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of Red Cross and Red Crescent Societies

Legal issues from the international response to the tsunami in

Sri Lanka



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Introduction

On 26 December 2004, an earthquake measuring 9.0 on the Richter scale struck the area off the western coast of northern Sumatra triggering massive tidal waves or 'tsunamis' and inundating coastal areas of countries around the Indian Ocean rim, from Indonesia to Somalia. The disaster affected millions of people along thousands of kilometres of coastline in 13 countries over a wide geographical region, with the most severely affected areas being located in zones which for years have been the theatre of intractable armed conflicts.¹

Tsunami waves of this magnitude are rare in this region and no tsunami early warning system similar to that in the Pacific Ocean basin was in place. Community awareness and preparedness was thus very low, resulting in a very high death toll and widespread devastation of socio-economic infrastructures and livelihoods. As of May 2005, there were estimates of 226,4151 presumed casualties (176,459 confirmed dead and 49,956 missing) with more than 2.3 million affected. Families from 104 countries throughout the world lost contact with loved ones.²

In Sri Lanka, the country suffered one of its worst natural disasters³ - killing, injuring and displacing thousands of people and destroying livelihoods. The tsunami caused severe destruction and damage to approximately two-thirds of Sri Lanka's coast. In total, the tsunami devastated 5 provinces and 13 districts, claiming 35,322 lives and displacing 853,025 persons island-wide.⁴ Jaffna, Kilinochchi, and Mullaitivu of the Northern Province, Trincomalee, Batticaloa and Ampara Districts of the Eastern Province, Hambantota, Matara and Galle Districts of the Southern Province, Kalutara, Colombo and Gampaha Districts of the Western Province and Puttalam District of the North Western Province were affected.⁵

Purpose of this report

This report aims to identify the various legal issues that impacted on international relief operations in Sri Lanka after the tsunami and examines the development of relevant laws and policies both prior to and following the disaster, drawing on first-hand accounts and documentation. Analysis focuses on topics such as: offers and requests for international assistance; the entry and facilitation of foreign relief organisations, personnel, relief goods and equipment; the coordination of assistance; and standards of quality and accountability.

It is not the aim of this study to criticize the government or relief providers 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.

¹ Above information quoted from International Federation of Red Cross and Red Crescent Societies, *South/Southeast Asia and East Africa: Earthquake & tsunamis (Plan and Budget)*, Emergency & Recovery Appeal no. 28/04, 6 May 2005 at http://www.ifrc.org/cgi/pdf_appeals.pl?04/2804PlanofAction2005-2010.pdf.

² Above information quoted from International Federation of Red Cross and Red Crescent Societies, *South/Southeast Asia and East Africa: Earthquake & tsunamis (Plan and Budget)*, Emergency & Recovery Appeal no. 28/04, 6 May 2005 at http://www.ifrc.org/cgi/pdf_appeals.pl?04/2804PlanofAction2005-2010.pdf.

³ 'Post Tsunami Recovery and Reconstruction', *Joint Report of the Government of Sri Lanka and Development Partners*, December 2005, available at http://www.tafren.gov.lk/portal/resources/GoSL_Partners_FinalLR-Version_Tsunami1yrsReport_Dec05.pdf accessed 20 March 2006.

⁴ 'Tsunami: Building Back Better Sri Lanka – Achievements, Challenges and Way Forward (1st Draft)', Document Drafted by the Steering Committee made up of representatives of the government (Ministry of Finance and TAFREN), donor community (ADB, International Federation, UN) and civil society (CHA), December 2005, p. 14.

⁵ 'Impact of the tsunami', *Disaster Relief Monitoring Unit*, Human Rights Commission, Govt Sri Lanka, www.drmu.gov.lk/impact.htm accessed 27 December 2005.

The issues and events identified below have been gathered from interviews, field visits, reports and other documentation. Additionally a consultation workshop was held in Colombo on 25 November 2005. The list of acronyms is found in Annex A and a list of sources used for this study and list of workshop participants are in contained in Annex B.

Country context

Sri Lanka is a small island nation in the Indian Ocean with a population of nearly 20 million, of whom about 80% live in rural areas. Despite its size, Sri Lanka is socially diverse and politically complex. Approximately 81.9% of the population is of Sinhalese descent, with Sri Lankan Tamils (4.3%), Indian Tamils (5.1%) and Sri Lankan Moors (8%) forming together the largest minority groups.⁶ The predominant religion is Theravada Buddhism (76.7%) while 7.9% of the people are Hindus, 8.5% Muslim, and 6.1% Roman Catholic.⁷

Sri Lankan politics and society have been dominated by the protracted conflict between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) since 1983. Spanning two decades, the conflict is estimated to have caused over 60,000 deaths, displaced over 800,000 people and seriously undermined the country's development potential.⁸ Of those displaced, voluntary returnees amounted to more than 300,000 and received resettlement allowances from the government and/or other support from the non-government sector. Some 84,000 Sri Lankan refugees still remain in India, 64,000 of whom are registered in more than 100 refugee camps.⁹ Whilst not the focus of this study, it is important to acknowledge that these complexities can also have a significant impact on the response to other disasters facing the country.

Disasters in Sri Lanka

Sri Lanka's experience with natural disasters has predominantly been limited to flash flooding and cyclones. Sri Lanka's coastal belt is especially vulnerable to the effects of tropical storms and tidal surges. Its location in the Indian Ocean exposes the country to a long northeast and southwest monsoon season each year. The southern and western sections of the island (the wet zone) receive large amounts of rain, causing flash floods in the mountainous areas and river flooding on the plains. In May 2003, flash floods and landslides struck villages in the south and southwest of Sri Lanka after heavy monsoon rains. This affected nearly 146,000 families and killed 250 people. In contrast, the northern regions of the country (the dry zone) often receive less than 1,000 mm rainfall annually, leading to widespread drought and food shortages.¹⁰

⁶ 'Percentage Distribution of Ethnicity by Districts, 1981-2001', *Census of Population and Housing 2001*, Government of Sri Lanka Department of Census and Statistics, website http://www.statistics.gov.lk/census2001/population/text_tabd.htm, accessed 20 March 2006.

⁷ 'Percentage Distribution of Ethnicity by Districts, 1981-2001', *Census of Population and Housing 2001*, Government of Sri Lanka Department of Census and Statistics, website http://www.statistics.gov.lk/census2001/population/text_tabd.htm, accessed 20 March 2006.

⁸ 'UNHCR's Operations in Sri Lanka: Country Report 2003', United Nations High Commissioner for Refugees (UNHCR), available at <http://www.unhcr.lk/Publications/2003%20Donor%20Report/DR2003ph.pdf> accessed 20 March 2006

⁹ UNHCR's Operations in Sri Lanka: Country Report 2003', *United Nations High Commissioner for Refugees (UNHCR)*, available at <http://www.unhcr.lk/Publications/2003%20Donor%20Report/DR2003ph.pdf> accessed 20 March 2006

¹⁰ 'Expert missions to Indian Ocean countries to assess requirements and capacity for an effective and durable national tsunami warning and mitigation system' Intergovernmental Oceanographic Commission, UNESCO Mission Report No.25, Sri Lanka, Colombo, 19-21 May 2005, p. 58, available at http://ioc3.unesco.org/indotsunami/documents/nationalreports/IOC25_Assessment_Sri%20Lanka.pdf accessed 20 March 2006.

Table: Top 10 Natural Disasters in Sri Lanka sorted by number of people killed and affected

Killed

Disaster	Date	Total Killed
Wave / Surge	26-Dec-2004	35,399
Wind Storm	24-Nov-1978	740
Flood	30-May-1989	325
Flood	17-May-2003	235
Wind Storm	22-Dec-1964	206
Wind Storm	25-Dec-1957	200
Slides	8-Oct-1993	65
Flood	25-Dec-1969	62
Epidemic	Nov-1987	53
Flood	24-May-1984	45

Affected

Disaster	Date	Total Affected
Drought	2004	3,500,000
Drought	1987	2,200,000
Drought	1982	2,000,000
Drought	1983	1,800,000
Flood	Dec-1983	1,250,000
Wave / Surge	26-Dec-2004	1,019,306
Wind Storm	24-Nov-1978	1,005,000
Flood	25-Dec-1969	1,000,000
Drought	Aug-2001	1,000,000
Drought	Mar-1989	806,000

Created on: Dec-27-2005. - Data version: v05.10 Source: "EM-DAT: The OFDA/CRED International Disaster Database, www.em-dat.net, Universit catholique de Louvain, Brussels, Belgium.

Response to the tsunami in Sri Lanka

The scale of the destruction caused by the tsunami placed existing disaster management resources under great strain. Moreover, the legal issues affecting various stakeholders were deeply complex and not easily resolved. The following section offers a brief chronology of the events as they unfolded in the immediate days and weeks that followed the tsunami and an overview of the key mechanisms developed to support, coordinate and regulate relief efforts.

The first day

The role of the local community

The tsunami struck the coasts of Sri Lanka at 8:35 in the morning. Despite extreme shock and trauma, the very first relief activities were conducted by local people in the affected areas. This effort was hampered by logistical difficulties posed by the impact of disaster itself on the population and essential infrastructure. Nevertheless, the local response was considered to be impressive, expedient and effective. The ability to prevent an epidemic of disease and food shortages has been largely attributed to the immediate response by local communities.¹¹

These activities were coordinated by district secretariats and were bolstered by the capacities of humanitarian organisations already working in Sri Lanka when the tsunami struck.¹² Although many districts had disaster management plans, these plans were aimed at mitigating the effects of flooding and were largely inapplicable to the tsunami operation.¹³ Immediately after the tsunami, inter-sectoral coordination mechanisms were established within the district secretariats. The Government Agent, who heads the district secretariat, supervised coordination and developed mechanisms through which they communicated with other districts and the national government.¹⁴ For example, in Galle, a coordinating group was immediately established within the district secretariat. The group was headed by the Government Agent and initially consisted of Sri Lanka Red Cross Society (SLRCS) s and local government representatives. As various relief organisations converged on Galle, they were invited to join and collaborate with this group.¹⁵

¹¹ Interview with official from Sri Lanka Red Cross Society 22 November 2005, Galle, Sri Lanka.

¹² For Example, UNHCR immediately distributed stockpiles of non-food relief items such as tents, tarpaulins, washing kits and sanitary kits from stockpiles despite not receiving directions from HQ in Colombo. Interview with UNHCR official, 31 October 2005, Canberra, Australia.

¹³ In 2003, United Nations Development Programme (UNDP) completed disaster reduction contingency plans for each district. However, the pre-tsunami focus of these were predominantly to mitigate against flooding.

¹⁴ Interview with official from Sri Lanka Red Cross Society, 22 November 2005, Galle, Sri Lanka.

¹⁵ Interview with official from Sri Lanka Red Cross Society, 22 November 2005, Galle, Sri Lanka.

National disaster response mechanisms

At the national level, there were no comprehensive plans or legislation for disaster management.¹⁶ Prior to the tsunami, the Ministry of Social Services had developed only limited plans for food relief in disaster situations and the Office of the Deputy Provincial Director of Health Services had developed pre-disaster arrangements for emergencies; however, the latter were limited to situations of epidemics resulting from airborne diseases.¹⁷

Although efforts had been underway for several years to develop and adopt new disaster management legislation, it was not passed by the Parliament until May 2005 and thus was not applied during the immediate response phase. Responsibility for disaster management and preparedness had been devolved to the Parliament in 1987 under the Thirteenth Amendment of the Constitution¹⁸ and in 1991 a Cabinet Sub-Committee was appointed to prepare a national disaster mitigation plan.¹⁹ A National Disaster Management Centre (NDMC) was established in July 1996 and the consultations about the new legislative framework for disaster management had begun, but no comprehensive plans or legislation had been put in place.²⁰ As a result, the NDMC had yet to be granted institutional authority and was not equipped with regulatory mechanisms to assist with ascertaining the extent of the damage and to effectively coordinate international humanitarian assistance.²¹

Request and offers for international assistance

In the capital Colombo on the morning of the tsunami, the GoSL convened emergency meetings with representatives from the SLRCS and in-country representatives of the International Federation of Red Cross and Red Crescent Societies (**International Federation**), International Committee of the Red Cross (**ICRC**) and various government embassies. Offers for international assistance were immediate and relief operations were commenced by the evening of 26 December 2004.

Three days after

New Centre for National Operations

On the 29th of December 2004, the President established the Centre for National Operations (CNO) within the Presidential Secretariat, after withdrawing responsibility for coordination

¹⁶ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

¹⁷ Tsunami Situation Report No.34 compiled by Dr. Bipin Verma in consultation of the country, regional and HQ team, *World Health Organisation*, Regional Office for South-East Asia, 30 January 2005, available at http://w3.whosea.org/EN/Section23/Section1108/Section1835/Section1851/Section1865_8676.htm accessed 20 March 2006.

¹⁸ Regulations outlined in Gazette Extraordinary No. 1378/23, '*Thirteenth Amendment to the Constitution, An Act to Amend the Constitution of The Democratic Socialist Republic of Sri Lanka*', Certified on 14 November 1987.

¹⁹ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

²⁰ 'Pilot Study on the Use of Telecommunications In Disaster and Emergency Situations in Sri Lanka – Interim Report', *Report conducted by the Telecommunications - Regulatory Commission of Sri Lanka in association with United Nations Office for the Coordination of Humanitarian Affairs, Working Group on Emergency Telecommunications and ICO Global Communications*, September 1998, p. 6, available at <http://www.reliefweb.int/telecoms/tampere/slcs.html> accessed 7 November 2005.

²¹ The *National Disaster Management Act 2005*, which confers the National Disaster Management Council with the authority to coordinate relief during a disaster, had not been passed by the Sri Lankan Parliament before the tsunami struck.

from line ministries.²² Whilst the pre-existing NDMC was also able to facilitate information management in support of the CNO²³, the CNO was designed to be an interim body for strategic planning and monitoring of the GoSL's tsunami relief operation until the state machinery had increased its capacity to meet the unprecedented challenge of creating a framework to respond to this disaster.

The CNO was designated responsibility for the deployment and coordination of international humanitarian assistance and its core activities included:

- Data collection and analysis to assess relief and reconstruction needs and beneficiaries;
- Coordination and facilitation of emergency relief work among provincial, district and central government ministries and the Commissioner General for Essential Services (which was established on 6 February 2005, see further below);
- Consultation with the Ministry of Finance and Planning, Ministry of Foreign Affairs and other relevant line ministries to coordinate and channel all international donor assistance, Non-governmental organisation (NGO) activities and voluntary services to the most needed areas and sectors;
- Facilitation of smooth and efficient coordination and implementation of all relief activities; and
- Media relations and public information.²⁴

The CNO's institutional divisions consisted of a number of desks relating to different areas of the response, which included:

- Social services;
- Health;
- Sanitation and food;
- Utilities and infrastructure;
- Government institutions/agencies;
- Foreign affairs;
- Armed forces and police;
- Airport operations;
- UN and international organisations;
- NGOs communication and media; and
- Internally displaced persons.²⁵

The CNO conducted weekly donor conferences chaired by the Director of the CNO and were attended by the respective CNO desks and more than 100 local and foreign organisations. Special meetings and briefings were also organized for business leaders, religious leaders and community leaders.²⁶

²² 'Centre for National Operations for Relief Work', *Daily News*, 1 Sri Lanka 2005, www.dailynews.lk/2005/01/01/new02.html accessed 5 December 2005.

²³ 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 6.

²⁴ 'Immediate Response to the Tsunami', *Centre for National Operations*, Presidential Secretariat of Sri Lanka, 28 December 2005, available at <http://www.asianphilanthropy.org/pdfs/conference/2005/TdeMelCOLLABORATION.pdf> accessed 20 March 2006.

²⁵ 'Immediate Response to the Tsunami', *Centre for National Operations*, Presidential Secretariat of Sri Lanka, 28 December 2005, available at <http://www.asianphilanthropy.org/pdfs/conference/2005/TdeMelCOLLABORATION.pdf> accessed 20 March 2006.

²⁶ 'Tsunami: Building Back Better Sri Lanka – Achievements, Challenges and Way Forward (1st Draft)', *Document Drafted by the Steering Committee made up of representatives of the government (Ministry of Finance*

CNO Management also coordinated relief operations with the District Secretariats and District Coordinating officers appointed by the Joint Operational Headquarters (**JOH**) within the tsunami affected areas. They also visited the respective districts on a weekly basis. Humanitarian assistance provided by foreign relief organisations was coordinated at the local level by the District Coordinating Officer.²⁷

Establishment of TAFRER and TAFLOL

Concurrent to the establishment of the CNO, the Presidential Secretariat also established two task forces to implement the GoSL's response for initial relief and disaster management: the Task Force for Rescue and Relief (**TAFRER**) and the Task Force for Logistics Law and Order (**TAFLOL**).²⁸

The World Health Organization explained TAFLOL's responsibilities as follows:

TAFLOL will coordinate all logistical activities of relief work and facilitate easy access to relief supplies to those in need of it. TAFLOL will coordinate with the customs and Immigration Authorities and ensure the secure storage and distribution of the basic needs of the disaster victims. This unit will work in consultation with TAFRER and the Center for National Operations - (CNO) housed at the presidents office. This unit is taken with the protection of the disaster victims from harassment and exploitation.²⁹

Nine days after: Declaration of a state of emergency

On the 4th of January 2005, the GoSL declared a state of emergency.³⁰ This was the first time this has been done in the case of a natural disaster in Sri Lanka.³¹

Under the Constitution, a state of emergency may be declared by the President.³² This gives the President "the power to make regulations having the legal effect of overriding, amending or suspending the operation of the provisions of any law except the provisions of the Constitution."³³ Orders made under the emergency laws must be approved by the parliament

and TAFREN), donor community (ADB, International Federation, UN) and civil society (CHA), December 2005, p. 14.

²⁷ 'Immediate Response to the Tsunami', *Centre for National Operations*, Presidential Secretariat of Sri Lanka, 28 December 2005, available at <http://www.asianphilanthropy.org/pdfs/conference/2005/TdeMelCOLLABORATION.pdf> accessed 20 March 2006.

²⁸ 'Immediate Response to the Tsunami', *Centre for National Operations*, Presidential Secretariat of Sri Lanka, 28 December 2005, available at <http://www.asianphilanthropy.org/pdfs/conference/2005/TdeMelCOLLABORATION.pdf> accessed 20 March 2006.

²⁹ 'Emergency Preparedness and Response: South-East Asia Earthquake and Tsunami, Sri Lanka Tsunami Situation Report, available at http://w3.whosea.org/en/Section23/Section1108/Section1835/Section1851/Section1865_8479.htm accessed on 26 June 2006.

³⁰ Gazette Extraordinary No. 1374/8, 4 January 2005. See also Asanga Welikala, 'Sri Lanka: The post-tsunami declaration of emergency' *Centre for Policy Alternatives (CPA)*, 11 Feb 2005, available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-6D5B7U?OpenDocument>.

³¹ Proclamation declared in Gazette Extraordinary No. 1374/8 dated 4 January 2005 and subsequent regulations in Gazette Extraordinary No. 1374/15 dated 6 January 2005. A second post-tsunami Proclamation was declared in Gazette Extraordinary No. 1378/22 dated and was accompanied by further emergency regulations outline in Gazette Extraordinary No. 1378/23.

³² Article 155, Chapter XVIII, 'Public Security' of the *Constitution of the Democratic Republic of Sri Lanka 1978*, certified 31 August 1978. and by doing so, it enforces Part II, Article 155(3) of the Public Security Ordinance no.25 of 1947.

³³ Article 155 (2), Public Security Ordinance no.25 of 1947 of the Public Security Ordinance no.25 of 1947.

retrospectively within one month of their proclamation.³⁴ Amendment 13 of 1987 to the Constitution³⁵ added a new provision that allows the President to give directions to the governors of the newly-formed Provincial Councils whenever a declared state of emergency was in force.³⁶ The 1987 amendment to the Constitution also makes emergency proclamations immune from judicial review if ratified by Parliament and provides that no suit or prosecution can be initiated against any person for acts done or purported to be done under emergency regulations or orders except with the consent of the Attorney-General.³⁷

Following the declaration of a state of emergency in the case of the tsunami, the President and the armed forces were placed at the top of the relief command structure. The details of the emergency order were outlined further in the *Emergency (Miscellaneous Provisions and Powers) Regulation No. 01* of 2005.³⁸

The decision to declare a state of emergency was justified by the GoSL as “expedient . . . in the interests of public security, the preservation of public order and the maintenance of supplies and services essential to the life of the community”.³⁹ However, the decision was also subject to some criticism because it “suspends for a period the separation of powers between the legislature and the executive” and thus needed to be “balanced and checked by the twin constraints of strict time limits and parliamentary approval”.⁴⁰ The legal duration of the emergency powers and the resulting appointment of the Commissioner General for Essential Services (CGES) have also stirred some debate.⁴¹ Additionally, the Human Rights Commission of Sri Lanka has expressed concern that an extended state of emergency may create a climate whereby large-scale violations of human rights may occur.⁴²

Eleven days after: Additional coordination mechanisms in place

On the 6th of January 2005, the President appointed the Secretary of the Ministry of Public Law and Order as the CGES.⁴³ Under the CGES, the Divisional Secretariat or Government Agent in each affected area was appointed as the competent authority to administer the

³⁴ Article 155 (5), Public Security Ordinance no.25 of 1947 of the Public Security Ordinance no.25 of 1947.

³⁵ *Thirteenth Amendment to the Constitution, An Act to Amend the Constitution of The Democratic Socialist Republic of Sri Lanka*, Certified on 14th November, 1987.

³⁶ Article 154J, *Thirteenth Amendment to the Constitution, An Act to Amend the Constitution of The Democratic Socialist Republic of Sri Lanka*, Certified on 14th November, 1987.

³⁷ Article 154J(2) *Thirteenth Amendment to the Constitution, An Act to Amend the Constitution of The Democratic Socialist Republic of Sri Lanka*, Certified on 14th November, 1987 and s131 *Constitution of the Democratic Republic of Sri Lanka* 1978.

³⁸ Gazetted in Gazette Extraordinary No. 1374/15, 6 January 2005. Some description of the content of the regulation is contained in Asanga Welikala, ‘Sri Lanka: The post-tsunami declaration of emergency’, *Centre for Policy Alternatives (CPA)*, 11 February 2005, available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-6D5B7U?OpenDocument>.

³⁹ Gazette Extraordinary No. 1374/8, 4 January 2005.

⁴⁰ Asanga Welikala, ‘Sri Lanka: The post-tsunami declaration of emergency’, *Centre for Policy Alternatives (CPA)*, 11 February 2005, available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-6D5B7U?OpenDocument>.

⁴¹ See Asanga Welikala, ‘Sri Lanka: The post-tsunami declaration of emergency’, *Centre for Policy Alternatives (CPA)*, 11 February 2005 available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-6D5B7U?OpenDocument>. Appointment of the CGES was made pursuant to Regulation 11, *Emergency (Miscellaneous Provisions and Powers) Regulation No. 1* of 6 January 2005.

⁴² ‘Letter to the president’ *Human Rights Commission of Sri Lanka*, available at <http://www.hrcsl.org/publications/pressreleases/2005/february/letter%20to%20the%20president.php> accessed 28 June 2006, see also ‘After the Tsunami: Human Rights of Vulnerable Populations’, *Human Rights Center, University of California Berkeley*, October 2005, pp. 68-69.

⁴³ Appointment of the CGES was made pursuant to Regulation 11, *Emergency (Miscellaneous Provisions and Powers) Regulation No. 1* of 6 January 2005.

decisions made by the CGES under the various emergency laws.⁴⁴ All decisions and policies made by the CGES were subject to retrospective approval by parliament within one month. Likewise, all decisions made by the CGES and the Divisional Secretariats or Government Agents were subject to “good faith” requirements and judicial review.⁴⁵

The President also conducted regular meetings with the various ministries involved in the tsunami operation. Large stakeholders, including local and foreign NGOs with well-established relationships with the GoSL, were involved in these consultations.⁴⁶

After the tsunami, more than 5,000 SLRCS volunteers responded to the crisis. As of May 2006, it was reported that over 20 national Red Cross Red Crescent Societies were present in Sri Lanka to support the activities of the SLRCS and the relief operation in general. Some of the key areas in which these societies have been active include: relief and recovery, construction of houses and hospitals, building water and sanitation infrastructure, restoring livelihoods and increasing health awareness.⁴⁷

While the International Federation together with SLRCS coordinated operations in the south and south-west of the country, ICRC coordinated Red Cross efforts in the areas of the north and east, where it has worked for the past 15 years. ICRC provided a number of services to tsunami affected populations including: health care and support for medical facilities and temporary accommodation and household essentials for the displaced, and repair and improvement of water and sanitation facilities.⁴⁸

Additionally, under the leadership of the United Nations Resident Humanitarian Coordinator, and with the assistance of the United Nations Disaster Assessment and Coordination (UNDAC) Team, a series of coordinated assessments of all affected areas was undertaken in partnership with key bilateral donors and NGO partners. However, it has been claimed that the results of the findings from these assessments were often at odds with information compiled by the GoSL and with assessments made by Divisional Secretariats.⁴⁹

In the coming days and weeks, the wider international community’s response was overwhelming and the GoSL accepted offers of humanitarian assistance from NGOs, governments and international organizations. One report estimated that as many as 43 foreign militaries had offered support.⁵⁰ The JOH was the focal point for the coordination and deployment of foreign forces and dispatched District Coordinating Officers to each affected District Secretariat.⁵¹ The quick response and operations of the JOH were considered to have been successful and reasonably well coordinated despite some periods of under-utilization.⁵²

⁴⁴ Gazette Extraordinary No. 1372/10, 29 December 2004.

⁴⁵ Interview with Disaster Relief Monitoring Unit officials, 25 November 2005, Colombo, Sri Lanka.

⁴⁶ ‘Tsunami Disaster Response’, *Centre for National Operations*, 3 March 2005, pp. 2-3.

⁴⁷ International Federation, ‘Tsunami operation fact sheet no. 23, Country in Focus: Sri Lanka.’ This document can be found at <http://www.ifrc.org/what/disasters/response/tsunamis/docs/factsheets/n23.asp> accessed on 26 June 2006

⁴⁸ ‘Sri Lanka: the humanitarian response since the tsunami’, *ICRC Operational Update*, 13 April 2005, this document can be found at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList431/BB0DFB65AA1964EBC1256FEA00530A50>, accessed 26 June 2006

⁴⁹ Interview with UN official, Ampara Office, 23 November 2005.

⁵⁰ ‘National Lessons Learned and Best Practice Workshop’, Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 6.

⁵¹ Brigadier L. Mahesh Samaraweera, The 2004 Tsunami Disaster: Implications for Regional Security Cooperation’ *National Defence University*, available at <http://www.ndu.edu/inss/symposia/Pacific2005/samaraweera.pdf> accessed 20 March 2006.

⁵² ‘National Lessons Learned and Best Practice Workshop’, Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 6

Two months after: New coordination structure put in place

The CNO was disbanded in early February 2005, 6 weeks after its establishment. Subsequently, TAFRER and TAFLOL were merged to form the Task Force for Relief (TAFOR). Following this, all international humanitarian assistance was coordinated through mechanisms established by TAFOR. Under TAFOR, key coordinating roles for the relief operations were passed back to the relevant government officers at national, provincial, local and village levels.⁵³

In addition to TAFOR, the Secretariat for the Task Force for Rebuilding the Nation (TAFREN) was formed on 17 January 2005 with the mandate of directing the post-tsunami recovery of Sri Lanka.⁵⁴ TAFREN was set up under a Presidential directive with a “clear mandate to facilitate, enable, coordinate and monitor the post-tsunami reconstruction efforts”.⁵⁵ Its four programme areas are described as:

- Getting people back into homes;
- Restoring livelihoods;
- Ensuring health, education & protection for all; and
- Upgrading national infrastructure.⁵⁶

TAFREN was considered to have played a crucial role in minimizing delays in planning and implementation and also brought together many of the parties that were involved in the process as a whole.⁵⁷

Specific legal issues affecting international disaster response

Registration of relief organisations

Newly formed organisations

The response to the tsunami was characterized by a massive influx of foreign and local organisations seeking to provide relief on an unprecedented scale. Indeed, it was estimated that since the tsunami, over 2,000 NGOs of various sizes commenced operations in Sri Lanka specifically in response to tsunami.⁵⁸

The GoSL announced that all NGOs were required to register their details and activities by the 20th of August 2005 in compliance with the *Registration of Voluntary Social Services Organisations (Registration and Supervision) Act no. 31 of 1980*.⁵⁹ This process would then

⁵³ National Lessons Learned and Best Practice Workshop’, Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 11.

⁵⁴ ‘The Role of TAFREN in Post-tsunami recovery in Sri Lanka’, TAFREN, 14 Nov 2005, available at <http://www.tafren.gov.lk/portal/index.jsp?sid=3&nid=18&y=2005&m=10&d=14> accessed 20 March 2006.

⁵⁵ ‘The Role of TAFREN in Post-tsunami recovery in Sri Lanka’, TAFREN, 14 Nov 2005, available at <http://www.tafren.gov.lk/portal/index.jsp?sid=3&nid=18&y=2005&m=10&d=14> accessed 20 March 2006.

⁵⁶ ‘The Role of TAFREN in Post-tsunami recovery in Sri Lanka’, TAFREN, 14 Nov 2005, available at <http://www.tafren.gov.lk/portal/index.jsp?sid=3&nid=18&y=2005&m=10&d=14> accessed 20 March 2006.

⁵⁷ ‘The Role of TAFREN in Post-tsunami recovery in Sri Lanka’, TAFREN, 14 Nov 2005, available at <http://www.tafren.gov.lk/portal/index.jsp?sid=3&nid=18&y=2005&m=10&d=14> accessed 20 March 2006.

⁵⁸ Patrick Brochard, ‘New Regulations and Procedures Affecting the NGOs in Sri Lanka’, *Canadian International Development Agency*, updated on 1 June 2005, p.1.

⁵⁹ ‘Notice under the *Registration of Voluntary Social Services Organizations/Organisations (Registration and Supervision) Act no. 31 of 1980*’, Ministry of Women’s Empowerment and Social Welfare, 1 August 2005,

grant them an official legal status to operate in the country. The requirement to register also applied to any unregistered organisations which had already been operating in Sri Lanka prior to the tsunami.

The process for registration itself was a lengthy one and the GoSL established a Centre for Non-government Sector (CNGS) in February 2005 under the External Resources Department of the Ministry of Finance and Planning to coordinate and facilitate the registration of these new organisations.⁶⁰ In order to register, an NGO had to complete a series of forms from the CNGS for pre-qualification in order to obtain a recommendation for registration.⁶¹ Each recommendation would then be forwarded to a designated line ministry, such as the Ministry of Defence or Ministry of Foreign Affairs, for an additional recommendation and then sent to the Ministry of Social Welfare for final approval and registration in accordance with the Act.⁶² Christian agencies such as Caritas had to obtain additional consent from by the Ministry of Christian Affairs.⁶³

It was soon apparent however, that very few of these organisations had successfully completed this process.⁶⁴ By April 2005 the CNGS only had records for 103 organisations having undertaken the pre-registration process. 70 of these had received recommendations but as of June 2005, nearly 6 months into the operation, only five of these had actually been approved by the Ministry of Social Services, with 45 still with the Ministry of Defense or in other stages in the process.⁶⁵ Despite the lack of formal registration, some organisations reported that the requirement to register was not being rigorously enforced.

Pre-registered organisations

Prior to the tsunami, there were a number of foreign organisations already working in Sri Lanka which had specific agreements with the GoSL.

In the case of international organisations, these usually took the form of legal status or headquarters agreements, replacing the need for separate registration. One example is between the International Federation and the GoSL that recognises the international legal personality of the International Federation⁶⁶ and grants the organization a number of facilities, privileges and immunities to enable it to carry out its humanitarian functions within Sri Lanka.⁶⁷ These are based on the *Convention on the Privileges and Immunities of the United*

available at <http://www.humanitarianinfo.org/srilanka/catalogue/Catalogues.aspx?CatID=88> . See also <http://www.ngosecretariat.gov.lk>.

⁶⁰ 'Setting up of unit for coordination of NGO activities for tsunami rehabilitation and reconstruction efforts', *Daily News*, 10 February 2005, available at <http://www.dailynews.lk/2005/02/10/new29.html> accessed 20 March 2006.

⁶¹ These forms are available at: <http://www.humanitarianinfo.org/srilanka/catalogue/Catalogues.aspx?CatID=89>.

⁶² See description of process outlined at <http://cngs.erd.gov.lk/regprocess.html>

⁶³ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 2, available at <http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/NEW%20NGO%20Reg.June1.pdf> accessed 17 November 2005.

⁶⁴ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 2, available at <http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/NEW%20NGO%20Reg.June1.pdf> accessed 17 November 2005.

⁶⁵ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 2, available at <http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/NEW%20NGO%20Reg.June1.pdf> accessed 17 November 2005.

⁶⁷ *Agreement between the International Federation of Red Cross and Red Crescent Societies and The Government of the Democratic Socialist Republic of Sri Lanka Concerning the Legal status of the International Federation*, which forms part of the *Memorandum of Understanding between the Sri Lanka Red Cross Society, International*

Nations⁶⁸ and the *Convention on the Privileges and Immunities of Specialized Agencies*.⁶⁹

A number of foreign NGOs who had already registered their presence in Sri Lanka prior to the tsunami had concluded Memoranda of Understanding (MOUs) with the GoSL for specific projects, usually related to development activities. In the immediate aftermath of the tsunami, these organisations were able to expand their mandates to include tsunami relief and recovery, provided they also submitted information regarding their activities to the CNGS. It was reported that all MOUs agreed between organisations and the government were required to be registered with the Ministry of Planning.

Visas for foreign staff

Under normal circumstances the process for persons entering Sri Lankan territory is determined by the *Immigration and Emigration Act no.20* of 1948, and prior to the tsunami, visa requests for the entry foreign staff of NGOs were directed through the NGO Secretariat at the Department of Immigration.

For organisations operational prior to the tsunami, it did not seem that there were significant difficulties in approving visas for additional staff.⁷⁰ However, for other organisations it was reported that the policy of the GoSL to encourage the appointment of local staff created some difficulties and delays, as described further below.⁷¹

For the tsunami operation, new procedures were put in place for foreign relief personnel. To obtain a work visa upon entry into Sri Lanka, the following information was required:

- Designation of the person;
- Description of project and its duration;
- Copy of passport;
- Curriculum Vitae / Resume; and
- Job Description or Terms of Reference.⁷²

The work visa enabled relief workers to have a presence in the country for the purposes of conducting relief and recovery operations. In some cases, only 1-month visas were granted.⁷³ However, two foreign staff reported to the Canadian International Development Agency that they were granted the usual 12 month visas.

Federation and ICRC, Final draft 4/7 (2002). The document regards the respective roles and responsibilities of the three components of the Movement in Sri Lanka.

⁶⁸ *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946). Sri Lanka acceded on 19 June 2003.

⁶⁹ *Convention on the Privileges and Immunities of the Specialized Agencies*, 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948).

⁷⁰ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 5, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

⁷¹ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 5, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

⁷² 'Guidelines to International INGO staff for obtaining visas', *Direction from the Ministry of Finance*, 25 July 2005, available at http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/Government%20of%20Sri%20Lanka/gl_guidelines_to_international_INGO_staff_for_obtaining_visas.pdf

⁷³ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 5, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

For longer term activities where a residence visa was required, the process was more complicated, requiring all of the documents listed above in addition to the following:

- Certification from the Divisional Secretariat/Government agent of the specific district of residence;
- Letter of recommendation from the relevant line Ministry;
- Certificate of approval from the Ministry of Planning;
- Certificate of approval from the Ministry of Public Security, Law and Order; and finally
- Approval from the Department of Immigration and Emigration.⁷⁴

The processes for issuing visas for relief personnel were not, however, encouraged, as the GoSL also wanted to ensure that locals were being employed wherever possible.⁷⁵ Thus it was recommended that any foreign recruits should have qualifications and experience that were not available in the local labour market. It was reported that some visa applications for foreign staff were delayed where the GoSL felt there were sufficient people with the requisite skills and experience available in-country.⁷⁶ This was the case particularly for foreign finance staff, where agencies wanted to bring in personnel who already had training and experience with the accounting system of their organisation. However, the government felt that there was already a pool of local professionals available and that accountants should be familiar with local accounting practices.⁷⁷ There were also reports of delays in overseas applications as the Sri Lankan embassies were reluctant to issue long-term visas and all visa applications were referred directly to Colombo, which was reported to be a time-consuming process.⁷⁸

Customs requirements for relief goods, medicines and equipment

In an unprecedented display of generosity from foreign governments, the international community and individuals, millions of dollars were pledged in cash and in-kind donations to respond to the tsunami in Sri Lanka. In addition, the Paris Club of creditors suspended Sri Lanka's debt repayments⁷⁹ and the UN Flash Appeal for the Indian Ocean Tsunami raised approximately US\$1bn to be shared amongst tsunami-affected countries.⁸⁰ In Sri Lanka alone,

⁷⁴ "Guidelines to International I/NGO staff for obtaining visas", *Direction from the Ministry of Finance*, 25 July 2005, available at http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/Government%20of%20Sri%20Lanka/gl_guidelines_to_international_ngo_staff_for_obtaining_visas.pdf

⁷⁵ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 5, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

⁷⁶ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

⁷⁷ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

⁷⁸ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

⁷⁹ 'Debt Freeze for Tsunami Nations', *BBC News*, 13 January 2005, available at <http://news.bbc.co.uk/2/hi/business/4166727.stm> accessed 20 March 2006.

⁸⁰ 'Executive Summary: Consolidated Appeals Process (CAP): Flash Appeal 2005 for Indian Ocean Earthquake – Tsunami', *United Nations Office for the Coordination of Humanitarian Affairs (OCHA)*, 6 January 2005, available at <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/40b19a67d90fb4b585256f800073eda1> accessed 20 March 2006.

over 350 flights carrying 17,000 tons of relief arrived at Bandaranaike International Airport in the first days following the tsunami.⁸¹

The standard process for the import of goods into Sri Lanka is outlined in the Customs Ordinance – the main provisions of which are attached in Annex C.⁸²

In the wake of the tsunami, the GoSL did make a number of exemptions for relief goods, as outlined further below. Additionally, to cope with the massive influx of goods arriving in by air and sea, Sri Lanka Customs established a Relief Facilitation Unit (**RFU**) to coordinate and expedite the clearance of relief items.⁸³ All designated entry points adopted procedures for receiving relief consignments and two main hubs were established at the Port of Colombo and the Air Cargo Terminal at Bandaranaike Airport. The RFU consisted of desks for Sri Lanka Customs, Ministry of Social Services, the Navy, the Ministry of Relief Rehabilitation and Reconstruction, and the Ministry of Health.⁸⁴

In some cases, normal procedures for specific goods were waived, as long as the goods were consigned to the relevant ministry of the GoSL for distribution.⁸⁵ These items included:

- New garments and textiles;
- Tents - provided they were suitable for local conditions;
- Building materials and building construction machinery/equipment;
- School supplies, pencils, paper and shoes for school children;
- Medicines and Medical Supplies and Medical and Surgical Equipment;
- Water pumps and water purification equipment;
- Generators; and
- Biscuits, infant food, powdered milk and bottled water.⁸⁶

Donations of medicines usually had to be cleared after approval from the Ministry of Health; however the SLRCS reported that medicines consigned to them were released immediately by special arrangement with the GoSL.⁸⁷

For relief items consigned to other organisations, a Simplified Goods Declaration (**SGD**) procedure was instigated by Sri Lanka Customs to enable relief consignments to be cleared expeditiously. The documents needed to enable clearance under a SGD were:

- Bill of lading;

⁸¹ 'Tsunami: Building Back Better Sri Lanka – Achievements, Challenges and Way Forward (1st Draft)', *Document Drafted by the Steering Committee made up of representatives of the government (Ministry of Finance and TAFREN), donor community (ADB, International Federation, UN) and civil society (CHA)*, December 2005, p. 16.

⁸² The full regulations can be found at <http://www.customs.gov.lk/ordinance.htm>

⁸³ 'RFU clears over Rs. 100 m relief goods', *South Asian Media Net*, 12 January 2005, available at <http://www.southasianmedia.net/cnn.cfm?id=174840&category=Services&Country=SRI%20LANKA> accessed 20 March 2006.

⁸⁴ 'Regulating and procedures for customs clearance of relief items', Presentation by M.H.R Tissera, Director of Customs, at the Foundation Institute, 7 March 2005 in Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 5, available at <http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/NEW%20NGO%20Reg.June1.pdf> accessed 17 November 2005, Annex I.

⁸⁵ 'Sri Lankan government withdraws tax on most goods related to tsunami', *Xinhua News Agency* February 6, 2005, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/KHII-69D4KM?OpenDocument> accessed 20 March 2006

⁸⁶ 'Duty/Tax Free Clearance of Tsunami Relief Goods', Director General of Customs, Ministry of Finance and Planning, Government of Sri Lanka', EP/T/2/3, 25 May 2005 and 'Duty/Tax Free Clearance of Tsunami Relief Supplies', Department of Treasury, Ministry of Finance and Planning, Government of Sri Lanka, Treasury Circular FP/J/2/3/26(6), 10 March 2005.

⁸⁷ Interview with Sri Lanka Red Cross Society Official, 21 November 2005, Colombo, Sri Lanka.

- Delivery Order;
- Authority for clearance by the consignee;
- Identification of clearing personnel; and
- Invoice and packaging lists (which were desirable but not mandatory).⁸⁸

In accordance with the SGD procedure, customs authorities registered the documents and then examined the cargo with Social Services, security officers and other government agency personnel depending on the nature of the consignment. Once the relief goods were cleared and approved by the relevant ministry, the consignee had seven days to remove their goods from government warehouses.⁸⁹ The Sri Lankan media reported that relief items worth more than 100 million rupees could be wasted if they weren't cleared within a stipulated period of time as the government authorities would then auction them to private buyers.⁹⁰

Despite concerted efforts to put in place new rules to fast-track the import of relief goods and equipment, there were many challenges to the smooth functioning of the system.

A report by the Sri Lankan Auditor General highlighted a number of issues related to the clearance of goods from airports and ports.⁹¹ These findings are listed below:

(a) Clearance of goods from Airport

- Goods received at the Katunayake International Airport from the date of Tsunami up to 28 December 2004 had been issued without the intervention of the Department of Customs. (Category of goods, number of units, etc.)
- According to a test check carried out on 04 June 2005, twenty five unclear motor vehicles had been retained in 3 storage institutions.
- Delays in clearance had resulted due to the relevant persons not presenting themselves for clearing the goods and the removal of duty concessions given by the Government.
- Instances of weaknesses such as non-recording of air freight goods, failure to issue numbers for clearance of such goods, same number issued for several consignments etc. were observed. Up to date records of goods cleared had not been maintained by the customs.
- Even though goods cleared free of duty by the Non-Governmental Organizations and various individuals should have been distributed under the supervision of District Secretaries and the Department of Social Services, there was no evidence in support of such distribution.

(b) Clearance of goods from Port

- 4,018 container loads of aid materials had been received during the period 28 December 2004 to 30 April 2005 and out of this only 2,864 containers had been cleared up to 30 April 2005.
- In view of the waiver of duty concessions by letter No.FP/T/2/3/26/6

⁸⁸ Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, p. 7, available at <http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/NEW%20NGO%20Reg.June1.pdf> accessed 17 November 2005.

⁸⁹ 'UNJLC-Sri Lanka Import Procedures for Relief Commodities' *United Nations Joint Logistic Centre*, 11 March 2005, available at www.unjlc.org/ImportedObjects/32409/download accessed 17 November 2005.

⁹⁰ 'Sri Lanka, stop customs duties on relief goods to tsunami victims', *Asian Human Rights Commission*, Hong Kong, 18 Feb 2005.

⁹¹ *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

dated 03 March 2005 of the Secretary to the Treasury, 686 containers received by Non-Governmental Organizations had been abandoned without being cleared.

- Non-availability of storage facilities at the Department of Social Services and the Ministry of Relief Rehabilitation and Reconciliation had caused delays in the clearance of goods.⁹²

Several organisations reported long delays due to security checks and the number of government departments involved in the process of clearing goods.⁹³ Some shipments also experienced delays because packaging and labels were in foreign languages that could not be easily translated by the authorities.⁹⁴ It was reported by the Disaster Relief Monitoring Unit (DRMU) (described further below) that, at one stage during the relief operation, there were 615 containers awaiting security screening at the port in Colombo. The DRMU was concerned that this was holding up essential items from reaching beneficiaries and advocated for a fast-tracking of the process. As a result, the GoSL convened a special committee to address the issue and it was reported that all relief containers had been cleared within two weeks.⁹⁵ In some cases, however, it was reported that delays for clearing cargo meant that items such as tents and body bags were no longer needed by the time they were released and food items had reached their expiry dates and had to be thrown away.⁹⁶

The GoSL did acknowledge that the importation of goods was “a time consuming process”, but also stated that “there is no other option in view of the security concerns and other mandatory regulatory requirements”.⁹⁷ It was also claimed that much of this delay was caused by the importing organizations as many of the mixed loads were arriving without packing lists.⁹⁸

The customs ruling that all relief consignments had to be assigned to the GoSL for distribution⁹⁹ caused concern among some organisations that the distribution of such goods would not be done fairly on a needs-basis in a timely and efficient manner and would not be properly monitored.

⁹² *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at:

http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

⁹³ ‘NGO aid packages subject to thorough examination’, *Truth Lanka*, 6 January 2005, available at www.lankatruth.com/news/01_10_jan_05/full_story-0106_5.htm accessed 1 November 2005.

⁹⁴ ‘Duty/Tax Free Clearance of Tsunami Relief Goods’, Director General of Customs, Ministry of Finance and Planning, Government of Sri Lanka’, EP/T/2/3, 25 May 2005.

⁹⁵ Interview with Disaster Relief Monitoring Unit Officials, 25 November 2005, Colombo, Sri Lanka.

⁹⁶ Interview with Disaster Relief Monitoring Unit Officials, 25 November 2005, Colombo, Sri Lanka.

⁹⁷ ‘Regulating and procedures for customs clearance of relief items’, Presentation by M.H.R Tissera, Director of Customs, at the Foundation Institute, 7 March 2005 in Patrick Brochard, ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ *Canadian International Development Agency*, updated 1 June 2005, p. 5, available at

http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf

accessed 17 November 2005, Annex I.

⁹⁸ ‘Regulating and procedures for customs clearance of relief items’, Presentation by M.H.R Tissera, Director of Customs, at the Foundation Institute, 7 March 2005 in Patrick Brochard, p7. ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ *Canadian International Development Agency*, updated 1 June 2005 available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf

accessed 17 November 2005-

⁹⁹ ‘Duty/Tax Free Clearance of Tsunami Relief Goods’, Director General of Customs, Ministry of Finance and Planning, Government of Sri Lanka’, EP/T/2/3, 25 May 2005 and ‘Duty/Tax Free Clearance of Tsunami Relief Supplies’, Department of Treasury, Ministry of Finance and Planning, Government of Sri Lanka, Treasury Circular FP/J/2/3/26(6), 10 March 2005.

There were also problems associated with the arrival of unsolicited or unsuitable items, sent by organisations and private individuals wanting to assist with the relief effort. The DRMU and SLRCS reported that a number of consignments of medicines and food had already passed their expiry dates by the time they arrived in Sri Lanka. Other items, such as toilet paper, winter clothes, unfamiliar food items and culturally insensitive items, such as those contained in some female hygiene kits, were simply inappropriate for distribution or were already in abundant local supply. It was also felt that the influx of inappropriate goods contributed to the difficulties of finding sufficient warehousing.

One particular frustration with the surplus of some goods was the lack of a suitable system for re-distributing them to other parts of the country or to other countries where they were actually needed. In many cases, these goods were destroyed or appropriated by the government and were not provided to organisations working on development projects in other parts of the country which, although unaffected by the tsunami, could have greatly benefited from them.¹⁰⁰ On the other hand, a number of surplus tents were sent on to Pakistan following the earthquake in October 2005.¹⁰¹

The sending of unsuitable relief items was partly attributed by some organisations to a lack of clear policy from the GoSL as to which items which were needed and their appropriate specifications. However, other organisations conceded that, at times, their own systems and standards were lacking and there were cases of distribution networks “dumping” items haphazardly in Sri Lanka.

Taxes and duties on imported relief goods and equipment

The Customs Ordinance allows the relevant minister to make a number of exemptions to the normal application of customs duties. These provisions are outlined as follows:

19. (1) The Minister may from time to time, by Order published in the Gazette, exempt goods consigned to, or imported or cleared out of bond by or for the use of the representative in Sri Lanka (by whatsoever name, title or designation called) of the Government of any foreign State, the Trade Commissioner in Sri Lanka of any such Government, and persons on the staff of any such representative or Commissioner named in such Order and the representatives of the United Nations or its affiliates and such other international organizations, institutions or bodies from payment of customs duty.

(2). The Minister may, in his discretion, by such Order (a) Prescribe the conditions, if any, subject to which the exemption is allowed; (b) Extend such exemption to goods consigned to, or imported by or for the use of the families and suits of such officers; (c) Limit the exemption to a grade or class of persons referred to in subsection (1) of any specified country or organization and to articles of any specified description.

[...]

(6) Notwithstanding anything in any Order under the preceding provision of this section, no goods to which such Order applies may be sold or otherwise disposed of, without the prior permission of the Director-General and unless the duties payable on such goods as determined in accordance with the value of such goods and rates of duty applicable at the time of such sale or disposal, are paid to the Director-General. Any goods sold or disposed of in

¹⁰⁰ Interview with Disaster Relief Monitoring Unit Officials, 25 November 2005, Colombo, Sri Lanka.

¹⁰¹ Interview with Disaster Relief Monitoring Unit Officials, 25 November 2005, Colombo, Sri Lanka.

contravention of the preceding provisions of this sub-section shall be liable to be forfeited.

19A. (1) The Minister may, if he deems it expedient in the public interest so to do, by Order exempt any goods imported by, or consigned to, any person specified in the Order from the whole or any part of the duties of customs leviable thereon, subject to such conditions (to be fulfilled before or after clearance) as may be specified in the Order.¹⁰²

Indeed, the GoSL used this discretion to develop a number of new rules for taxes and duties on relief goods. Whilst initially it was reported that relief goods were able to enter Sri Lanka free of all taxes and duties, Sri Lanka Customs declared that these general exemptions would expire on 26 April 2005 and subsequently all relief items would have to be channeled through the Ministry of Social Services for distribution. Following this, the procedures for duty/tax free clearance were as follows:

- i) Goods consigned to the Department of Social Welfare, Ministry of Relief, Rehabilitation and Recovery, Ministry of Healthcare and Nutrition, UN Agencies and INGOs with diplomatic privileges, shall remain to be cleared free of duty/tax; however
- ii) In the case of tsunami relief goods consigned to other Government Agencies, NGOs, and/or Individuals, or where distribution is being handled by the agencies themselves, requests for duty/tax free clearance should be referred to the Director General, Department of Fiscal Policy for consideration, on a case by case basis.¹⁰³

In May 2005, the GoSL revised its procedures and introduced more stringent regulations on tax and duties for relief items. These directions are abbreviated as follows:

- i) There were to be no more waivers on rice except for UN World Food Program (WFP) rice consignments (that were to be kept separate in a Bonding Warehouse pending disposal decisions from Treasury);
- ii) Customs would release free of duties and taxes all WFP food items to the Ministry of Relief Rehabilitation and Reconciliation or the Director of Social Services;
- iii) Customs would release free of duty and tax all building materials, equipment and machinery for reconstruction in tsunami affected areas at the discretion of Urban Development Authority.
- iv) Customs would release all other relief items and hand them over to the Secretary of the appropriate ministry as specified by the Ministry of Relief Reconstruction and Rehabilitation or specified by the Treasury. After the requisite security clearance, items would be released to donors for distribution among intended beneficiaries provided distribution was to be supervised by the relevant District or Divisional Secretary/Government Agent.
- v) All consignments are required to comply with all regulatory and security clearance procedures including examination conducted by the Sri Lankan Navy at Colombo port for Health and Food agencies.
- vi) Communication Equipment needed a clearance recommendation from the Telecommunications Regulatory Commission and Ministry of Defense and would

¹⁰² The full regulations can be found at <http://www.customs.gov.lk/ordinance.htm>.

¹⁰³ 'Duty/Tax Free Clearance of Tsunami Relief Goods', Director General of Customs, Ministry of Finance and Planning, Government of Sri Lanka', EP/T/2/3, 25 May 2005 and 'Duty/Tax Free Clearance of Tsunami Relief Supplies', Department of Treasury, Ministry of Finance and Planning, Government of Sri Lanka, Treasury Circular FP/J/2/3/26(6), 10 March 2005. See <http://www.fpd.gov.lk/pdf/Trade/Tsunami%20new%20circular%2005-12.pdf>.

only be cleared tax/duty free if it was for temporary use.¹⁰⁴

Pre-tsunami customs procedures, including the application of taxes and duties, were also maintained for general items and goods to equip offices and official employees.¹⁰⁵

International NGOs that had been long established in Sri Lanka and had maintained positive relationships with the GoSL were able to successfully negotiate various duty and tax concessions. Most aid agencies sought import exemptions as duties could be very high. Some smaller or newly established organisations found it difficult to obtain any special exemptions. Indeed, it was reported that the Ministry of Finance was actively discouraging the formation of new MOUs with organizations that included tax, duty and immunity concessions to foreign organisations providing tsunami relief.¹⁰⁶

It was reported that some organisations had taken advantage of the more relaxed customs procedures and the waiver of taxes and duties on certain items by deliberately “mislabeling” their consignments as containing essential relief goods when they in fact contained other types of technical equipment, which although needed for the relief operation, were not considered as meriting tax exemptions.¹⁰⁷ More serious cases were reported whereby individuals or groups would fraudulently register or claim to be NGOs in order to import commercial goods without paying taxes and duties and there were also allegations of criminal operations importing illegal drugs and other contraband.¹⁰⁸ Authorities in Colombo reported having to check each container shipment because criminal gangs had been using them to smuggle drugs and ammunition, they claimed to have found commercial ball bearings, grenades, cigarettes and heroin hidden among canned food and bags of rice.¹⁰⁹ One report noted that some organizations were taking advantage of the relaxed system by doing things such as importing helicopters, items for commercial sale and other goods which were clearly not part of the relief effort.¹¹⁰ The government then implemented new taxes on the in-coming relief material with hopes to prevent unscrupulous elements from bringing in goods for the open market under the guise of it being relief material for tsunami victims.¹¹¹

Telecommunications equipment

Sri Lanka is signatory to the *Tampere Convention on the Provision of Telecommunication*

¹⁰⁴ ‘Duty/Tax Free Clearance of Tsunami Relief Goods’, Director General of Customs, Ministry of Finance and Planning, Government of Sri Lanka’, EP/T/2/3, 25 May 2005 and ‘Duty/Tax Free Clearance of Tsunami Relief Supplies’, Department of Treasury, Ministry of Finance and Planning, Government of Sri Lanka, Treasury Circular FP/J/2/3/26(6), 10 March 2005.

¹⁰⁵ ‘UNJLC-Sri Lanka Import Procedures for Relief Commodities’ *United Nations Joint Logistic Centre*, 11 March 2005, available at www.unjlc.org/ImportedObjects/32409/download accessed 17 November 2005.

¹⁰⁶ Patrick Brochard, ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ *Canadian International Development Agency*, updated 1 June 2005, p. 7, available at <http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/NEW%20NGO%20Reg.June1.pdf> accessed 17 November 2005.

¹⁰⁷ ‘Communication equipment brought with tsunami aid’, *Truth Lanka*, 20 January 2005; ‘Action will be taken against errant NGOs’ *Truth Lanka*, 31 January 2005; ‘NGO relief packages to thorough checks’, *Truth Lanka*, 8 January 2005, available at www.lankatruth.com/news.01_10_jan_05/full_story-0108_6.htm accessed 10 January 2005.

¹⁰⁸ ‘Look out for ‘vultures’, says customs official’, *Daily News*, 2 January 2005, available at www.dailynews.lk/2005/01/03new27.html accessed 9 February 2005; ‘NGO aid packages subject to thorough examination’, *Truth Lanka*, 6 January 2005, available at www.lankatruth.com/news/01_10_ja_05/full_story-0106_5.gtm accessed 10 January 2005.

¹⁰⁹ Thair Shaikh and Sam Forsdike, ‘Tsunami aid trapped out of reach’, *The Times*, 13 August 2005, available at http://www.timesonline.co.uk/article/0,,2-1732757_1,00.html, accessed 27 June 2006.

¹¹⁰ Thair Shaikh and Sam Forsdike, ‘Tsunami aid trapped out of reach’, *The Times*, 13 August 2005, available at http://www.timesonline.co.uk/article/0,,2-1732757_1,00.html, accessed 27 June 2006.

¹¹¹ PK Balachandran, ‘Sri Lanka: Local taxes and dubious foreign aid tell on tsunami relief,’ *Hindustan Times, Colombo Diary*, 21 February 2005.

Resources for Disaster Mitigation and Relief Operations of 1998 which entered into force during the peak of the relief operation.¹¹² The *Tampere Convention* addresses the efforts of states, international organisations, non-governmental organisations, private enterprises and other actors to provide telecommunications-related assistance in the case of disaster.¹¹³

Obligations under the *Tampere Convention* include:

- To ensure the facilitation of the use of telecommunication resources for disaster mitigation and relief;¹¹⁴
- To share information about hazards and disasters and disseminate this information to the public, particularly to at-risk communities;¹¹⁵
- The installation and operation of reliable, flexible telecommunication resources to be used by humanitarian relief and assistance organizations;¹¹⁶ and
- The reduction or removal, when possible, of regulatory barriers to the use of telecommunication resources for disaster mitigation and relief, including those relating to: the import and export of telecommunications equipment; the use of telecommunication equipment and radio-frequency spectrum; the movement of personnel who operate telecommunication equipment; and the transit of telecommunication resources.¹¹⁷

Domestic law in Sri Lanka at the time of the tsunami required that imports of telecommunications equipment had to be cleared by the Ministry of Public Security Law and Order and the Telecommunications Regulatory Commission (**TRC**). Clearance would only be given for temporary use of the equipment in Sri Lanka. The frequencies used and the planned location of the equipment had to be provided with the request for import. In addition, the use of Very Small Aperture Terminals (**VSATs**) had to be cleared by the Ministry of Defense.¹¹⁸

Special procedures initially set up by the GoSL which originally expired on 26 May 2006, pertaining to telecommunications were as follows:

Telecom equipment can only be cleared free of duty and tax if imported temporarily.

- a) Prior to clearing telecom equipment, including VSATs, permission of importation is required from TRC, who will forward it to the Ministry of Public Security Law and Order for approval. Details are required of the planned location of the equipment, especially VSAT. The frequencies must be provided at import.
- b) In additions, VSATs have to be approved by the Ministry of Defence.
- c) Usage of VSAT has to be approved by the TRC in an additional request.¹¹⁹

¹¹² *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, United Nations depositary notification, C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005).

¹¹³ 'Regulation of Emergency Telecommunications' *IDRL Fact Sheet*, November 2005, available at <http://www.ifrc.org/what/disasters/idrl/publications.asp> accessed 20 March 2006.

¹¹⁴ Article 3(1), *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, United Nations depositary notification, C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005).

¹¹⁵ Article 3(2)(b), *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, United Nations depositary notification, C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005).

¹¹⁶ Article 3(2)(d), *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, United Nations depositary notification, C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005).

¹¹⁷ Articles 9(1)-(2), *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, United Nations depositary notification, C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005).

¹¹⁸ UNJLC-Sri Lanka, 'Import Procedures for Relief Commodities', *UNJLC*, accessed at www.unjlc.org/ImportedObjects/32409/download, accessed on 28 June 2006

¹¹⁹ UNJLC Sri Lanka Logistics Overview, <http://www.unjlc.org/23003/28224/>, April 2005.

Interviews in Sri Lanka revealed a lack of awareness of the *Tampere Convention* and there is no mention of its application in the GoSL regulations for 'Duty/tax free clearance of Tsunami Relief Supplies'.¹²⁰ In fact, one prominent international organisation, which had a pre-existing status agreement with GoSL granting various exemptions and facilities, reported great difficulty in importing and obtaining frequencies and permits for the use of radios. This posed a significant operational challenge, as many of the affected areas were in volatile and remote locations with minimal or no mobile coverage and the absence of communications potentially put their staff at risk. The explanation of the GoSL was that many of the areas of concern were conflict-related, and the technology of the equipment was considered to be military grade and thus posed a potential security risk to their forces. Some private operators also reported difficulties when attempting to transport telecommunication equipment to the LTTE controlled areas in the North.¹²¹

Whilst the capacity of the GoSL to install specific telecommunication facilities for use by humanitarian organizations was limited, the GoSL did undertake some initiatives consonant with its obligations under the *Tampere Convention* to improve transparency and communication amongst all stakeholders. During the initial relief phases, these included participation by relief agencies and special briefings for assessment and planning by the CNO at the national level and varying degrees of consultations and engagement with the non-government sector conducted at the district levels. However, it was felt this engagement was not coordinated systematically and agencies reported having difficulties accessing information and communications networks.¹²²

Import of vehicles

Special rules applied to the import and re-export of vehicles to and from Sri Lanka for the relief and recovery effort. Prior to the tsunami, vehicles were treated as luxury goods and were taxed up to three times their value. However, after the tsunami, vehicles could be imported tax and duty free for relief operations on a temporary basis. These exemptions were subject to the following conditions:

- i) Agencies which have completed their intended Tsunami relief operations are required to re-export their vehicles, or donate them to the government at a concessionary price as determined by the Sri Lanka Customs;
- ii) If vehicles are to be donated to any government agency, duties and taxes will be paid by the government through such recipient government agency;
- iii) If any other agency, including UN agencies and international NGOs, which are entitled to duty free importation of vehicles in terms of agreements signed with the Government, granting of duty waivers will be considered by the Ministry of Finance and Planning on a case by case basis; and
- iv) If agencies intend selling such vehicles to a party other than those referred to above, they are liable to pay applicable duties/taxes as per the provision of relevant laws.¹²³

¹²⁰ 'Duty/Tax Free Clearance of Tsunami Relief Goods', Director General of Customs, Ministry of Finance and Planning, Government of Sri Lanka', EP/T/2/3, 25 May 2005 and 'Duty/Tax Free Clearance of Tsunami Relief Supplies', Department of Treasury, Ministry of Finance and Planning, Government of Sri Lanka, Treasury Circular FP/J/2/3/26(6), 10 March 2005.

¹²¹ 'Communication equipment brought with tsunami aid', *Truth Lanka*, 20 January 2005.

¹²² 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 5.

¹²³ 'Importation of Vehicles for Humanitarian Assistance for Rehabilitation and reconstruction in the Tsunami affected areas' *Ministry of Finance and Planning*, Finance Circular FP/T/2/3/26(6), dated 27 June 2005.

After the initial relief phase was over, the GoSL introduced a new policy on vehicle importation. As of July 2005, the duty free importation of vehicles was only allowed for UN agencies and NGOs who had made commitments to undertake rehabilitation and reconstruction work in the tsunami-affected areas. They were required to submit program details to Ministry of Finance and Planning and were subject to the following conditions and guidelines:

- i) For vehicles imported with funding by UN agencies for use in projects that are implemented by government agencies, duties and taxes have to be paid by the relevant government agency.
- ii) For vehicles imported by NGOs either duty/tax free concessions or the facility of getting vehicles released on a temporary basis will be decided by the Treasury on a case by case basis, taking into consideration the relief, rehabilitation and reconstruction work being undertaken. Recommendations to this effect to be obtained from TAFREN or relevant government Ministry/Agency. However, the final decision is to be made on case-by-case basis by the Ministry of Finance and Planning; and
- iii) The facility to import vehicles free of duties and taxes by the UN agencies will continue on the recommendation of the Protocol Division of the Ministry of Foreign Affairs.¹²⁴

Several organisations reported that they experienced difficulties and delays in receiving approval for the waiver of tax and duties on their vehicles. For example, it was reported that Oxfam was required to pay a £550,000 duty to import 25 four-wheel-drive vehicles.¹²⁵ In some cases, where exemptions were denied, it was too expensive to clear vehicles through customs, as paying the duty would have a significant impact on the resources available for conducting other in-country activities. In one case, some vehicles were left in customs for several months while further discussions were held with the relevant authorities, and the organisation was advised that the duty free release of their vehicles was contingent upon successful results of their programmes. There was also one case reported by a relief organisation not being able to clear an ambulance to be used in relief efforts without paying duty.

Whilst it was said that a key reason for the reluctance of the GoSL to grant exemptions for vehicles was to encourage the purchase of local vehicles in Sri Lanka, some relief organisations argued that the vehicles locally available did not meet organisational/operational standards and were unsuitable for their operations. Moreover, locally purchased vehicles were considered prohibitively expensive, as they include all duties and were three to four times more than organisations could pay for the same vehicles in international markets.

The report of the Auditor General also highlighted a number of challenges with vehicle deployment for tsunami activities including:

- 506 motor vehicles had been imported for Tsunami Relief Works under the duty concessions for a period of 3 months. Nevertheless, that period had been extended up to the year 2008 after the expiry of that period contrary to the provisions in the Customs Ordinance and without passing a resolution in Parliament.
- It was revealed in audit that 207, 290 and 9 of those motor vehicles had been released to Government Institutions, Non-Governmental Organizations and other institutions respectively. Nevertheless, the

¹²⁴ 'Importation of Vehicles for Humanitarian Assistance for Rehabilitation and reconstruction in the Tsunami affected areas' *Ministry of Finance and Planning*, Finance Circular FP/T/2/3/26(6), dated 27 June 2005.

¹²⁵ Thair Shaikh and Sam Forsdike, 'Tsunami Aid Trapped Out Of Reach', *The Times*, 13 August 2005.

General Treasury did not have the particulars of institutions or individuals who are using these motor vehicles.¹²⁶

Another challenge linked to the use vehicles was that foreign and international driver's licenses are not valid in Sri Lanka¹²⁷ and, as a result, many foreign relief personnel were technically driving unlicensed.¹²⁸

Taxation of NGO revenue

Due to the influx of NGO activity in Sri Lanka,¹²⁹ the GoSL amended the *Inland Revenue Act No. 38 of 2000* with a provision relating directly to the tax liability of NGOs.¹³⁰ The newly inserted section 96A of the *Inland Revenue Act* deems that any money received by a NGO in Sri Lanka will constitute profits and income. Accordingly, 3% of the total of this revenue will be taxed at 30%; in effect 0.9 percent of total revenue.¹³¹ This applied to all NGOs in Sri Lanka¹³² but also affected international NGOs, as their local partners will have to factor this additional burden into their budgets.

This obligation is additional to any tax that is payable by registered NGOs on profits of income from any other source of income mentioned in section 3 *Inland Revenue Act No. 38 of 2000* such as profits accrued from trade, business, rent and interest.

However, the amendment to the *Inland Revenue Act no. 38 of 2000* also provides a mechanism for tax remission for organisations in relation to certain transactions. Per section 96A(2) *Inland Revenue Act no. 38 of 2000*, the Commissioner General is empowered to remit the income tax of an organization if satisfied that it is engaged in utilizing its income for the following activities:

- (a) Rehabilitation and the provision of infrastructure facilities and livelihood support to displaced persons in any area identified by the GoSL for such purpose; or
- (b) Any other activities approved by the Minister as being of humanitarian in nature, taking into consideration the nature and gravity of any disaster and the magnitude of relief required to be provided.

¹²⁶ *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

¹²⁷ 'Driving in Sri Lanka', *Government of Canada website*, available at http://www.dfait-maeci.gc.ca/world/embassies/srilanka/Drivers_licences-en.asp accessed 20 March 2006.

¹²⁸ Interview with Sri Lanka Red Cross Society official, 22 November 2005, Galle, Sri Lanka.

¹²⁹ 2005 Budget statement made by Minister for Finance and Planning quoted in Patrick Brochard, 'New regulations and Procedures Affecting NGOs in Sri Lanka,' *Canadian International Development Agency*, updated 1 June 2005, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

¹³⁰ Section 27 *Inland Revenue (Amendment) Act no. 8 of 2005*. This section provides for the addition of section 96A *Inland Revenue Act no. 38 of 2000*.

¹³¹ Per 96A *Inland Revenue Act no. 38 of 2000*, "Where any Non - Governmental Organisation ...receives in any year of assessment, commencing on or after April 1, 2005 any money by way of grants, donations, contributions or by any other means, an amount equal to three per cent of such money, shall notwithstanding anything to the contrary in any other provision of this Act, be deemed to be the full profits and income of such year of assessment, and such profits and income of such non-governmental organisation shall be deemed to arise in Sri Lanka."

¹³² Per section 96A of *Inland Revenue Act no. 38 of 2000*, all NGOs operating in Sri Lanka is required to apply to the Commissioner General of Inland Revenue for registration. See 'Taxation of Non Governmental Organisations (NGOs) in terms of Section 96A of the *Inland Revenue Act no. 38 of 2000* – Guidelines for remission of payable tax', *Department of Inland Revenue*, 20 July 2005, p. 2, available at http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/Government%20of%20Sri%20Lanka/1_Inland_revenue.pdf accessed 12 December 2006.

Pursuant to these amendments the Sri Lankan Department of Inland Revenue issued a policy paper to clarify the terms of the new amendment. Under these guidelines, ‘provision of infrastructure facilities and livelihood support’ means:

- The construction/renovation of roads, schools, houses, health care centres and buildings for community development centres;
- Provision of electricity, telecommunication, water and sanitation facilities;
- Provision of medical facilities; and
- Any other infrastructure as approved by the Commissioner General of Inland Revenue.¹³³

To qualify for the abovementioned categories of “provision of infrastructure”, the guidelines specify that the activities undertaken have to be considered by the Minister as “humanitarian in nature”. Activities that are “humanitarian in nature” were defined as those that:

- Supply food, clothes, or medicines to the needy in a tsunami devastated area;
- Provide temporary or permanent housing to people affected by the tsunami; and/or
- Assist in rehabilitation of children who became, or become, mentally retarded due to the tsunami or civil conflict.¹³⁴

While the first two activities mentioned refer specifically to activities in tsunami affected areas or required as a result of the tsunami, the last activity also includes provision for beneficiaries affected by the conflict. The guidelines also outline the necessary procedures required for the declaration of tax and application for tax remission.

The amendments to the *Inland Revenue Act No. 38 of 2000*¹³⁵ giving the GoSL authority to tax the income of the NGOs was seen by some organisations as an attempt by the government to capitalise on their goodwill and assistance.¹³⁶ On the other hand, this measure could be argued as necessary due to the extra resources required to regulate and monitor the increasing influx of NGO activities post-tsunami. It was also reported that some organisations were using personal accounts or joint accounts in the name of individual Sri Lankan citizens to avoid tax liability altogether.¹³⁷

Taxation issues in fact pre-date the tsunami and the issue was raised in the 2005 budget. At the budget speech the minister stated

“There are many Non Governmental Organizations carrying out activities which are not monitored adequately. It is necessary to adopt a proper system of monitoring of such organizations particularly in areas of activities carried out and funds utilized by them. Those institutions are now required to register with the registrar of companies and open tax files. I propose to impose a presumptive tax at the rate of 30% by taking

¹³³ ‘Taxation of Non Governmental Organisations (NGOs) in terms of Section 96A of the Inland Revenue Act. no. 38 of 2000 – Guidelines for remission of payable tax’, *Department of Inland Revenue*, 20 July 2005, available at http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/Government%20of%20Sri%20Lanka/1_Inland_revenue.pdf accessed 12 December 2006.

¹³⁴ ‘Taxation of Non Governmental Organisations (NGOs) in terms of Section 96A of the Inland Revenue Act. no. 38 of 2000 – Guidelines for remission of payable tax’, *Department of Inland Revenue*, 20 July 2005, available at http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/Government%20of%20Sri%20Lanka/1_Inland_revenue.pdf accessed 12 December 2006.

¹³⁵ Section 27 *Inland Revenue (Amendment) Act no. 8 of 2005*.

¹³⁶ ‘Presidents dissatisfaction over Ngo’s’ *Truth Lanka*, 28 January 2006.

¹³⁷ ‘Presidents dissatisfaction over Ngo’s’ *Truth Lanka*, 28 January 2006.

6% of the funds received as income of the institution, other than the institutions carrying out activities solely related to rehabilitation work of North & East and any other activities which are approved by the Minister on humanitarian grounds.”¹³⁸

Value Added Tax (VAT)

The *Value Added Tax Act* no 12 of 2002, which was applied to foreign donor agencies that had entered into MOUs with the GoSL during the tsunami operation, establishes a system of either exemption or deferment of VAT on local purchases made using foreign funds.¹³⁹ In the case of exemption, the “Hon. Minister of Finance can grant approval for VAT exemption for the import of goods donated by persons or organizations abroad and local purchases of goods funded directly by foreign organizations to be used in projects for the relief/rehabilitation and reconstruction of [the] Tsunami disaster.”¹⁴⁰ In the case of deferment, to qualify, a donor must award a contract to a local supplier and, on completion of the transaction, the supplier must issue an invoice to the direct contractor. These invoices should be issued in the name of the project on behalf of the Line Ministry.¹⁴¹ For those invoices submitted, the GoSL would pay the VAT portion on the agreed contract value on behalf of the donor.¹⁴²

Arrangements were also made for local donor organizations who engaged in tsunami relief on voluntary basis, which were accorded the following concession: “The Import of goods by Local Donor organizations for Tsunami relief activities will be considered for Tax exemptions on a case by case basis, by the Department of Fiscal Policy.”¹⁴³

It has been mentioned by one international organisation that only “diplomatic missions”, which now include some international organisations and the International Federation, are entitled to so-called “blanket exemptions” of VAT.

Airport charges and storage

In the post-tsunami period, normal landing and parking charges were waived for all foreign government and foreign military aircraft. Civil aircraft owned by private operators for non-commercial flights engaged in emergency and search and rescue humanitarian activities were

¹³⁸ Patrick Brochard, ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ *Canadian International Development Agency*, updated 1 June 2005, p. 7, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

¹³⁹ Per section 2(2)(b) *Value Added Tax Act*, “[s]upply of goods (raw materials or finished goods) or services locally, by a VAT registered person to any direct contractor (local or foreign institution assigned by the Foreign Donor Agency” could qualify for VAT deferment.

¹⁴⁰ ‘Concessions on the payment of Value Added Tax on donations/purchases of goods and services by organisations or persons engaged in the rehabilitation work in Tsunami affected areas’ *Ministry of Finance and Planning*, Fiscal Policy Circular No. 01/2205, dated 20 July 2005, see <http://www.treasury.gov.lk/FPPFM/fpd/pdfdocs/vatconcessions.pdf>.

¹⁴¹ ‘Concessions on the payment of Value Added Tax on donations/purchases of goods and services by organisations or persons engaged in the rehabilitation work in Tsunami affected areas’ *Ministry of Finance and Planning*, Fiscal Policy Circular No. 01/2205, dated 20 July 2005, see <http://www.treasury.gov.lk/FPPFM/fpd/pdfdocs/vatconcessions.pdf>.

¹⁴² ‘Concessions on the payment of Value Added Tax on donations/purchases of goods and services by organisations or persons engaged in the rehabilitation work in Tsunami affected areas’ *Ministry of Finance and Planning*, Fiscal Policy Circular No. 01/2205, dated 20 July 2005, see <http://www.treasury.gov.lk/FPPFM/fpd/pdfdocs/vatconcessions.pdf>.

¹⁴³ ‘Concessions on the payment of Value Added Tax on donations/purchases of goods and services by organisations or persons engaged in the rehabilitation work in Tsunami affected areas’ *Ministry of Finance and Planning*, Fiscal Policy Circular No. 01/2205, dated 20 July 2005, , see <http://www.treasury.gov.lk/FPPFM/fpd/pdfdocs/vatconcessions.pdf>.

also exempt from charges in most circumstances.¹⁴⁴

Parking charges however, were applicable to relief commodities supplied by commercial operators if the aircraft was parked for more than 3 hours. Beyond the initial 3-hour waiver an aircraft would be charged the equivalent of 10% of the normal charge.¹⁴⁵

Warehouse handling charges for relief commodities carried by commercial operators and stored at the Bandaranaike International Airport cargo warehouse attracted the following fees:

- Registration (registration of airway bills, location of cargo and notification to consignee) - 350 Sri Lankan Rupees (SLRs);
- Offloading and dispatching of cargo to warehouse – 3 SLRs per kg;
Storage: First 3 days Free, 1st week after initial 3 days - 5 SLRs per kg 1.4 MT. 2nd week - 10 SLRs per kg. 3rd week - 17 SLRs per kg. 4th week 24 SLRs per kg;
- Storage in cool area - 4 SLRs per kg per day / minimum charge 250 SLRs; and
- VAT charges of 15% of total charges.¹⁴⁶

Transport of goods to affected areas

Once in-country, relief organisations reported facing expensive transport fees by local distribution and logistics companies, many of them overcharging and capitalising on the exponential increase in demand. In the case of some smaller organisations this expense was too much and they could not afford to have their relief goods distributed. The DRMU brought this to the attention of the GoSL and the government intervened and agreed to fund the transport of relief items during the initial relief phase.¹⁴⁷

Normal checkpoint procedures were maintained by the GoSL and LTTE for goods and vehicles moving into LTTE controlled areas. There are two checkpoints at each border, at which all goods had to be offloaded, inspected and valued twice in order to pass. For the most part, relief providers did not report difficulties in transporting relief related items through these checkpoints. However, in cases where aid supplies were shipped directly to affected districts without distribution instructions from Colombo, some delays were encountered as the consignments would be subjected to thorough examinations by the Sri Lanka Navy and Air Force.¹⁴⁸

Coordination mechanisms

Government coordination

Challenges with coordination and consistent information sharing were noted by many relief organisations and also by the GoSL. The differing roles and responsibilities of the various levels of government were felt to have created difficulties, particularly in relation to the communication, mobilization and coordination of activities and in ensuring equitable relief distribution.¹⁴⁹ As described above, the GoSL did implement a number of structures and initiatives to improve coordination of the relief; however, they were not immediately

¹⁴⁴ 'UNJLC-Sri Lanka Import Procedures for Relief Commodities' *United Nations Joint Logistic Centre*, 11 March 2005, available at www.unjlc.org/ImportedObjects/32409/download accessed 17 November 2005.

¹⁴⁵ 'UNJLC-Sri Lanka Import Procedures for Relief Commodities' *United Nations Joint Logistic Centre*, 11 March 2005, available at www.unjlc.org/ImportedObjects/32409/download accessed 17 November 2005.

¹⁴⁶ 'UNJLC-Sri Lanka Import Procedures for Relief Commodities' *United Nations Joint Logistic Centre*, 11 March 2005, available at www.unjlc.org/ImportedObjects/32409/download accessed 17 November 2005.

¹⁴⁷ Interview with Disaster Relief Monitoring Unit officials, 25 November 2005, Colombo, Sri Lanka.

¹⁴⁸ 'NGO packages to thorough checks', *Truth Lanka*, 8 January 2005, available at http://www.lankatruth.com/news/01_10_jan_05/full_story-0108_6.htm accessed 10 January 2005.

¹⁴⁹ Interview with Disaster Relief Monitoring Unit officials, 25 November 2005, Colombo, Sri Lanka.

functional.¹⁵⁰ Thus, the various relief organizations - both domestic and foreign - initially dealt directly and independently with local authorities.¹⁵¹ This made it difficult for the GoSL to establish an effective overall coordination role with the non-government sector. It was also difficult for the GoSL to ensure that its national policies were consistent with local needs and priorities.

Criticisms of the CNO have concerned its uncertain legal standing, lack of consultation with organizations outside Colombo, lack of specification of the role of the military and police and lack of transparency.¹⁵² Although there was an NGO Desk at the CNO, it was seen as representing the Colombo-based networks as well as the international NGO community rather than the totality of the groups involved in relief efforts.¹⁵³ It has also been suggested that the CNO was dissolved too early before its responsibilities and institutional mechanisms were appropriately mainstreamed into more effective procedures and that the frequent creation and reshuffling of agencies exacerbated bureaucratic processes, inefficiencies and delayed responses.¹⁵⁴

The centralization of relief command in the CNO and later in TAFREN, has also been criticized as undermining the important role of the District Secretariats to coordinate assistance in the affected regions. The role of the military and police, including the Special Task Force of the Police and the role of the local administrative structures in each District were considered to be insufficiently defined, leading to situations of confusion as to the role, authority and mandate of each body.¹⁵⁵

At the district level, attempts were made to improve mechanisms for coordination and communication, such as the hosting of regular meetings. However, in light of the limited resources available and the large numbers of organisations present, these efforts were felt to have become increasingly futile. Furthermore, there were a number of organisations choosing to only coordinate with authorities at the local and *Grama Niladaris* level. This was deemed problematic as these local authorities were considered to have lacked the capacity to disseminate data consistently and to feed it through to the district level and beyond.¹⁵⁶

Coordination of international assistance

Lead agencies, such as the United Nations High Commissioner for Refugees (UNHCR) which acted as the lead agency for temporary shelter, and the International Organisation for Migration which was the lead for permanent housing, played a pivotal role in the coordination of the humanitarian sector.¹⁵⁷ The 'lead agency' approach was considered an efficient way for the government to monitor the activities of organisations working within that sector.

The Consortium of Humanitarian Agencies (CHA) is a network of humanitarian agencies in

¹⁵⁰ 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, pp. 4-5.

¹⁵¹ 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, pp. 4-5

¹⁵² 'After the Tsunami: Human Rights of Vulnerable Populations', *Human Rights Center, University of California Berkeley*, October 2005, p. 69.

¹⁵³ INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005.

¹⁵⁴ 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 11.

¹⁵⁵ INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005.

¹⁵⁶ 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, pp. 4-5

¹⁵⁷ 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005, p. 14.

Sri Lanka and is a national service provider in the non-profit sector. After the tsunami, the CHA created a programme to address the fact that the tsunami situation required concerted efforts of different sectors and different actors. Therefore, the three aims of the programme were to:

- Encourage, facilitate and establish partnerships for humanitarian action across all sectors and levels of response;
- Enable the collection, analysis and dissemination of information and qualitative research pertinent to the tsunami response, ensuring that the voices of the people are heard; and
- Develop a vigorous advocacy campaign to ensure transparency and accountability especially to the affected population.¹⁵⁸

The various components of the International Red Cross and Red Crescent Movement participating in the tsunami response (comprising the ICRC, the International Federation, the SLRCS and a number of other national Red Cross and Red Crescent Societies) also made significant efforts to coordinate their activities. A Tsunami Response Forum met in Hong Kong in March 2005 to review the disaster operation to date and to map out future plans, launching a comprehensive recovery programme for all tsunami affected countries which addressed both short term and long term needs. A Regional Strategy and Operational Framework was agreed upon which focused on the need for well coordinated action in order to collaborate with communities, national authorities and international actors in the region. All members of the forum committed to 9 key points, including: delivering rehabilitation and recovery programs based on needs; underlining the mandate of the host national societies of the affected countries; continuing to provide humanitarian actors in order to deliver appropriate programmes to the affected communities; strengthening national and trans-national disaster response capacity and supporting disaster risk reduction programmes; developing disaster management skills of volunteers and staff within national societies; strengthening advocacy of behalf of vulnerable people; and putting in place an accountability framework that ensures transparency.

Despite the efforts of various organisations, as described above, there was substantial criticism of the way in which some organisations were seen to be competing for visibility and space and did not want to engage in any coordinated response. One report stated:

A lack of coordination among all those dealing with the process of reconstruction and rehabilitation, in both the state and non-state sector, combined with the absence of any standard-setting with regard to provision of minimum facilities in the temporary resettlement sites result in a continuing cycle of ad hoc responses and disparities in distribution.¹⁵⁹

Local communities reported that the rehabilitation efforts had been hindered by inequality, top down policies and lack of coordination, as well as a lack of financial and policy transparency and community participation¹⁶⁰

In one case, a relief organisation reported that coordination of the response was hampered due to a high number of different organizations, approximately 90, working in one area on transitional shelter. The different organizations included UN agencies, NGOs, political

¹⁵⁸ This information found on the CHA website at <http://www.humanitarian-srilanka.org/index.php>, accessed on 29 June 2006.

¹⁵⁹ INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005.

¹⁶⁰ Alice Rice and Kelly Haynes, 'Post-tsunami reconstruction and tourism: a second disaster?' A report by Tourism Concern, October 2005.

parties, private donors and the GoSL. Indeed, the International Federation's *World Disasters Report 2005* noted that rivalry between aid groups caused a scramble for aid money and the pressure to produce results quickly, leading to a lack of coordination and misallocation of resources.¹⁶¹

Many of the above challenges were identified during the *National Lessons Learnt and Best Practices Workshop* in Colombo hosted by the GoSL and United Nations in June 2005.¹⁶²

In regards to coordination and information sharing, the workshop report identifies a number of recommendations, which are as follows:

The Government:

- Identify the focal ministry for disaster management
- Include national financial institutions (Central Bank, etc.) in the Disaster Risk Management Programmers (explore risk transfer mechanism)
- Invest in capacity building from local level upwards
- Implement seriously the decentralization and devolution of powers
- Appropriate institutional/financial provisions to implement the Disaster Management Act (No. 13 of 2005)
- Prepare a roadmap (a time-bound action plan) for implementation of comprehensive disaster risk management
- Revise existing National Disaster Management Plan and operationalize it
- Create a National Emergency Fund for disaster risk management with appropriate incentive system for disaster risk reduction at appropriate level

The UN/international organizations:

- Have a pre-existing dialogue with Government and other humanitarian actors to better define the UN's niche in small, medium, and large-scale disasters
- Take the lead in monitoring disaster risk reduction/preparedness measures regularly
- Train government, international humanitarian actors and UN staff in the country in UNDAC methodology for disaster assessment and coordination

Local/International NGOS

- Create an in-country Disaster Management Team, in consonance with the government framework, among NGOs and INGOs
- Consciously build capacity and cooperate between INGOs and NGOs
- Professionalize humanitarian response
- Coordinate with the government at all levels
- Use local capacity

The Military

- Continue to do its good work
- Formalize the use of military forces in disaster response in the national disaster management plans

¹⁶¹ 'Initial tsunami aid euphoria leaves reconstruction hangover', South Asia Features by DPA, 23 Dec 2005. available at

http://news.monstersandcritics.com/southasia/article_1071192.php/Initial_tsunami_aid_euphoria_leaves_reconstruction_hangover?page=1

¹⁶² 'National Lessons Learned and Best Practice Workshop', Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005.

Donors

- Collaborate closely with the Government (Treasury) while bringing in external resources (both in kind and financial)
- Show flexibility in programming funds to meet sustainable recovery needs
- Show sensitivity in programming and delivery to national development objectives
- Strike a balance between marketing and programming”¹⁶³

Concerning the development of a national disaster management plan and establishing the institutional mechanisms of the National Council for Disaster Management (NCDM) and NDMC, it can be seen that some positive steps to implement these recommendations have been taken, which are described later in this report.

Quality and accountability of relief

Government quality and accountability mechanisms

“[t]he Government's intention is to ensure that international best practices and transparent procedures are adopted for effective participation of such organisations and better utilization of resources.”¹⁶⁴

There were a number of mechanisms in place which aimed to improve the quality and accountability of relief and recovery efforts, mostly through the monitoring of activities.

In addition to registration requirements detailed above, rules were put in place to ensure that all foreign fund transfers made to the accounts of local and foreign organisations for tsunami relief activities could be closely monitored by the GoSL. Inward remittances were tracked and agencies could subsequently be asked to account for them. It was reported that the amount of remittances that NGOs received far exceeded the funds that the GoSL received for tsunami related initiatives.¹⁶⁵ Specifically, the accounting requirements for NGOs were as follows:

1. NGOs receiving tsunami related funds should channel the funds through a special bank account entitled “Post Tsunami Inward Remittances Account”. All registered banks in Sri Lanka are authorized to open such accounts;
2. Monthly statements in respect of all such accounts were to be forwarded to the Exchange Control department on a monthly basis and were to be done by the bank directly.

Organisations with pre-existing accounts before the tsunami did not have to adopt this procedure.¹⁶⁶

In relation to specific quality and accountability standards for tsunami relief activities, the GoSL specified that transitional shelter must be completed pursuant to the Sphere Project's

¹⁶³ ‘National Lessons Learned and Best Practice Workshop’, Report of workshop conducted by United Nations and the Government of Sri Lanka, Colombo, 8-9 June 2005. page 7.

¹⁶⁴ Centre for Non Government Centre website, accessed 28 December 2005, <http://cngs.erd.gov.lk/>

¹⁶⁵ Patrick Brochard, ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ Canadian International Development Agency, updated 1 June 2005, p. 4, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

¹⁶⁶ Patrick Brochard, ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ Canadian International Development Agency, updated 1 June 2005, p. 4, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005.

*Humanitarian Charter and Minimum Standards in Disaster Response*¹⁶⁷ and set up a number of mechanisms to monitor some aspects of the relief effort. As described by UNHCR:

The Transitional Shelter Strategy and Implementation Papers (Version 6 – 21/0105), which have been endorsed and adopted by the Government of Sri Lanka (first by CNO and then by TAFOR), address utilities in Standard 2 (Access to Infrastructure and Services) in the Implementation Paper.”¹⁶⁸

The mentioned papers have become a part of government policy and also refer to UN and international standards, specifically the Sphere Project Minimum Standards, referred to above.¹⁶⁹

One of the most significant initiatives was the establishment of the DRMU on 10 January 2005, under auspices of the Human Rights Commission of Sri Lanka. Its role was to independently monitor relief and reconstruction activities in the tsunami operation including “government services and civil society activities in relation to relief, benefits, land titles and livelihood of Tsunami victims from a human rights perspective”.¹⁷⁰

This DRMU’s role incorporated the following responsibilities:

- Monitoring the relief operation and the activities of both the GoSL and non-government sector;
- Consultation with beneficiaries;
- Encouraging transparency and accountability in all activities;
- Working closely with Divisional authorities, TAFREN, Urban Development Authority and others to provide advice and monitoring role;
- Advising TAFREN on livelihoods issues; and
- Distributing leaflets to beneficiaries informing them of their rights.¹⁷¹

During the initial phases, the DRMU was receiving up to 200 letters of complaint per day from all sectors including government, relief organisations and beneficiaries, and engaged a number of volunteers who were tasked to send replies and where possible respond to complaints.¹⁷²

One of its achievements was the development of a *Code of Conduct for Civil Servants*¹⁷³ to specify standards for civil servants to carry out their disaster relief activities and promote transparent spending of donor funds. The code identified a number of principles addressing different areas including: allocation of resources; community empowerment; information sharing and transparency; anti-corruption; disaster management; and coordination and

¹⁶⁷ The Sphere Project is a programme of the Steering Committee for Humanitarian Response (SCHR) and InterAction with VOICE and ICVA. The project was launched in 1997 to develop a set of universal minimum standards in core areas of humanitarian assistance. See *Humanitarian Charter and Minimum Standards in Disaster Response* (2004 ed.), The Sphere Project, Geneva <http://www.sphereproject.org>

¹⁶⁸ See ‘Transitional Shelter – Summary of Government Policy and Present Discussion on Utilities (Water & Electricity)(Draft)’, UNHCR Media Release, dated 7 July 2005, available [http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/United%20Nations/gl_Transitiona1%20Shelter%20Summary%20Of%20Governmnt%20Policy%20And%20Present%20Discussion%20On%20Utilities%20\(Water%20&%20Electricity\).pdf](http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/United%20Nations/gl_Transitiona1%20Shelter%20Summary%20Of%20Governmnt%20Policy%20And%20Present%20Discussion%20On%20Utilities%20(Water%20&%20Electricity).pdf) accessed 10 January 2006.

¹⁶⁹ See ‘Transitional Shelter – Summary of Government Policy and Present Discussion on Utilities (Water & Electricity)(Draft)’, UNHCR Media Release, dated 7 July 2005, available [http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/United%20Nations/gl_Transitiona1%20Shelter%20Summary%20Of%20Governmnt%20Policy%20And%20Present%20Discussion%20On%20Utilities%20\(Water%20&%20Electricity\).pdf](http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/United%20Nations/gl_Transitiona1%20Shelter%20Summary%20Of%20Governmnt%20Policy%20And%20Present%20Discussion%20On%20Utilities%20(Water%20&%20Electricity).pdf) accessed 10 January 2006.

¹⁷⁰ Disaster Relief Monitoring Unit, website <http://www.drmu.gov.lk> accessed 28 December 2005.

¹⁷¹ Disaster Relief Monitoring Unit, website <http://www.drmu.gov.lk> accessed 28 December 2005.

¹⁷² Interview with Disaster Relief Monitoring Unit officials, 25 November 2005, Colombo, Sri Lanka.

¹⁷³ Available at <http://www.drmu.gov.lk/code.htm>

networking.

The DRMU also undertook a 'Peoples Consultation' in conjunction with Colombo University Community Extension Centre and the United Nations Development Programme (**UNDP**). The process involved extensive field visits to disaster affected areas to consult with beneficiaries, government and relief organisations. The interim reports from the various districts, published on the DRMU website, document a range of issues relating to the quality and conduct of the relief operation, ranging from poor sanitation, inadequate relief items and delayed compensation payments, to inequitable distribution of aid and political interference.¹⁷⁴

Another body engaged in accountability was the Commission to Investigate Allegations of Bribery or Corruption (**CIABOC**). The CIABOC began operations in 1994¹⁷⁵ with the role of investigating and prosecuting bribery and corruption cases pursuant to the *Bribery Act no 9 of 1980*. Its power is conferred by the *Commissions of Inquiry Act no 17 of 1948*.

Due to an influx of claims alleging misappropriation of tsunami funds, the UNDP granted CIABOC USD\$125,000 in order to boost its capacity.¹⁷⁶ At the time of writing, the commission was in the preliminary stages of preparation to assess claims in this area.

In September 2005, well after the initial relief phase, the GoSL launched the Development Assistance Database (**DAD**) as an initiative to better coordinate and monitor post tsunami recovery aid. The DAD has been made available to all stakeholders over the internet including government ministries, local governments, donors, UN, NGO partners and the Sri Lankan public. The DAD shows the allocation of aid by sector, district, donor and implementer. It includes projects from UN agencies, international financial institutions, bilateral donors, national and international NGOs and the private sector.¹⁷⁷

Standards and best practice of relief organisations

UN Agencies and other relief organisations referred to several different instruments as guiding their relief operations. These included UN or specific organisational policies, the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Government Organizations (NGOs) in Disaster Relief* and the Sphere Project's *Humanitarian Charter and Minimum Standards in Disaster Response*.¹⁷⁸

As described previously, the CHA set up information management offices in tsunami affected areas. Within their post-tsunami program they encouraged partnerships, enabled collection, analysis and dissemination of information and advocated assurance of transparency and accountability, especially to the affected population.¹⁷⁹

Additionally, there have been a number of workshops and reviews of the lessons learned from the tsunami operation on aspects of disaster response, preparedness and risk management in Sri Lanka and other countries affected the tsunami. A list of these can be found on the Active Learning Network for Accountability and Performance in Humanitarian Action website.¹⁸⁰

¹⁷⁴ Available at <http://www.drmu.gov.lk/pc.htm>

¹⁷⁵ Under the 17th amendment to the constitution and under the *Bribery Commission Act No. 19 of 1994*.

¹⁷⁶ 'Sri Lanka's Bribery Commission gets UNDP boost', *United Nations Development Program Press Release*, 25 August 2005, <http://www.undp.lk/undplk/pages/BriCom.html> accessed 10 January 2006.

¹⁷⁷ 'Sri Lanka launches new system to monitor tsunami funds', *United Nations Development Programme (UNDP)*, 2 September 2005, available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/SODA-6FU7AM?OpenDocument> accessed 12 January 2006.

¹⁷⁸ *Humanitarian Charter and Minimum Standards in Disaster Response* (2004 ed.), The Sphere Project, Geneva <http://www.sphereproject.org>

¹⁷⁹ See the CHA website, <http://www.humanitarian-srilanka.org/CPRP/index.php>

¹⁸⁰ ALNAP website: <http://www.odi.org.uk/alnap>

Inspired by the present research study, the Fondation de France hosted a workshop on the administrative procedures and legal issues relations arising during the tsunami operation for a number of French organisations in Colombo on 9 December 2005.¹⁸¹ The workshop identified a number of legal challenges and enabled organisations to compare experiences to better understand the legal and administrative context in Sri Lanka.¹⁸² This initiative demonstrated the usefulness of identifying and discussing legal issues collectively and in trying to find solutions and share information for resolving specific challenges. Additionally it is hoped that the process will assist in generating awareness of the need for better legal preparedness for future operations.

This workshop highlighted the concerns of NGOs on a number of legal issues, many of which are mentioned elsewhere in this report, including:

- Delayed or refused entry permission/visas for foreign relief workers;
- Imposition of taxes, fees, tolls on relief activities;
- Restricted use of communications equipment;
- Legal status of foreign organizations;
- Difficulties transferring/exchanging money and opening bank accounts;
- Vulnerability to false legal claims, arrest, detention and seizure of property;
- Coordination, quality and accountability;
- Sending unnecessary or inappropriate relief items and assistance;
- Undervaluing local knowledge and response capacities; and
- Lack of adherence to quality/accountability standards¹⁸³

A further indication of the challenges faced by relief organisations in dealing with legal and administrative issues, is the seemingly growing trend of relief organisations incorporating legal support into their operations. In this regard, several organisations reported requiring the services of local law firms. The International Federation and World Vision Sri Lanka also deployed their own legal delegates to assist with recovery and reconstruction projects and some other NGOs reported having the benefit of local staff with legal backgrounds who could assist on some issues. In the case of the International Federation, this role proved to be crucial both in terms of ensuring compliance with legal standards, providing technical legal support, and also in providing a legal perspective on problem solving and policy issues.

Despite the efforts described above, there were a number of issues concerning the quality of relief and recovery operations, many of which are closely linked to the problems of coordination and information sharing.

Conflicting needs assessments

Whilst most actors were conscious of the importance of identifying needs at the local level, a lack of adequate communication, assessment standards and a clear division of roles and responsibilities between district and national levels were considered to have resulted in some conflict between national and district-level needs assessments.¹⁸⁴ Additionally, in the rush for funding, some organisations felt that appeals were launched and consultations with donors commenced before their assessments could be verified.

¹⁸¹ 'Tsunami Administrative Procedures and Legal Context in Sri Lanka – Sharing lessons learnt and Experience between French NGOs', *Report of workshop organized by the Fondation de France*, Colombo, 9 December 2005.

¹⁸² 'Tsunami Administrative Procedures and Legal Context in Sri Lanka – Sharing lessons learnt and Experience between French NGOs', *Report of workshop organized by the Fondation de France*, Colombo, 9 December 2005, p. 4.

¹⁸³ 'Tsunami Administrative Procedures and Legal Context in Sri Lanka – Sharing lessons learnt and Experience between French NGOs', *Report of workshop organized by the Fondation de France*, Colombo, 9 December 2005, p. 4.

¹⁸⁴ See INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005, and Interview with Sri Lanka Red Cross Society official, 22 November 2005, Galle, Sri Lanka and Interview with CHA official, 22 November 2005, Galle, Sri Lanka.

The doubt over the accuracy of government assessments also led many organisations to conduct their own fact-finding missions and needs assessments, adding to the confusion. However, some organisations described this as necessary in some circumstances, due to the lack of government officials with the requisite skills and technical expertise in some affected districts.

The poor quality of some needs assessments and the multiplicity of beneficiary lists created instances of data mismatches and inappropriate distribution of aid. Indeed, the Fritz Institute reported that 15 per cent of NGOs in Sri Lanka reported that gaps and inaccuracies in data hampered relief and rehabilitation efforts while a further 10 per cent cited difficulties in correctly identifying disaster-affected problems.¹⁸⁵ This may be partly attributed to the fact that there were many relief workers who had comparatively little experience in humanitarian response and limited understanding of national and international techniques and standards used in the Sri Lankan context.¹⁸⁶

One example of this type of challenge was the distribution of fishing boats and equipment to fishermen in affected areas. In some areas, it was reported that fishermen had received more than one boat, whereas others had received none at all. Additionally, it was apparent that there had been insufficient consultation and cross-checking as to the numbers and types of boats that were needed. The Food and Agriculture Organization reported that donors provided almost 100 more small fiberglass fishing boats than had been destroyed, and by contrast, not one of the 187 large fishing vessels lost to the tsunami had been replaced.¹⁸⁷ It was also reported that a number of deep sea fishing vessels and equipment were provided to shallow water fishermen, which were completely unsuitable. Yet another account identified a 'common scam' whereby a local NGO would inflate the price of boats for the purpose of applying for funding, and then split the profit with the boat supplier, seemingly without any consequences or accountability.¹⁸⁸

Many relief organisations however, were making efforts to conduct proper needs assessment and to consult with beneficiaries, which was facilitated by the existence of well developed civil structures.¹⁸⁹ However, there were a certain number of NGOs refusing to coordinate with others without understanding the local context and without knowledge or experience of disaster management and relief.¹⁹⁰ The unprofessional activities of a few NGOs was felt to have tarnished the reputation of all organisations, leading to increased restrictions and suspicion by the GoSL of all relief activities.¹⁹¹

Quality and distribution of goods and services

Poor quality assistance was also seen to be the result of a lack of adherence to basic humanitarian standards. Indeed, smaller or inexperienced NGOs were criticized by some for a lack of familiarity or failure to comply with accepted international standards and practices.¹⁹²

¹⁸⁵ 'Lessons from the tsunami: Survey of Non-Governmental Organizations in India and Sri Lanka'. Fritz Institute 2005. Available at <http://www.fritzinstitute.org/PDFs/findings/NGOsReport.pdf>, accessed on 30 June 2005

¹⁸⁶ Linda Richardson, 'Internal Evaluation of Phase 1 of RedR-IHE: Learning Support and Capacity Building Programme, *RedR-International Health Exchange*, Edinburgh, 18 August 2005.

¹⁸⁷ 'Old prejudices keep tsunami aid from Tamils', *Sunday Times (London)*, 18 December 2005.

¹⁸⁸ 'Letter Uncharitable Events', *Accountancy Age*, 17 November 2005, see also Guy Standing, 'Giving Cash is the Easiest Way to Respond to Poverty', *Financial Times*, London England, 1 October 2005.

¹⁸⁹ 'A place to stay, a place to live: Challenges in providing shelter in India, Indonesia, and Sri Lanka after the tsunami'. *Oxfam Briefing Note*, *Oxfam International*, 14 December 2005.

¹⁹⁰ See for example, 'Tsunami agencies caused waste and confusion', *Financial Times* December 22, 2005, London and 'After the Tsunami: Human Rights of Vulnerable Populations', *Human Rights Center, University of California Berkeley*, October 2005, p. 69.

¹⁹¹ Interview with UN official, 25 November 2005, Colombo, Sri Lanka.

¹⁹² Interview with CHA official, 22 November 2005, Galle, Sri Lanka.

A lack of coordination among all those dealing with the reconstruction and rehabilitation process, in both the state and non-state sector, combined with the absence of any standard-setting with regard to provision of minimum facilities in the temporary resettlement sites was seen to result in a continuous cycle of disparities in distribution.¹⁹³ Other incidents reported included theft during the clearing of donated items at airports and harbours, as well as incompetence and serious shortcomings in the construction of houses.

Failure to use local knowledge was seen as being particularly problematic in the construction of transitional housing and shelters.¹⁹⁴ For example, local drainage techniques were not utilized in some projects, resulting in important problems in newly reconstructed areas.¹⁹⁵ Whilst organisations reported that it was very difficult to access local expertise because affected communities were dislocated and traumatized, others suggested it was the result of the undervaluation of local knowledge as well as a lack of government regulation to enforce adequate standards.¹⁹⁶

Another criticism of the tsunami relief operation was the disparity of relief provided to certain groups of beneficiaries. For example, a number of reports document inequality between relief and recovery efforts in LTTE controlled areas in parts of the north and east of the country, as compared to the south.¹⁹⁷ There were also reports of aid distribution being linked to political allegiance rather than on the basis of need.¹⁹⁸ Whilst many organisations on the ground felt this was not widespread, these reports were believed to have encouraged donors to transfer money directly to relief organisations to protect against any misuse of funds for political purposes.¹⁹⁹ Indeed, the total funds pledged by donors to relief organisations was considerably larger than that received by the GoSL for relief operations.²⁰⁰

Use of funds

The large inflow of foreign funds into Sri Lanka through multi-lateral, bilateral and non-governmental sources has also raised issues of accountability and transparency.²⁰¹ The report of the Auditor General of Sri Lanka is one of many reports highlighting deficiencies in the management of tsunami funds.²⁰² The Auditor General made a number of observations including the “lack of systems for recording assistance in the form of cash and

¹⁹³ INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005.

¹⁹⁴ ‘Tsunami Administrative Procedures and Legal Context in Sri Lanka – Sharing lessons learnt and Experience between French NGOs’, *Report of workshop organized by the Foundation de France*, Colombo, 9 December 2005, p. 4.

¹⁹⁵ Interview with Sri Lanka Red Cross Society official, 22 November 2005, Galle, Sri Lanka.

¹⁹⁶ Interview with Sri Lanka Red Cross Society official, 22 November 2005, Galle, Sri Lanka.

¹⁹⁷ See for example: ‘Control political squabbling: Managing aid deluge for tsunami survivors’, *Asian Center for Human Rights Weekly Review*, 12 January 2005; Caroline Gammell, ‘Tsunami Aid Efforts Leave War Victims Feeling Excluded’, *Press Association*, 11 December 2005, INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005 and ‘Tsunami Response: A Human Rights Assessment’, Action Aid International, January 2006.

¹⁹⁸ ‘S.Lanka probes tsunami fund claim, PM seen in clear’ *LankaNewspapers.com*, 26 July 2005, available at <http://www.lankanewspapers.com/news/2005/7/2794.html> accessed 20 March 2006.

¹⁹⁹ Tsunami Administrative Procedures and Legal Context in Sri Lanka – Sharing lessons learnt and Experience between French NGOs’, *Report of workshop organized by the Foundation de France*, Colombo, 9 December 2005, p. 6.

²⁰⁰ Patrick Brochard, ‘New regulations and Procedures Affecting NGOs in Sri Lanka,’ *Canadian International Development Agency*, updated 1 June 2005, p. 4, available at http://www.humanitarianinfo.org-/srilanka/catalogue/Files/Reference/NGO%20Registration/Donors/_NEW%20NGO%20Reg.June1.pdf accessed 17 November 2005

²⁰¹ See for example, INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005.

²⁰² See *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

goods/materials for providing relief and rehabilitation” and the “lack of a national level register/record to use as base document for the supply of relief and assistance in the even of a national disaster due to the abolition of the Chief Householder System that prevailed in the past”.²⁰³ It was noted that as of 17 August 2005, only 37 per cent of funds collected locally for the relief of tsunami victims had been spent and there had been “irregular collection of funds by the Ministries, Departments, Public Corporations, etc. retention of collections and incurring expenditure”.²⁰⁴

In the case of payments to beneficiaries for reconstruction and allowances, the Auditor General noted a number of anomalies were reported whereby recipients received money far in excess of the cost of rebuilding or repairs, situations where recipients had received less than their full entitlements and instances where disbursements were made in areas where the eligibility of recipients had not been determined or where the recipients were not entitled to receive relief.²⁰⁵

In other reports, one international NGO drew criticism for allegedly extravagant expenditure in Sri Lanka, including spending money on large roadside billboards which advertised the organisation’s work,²⁰⁶ some international NGOs have also been reportedly spending large sums of money without consulting local authorities, and causing inflation in prices of goods and services.²⁰⁷ There have also been claims that money collected by some NGOs did not reach Sri Lanka at all.²⁰⁸

Specific challenges for housing reconstruction

There were a number of legal challenges unique to the process of housing reconstruction. Indeed, housing appears to be the highest profile and most difficult issue faced by international relief organisations and the GoSL in the post-tsunami reconstruction phase. Delays in the construction of permanent housing have been a cause for great concern and have received a lot of media attention, although as demonstrated below, the processes were involved a complex range of legal issues. Much of the information below on the procedures for construction comes from legal advice received by the International Federation’s legal delegate in Colombo.

Land identification and allocation

The identification and acquisition of suitable land for reconstruction was undertaken centrally by the GoSL, initially by TAFREN, which was later dissolved within the newly formed the Reconstruction and Development Agency (**RADA**). The central authority would allocate the land to various donor organisations, through the signing of an MOU, enabling the organisation to undertake the construction of permanent housing.

²⁰³ See *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

²⁰⁴ See *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

²⁰⁵ See *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

²⁰⁶ ‘Tsunami agencies caused waste and confusion’, *Financial Times*, London England, 22 December 2005.

²⁰⁷ ‘Tsunami Citizen’s Voice: National Consultation & Public Hearing’, *Human Development Organization (HDO) and IMADR International*, Colombo, 27 August 2005.

²⁰⁸ PK Balachandran, ‘Sri Lanka: Local taxes and dubious foreign aid tell on tsunami relief,’ *Hindustan Times, Colombo Diary*, 21 February 2005.

There has been criticism of the process of land allocation. Firstly, it has been felt by some that the GoSL had initially been slow in apportioning the land to different organisations; secondly, that some organisations received land which was unsuitable for housing, such as marshlands or areas in conflict zones; thirdly, that community needs were not taken into account when prioritizing relocation, resulting in some coastal communities being moved to unsuitable urban areas; and finally, that District level officials were marginalized or excluded from the decision-making process.²⁰⁹ Some of these issues are elaborated further below.

One of the key factors determining land availability was the so called “buffer zone” policy. Over 20 years ago, the *Coast Conservation Act No. 57 of 1981* declared that no development was to take place within the designated ‘Costal Zone’.²¹⁰ The area 1km from the mean high water line required special permission of the Urban Development Authority (UDA) for any construction.²¹¹ In 1997, the *Coastal Zone Management Plan* was developed, replacing or supplementing the *Coast Conservation Act*, and specifying a number of other setback zones for construction and development. Although the UDA was the responsible body under the Acts, most of its authority was delegated to local government and the law itself was rarely adhered to or enforced.

After the tsunami, however, a number of policy revisions were made:

31 December 2004 – A public notice was issued which reinvested full authority on development approval with the UDA²¹²

3 January 2005 – The establishment of a “vulnerable zone” changed the setback zone up to 1km from the coastline.²¹³

1 June 2005 – A comprehensive guidance note issued by the government replaced the *Coastal Zone Management Plan* and specified new setback zones of 100m in the West and South and 200m in the North and East of the country.

14 October 2005 – Setback zones were minimally revised again based on recommendations by a team of experts who found that the spatial distribution of the impact from the beach towards the interior was at moderate and low levels. Other requests for the revision were also received from the District Secretaries and Divisional Secretaries.²¹⁴

27 December 2005 – The *Coastal Zone Management Plan of 1997* was reinstated.

Since December 2005, the geographic lines have been clear, although some organisations have felt that the standards have only been selectively enforced. In some areas, such as Galle, it was felt that the tourism industry received special exemptions allowing the construction of hotels and tourist facilities which were not granted to displaced communities.²¹⁵ This practice, and the frequent revision of the set back areas, created a great deal of uncertainty amongst

²⁰⁹ INFORM Human Rights Documentation Centre, *Human Rights in the Post-Tsunami Context*, Sri Lanka, February 2005 and Alice Rice and Kelly Haynes, ‘Post-tsunami reconstruction and tourism: a second disaster?’, Report by Tourism Concern, October 2005.

²¹⁰ ‘Costal Zone’ defined as an area lying within a limit of 300m landwards of the mean high water line and a limit of 2km seawards of the low water. See *Coast Conservation Act No. 57 of 1981*.

²¹¹ Gazette Extraordinary No. 223/16 dated 17 December 1982.

²¹² UDA Public Notice dated 31 December 2004.

²¹³ ‘Physical Planning Guidelines and Project Proposals for the Vulnerable Coastal Zone of Sri Lanka’, *The National Physical Planning Department (NPPD) of the Ministry of Urban Development and Water Supply*, dated 3 January 2005.

²¹⁴ ‘Revision of Setback Standards – Press Release’, *Ministry of Urban Development and Water Supply*, Press Release THRU/CEO/15/04 dated 14 October 2005, available at http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/Government%20of%20Sri%20Lanka/G_Revision%20of%20Set%20Back%20Standards.pdf accessed 6 January 2006.

²¹⁵ Interview with CHA official, 22 November 2005, Galle, Sri Lanka.

humanitarian organisations, as they wanted to reconstruct housing within the coastal zone to avoid the further displacement of coastal communities. Whilst some organizations were confident that the law would be rescinded and commenced projects within those areas, others were reluctant to do so until they received further clarification.

Prior to the tsunami there had also been concerns raised to the Human Rights Commission about High Security Zones in conflict areas, which also precluded development and resettlement. In this regard, the Human Rights Commission had plans to appoint an independent expert to provide recommendations on this issue, and was also recommended to extend this mandate to include the issue of “buffer zones” in the context of the post-tsunami reconstruction phase.²¹⁶

Land ownership

Several international relief organisations reported facing challenges in clarifying the true ownership of their allocated land. Some land title certificates had been lost in the tsunami and there were conflicting records relating to land title registrations between various districts. There were also situations where no records were available and ownership was considered customary rather than a legal entitlement. Despite government assurances that ownership of the allocated land was a state responsibility, some organisations were reluctant to commence construction activities until such matters were legally verified, to avoid additional legal challenges at a later stage – a process which was long and involved, and which necessarily caused delays to construction.

In April 2006, the GoSL issued a *Revised Tsunami Housing Policy*²¹⁷ which among other aspects, attempted to settle the issue of land ownership. Among its policies included the following:

- A person who has legal title to the land containing the damaged property is deemed the legal owner.
- Legal owners will remain the legal owner but if they wish to receive government assistance they must submit their existing structures for demolition or obtain a permit to rebuild.
- A person who does not have legal title to the land on which the damaged property stands is deemed an encroacher. This definition stands regardless of how long this individual occupied the property, or what other implication of ownership (municipal rates, electricity bills, electoral registry entries etc) exist.
- Encroachers wishing to receive government assistance must surrender their encroached lands to the legal owner and submit existing structures for demolition.²¹⁸

Additionally, the model MOU attached to the new guidelines specific expressly stated that donor organisations had no responsibility to establish land ownership, but that this would be

²¹⁶ ‘National Human Rights Institutions and Internally Displaced Persons: Visit to the Sri Lanka Human Rights Commission 30th November - 3rd December 2004’, Asia Pacific Forum of National Human Rights Institutions / Brookings Institution– SAIS Project on Internal Displacement available at <http://www.asiapacificforum.net/training/idp/brookings-bern/srilanka.pdf>

²¹⁷ ‘Acceleration of tsunami housing programme’, Letter from the Secretary of the President to District Secretariats, 3 May 2006, and *Revised Tsunami Housing Policy April 2006* available at: http://www.tafren.gov.lk/portal/resources/_housing/060509_RADA_RevisedHousingPolicy_English.pdf

²¹⁸ ‘Acceleration of tsunami housing programme’, Letter from the Secretary of the President to District Secretariats, 3 May 2006, and *Revised Tsunami Housing Policy April 2006* available at: http://www.tafren.gov.lk/portal/resources/_housing/060509_RADA_RevisedHousingPolicy_English.pdf

carried out by the Divisional Secretary “by available and acceptable means”.²¹⁹

Beneficiary identification and relocation²²⁰

Local authorities were given the role of determining those entitled to receive new housing and, if necessary, where they would be relocated. These decisions were based on the various applicable “buffer zone” and assistance policies issued by the central government, which were progressively revised during the operation. On 6 January 2006, a major circular was published revising the guidelines for assistance and in April 2006 the *Revised Tsunami Housing Policy* again revised the requirements, but with the aim of simplifying and accelerating the construction process.²²¹ Specifically, it provided there should be “a house for a house, regardless of ownership” and that “all affected shelters to be considered regardless of location”.

Under the new guidelines it was the responsibility of the District Secretaries to develop beneficiary lists and to “ensure proper prioritization of beneficiaries, so that vulnerable groups such as single women, elderly, multi-child households, etc. receive assistance first”.²²² Consequently, donor organisations would receive the pre-determined beneficiary lists from the District Secretaries and would commence consultations with the relevant communities on the planning and design for housing.

There were a number of concerns expressed by donor organisations throughout the process. Firstly, there was concern that the decisions of local authorities in developing the beneficiary lists could also be influenced by political or other factors, rather than purely on the basis of need. Additionally, major problems arose when local authorities would subsequently modify the lists or produce conflicting lists – either as a consequence of changing national policy or for unknown reasons. Having created expectations, the donor agencies would have to withdraw their plans for some beneficiaries. Additionally, there were uncertainties as to the legal and policy entitlements for certain persons to receive housing assistance, such as squatters, which also needed to be resolved. In some cases, the time taken to address these issues led to construction projects being significantly delayed or cancelled altogether because earmarked budgets were not been able to be spent in time. The Auditor General’s report also cited instances where NGOs had provided housing to families which had not suffered any damage.²²³

Construction of houses²²⁴

Once donor organisations proceeded to the construction phase, they adopted one of two distinct approaches. Some organisations developed an internal construction management unit to plan and design the housing and then engage either small scale contractors or labourers to carry out the works. Alternatively, they would engage a professional consulting firm to design

²¹⁹ ‘Acceleration of tsunami housing programme’, Letter from the Secretary of the President to District Secretariats, 3 May 2006, and *Revised Tsunami Housing Policy April 2006* available at: http://www.tafren.gov.lk/portal/resources/_housing/060509_RADA_RevisedHousingPolicy_English.pdf

²²⁰ These examples have been collected from interviews with various organisations involved in reconstruction.

²²¹ ‘Acceleration of tsunami housing programme’, Letter from the Secretary of the President to District Secretariats, 3 May 2006, and *Revised Tsunami Housing Policy April 2006* available at: http://www.tafren.gov.lk/portal/resources/_housing/060509_RADA_RevisedHousingPolicy_English.pdf

²²² ‘Acceleration of tsunami housing programme’, Letter from the Secretary of the President to District Secretariats, 3 May 2006, and *Revised Tsunami Housing Policy April 2006* available at: http://www.tafren.gov.lk/portal/resources/_housing/060509_RADA_RevisedHousingPolicy_English.pdf

²²³ See *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at: http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

²²⁴ These examples have been collected from interviews with various organisations involved in reconstruction.

and supervise the works, carried out by a construction company.

The GoSL has publicly criticized many relief organisations for engaging in lengthy internal bureaucratic processes for construction and placed this issue at the centre of delays in permanent housing. The Auditor General noted in his report:

Even though 384 Non-Governmental Organizations registered with the Department of Social Services had agreed to provide funds amounting to US \$1,321.2 million for rebuilding of assets destroyed by the Tsunami, instances of failure to sign Memorandum of Understanding up to date were observed. Work of certain Organizations which had signed the Memorandum of Understanding had not been commenced.²²⁵

However, the report also added “[i]t was observed in audit that it was not possible to achieve the planned targets due to legal actions taken against the Organizations.”²²⁶

Indeed, in addition to the many complications outlined above in getting to the construction phase, the donor organisations asserted that housing construction was a time consuming process due to: ensuring transparent tendering processes for contractors; properly consulting with beneficiaries; ensuring that housing construction meets acceptable standards; and ensuring its resilience to future hazards.

Future directions for disaster management legislation and “legal preparedness” for international disaster response

Prior to the tsunami, legislation for disaster management had been drafted but not yet approved by Parliament. Immediately after the tsunami, it was expeditiously taken up for parliamentary discussion and numerous drafts were tabled. The resulting *Disaster Management Act no. 13 of 2005* was passed on 13 May 2005²²⁷ with the NCDM and the NDMC formally established on 29 September 2005. The GoSL has also demonstrated a financial commitment to this process by specifying disaster management as a specific sector in the 2006 National budget.²²⁸

The *Disaster Management Act* gives limited recognition to the role of non-state actors in disaster management. In relation to disaster risk reduction, the Act instructs the NCDM “to facilitate liaison with organizations and persons pursuing hazard, vulnerability and risk reduction studies and implementing action programmes and commissioning such studies and action programmes”.²²⁹

In relation to disaster assistance, Article 13 states:

(1) ...where a state of disaster is declared under section 11, the Council may,

²²⁵ *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at:

http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

²²⁶ *Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004* (carried out up to 30 June 2005) available at:

http://www.auditorgeneral.lk/reports/English/Tsunami_Eng_.pdf

²²⁷ *Disaster Management Act no. 13 of 2005*.

²²⁸ Gazette Extraordinary no. 1412/31 dated 29 September 2005.

²²⁹ Section 4(k) *Disaster Management Act no. 13 of 2005*.

wherever it considers necessary or appropriate, obtain the assistance of any non-governmental organization, being a non-governmental organization whose activities are not detrimental to national independence and sovereignty, to assist any appropriate organization in the discharge of its duties under section 12.

(2) Where any assistance is obtained under subsection (1) from a non-governmental organization, such organization shall act in accordance with instructions issued by the appropriate organization it is assisting and shall, for service rendered, be paid by the Council out of the Fund of the Council, such amount as shall be determined by the Council.

Whilst the involvement of NGOs under this article may be considered a positive mechanism for the facilitation of humanitarian assistance, it could also be seen as limitation on the independence of humanitarian action and creates a consulting-type arrangement rather than a recognition of voluntary humanitarian services. Additionally it does not specify whether ‘non-government organisation’ includes both domestic and foreign organisations.

Indeed, the Act makes no direct reference to international assistance or any specific coordination, facilitation or regulation mechanisms in this regard. An indirect reference to external assistance may be implied in the use of “additional resources” – where the Act gives authority to the President to direct one or more appropriate organisations to “direct, co-ordinate and use additional resources, if and when they become available, in accordance with such arrangements as may be made in respect of its allocation”.²³⁰ However, it is unclear whether foreign assistance is envisaged.

The NCDM, established within the Presidential Secretariat, also has the responsibility to develop a National Disaster Management Plan (NDMP).²³¹ The NCDM is to act as the operational focal point for disaster management in Sri Lanka and has the responsibility for implementation of the Plan.²³² Indeed, since its recent inception, the NCDM has been in the process of establishing the regulatory structure for disaster management. To date the District Disaster Coordinators, on secondment from the army, have been deployed in nine districts to undertake analysis and needs assessments.²³³ For the drafting of the NDMP, the NCDM has held extensive consultations with the international community, and a coordination cluster consisting of relevant government agencies and major international stakeholders has been formed to advise on the creation the National Disaster Management Plan.²³⁴

This plan is yet to be completed but it would be beneficial if it provided clear guidelines and standards in regards to the provision of international assistance in the event of a disaster which exceeds the capacities of the NDMC.

Following the tsunami, and to guide the GoSL in developing its regulatory framework for disaster management, the GoSL also formed the *Parliamentary Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters (PSCND)*.²³⁵

²³⁰ Section 12(b) *Disaster Management Act* no. 13 of 2005.

²³¹ Section 4(b) *Disaster Management Act* no. 13 of 2005.

²³² Section 4(b) *Disaster Management Act* no. 13 of 2005.

²³³ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

²³⁴ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

²³⁵ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

The terms of reference of the PSCND were:

To investigate whether there was a lack of preparedness to meet an emergency of the nature of the Tsunami that struck Sri Lanka on December 26, 2004 and to recommend what steps should be taken to ensure that an early warning system be put in place and what other steps should be taken to minimize the damage caused by similar natural disasters.²³⁶

After extensive study both domestically and internationally, the PSCND released its proposed Five-year Programme for strengthening disaster risk and disaster management systems in Sri Lanka and a resource mobilization and partnership strategy for mobilizing national, regional and international resources.

The report makes multiple references and recommendations on the role international assistance in a number of aspects relating to early warning and disaster risk reduction. Of particular relevance to the role of international relief organisations in disaster response is the following recommendation

The committee recommends that a framework within which Non-Governmental Organizations (NGO) and International Governmental Organization (INGO) must operate within Sri Lanka should be stipulated by government. In fact, when the committee met with selected NGO's and INGO's, the unanimous position taken by those who came before the select committee was that they would be willing to operate within a stipulated framework and in return, NGO's and INGO's should be recognized and facilitated by government. The committee has looked at the Code of Conduct used by AUSAID and would like to suggest that a Code of Conduct similar to this should be developed, preferably in consultation with NGO's and INGO's..²³⁷

A similar approach was recommended in consultations at the workshop conducted for this study. It was proposed that foreign relief organisations should benefit from expedited procedures, exemptions and privileges for their activities, provided they meet a number of quality and accountability criteria set by relief organisations and the GoSL, based on international standards. To be effective, this system would need to be established in advance of disaster and relevant organisations would need to be able demonstrate compliance to both their peers and the government to be included in a pre-authorised list of relief agencies. Other organisations wishing to assist in the event of a disaster would not automatically benefit from such exemptions and would be considered on a case-by-case basis until such time as they are included in the list of pre-approved agencies. It was felt that this system may assist in ensuring that urgent and legitimate relief consignments from approved organisations are not waylaid because of the poor practices of a few organisations, and further, would constitute a ready-made consortium for coordination and for discussing common issues with government.

Conclusions

The scale of both the devastation caused by the tsunami and the domestic and international relief effort was unprecedented in Sri Lanka. Whilst it can be said that the tsunami disaster was an exceptional case and that even well-planned systems would have been placed under strain, it was nevertheless apparent that pre-existing institutions set up to deal with disasters in Sri Lanka were overwhelmed. Indeed, much of Sri Lanka's disaster management mechanisms

²³⁶ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

²³⁷ *Report of the Sri Lankan Parliament Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters* available at <http://www.srilankanparliamentonnaturaldisasters.org>, accessed 5 January 2005.

were still “works in progress” yet to be adopted by the Parliament and did not have fully developed structures, systems or mandate to support their implementation. Consequently, the relief and recovery operations faced many challenges relating to coordination, information sharing and the quality of assistance, which were exacerbated by the frequent re-organisation of many different structures put in place to coordinate the operation, such as the CNO, CGES, TAFRER and TAFLOL, TAFOR, TAFREN and eventually RADA. Additionally, disparities of needs assessments and standards between relief providers, between affected areas and between levels of government limited the effectiveness of relief and recovery efforts and were the subject of complaints from beneficiaries.

However, the tsunami response was also characterised by a significant effort on the part of the GoSL in the post-tsunami period to put in place new structures and mechanisms to better manage the disaster, which in many cases were supported by legislation and policy directives. Regarding international assistance, the most relevant of these were the establishment of the CNGS to facilitate procedures relating to visas for personnel, customs, taxes and duties. The CNGS represented an attempt to provide a “one-stop” focal point for NGOs working in Sri Lanka on a number of important issues, however its effectiveness was limited by the fact that some of the procedures, such as NGO registration, were still time consuming and thus acted as deterrent for organisations to cooperate, particularly as some had already managed to set up their operations outside of government coordination mechanisms. Had such a body been operational either prior to or immediately after the tsunami struck, it might have been able to play a more prominent role in facilitating and monitoring the work of foreign NGOs in the country, and improved the overall coordination of the response.

With regard to the regulations concerning visas, customs, taxes and duties, it was apparent that pre-existing procedures did not suit situations of large-scale international assistance and had to be amended and re-amended during the operation, creating a degree of uncertainty and confusion among relief providers. The fact that many of these procedures also relied on the discretion of the authorities on a “case-by-case basis” added to this uncertainty and also created delays in enabling goods and equipment to be put to immediate use in relief operations. However it was also apparent that organisations with established pre-existing relationships with the GoSL, either through the presence of country offices or through specific development programmes, were able to benefit to some extent from exemptions and the fast-tracking of procedures.

It was generally agreed that universal exemptions without any cross-checking measures could have jeopardized public health and safety and that the GoSL had a responsibility to prevent organisations and individuals from taking advantage of the exemptions for commercial or criminal purposes, to ensure that goods were of acceptable quality and to find ways of maintaining overall control of the operation. However, it was felt by some that these privileges were sometimes withdrawn or made unnecessarily burdensome for all organisations based on the inappropriate actions of only a few. In this regard, it is interesting to note the proposals described above, by both the Parliamentary Committee and also by some participants of the workshop conducted for this study, on the development of a system of privileges and exemptions for relief organisations based on adherence to identified standards or a Code of Conduct.

Such an initiative however, would not negate the need to have additional accountability and monitoring systems in place to ensure that quality standards and humanitarian principles are in fact being implemented. In this regard, the establishment of the DRMU was a positive step and played an important role in setting standards for civil servants, providing an interface between beneficiaries and the government and in the investigation and documenting of human rights issues in the context of the relief operation. This issue could be considered further in the context of developing structures and systems to improve the quality of disaster management in Sri Lanka, both for domestic and international operations.

Also of importance for future operations is ensuring that institutional experience and learning from the tsunami, particularly relating to international disaster response and the resulting legal issues not be lost. One way of achieving this is to ensure that this topic is included in future operational reviews and, most significantly, is considered during the development of disaster management plans and legislation. As described above, the introduction of ad hoc procedures in the height of a crisis are often the cause of confusion and delays, which ultimately undermines the relief effort as a whole. By learning from and anticipating the legal and policy challenges for international disaster response, and incorporating “legal preparedness” as part of holistic disaster management, it is hoped that many of the challenges of described in this report could be mitigated or resolved.

List of Acronyms

ALNAP	Active Learning Network for Accountability and Performance in Humanitarian Action
CGES	Commissioner General for Essential Services
CHA	Consortium of Humanitarian Agencies
CIABOC	Commission to Investigate Allegation of Bribery or Corruption
CNGS	Centre for Non-government Sector
CNO	Centre for National Operations
DAD	Development Assistance Database
DRMU	Disaster Relief Monitoring Unit
GoSL	Government of Sri Lanka
ICRC	International Committee of the Red Cross
INGO	International Non Governmental Organization
JOH	Joint Operational Headquarters
LTTE	Liberation of Tamil Eelam
MOU	Memorandum of Understanding
NCDM	National Council for Disaster Management
NDMC	National Disaster Management Centre
NDMP	National Disaster Management Plan
NGO	Non Governmental Organization
PSCND	Parliamentary Select Committee to Recommend Steps to Minimize the Damages from Natural Disasters
RADA	Reconstruction and Development Agency
RFU	Relief Facilitation Unit
SGD	Simplified Goods Declaration
SLR	Sri Lankan Rupees
SLRCS	Sri Lanka Red Cross Society
TAFLOL	Task Force for Logistics Law and Order
TAFOR	Task Force for Relief
TAFREN	Task Force for Rebuilding the Nation
TAFRER	Task Force for Rescue and Relief
TRC	Telecommunications Regulatory Commission
UDA	Urban Development Authority
UNDAC	United Nations Disaster Assessment and Coordination
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees

VAT	Value Added Tax
VSAT	Very Small Aperture Terminal
WFP	World Food Programme

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Workshop Participants

Workshop: “Legal issues affecting the international response to the Sri Lanka tsunami” on 25 November 2005, Colombo. Co-hosted by Sri Lanka Red Cross Society and the International Federation of Red Cross and Red Crescent Societies.

Name	Position	Organisation
Surein Peiris	Deputy Director General	SLRCS
Major General Gamini Hettiarachichi	Director General	Disaster Management Centre, Presidential Secretariat
Ramraj Narasimhan	Disaster Reduction Specialist	UNDP
Dinusha Dharamaratna	Research Assistant	Institute of Policy Studies of Sri Lanka
Carmen Van Hesse	Deputy Head of Office/Field Office Coordinator	UN OCHA
Dushyanthan Devadoss	Donor Aid Coordinator	Task Force for Rebuilding the Nation (TAFREN)
Selvi Sachithanandam	National Programme Officer	WFP
Borja Miguelez	Technical Assistant	ECHO
David Verboom	Head of Office	ECHO
Dhinush Jayasuriya	Assistant National Coordinator - Tsunami Programme	Caritas - Sri Lanka
Saama Rajakaruna	Development Officer	Canadian International Development Agency
Asker Khan	Executive Director	Caring Hands
Pradeep Ginige		Family Rehabilitation Centre
Setge Tissot		FAO
Chinthaka Mendis		Ministry of Foreign Affairs
David Knaute		Foundation of France
Leslie Dharmawardana		Church of Ceylon

Upamalikaa Liyange		SLRCS
Shahina Zhar		Centre for Policy Alternatives
Alexandra Owens		Centre for the Study of Human Rights
Ganga Jasenthuliyana		CCF Sri Lanka
Nishanthi Wagawatta		CCRC
Kumudhini Rosa		CCRC
Gian Pietro Testolin		Italian Cooperation
R.H.W.A Kumarasivi		Ministry of Relief, Rehabilitation and Reconciliation
Y.K.H de Silva	Consultant	Human Right's Commission, Disaster Relief Monitoring Unit
Lionel Fernando	Chairperson	Human Right's Commission, Disaster Relief Monitoring Unit
Amitha Chetty		Coalition for Assisting Tsunami Affected Women
Cyrene Swiwardhana		Centre for Policy Alternatives
Bhavani Fonsika		Centre for Policy Alternatives
Thannja Juyathnga		Ministry of Foreign Affairs, Sri Lanka

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<http://www.customs.gov.lk/ordinance.htm>

PART IV

REGULATIONS INWARDS

27. And whereas it is expedient that the officers of customs should have full cognizance of all ships coming into any port or place in Sri Lanka, or approaching the coast thereof, and of all goods on board or which may have been on board such ships, and also of all goods unladen from any ships in any port or place in Sri Lanka;

(9, Law 35 of 1974)

No goods to be landed nor bulk broken before report.

It is enacted that no goods shall be unladen from any ship arriving from parts beyond the seas at any port or place in Sri Lanka, nor shall bulk be broken after the arrival of such ship within the territorial waters of Sri Lanka, before due report of such ship and sufferance granted, in manner hereinafter directed; and that no goods shall be so unladen except at such times and places and in such manner and by such persons and under the care of such officers as hereinafter directed; and that all goods not duly reported, or which shall be unladen contrary hereto, shall be forfeited; and if bulk be broken contrary hereto the master of such ship shall forfeit a sum not exceeding one hundred thousand rupees; and if after the arrival of any ship within the territorial waters of Sri Lanka any alteration be made in the stowage of the cargo of such ship so as to facilitate the unloading of any part of such cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, such ship shall be deemed to have broken bulk:

Times and places of landing and care of officers. (17, 83, of 1988) Goods not reported or entered, forfeited.

Penalty.

Provided always that coin, bullion, cattle and other livestock, and passengers with their baggage, may be landed previous to report, entry or sufferance.

28. The master of every ship arriving at any port or place in Sri Lanka, whether laden or in ballast, shall come within twenty-four hours after such arrival, and before bulk be broken, to the Custom-house, and there make a report in writing, and such report shall be in duplicate, and shall make and subscribe a declaration to the truth of the same before the Director-General or other officer of Customs of the arrival and voyage of such ship, stating the name, country, and tonnage, and if British, the Port of registry, the name and country of master, the country of the owners, the number of the crew, and how many are of the country of such ship, the number of passengers, if any, and whether such ship be laden or in ballast, and if laden, the marks, numbers, and contents of every package or parcel of goods on board, and the particulars of such goods as are stowed loose, and where any such goods were laden, and where and to whom consigned and where and what goods, if any, had been unladen during the voyage, and what

Ship and Cargo to be reported within twenty four hours of arrival of ship. Particulars of report.

(83, 83 of 1988)

part of the cargo, if any, is intended for exportation in such ship to parts beyond the seas, and what stores or stock remain on board such ship, as far as any of such particulars can be known to him; and further the master shall answer all such questions concerning the ship and the cargo, and the crew and the voyage, as shall be demanded of him by such officers; and if any goods shall be unladen from any ship before such report be made, or if the master shall fail to make such report, or if after such report any package shall have been opened, or if he shall make an untrue report, or shall not truly answer the question demanded of him, he shall be liable to a penalty not exceeding one hundred thousand rupees.

(38, 83 of 1988)

29. The master of every ship shall at the time of making such report, deliver to the Director-General the manifest of the cargo of such ship, when a manifest is required, and, if required by the Director-General, shall produce to him any bill or bills of lading, or a true copy thereof, for any and every part of the cargo laden on board; and in case of failure or refusal to produce such manifest or to produce such bill of lading or copy, or if such manifest or bill of lading or copy shall be false, or if any bill of lading be uttered, or produced by any master, and the goods expressed therein shall not have been bona fide shipped on board such ship, or if any bill of lading uttered or produced by any master shall not have been signed by him or other duly authorized person, or any such copy shall not have been received or made by him previously to his leaving the place where the goods expressed in such bill of lading or copy were shipped, then in every such case such master shall be liable to forfeit a sum not exceeding one hundred thousand rupees.
30. Officers of the Customs may board any ship arriving at any port in Sri Lanka, and freely stay on board until all goods laden therein shall have been duly delivered from the same, and such officers shall have free access to every part of the ship, with power to fasten down hatchways, and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board such ships; and if any place or any box or chest be locked and the keys be withheld, such officers, if they be of a degree superior to tide waiters or boatmen, may open any such place, box, or chest in the best manner in their power, and if they be tide waiters, or boatmen, or only of that degree, they shall, send for their superior officer who may open or cause to be opened any such place, box, or chest in the best manner in his power; and if any goods be found concealed on board any such ship they shall be forfeited; and if the officers shall place any lock, mark, or seal upon any goods on board, and such lock, mark, or seal be wilfully opened, altered, or broken before the delivery of such goods, or if any of such goods be secretly conveyed away, or if the hatchways after being fastened down by the officer be opened, the master of such ship shall be liable to forfeit a sum not exceeding one hundred thousand rupees.

Master to deliver manifest and, required, bill of lading or copy. (83, 83 of 1988)

Penalty on failure. (19, 83 of 1988)

Officers to board ships.

To have free access to all parts.

May seal or secure goods and open locks.

Goods concealed forfeited.

If seal, & c. broken, master to forfeit one hundred thousand rupees. (20, 83 of 1988).

31. Officers of the Customs may be stationed on board any ship while within the limits of any port or place in Sri Lanka, and the master of every ship on board of which any officer is so stationed shall provide every such officer with suitable shelter and accommodation while on board, and in case of neglect or refusal so to do shall be liable to forfeit a sum not exceeding ten thousand rupees. **Officers may be stationed, in ships within the limits of any port (22, 83 of 1988)**
32. If any ship shall arrive at any port in Sri Lanka without clearance or other paper which it is usual to grant at the place or places from which such ship shall have come, the master shall be liable to a penalty not exceeding twenty-five thousand rupees or if any goods entered on any clearance, or other paper granted at the place from which any ship shall have come, shall not be found on board such ship, or if the quantity found be short, and the deficiency be not duly accounted for, or if goods sent out of the ship be not landed at the appointed places, the master shall, in respect of any goods which are missing or deficient and not accounted for, be liable, if such goods are chargeable with duty, and if such duty can be ascertained, to a penalty of twenty-five thousand rupees or a sum not exceeding the amount of the duty chargeable thereon, whichever is the greater amount, or if such duty cannot be ascertained or if such goods are not chargeable with duty, to a penalty not exceeding ten thousand rupees for each missing or deficient package, and the Director-General is authorized to require the payment of such penalty, and to decline the granting of clearance outwards to the master of any vessel so liable, and refusing to pay such penalty; **Penalty on master not having clearance and if cargo do not correspond with ships' papers, or if goods sent out of vessels be not landed at the appointed places. (22, 83 of 1988)**
- Provided always that nothing herein contained shall be construed to prevent the Director-General from accepting an explanation in the absence of clearance, or permitting at his discretion the master of any ship to amend obvious errors or to supply omissions from accidents or inadvertence, by furnishing an amended report, or accepting at his discretion an estimated single duty in respect of any class of goods. **(83, 83 of 1988)**
33. No goods shall be unshipped or carried from the importing ship to any wharf or other place, except under such rules, regulations, and restrictions as the Director-General may from time to time direct and appoint; and all goods unshipped or carried contrary to such rules, regulations, and restrictions, or any of them, shall be forfeited, together with the boat or other means used for the conveyance of such goods; and every person knowingly concerned in the unshipping or carrying of such goods, or into whose hands and possession such goods shall knowingly come, contrary to such rules, regulations, and restrictions shall forfeit and pay a sum not exceeding one hundred thousand rupees, or treble the value of such goods, at the election of the said Director-General. **Goods unshipped from the importing vessel, or landed contrary to the regulations of the Director-General forfeited. Penalty on persons concerned. (23, 83 of 1988)**
34. (1) No goods shall be unladen from any ship until a surffiance shall have been granted by the Director-General for the landing of the same, and no goods shall be landed except at the place appointed and expressed in such **Provision with respect to unloading goods, depositing and removing of the same (83, 83 of 1988)**

sufferance; and all goods so landed shall be taken and deposited in the warehouse of the Republic, and within three clear days from the date of landing the importer shall make a full and complete entry thereof as hereinafter provided, and shall either pay down all duties which shall be due and payable on such goods, or shall duly warehouse the said goods, or, if the goods be free of duty, shall so enter the same; and in default of such entry being made and the said goods being removed within three clear days as aforesaid such goods shall during such time as they may remain in the warehouse be liable to additional rent at such rate as may be fixed by the Minister by regulation under section 15; and all goods unladen, landed, or removed without such sufferance, or contrary to the directions in such sufferance, shall be forfeited.

from the warehouse of the Republic and penalties for failure to warehouse within prescribed time.

(11, Law 35 of 1974).

- (2) In computing the said period of three clear days, public holidays shall not be taken into account; but, in ascertaining the period for which any goods are liable to double rent, account shall be taken of public holidays, and a fractional part of a period of twenty-four hours shall count as a full period of twenty-four hours.

35. The master of any ship from which goods or cargo shall be unladen outside such hours as the Director-General with the sanction of the Minister may from time to time prescribe, or on any day when the Customs house is closed for business, without permission from the Director-General shall be liable to a fine not exceeding one thousand rupees and the boat and other means used for the conveyance of such goods shall be liable to be forfeited.

No goods to be unladen except during the legal hours and days of business.

(83, 83 of 1988).

(2 Law 35 of 1974).

36. Except in special cases sanctioned by the Director-General, ten days, exclusive of Public holidays, shall be allowed for the discharge of the import cargoes of vessels not exceeding 150 tons burthen; and twenty-five days for vessels exceeding that burthen; and the said period shall be calculated from the date on which the vessel was admitted to entry and sufferance granted; and if any goods remain on board after the periods above fixed the Director-General may order such goods to be at once landed, and in case of neglect of such directions or of unnecessary delay or other unwarranted cause the Director-General may authorize the landing of the cargo and its conveyance to the warehouse of the Republic; and if the duties warehouse rent, and charges of landing and freight due upon any goods so landed shall not be paid within one month after such landing the same shall be sold and the produce thereof applied, first to the payment of freight and landing charges, next of duties and warehouse rent, and the overplus, if any, shall be paid to the owner of the goods, if claimed within twelve months from the date of such sale, otherwise such surplus shall be brought to account as revenue;

(83, 83 of 1988) Cargo in ships of 150 tons to be landed within ten days, and exceeding 150 tons within 25 days after arrival of such ship.

(83, 83 of 1988) In default Director General may land and convey goods to warehouse of the Republic.

Duties, & c. to be paid within one month, or goods to be sold.

(83, 83 of 1988)

Provided that it shall be lawful for the Director-General to have any small

package or parcel of goods landed and conveyed to the warehouse of the Republic out of any ship whatever, although the periods above specified shall not have expired.

(83, 83 of 1988)

37. (1) Any goods in a vessel being goods mentioned in the import manifest as good intended for transit in the same vessel to any port outside Sri Lanka may be allowed, to be so transmitted without payment of duty.

Goods in transit and goods transhipped allowed without payment of duty. (24, 83 of 1988)

- (2) No transshipment of any goods shall be made without payment of duty except by the special order of the Director-General or other proper officer, and after due entry of the goods and subject to such conditions as may be prescribed by the Minister. If any goods are transhipped, or attempted to be removed from one vessel to another contrary to the provisions of this section, such goods, together with the boat and other means used for conveying the same, may be seized and shall be liable to forfeiture.

(83, 83 of 1988)

38. With all goods unladen from any ship there shall be sent with each boat load a boat-note, specifying the number of packages the marks and numbers or other description thereof, and such boat-note shall be furnished and signed by an officer of the ship, and if there be a custom-house officer on board the boat-notes shall be signed by such officer also; and the findal and owner of the boat into which the goods have been laden shall be held responsible for the due landing and delivery at the custom-house of all the goods so laden and specified in the boat-note, and shall be liable to treble the duties due on any deficiency; and if any goods be found in a boat without a boat-note, as above provided for, or in excess of the quantity specified in the boat-note, or if the boat be found deviating from the proper course to the proper place of landing, the boat containing such goods may be detained by any officer of the customs, and unless the cause of deviation or excess be explained to the satisfaction of the Director-General such boat and such goods shall be liable to forfeiture.

Boat notes to accompany goods unladen from any ship &c. c.

The owner of each such boat shall provide the Director-General within such period as may be specified in that behalf by the Director-General a statement setting out the quantity and description of the goods so laden, the person to whom and the place at which he has delivered those goods, and such other particulars as the Director-General may, by written order issued to him not less than seven days before the expiration of the aforesaid period, require him to furnish. Any such owner who fails to provide such statement within such period shall be liable to a penalty of ten thousand rupees.

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

25, 83 of 1988)

39. The stores of every ship shall be subject to the same duties and the same prohibitions, restrictions, regulations, fines, and penalties, as goods and

Ship's stores

merchandise on importation, and may in like manner be entered for payment of proper duties or to be warehoused.

40. The unshipping, carrying, and landing of all goods and the bringing of the same to the proper place for examination or for weighing, and the putting of the same into and out of the scales, and the measuring, counting, unpacking, and repacking, and the opening and closing of the same, and removing to and placing them in the proper place of deposit shall be performed by and at the expense and risk of the importer, consignee, or agent.

Goods to be landed and examined at the expense of importer.

41. All goods placed in the warehouse of the Republic or other warehouses by any person shall be stowed by such person so as to afford easy access thereto, and in such parts or divisions of the warehouse and in such manner as the Director-General shall direct; and if the stowage be broken the goods shall be re-piled by the person breaking such stowage, in such manner as the Director-General may require.

Goods in warehouse must be properly stowed and re-piled.

(83, 83 of 1988)

(83, 83 of 1988)

42. If any person placing such goods or breaking the stowage shall neglect or refuse to stow or re-pile them as herein-before directed, he shall for such neglect or refusal be guilty of an offence, and be liable to a fine not exceeding one hundred rupees.

Penalty for neglect or refusal (2, Law 35 of 1974)

Expenses to be paid to Director General.

Provided that it shall be lawful for the person so offending to avoid prosecution for the offence by tendering double the sum incurred in properly stowing or re-piling the goods; and if such sum be duly tendered before the institution of the prosecution, no further proceedings shall be had against such person for the offence aforesaid. In case of prosecution, the Magistrate shall direct so much of the fine as shall be sufficient to cover the expense of properly stowing and re-piling the goods to be paid to the Director-General.

(83, 83 of 1988)

43. If any goods enumerated in the table of prohibitions and restrictions in Schedule B shall be imported or brought into Sri Lanka contrary to the prohibitions and restrictions contained in such table in respect thereof, such goods shall be forfeited, and shall be destroyed or disposed of as the Director-General may direct:

Prohibitions and restrictions.

(83, 83 of 1988)

Provided that if any dangerous substance be imported or brought in to Sri Lanka without the license of the Minister, or contrary to any of the regulations which may be made from time to time by the Minister, for the safe landing and deposit of such substance, the person importing or bringing the same to Sri Lanka and any person concerned in such importation or bringing of the same, shall, in addition to the forfeiture above provided, be guilty of an offence and be liable to a fine not exceeding two thousand rupees.

(2, Law 35 of 1974)

44. If any person exports or attempts to export or take out of Sri Lanka any goods enumerated in the table of prohibitions and restrictions in Schedule B, in contravention of the prohibitions and restrictions contained in such table in respect thereof, such goods shall be forfeited, and shall be destroyed or disposed of as the Director-General may direct. Goods exported contrary to the prohibitions and restrictions in schedule B to be forfeited. (S3, S3 of 1988)

- *46. (1) Where any goods imported into Sri Lanka have sustained damage, the Director-General may, upon claim made in that behalf and upon proof to his satisfaction that such damage was sustained after the goods had been shipped in the importing ship and before the goods had been landed in Sri Lanka, make an abatement of the whole or any part of the duty chargeable thereon, as he may in his discretion determine. Abatement of duty on damaged goods. (S3, S3 of 1988)

- (2) Every claim under subsection (1) for the abatement of duty shall be made by the importer or consignee of the goods in such form and in such manner as the Director-General may prescribe. (S3, S3 of 1988)

- (3) If the importer or consignee of the goods is not satisfied with the abatement made by the Director-General, the Director-General may call upon two impartial merchant or representatives of insurance companies to examine the goods and report to what extent in their judgment the goods are lessened in value by the damage they have sustained, and may, in his discretion, having regard to such report, vary the original abatement. (S3, S3 of 1988)

- (4) Where an abatement of the whole duty originally chargeable on any goods is made under subsection (1), or where any damaged goods are abandoned by the importer or consignee thereof, the Director-General may in his discretion take those goods for the use of the State, or order that those goods be destroyed or removed from the customs premises under the supervision of an officer of customs and at the expense of the importer or consignee of the goods. (S3, S3 of 1988)

- (5) Where the importer or consignee of any goods fails to pay any sum incurred under subsection (4) in the destruction or removal of such goods, it shall be lawful for the officers of customs to refuse to pass any other goods belonging to such importer or consignee until such sum is paid:

Provided that nothing in the preceding provisions of this subsection shall be deemed to prohibit the recovery of such sum from such importer or consignee as a debt due to the State.

47. The person entering any goods inwards, whether for payment of duty or to be warehoused, or for payment of duty upon the taking out of the warehouse, or whether such goods be free of duty, shall deliver to the Director-General a bill of entry of such goods, on a form of such size and colour as may be specified in that behalf by the Director-General by Notification published in the *Gazette*, and be fairly written in words at length, expressing the name of the ship, and of the master of the ship in which the goods were imported, and of the place from which they were brought, and of the description and situation of the warehouse, if they are to be warehoused, and the name of the person in whose name the goods are to be entered, and the quantity, value, and description of the goods and the number, dimensions, and denomination or description of the respective packages containing the goods, and such other particulars as the Director-General by that or a subsequent Notification may require him to furnish, and in the margin of such bill shall delineate the respective marks and numbers of such packages. The particulars furnished in the bill of entry shall be supported by such documents containing such particulars as the Director-General may, by Notification published in the *Gazette*, require. If such person fails to deliver a bill of entry prepared, and supported by such documents, as aforesaid, he shall be liable to a penalty not exceeding one thousand rupees. Such person shall pay any duties and dues which may be payable upon the goods mentioned in such entry: and such person shall also deliver at the same time two or more duplicates of such bill, in which bill all sums and numbers shall be expressed in figures, and the particulars to be contained in such bill shall be legibly written and arranged in such form and manner, and the number of such duplicates shall be such, as the Director-General shall require, and such bill of entry when signed by the Director-General, or person authorized by him, and transmitted to the proper officer, shall be the warrant to him for the examination and delivery of such goods; but if such goods shall not agree with the particulars in the bill of entry the same shall be forfeited, and such forfeiture shall include all other goods which shall be entered or packed with them as well as the packages in which they are contained.

Importer to deliver bill of entry together with other documents.

(27, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

48. Notwithstanding anything contained in section 47, it shall be lawful for the Director-General, on application made and subject to such regulations as the Director-General may from time to time issue, to allow the delivery of goods with or without examination, prior to the presentation of the bill of entry:

Delivery of goods prior to entry.

(83, 83 of 1988)

Provided that-

(83, 83 of 1988)

(a) any misdescription or under-valuation appearing in the application shall render the importer liable to the penalties imposed by this Ordinance for misdescription or under-valuation in the bill of entry:

misdescription or under-valuation in the bill of entry;

- (b) such delivery shall not in any way be construed as a waiver of the Director-General's right to order forfeiture of the goods for any breach of this Ordinance committed in respect of such goods by the importer thereof, or relieve such importer from any penalty or liability to which he would have been subject had delivery been claimed on the presentation of the bill of entry; (83, 83 of 1988)

- (c) If any sum of money imposed as a penalty be not duly paid, it shall be lawful for the officers of customs to refuse to pass any other goods imported by that importer until the said sum of money is paid.

49. The importer of any goods, or his agent, if unable, for want of full information, to make perfect entry of such goods, may on making and subscribing a declaration to that effect before the Director-General or other proper officer of customs, make a perfect entry by bill of sight for the packages or parcels of such goods, in order that the same may be seen and examined by the proper officer; and within three days after the goods shall have been so examined the importer shall make an entry thereof, either for payment of duty or for warehousing, as the case may be; but if the importer shall neglect to pass such perfect entry within one month after the date of the examination, such goods shall be sold for the payment of duties, warehouse rent, and other charges due thereon, and the overplus, if any, shall be paid to the proprietor of the goods. Entry by bill of sight (83, 83 of 1988)
Perfect entry to be made within three days
In default goods to be sold after one month.

50. No entry nor any warrant for the delivery of any goods, or for the taking of any goods out of any warehouse, shall be valid unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report of the ship, and in the manifest where a manifest is required, and in the certificate or document, where any is required, by which the importation or entry of such goods is authorized, nor unless the goods shall have been properly described in such entry by the denominations and with the characters and circumstance according to which such goods are charged with duty, or may be imported, either to be used in Sri Lanka or to be warehoused for exportation only; and any goods taken or delivered out of any ship, or out of any warehouse, or for the delivery of which, or for any order for the delivery of which, from any warehouse, demand shall have been made, not having been duly entered, shall be forfeited. Entry to agree with manifest & c.
Goods not duly entered forfeited.

50A. (1) Where any goods imported into Sri Lanka have been-

- (a) exempted from the payment of customs duties or other dues chargeable on their importation or charged with customs duty at reduced rate, subject to any conditions stipulated in that behalf; or Action applicable to goods exempted from customs duties and other dues conditionally (28, 83 of 1988)
- (b) allowed into Sri Lanka, under any other law subject to any conditions

to be fulfilled after their importation, and where such conditions are not complied with, then such goods shall be forfeited.

- (2) If such goods are not at the time of forfeiture in the possession of the person in whose name such goods were imported, then such person shall forfeit a sum not exceeding three times the value of such goods as at the time of their importation.
- (3) The provisions of this section shall apply whether or not any undertaking or security has been given under any other provisions of this Ordinance for compliance with the conditions stipulated or for the payment of the duty payable and the forfeiture of any goods under this section shall not affect any liability of any person who has given any such undertaking or security.

51. In all cases when the duties imposed upon the importation of articles are charged according to the value thereof, the respective value of each such article shall be stated in the entry together with the description and quantity of the same, and duly affirmed by declaration by the importer or his agent, and such value shall be determined in accordance with the provisions of Schedule F, and duties shall be paid on a value so determined.
52. Where it shall appear to the officers of the customs that the value declared in respect of any goods is not in accordance with the provisions of Schedule E, the goods in respect of which such declaration has been made shall be forfeited together with the package in which they are contained. Where such goods are not recoverable, the person making such false declaration shall forfeited either treble the value of such goods or be able to a penalty of two thousand rupees, at the election of the Director-General.
- Value of goods for the purpose of ad valorem duties.
(29, 83 of 1988)
- Forfeiture for non-compliance or false declaration. Forfeiture of value where goods not recoverable.
(30, 83 of 1988)
(83, 83 of 1988)