



International Federation  
of Red Cross and Red Crescent Societies

**Legal issues from the international response to  
the tsunami in**

**Indonesia**

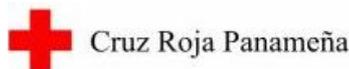
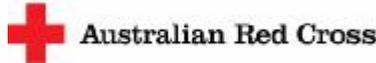


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## Introduction

In July 2005, the International Federation of the Red Cross and Red Crescent ('International Federation') published a report entitled "Indonesia: Laws, Policies, Planning and Practices on International Disaster Response".<sup>1</sup> The report was part of the International Disaster Response Laws, Rules and Principles (IDRL) Asia-Pacific Study, conducted during 2004 and 2005. It examined Indonesia's domestic legal regime as well as international and regional instruments, policies, treaties and agreements, applicable to international disaster response. Additionally, it examined the practical application of these instruments in past international disaster response operations, identifying examples of good practice and challenges to be addressed.

The July 2005 report was prepared in the context of the "pre-tsunami" experiences of Indonesia.

On 26 December 2004 at 8.00 a.m., an off-shore earthquake occurred near northern Sumatra, Indonesia. The resulting tsunami affected 12 countries in total, of which Indonesia was the hardest hit. The tsunami struck the province of Nanggroe Aceh Darussalam ('Aceh')<sup>2</sup>, just 150 kilometres away from the earthquake's epicentre, as well as the islands of Nias in North Sumatra Province.<sup>3</sup> Some 129,200 people were killed, more than 566,800 were displaced, 750,000 partially or totally lost their livelihoods, and a large number remain missing or unaccounted for.<sup>4</sup>

At the time of the tsunami, Aceh had endured a long-running armed conflict for almost 30 years. Efforts to resolve the conflict had begun and produced two agreements and brief periods of calm. On 19 May 2003 Aceh was placed under martial law which was later modified to civil emergency rule. Consequently, foreign access to the province was restricted with limited outflow of information.<sup>5</sup>

### Purpose of this report

This report aims to identify the various legal issues which impacted on international relief operations and examines the development of relevant laws and policies in Indonesia both prior to and following the tsunami. Analysis focuses on topics such as: offers and requests for international assistance; the entry and operation of foreign relief organisations, personnel, relief goods and equipment; the coordination of assistance; and the application of standards of quality and accountability.

It is not the aim of this study to criticize the Indonesian Government or other actors involved in the tsunami operation but rather to generate reflection on why these challenges occurred and to identify examples of good practice or issues to be addressed through the development or strengthening of legal and regulatory mechanisms.

The issues and events identified below have been gathered from interviews, field visits, reports and other documentation. A list of acronyms is contained in Annex A and the list of sources and interviews for this study are contained in Annex B.

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<sup>1</sup> See 'Indonesia: Laws, Policies, Planning and Practices on International Disaster Response', *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

<sup>2</sup> *Special Autonomy for the Province of Aceh Special Region as the Province of Nanggroe Aceh Darussalam*, Law No. 18/2001 (Republic of Indonesia) establishes autonomy for the province of Aceh.

<sup>3</sup> The Nias Islands were further damaged by additional aftershocks on 28 March 2005.

<sup>4</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 3. Available at <http://www.tsunami-evaluation.org>

<sup>5</sup> See Scheper, E, 'Impact of the Tsunami Response on Local and National Capacities: Indonesia Country Report', *Tsunami Evaluation Coalition*, April 2006.

## Response to the tsunami

The tsunami battered Aceh and Nias with waves that travelled up to seven kilometres inland, causing wide scale devastation, hundreds of thousands of deaths, and leaving an even greater number homeless. The tsunami's impact was powerful enough to destroy towns and villages and to redraw the coastline of some parts of Aceh.<sup>6</sup>

The tsunami also struck hard at Aceh's local economy, administration and infrastructure. Thirteen of Aceh's 21 districts were affected by the tsunami, six of them severely. Provincial government and administration was to a large extent paralysed by a substantial loss of personnel and expertise. Government records, voting lists, land title deeds and other personal records were washed away. Health services were incapacitated by destroyed and damaged hospitals, and a lack of skilled personnel. Economic activity, which had largely developed around traditional farming, forestry and fishing, was stunted. An estimate of preliminary damage and loss by the National Development Planning Agency, Bappenas PBP, for the province was US\$ 4.5 billion. According to Asian Development Bank (ADB) estimates, reconstruction will cost up to US\$5 billion over the next five years, with the cost of housing rehabilitation/reconstruction alone estimated at US\$573 million.<sup>7</sup>

As the waters receded, the Acehnese people were faced with tens of thousands of corpses lining the streets and lying trapped under rubble, destroyed families and livelihoods and many feared the outbreak of an epidemic due to a lack of safe drinking water.

### Initiation of national response

At the time of the tsunami, there was no comprehensive disaster management legislation in place to direct national and international relief efforts.<sup>8</sup> At the national level, a series of Presidential Decrees bestowed the responsibility for the planning and management of disaster response with a coordinating board, the National Coordinating Board for Disaster Management (**Bakornas PBP**) and also established disaster units at the district and provincial levels. Under these decrees, Bakornas PBP was tasked with coordinating the relief activities of government agencies and the non-government sector, including international relief organisations. Additionally, there were a number of other Acts which include aspects of disaster management, for example in the areas of health, epidemics, environmental management and social welfare, however the system remained dispersed.<sup>9</sup>

On the first day after the tsunami struck, the Indonesian President sent the Vice President to Aceh to see first hand the extent of the damage, at which time a national disaster was declared.<sup>10</sup> Two days later, however, the President declared Aceh open to the international community to provide emergency relief.<sup>11</sup>

At the national level, the Bakornas PBP, directed by the Vice President, was placed in charge of coordinating the emergency relief effort and a senior military officer, placed in the Vice-President's

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<sup>6</sup> See 'Responding to Aceh's Tsunami: The First 40 days', *Eye on Aceh*, April 2005. Available at [http://www.aceh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.aceh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>7</sup> In Athukorala, P and Resosudarmo, BP, 'The Indian Ocean Tsunami: Economic Impact, Disaster Management and Lessons', *Research School of Pacific and Asian Studies, Australian National University*, May 2005. Available at <http://rspas.anu.edu.au/economics/publish/papers/wp2005/wp-econ-2005-05.pdf>

<sup>8</sup> See 'Indonesia: Laws, Policies, Planning and Practices on International Disaster Response', *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

<sup>9</sup> See 'Indonesia: Laws, Policies, Planning and Practices on International Disaster Response', *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

<sup>10</sup> Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 44.

<sup>11</sup> The TEC Synthesis Report suggests that the decision to allow international access was made earlier but was not 'widely known' until two days later. See Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 43.

office, headed the tsunami response.<sup>12</sup> The National Development Planning Agency (**Bappenas**) was allocated the rehabilitation and reconstruction program, and the Coordinating Ministry for the Economy was assigned to tackle the province's economic resurgence. At the regional level, **Satkorlak PBP** oversaw the relief effort. Satkorlak is the provincial extension of Bakornas PBP and is a collective of line ministry personnel, brought together under an appointed head in times of emergency.<sup>13</sup> The Coordinating Minister for Social Welfare was placed on its committee, which also included a senior army representative. **Satlak PBP**, the District Disaster Management Implementing Units, were responsible for relief distribution at district and sub-district level.<sup>14</sup>

It has been widely acknowledged that the Indonesian military, the Tentara Nasional Indonesia (**TNI**), played a major role in the emergency relief effort, owing largely to its vast manpower and ability to mobilise quickly. A Tsunami Evaluation Coalition (**TEC**) country study found that the TNI was "generally credited to have done a 'good' job".<sup>15</sup>

There was no distribution plan in place prior to the disaster<sup>16</sup>, so civilian relief distribution efforts were incorporated into the humanitarian element of the ongoing military operations in Aceh. Accordingly, the TNI was deemed quick to impart a semblance of control and coordination over the situation, facilitating the arrival of relief. However, with sizable damage to much of the vital road network, many survivors could only be reached by helicopter or ship, stretching the existing resources of the TNI. Thus, survivors stranded in more remote areas, for example in the west coast city of Meulaboh, only received significant assistance with the arrival of the more than seventeen foreign militaries that responded to the disaster.<sup>17</sup> Indonesia's Department of Foreign Affairs acknowledged that:

One of the most difficult challenges at this stage is to transport and distribute relief materials to isolated areas in which communications systems and other infrastructure is no longer operational. We further appreciate offers by friendly countries to mobilise more air transport to reach out to isolated areas.<sup>18</sup>

## Initiation of international response

At the time of the tsunami, Indonesia had concluded a number of international, regional and bilateral instruments which afford it assistance in the event of a disaster.<sup>19</sup> In addition, Indonesia had passed several pieces of domestic legislation which contained disaster management provisions. However, at the time the tsunami struck, there was no Indonesian law which stipulated when the Indonesian

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<sup>12</sup> 'Disaster-Response Management: Going the Last Mile - Thailand and Indonesia', *Economist Intelligence Unit*, 2005.

<sup>13</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami - Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 6. Available at <http://www.tsunami-evaluation.org>

<sup>14</sup> See also Schulze, KE, 'Between Conflict and Peace: Tsunami Aid and Reconstruction in Aceh', *London School of Economics*, 2005, p 10.

<sup>15</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami - Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, pp 7 and 23. Available at <http://www.tsunami-evaluation.org>

<sup>16</sup> Adrian van der Knaap, Chief of the UN Joint Logistics Centre (UNJLC) quoted in 'Disaster-Response Management: Going the Last Mile - Thailand and Indonesia', *Economist Intelligence Unit*, 2005.

<sup>17</sup> Number of foreign militaries reported in Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 21. Available at <http://www.tsunami-evaluation.org>

<sup>18</sup> Deplu Press Release, 30 December, 2004 in 'Responding to Aceh's Tsunami: The First 40 days', *Eye on Aceh*, April 2005. Available at [http://www.aceh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.aceh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>19</sup> See 'Indonesia: Laws, Policies, Planning and Practices on International Disaster Response', *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

government might seek international assistance upon declaring a disaster situation within its territory; that prerogative remained at the discretion of the elected Indonesian government.<sup>20</sup>

## Gaining access

Despite the declaration of a national disaster, it was reported that Aceh initially remained closed to the international humanitarian relief community because elements in the TNI were concerned about security and felt that Indonesia could best deal with the disaster by itself.<sup>21</sup> The Tsunami Evaluation Committee (TEC) Synthesis Report however, suggests that the decision to allow international access was made soon after the tsunami, but that it only became “widely known” two days later.<sup>22</sup> It was also reported that some organisations immediately sent emergency medical and rescue teams to neighbouring areas while awaiting permission to enter Aceh, which was felt to have brought international pressure to bear on allowing access.<sup>23</sup>

On 28 December 2004, the Indonesian government made an official request for assistance to the United Nations (UN) and to the international humanitarian community.<sup>24</sup> Soon after, the UN was asked to take a coordinating role<sup>25</sup> and within a week more than 50 international organizations had arrived, and by mid-January had risen to over 200.<sup>26</sup> Indeed the proliferation and diversity of relief agencies has been widely reported, not only in the case of Indonesia, but also in other tsunami affected countries and was described by one author as a “second tsunami”.<sup>27</sup>

## Issues restricting international relief operations

At first, the government imposed restrictions on the movements of humanitarian organisations, reporters and others in Aceh on the grounds of security<sup>28</sup> and it was unclear whether a civil emergency situation still existed.<sup>29</sup> It was felt by some that the ability of relief agencies to operate effectively in the early days of the tsunami’s aftermath was hampered by the TNI’s tight controls on food and relief

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<sup>20</sup> The following paper contains an overview some of these provisions: ‘Disaster Management in Indonesia 2005: A Briefing Paper for Legislative Reform’, *Indonesian Society for Disaster Management*, 7 May 2005. Available at [www.mmpi.org](http://www.mmpi.org). See also ‘Indonesia: Laws, Policies, Planning and Practices on International Disaster Response’, *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

<sup>21</sup> ‘Responding to Aceh’s Tsunami: The First 40 days’, *Eye on Aceh*, April 2005. Available at [http://www.acheh-eye.org/data\\_files/english\\_format/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.acheh-eye.org/data_files/english_format/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>22</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 43.

<sup>23</sup> ‘Responding to Aceh’s Tsunami: The First 40 days’, *Eye on Aceh*, April 2005. Available at [http://www.acheh-eye.org/data\\_files/english\\_format/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.acheh-eye.org/data_files/english_format/ngo_eoa/ngo_eoa_2005_04_00.html) and ‘Disaster-Response Management: Going the Last Mile - Thailand and Indonesia’, *Economist Intelligence Unit*, 2005.

<sup>24</sup> Michael Elmquist, Deputy Chief of the United Nations Office for the Coordination of Humanitarian Affairs explained: “It wasn’t until the late afternoon of 28 December 2004, that Bakornas PBP requested OCHA to assist in co-ordinating international relief aid and international aid workers to enter Aceh”, Interview, Jakarta, 26 January 2005, in ‘Responding to Aceh’s Tsunami: The First 40 days’, *Eye on Aceh*, April 2005. Available at [http://www.acheh-eye.org/data\\_files/english\\_format/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.acheh-eye.org/data_files/english_format/ngo_eoa/ngo_eoa_2005_04_00.html).

<sup>25</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 8. Available at <http://www.tsunami-evaluation.org>

<sup>26</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 5. Available at <http://www.tsunami-evaluation.org>

<sup>27</sup> Brochard, P ‘New Regulations and Procedures Affecting the NGOs in Sri Lanka’, *Canadian International Development Agency Program Support Unit*, Colombo, Sri Lanka, 1 June 2005.

<sup>28</sup> ‘Indonesian Government Must Not Hesitate to Grant Access to All Affected Areas’, *Asian Human Rights Commission*, 30 December 2004, and ‘Open Letter to President Susilo Bambang Yudhoyono’, *Human Rights Watch*, 6 January 2005.

<sup>29</sup> Human Rights Watch sought to clarify the status of *Regulation of Visits and Activities of Foreign Citizens, NGOs and Journalists in NAD Province*, Presidential Decree No. 43 of 2003 (Republic of Indonesia), which placed restrictions on access for the United Nations, international agencies, nongovernmental organizations, journalists and foreigners in Aceh. See ‘Open Letter to President Susilo Bambang Yudhoyono’, *Human Rights Watch*, 6 January 2005

causing delays in already challenged distribution lines. There were reports that the TNI barred some local non-government organisations (NGOs) from partaking in relief distribution<sup>30</sup>; that relief workers were required to accept military escorts when delivering relief to survivors in situations where there was no risk posed to the workers' security; and that agencies were pressured or forced to allow the military to deliver their relief.<sup>31</sup> Indeed the TEC Synthesis Report found that NGO-military relations "bordered on the hostile" and were characterised by deep suspicion on both sides.<sup>32</sup> Nevertheless it was also noted that "the widely acknowledged lead role of the TNI in the immediate response to the tsunami improved both national and international relations".<sup>33</sup>

Early on in the relief phase, relief workers were required to register their activities, as well as any plans to travel outside the towns of Banda Aceh and Meulaboh where the military had less control.<sup>34</sup> There were reports of intimidation and even arrest of relief workers who were thought not to be complying with this requirement.<sup>35</sup> Consequently, it was felt to be initially difficult for relief workers to get information about the affected areas, particularly from the more remote areas. It was reported that survivors, walking for tens of kilometres to find relief, were the main source of news.<sup>36</sup>

Less than two months after allowing foreign militaries and relief agencies into Aceh, the government imposed a deadline on their departure for 26 March 2005.<sup>37</sup> Accordingly, agencies felt they were placed in an uncertain state, which "paralysed" plans for relief and reconstruction activities under the threat that they might not be permitted to stay and carry them out,<sup>38</sup> as described further below.

The UN Office of the High Commissioner for Refugees (UNHCR) was initially called upon to assist in Aceh, but in February 2005, it reported getting 'signals' from the Government that it should cease its relief operations. As explained by a UNHCR official:

We haven't received anything in writing and we haven't been told in blunt terms, 'get out'. But in the discussions that we've had the government has made it clear that . . . they don't see us having a role in the reconstruction phase.<sup>39</sup>

Consequently, UNHCR had to close a substantial operation involving between US\$40-60 million of earmarked funding for Aceh and three offices with 60 local and 40 expatriate staff within three weeks, shelving significant plans for shelter and housing. Two months after its departure UNHCR was invited

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<sup>30</sup> 'Human Rights and Humanitarian Situation in Aceh', *Forum-Asia*, Press Release, 5 January 2005, and 'Control Political Squabbling: Managing Aid Deluge for Tsunami Survivors', *Asian Centre for Human Rights*, 12 January 2005.

<sup>31</sup> 'Open Letter to President Susilo Bambang Yudhoyono', *Human Rights Watch*, 6 January 2005.

<sup>32</sup> Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 60. See also Schulze, KE, 'Between Conflict and Peace: Tsunami Aid and Reconstruction in Aceh', *London School of Economics*, 2005, pp 11-13.

<sup>33</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami - Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 7. Available at <http://www.tsunami-evaluation.org>

<sup>34</sup> 'Control Political Squabbling: Managing Aid Deluge for Tsunami Survivors', *Asian Centre for Human Rights*, 12 January 2005.

<sup>35</sup> In June 2005, it was reported that field workers for the International Labour Organization collecting data in Waylay Regency, were arrested by the military and warned that they must report their activities to the military, despite having reported their intended activities to the head of the sub-regency. Reported in 'After the Tsunami: Human Rights of Vulnerable Populations', *Human Rights Centre, University of California, Berkeley*, October 2005.

<sup>36</sup> Interview with UN official, 15 March 2006, Banda Aceh.

<sup>37</sup> Vice President Kalla, quoted in Media Indonesia, 15 January 2005 in 'Responding to Aceh's Tsunami: The First 40 days', *Eye on Aceh*, April 2005. Available at [http://www.aceh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.aceh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>38</sup> Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 55.

<sup>39</sup> Interview with UNHCR representative in Jakarta, in Donnan, S, 'Tsunami Relief Groups Face Indonesian Crackdown', *The Financial Times*, 26 March 2005.

back upon signing a Memorandum of Understanding (MOU) for a number of scaled back activities as a 'non mandate' operation for humanitarian purposes only.<sup>40</sup>

## Planning Aceh's recovery

Several weeks after the disaster struck, the government and humanitarian organisations started to focus on long term reconstruction and the mechanism that would be required in order to bring it into effect.

In mid-January 2005, Bappenas hosted a '*National Dialogue on Planning, Rehabilitation and Reconstruction for Aceh and North Sumatra*' and on 28 January 2005, the Secretariat for the Rehabilitation and Reconstruction of Aceh and North Sumatra announced the establishment of ten working groups to create and implement plans for the rehabilitation and reconstruction phase. The blueprint produced as a result of this process was opened for broader public consultation on 1 March 2005. The draft identified three phases of the disaster response in Aceh. These three phases were explained by the President as follows:

Immediate term - 1 year: The objective is emergency rescue, emergency food supply, replacing basic infrastructure, and burying of bodies.

Short term - 1.5 to 2 years: Focus on rehabilitation to restore public services to minimum requirements, such as economic facilities, banking and financial institutions, social treatments, secure land rights, and to restore law and order mechanisms.

Long term - 5 years: Reconstruction phase, aiming to rebuild and revitalise the area, including the economy (production, trade, banking), transportation and telecommunications, and rehabilitate social and cultural life.<sup>41</sup>

The emergency relief phase was officially ended on 26 March 2005. On 28 March 2005, another significant earthquake weakened further damage on the island of Nias, but did not prompt an extension of the emergency phase.<sup>42</sup>

On 15 April 2005, a *Master Plan for Rehabilitation and Reconstruction* outlined a four-year strategy for Aceh and Nias as a planning and coordination tool<sup>43</sup> and on 16 April 2005, the Board in Charge of Rehabilitation and Reconstruction of the Region and Life in Nanggroe Aceh Darussalam Province and Nias Islands in North Sumatra Province (BRR) was established.<sup>44</sup>

The BRR was intended as an independent body with financial reporting obligations<sup>45</sup>, accountable directly to the President, in order to bring some cohesion and speed to the reconstruction phase, and to

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<sup>40</sup> Interview with UN official, 20 March 2006, Medan. See also Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 59.

<sup>41</sup> President Susilo Yudhoyono speech at the ASEAN Leaders Summit, Jakarta, 6 January 2004 in 'Responding to Aceh's Tsunami: The First 40 days', *Eye on Aceh*, April 2005. Available at [http://www.aceh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.aceh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>42</sup> Interview with UN official, 15 March 2006, Banda Aceh.

<sup>43</sup> *Master Plan for Rehabilitation and Reconstruction of Territory and Social Life of Nanggroe Aceh Darussalam Province and Nias Island of North Sumatra Province*, Presidential Regulation No. 30 of 2005 (Republic of Indonesia)

<sup>44</sup> *Board in Charge of Rehabilitation and Reconstruction in NAD Province and Nias Islands in North Sumatra Province*, Law 2 of 2005 (Republic of Indonesia).

<sup>45</sup> *Board in Charge of Rehabilitation and Reconstruction in NAD Province and Nias Islands in North Sumatra Province*, Law 2 of 2005 (Republic of Indonesia), art 22.

address fears of corruption by government officials involved in the relief effort.<sup>46</sup> After this time, Bakornas PBP and Bappenas had a limited role in Aceh's reconstruction.

The structure of BRR comprised of:

- a Steering Committee charged with directing the formulation, planning and implementation of rehabilitation and reconstruction<sup>47</sup>;
- a Supervisory Committee charged with supervising the process and following up on complaints<sup>48</sup>; and
- an Executive Body charged with formulating operational strategies and other activities necessary for implementing the Master Plan and Detailed Plan for rehabilitation and reconstruction, plus managing, coordinating and supervising the various groups involved in these activities.<sup>49</sup>

The mandate of BRR involved coordination and facilitation in the areas of: immigration, manpower, customs, clearance, excise and tax requirements, applicable to foreign organisations, individuals, universities and companies within Aceh and Nias, but not to International Organisations (IO's).<sup>50</sup> BRR was not granted any of its own legal authority to make decisions independently of Indonesian government ministries, whose legislative power still applied in all areas. One exception to this however, was for NGO registration, where BRR was given some discretion.<sup>51</sup> Thus, BRR operated on the basis of recommendation and referral to the government ministries, as a first port of call for foreign organisations working in Aceh and Nias.

BRR concluded a number of MOUs with different international organisations. The first of these was concluded with the International Federation, the International Committee of the Red Cross (ICRC) and the Indonesian Red Cross (PMI), signed in Banda Aceh on 6 May 2005.

The UN also established its own Office of the United Nations Recovery Coordinator for Aceh and Nias (UNORC) in June 2005. Its role included support to BRR, based on the recommendations of the Joint Mission of the United Nations Development Programme (UNDP), the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the Development Group Office. This support was formalised in an MOU concluded on 30 November 2005 between the UNORC and the Government, represented by BRR.<sup>52</sup>

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<sup>46</sup> *Government Regulation in Lieu of Law 2 of 2005*, Government Regulation 10 of 2005 (Republic of Indonesia), supplemented by *Organization Structure, Working Procedure, and Financial Authority of the Nanggroe Aceh Darussalam Province and Nias Islands, North Sumatra Province Rehabilitation and Reconstruction Agency*, Presidential Regulation No. 34 of 2005 (Republic of Indonesia).

<sup>47</sup> *Board in Charge of Rehabilitation and Reconstruction in NAD Province and Nias Islands in North Sumatra Province*, Law 2 of 2005 (Republic of Indonesia), arts 9, 10.

<sup>48</sup> *Board in Charge of Rehabilitation and Reconstruction in NAD Province and Nias Islands in North Sumatra Province*, Law 2 of 2005 (Republic of Indonesia), arts 12, 13.

<sup>49</sup> *Board in Charge of Rehabilitation and Reconstruction in NAD Province and Nias Islands in North Sumatra Province*, Law 2 of 2005 (Republic of Indonesia), arts 15, 16, 17.

<sup>50</sup> *Participation of Foreign Organisations/Individuals in Providing Grants for the Rehabilitation and Reconstruction of the Region and Life in NAD Province and Nias*, Presidential Regulation No. 69 of 2005 (Republic of Indonesia), art 7 (1).

<sup>51</sup> *Participation of Foreign Organisations/Individuals in Providing Grants for the Rehabilitation and Reconstruction of the Region and Life in NAD Province and Nias*, Presidential Regulation No. 69 of 2005 (Republic of Indonesia) clarifies the issue. Art 7 (2) states that the grant of facilitation to foreign organisations and individuals shall be in accordance with prevailing laws and regulations, and art 11 states that BRR and relevant ministries may determine further provisions regarding the implementation of the Decree in accordance with their respective tasks and authorities.

<sup>52</sup> 'BRR UNORC Sign MOU on Aceh Reconstruction', *Organisation of Asia-Pacific News Agencies*, 30 November 2005.

During 2005, the structure and activities of Bakornas PBP was also slightly amended.<sup>53</sup> Specifically in respect of international relief assistance, it provided that all overseas assistance must be coordinated by Bakornas PBP<sup>54</sup>, however it appeared that this role did not result in its substitution of BRR, which continued under its existing mandate in Aceh and Nias.

Also in December 2005, BRR formed an integrated task force called *tim terpadu*, composed of representatives from BRR, the district police, and government ministries relating to immigration, foreign affairs, manpower, trade, customs and excise, and taxation. Its role was to coordinate with donors and relief agencies with the aim of achieving faster solutions to the needs of the region.<sup>55</sup>

## Laws, rules and policies affecting international disaster response

Special note: In preparing this report the International Federation was at times presented with conflicting advice from reputable sources on the applicability of Indonesian legislation during the course of the international response and recovery operation. Thus, the outline below represents an understanding of the relevant laws based on documents, interviews and advice from legal counsel but may not be complete.

### Registration and legal status of foreign relief organisations

#### Pre-registered organisations

Under Indonesian civil code, contracts between foreign companies (including foreign relief organisations) and Indonesian organisations or individuals are legally binding.<sup>56</sup> However foreign relief organisations entering Indonesia are also required to register with the relevant Indonesian authorities in order to legally operate an office and to conduct activities such as hiring staff, leasing premises and sponsoring international delegates.

Prior to the tsunami, there were a number of foreign relief organisations registered in Indonesia. There are two avenues for registration depending on the type of organisation involved:

Firstly, recognised international organisations such as the UN, International Federation and ICRC may register with the Ministry of Foreign Affairs and conclude legal status or headquarters agreements which authorise them to establish an in-country office.<sup>57</sup> These types of agreements often grant the same or similar provisions as contained in the *Convention on the Privileges and Immunities of the United Nations*<sup>58</sup> and the *Convention on the Privileges and Immunities to Specialized Agencies*<sup>59</sup>.

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<sup>53</sup> *National Coordinating Board for Disaster Management*, Presidential Regulation No. 83 of 2005 (Republic of Indonesia). Nullifies *Presidential Decree No. 3 of 2001* (Republic of Indonesia), modified by *Presidential Decree No. 111 of 2001* (Republic of Indonesia) (Art 24 (1)). (cf Art 24 (2) – decrees of 2001 remain in effect if not in conflict with decree of 2005).

<sup>54</sup> *National Coordinating Board for Disaster Management*, Presidential Regulation No. 83 of 2005 (Republic of Indonesia), art 19(3).

<sup>55</sup> Diani, H, 'Help on the Way for Stuck Tsunami Aid', *Jakarta Post*, 14 January 2006 and interview with BRR official, 15 Mar 2006, Banda Aceh.

<sup>56</sup> *Civil Code*, Promulgated by Publication of April 39 1847 S.NO.23 (Republic of Indonesia), art 1320.

<sup>57</sup> See 'Indonesia: Laws, Policies, Planning and Practices on International Disaster Response', *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

<sup>58</sup> *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946).

<sup>59</sup> *Convention on the Privileges and Immunities of the Specialized Agencies*, 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948).

Second, a number of international NGOs (**INGOs**) registered at national level with the State Secretary and obtained an MOU. These usually permit operations anywhere in Indonesia and offer limited immigration facilitation, tax and importation exemptions. To obtain the permit from the State Secretary, an application must be made submitting the organisation's profile, a summary of its objectives and purposes in Indonesia, including activities and results, and its legal status. The State Secretary then liaises with the government agency most relevant to the activities of the NGO and concludes an MOU.

### **New organisations entering Indonesia for tsunami operations**

Relief agencies arriving in Indonesia immediately following the tsunami noted that registration began to pose difficulties several months after the commencement of operations.<sup>60</sup> Following the establishment of BRR, unregistered organisations in Aceh or Nias were required register or face eviction. However some of the organisations interviewed said that the process remained unclear and they were still operating in a climate of uncertainty, not knowing whether the rules would change and they would be asked to leave at a moments notice. Although rumoured, it was not clear whether any evictions actually took place, however the seemingly tenuous situation appeared to have a direct impact on humanitarian operations.<sup>61</sup> A number of organisations reported being discouraged from scaling up their activities and decided to postpone or cancel plans to establish offices, increase their staff or commit further resources.

A BRR regulation declared on 30 September 2005 set out new registration requirements for foreign relief organisations through the internet-based Recovery Aceh and Nias Database (**RAND**).<sup>62</sup> Organisations were required to register and update their projects' progress on a monthly basis.<sup>63</sup> In an attempt to monitor and coordinate reconstruction projects it was stated that organisations that did not register their projects in the RAND would be evicted.<sup>64</sup> The conditions of registration limited the geographic areas in which organisations could operate in Aceh and Nias.<sup>65</sup> Certification was also dependent on the organisation signing an Anti-Corruption Declaration and indemnifying BRR against any legal disputes, claims or settlements as a result of the organisation undertaking its rehabilitation and reconstruction activities.

BRR stated in interviews that registration did not constitute recognition of legal status, rather that legal status of foreign organisations was granted in their country of origin. Indeed, foreign relief organisations did not appear to be prevented from entering into legally binding contracts.

In November 2005, *Presidential Regulation of 2005*<sup>66</sup> was introduced, further requiring all foreign organisations and individuals (with the exception of IOs) to submit all program proposals to BRR for

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<sup>60</sup> Interview with UN official, 15 March 2006, Banda Aceh.

<sup>61</sup> According to one international organisation interviewed for this study, a list was produced of good and bad agencies, but no explanation was given as to how it was decided. See also 'Tsunami and Human Rights: 100 Days After', *Asian Forum for Human Rights and Development*, 4 April 2005. It has also been reported that "no agencies were kicked out", see Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 127 note E21.

<sup>62</sup> *Registration Requirements of Foreign Foundations and/or Organizations Engaged in the Nanggroe Aceh Darussalam Province and Nias Islands, North Sumatra Region and Life Rehabilitation and Reconstruction Activities*, Regulation of the Chief of Nanggroe Aceh Darussalam Province and Nias Islands, North Sumatra Province Region and Life Rehabilitation and Reconstruction Agency No. 02/Per/BP-BRR/IX/2005 (Republic of Indonesia)

<sup>63</sup> Interview with government official, 15 March 2006, Banda Aceh. See also BRR website: <http://e-aceh-nias.org>

<sup>64</sup> Gelling, P, 'At Tsunami's Epicenter a Town is Reborn but Housing is Scarce', *New York Times*, 14 November 2005, and interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>65</sup> *Registration Requirements of Foreign Foundations and/or Organizations Engaged in the Nanggroe Aceh Darussalam Province and Nias Islands, North Sumatra Region and Life Rehabilitation and Reconstruction Activities*, Regulation of the Chief of Nanggroe Aceh Darussalam Province and Nias Islands, North Sumatra Province Region and Life Rehabilitation and Reconstruction Agency No. 02/Per/BP-BRR/IX/2005 (Republic of Indonesia), arts 3, 5.

<sup>66</sup> *Participation of Foreign Organisations/Individuals in Providing Grants for the Rehabilitation and Reconstruction of the Region and Life in NAD Province and Nias*, Presidential Regulation No. 69 of 2005 (Republic of Indonesia).

approval. Each organisation was required to then conclude MOUs with the government<sup>67</sup> which, in addition to detailing the proposed activities, included the various facilities and exemptions such as taxation and visas. Organisations were obliged to observe a Code of Ethics to be elaborated by the President, comply with the guidelines and policies of BRR, and provide updates on the progress of their projects.<sup>68</sup>

Towards the end of 2005, it was reported that 438 NGOs had registered with the Indonesian government, either in Jakarta or Aceh, but only 129 of these had provided any activity reports to BRR.<sup>69</sup> A number of circumstances were felt to have contributed to this, including duplication of information already submitted to OCHA, and instances in which NGOs had already left the country and had not informed the government.<sup>70</sup> Several organisations mentioned the length of time and drain on resources to initiate the registration process, requiring many visits and long waiting times at BRR offices. One foreign relief organisation had been waiting for BRR to provide a registration certificate for many months after lodging their application. The same organisation had also previously applied to the Ministry of Foreign Affairs to allow it operate in the whole territory of Indonesia, and had been waiting for nearly a year without a response.<sup>71</sup> Another organisation reported that the database was very slow and often failed to work at all, so instead decided to take a print out of their monthly progress reports to BRR and get a signed receipt, to avoid being later accused of not having reported their activities.<sup>72</sup> It was also felt by some that a disinterest in supporting the government coordination role was also partly responsible for the poor response.<sup>73</sup>

## Entry and legal status of foreign relief personnel

### Visa and work permit legal requirements

The International Federation report entitled “Indonesia: Laws, Policies, Planning and Practices on International Disaster Response” outlines a number of regulations applicable to the entry and departure from Indonesia, including regulations concerning entry permits and visas.<sup>74</sup> However, in conducting research for this report, the following additional legislation was also found to be relevant:

- *Transit Visas, Visit Visas, Limited Stay Visas, Entry Permit and Immigration Permit*, Decision of the Minister of Justice No. M.02.IZ.01.10 of 1995 (Republic of Indonesia);
- *Visit Visas on Arrival and its Amendments*, Decision of the Minister of Justice No. M-04.IZ.01.10 of 1993 (Republic of Indonesia);
- *Visa-Free Short Visits and its Amendment*, Presidential Decree No.18 of 2003 (Republic of Indonesia);

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<sup>67</sup> *Participation of Foreign Organisations/Individuals in Providing Grants for the Rehabilitation and Reconstruction of the Region and Life in NAD Province and Nias*, Presidential Regulation No. 69 of 2005 (Republic of Indonesia), art 2.

<sup>68</sup> *Participation of Foreign Organisations/Individuals in Providing Grants for the Rehabilitation and Reconstruction of the Region and Life in NAD Province and Nias*, Presidential Regulation No. 69 of 2005 (Republic of Indonesia), art 5.

<sup>69</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 37. Available at <http://www.tsunami-evaluation.org>

<sup>70</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 37. Available at <http://www.tsunami-evaluation.org>

<sup>71</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>72</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>73</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 37. Available at <http://www.tsunami-evaluation.org>

<sup>74</sup> ‘Indonesia: Laws, Policies, Planning and Practices on International Disaster Response’, *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

- *Implementation Guidance of Director General of Immigration*, No F-309.IZ.01.1 (Republic of Indonesia);
- *Letter of the Director General of Immigration*, No F-UM.06.07-3087 of 21 December 2005 (Republic of Indonesia); and
- *Implementation Guidance of Director General of Immigration*, No. F303.IZ.03.03 of 1995 (Republic of Indonesia).

Based on these various regulations and their practical application, there are four types of visas available to foreign nationals:<sup>75</sup>

- On-Arrival or Tourist Visa, valid for 30 days and not renewable in-country;
- Official or Diplomatic Visa (*Visa Dinas*) which may be issued to holders of Diplomatic or Official Passports who will be performing official tasks assigned to them by a foreign government or an international organisation. A successful applicant must apply to the Director General of Immigration for an Official Stay Permit within 60 days of entry;
- Visit or Social Visa (*Visa Kunjungan*) which may be issued at an Indonesian Embassy/Consulate to persons entering Indonesia for governmental duties, tourism, socio-cultural activities and other purposes. Upon arrival in Indonesia, holders of a *Visa Kunjungan* will receive a Visitor Permit, which is valid for a maximum of 60 days, and may be extended a maximum of 5 times for a maximum of 30 days each time; or
- Limited Stay Visa (*Visa Tinggal Terbatas* or '**VITAS**') which may be issued at an Indonesian Embassy/Consulate to persons visiting Indonesia for purposes including employment, missionary activities, and training and education or scientific research.<sup>76</sup> The visa is valid for a maximum of two years commencing on the date of entry to Indonesia.

The holder of a Visit Visa may apply, and the holder of a VITAS must apply, for a Limited Stay Permit (**KITAS**). A KITAS is valid for a maximum of one year and is extendable up to five times. KITAS holders wishing to exit and re-enter Indonesia frequently may apply for a multiple re-entry permit. A departure tax is levied on all persons departing from Indonesia; however KITAS holders are required to pay a higher sum of 1 million rupiah (approximately US\$100) on departure.

Additionally, regardless of which visa or permit is held, all foreigners residing in Indonesia for more than 90 days – other than KITAS holders and nationals on diplomatic and consular missions - must register at an immigration office within fourteen days of the end of the 90 day period.<sup>77</sup>

Finally, all foreign relief workers in Indonesia require an official work permit. These must be applied for separately with the Department of Manpower.

### **Visas - Practical experiences**

At the start of the relief operation, many relief agency representatives and military personnel entering Indonesia obtained On-Arrival Visas. When the emergency phase ended, and the reconstruction phase commenced, some relief workers sought longer-term visas, most often Visit Visas or VITAS/KITAS.

BRR's integrated team, *tim terpadu*, had been seeking to ease the process of obtaining visas and work permits for international relief workers<sup>78</sup> however the process seemed to vary depending on where the

<sup>75</sup> This information is based on legal advice received by the International Federation Indonesia Country Delegation in Jakarta.

<sup>76</sup> Other reasons include capital investment; joining husband, parents of spouse, or legitimate children of an Indonesian national; repatriation; joining husband, parents of spouse, or legitimate children of a foreign national in Indonesia for any of the listed purposes.

<sup>77</sup> *Immigration Law*, No 9 of 1992 (Republic of Indonesia) and *Alien Control and Immigration Actions*, Government Regulation No. 31 Year 1994 (Republic of Indonesia), art 12(1) and (2), and art 13.

<sup>78</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

visa application was made. Some organisations, including IOs, reported facing a bureaucratic, lengthy and expensive process in their attempts to obtain the appropriate visas and work permits.

INGOs based in Aceh could obtain a recommendation letter from BRR and attempt to conclude MOUs with the Department of Foreign Affairs in Jakarta to facilitate the visa process, however it was reported that the letters were not always accepted by the Ministry.<sup>79</sup> In practice, most foreign relief personnel were granted Visit Visas if they were intending to stay in Indonesia for up to 6 months, however this required them to leave the country after the first 60 days to receive a renewal, and every 30 days thereafter. One INGO reported that it had been waiting for over three months to get a single visa processed, then half of its staff were processed at once – although only four staff members were successful in obtaining long stay visas.<sup>80</sup>

Indeed, long stay visas - VITAS and KITAS – were notoriously difficult to obtain and even one UN agency reported difficulties and inconsistent practices in obtaining the appropriate visas, which took a year to resolve. Consequently this organisation, and many others, incurred large costs to their operations budgets to continually send foreign staff in and out of the country, usually to the Indonesian Consulate in Singapore, paying for their flights and accommodation from their operations budgets, not to mention the disruption caused to their ongoing activities.<sup>81</sup>

In relation to obtaining work permits, this requirement was not actively enforced in the early stages of the relief and recovery operation and only personnel seeking to obtain KITAS permits generally lodged applications. Increasingly however, BRR began monitoring this and other requirements more stringently. In May 2006, BRR issued a brochure outlining, among other things, its immigration and manpower facilitation services to assist with clarifying the process.<sup>82</sup>

### **Identification Cards**

In addition to visas and work permits, another process was introduced soon after the initiation of international assistance. In March 2005 all representatives of foreign organisations in Aceh and Nias were required to obtain a police-issued ID card. Some organisations believed that the ID Cards had to be renewed every two weeks and others reported that this was later revised to every month. Of main concern was that the ID cards could only be issued in the city of Banda Aceh, requiring a several day return trip by car, helicopter or plane for personnel engaged in operations in other areas.<sup>83</sup> Additionally, police officers were also reported to be requiring individuals to produce documents such as project plans and updates which were not required by law, prior to issuing the cards. In all cases, it was felt that the renewal process was both expensive, time consuming and a burden on relief and recovery operations.

### **Employment contracts for locally hired staff**

Many foreign relief organisations hired local staff to support their operations in Indonesia and several reported difficulties in drafting proper employment contracts due to a lack of information about Indonesian legal requirements.

The International Federation discussed this issue with an official of the Manpower Department in Jakarta<sup>84</sup> who confirmed that IOs, NGOs and community social organisations conducting activities in

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<sup>79</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>80</sup> Interview with INGO, 17 March 2006, Banda Aceh.

<sup>81</sup> Interview with UN official, 20 March 2006, Medan.

<sup>82</sup> *'Services of Tim Terpadu (BRR) for Foreign Institutions/Individuals Providing Assistance for the Rehabilitation and Reconstruction of Aceh-Nias'*, Board in Charge of Rehabilitation and Reconstruction in NAD Province and Nias Islands in North Sumatra Province, May 2006.

<sup>83</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>84</sup> According to e-mail advice from legal counsel provided to the International Federation, dated 16 November 2005.

Indonesia are classified as companies for the purposes of Indonesian employment regulations under Indonesian Labour Law.<sup>85</sup>

In accordance with this law, every company with more than ten employees is obligated to prepare a set of company regulations, legalised by the Minister of Manpower and renewable every two years.<sup>86</sup> The International Federation was also advised that companies offering 'definite period' contracts<sup>87</sup> to their employees must register the contract within seven days of its execution at the Manpower Regional Office, otherwise the contract will convert to an 'indefinite period' contract.<sup>88</sup> One organisation was also informed that the Department of Manpower required a small fee to process each contract.<sup>89</sup>

Additionally, companies employing more than ten employees or paying salaries above a certain amount are required to enlist their employees on the **JAMSOSTEK**<sup>90</sup> program, the social security program of the Department of Manpower, and pay monthly contributions.<sup>91</sup> The program covers security for work accidents, death, retirement and health care, but does not apply to expatriate workers covered by similar social security programs in their country of origin.

Other organisations were given different advice. One INGO was advised by its lawyer that it was not possible to have a short term employment contract in Indonesia.<sup>92</sup> Another was advised that employment contracts between one and two years in duration were covered by contract law and not labour law.<sup>93</sup> Some organisations, particularly those only intending to stay in Indonesia for a short time, expressed concern about having all local staff deemed to be permanent employees and the potential costs and legal claims which could arise when it's in-country operations ceased.

Many IOs and NGOs interviewed were either unaware of the Indonesian Manpower legislation, or found it too complicated and time consuming to apply. In one case, an INGO did not feel the legislation offered acceptable terms and conditions for employees, when compared the labour standards of its own country and so developed contracts which combined both its own national standards and Indonesian standards. However, the INGO remained unsure as to whether the contracts would be legally enforceable under Indonesia law.

## Income tax

Rules for payment or exemptions from income tax were dependent on the type of organisation involved. For personnel working for organisations with international legal status in Indonesia, the following legislation was found to apply:

- *Income Tax Law No. 7 of 1983 as amended* (Republic of Indonesia);
- *Decree of Minister of Finance No. 6111/KMK.04/1994* (Republic of Indonesia; and

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<sup>85</sup> Pursuant to *Labour Law*, Law No. 13 of 2003 (Republic of Indonesia), art 1(6).

<sup>86</sup> Pursuant to *Labour Law*, Law No. 13 of 2003 (Republic of Indonesia), art 108, the regulations should relate to the rights and obligations of the employer; the rights and obligations of the employee; working conditions and requirements; the company discipline and rule of conduct; and the validity of company regulations.

<sup>87</sup> Applies to seasonal work and employment which, because of its type and nature, will finish in a definite time period which is not longer than 3 years.

<sup>88</sup> Pursuant to *Labour Law*, Law No. 13 of 2003 (Republic of Indonesia), art 59(1), and *Implementing Regulations of Employment Agreement with Definite Term Period*, Decision of Minister of Manpower No. 100/MEN/VI/2004 (Republic of Indonesia), art 13.

<sup>89</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>90</sup> *Manpower and Social Security*, No. 3 of 1992 (Republic of Indonesia).

<sup>91</sup> Pursuant to *Implementation of Manpower Social Security*, Government Regulation No. 14 of 1993 (Republic of Indonesia)

<sup>92</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>93</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

- *International Organizations and Officials of Representative Offices of International Organizations Excluding from Subjects of Income Tax, Decree of Minister of Finance No. 574/KMK.04/2000 (Republic of Indonesia).*<sup>94</sup>

In accordance with the above, persons present in Indonesia for more than 183 days in a twelve month period, or persons present in a taxable year and who intend to reside in Indonesia - including KITAS holders - are subject to income tax except. However, exemptions are made for the following:

- Diplomatic Missions;
- Officials of a diplomatic and consular mission or other foreign officials and individuals who work for and stay with them at their official residence;
- Officials of international organisations as determined by the Minister of Finance; and
- Officials of international organisations' representative offices as determined by the Minister of Finance, provided that they are not Indonesian citizens and do not conduct any income earning activities within Indonesia.<sup>95</sup>

Additionally, the *Decree of Minister of Finance No 6111/KMK.04/1994* (Republic of Indonesia) and *Decree of Minister of Finance No 574/KMK.04/2000* (Republic of Indonesia), mentioned above, include annexes which specifically list the exempted organisations by name.

For those organisations not included on the list, exemption arrangements varied. Some, such as the International Federation, had previously concluded an agreement with the Indonesian government which included tax exemptions. However, many INGOs did not have the benefit of pre-existing arrangements. Consequently, a number of INGOs remained confused about their tax obligations, particularly in relation to withholding tax for local staff, either because they had not found the relevant legislation or they did not understand it.

In Aceh, Indonesian tax officials were reported to be making visits to the offices of relief organisations to clarify their tax status. One organisation visited was informed that they would not be required to withhold tax for staff if it was a registered INGO. Later, they were informed that they would need to apply for a tax file number and pay withholding tax regardless of registration. Still later the rules were reversed again. The organisation eventually decided to withhold tax in case it was asked for, and return it to employees if they were eventually deemed exempt.<sup>96</sup> Another INGO was also unable to obtain clear information on tax obligations relating to local staff, having received contradictory advice from two different tax professionals. The organisation had not been withholding tax as a precautionary measure and thus feared having to make a large back payment of taxes to the Indonesian government.<sup>97</sup>

### **Other tax requirements**

In relation to other tax requirements, a government source advised that a non-listed organisation seeking to receive tax exemptions must first register with BRR, then obtain a letter of recommendation for the Ministry of Finance to be added to the tax exemption list. The organisation can then submit invoices in order to receive a tax refund.<sup>98</sup>

<sup>94</sup> As amended by *Decree of Minister of Finance No 230/KMK.03/2001, 30 April 2001* (Republic of Indonesia); *Decree of Minister of Finance No. 532/KMK.03/2002, 30 December 2002* (Republic of Indonesia); *Decree of Minister of Finance No.69/KMK.03/2003, 17 February 2003* (Republic of Indonesia); *Decree of Minister of Finance No. 243/KMK.03/2003, 4 June 2003* (Republic of Indonesia); and most recently by *Decree of Minister of Finance No. 601/KMK/03/2005,27 December 2005* (Republic of Indonesia).

<sup>95</sup> According to e-mail correspondence between legal counsel and the International Federation dated 9 February 2006.

<sup>96</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>97</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>98</sup> Interview with government official, 15 March 2006, Banda Aceh.

Recognised international organisations however, were exempted from this process. The requirements for tax exempt status under Article 3(c) and (d) of the Income Tax Law of Indonesia are described as follows:

- c. International organizations as determined by Minister of Finance Decree provided that:
  - 1) Indonesia is a member of the international organization;
  - 2) they do not conduct business or engage in other activities to derive income in Indonesia, except providing loan to government the funds of which comes from member's contributions;
- d. The officials of the international organization's representative office as determined by Minister of Finance Decree, provided they are not Indonesian citizens and do not conduct business or engage in activities or other employment to derive income in Indonesia.<sup>99</sup>

It was also reported that grants and gifts to charitable organisations were not afforded tax-free status.<sup>100</sup>

BRR has latterly issued information on tax exemptions to clarify the situation for foreign organisation working on tsunami relief and recovery activities.

### **Recognition of foreign professional qualifications**

Some INGOs reported that they were aware of restrictions on foreign medical practitioners in Indonesia and adjusted their activities to ensure that foreign staff in their medical teams were not undertaking activities in breach of this, such as performing surgery.

Indeed, the regulation on Health Personnel provides that all foreign health personnel seeking to work in Indonesia must be licensed by the Minister in charge of Health Affairs with regard to the legislation on foreign manpower policy.<sup>101</sup> The International Federation was advised that foreign nurses forming part of the humanitarian effort would fall into this category.<sup>102</sup> Additionally, foreign nurses found to be negligent in performing their duties would face disciplinary measures in the form of a warning or cancellation of license<sup>103</sup> in addition to any compensation claims against them.<sup>104</sup>

Foreign doctors forming part of a humanitarian response and desiring to practice in Indonesia are separately regulated by a law on Medicine Practice.<sup>105</sup> Such doctors must have a Certificate of Registration issued by the Indonesian Doctors Council. Foreign doctors staying temporarily in Indonesia for the purposes of research, training, education, and medical services must obtain a temporary certificate, valid for one year and renewable for another year.<sup>106</sup> Foreign doctors holding temporary registration certificates who are deemed negligent are also subject to censure by the Disciplinary Council<sup>107</sup> and/or legal action in Indonesia.<sup>108</sup>

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<sup>99</sup> *Consolidation of Law of the Republic of Indonesia No. 7 of 1983 Concerning Income Tax As Lastly Amended By Law No 17 Of 2000*, Directorate General of Taxes Ministry of Finance, Jakarta, 2001.

<sup>100</sup> Based on legal advice provided to the International Federation Indonesia Country Delegation, Jakarta.

<sup>101</sup> *Health Personnel*, Presidential Regulation No. 32 of 1996 (Republic of Indonesia), art 27.

<sup>102</sup> E-mail advice given to International Federation staff dated 15 November 2005, interpreting health personnel as defined by art 2 (1), 2 (3).

<sup>103</sup> *Health Personnel*, Presidential Regulation No. 32 of 1996 (Republic of Indonesia), art 33.

<sup>104</sup> *Health Personnel*, Presidential Regulation No. 32 of 1996 (Republic of Indonesia), art 22.

<sup>105</sup> Based on legal advice provided to the International Federation Delegation, Jakarta.

<sup>106</sup> *Medicine Practice*, Law No. 29 of 2004 (Republic of Indonesia) arts 30, 31.

<sup>107</sup> The Honorary Disciplinary Council of Indonesian Medical doctors (*Majelis Kehormatan Disiplin Dokter Indonesia* (MKDKI)).

<sup>108</sup> *Medicine Practice*, Law No. 29 of 2004 (Republic of Indonesia), art 66 (1).

## Earmarked funding and donated goods

The generosity of the international community both to the government and people of Indonesia, as well as to appeals launched by relief agencies, was immense. The tsunami relief and recovery efforts were supported by grants, loans, donations and in-kind support from governments, banks, regional bodies, humanitarian organisations, NGOs and individuals.

Relief agencies reported finding themselves inundated with goods and funds to conduct relief operations, with many contributions being specifically earmarked for Aceh.<sup>109</sup> These donations raised the question of what to do with surplus funds and relief stocks that were redundant in Aceh. Some organisations tried to divert these resources to other parts of Indonesia or elsewhere, but encountered difficulties in doing so.

One INGO faced challenges in taking oversupplies of medication out of Aceh for use in other parts of the country. Although sympathetic to the problem, it was reported that BRR was unable to support the re-export of medicines and other medical items without the approval of the Provincial Health Office. It was deemed a very sensitive political issue, particularly because of the negative local press which reportedly claimed that the re-export of goods intended for tsunami victims was a betrayal of the Acehnese people. Consequently, the authorities had been checking vehicles leaving Aceh to ensure that no such items were being taken out of the province.<sup>110</sup>

In one case an over-supply of malaria pills, which were only ever intended for the use of the organisation's delegates and not for tsunami affected communities, was prevented from being removed to other parts of Indonesia where it was needed for other staff. Similarly, surgical equipment for programmes since closed, remained in Aceh unable to be used. Another INGO sent a cholera kit for 5,000 people to Aceh in case there was an outbreak – this did not eventuate, so they attempted to truck it back out of Aceh for use in another part of the country. The truck was stopped by police who inspected the load and held the truck and its contents for a month.<sup>111</sup>

## Telecommunications

Indonesia has enacted several regulations concerning the use of telecommunications on its territory.<sup>112</sup> There were few reports of telecommunications difficulties associated specifically with these regulations. Many of the telecommunications challenges during the relief operation faced by military and civilian bodies alike, related more to the damage sustained to infrastructure by the tsunami itself. In this regard, large telecommunications companies such as Ericsson were reported to have played a critical role in establishing new mobile networks.<sup>113</sup>

Some organisations reported difficulties when attempting to import telecommunications equipment which did not comply with South East Asian standards and also experienced delays in obtaining radio licenses for their equipment. However, the latter issue was accepted by relief agencies as a consequence of the sensitivities of the conflict situation which had been present Aceh.<sup>114</sup> The UN offered some facilitation in this regard by providing some radio frequencies for organisations to use.<sup>115</sup>

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<sup>109</sup> See Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 88.

<sup>110</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>111</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>112</sup> See 'Indonesia: Laws, Policies, Planning and Practices on International Disaster Response', *International Federation of Red Cross and Red Crescent Societies*, July 2005. Available at <http://www.ifrc.org/idrl>

<sup>113</sup> Interview with UN official, 16 March 2006, Banda Aceh.

<sup>114</sup> Interview with INGO, 16 March 2006, Banda Aceh.

<sup>115</sup> Interview with INGO staff 17 March 2006, Banda Aceh.

## Customs regulations and import duties for relief goods and equipment

For the initial period of the relief phase, the Indonesian government waived customs requirements and import duties on all relief. It was not clear from interviews how long this period lasted – possibly between four to six weeks into the operation. After that period, different procedures and exemptions were applied depending on the type of organisation, which are explained below.

### Exemptions for pre-registered international organisations and INGOs

International organisations and nationally registered INGOs were able to avail themselves of a number of pre-established customs and duty exemptions

By *Decree of the Finance Minister No. 144/KMK.05/1997*, a number of goods are generally exempted from import duties and customs.<sup>116</sup> These include:

- Goods needed for building or repairing religious buildings, hospitals, polyclinics, and schools, or goods that are part of their permanent inventories;<sup>117</sup>
- Clinic cars, facilities to transport sick persons, facilities to transport general worship officers and facilities to transport health officers;<sup>118</sup>
- Surgical equipment, medical devices and bandage materials used by social organisations;<sup>119</sup> and
- Food, drugs and clothing to be distributed for free for public welfare.<sup>120</sup>

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.<sup>121</sup> The specific organisations eligible to apply for such exemptions are listed in *Presidential Decree No. 133 of 1953* (Republic of Indonesia).<sup>122</sup>

Additionally, *Decree of Minister of Finance No. 89/KMK.04/2002*<sup>123</sup>, exempts a number of international organisations and their officials - as listed in its Annex - from duty and excise when importing the following goods:

- Goods for the need of offices of international organisations;
- Goods for their personal use or required for their expertise - for example, professional equipment - including goods required by family members of officials working in Indonesia; and
- Goods required by projects and non-projects in the framework of technical cooperation which are delivered through international organisations.

Although not on the official exemptions list, the International Federation was informed by a government official<sup>124</sup> that in order to receive tax exemptions for goods and equipment, it must first submit a number of documents to the Ministry of Finance to receive a recommendation and then a review by the Department of Foreign Affairs, the State Secretary and the Ministry of Finance. The documents required for submission include: the organisation's Annual Report; a recommendation

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<sup>116</sup> *Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, Decree of Finance Minister No. 144/KMK.05/1997 (Republic of Indonesia), art 2.

<sup>117</sup> *Decree of Finance Minister No. 144/KMK.05/1997* (Republic of Indonesia), art 1(a).

<sup>118</sup> *Decree of Finance Minister No. 144/KMK.05/1997* (Republic of Indonesia), art 1(b).

<sup>119</sup> *Decree of Finance Minister No. 144/KMK.05/1997* (Republic of Indonesia), art 1(e).

<sup>120</sup> *Decree of Finance Minister No. 144/KMK.05/1997* (Republic of Indonesia), art 1(f).

<sup>121</sup> *Decree of Finance Minister No. 144/KMK.05/1997* (Republic of Indonesia), arts 3(1) and (2).

<sup>122</sup> Referred to in *Decree of Finance Minister No. 144/KMK.05/1997* (Republic of Indonesia), art 5.

<sup>123</sup> Dated 12 March 2002, as amended several times, most recently by Decree of Minister of Finance Number 114/PMK.04/2005 dated 22 November 2005, according to e-mail correspondence with International Federation staff dated 17 February 2006.

<sup>124</sup> According to the summary of a meeting between International Federation staff and the Minister of Finance and State Secretary on 8 and 10 February 2006.

letter from the organisation's head office appointing its in-country office and Head of Delegation in Indonesia, and confirming that the organisation is non-profit; concept papers for project activities; and finally confirmation that the in-country office is a member of an international organisation.

It was not clear whether the above process and conditions applied to all organisations with a pre-established country office, or just to the International Federation.

### **Exemptions for newly arrived organisations**

For both domestic and international NGOs only commencing operations in Indonesia after the tsunami, exemptions were applied on a case by case basis, facilitated by BRR and subject to the approval of the Ministry of Finance. Many of these organisations were not informed of the requisite customs requirements prior to importing goods or equipment; and in some cases, they did not even attempt to seek clarification of the procedures themselves. Others however, did attempt to familiarise themselves with the system, but reported to have found it difficult to determine the exact customs requirements and exemption application process.

In many cases, relief consignments were held back by improper or inadequate documentation. As one INGO stated:

Somebody needs to inform NGOs about the proper procedures to claim the aid. Provide the guidelines about registration, tax office in order to avoid inadequate documentation.<sup>125</sup>

Some agencies preferred to simply pay the tax on smaller consignments rather than engage in the lengthy process of seeking exemptions; as one INGO reported, sometimes it was easier than seeking a letter from BRR, and then waiting one or more weeks while the request went to Jakarta.<sup>126</sup>

BRR later clarified the issue, stating that relief clearance requires recommendations from the Ministry of Foreign Affairs, Ministry of Trade and Customs and Excise Office, Ministry of Social Affairs and Bakornas PBP. The Director General of Customs and Excise also stated that each container of tsunami relief entering Indonesian ports must have a recommendation letter from BRR. The Customs and Excise Office, upon receiving the letter, would issue a letter for the release of the goods, and file a request with the Finance Ministry to waive import duties.<sup>127</sup>

### **Delays in clearance**

Many organisations expressed frustration with government bureaucracy which was considered to be delaying the clearance of urgently needed goods. Indeed, it has been reported that thousands of tons of foreign relief, costing millions of dollars, languished at ports in Indonesia waiting to be cleared. As late as January 2006, an estimated 217 containers of relief goods were still stuck at Tanjung Priok Port outside Jakarta, while 232 containers of supplies and 58 vehicles were awaiting clearance at Belawan Port, Medan.<sup>128</sup> Some organisations noted that perishable items rotted, medicines expired, and emergency relief items like clothes, tents, blankets and surgical equipment, which were essential at the start of the relief effort, were redundant by the time they were cleared months later.<sup>129</sup>

Detailed explanations were rarely given for delays in the clearance of specific consignments, although officials publicly defended the lengthy process, stating that it was necessary in order to ensure

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<sup>125</sup> Fadlullah Wilmut of the British-based Muslim Aid, interviewed by Diani, H, 'Help on the Way for Stuck Tsunami Aid', *Jakarta Post*, 14 January 2006.

<sup>126</sup> Interview with INGO staff, 20 March 2006, Medan.

<sup>127</sup> 'Officials Lay Blame as Tsunami Aid Lies in Wait', *Jakarta Post*, 12 January, 2006.

<sup>128</sup> Diani, H, 'Help on the Way for Stuck Tsunami Aid', *Jakarta Post*, 14 January 2006.

<sup>129</sup> See for example Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, pp 53 and 54 and Diani, H, 'Help on the Way for Stuck Tsunami Aid', *Jakarta Post*, 14 January 2006.

accountability and to prevent smuggling.<sup>130</sup> Additionally, the volume of incoming goods, up to 150 relief flights per day,<sup>131</sup> no doubt stretched the capacities of government officials. It was reported that medical supplies arriving from multiple sources led to complaints from Government health officials that they had no time or resources to organize and distribute them effectively, and given the complications with dosages and expiry dates it was feared that more harm than good could be done if they were distributed.<sup>132</sup> Conversely, it was also suggested that clearance of goods could be ‘fast-tracked’ by paying additional fees; an avenue many organisations were reluctant to pursue for reasons of transparency.<sup>133</sup>

Relief agencies had also expressed frustration with the Indonesian military and found it bureaucratic and uncooperative when trying to access relief goods which were stranded at airports and military distribution centres.<sup>134</sup> An Australian military officer commented:

In the beginning, getting goods into Banda Aceh was not a problem, but as time passed and the Indonesia military tightened its bureaucracy, it became – quite frankly – a nightmare. We will try to stop flying goods to Banda Aceh, perhaps Sabang airport will be less problematic. I’m not saying the military are stealing the goods, but they seem to like to store everything in the warehouse. I’m frustrated that distribution is slow; there is no need for that. People out there [in Aceh] are desperate.<sup>135</sup>

Later during the operation, after the establishment of BRR, the integrated taskforce of *tim terpadu* began to more actively assist with the clearance of the containers of tsunami relief stuck at ports in Jakarta and Belawan in North Sumatra.<sup>136</sup> A spokesperson from BRR was quoted as saying “...if anyone has troubles getting aid cleared at the ports, they can come to us. We will help clear the supplies as long as they can be properly accounted for.”<sup>137</sup>

### **Port and storage charges**

Reports suggest that the Indonesian government did not make any special exemptions for airport, shipping and lading charges. Several UN officials from different agencies stated that airport charges made it too expensive for some aircraft carrying relief goods to land. It was also reported that the steady flow of consignments arriving at ports encouraged some service providers to take advantage of relief agencies. For example, it was reported that the UN was charged inflated fuel charges as part of transport costs and that stevedores in Nias doubled their rates for international relief providers.<sup>138</sup>

Additionally, having arrived at Indonesian ports, relief cargo awaiting customs clearance continued to accumulate port storage fees. This situation was felt to be very burdensome for some relief agencies as the storage costs at times exceeded the value of the relief consignment itself. For example, it was reported that by the time the Sampoerna Foundation finally received approval for its relief shipment of

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<sup>130</sup> Diani, H, ‘Help on the Way for Stuck Tsunami Aid’, *Jakarta Post*, 14 January 2006.

<sup>131</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 54 in footnote 43.

<sup>132</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami - Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 30. Available at <http://www.tsunami-evaluation.org>

<sup>133</sup> See Shaikh, T and Forsdike, S, ‘Tsunami Aid Trapped Out of Reach’, *The Times*, 13 August 2005.

<sup>134</sup> ‘Indonesia Urged to Work with Aid Agencies to Speed Up Relief in Aceh’, *Asian Human Rights Commission*, Press Release, 5 January 2005.

<sup>135</sup> Interview, Medan, 25 January 2005, in ‘Responding to Aceh’s Tsunami: The First 40 days’, *Eye on Aceh*, April 2005. Available at [http://www.aceh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.aceh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>136</sup> Diani, H, ‘Help on the Way for Stuck Tsunami Aid’, *Jakarta Post*, 14 January 2006.

<sup>137</sup> Sudirman Said quoted in Diani, H, ‘Help on the Way for Stuck Tsunami Aid’, *Jakarta Post*, 14 January 2006.

<sup>138</sup> Interview with UN official, 20 March 2006, Medan.

clothes, blankets and mattresses, the storage fees had reached 65 million rupiah (approx US\$6,914) - and the relief was no longer needed.<sup>139</sup>

### **Transportation of relief cargo**

Relief agencies reported bottlenecks in the transportation of cargo, and that the supply of relief stocks in the early stages quickly exceeded their distribution capacities. Whilst many challenges in the delivery of relief were the result of Aceh's damaged infrastructure and the volume of air traffic and cargo which clogged the airports and warehouse facilities, delays were further exacerbated by what was felt to be increasing levels of bureaucracy and a lack of coordination. Irregular and unreliable flight schedules to and within Aceh, reduced capacities of ground staff and inadequate clearance documentation were all felt to have exacerbated the situation.<sup>140</sup>

The situation was reported to be partly eased in Medan when OCHA, together with the Indonesian government, established a board involving aircraft owners, NGOs and donor government representatives. The board was chaired by the Indonesian government, and co-ordinated with the UN Joint Logistics Centre (UNJLC) in determining the types of goods needed and their priority.<sup>141</sup>

A UN official reported that foreign ships importing relief cargo to Indonesia also required 'flag waiver', a standard procedure which takes four to six days after a vessel's arrival in a foreign port. Without such a waiver, foreign crew members are subject to Indonesian immigration regulations and other requirements. Accordingly, some agencies opted to use Indonesian ships to import goods, which were considered to be of a lower standard, but were not subject to any regulations which could cause delays.<sup>142</sup>

### **Vehicles**

Organisations dependent on vehicles to conduct their operations and to transport relief said they encountered complex and at times contradictory practices with regard to vehicle importation, registration and insurance. These challenges are described below and were the subject of discussions during a meeting in Banda Aceh dedicated to fleet management issues.<sup>143</sup>

#### *Importation of vehicles*

Relief agencies reported that the procedure for importation of vehicles changed during the course of the operation. In the immediate aftermath of the disaster, vehicles imported by foreign agencies and military were not subject to customs clearance. Later, the Indonesian government brought an end to this practice and ceased all exemptions on vehicle imports, with the exception of ambulances.<sup>144</sup> Consequently, organisations reported facing significant delays and uncertainty in the import of their vehicles in latter stages of the operation.

#### *Registration of vehicles*

At the start of the relief operation, it was reported that vehicles of relief agencies were not subject to registration. The situation changed shortly afterwards to a process of registration which was described by some as long and costly, causing delays for operations, or encouraging organisations to drive their vehicles unregistered while they completed the paperwork. Additionally, relief agencies were required

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<sup>139</sup> Diani, H, 'Help on the Way for Stuck Tsunami Aid', *Jakarta Post*, 14 January 2006.

<sup>140</sup> 'Indonesia Urged to Work with Aid Agencies to Speed Up Relief in Aceh', *Asian Human Rights Commission*, Press Release, 5 January 2005, and interviews with relief organisations in Medan and Banda Aceh.

<sup>141</sup> 'Disaster-Response Management: Going the Last Mile - Thailand and Indonesia', *Economist Intelligence Unit*, 2005.

<sup>142</sup> Interview with UN official, 20 March 2006, Medan.

<sup>143</sup> Interagency Fleet Forum Meeting, 15 March 2006, Banda Aceh.

<sup>144</sup> Interview with UN official, 15 March 2006, Banda Aceh and Interagency Fleet Forum Meeting, 15 March 2006, Banda Aceh.

to obtain Acehnese licence plates, which were not valid in other parts of Indonesia, placing significant restrictions on their use. Some IOs however, were granted permission to use international plates and were not restricted to a particular territory.

The police were responsible for enforcing registration and it was reported that they conducted frequent checks of vehicles driven by foreigners. Many organisations interviewed, including IOs, reported having vehicles impounded and were required to pay heavy fines for their release. Certain fees were payable to the police to avoid impounding for infringements such as incorrect plates, failure to register or outdated paperwork. Although accepting that they were at times in breach of vehicle registration rules, several INGOs indicated they preferred to pay the fines, given the lengthy process for obtaining and renewing licenses, and felt this was preferable to holding up their relief and recovery activities. One INGO reported having its vehicles impounded because they did not have Aceh license plates, despite having a letter from BRR confirming that the vehicle's registration was in progress, which would supposedly prevent any penalty.<sup>145</sup> It was also reported that truck drivers transporting relief cargo were frequently stopped by police and soldiers and required to pay an unofficial "road tax".<sup>146</sup>

#### *Vehicle and third party insurance*

Prior to the tsunami, it was reported that Acehnese vehicle owners rarely possessed accident or death insurance and there was no third party insurance option in Aceh. Rather, in the event of an accident, a customary amount of money would be paid to the victim and/or their family and to the police. Vehicle insurance was available prior to the tsunami, however it soon became difficult to obtain and the cost increased dramatically owing to the presence of large numbers of relief agency vehicles, as described below.

Most local insurance companies were reluctant to insure relief agency vehicles because standard Indonesian insurance provisions required the insurance company to pay for towing and replacement of spare parts. In addition to the costs of towing, good quality and genuine spare parts were very expensive or were simply impossible to obtain for many of the imported vehicles. To get around this problem, some agencies negotiated special insurance contracts with local insurers to exclude towage and spare parts. It was also reported that insurance was available more readily in Medan; however this required agencies to bring their vehicles back to Medan for servicing, potentially breaching Acehnese license plate conditions, and also often requiring a several day round trip, resulting in a significant impact on vehicle mileage and personnel time.<sup>147</sup>

Additionally, vehicle warranties were rarely helpful as few agencies could realise the usual conditions of regular service by authorized dealers using authentic parts. One INGO reported having only one car out of a large fleet insured as a result. Another INGO managed to obtain local vehicle insurance, but was turned away by mechanics that did not trust the local insurer's ability to pay for the repairs.<sup>148</sup>

#### *Disposal of vehicles*

It was reported that the Indonesian Government was required to monitor the registration and whereabouts of vehicles supplied under grant or donation from particular donors.<sup>149</sup> Additionally, under the arrangements for import, organisations were required to dispose of the vehicles within Indonesia at end of their operations. It was noted that this obligation could have negative consequences, as it was often used an opportunity to cheaply dispose of unwanted vehicles under the guise of "capacity building". Organisations would hand over imported vehicles which were overused and poorly maintained to local organisations or to the government at the end of their operations.

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<sup>145</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>146</sup> Batha, E, 'Q&A: Corruption and Aid', *AlertNet*, 9 November 2005, and interview with INGO staff, 17 Mar 2006, Banda Aceh.

<sup>147</sup> Interagency Fleet Forum Meeting, 15 March 2006, Banda Aceh.

<sup>148</sup> Interview with INGO staff, 16 March 2006, Banda Aceh

<sup>149</sup> Interview with INGO staff, 15 March 2006, Banda Aceh.

Although this was usually welcomed by the recipients, who enjoyed the prestige of having additional vehicles, the vehicles themselves would often be defective and expensive to run, making them ultimately a burden and a financial drain.<sup>150</sup>

Additionally, some donating organisations reported that recipients would continue to use their old logos or number plates, creating concerns that the original agency may be considered liable in the event of an accident or dispute. For example, one UN agency donated some of its vehicles to local government authorities, having removed the UN plates from the vehicle, only to later see that the UN plates had been painted on again without the agency's consent.<sup>151</sup>

## Coordination and information sharing

### *Coordination by the Indonesian Government and BRR*

The exceptional scale of the devastation caused by the tsunami and the number of organisations involved in the relief and reconstruction operations understandably placed government coordination mechanisms under great strain.

The TNI was considered vital in providing initial coordination and briefed body retrieval teams and foreign military liaison officers arriving in Aceh on their operational mechanisms to open up relief distribution lines.<sup>152</sup> However, there was also reported to be contradictory and blurred chains of command between the Indonesian military and Indonesian government officials regarding disaster response management.<sup>153</sup> The TEC country study on coordination in Indonesia found that no international policies exist regarding the use of military and civil defence assets for natural disaster response in a conflict environment and that as a result, each organisation in Aceh followed their own procedures, leading to a wide variation in approach.<sup>154</sup>

There was also felt to have been a gap in government coordination during the time between the departure of the Coordinating Minister for People's Welfare and the eventual establishment of BRR.<sup>155</sup> Consequently, relief personnel reported having to manoeuvre between various levels of officials from central government, local government and the military, encountering institutional and procedural barriers - delays which few agencies understood or thought justifiable.

The eventual establishment of BRR generated a mixed response, although its attempts to monitor, coordinate and facilitate the multitude of organisations engaging in relief and reconstruction activities were largely welcomed. On the one hand, BRR coordination efforts were considered effective in resolving some of the early confusion caused by overlapping agency projects and it was praised for the brochures and guidelines prepared for organisations wishing to participate in relief operations. It also organised monthly meetings designed for information sharing<sup>156</sup>, provided assistance with visa applications<sup>157</sup> and attempted to identify and solve other problems for relief organisations.<sup>158</sup>

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<sup>150</sup> Interagency Fleet Forum Meeting, 15 March 2006, Banda Aceh.

<sup>151</sup> Interview with UN official, 15 March 2006, Banda Aceh.

<sup>152</sup> 'Responding to Aceh's Tsunami: The First 40 days', *Eye on Aceh*, April 2005. Available at [http://www.acheh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.acheh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>153</sup> 'Disaster-Response Management: Going the Last Mile - Thailand and Indonesia', *Economist Intelligence Unit*, 2005. and interview with IO staff, 14 Mar 2006, Jakarta.

<sup>154</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 26. Available at <http://www.tsunami-evaluation.org>

<sup>155</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 45. Available at <http://www.tsunami-evaluation.org>

<sup>156</sup> Interview with government official, 15 March 2006, Banda Aceh

<sup>157</sup> Interview with INGO, 17 March 2006, Banda Aceh.

Conversely, some organisations found formal coordination mechanisms ‘weak’<sup>159</sup> and some criticised BRR’s policy of dealing with issues and organisations on a case by case basis, rather than having a cohesive framework applicable to all relief organisations. Others further insisted that BRR had done little to diffuse the chaos surrounding the vast number of agencies, and that difficulties were exacerbated by tensions between BRR and other government agencies. Indeed, in spite of the positive contribution of coordination meetings and clarification of procedures and guidelines, it was felt by some that bureaucracy and legal confusion persisted, or in fact grew, after the establishment of BRR.<sup>160</sup>

One underlying cause of criticism about the role of BRR could be attributed to the limits of BRR’s remit. Unlike perceptions held by some organisations, its mandate was restricted to coordination and facilitation, rather than decision-making and policy development. With the exception of NGO registration procedures for Aceh and Nias, BRR was not authorised to make any changes to existing Indonesian policies, laws and regulations affecting relief and recovery operations. It could only assist relief agencies in obtaining authorisation from the relevant ministries by facilitating applications, making recommendations and issuing letters confirming recommendation.

Some organisations felt that BRR had not sufficiently clarified the limitations of its role and was therefore creating unrealistic expectations. There were reports of confusion about the legal status of BRR’s letters of recommendation on tax exemptions, visas and other matters, particularly as there were times when government ministries, officials and the police chose to disregard them.

It is also felt that the large numbers of organisations working in Aceh placed incredible strain on coordination mechanisms:

[T]here were simply too many actors involved, at least in Sri Lanka and Indonesia. This posed huge additional challenges for governments at all levels, as well as for OCHA. In Aceh scarce management resources that should have been focused on reconstruction have had to go into coordination.<sup>161</sup>

#### *Relief agency coordination*

It has been widely reported that in the early stages of the relief and recovery operation in Aceh, systems for coordinating the activities of assisting organisations were lacking.<sup>162</sup> The government of Indonesia initially turned to the UN to take a lead at both the provincial and the district level to coordinate the high number of international agencies that were arriving each day.<sup>163</sup> The UN did attempt to fulfil this function, but it was felt that few relief organisations were willing to operate under its guidance, evidenced by limited attendance at weekly coordination meetings hosted by OCHA.<sup>164</sup>

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<sup>158</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>159</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 62.

<sup>160</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>161</sup> Tsunami Evaluation Coalition Funding Report (2006), cited in Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 57.

<sup>162</sup> See for example Hidayat, T, ‘Tsunami Response Offers Lessons For Islamabad’, *The Financial Times*, 12 October 2005.

<sup>163</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 8. Available at <http://www.tsunami-evaluation.org>

<sup>164</sup> Interview with UN official, 15 March 2006, Banda Aceh.

Some organisations felt that the UN coordination meetings marginalised local organisations as they were only conducted in English. Others thought that some of those attending were motivated purely by requests from donors, rather than with a genuine spirit of cooperation. Some felt that there were simply too many meetings in the initial stages: heads of agency meetings each morning; general coordination meetings and government coordination meetings every evening; sectoral working group meetings every other day; and ad hoc meetings of the Security Management Team. Since these coordination demands were so heavy, they were felt to be a challenge to attend for smaller organisations with fewer personnel.<sup>165</sup> BRR eventually took over regular meetings, but they were considered by some to be even less effective when hosted by a government agency.<sup>166</sup>

A local Interagency Standing Committee (**IASC**) was established in Banda Aceh which involved a number of UN and non-UN agencies and took a role in promoting principles, standards and policies on a number of activities such as temporary living centres, however this forum was not widely attended.<sup>167</sup> Additionally, the International Council of Volunteer Agencies (**ICVA**) was reported to have attempted to establish an NGO Platform for Aceh to facilitate coordination, however it faced challenges in attaining consensus between its members on a number of important issues.<sup>168</sup>

The sizeable donations received by most relief agencies after the tsunami were also considered to be a factor contributing to poor coordination.<sup>169</sup> In previous large scale relief operations, major international organisations have often benefited from having the most funds and largest programmes, naturally placing them in a position to encourage coordination. This was not the case with the tsunami. While US\$1.4 billion was pledged to the UN for tsunami work, nearly four times that amount - US\$5.5 billion - was pledged to the International Federation and other relief organisations, according to the Office of the UN Special Envoy for Tsunami Recovery.<sup>170</sup> The TEC reported that the collective funds of INGOs for both emergency and recovery were greater than the UN, any bilateral donors and even the Government of Indonesia. The report further notes that three INGOs – World Vision, Catholic Relief Service (**CRS**), and CARE had greater resources than all UN agencies together.<sup>171</sup>

The amount of earmarked funding also appeared to reduce incentives for some organisations to cooperate. Although it has been reported that there was a large percentage of funds which were unearmarked, there were still considerable amounts which were tied not only to the tsunami operation but also to certain activities, goods and services.<sup>172</sup> There were reports of competition and withholding information to protect ‘territory’ in which to operate and excessive publicity of activities to donors and the general public. One study has suggested that “agencies were rewarded by donors and senior management for not collaborating” so that they could expand their “territory”.<sup>173</sup> Even the various UN agencies did not escape criticism, as one Indonesian government adviser stated:

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<sup>165</sup> Interviews in Banda Aceh and see also Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 8. Available at <http://www.tsunami-evaluation.org>

<sup>166</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>167</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 62.

<sup>168</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 63.

<sup>169</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 62.

<sup>170</sup> ‘Aceh Shows Best Worst of Tsunami Spending’, *Associated Press*, 18 December 2005.

<sup>171</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 15. Available at <http://www.tsunami-evaluation.org>

<sup>172</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 88.

<sup>173</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 19. Available at <http://www.tsunami-evaluation.org>

It feels like a wave of kindness and concern. It feels great. The 'but' is that, especially with the UN, a lot of that gets overtaken by inter-agency rivalries[....]The territoriality of it all is baffling and frustrating.<sup>174</sup>

Médecins sans Frontières (**MSF**) and the United Nations Children's Fund (**UNICEF**) were seen to be exceptions to the above.<sup>175</sup> Both organisations publicly stopped accepting donations when it became obvious that they had more funds than they needed to provide tsunami relief. MSF wrote to every donor, asking if their money could be reallocated to other programmes; only 1% of donors refused and, in those cases, their money was returned.<sup>176</sup> As a result, they were able to divert significant funding to the later Pakistan earthquake relief operation.<sup>177</sup> Further, it was reported that MSF had handed over some of their programmes in Banda Aceh to other agencies with appropriate expertise whose funding was only earmarked for the tsunami.<sup>178</sup> Other organisations were also reported to have closed their appeals to avoid over-funding including CRS, Australian Red Cross and the Disasters Emergency Committee (**DEC**), an umbrella organisation representing thirteen prominent aid agencies in the UK.<sup>179</sup>

Nevertheless, a lack of coordination sometimes led to challenges of duplication of relief in some areas and a lack of support to other areas.<sup>180</sup> A sectoral rather than geographical approach to coordination was seen to create challenges and prevented "integrated planning", resulting in a least one case where housing was constructed by an NGO in a place already designated for a road by the local community and another NGO.<sup>181</sup> Assessments by various organisations were often not published or made accessible to others, resulting in duplication of efforts.<sup>182</sup> It was reported that there were ten international hospitals set up in Aceh, none of which were operating at full capacity.<sup>183</sup> The medical team of one INGO arrived at a location to find 18 other medical teams already there.<sup>184</sup> In another case, an INGO providing medical services was requested to provide urgent assistance to a village of 1,000 people, however upon arrival they discovered that the Imam of the village had been approaching several other organisations with the same request and the village had in fact received medical assistance from a different agency every day, far in excess of its actual need. In all cases, it seemed that if the organisations been communicating more effectively, these kinds of situations could have been avoided.

With the end of the emergency phase, some relief agencies left Aceh, and it was felt that those remaining became more cooperative, which contributed to better systems and coordination.

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<sup>174</sup> Hidayat, T, 'Tsunami Response Offers Lessons For Islamabad', *The Financial Times*, 12 October 2005.

<sup>175</sup> 'Much Tsunami Aid Still Unspent, Report Says', *Los Angeles Times*, 21 December 2005, and 'Aceh Shows Best Worst of Tsunami Spending', *Associated Press*, 18 December 2005.

<sup>176</sup> 'Tsunami Response Was World's Best Ever: UN', *Reuters*, 19 December 2005

<sup>177</sup> 'MSF Diverts EUR 21m in Tsunami Funds to Pakistan Earthquake', *Development Today* (19/2005), 6 December 2005.

<sup>178</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>179</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 15. Available at <http://www.tsunami-evaluation.org>

<sup>180</sup> It was noted that the remoteness and logistical challenges of reaching Nias, which was battered by aftershocks on 28 March 2005, meant that it was often overlooked by donors and agencies: 'BRR Director Kuntoro Opens Aceh-Nias Update', *Organisation of Asia-Pacific News Agencies*, 29 October 2005.

<sup>181</sup> Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 63.

<sup>182</sup> Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 43. Available at <http://www.tsunami-evaluation.org>

<sup>183</sup> 'World Still Not Ready To Deal With Disasters', *The Age* (Melbourne), 11 October 2005.

<sup>184</sup> Tarrant, W, 'Health Indicators Show Tsunami-Hit Aceh Normal', *Reuters*, 16 December 2005.

## Quality and accountability

Another key aspect of the tsunami relief and recovery operations in Indonesia involved a lack of adherence to acceptable international standards and principles of disaster relief and recovery. In setting its relief quality standards, a BRR official stated that Sphere Standards<sup>185</sup> were used as a guide, and were integrated into Indonesian Government standards.<sup>186</sup> Despite these efforts and the number of quality and accountability instruments developed over the years,<sup>187</sup> the experience of Aceh led to descriptions of humanitarian activity as "the world's largest unregulated industry".<sup>188</sup> Indeed in the early stages of the relief operation it seemed there was little regulation of adherence to basic humanitarian principles such as non-discrimination, on the quality of services being rendered by the various relief providers, and on the competency and credentials of the organisations involved.<sup>189</sup> Nearly a year into the operation, Leroy Hollenbeck, an US adviser to the Governor of Aceh, stated: "There are 300 non-government organizations in Aceh and half of them shouldn't be here."<sup>190</sup>

The section below highlights some examples of where adherence to international quality and accountability standards could have played a more significant role in improving the tsunami relief and recovery efforts in Indonesia.

### *Ensuring good health information systems*<sup>191</sup>

Interviewees mentioned instances of some relief workers and volunteers failing to adhere to basic good practice in administering medical procedures, for example, one organisation was reported to be vaccinating children in villages without maintaining proper records, thus leading to possible multiple vaccinations.<sup>192</sup>

### *Respect for culture and custom, not using aid to further a particular religious standpoint*<sup>193</sup>

Some organisations were deemed to be acting in religiously or culturally inappropriate ways, particularly those which did not understand the history of Aceh province and Sharia law. Of the different religious organisations and individuals entering, there were reports that some were proselytising.<sup>194</sup> One organisation had a campaign to send 300 Muslim Acehese children to be raised in a US Christian missionary home, but suspended the programme after public outcry.<sup>195</sup>

### *Openly reporting on the factors limiting the impact of assistance*<sup>196</sup>

Some larger organisations were criticised for undertaking projects outside their areas of expertise<sup>197</sup>, which was seen to be a particular problem for housing, as discussed further below.

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<sup>185</sup> *Humanitarian Charter and Minimum Standards in Disaster Response*, The Sphere Project, 2<sup>nd</sup> ed., 2004.

<sup>186</sup> Interview with government official, 15 Mar 06, Banda Aceh

<sup>187</sup> 'IDRL Background Information Sheet: International Standards of Quality and Accountability in Disaster Relief', *International Federation of Red Cross and Red Crescent Societies*, 2006. Available at [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

<sup>188</sup> 'World Disasters Report 2005: Focus on Information in Disasters', *International Federation of Red Cross and Red Crescent Societies*, 2005, p 93.

<sup>189</sup> See Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 106

<sup>190</sup> Gelling, P, 'At Tsunami's Epicenter a Town is Reborn but Housing is Scarce', *New York Times*, 14 November 2005.

<sup>191</sup> 'Health systems and infrastructure standard 6: Health information systems' in *Humanitarian Charter and Minimum Standards in Disaster Response*, The Sphere Project, 2<sup>nd</sup> ed., 2004, p270.

<sup>192</sup> Macan-Markar, M, 'NGOs Can Add to Disasters', *Inter Press News Service Agency*, 5 October 2005 and 'Tsunami Response Was World's Best Ever: UN', *Reuters*, 19 December 2005.

<sup>193</sup> See Principle 2 and Principle 5 of the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, prepared jointly by the International Federation and ICRC, 1995.

<sup>194</sup> Interview with UN official, 15 Mar 06, Banda Aceh.

<sup>195</sup> Sipress, A, 'Christian Group Never Had Custody of Orphans', *Washington Post*, 15 January 2005.

<sup>196</sup> See Principle 9 of the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, prepared jointly by the International Federation and ICRC, 1995.

### Corruption

The establishment and activities of BRR were widely acknowledged as having prevented large scale graft in the reconstruction process.<sup>198</sup> Although BRR reported that the most serious threats had not materialised, they had recommended that organisations retain security officers and created a special adviser for security (*Tim Verifikasi*) as part of its mediation unit to receive reports of all incidents. Additionally, reports to local police were considered ineffective and instead BRR was recommending incidents also be reported to *Polres* and then *Polda* if unsuccessful.<sup>199</sup> The international accounting firm Ernst & Young was engaged in auditing the disbursement of funds in Indonesia.<sup>200</sup> In April 2005 an Expert Meeting on Corruption Prevention in Tsunami Relief was held in Indonesia bringing together governments and organisations from several tsunami-affected countries to develop a Framework for Action identifying a number of measures to improve accountability of various stakeholders.<sup>201</sup>

Nevertheless, relief agencies did report being impeded by graft, especially at lower levels and the humanitarian community faced the issue of how to operate transparently. There were reports that some government officials may have inflated the number of people needing relief in their districts; of discrimination by Indonesian officials in relief distribution; of a lack of transparency in the bidding process regarding the building of temporary shelters in Aceh; of community leaders taking bribes to add names to shelter lists; and, an instance where only thirty percent of 1,000 constructed temporary shelters were used to house internally displaced people.<sup>202</sup>

Relief organisations were generally averse to reporting incidents of corruption by government officials which they feared might result in added obstacles and bureaucracy in conducting their programmes.<sup>203</sup> On 16 April 2007 the International Red Cross and Red Crescent Movement issued a security policy to address increasing instances of corruption and threats to the organisation and its personnel in Aceh and Nias.<sup>204</sup> It notes that contractors in the reconstruction effort have been targets and there has been a tendency to react with "it is better to pay than to lose my life once BRR and the NGOs have left".<sup>205</sup> The policy put in place a number of measures to respond to and report instances of corruption and

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<sup>197</sup> See generally Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 53.

<sup>198</sup> 'After Tsunami Rebuilding Pace Falls Short of Hopes', *The Wall Street Journal*, 19 December 2005, and 'Aceh Shows Best Worst of Tsunami Spending', *Associated Press*, 18 December 2005.

<sup>199</sup> See *Red Cross and Red Crescent Movement Security Policy in Aceh and Nias*, prepared by the ICRC and approved by the Movement Platform on 16 April 2007.

<sup>200</sup> Tarrant, W, 'Indonesia Appeals for Tsunami Food Aid', *Reuters*, 7 October 2005.

<sup>201</sup> 'Expert Meeting on Corruption Prevention in Tsunami Relief: Meeting Conclusions and Framework for Action', ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International, 7-8 April 2005, Jakarta, Indonesia.

<sup>202</sup> See: Batha, E, 'Q&A: Corruption and Aid', *AlertNet*, 9 November 2005; 'After the Tsunami: Human Rights of Vulnerable Populations', *Human Rights Centre, University of California, Berkley*, October 2005; and 'Curbing Corruption in Tsunami Relief Operations: Proceedings of the Jakarta Expert Meeting', *ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International*, hosted by the Government of Indonesia, Jakarta, Indonesia, 7-8 April 2005. For other examples, see also: 'Turning Tides in Aceh', *The Age* (Melbourne) 22 December 2005, 'Open Letter to President Susilo Bambang Yudhoyono', *Human Rights Watch*, 6 January 2005; 'Human Rights and Humanitarian Situation in Aceh', *Forum-Asia*, Press Release, 5 January 2005; 'Tsunami and Human Rights: 100 Days After', *Asian Forum for Human Rights and Development*, 4 April 2005. Contra: Schulze, KE, 'Between Conflict and Peace: Tsunami Aid and Reconstruction in Aceh', *London School of Economics*, 2005, pp12-13.

<sup>203</sup> 'After the Tsunami: Human Rights of Vulnerable Populations', *Human Rights Centre, University of California, Berkley*, October 2005.

<sup>204</sup> *Red Cross and Red Crescent Movement Security Policy in Aceh and Nias*, prepared by the ICRC and approved by the Movement Platform on 16 April 2007.

<sup>205</sup> *Red Cross and Red Crescent Movement Security Policy in Aceh and Nias*, prepared by the ICRC and approved by the Movement Platform on 16 April 2007.

threats, as well as a number of prevention measures – including dissemination of the policy itself - to minimise the opportunities for incidents to occur.

Relief organisation themselves were sometimes the victims of corruption from within their own ranks, or experienced difficulties implementing adequate transparency and accountability standards. One agency was investigating the possible internal theft of tens of thousands of dollars in tsunami funds from its Aceh Besar office in March 2006.<sup>206</sup> Most lapses in accountability were felt to have occurred in the early stages of emergency operations when the desperate situation prompted some agencies to cut their internal red tape in order to react quickly, and less scrupulous organisations were able to operate with little monitoring. Later in the operation, many agencies took pains to maintain accepted accountability standards and had internal monitoring mechanisms to promote this<sup>207</sup> however it was felt that agencies were also presenting overly flattering reports of their accountability practices.<sup>208</sup>

#### *Involvement of beneficiaries in programme management*<sup>209</sup>

Despite being a widely accepted standard in relief operations, there was also deemed to be an absence of adequate consultation with affected communities in the determination of relief and recovery programmes.<sup>210</sup> This was the case particularly at the commencement of the reconstruction phase, with many relief workers feeling the pressure of having to respond to the urgency of the disaster's impact and by time constraints imposed by their head offices and donors. Inadequate communication led to inflated expectations and ultimately disappointment when organisations were unable to deliver according to initial promises.<sup>211</sup> Beneficiaries were reported to frequently complain about the delays in services.<sup>212</sup> In one case the property of an INGO in Calang was the subject of arson attacks by frustrated members of the community when it was felt they were not meeting expectations.<sup>213</sup>

Conversely, it has also been noted that “affected populations understood almost any enquiry by NGOs to be an undertaking to do something about the issue raised”, leading to increased challenges for effective communication.<sup>214</sup>

#### *Undertaking appropriate needs assessments*<sup>215</sup>

Some organisations, particularly smaller, less experienced groups, were criticised for failing to conduct sufficient research and needs assessments before starting projects<sup>216</sup> and it was felt there was

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<sup>206</sup> Batha, E, ‘Oxfam Probes Possible Tsunami Aid Theft’, *AlertNet*, 15 Mar 2006, see also Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 79.

<sup>207</sup> Tarrant, W, ‘Indonesia Appeals for Tsunami Food Aid’, *Reuters*, 7 October 2005.

<sup>208</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, pp 78-9.

<sup>209</sup> See Principle 7 of the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, prepared jointly by the International Federation and ICRC, 1995.

<sup>210</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 48.

<sup>211</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, pp 69-70.

<sup>212</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 69.

<sup>213</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 41. Available at <http://www.tsunami-evaluation.org>

<sup>214</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 71.

<sup>215</sup> See Principle 2 of the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, prepared jointly by the International Federation and ICRC, 1995.

<sup>216</sup> Gelling, P, ‘At Tsunami’s Epicenter a Town is Reborn but Housing is Scarce’, *New York Times*, 14 November 2005.

a lack of a common approach between organisations.<sup>217</sup> Consequently there were instances of both over and under-supply of assistance. For example, several organisations donated fishing boats as part of their relief efforts, however, the donated number far exceeded the number of boats destroyed, leaving the threat of over-fishing.<sup>218</sup> Further, some of these boats were inappropriate, either too small to replace the open sea boats that were destroyed<sup>219</sup> or unsuitable for the specific needs of their recipients.<sup>220</sup>

#### *Unsolicited goods*<sup>221</sup>

Thousands of tons of emergency relief were rapidly committed to Indonesia in response to the disaster, a significant number of this being unsolicited.<sup>222</sup> Consequently, Indonesian customs officials were tasked with sorting through numerous consignments of unsolicited goods with at times little or no documentation, including 75 metric tons of expired medicines and expired food – some of which had already expired in 2003.<sup>223</sup> Some medicines arrived with instructions or labels in languages that could not be read by locals, thereby limiting their distribution.<sup>224</sup>

The strange and wasteful nature of much of the unsolicited relief donations was also cause for consternation: tinned pork and Christmas costumes for a Muslim population, Viagra, ski jackets, high heeled shoes, swimming costumes and piles of unsuitable used clothing.<sup>225</sup> Receiving inappropriate goods was reported to have been very distressing for a number of female recipients who felt their dignity had been undermined.<sup>226</sup> Unfortunately, the full scale of the problem may never be known as there were not adequate records kept of all in-kind donations received, a factor which has in itself been noted as a weakness of the operation.<sup>227</sup>

#### *Impact on the local economy*

Other recognised standards in disaster response activities include: “to minimise the negative impact of humanitarian assistance, seeking to avoid long-term beneficiary dependence upon external aid;” and to prioritise the local purchase of goods.<sup>228</sup> With large numbers of relief agencies concentrated in a small area of Indonesia, which had previously been inaccessible for foreigners, it is not surprising that there was significant impact on the local economy. It is thought that more effort could have been made to

<sup>217</sup> Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 48.

<sup>218</sup> Donnan, S and Hidayat, T, ‘Tsunami Donations Threaten Fish Stocks’, *The Financial Times*, 23 November 2005.

<sup>219</sup> ‘Tsunami Survivors Still Struggling Despite Aid Outpouring’, *Associated Press*, 18 December 2005.

<sup>220</sup> Tierney, M, ‘After the Flood the Trickle of Relief’, *Glasgow Herald*, 7 December 2005.

<sup>221</sup> The issue of unsolicited goods raises a number of relating to the international standards of quality and accountability of assistance of the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, prepared jointly by the International Federation and ICRC, 1995 such as: “assistance should not be driven by the need to dispose of donor commodity surpluses” (see Principle 4); strengthening capacities by purchasing local materials (see Principle 6); minimizing the wasting of valuable resources (see Principle 9); and respecting local culture and custom (see Principle 5).

<sup>222</sup> It was reported that Indonesia did not take the same approach to this issue as for example India, which had “actively discouraged” unsolicited relief in the aftermath of the tsunami. See Macan-Markar, M, ‘NGOs Can Add to Disasters’, *Inter Press News Service Agency*, 5 October 2005.

<sup>223</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 52.

<sup>224</sup> Bennett, J, Harkin, C, and Samarasinghe, S, ‘Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia’, *Tsunami Evaluation Coalition*, 2006, p 30. Available at <http://www.tsunami-evaluation.org>

<sup>225</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 52.

<sup>226</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 51.

<sup>227</sup> See Telford, J, Cosgrave, J and Houghton, R, ‘Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report’, *Tsunami Evaluation Coalition*, 2006, p 52.

<sup>228</sup> See Principle 6 of the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, prepared jointly by the International Federation and ICRC, 1995.

purchase goods locally to support the Indonesian and Acehese economy, rather than rely on imports. However, when goods and services were purchased locally, it tended to provoke large scale inflation, occasionally placing these items out of the reach of the local population. It has been estimated for example that property rental prices increased between 1,000 to 2,000 times due to the high demand of foreign organisations, including foreign media.<sup>229</sup>

There was also a high demand for local staff, particularly those who spoke English, and relief agencies were felt to be depleting the labour force by offering far higher pay scales than the local market could match.<sup>230</sup> This also depleted the capacity of local NGOs by taking their leading staff members, and at times local organisations were simply forced to close.<sup>231</sup> Universities were also vulnerable, with INGOs hiring skilled faculty staff directly without working through the institution itself or seeking to form capacity-building partnerships. As faculty members could earn more in several days working for an INGO than they usually do in a month, few worried about any long term ramifications to Aceh's education sector.<sup>232</sup>

These issues are notoriously difficult to grapple with, particularly in a legal or policy sense, as they juxtapose the principles of utilising and developing local capacities, with trying to minimise the negative impacts of international assistance on affected communities. Nevertheless, by flagging them here is hoped that it will raise issues for future consideration.

## Specific challenges for reconstruction

A significant part of the post-tsunami recovery involved extensive reconstruction. The sheer scale of Aceh's damaged infrastructure, with an estimated 141,000 homes destroyed, meant that coherent reconstruction planning was very difficult in the first few months. The reconstruction phase officially began in April 2005, however the confusion over how long foreign organisations would be allowed to remain in Aceh (described above), delayed the planning process for some organisations, pending a clear announcement by the government. Further, some organisations interviewed said they were unprepared for the decision of the Indonesian Government to undertake temporary shelter programmes after permanent shelter reconstruction was already underway. Thus, inadequate coordination and a piecemeal approach to reconstruction was felt to have resulted in or exacerbated many of the issues undermining these efforts.<sup>233</sup>

The pace of reconstruction had fallen behind the expectations of all parties, with completion set back several years. This delay was also a source of frustration for affected communities, as the conditions in some camps deteriorated with some survivors living in worse conditions several months after the tsunami than in its immediate aftermath.<sup>234</sup> It was felt by some that the Government had been slow in providing leadership and coordination and some ten months after its establishment there were protests

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<sup>229</sup> 'Responding to Aceh's Tsunami: The First 40 days', *Eye on Aceh*, April 2005. Available at [http://www.aceh-eye.org/data\\_files/english\\_format/ngo/ngo\\_eoa/ngo\\_eoa\\_2005\\_04\\_00.html](http://www.aceh-eye.org/data_files/english_format/ngo/ngo_eoa/ngo_eoa_2005_04_00.html)

<sup>230</sup> Bearak, B, 'The Day the Sea Came', *New York Times*, 27 November 2005, see also Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 43.

<sup>231</sup> Interview with UN official, 15 March 06, Banda Aceh.

<sup>232</sup> Overland, MA, 'Post Tsunami Aid Fails to Reach Universities in Banda Aceh', *Chronicle of Higher Education*, 16 December 2005.

<sup>233</sup> See Bennett, J, Harkin, C, and Samarasinghe, S, 'Coordination of International Humanitarian Assistance in Tsunami-Affected Countries - Evaluation Findings for Indonesia', *Tsunami Evaluation Coalition*, 2006, p 34. Available at <http://www.tsunami-evaluation.org>

<sup>234</sup> Parry, S, 'Temporary Solution to Housing Problem Won't Work, Says Oxfam', *South China Morning Post*, 30 October 2005, see also Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, pp 68-70.

calling for the abolition of BRR, citing excessive bureaucracy.<sup>235</sup> Conversely, others have claimed that BRR's slower but more considered approach to reconstruction curtailed incidences of graft, and assisted in raising construction standards.<sup>236</sup>

The following outlines some specific legal issues faced during reconstruction efforts.

#### *Land and shelter ownership*

Land ownership issues were deemed to have significantly hindered reconstruction efforts. The disappearance of original coastline that had once housed 120,000 people,<sup>237</sup> the loss of land title deeds washed away, the absence of wills, and the fact that many families had rented or squatted on certain sites for generations, made the process of determining who owned which land a complex and time consuming process.<sup>238</sup>

Shortly after the tsunami, the Indonesian Government announced a two kilometre buffer zone which prevented people from rebuilding their homes along the coast. Survivors from these areas refusing relocation to camps were reported to have officially lost their access to government aid and re-housing.<sup>239</sup> The zones were opposed by civil society groups, and debate continued until May 2005 when the regulation was relaxed. However this did not completely resolve the uncertainty for survivors wishing to rebuild on land in the zones and for the relief organisations seeking to assist them.<sup>240</sup>

Before engaging in the construction of permanent shelters, some relief organisations made independent efforts to clarify the ownership of land, requiring that beneficiaries must have a land certificate.<sup>241</sup> Despite agency checks, there were reports of shelters being constructed on land owned by Acehese people without prior consultation. The government acted to identify suitable and available sites for temporary shelters, and reportedly Sphere Standards were used in this regard,<sup>242</sup> but rising land prices added a further obstacle to the process.

The issue of temporary shelter ownership also caused difficulties. It was noted by some organisations that they were considered "moveable assets" and thus BRR asked beneficiaries to relinquish them to government authorities when they moved to permanent housing. However, it was felt by some relief organisations that the shelters represented relief given by humanitarian organisations to the beneficiaries, not the Indonesian Government, and thus they questioned BRR's right to make this request.

#### *Building codes and standards*

Whilst Indonesia has building and reconstruction codes and standards, in some instances they were considered to be lower than internationally accepted standards. For example, it was reported by one organisation that under Indonesian law it is acceptable to have a health facility without running water, toilets or waiting rooms, which was felt to be below acceptable standards elsewhere. On the other hand, if relief organisations decided to include extra facilities such as sanitation, lighting and air

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<sup>235</sup> Phillips, J, 'Protesters Cite Bureaucracy for Lax Relief from Tsunami', Washington Times, 15 October 2005. See also Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 102.

<sup>236</sup> 'After Tsunami Rebuilding Pace Falls Short of Hopes', *The Wall Street Journal*, 19 December 2005, and 'Aceh Shows Best Worst of Tsunami Spending', *Associated Press*, 18 December 2005.

<sup>237</sup> 'Long After the Deluge, 1.5m Homeless Still Battle to Survive', *The Independent*, 19 December 2005.

<sup>238</sup> See for example 'Tsunami Response: A Human Rights Assessment', *Action Aid*, January 2005.

<sup>239</sup> 'After the Tsunami: Human Rights of Vulnerable Populations', *Human Rights Centre, University of California, Berkley*, October 2005.

<sup>240</sup> 'Tsunami Response: A Human Rights Assessment', *Action Aid*, January 2005.

<sup>241</sup> Interview with INGO staff, 17 March 2006, Banda Aceh.

<sup>242</sup> Interview with UN official, 15 March 2006, Banda Aceh.

conditioning facilities, there would be problems running and maintaining them without access to sufficient electricity supplies or a sufficient public health budget.<sup>243</sup>

There were debates between the Indonesian government and organisations on building standards and designs for permanent housing – some of which did not reflect the views of the affected communities. Many relief agencies felt that BRR had been slow in giving them guidance on standards. It was reported to have taken nearly nine months of negotiation for BRR and relief organisations to agree on building codes which establish standard measurements and requirements for new homes.<sup>244</sup>

On the standards for temporary shelters, a BRR chief stated:

“No, I don't need to see the design [of temporary shelters] first...The objective is to get people out of tents in as short a time as is humanly possible.”<sup>245</sup>

Since this time however, BRR introduced new detailed housing regulations including the requirement that any completed housing which has not yet been handed over to beneficiaries must be modified or rebuilt in accordance with these new standards.<sup>246</sup>

#### *Materials and labour*

Obtaining domestic timber has been a major and complicated issue for government and relief agencies. Illegal logging is an issue of concern throughout the region, and a new Presidential Decree was introduced to deal with the issue in Indonesia due to its environmental and political implications such as landslides, and smog from fires drifting to Malaysia.<sup>247</sup>

Difficulties were also noted with regard to regulations on the cutting and transport of timber. They were said to be very bureaucratic in the context of a recovery operation, requiring documentation at every stage of the delivery process if more than five cubic metres is moved. One relief organisation found that legal suppliers were unable to meet demands for reconstruction timber; by March 2006, only 2000 cubic metres – ten percent of the total need – had been supplied. Some organisations were using illegal timber cut in Nias and Aceh, arguing that their beneficiaries would have done it anyway because they could not wait indefinitely for housing.<sup>248</sup>

Other agencies chose to import timber from outside the Southeast Asia region, although there were also challenges with this approach. In addition to the increased cost of transport, imported timber was said to take two to three months to ship and could be too soft to withstand the tropical climate. Additionally, some organisations reported bottlenecks arising in the importation of timber shipped to Aceh, which had to be inspected to ascertain that any chemicals used to treat the timber were safe to be imported.<sup>249</sup>

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<sup>243</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>244</sup> Parry, S, 'A Second Wave of Despair Hits Aceh', *South China Morning Post*, 30 October 2005.

<sup>245</sup> Tarrant, W, 'Indonesia Appeals for Tsunami Food Aid', *Reuters*, 7 October 2005.

<sup>246</sup> *Regulation of Executing Agency Rehabilitation and Reconstruction Agency and the Lives of the People of Nang groe Aceh Darussalam Province and Nias Island On Housing and Settlement Proper Construction Standards for the Victims of Earthquake and Tsunami in Nanggroe Aceh Darussalam Province and Nias Island, North Sumatra Province, 2006* (Republic of Indonesia). Available at:

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<sup>247</sup> *Combating Illegal Logging and its Distribution in All Areas in Indonesia*, Presidential Decree No. 4 of 2005 (Republic of Indonesia).

<sup>248</sup> Interview with UN official, 20 March 2006, Medan.

<sup>249</sup> Interview with UN official, 20 March 2006, Medan.

### *Quality and selectivity in reconstruction*

An initial lack of government monitoring and construction standards, in addition to the many different organisations involved, produced wide variations in the quality of reconstruction. There were an estimated 95 different organisations working on housing alone, and resulting variations of quality in the houses built, however slight, were reported to have fuelled jealousies between beneficiaries, prompting some villagers to reject homes they felt were inferior to their neighbours.<sup>250</sup> Some agencies engaged in reconstruction were not experts, and were reported to have pledged assistance they were not competent to deliver, rather than subcontracting the tasks to construction companies or agencies with construction skills.<sup>251</sup> It was also stated that some early reconstruction efforts were of such poor quality that they had to be demolished.<sup>252</sup>

Some relief agencies and local government officials felt their input to the reconstruction process was disregarded by Bappenas in the development of reconstruction plans. Several relief agencies ignored the Bappenas plans altogether and set up separate consortiums for reconstruction programs.<sup>253</sup> Some time later the head of BRR decided to involve outside consultants, relief agencies and communities in government-led reconstruction plans, which was well received and was seen to assist with improving coordination.<sup>254</sup>

A number of organisations were criticised for being too selective in identifying locations for their reconstruction efforts and were competing to build in villages which already had good existing infrastructure; meanwhile more remote and logistically challenging areas saw little progress in rebuilding.<sup>255</sup> The slow pace of completion of relief agency projects was a common complaint widely publicised in the media and BRR threatened to “name and shame” organisations that were not coordinating properly or that failed to deliver on their promises.<sup>256</sup> Under-performing reconstruction NGOs and INGOs were placed on a list with the intention of relieving them of their reconstruction programmes<sup>257</sup> although it is not clear whether this ever eventuated.

### **Addressing legal challenges in future disaster management legislation**

In response to the tsunami experience and recognising the importance of good disaster management structures in a country which has such a high frequency of disasters, a *Draft Bill on Disaster Management* has since been prepared and in the process of approval by the Parliament.<sup>258</sup>

In explaining the needs and rationale for such a draft, it has been stated:

The Preamble to the 1945 Constitution decrees that the purpose of establishing the Republic of Indonesia is, among others, to protect the people and country of Indonesia. Disaster management as an expression of such enshrined goal, however, has been far from optimal and demonstrates the impression of being slow. This can be attributed to the fact that disaster management tends to be partial, sectoral and fragmented. The general view of the public is

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<sup>250</sup> Baum, C, ‘Someone Else’s Utopia’, *Sydney Morning Herald*, 8 December 2005.

<sup>251</sup> Brown, S, ‘Aceh’s Recovery Stumbled but Now Gaining Momentum: Report’, *Agence France Presse*, 15 December 2005.

<sup>252</sup> Interview with INGO staff, 16 March 2006, Banda Aceh.

<sup>253</sup> Athukorala, P and Resosudarmo, BP, ‘The Indian Ocean Tsunami: Economic Impact, Disaster Management and Lessons’, *Research School of Pacific and Asian Studies, Australian National University*, May 2005. Available at <http://rspas.anu.edu.au/economics/publish/papers/wp2005/wp-econ-2005-05.pdf>

<sup>254</sup> ‘Aceh Shows Best Worst of Tsunami Spending’, *Associated Press*, 18 December 2005.

<sup>255</sup> Parry, S, ‘Temporary Solution to Housing Problem Won’t Work, Says Oxfam’, *South China Morning Post*, 30 October 2005.

<sup>256</sup> ‘Indonesia Admits Mistakes in Tsunami Response’, *Agence France Presse*, 15 December 2005.

<sup>257</sup> Asmarani, D, ‘Inefficient NGOs to be Sent Packing’, *Straits Times*, 8 December 2005.

<sup>258</sup> *Draft Bill of the Republic of Indonesia* for proposal to the People’s Representative Assembly and President of the Republic of Indonesia to enact a law on Disaster Management [undated]. A version of this Draft Bill can be found at [www.mpbi.org](http://www.mpbi.org).

still orientated on emergency response efforts, made by the government, and mostly is in the form of physical assistance.

One of the lessons learned from responding to these enormous disasters is the need for a sound basic policy to regulate the functions and roles of various parties in managing disasters. Such basic policy should help government overcome its hesitance and indecisiveness and encourage better coordination leading to more effective responses to disasters. Laws are one of the means of overcoming the problems of poor coordination, miscommunication, and the sectoral and fragmented disaster management that has compromised their effectiveness.<sup>259</sup>

Additionally, a 'Post-Tsunami Lessons Learned and Best Practices Workshop' held in Jakarta on 16-17 May 2005 made a number of key recommendations about the form and substance of the legislation.<sup>260</sup> Whilst all recommendations are of direct relevance to improving important legal and institutional preparedness in the areas of risk management, preparedness and response, of particular relevance to international assistance, the following recommendations were made:

To specify provisions for the request and reception of international assistance; and  
To create a permanent liaison mechanism with the international humanitarian community.<sup>261</sup>

The current *Draft Bill on Disaster Management* addresses many important aspects of disaster management such as: the basis, principle and objectives of disaster management; the responsibilities and authority of the Government; the rights, obligations and roles of the people, community-based institutions, the Indonesian Red Cross<sup>262</sup>; disaster management activities, including disaster risk reduction; disaster emergency response; the determining a disaster emergency situation<sup>263</sup>; the handling of disaster victims and IDPs; rehabilitation and reconstruction provisions; disaster management arrangements; the structure and authority of the disaster management agency; funding, including disaster relief<sup>264</sup>; the deployment of resources; and, the supervision of activities.

There are a number of key provisions relating to international assistance, which are as follows:

Article 5 (3)(e) – Recognises “international institutions” as one of the actors in disaster management.

Article 6(3)(f) – Specifies that the Government’s authority and responsibility includes the formulation of policies on cooperation in disaster management with other countries, bodies or international parties.

Article 55 – “The Disaster Management Agency is to be responsible to formulate disaster management policies, to implement disaster management policies, to perform the tasks of disaster

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<sup>259</sup> 'Disaster Management in Indonesia 2005: A Briefing Paper for Legislative Reform', *Indonesian Society for Disaster Management*, 7 May 2005. Available at [www.mpbi.org](http://www.mpbi.org).

<sup>260</sup> 'Post Tsunami Lessons Learned and Best Practices Workshop', *Government of Indonesia and United Nations*, Jakarta, Indonesia, 16-17 May 2005.

<sup>261</sup> 'Post Tsunami Lessons Learned and Best Practices Workshop', *Government of Indonesia and United Nations*, Jakarta, Indonesia, 16-17 May 2005, p.4-5.

<sup>262</sup> *Draft Bill of the Republic of Indonesia* for proposal to the People’s Representative Assembly and President of the Republic of Indonesia to enact a law on Disaster Management [undated], arts 15, 16 and 17. A version of this Draft Bill can be found at [www.mpbi.org](http://www.mpbi.org).

<sup>263</sup> *Draft Bill of the Republic of Indonesia* for proposal to the People’s Representative Assembly and President of the Republic of Indonesia to enact a law on Disaster Management [undated], art 32. A version of this Draft Bill can be found at [www.mpbi.org](http://www.mpbi.org).

<sup>264</sup> *Draft Bill of the Republic of Indonesia* for proposal to the People’s Representative Assembly and President of the Republic of Indonesia to enact a law on Disaster Management [undated], arts 62 and 63. A version of this Draft Bill can be found at [www.mpbi.org](http://www.mpbi.org).

management information centre, to perform intersectoral coordination and international cooperation.”

Article 57 – Provides that the duties of the Disaster Management Agency shall “include the coordination among national agencies, among local governments, between national and local agencies, coordination with government of other countries, and coordination with community organizations [...] both national and international.” And that these arrangements “shall be regulated further in the Implementing Regulation.”

Article 62 – States that after the disaster emergency status is proclaimed, the government may use resources including emergency funds, volunteers and international assistance.

Article 66(1)(c) – Provides that the Head of Disaster Management Agency has the duty to request the mobilization of “international institutions handling disasters” and in article 66 (2) that arrangements and procedures for the mobilization of such resources “shall be further arranged in Implementing Regulations.”

However, the main provisions relating to international aid are found in articles 21-23 which outline the “Right, Obligations and Role of International Institutions”. These sections are reproduced below:

Article 21 -

- (1) International institutions may participate in efforts for disaster management and obtain protection from the Government for their workers.
- (2) International institutions in implementing disaster management activities as referred in paragraph (11) have the right to carry it out individually, jointly and/or together with working partners from Indonesia, in accordance with their principles and regulations, as long as these are not in conflict with valid legislative stipulations and regulations.
- (3) International institutions in implementing disaster management activities have the right to get safe access to the regions affected by disasters.

Article 22 -

- (1) International institutions have the obligation to harmonize their disaster management activities to the policies of the Government.
- (2) International institutions have the obligation to inform the Government on assets for disaster management brought into Indonesia.
- (3) International institutions have the obligation to comply with legislative stipulations and valid regulations and to respect local customs and cultures.
- (4) International institutions have the obligation to comply with government stipulations, particularly those related to security and safety.

Article 23 -

- (1) International institutions represent the interest of the international community and are working in accordance with international legal norms.
- (2) International institutions become partners of the community and the government in disaster management.
- (3) Implementation of disaster management activities by international institutions shall be arranged further by Disaster Management Agency in accordance to prevailing regulations.

Unfortunately, the *Draft Bill on Disaster Management* falls short making any detailed provisions for the facilitation of international assistance and the specific standards of quality and accountability to be applied, which would address many of the issues highlighted in this report. In this regard, it is hoped that these issues will be considered in the course of the further preparation of the Bill and in the development of the Implementing Regulation referred to at several points in the text.

## Conclusion

Indonesia is a country frequently affected by natural disasters, and significant inroads have been made in relation to disaster management prior to the tsunami which had limited the need for Indonesia to receive international assistance. However, the enormity of the tsunami's devastation in Indonesia was greater than had previously been experienced, and it is unlikely that any country's disaster response mechanism would be unchallenged by its scale. The tsunami highlighted in Indonesia a reactive approach to disaster management, limited disaster coordination contingency plans, particularly relating to international assistance, and the need to further clarify disaster response mechanisms.

Many of the laws and regulations applicable to the entry of foreign organisations did not support a relief situation, and were overwhelmed or ignored altogether, particularly at the start of relief operations. The Indonesian government was reasonably quick to recognise the limitations of its re-existing legal and policy framework. Consequently, ad hoc legislation was passed, new institutions created, and policies amended in response to the disaster. The Indonesian Government also introduced harmonising legislation and modified the disaster response mechanisms to better support both local NGOs and the international humanitarian community in Aceh and Nias.

While there was a clear need for the Indonesian Government to impose regulations to ensure standards of quality, coordination, and to guard against exploitation, there was also a need to consider the challenges posed to the provision international relief. Such challenges included the imposition of taxes and duties, lengthy procedures for customs clearance, and the inconsistency and confusion surrounding visas and work permits. Compounding the issue was the fact that many of these issues were determined on a case by case basis, rather than through a clear and transparent system applicable to all genuine relief and recovery actors.

However, relief organisations were also responsible for some of the confusion surrounding the coordination of relief and for non-compliance with the various efforts made by the Government to keep track of all activities taking place. This, together with the pressures of time, earmarked funding and the number and diversity of foreign actors seeking to contribute to the response efforts, resulted in instances of over-supply or under-supply of assistance in some areas. There were also instances of relief providers failing to comply with basic humanitarian principles as well as international and local standards of quality and accountability, which not only reduced the overall effectiveness of the operation but also contributed to bottlenecks, such as through the sending of unsolicited or inappropriate goods.

It was clear that organisations established in Indonesia prior to the tsunami benefited from greater facilitation than organisations entering Indonesia for the first time, and there were tangible benefits from having MOUs granting a range of exemptions and facilities. Newly arrived organisations however, had to build relationships with the Indonesian government, while also trying to decipher at times unclear and inconsistent regulations concerning their operations.

The establishment of BRR, a 'first stop' overseeing authority for Aceh and Nias, did bring some clarity and transparency to relief agency operations. The institution has sought to merge responsibility for coordinating of relief operations and for the facilitation of legal and administrative formalities affecting humanitarian organisations in Aceh and Nias under one entity. Whilst this was seen by many as a useful model, there were still gaps and a lack of clarity in the system, mainly due to the limited scope of BRR's remit as a facilitator not policy-maker, of which many were simply not aware. The more recent establishment of the *tim terpadu* should offer greater assistance in this regard.

It is hoped that many of the "legal" lessons learned from the tsunami experience will have long term benefit to any future international relief operations in Indonesia. Indeed, on this point the TEC Synthesis Report concludes the following:

States should set standards and procedures for inviting, receiving and regulating international assistance. These should include speedy initial assessments (on a joint national-international basis) to determine the degree to which national and local capacities have been overwhelmed, and thus the need for external aid. Procedures and standards governing international agency admission, registration, accountability, performance, reporting and information sharing should be established.<sup>265</sup>

Currently, many of the new laws and policies which were introduced to facilitate the operation, including the establishment of BRR, are only applicable to Aceh and Nias. Foreign relief organisations responding to disasters in other parts of Indonesia must fall back on pre-tsunami disaster legislation, policies, and institutions - as demonstrated by the Jogjakarta earthquake on 27 May 2006.

The *Draft Bill on Disaster Management*, while not without its limitations, reflects a positive shift away from disaster reaction, to nationwide disaster preparedness through a unified legal structure. Hopefully it will also be supported by a clarification of laws, rules and principles which can be applied to all future international disaster response operations.

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<sup>265</sup> See Telford, J, Cosgrave, J and Houghton, R, 'Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report', *Tsunami Evaluation Coalition*, 2006, p 114.

## **Annex A**

## **List of Acronyms and Abbreviations**

ADB	Asian Development Bank
Bakornas PBP	National Coordinating Board for Disaster Management
Bappenas	National Development Planning Agency
BRR	Nagroe Aceh Darussalam Province and Nias Islands in North Sumatra Province
CRS	Catholic Relief Service
DEC	Disasters Emergencies Committee
IASC	Inter-Agency Standing Committee
ICRC	International Committee of the Red Cross
ICVA	International Council for Volunteer Agencies
IDRL	International Disaster Response Laws Rules and Principles
INGO	International Non-Governmental Organisation
International Federation	International Federation of Red Cross and Red Crescent Societies
IO	International Organization
JAMSOSTEK	Social Security Programme
KITAS	Limited Stay Permit
MSF	Medicines sans Frontieres
MOU	Memorandum of Understanding
NGO	Non Governmental Organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PMI	Indonesian Red Cross
RAND	Recovery Aceh and Nias Database
Satkorlak	Provincial Disaster Management Unit
Satlak	District Disaster Management Unit
TEC	Tsunami Evaluation Coalition
TNI	Tentara Nasional Indonesia
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children Fund
UNJLC	United Nations Joint Logistics Centre
UNORC	United Nations Recovery Coordinator for Aceh and Nias
VITAS	Limited Stay Visa
WHO	World Health Organization

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