



International Federation  
of Red Cross and Red Crescent Societies

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

# **Thailand**



Photo: International Federation of Red Cross and Red Crescent Societies

**An International Disaster Response Laws,  
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## **Acknowledgements**

### **Commission of study and editor**

Victoria Bannon, IDRL Asia-Pacific Programme Coordinator, International Federation of Red Cross and Red Crescent Societies, Thailand

### **Primary research, interviews and report preparation**

Maxwell Chance from the Disaster Tracking Recovery Assistance Center, Thailand

### **Additional research and editing**

Kimberly Brown, Research Consultant, IDRL Asia-Pacific Programme, International Federation of Red Cross and Red Crescent Societies, Thailand

Jay Abai, Research Consultant, IDRL Asia-Pacific Programme, International Federation of Red Cross and Red Crescent Societies, Thailand

Sandra Schimmelfennig, Director, Disaster Tracking Recovery Assistance Center, Thailand

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All comments on this report should be directed to:

Ms Victoria Bannon, IDRL Programme Coordinator, Asia-Pacific  
International Federation of Red Cross and Red Crescent Societies  
Southeast Asia Regional Delegation, Bangkok, Thailand  
Tel: +66 2 661 8201, ext 288  
Fax: +66 2 661 9322  
Email: [victoria.bannon@ifrc.org](mailto:victoria.bannon@ifrc.org)

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## Introduction

On 26 December 2004, an earthquake measuring 9.1 on the Richter scale<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

Thailand was the second worst-affected country in the Southeast Asia region, after Indonesia. The tsunami caused major damage in six provinces in the south of the country: Ranong, Phang-Nga, Phuket, Krabi, Trang and Satun.<sup>4</sup> According to the Ministry of the Interior, 5,395 people were killed, 8,457 injured, and 2,932 missing. There were 12,017 households (58,550 people) in 407 villages that were affected.<sup>5</sup> Although numbers killed in Thailand were considerably lower than in Indonesia and Sri Lanka, the world spotlight immediately focused on Thailand because the affected areas included popular tourist destinations.

## Purpose of this report

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

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

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<sup>1</sup> This information is from the U.S. Geological Survey website and can be accessed at <http://earthquake.usgs.gov/eqcenter/eqinthenews/2004/usslav/>

<sup>2</sup> 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](http://www.ifrc.org/cgi/pdf_appeals.pl?04/2804PlanofAction2005-2010.pdf).

<sup>3</sup> 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](http://www.ifrc.org/cgi/pdf_appeals.pl?04/2804PlanofAction2005-2010.pdf).

<sup>4</sup> Anat Ruangrassamee and Panitan Lukkunaprasit, *Tsunami-Induced Damage to Lifelines*, Department of Civil Engineering, Chulalongkorn University, available at <http://www soi.wide.ad.jp/soi-asia/conference/tsunami/material/anat.pdf>, accessed 2 July 2006.

<sup>5</sup> These figures are from March 21, 2005, and the last official posting by: Department of Disaster Prevention and Mitigation, Ministry of the Interior. *Earthquake/Tsunami Victim's Relief Efforts*. [http://www.disaster.go.th/html/english/general/ddpm\\_tsunami.pdf](http://www.disaster.go.th/html/english/general/ddpm_tsunami.pdf)

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

## Country Background

### Social and Political Context<sup>6</sup>

The Kingdom of Thailand has its origins in the 14th century. Thailand was known to Europeans as Siam until 1939, and was never subject to colonial rule, unlike every one of its neighbors in Southeast Asia.

Thailand's population is nearly 66 million people and is predominantly rural, at 68 percent. People of Thai ethnicity make up 80 percent of the population, with Chinese and Malay groups comprising the other main ethnic identities. In 2004, Thailand acknowledged that over 188,000 refugees and migrant workers from Myanmar contribute significantly to the labor economy.

Theravada Buddhism is the official religion of Thailand, comprising about 90 percent of the Thais. However, the constitution mandates the support and protection of all religions, and the promotion of harmony between followers of all religions.<sup>7</sup> Islam is the second largest religion, with adherents comprising almost 4 percent of the population. Christianity and Hinduism claim .05 and .01 percent respectively. More recently, there has also been upsurge in violence in the three southernmost, Muslim-majority provinces.

### Government and Legislative Structure<sup>8</sup>

A constitutional monarchy was established in 1932 and in 1992 reforms and amendments to the constitution opened the door for multi-party democracy and a more expansive, representative Parliament.

His Majesty King Bhumibol Adulyadej, sovereign since 1946, has a powerful informal influence over government, but has never exercised his constitutional power to veto legislation or dissolve the legislature. He is also the head of the Executive Branch of government, and advised by the 18-member Privy Council. Executive power is conducted through the Council of Ministers and the Prime Minister is the head of government. There are currently 19 ministries, with one minister attached to the Prime Minister's Office.

The legislature, called the National Assembly (*Rathasapha*), consists of a 200-member Senate (*Wuthisapha*) and a 438-member House of Representatives (*Sapha Puthaen Ratsadon*). The current Constitution is the sixteenth since 1932 and was approved by the National Assembly on Sept. 27, 1997. The hierarchy of Thai law and legislation is as follows:

- 1) The Constitution
- 2) "Acts" passed by the Parliament.
- 3) "Regulations" and "Notifications" enacted by the respective Ministries.

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<sup>6</sup> Unless referenced otherwise, this information was obtained from the *U.S. Library of Congress - Federal Research Division, Country Profile: Thailand, September 2005*.

<sup>7</sup> *Constitution of the Kingdom of Thailand, Section 73*.

<sup>8</sup> Unless referenced otherwise, this information was obtained from the *U.S. Library of Congress-Federal Research Division, Country Profile: Thailand, September 2005*.

The Supreme Court is called the *Sandika*. Below it are the Court of Appeal and the Courts of First Instance. An independent Constitutional Court interprets the Constitution. Separate administrative courts adjudicate disputes involving state agencies, state enterprises, local government organisations, and individuals and state officials.

Thailand's administrative divisions consist of 76 Provinces (*changwat*) including Bangkok Municipality. Within the provinces, there are a national total of 795 districts (*amphoe*) and 7,255 rural administrative districts (*tambon*), and 69, 866 villages (*muban*).

Local government is based on principles of decentralization. The most recent constitution of 1997 calls for measures to be put in place toward decentralization of power to local authorities<sup>9</sup> and the subsequent *Decentralization Act" of 1999*<sup>10</sup> focuses on powers and duties in the management of public services and taxation issues. For Thailand, then, "[d]ecentralization is ... a transfer of powers and responsibilities in providing social services to the local government organisations to directly and freely serve the needs of the local inhabitants. It is by no means the assignment from the State."<sup>11</sup>

Another feature of decentralization in the Constitution of 1997 was the further empowerment of Tambon Administrative Offices and Tambon Administrations.<sup>12</sup> The Tambon, historically formed to deal with sanitation, acquired real administrative authority with an elected Tambon Council and may come to play a more important role in disaster preparedness and planning and future relief operations.<sup>13</sup>

## Disasters in Thailand

Geographically, Thailand is divided into four regions; the North, the Central or the Chao Phraya River Basin, the Northeast on the Korat Plateau and the Southern Peninsula. The mountainous northern regions are prone to water-related disasters such as flash floods, landslides and debris flow. The northeast is an arid area on Korat Plateau and frequently suffers inundation during the rainy season, and severe drought and cold spells, respectively, during summer and the cool season. In this region, drought is the greatest threat, and has been aggravated by the El Niño-Southern Oscillation oceanic anomaly. The central region, the fertile land known as the "Rice Bowl" of the country, often experiences river flooding and urban deluge during the rainy season. The hilly Southern Peninsula on the West coast and the coastal plain on the eastern side have occasionally experienced flash floods, mudslides, tropical storms and forest fires.<sup>14</sup>

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<sup>9</sup> *Constitution of the Kingdom of Thailand*, Sections 78, 282-290.

<sup>10</sup> *Act of Plans and Process for Decentralization of Power from the State to the Locality, 1999*.

<sup>11</sup> Tanchai, Woothisarn. *Decentralization in Thailand: Issues of Government Policy Formulation Towards Decentralization*. College of Local Government Development, King Prajadhipok's Institute. [http://www.decentralization.ws/icd2/papers/decent\\_thailand.html](http://www.decentralization.ws/icd2/papers/decent_thailand.html).

<sup>12</sup> These most basic units of local government were first legislated in their current administrative form in the *Tambon Council and Tambon Administrative Authority Act of 1994*.

<sup>13</sup> Interview with official in DDPM (Department of Disaster Preparedness and Mitigation), March 9, 2006.

<sup>14</sup> This information was obtained from the Asian Disaster Preparedness Center, <http://www.adpc.net/infores/country-thai.html>, and *Thailand's Country Report*, The Research and International Cooperation Bureau, Department of Disaster Prevention and Mitigation, The Ministry of the Interior.

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

Disaster	Date	Total Killed	Disaster	Date	Total Affected
Wave / Surge	26-Dec-04	8,345	Drought	Jan-99	6,000,000
Wind Storm	27-Oct-62	769	Flood	Jun-96	5,000,000
Flood	19-Nov-88	664	Drought	Feb-02	5,000,000
Wave / Surge	Jun-55	500	Flood	8-Sep-95	4,280,984
Wind Storm	3-Nov-89	458	Flood	Oct-02	3,289,420
Flood	3-Jan-75	239	Flood	3-Jan-75	3,000,093
Flood	8-Sep-95	231	Drought	Mar-91	2,500,000
Flood	28-Oct-95	200	Flood	Jul-00	2,500,000
Flood	Oct-02	154	Wind Storm	17-Aug-91	1,894,238
Flood	8-Aug-01	104	Flood	Aug-78	1,628,400

Created on March-22-2006 - Data Version v05.06 Source: Emergency Disasters Database (**EM-DAT**): The Office of U.S. Foreign Disaster Assistance (**OFDA**)/Center for Research on the Epidemiology of Disaster (**CRED**) International Disaster Database, [www.em-dat.net](http://www.em-dat.net) - Universite catholique de Louvain - Belgium

## National disaster management legislation and structure

It has been recognized that the "legal framework and resulting structural arrangements for disaster management" are "relatively clear in Thailand."<sup>15</sup> The primary disaster legislation in Thailand is the *Civil Defense Act of 1979*. It is "the most important because it covers all kinds of disaster, prescribes clearly [the] jurisdiction and responsibilities of concerned organisations, and also contains systematic process of disaster management."<sup>16</sup>

The strictures of the Act are implemented by the Ministry of the Interior, whose Civil Defense Committee is responsible for policy. Coordination and implementation of disaster relief operations is the responsibility of the Civil Defense Secretariat. Currently, the acting Secretariat to the Committee is the Department of Disaster Prevention and Mitigation (**DDPM**), formed in 2002.

The DDPM directs and gives support to the provincial governors (the provincial civil defense directors) and the district chief officers. Provincial government is the primary implementer of relief and reconstruction operations, and the *Civil Defense Act of 1979* gives the governor authority to mobilize public and private resources toward relief efforts. Provincial governors do not have authority over the military, which is directed by the Defense Ministry (and ultimately the Prime Minister), but the governors are able to make a request for assistance to the commander of the military unit in that area.<sup>17</sup>

The other significant authority related to disaster management is the *National Safety Council Regulation of 1995*, promulgated and enforced by the Prime Minister's Office. This regulation stipulates the formation of the National Safety Council whose duties, as representative of the

<sup>15</sup> *National Workshop on Tsunami Lessons Learned and Best Practices in Thailand, Report and Summary of Main Conclusions*, Tsunami Evaluation Coalition (TEC), Bangkok, 30-31 May, 2005, [http://www.alnap.org/tec/pdf/lessons\\_thailand.pdf](http://www.alnap.org/tec/pdf/lessons_thailand.pdf)

<sup>16</sup> Asian Disaster Reduction Centre, "Legal System", *Disaster Information on Member Countries: Thailand* (undated) [http://www.adrc.or.jp/nationframe.php?URL=/management/THA/Thailand\\_Legal\\_System.html&Lang=en&NationCode=764](http://www.adrc.or.jp/nationframe.php?URL=/management/THA/Thailand_Legal_System.html&Lang=en&NationCode=764) accessed 9 February, 2006

<sup>17</sup> Asian Disaster Reduction Centre, *The Structure of Civil Defense Organization in Thailand*. 2002. [http://www.adrc.or.jp/counterpart\\_report/thai/CDM.htm](http://www.adrc.or.jp/counterpart_report/thai/CDM.htm).

Prime Minister, pertain to national oversight of safety planning, including disasters and disaster preparedness.<sup>18</sup>

## Response to the tsunami in Thailand

The following section provides a brief chronology and key activities conducted by the various responders, both local and international and also documents some of the key legal and institutional arrangements put into place to manage the relief and recovery operations.

### Response of the Thai Government<sup>19</sup>

Nearly every agency surveyed in this study praised the Royal Thai Government's (RTG) rapid and efficient response during the initial emergency. Participants in a key United Nations (UN) workshop also commended the RTG's rapid and relatively organized response, while "very limited secondary loss of life was experienced in the affected areas."<sup>20</sup> Furthermore, Thailand's strong public health system received credit for one of the most effective medical operations ever for a disaster area. Teams of doctors and nurses were mobilized very quickly, resulting in mortality rate of only 0.3% of those treated, despite the severity of wounds and a highly contaminated disaster environment.<sup>21</sup>

Unlike many major disasters, the local and national infrastructure needed to support the relief effort was relatively undamaged in Thailand. The legal framework and structural arrangements (a clear, hierarchical chain of command) already in place facilitated a rapid response on the part of the RTG. The invocation of the *Civil Defense Act of 1979*, allowed senior government staff to be delegated to official districts overnight, brought tsunami response of different line ministries under the central coordination the Ministry of the Interior and released preexisting budgets for relief efforts.<sup>22</sup>

### Day 1 – Rescue and request for international assistance

Within the first day, the Prime Minister of Thailand sent navy vessels for search and rescue and the Ministry of Public Health called to action more than 100 rescue teams and set up a Rescue Center in Phuket. Although it requested assistance, the Ministry of Foreign Affairs (MFA) asked the UN to not refer to it as an "international appeal". Requests were made for the provision of search and rescue helicopters, personnel and experts, forensic medical teams, medical supplies, body bags and formalin. The RTG also requested support from the UN to coordinate international relief efforts.

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<sup>18</sup> Further disaster related legislation includes the *Building Control Act of 1979*, and the *Fire Prevention and Control Act of 1952*.

<sup>19</sup> Unless cited otherwise, the data for this section comes from: *Tsunami Thailand: One Year Later: National Response and Contribution of International Partners*. United Nations Country Team in Thailand, Office of the UN Resident Coordinator, [www.un.or.th](http://www.un.or.th) (undated); *Indian Ocean Earthquake & Tsunami Updates*, December 31 2004 through July 6, 2005, Center of Excellence in Disaster Management & Humanitarian Assistance, Pacific Disaster Management Information Network, [www.coe-dmha.org](http://www.coe-dmha.org); Merlin-Scholtes, Joana. "Disaster, Field Sit Repts 1-14 (Dec. 26, 2004-May 27, 2005), UN Resident Coordinator, Thailand; *Multi-Agency Evaluation of Tsunami Response: Thailand and Indonesia*. CARE International and World Vision International, August 2005.

<sup>20</sup> *National Workshop on Tsunami: Lessons Learned and Best Practices in Thailand: Report and Summary of Main Conclusions*. May 30-31, 2005.

<sup>21</sup> *Impact limited by Excellent Health Service*, South China Morning Post, December 22, 2005.

<sup>22</sup> Pakrama, Arjuna, Patel, Smruti and Elisabeth Scheper. *TEC Local and National Capacities Evaluation*. Tsunami Evaluation Coalition, February 3, 2006.

### **Day 3 – Ad Hoc Tsunami Taskforce**

By day three, the entire civil and military apparatus had been mobilized including more than 5,000 soldiers, 20,000 volunteers and 200 doctors by the Ministry of Health. The army, together with private operators, deployed mobile satellite vehicles to support the communications system. In an effort to coordinate the incoming international assistance, the MFA launched an “Ad Hoc Task Force on the Tidal Wave Disaster” and appointed a “Humanitarian Relief Coordinator” as well as a three-person team to liaise with the UN. A UN Emergency Relief Fund managed by the MFA Humanitarian Relief Coordinator to provide a quick and flexible mechanism to support the relief operation, logistics support, transport of relief items and personnel, search and rescue operations, and medical supplies.<sup>23</sup>

### **Day 5 – Response strategy, acceptance of “technical assistance” only**

With much of the response thus far focused on the collection and identification of bodies, the Minister of Public Health announced a three-phase response strategy:

- Phase 1 - recovery and identification of human remains;
- Phase 2 - preventing infectious diseases and preventing secondary loss of life;
- Phase 3 - focus on long term recovery and construction.

From the rescue center in Phuket, the Ministry oversaw health services, disease surveillance, immunization and the distribution of clean water and announced that efforts were moving into Phase 2. The Prime Minister also announced that the RTG would decline international funding, but would welcome “technical assistance.”

### **2 Weeks – Division of ministerial responsibility for recovery**

*“A bewildering array of matrixed responsibilities have been assigned to ministries, committees and government entities, but the system is working.”<sup>24</sup>*

By January 3, RTG officials reported that the most pressing humanitarian needs had been met, there was no more need for relief supplies, and that it was time to focus on long term recovery. In early January, the RTG divided responsibilities for rebuilding and recovery among the various levels of government and ministries:

- Provincial governments - clearing beaches and streets;
- Public Works Department - infrastructure repair and maintenance;
- Agricultural Ministry and the military - repair or replacement of fishing craft;
- Ministry of Natural Resources - monitoring the supply and quality of water sources;
- Finance Ministry - assisting business recovery and obtaining loans;
- Education Ministry - school rehabilitation and the care of orphaned children; and
- Interior Ministry - overseeing the establishment of temporary and permanent housing in cooperation with the Ministry of Social Development and Human Security and the military.

The Prime Minister re-confirmed that Thailand did not require financial assistance and turned down an offer from Japan of US\$20 million. However, the Prime Minister said assistance would be welcome to establish a tsunami early warning system in Thailand. Additionally, the Permanent

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<sup>23</sup> ReliefWeb, *United Nations provides urgent support to Tsunami-stricken Thailand*, UNDP, 29 December 2004, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/JMAN-68BFHY?OpenDocument>, accessed on 2 July 2006

<sup>24</sup> Operations update from the Hawaii-based Center of Excellence in Disaster Management and Humanitarian Assistance, 9 Jan 2005, <http://coe-dmha.org/Tsunami/Tsu010905.htm>

Secretary of the Justice Ministry announced that a coordination center for legal assistance to tsunami victims would be established in each province.

### **3-4 Weeks – Establishment of sub-committee for Coordination of International Assistance**

In mid-January, the Prime Minister established a Sub-committee for the Coordination of International Assistance, with three task forces focusing on:

- Coastal and marine environmental restoration, with the United Nations Development Program (**UNDP**) as the lead support agency;
- Geophysical hazards, such as sink holes and saline incursion on fresh water sources, with the Food and Agriculture Organisation as the lead support agency; and
- Livelihood restoration, with the World Bank and UNDP in support.

The Interior Ministry, together with the national police and Interpol, began assuming control of forensic work from the Central Institute of Forensic Science. The Cabinet also announced that the National Operation Center in Phuket would remain open until February 22. Additionally, the Asian Disaster Preparedness Center (**ADPC**) agreed to a government request to be the regional center for an early warning system.

### **10 weeks – Coordination shifted to the Thai International Cooperation Agency**

By mid-March, the Sub-committee for Coordination of International Assistance was disbanded and the MFA's Thai International Cooperation Agency (**TICA**) assumed responsibility for coordinating foreign assistance in cooperation with the DDPM and the UNDP. At the same time, the Ministry of Finance and the Asian Development Bank met to draft a master plan for reconstruction.

### **4 months - Master emergency and evacuation plan developed**

Within four months after the tsunami, the DDPM finished a master evacuation plan for the six tsunami-affected provinces of the south and announced that a preliminary warning system would be operative within a month.<sup>25</sup>

## **Response of the local community, NGOs and Thai Red Cross Society**

The volunteerism and generosity of the Thai community, individuals and businesses, in the immediate aftermath of the tsunami has been broadly praised, particularly in southern Thailand. Indeed, Thai civil society demonstrated a formidable capacity to network, coordinate and plan for relief and recovery. Areas of significant contribution included distribution of food and water, provision of transport and telecommunications facilities, and even community-based psychological counseling.

Soon after the tsunami struck, the Community Organisations Development Institute and the Thai Community Foundation met with civic groups, non-governmental organisations (**NGOs**) and government agencies operating in the area. From these meetings, the Save Andaman Fishing Communities Network was formed which set up working teams for each affected province to help coordinate assistance. They conducted assessments and surveys, began providing immediate

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<sup>25</sup> UNESCO's Intergovernmental Oceanographic Commission, the group coordinating the warning system, will hear reports from more than 20 nations on the progress of emergency and evacuation plans. The warning system will consist of a network of national systems, each owned and operated by the individual country, and linked to each other through a regional base: Centre of Excellence, 'Indian Ocean Earthquake & Tsunami Emergency Update', 28 July 2005, <http://coe-dmha.org/Tsunami/Tsu072805.htm>

relief, and helped initiate many of the community-based, long-term tasks of rebuilding homes, communities and livelihoods.

The Thai Red Cross Society (**TRCS**) was an integrated part of the RTG disaster response and rebuilding activities at the provincial level, and played a major part in coordinating public donations and distributing relief goods to communities. It became the chief distributor of food upon the request of the RTG and played a leading role in organizing and deploying at least 10,000 relief volunteers and other personnel. It also deployed disaster relief teams to distribute a variety of relief goods, medical aid and medical personnel. Soon after the disaster, the TRCS set up a donation center, which garnered national and international assistance amounting to US \$5 million as well as food, clothes, blankets, and other in-kind aid. The TRCS Blood Center also received 27,909 units of donated blood after the tsunami.<sup>26</sup>

## Response of the International Community

Despite the fact that the RTG had not launched an international appeal, unprecedented aid came to Thailand. The UN conferred with the MFA on the 27th of December, and within two days, UNDP had provided US\$100,000 dollars to the MFA for logistics and coordination.<sup>27</sup>

The UN Humanitarian Coordinator almost immediately established a UN Country Team (**UNCT**) for disaster management involving all of the heads of the UN agencies.<sup>28</sup> The UNCT was later involved in providing policy and technical advice for government agencies on a variety of issues, including coordination, local governance, environmental management and disaster preparedness. In the tsunami affected areas, the UNCT focused on the direct support of local government and community-based organisations and their capacity for self-organisation and empowerment.

A large number of UN organisations were involved in the relief activity in various capacities. A summary of the key tasks undertaken by the various UN agencies as of six months after the tsunami is attached in **Annex C**.

Whilst there was no formal international appeal for funding, the UNCT, with approval from the RTG, was still able to access world-wide funding for the tsunami by including project proposals under the "regional component" of the UN Flash Appeal of January 6, 2005.<sup>29</sup> UN Flash Appeals have been the primary mechanism for UN funding of Tsunami relief and rebuilding projects in Thailand.

Additionally, forensics teams comprising nearly 2000 personnel from 31 countries arrived in Thailand, but with little communication or coordination. On January 12th, the RTG established the Thailand Tsunami Victim Identification operation, designed to meet the internationally accepted Interpol guidelines for mass fatality incidents. An Information Management Centre was established in Phuket, later relocated to Bangkok, for the processing of post mortem and ante

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<sup>26</sup> Reports of Thai Red Cross activities for the tsunami operation can be found on the website:

<http://www.redcross.or.th/english/home/index.php4>

<sup>27</sup> UNDAC/UNRC Situation Report No. 3, Thailand, 29 December 2004. This information available at

<http://www.undp.org/bcpr/disred/documents/tsunami/thailand/sitrep3.pdf>, accessed 3 July 2006

<sup>28</sup> United Nations Resident Coordinator of the United Nations System's Operational Activities for Development in Thailand. *Annex 1: Best Practice: UNCT Thailand's Joint Response to the Tsunami Disaster*. Available at

<http://unctdatabase.undg.org/index.cfm?module=AnnualReport&page=GetDocumentFile&AnnualReportDocumentID=179>, accessed 2 July 2006.

<sup>29</sup> United Nations Country Team in Thailand, *Tsunami Thailand One Year Later: National Response and Contribution of International Partners*, UNCT, Thailand, p49.

mortem information relating to victims. The scale of this task required co-operation from the RTG, Royal Thai Police, Interpol, foreign governments and individual agencies and organisations which contributed resources required to continue the process.<sup>30</sup>

The RTG also welcomed strategic and technical assistance as well as direct support to local governments and NGOs in the disaster areas. Many international NGOs (**INGOs**), some of whom were already established in Thailand, also deployed personnel to affected areas after the tsunami. Several foreign national Red Cross/Red Crescent Societies including the French, American, Finnish, Swedish and Hong Kong Branch of the Chinese Red Cross, participated in relief and rebuilding efforts in conjunction with the International Federation of Red Cross and Red Crescent Societies (**International Federation**) and in support of the TRCS. They undertook projects in a number of sectors, including water and sanitation, building, disaster preparedness, livelihoods and health care.<sup>31</sup>

Whilst some foreign relief organisations made efforts to cooperate closely with the government and UN, others have been criticized for insulating themselves from other aid agencies and for not complying with international standards of engagement. Nevertheless, during the ensuing rebuilding effort, both INGOs and local organisations, played key roles working in sectors and with populations where needs would not otherwise have been met.

## **Impact of Laws, Policies, and Practices on International Relief Activities**

### **Legal Status and Registration of Foreign Relief Organisations in Thailand**

During the first few months of the relief operation a number of INGOs commenced activities in southern Thailand with unprecedented amounts of private funding. As many organisations were newly formed, or had commenced operations in Thailand for the first time, they did not automatically have the required authorisation or legal status to conduct activities in Thailand.

There appear to be several different routes that INGOs have pursued to register and obtain legal status depending on their needs and activities in Thailand. However, which route to pursue and the process required was not apparently clearly understood.

#### **Registration as a Thai relief or development “foundation”**

Several INGOs interviewed for this study were in the process of registering as a Thai relief or development "foundation". Applications must proceed through both the Ministry of the Interior, which bases its enforcement on the *Civil and Commercial Code of 1925* (as amended in 1992) and the National Cultural Commission within the Ministry of Education, which bases its jurisdiction on the *National Cultural Act of 1942*.

One organisation considering this route sought the advice of government officials and a lawyer, and was advised that the foundation must have at least one Thai national on the board. This was seen as a significant problem because that person would essentially become a partner in the

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<sup>30</sup> 'Thailand Tsunami Victim Identification Information Management Centre TTVI-IMC-History', Interpol, 3 July 2006. Available at [http://www.interpol.int/Public/asiandisaster/background/TTVI\\_History.asp](http://www.interpol.int/Public/asiandisaster/background/TTVI_History.asp), accessed on 3 July 2006.

<sup>31</sup> Full reports on the activities of the IFRC and National Societies can be found at <http://www.ifrc.org/what/disasters/response/tsunamis/index.asp>

organisation not only in Thailand but elsewhere in the world and have a say in the future of the foundation as a whole, even once operations had ceased in Thailand. Additionally, since the foundation would involve foreign staff on the board, the process had to be completed at the national rather than provincial level and was expected to take up to six months and would need to be renewed every year. Thus, the organisation was advised not to proceed with this option.

### **Registration through the Ministry of Labour**

One foreign staff member in an INGO interviewed for this report was provided a document entitled *Authorization to Enter the Country and Conduct the Business of this Non-Governmental Entity*, granted by the Ministry of Labor, which was claimed gave them the right to have a 'national office' in Thailand. Indeed, a Thai government official reported that INGOs or NGOs which have a local office but 'receive a budget from a foreign country' must register with the Ministry of Labour.<sup>32</sup>

### **Registration of religious NGOs through the Ministry of Culture**

Some religious-based INGOs received legal recognition through sponsorship from the local church with which they are also affiliated internationally. Religious organisations can register with the Ministry of Culture regardless of faith and the NGOs registered this way received a letter of sponsorship from the church to the Ministry of Labour.

### **Letters of support**

Another avenue for legitimization for INGOs engaged in tsunami operations has been through letters of support, although the legal implications of these letters are unclear. At least three agencies surveyed had obtained letters of support from local or regional government officials. At least two agencies obtained letters of support from the head of a provincial branch of the Thai Red Cross. At least two agencies obtained letters from various Ministries for particular programs to 'legitimize' their activities in the eyes of other government entities.

### **Becoming an 'implementing partner' with a registered organisation**

Some unregistered NGOs have been able to operate with a minimum sense of security under the umbrella of, or in close association with, registered NGOs. One large registered Thai NGO funds several smaller Thai NGOs as 'implementing partners' in various projects. At least three new start-up INGOs, unable to register in Thailand, have sought partnerships with larger INGOs, who are not necessarily registered either, but it was believed this would help to increase the legitimacy and accountability of the start-up in the eyes of international donors.

### **Challenges of registration**

In the early stages of the tsunami operation, many organisations did not attempt to register their presence with the government or to obtain formal legal status. In Phang Nga Province, which was the most severely affected by the tsunami, 34 percent of the NGOs started up after the tsunami<sup>33</sup> but not one of these had formally registered.

However, in the following months, many organisations that were new in Thailand reported challenges when they did try to register, claiming that it was difficult to find information about the proper process. The process also seemed unclear to some government officials. One small startup NGO director reportedly approached a provincial labor office to inquire about registration,

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<sup>32</sup> Interview with official in *Thailand International Development Cooperation Agency (TICA), Ministry of Foreign Affairs*, February 27, 2006.

<sup>33</sup> Disaster Tracking Recovery Assistance Center (D-TRAC), Statistics Pages, <http://www.d-trac.org/pages/en/statistics/>.

but the authorities refused to consider it or to provide the necessary paperwork. Indeed, a number of other agencies which have attempted to register since the tsunami have been discouraged from doing so by government officials, who have recommended that only organisations planning to be active for several years in Thailand should complete the process.

One start-up NGO had hired a Thai lawyer in Bangkok to assist them in understanding and implementing the registration process. At the time of the interview, the lawyer had yet to fully understand the process. In Phang Nga, an NGO which had had a strong working relationship with several politicians and government officials, asked a number of different authorities - the Community Development Office, the District Office, members of Parliament (Senators) and the head of the Phang Nga branch of Thai Red Cross - how to register. No one was able to provide a clear answer.<sup>34</sup>

Some organisations decided not to attempt registration. The director of a well known INGO felt that the national registration process was too difficult and instead the organisation obtained a letter of sanction from the *Nai Amphoe* (chief official of the District, or *Amphoe*). They felt this letter granted enough legitimacy to operate effectively in that district. However, they questioned the capacity of the *Nai Amphoe* to truly legitimize them, and were concerned that in the eyes of the national government, they were technically "illegal."

Some small local NGOs also chose not to register, partly to avoid what was perceived as increased monitoring by government but also because NGOs wishing to register must have at least 200,000 Baht in cash or assets, which was not generally the case.

Most organisations interviewed did not feel that the government was actively encouraging or requiring registration of NGOs and that the maintenance of operational transparency and discourse with local officials was sufficient to establish an informal legitimacy. At least two unregistered agencies have been invited to government planning meetings despite their technically 'illegal' status, which has provided some reassurance.

However, some unregistered organisations have expressed concerns over their status – particularly because it has impacted on other processes such as obtaining work permits and tax exemptions, as detailed further in this study. Additionally, some organisations have been trying to keep a low profile whilst working in Thailand for fear that government officials may begin to take action against organisations which have not registered and thus put their relief and recovery programmes in jeopardy.

### **Pre-registered organisations**

NGOs already registered through TICA or the Ministry of Labour before the tsunami struck have not had as much insecurity and uncertainty regarding issues of legitimacy.

Few NGOs interviewed had already been successfully registered in Thailand through TICA. The procedure can take several years and an officer in TICA acknowledged that it can be difficult for an NGO to register this way as the process involves approval through a series of committees involving representatives of several ministries and government offices.<sup>35</sup> The INGOs which have registered with TICA are relatively large and well respected and are considered to have

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<sup>34</sup> Interview with D-TRAC (Disaster Tracking Recovery Assistance Center) [www.d-trac.org](http://www.d-trac.org).

<sup>35</sup> Interview with official in *Thailand International Development Cooperation Agency (TICA)*, Ministry of Foreign Affairs, February 27, 2006.

significant “lobbying” power which assisted their application. TICA’s regulations on NGO registration are also currently under revision.<sup>36</sup>

As in other countries, international organisations such as UN agencies, usually benefit from legal status agreements, replacing the need for separate registration. These agreements recognize the international legal personality of the organisation and grant the organisation a number of facilities, privileges and immunities to enable it to carry out its functions within Thailand and are based on the *Convention on the Privileges and Immunities of the United Nations*<sup>37</sup> and the *Convention on the Privileges and Immunities of the Specialized Agencies*.<sup>38</sup>

The Federation has not yet concluded such a permanent status agreement, instead, it has agreed via an “Exchange of Letters” with the RTG as described previously which grant a certain limited number of exemptions and privileges.

### **Visas and Work Permits for Foreign Staff**

Besides the issue of NGO registration, visas and work permits have been the issue of greatest concern for NGOs with foreign staff working as part of tsunami relief and recovery operations. Indeed, it appears there was no consistently applied system to facilitate or oversee the entry of foreign relief workers following the tsunami.

Legislation regarding the legal status of foreigners working in Thailand is based on the *Working of Aliens Act of 1978*. Under the provisions of this act, a foreigner cannot perform any work or service unless they have been issued a work permit by the Alien Employment Division of Labor Department and Social Welfare Ministry, or unless the individual or the work performed falls within an exception to the Act. The term “work” is defined very broadly in the Act; theoretically, even volunteer or charity work requires a work permit.<sup>39</sup> However the procedure and the types of visa and work permit available for foreign staff entering Thailand to assist with the tsunami, varied depending on whether and with whom the organisation was registered.

Organisations which are registered usually arrange work permits and visas through the agency with which they are registered. Organisations registered with TICA, have sometimes been able to obtain a non-immigrant F visa (for persons performing “official” duties) and do not need to process a work permit.<sup>40</sup> Organisations registered through the Ministry of Labour have typically required a visa *and* work permit. Non-immigrant “F” visas are also granted for a number of activities including work for social welfare organisations.<sup>41</sup> This category includes the Federation under the ‘social welfare’ aspect.

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<sup>36</sup> Interview with official in *Thailand International Development Cooperation Agency (TICA), Ministry of Foreign Affairs*, February 27, 2006.

<sup>37</sup> *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946).

<sup>38</sup> *Convention on the Privileges and Immunities of the Specialized Agencies*, 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948).

<sup>39</sup> Tilleke and Gibbins, ‘Working in Thailand: Foreign/Alien Employment’, Tilleke and Gibbins International, March 2003, page 55. Available at [http://www.tillekeandgibbins.com/Publications/thailand\\_legal\\_basics/working\\_in\\_thailand.pdf](http://www.tillekeandgibbins.com/Publications/thailand_legal_basics/working_in_thailand.pdf) accessed 3 July 2006.

<sup>40</sup> See Ministry of Foreign Affairs Thailand website, this information available at <http://www.mfa.go.th/web/2381.php#regulation>, accessed 3 July 2006

<sup>41</sup> See Ministry of Foreign Affairs Thailand website, this information available at <http://www.mfa.go.th/web/2381.php#regulation>, accessed 3 July 2006

In general, unregistered NGOs have not been able to obtain suitable work permits and visas for their foreign workers. Consequently, they have usually obtained a 30-day tourist visa on arrival and are therefore required to leave and re-enter the country every month.

Based on interviews with foreign aid workers in Thailand, there appears to be a degree of inconsistency regarding the provision of documents that legitimize foreign aid workers and organisations. This has caused a degree of insecurity, affecting not only the individuals concerned but also the sustainability of programmes. In one case, a staff member from an unregistered organisation was advised by Thai authorities to remain on a tourist visa, but was eventually successful in obtaining a non-Immigrant B visa (business visa)<sup>42</sup> although not a work permit. In another case, the visa and working eligibility of a foreign aid worker has depended on the discretion of local or provincial officials. The staff member mentioned having a "special arrangement" with local authorities in this regard.

According to one start-up NGO with several foreign staff, the inability of the government to fully legitimize the status of aid workers has challenged the facility of organisations to maintain transparent and accountable book-keeping relating to staff salaries and related expenses, which creates uncertainty about whether they will continue to receive funding and be able to carry out relief and recovery activities in Thailand.

At least two pre-registered INGOs surveyed also encountered problems in increasing staff numbers in support of tsunami relief efforts. TICA and the Ministry of Labour had allocated quotas on the numbers of foreign staff for individual organisations and would not issue additional visas and work permits. The additional staff arrived anyway and had to operate with tourist visas until they were eventually able to obtain business visas and work permits.

## **Recognition of Foreign Professional Qualifications**

During the tsunami relief operation, no formal exemptions were made to the requirements for the recognition of profession qualifications. As with other areas covered in this report, laws and regulations concerning foreign professional qualifications were not always clear to the organisations involved and compliance has not been actively pursued by the Thai authorities.

In the case of foreign doctors, there is a requirement that all foreign doctors seeking to practice in Thailand must register with the Thai Medical Council and meet certain qualification requirements. The Medical Council requires that foreign doctors pass Thai language tests to obtain a medical license. In this regard, the Medical Council Chairman has stated: "Some may think the Thai-language tests is a barrier to screen our foreigners, but we think this is a must."<sup>43</sup> As of 2003, fewer than 100 doctors had passed these exams.<sup>44</sup> One foreign doctor working for a prominent INGO stated that she is currently registering with the Thai Medical Council, but that the process takes approximately two years.

In reality, foreign aid workers and experts arriving to assist with the tsunami were not particularly proactive in seeking advice on requirements for professionals working in Thailand. One agency

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<sup>42</sup> See Ministry of Foreign Affairs Thailand website, this information available at <http://www.mfa.go.th/web/2381.php#regulation>, accessed 3 July 2006.

<sup>43</sup> "Foreign Doctors Not Allowed to Work in Thailand: Department says no to foreign doctors." The Nation. Jan 13, 2003. [http://www.thaivisa.com/index.php?514&backPID=10&tt\\_news=84](http://www.thaivisa.com/index.php?514&backPID=10&tt_news=84).

<sup>44</sup> "Foreign Doctors Not Allowed to Work in Thailand: Department says no to foreign doctors." The Nation. Jan 13, 2003. [http://www.thaivisa.com/index.php?514&backPID=10&tt\\_news=84](http://www.thaivisa.com/index.php?514&backPID=10&tt_news=84).

reported that there have been instances of unregistered foreign doctors treating patients during the tsunami relief operation, though it was not certain whether or not the provincial authorities had taken any action. It was also reported that only one of the 32 foreign forensic teams that arrived in the days following the tsunami sought permission to provide forensics support from the Ministry of Justice, which was charged with coordinating forensics operations.<sup>45</sup>

Several NGOs interviewed for this study had sought legitimization of medical professional qualifications, but were discouraged by officials and faced with ambiguity regarding applicable laws and regulations. One agency seeking to establish a mobile clinic was told by the Director General of the Ministry of Health in that province that they would not be allowed to register their foreign doctors with the Thai Medical Council, and that only Thai Doctors could do such work. No mention was made of the registration requirements outlined above. As a result their doctors did not treat any patients but worked only as ‘medical advisors’, referring patients to Thai hospitals.

Additionally there was been concern about an absence of clear guidelines about the scope of activities which can be undertaken by a legally present but unregistered foreign doctor, and a sense of insecurity of some who fear that, despite being prevented from registering, there will be negative consequences for not doing so.

Another situation in which a lack of recognition of professional qualifications was mentioned as a potential issue was for architects. One NGO interviewed decided to pass all their architectural designs through a Thai firm for approval to avoid any potential legal problems.

## **Customs and Import Tax Requirements for Relief Goods**

There are a number of possibilities under domestic law for tax exemptions for certain organisations or types of goods. UN agencies and the diplomatic missions of foreign states and their personnel are given customs exemptions on goods brought in to the country, provided they have prior written approval through the Diplomatic Privilege and Immunity Division, Department of Protocol, Ministry of Foreign Affairs concerning the quantity and type of goods (see **Annex D**).<sup>46</sup>

Additionally, there are provisions for the use of Temporary Admissions (A.T.A) Carnets, for the import of “professional equipment” which “allows goods to be temporarily imported into Thailand without payment of duty or taxes if the goods are entitled for admission under the provisions of the international agreements to which Thailand has acceded. The duty and taxes are payable if the goods are not exported within the approved period.” See **Annex E** for further details.

Some exemptions are also provided to agencies and individuals that are regarded as ‘foreign experts’ and registered with the Department of Technical and Economic Operation, now known as TICA. Under the several “Agreements under Technical Assistance Cooperation Programs between Foreign Donors and the Thai Government” the RTG grants tax and duty free allowance to foreign experts working in Thailand. The exemptions apply to personal and household effects,

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<sup>45</sup> *Disaster Response Management: going the last mile, Thailand and Indonesia.* Economist Intelligence Unit briefing paper, Economist Intelligence Unit of "The Economist," 2005.

<sup>46</sup> The Customs Department of the Kingdom of Thailand, "Privileged Goods," <http://www.customs.go.th/Customs-Eng/PrivilegedGoods/PrivilegedGoods.jsp?menuNme=Diplomatic>

in reasonable quantity, as well as one motor vehicle, provided that the goods and motor vehicles arrive in Thailand not earlier than 1 month before or not later than 6 months after the first arrival of foreign experts.”<sup>47</sup> However, these exemptions seem to address only personal goods and vehicles, not to relief goods.

Other exemptions are provided through the so-called *Florence Agreement*, whereby the Committee on Tax and Duty Free Allowance of Educational, Scientific, and Cultural Materials may approve tax and duties exemptions for goods oriented toward those selfsame purposes.<sup>48</sup> Applications for this exemption must be sent to an Office of the Ministry of Education which approves the request and notifies the Customs Department to grant the appropriate waivers.

In the first few days following the tsunami, the Interior Ministry had made several specific requests for material assistance through UN agencies, and these goods were able to receive exemptions. Exemptions also applied to government relief agencies such as USAID, although it was felt by one staff member of a foreign governmental volunteer organisation that this was the result of special ad hoc arrangements with the Thai government rather than through law or formal agreement.

Most NGOs interviewed for this study had a policy of buying goods locally and had never tried to import relief goods to Thailand. This was partly because most supplies were readily available in Thailand, but also because of the anticipated difficulty of getting the goods quickly through customs. During the initial relief phase, goods were flown into Phuket airport from Utapao Airforce Base and other locales within Thailand. Sources consulted in this study gave no indication of any charges for relief goods arriving in these airports during the initial emergency.

Some organisations seeking to bring goods into Thailand at later stages did face some difficulties with receiving exemptions for goods passing through customs. One NGO donated a number of computers for schools affected by the tsunami, but these were blocked in customs for several months despite having a letter of support to the Department of Customs from the Ministry of Education - possibly via the procedure prescribed for the *Florence Agreement*. Another NGO reported having to pay inexplicable fees in customs at several different desks as well as a storage fee of approximately 10,000 Baht for several boxes of school supplies, despite having a letter of support from a governmental development agency tied to a diplomatic mission, which was sponsoring their project.

## **Transport of Goods to Affected Areas**

The impact of the tsunami temporarily closed many coastal roads in Krabi and the worst hit area, Khao Lak in Phang Nga Province. In the immediate aftermath, supply by boat was also limited for fear of more killer waves. Getting relief supplies to victims in the first few days after the tsunami was facilitated by the good fortune that Phuket International Airport was not damaged by the tsunami. Thai police and military helicopters brought supplies and relief personnel to many disaster areas.

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<sup>47</sup> The Customs Department of Thailand, “Importing Privileged Goods”, available at <http://www.customs.go.th/Customs-Eng/PrivilegedGoods/PrivilegedGoods.jsp?menuNme=Diplomatic>, accessed 3 July 2006.

<sup>48</sup> The Customs Department of Thailand, “Importing Privileged Goods”, available at <http://www.customs.go.th/Customs-Eng/PrivilegedGoods/PrivilegedGoods.jsp?menuNme=Diplomatic>, accessed 3 July 2006.

A depot of relief supplies was also established at Utapao Air Base. Utapao played a central role in re-supply of disaster areas not only in Thailand via Phuket International, but throughout the Indian Ocean. The Thai Government "allowed unprecedented access to Utapao" in support of the relief operations, including visa-free access to US military personnel who were responsible for the shipping of at least 4.3m kg of relief supplies throughout the Indian Ocean.<sup>49</sup>

## **Taxation and Bank Accounts**

In general, registered organisations, including INGOs, are liable to pay taxes in Thailand. However, a summary of tax law in Thailand states that certain activities are exempt from value added tax, including "services such as religious and charitable services"<sup>50</sup> Additionally, registered organisations have been able to open bank accounts and receive transfers from overseas.

Unregistered organisations have faced a number of difficulties in this area. Not having a legitimate presence in the country has prevented them from being able to fulfill taxation requirements, including for foreign staff. One unregistered organisation was also concerned about its inability to declare taxes for Thai national staff. Additionally, unregistered NGOs have had trouble opening bank accounts in the name of their organisations and one was obliged to open a private account in a personal name, which has been problematic for receipt of donations and donors in general. Other unregistered NGOs have partnered with an INGO which is registered either in Thailand or abroad. With a letter from their partner organisation, unregistered organisations have been able to open Thai bank accounts.

International organisations are generally exempt from taxes in accordance with the conditions of their legal status agreements referred to previously.

## **Coordination of Assistance and Sharing of Information**

Despite the RTG's establishment of an ad hoc "Task Force for Tsunami Disaster" within the MFA in the days following the catastrophe and the subsequent appointment of TICA as the coordinator of foreign aid, all sources interviewed for this study noted a lack of coordination on the part of the government and between other stakeholders in the districts affected by the tsunami.

Within a matter of hours after the tsunami struck, the government appeared to rely heavily on the UN to coordinate relief efforts and ensure adequate information sharing. However, it was felt by some there was no clear agenda within and between UN offices and large international relief organisations concerning their role in disaster response and in relation to governments.<sup>51</sup>

In an attempt to facilitate coordination through information, TICA, in cooperation with the UNDP, has been operating the Development Assistance Database (DAD).<sup>52</sup> However, they have not been able to cover the activities of aid agencies below the Provincial level. Critics of the utility of this database assert that with the current system, it is not possible to know what projects aid agencies are actually doing, and that DAD is mainly focused on tracking funding. Furthermore, DAD does not track the approximately 40 percent of tsunami aid that has been privately funded, and another estimated 10 percent that has been given by corporations.<sup>53</sup>

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<sup>49</sup> *Disaster Response Management: Going the last mile, Thailand and Indonesia.* Economist Intelligence Unit briefing paper, Economist Intelligence Unit of "The Economist," 2005.

<sup>50</sup> *Thai Visa; Expat Forum; Value Added Tax - VAT in Thailand* [http://www.thaivisa.com/thailand\\_vat.0.html](http://www.thaivisa.com/thailand_vat.0.html).

<sup>51</sup> Interview with an official in ADPC (Asian Disaster Preparedness Center), Bangkok, February, 22, 2006.

<sup>52</sup> Development Assistance Database (DAD), <<http://dadthailand.mfa.go.th/dad/>>

<sup>53</sup> Interview with staff members in Disaster Tracking Recovery Assistance Center (D-TRAC), March 28, 2006.

An official from the DDPM identified communication between government agencies during relief and rehabilitation as a significant issue affecting coordination and quality of assistance. It was remarked that communication during the response was difficult regardless of the highly-praised and centralized national response and its clearly delineated chains of command.

The tsunami may have also have augmented an interest in decentralization, highlighted by indications that the capacity of local governments to meet the needs of tsunami victims was exceeded. For example, sources interviewed in this study, including a government official involved with disaster management policy in Thailand, noted that jurisdiction for post-relief operations rebuilding had been relegated to the district and sub-district levels, but little or no corresponding funding or capacity building was provided. Even where funding was originally made available from the center, it was withdrawn after a period of time without being spent on projects for those in need.

Indeed, a previous report on Thai legislation and government agency jurisdiction in the environmental sector identifies "overlaps in administrative jurisdiction...at the central level amongst government agencies *inter se*, as well as between central and provincial authorities," and "the division of competencies and the lack of coordination amongst the...(government offices)...and the separate laws which they administer."<sup>54</sup> In attempting to track responsibilities of various ministries and committees of the central government versus provincial and local governments, it seems these same comments would also seem to apply to tsunami relief and reconstruction process.<sup>55</sup>

Criticism of a lack of effective coordination also persisted into the rebuilding and development phases. Despite the general consensus that Thailand "proved itself up to the task of dealing with the emergency relief and humanitarian assistance in the immediate wake of the waves,"<sup>56</sup> relief organisations also cited a need for greater access to information, the lack of an adequate database and the fact that there was no clear strategy for action. As a result, there has reportedly been a high degree of overlap in some sectors, and uneven or insufficient distribution in other areas.<sup>57</sup>

### **Quality and accountability of relief and recovery**

Several agencies surveyed felt that the government's inability to coordinate and legitimize aid organisations made it difficult to monitor relief and recovery activities, thus reducing the quality and accountability of assistance and adherence to international standards.

At least two NGOs interviewed mentioned following Sphere standards<sup>58</sup> for specific projects, and another mentioned adherence to the Code of Conduct of the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief. However, most organisations interviewed seemed to consign greater importance to their own internal aid agency

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<sup>54</sup> Tan, Alan K. J. *Preliminary Assessment of Thailand's Environmental Law*. APCEL Report: Thailand, National University of Singapore, 1998. <http://sunsite.nus.edu.sg/apcel/dbase/thailand/reportt.html>.

<sup>55</sup> A good source to study the changing structures and goals of government organizational response to the tsunami are the daily updates at *Indian Ocean Earthquake & Tsunami Updates*, Center of Excellence in Disaster Management & Humanitarian Assistance, Pacific Disaster Management Information Network, [www.coe-dmha.org](http://www.coe-dmha.org)

<sup>56</sup> *Initial Tsunami Aid Euphoria Leaves Reconstruction Hangover: Monsters and Critics*, December 23, 2005, [http://news.monstersandcritics.com/southasia/article\\_1071192.php/Initial\\_tsunami\\_aid\\_euphoria\\_leaves\\_reconstruction\\_hangover?page=1](http://news.monstersandcritics.com/southasia/article_1071192.php/Initial_tsunami_aid_euphoria_leaves_reconstruction_hangover?page=1).

<sup>57</sup> Interview with staff members in Disaster Tracking Recovery Assistance Center (D-TRAC), March 28, 2006.

<sup>58</sup> The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (2nd ed. 2004).

policies and values. At least three NGOs interviewed provided regular written reports of their activities to local government offices.

The following issues were identified as being of particular concern in Thailand:

### **Distribution of relief goods**

Although the RTG and civil society have received praise for their fast and efficient response to the tsunami, there were cases reported of the theft of relief goods and unsuitable donations of aid going to tsunami victims. There were "incidents reported of aid being halted by village chiefs who acted almost like village bullies. They sifted through supplies and took what they wanted before allowing them through." Relief workers were intimidated and complied to "local officials" demands.<sup>59</sup>

It is also reported that the massive volume of foreign material aid caused a number of international relief shipments to be detoured to Singapore and Hong Kong. "The main culprit seemed to be inappropriate donations, particular clothing" not suited to the tropical climate.<sup>60</sup>

It seemed that technical assistance provided by multi-and bilateral donors was welcomed and effectively utilised, whereas large quantities of inappropriate in-kind donations which were provided by individuals and non-governmental organisations could not be utilised. Managing these latter contributions was seen to cause a large and unnecessary burden on disaster management authorities. Additionally, the large number of inexperienced volunteers were also deemed to have had a negative effect on the operation as whole.<sup>61</sup>

### **Religious Organisations**

The *Constitution of the Kingdom of Thailand* allows for religious freedom and approximately 17 percent of the aid organisations that arrived after the tsunami have been faith based.<sup>62</sup> However, there have been accusations of aid being provided on condition of conversion or participation in religious activities.<sup>63</sup> A senior staff member in the ADPC and an official in the Interior Department's DDPM also expressed concern over the inappropriate conditionality of aid and insensitivity to local culture on the part of some faith based organisations.<sup>64</sup>

### **Assistance to migrant workers**

There is significant documentation about the disparity of assistance provided to Thai citizens and foreign tourists, as compared with migrant workers mostly from Myanmar.<sup>65</sup>

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<sup>59</sup> *Disaster Response Management: going the last mile, Thailand and Indonesia*. Economist Intelligence Unit briefing paper, Economist Intelligence Unit of "The Economist," 2005, p. 16

<sup>60</sup> *Disaster Response Management: going the last mile, Thailand and Indonesia*. Economist Intelligence Unit briefing paper, Economist Intelligence Unit of "The Economist," 2005

<sup>61</sup> Above para, *National Workshop on Tsunami: Lessons Learned and Best Practices in Thailand: Report and Summary of Main Conclusions*. May 30-31, 2005, p. 5

<sup>62</sup> Disaster Tracking Recovery Assistance Center (D-TRAC), Statistics Pages, <http://www.d-trac.org/pages/en/statistics/>

<sup>63</sup> Lloyd, Peter. *Claims tsunami aid used as evangelical opportunity*. The World Today, December 19, 2005. <<http://www.abc.net.au/worldtoday/content/2005/s1534097.htm>>; Ghosh, Nirmal, "Churches Sprouting up in Tsunami Zone," Straits Times, December 10, 2005.

<sup>64</sup> Interview with ADPC official, February 26, 2006; Interview with official in DDPM official, March 9, 2006.

<sup>65</sup> Unless specified otherwise, data for this summary comes from: Aid agency interviews, Feb. 14-March 31, 2006; *Discriminatory relief operation and forced deportation against Burmese migrant worker affected by the tsunami*, Asian Human Rights Commission, Urgent Appeal, January 19, 2005; Oberoi, Pia. "Humanitarian Response towards Burmese migrant workers," *Forced Migration Review*, Refugee Studies Centre, Oxford, 2005; Update on Situation for *Burmese Migrant Workers in Phang Nga, South of Thailand*, TAG (Tsunami Action Group), January 29, 2005; An

In January 2005, it was estimated that at least 7,000 migrant workers had been affected by the tsunami, with about 2,300 killed, 4,000 missing and over 3,000 taking shelter in abandoned construction sites.<sup>66</sup> Exact figures are unknown because thousands of migrant workers are unregistered and not included in official statistics.

It has been reported that the level and quality of assistance to migrant workers affected by the tsunami has depended to a large extent on the possession of appropriate papers and identification cards. Indeed, the Thai government stated that only those possessing registration papers would receive assistance. However, many such workers had been unable to obtain the necessary legal status, often as a consequence of their employer refusing to apply for work permits despite having been paid a fee to do so. Additionally, a number of workers lost their identification cards in the tsunami. Thus, many people were completely dependent upon the assistance of other relief organisations.

The challenges facing this group were further exacerbated by fears that their illegal status would be revealed if they approached organisations for help and thus many went into hiding. Reports of people being arrested, detained and deported back to Myanmar by Thai authorities in the wake of the tsunami, regardless of legal status, also created a deterrent for coming forward to receive assistance. There was also reluctance on the part of NGOs to extend their relief services to migrant workers. At least three NGOs interviewed for this study stated that they have never assisted people from Myanmar because of their 'irregular status' in Thailand. One report also states that in the post-tsunami period, local landlords and factories were only employing migrant workers on the condition that they forgo their rights under the *Labour Protection Act (1998)*.<sup>67</sup>

Additionally, it was reported that some migrant workers affected by the tsunami found themselves trapped between the conflicting policies of the Thai and Myanmar governments. Despite having signed an MOU stating that "*Workers of both parties are entitled to wage and other benefits due for local workers based on the principles of non-discrimination and equality of sex, race, and religion*"<sup>68</sup> it was reported that some persons from Myanmar were unable to reclaim the bodies of family members from Thai Morgues. Approximately 70 bodies were not to be released by Thai authorities until the Myanmar government officially recognized them as citizens, something the latter government refuses to do.<sup>69</sup>

A number of human rights groups have condemned the actions of government and relief organisations alike for discrimination in provision of assistance to migrants from Myanmar and a lack of attention to international instruments such as the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, as well

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update on the activities of TAG and the situation of Burmese migrant workers affected by the tsunami in Phang Nga, Southern Thailand, TAG (Tsunami Action Group), March 15, 2005; *Thailand's sea gypsies still adrift after tsunami*, Agence France Presse, December 21, 2005.

<sup>66</sup> *Discriminatory relief operation and forced deportation against Burmese migrant worker affected by the tsunami*, Asian Human Rights Commission, Urgent Appeal, Januar 19, 2005

<sup>67</sup> *Tsunami Response: A Human Rights Assessment*, Actionaid International, January 2006

<sup>68</sup> In 2004, the Thai and Myanmar Governments signed an MOU regarding Burmese migrants in Thailand. See *Multi-Agency Evaluation of Tsunami Response: Thailand and Indonesia*. CARE International and World Vision International, August 2005. The MOU can be found at

<http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/bilateralmous.htm>, accessed 3 July 2006.

<sup>69</sup> Morison, Alan. "Tsunami bodies stranded amid Thai-Myanmese row." *South China Morning Post*, November 16, 2005.

as national agreements and national legislation on human rights and labor.<sup>70</sup> In order to increase access to people being arrested and in hiding after the tsunami, a coalition of NGOs also lobbied the Thai Interior Ministry to enable *Article 17 of the Immigration Act*, the legal framework applicable to migrants, which allows the Interior Minister to permit illegal immigrants to remain in Thailand under certain circumstances.

### **Housing and Building Standards**

It is estimated that over 5,000 homes were destroyed in the tsunami.<sup>71</sup> The framework laws for building regulation are the *Building Control Acts of 1979 and 1991*. These laws cover zoning, however detailed building codes and their enforcement vary by province, with regulations apparently available at Provincial Land Offices.<sup>72</sup> Furthermore, there does not appear to be any legal recourse or standards of fairness for families who have been placed in substandard or inadequate housing.<sup>73</sup>

Many interviewees cited instances of substandard housing and that future homeowners were not consulted on their needs. The army built many houses in a very rapid fashion but the soldiers were not necessarily skilled or experienced in construction. There are numerous reports of cracking walls, inadequate foundations, and small, cramped living quarters. It is widely known among NGOs in Phang Nga Province that scores of families are still living in small, cramped temporary structures. Furthermore, families have been forced to continue occupying temporary shelters despite being granted new permanent housing because their new structures are too small.<sup>74</sup> Other building projects sponsored by some Thai foundations have also proved to be too small for most families. In recent months, most housing construction has been undertaken solely by NGOs.

### **Land Tenure**

Property law concerning private land is contained in the *Civil and Commercial Code (1932)*. But the *Land Code (1954)* contains the main legal provisions covering tenure and administration of land. Under this code the Department of Lands is responsible for maintaining land registers and conducting cadastral surveys.

Accusations of "land-grabbing" of prime coastal territory by commercial developers have surfaced in Thailand and throughout the Indian Ocean.<sup>75</sup> One newspaper reported after the tsunami that, of 47 villages in Thailand that were severely affected, 32 are "embroiled in land disputes," where "business and politics (are) ganging up to push fishermen and villagers off lucrative plots of land."<sup>76</sup> For example, it was reported that in the fishing community of Laem Pom, Phang Nga Province, survivors returning to look for bodies of relatives found their village fenced off and guarded by members of a large corporation. Men carrying firearms prevented

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<sup>70</sup> See Oberoi, Pia. "Humanitarian Response towards Burmese Migrant Workers," *Forced Migration Review*, Refugee Studies Centre, Oxford, 2005.

<sup>71</sup> *Land Rows, migrants, challenge Thai tsunami recover*, Reuters News, December 22, 2005.

<sup>72</sup> Suwannachote, Suphote, Chief of Phuket Land Office.

<http://www.phuketgazette.net/issuesanswers/details.asp?id=899>.

<sup>73</sup> Interview with key official in ADPC (Asian Disaster Preparedness Center), February 26, 2006.

<sup>74</sup> "Community Leaders in Phang Nga Try to Remove Villagers From Temporary Homes." Thai News Service, November 24, 2005.

<sup>75</sup> *Tsunami Response: A Human Rights Assessment*, Actionaid International, January 2006, Leckie, Scott; "The Great Land Theft." *Forced Migration Review*, Refugee Studies Centre, Oxford, 2005.

<sup>76</sup> *Land Rows, migrants, challenge Thai tsunami recovery*, Reuters News, December 22, 2005

them from accessing their deceased family members. Without deeds to the land they lived on, the villagers of Laem Pom are asserting their right to remain on the land through the courts.<sup>77</sup>

It has also been reported that some communities have been moved into temporary camps and placed into new government or NGO housing developments in different areas, far from their previous community and livelihoods. As many of these survivors have no ownership documentation concerning their homes or land they lived on, they have not been able to lay claim to the land against other commercial or political interests.<sup>78</sup>

Indeed, it has been reported that, "[o]f the privately occupied land in Thailand only 15 percent is owned by title deed, while a further 52 percent is held under certificates of utilization. The remaining one-third is undocumented."<sup>79</sup> In some cases, there was no formal documentation of land ownership, despite the fact that some families have lived on the land for generations. In other cases the tsunami washed deeds and other paperwork out to sea and the District Land Office did not necessarily have a full collection of official records. In some cases it was found that people were granted ownership of their new house but not of the land under it.<sup>80</sup>

These issues not only affected the individuals and communities concerned but also posed problems for relief agencies. At least two INGOs will not build on land if the potential home owner could not provide proof of ownership of the land, for fear of later repercussions. However, other NGOs have been building homes for tsunami victims under these conditions.

### **Environmental Concerns and Regulations**

The main framework legislation for environmental law in Thailand is the *Enhancement and Conservation of the Natural Environmental Quality Act of 1992*. Some interesting features of this act are:<sup>81</sup>

- The assignment of responsibility to the Prime Minister or the delegated provincial governor to deal with emergencies or public danger arising from natural disasters or environmental pollution."
- The recognition of the role and significance of NGOs
- The right to information to individuals and compensation to individuals for infraction of environmental laws.
- The prescription of a detailed environmental impact assessment process which incorporates public participation and views of experts in decision-making
- The formulation of a National Environmental Management Plan, and the duties of government agencies to implement the Plan and the responsibility of the Province (*Changwat*) to draw up a *Changwat* action plan to address the circumstances.<sup>82</sup>

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<sup>77</sup> Rice, Alison and Kelly Haynes. *Post-Tsunami Reconstruction and Tourism: A Second Disaster?* Tourism Concern, October 2005, p. 19

<sup>78</sup> Rice, Alison and Kelly Haynes. *Post-Tsunami Reconstruction and Tourism: A Second Disaster?* Tourism Concern, October 2005, p. 20

<sup>79</sup> Angus-Leppan and I. P. Williamson. *A Project for Upgrading the Cadastral System in Thailand*. School of Surveying, University of New South Wales (date not given).

<sup>80</sup> Interview with staff members in Disaster Tracking Recovery Assistance Center (D-TRAC), March 28, 2006.

<sup>81</sup> Taken from Tan, Alan K. J. *Preliminary Assessment of Thailand's Environmental Law*. APCEL Report: Thailand, National University of Singapore, 1998. <http://sunsite.nus.edu.sg/apcel/dbase/thailand/report.html>

<sup>82</sup> More features of this Act and other sector-specific environmental legislation (Marine Environment and Water Resources, Fisheries, Natural Resources, Pollution, Mining, Land Use and Planning, Energy and Cultural/Natural Heritage) are listed at the above citation (APCEL Report: Thailand).

Additionally, the RTG announced in February 2005 the establishment of 'environmentally protected zones,' which prohibited any construction within 40 meters of the shore.<sup>83</sup>

The tsunami appeared to reveal underlying problems regarding environmental protection and law in Thailand. During interviews with different organisations, it was noted that where environmental regulations do exist, they are not being enforced.

Indeed, scholars note an overall discrepancy in Thailand between formal law and the living laws of customary behavior, which has been highlighted particularly in the arbitration of disputes over land and natural resources.<sup>84</sup> Consequently, some organisations have noted land developers, such as hoteliers, building in violation of coastal conservation legislation.

Additionally, it is claimed that "the devastation caused by the tsunami has begun to reveal a close connection between the magnitude of the damage caused by the killer waves and the violation of environmental regulations in the affected countries."<sup>85</sup> Ecologists corroborate that where there are healthy mangrove forests, coral reefs and other natural barriers, the impact of the tsunami waves on coastal communities was less severe.<sup>86</sup>

## New Disaster Management Legislation

According to an official in the DDPM, the *Civil Defense Act of 1979* will soon be "superseded" by a new act. This act will, in part, try to consolidate the national capacity to respond to disaster emergencies by improving the role of the DDPM as the central coordinator. This would involve bringing together the National Civil Defense Committee (within the Interior Department) and the National Safety Council (within the Prime Minister's Office) to form a single "national disaster committee" facilitated by the DDPM. In addition, the new Act will try to improve the capacity of local government (progressively to the sub-district level) to plan, prepare and respond to emergencies. The DDPM is also currently facilitating the drafting a new, updated, *National Disaster Management Plan*.

## Conclusion

In Thailand, there are few specific laws in place to facilitate the access of international aid agencies and personnel. Most relief organisations interviewed identified an unclear legal and policy environment: laws and regulations were ambiguous and not readily accessible; the application of regulations was inconsistent; and the regulations themselves were not well communicated by government authorities. It seemed that no formal exceptions were made to normal rules and laws, such as the registration and licensing of foreign medical personnel, making it difficult for organisations to comply with all requirements. However, it also seemed

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<sup>83</sup> *Tsunami Response: A Human Rights Assessment*, Actionaid International, January 2006.

<sup>84</sup> Christensen, Scott R. and Akin Rabibhadana. *Exit, Voice, and the Depletion of Open Access Resources: The Political Bases of Property Rights in Thailand*. *Law and Society Review*, Vol. 28, No. 3, Law and Society in Southeast Asia, 1994, pp. 639-656; Klausner, William J. *Law and Society*. Thailand Law Source; Online Thailand Law Journal. <http://members.tripod.com/asialaw/articles/lawwilliam.html>

<sup>85</sup> Athukorala Prema-chandra, and Budy P. Resosudarmo, *The Indian Ocean Tsunami: Economic Impact, Disaster Management and Lessons*, Division of Economics, Research School of Pacific and Asian Studies, Australian National University, page 4, Available at <http://rspas.anu.edu.au/economics/publish/papers/wp2005/wp-econ-2005-05.pdf>, accessed 3 July 2006.

<sup>86</sup> Athukorala, Prem-chandra and Budy P. Resosudarmo. *The Indian Ocean Tsunami: Economic Impact, Disaster Management and Lessons*. Research School of Pacific and Asian Studies, Division of Economics, Australian National University, (date not given).

that the RTG was not actively pursuing cases of non-compliance and in some circumstances was discouraging organisations and relief workers from following established procedures.

The key legal issues impacting on the activities of foreign relief organisations related to their registration and legal status in Thailand. A number of organisations commencing activities in Thailand for the first time experienced difficulties with registration, either as a consequence of being unable to find the relevant information or because of the time consuming process involved. Whilst registration did not appear to be a compulsory requirement of the RTG, those organisations which had not registered faced an uncertain legal situation with regard to taxation, customs procedures and duties, opening bank accounts and obtaining visas and work permits for staff and were also fearful of being expelled from the country.

Generally, the working relationship between relief agencies and local government has been very positive. At the national level, the RTG allowed unprecedented access to facilities such as Utapao Air Base and established a number of coordinating mechanisms both for general relief efforts and for the identification of victims. Still, by all accounts, tsunami relief and reconstruction efforts in Thailand would have benefited from clearer disaster management structures between different levels of government, more active coordination by the RTG, the improvement of systems for managing international assistance and greater access to information.

In terms of adherence to appropriate quality and accountability standards, some of the key challenges included the volume of inappropriate and unsolicited relief items sent to Thailand in the wake of the tsunami, the failure of some relief organisations to adhere to basic humanitarian principles such as respect for local culture and refraining from proselytizing. Additionally there were concerns about the disparity of aid being directed towards or away from certain groups of survivors irrespective of actual need, the difficulties of assisting people without formal documentation of land ownership and the failure by some relief organisations, companies and government agencies to adhere to appropriate building standards and environmental protection laws in the reconstruction of housing.

The RTG is currently in the process of restructuring its national structure for disaster response. It will centralize and increase the role of the DDPM and try to increase the capacity of local communities. Hopefully, this will improve communication and information-sharing between line ministries. However, there is also a need to put in place appropriate laws and systems to better coordinate and facilitate the influx of foreign agencies and personnel, should some future disaster again overwhelm domestic capacities. The experiences of the tsunami has revealed some of the complexities of operating as a foreign relief organisation in Thailand, as well as the challenges of ensuring that relief and reconstruction activities can be conducted with transparency and in accordance with accepted international standards, which will ultimately ensure that the needs of people affected by disasters can be fully realised.

## List of Acronyms

ADPC	Asian Disaster Preparedness Center
DAD	Development Assistance Database
DDPM	Department of Disaster Prevention and Mitigation
INGO	International Non Governmental Organization
MFA	Ministry of Foreign Affairs
MOU	Memorandum of Understanding
NGO	Non Government Organization
TICA	Thai International Cooperation Agency
TRCS	Thai Red Cross Society
RTG	Royal Thai Government
UN	United Nations
UNCT	United Nations Country Team
UNDP	United Nations Development Program

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## UN Activities<sup>87</sup>

### Food and Agriculture Organisation (FAO)

- Contributed US \$20,000 to the MFA tsunami assistance fund
- Provide agricultural substance inputs to 1,183 farmers (of a targeted 1,500) and 501 of 4,900 affected livestock farmers
- Provided assistance to 1,420 of 10,000 affected aquaculture farmers and small boat owners

### International Labor Organisation (ILO)

- Carried out assessment missions to Thailand from early January through to the end of April and also ran a number of training programmes

### The Joint United Nations Programme on HIV/AIDS (UNAIDS)

- Provided education materials and condoms 5,000 troops assisting in disaster relief, to lower the risk of high-risk sexual behaviour

### United Nations Development Programme (UNDP)

- Procured and delivered emergency relief items (generators, water purifiers, body bags, formalin, etc) in partnership with OCHA
- Provided an immediate contribution of US \$100,000 to the Ministry of Foreign Affairs for logistics and coordination
- Provided support to donor coordination efforts led by the Prime Minister's office

### United Nations Environment Programme (UNEP)

- Provided funds to the government for technical assistance for a rapid environmental assessment

### United Nations Educational, Scientific and Cultural Organisation (UNESCO)

- Allocated funds for immediate assessments in the region

### United Nations Population Fund (UNFPA)

- Donated US \$50,000 to the government in immediate assistance
- Distributed first-aid and survival kits to 60,000 beneficiaries
- Voluntarily repatriated 692 Myanmar migrant workers

### United Nations High Commissioner for Refugees (UNHCR)

- Contributed US \$50,000 to the MFA tsunami assistance account, for emergency shelter

### United Nations Children's Fund (UNICEF)

- Ensured school attendance for 2,000 children through temporary classrooms, education grants and transport for children living in shelters
- Upgraded water supply and sanitation for 12 temporary shelters, including purification equipment, latrines and drainage

### World Food Programme (WFP)

- Provided 11,255 schoolchildren in 767 schools with lunch support, across the six affected provinces
- Provided more than 3,000 vulnerable families (15,000 people) with basic rations

### World Health Organisation (WHO)

- Supported the Ministry of Public Health, in conducting rapid health and needs assessments
- Provided technical information and guidelines in forensic operations, psychological and mental health, sanitation and water safety, health promotion, outbreaks monitoring and reporting.

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<sup>87</sup> The information for this list comes from *UNCT Thailand Tsunami Reponse-Six Months on*, and is available at [http://www.un.or.th/pdf/6months-Thailand\\_6month\\_tsunami-response\\_analysis2.pdf](http://www.un.or.th/pdf/6months-Thailand_6month_tsunami-response_analysis2.pdf), accessed 2 July 2006.

## Extract from Customs Department information on Privileged Goods

<http://www.customs.go.th/Customs-eng/PrivilegedGoods/PrivilegedGoods.jsp?menuNme=Diplomatic>

Goods imported by diplomatic missions, international organizations and their entitled staff under the Agreements or Laws listed below may be exempted from Customs taxes and duties, subject to the conditions laid down therein:

- **Agreements with the United Nations and Diplomatic Missions:** The quantity and type of goods to be imported free of taxes and duties **by agencies** under the United Nations and diplomatic missions are determined and approved by the Diplomatic Privilege and Immunity Division, Department of Protocol, Ministry of Foreign Affairs. Additionally, the tax and duty free importation of goods **by the staff members** of the agencies under the United Nations and diplomatic missions is also determined by the Department of Protocol and shall be carried out only with the prior written approval of the Department of Protocol. Generally, the staff members of the United Nations and diplomatic missions are entitled to bring in, at a reasonable quantity, personal and household effects, including motor vehicles, free of import taxes and duties.
- **Agreements under Technical Assistance Cooperation Programs between Foreign Donors and the Thai Government:** The Agreements require that the Thai Government grant tax and duty free allowance to foreign experts working in Thailand under the Technical Assistance Cooperation Programs. The entitled imported goods include personal and household effects, at a reasonable quantity, as well as one motor vehicle, provided that the goods and motor vehicles arrive in Thailand not earlier than 1 month before or not later than 6 months after the first arrival of foreign experts. The Agreements under Technical Assistance Cooperation Programs between Foreign Donors and the Thai Government are as listed below:

**(1) Technical Assistance Cooperation Programs Granted through the Department of Technical and Economic Cooperation (DTEC):** In case where the Technical Assistance Cooperation Programs are granted through the DTEC, the DTEC is responsible for importation and clearance of goods under these programs, regardless of the agencies carrying out the Technical Assistance Cooperation Programs.

**(2) Technical Assistance Cooperation Programs Not Granted through the DTEC:** This type of Program is the agreement that other government agencies other than the DTEC entered with foreign countries with the approval of the Cabinet; and the agreement requires that the Thai Government grant tax and duty free allowance to foreign experts working in Thailand under such programs. In case where the Technical Assistance Cooperation Programs are not granted through the DTEC, the Customs Department is the agency determining and granting tax and duty free entry for the imported goods.

**(3) Florence Agreement:** The Florence Agreement is the agreement on the tax and duty free importation of educational, scientific and cultural materials by educational institutes and government agencies. The importation under the Florence Agreement is determined by the "Committee on Tax and Duty Free Allowance of Educational, Scientific and Cultural Materials" appointed by the Cabinet. Goods covered by the Florence Agreement include:

- (a) Books, publications and documents;
- (b) Works of Art, and collections in connection with education, science and culture;
- (c) Audiovisual on in connection with education, science and culture;
- (d) Scientific equipments; and
- (e) Articles for the blind.

- **Laws of which certain provisions require that tax and duty free allowance is applied to imports** e.g. Section 5 of the Laws Protecting the Operations of the Southeast Asian Fisheries Development Center B.E. 2514 requires that tax and duty free allowance, including VAT, are applied to vessels, vehicles, materials and equipment imported by the Southeast Asia Fishery

Development Center provided that the imports are approved by the Ministry of Agriculture and Cooperative.

### How to Import Privileged Goods?

- **Privileged Goods under the Agreement with the United Nations and Diplomatic Missions**  
The minimum amount of documentation required for Customs clearance comprises a completed Import Declaration Form, an air waybill (AWB) or bill of lading (B/L), a delivery order, a D.P.I. Form (Entry Form for diplomatic clearance of goods imported by diplomatic missions, international organizations) issued by the Ministry of Foreign Affairs, and other documents relating to the importation (if any).

An Import Declaration Form must be completed and submitted to the Privileges and Investment Promotion Section at the port or place of entry, including the D.P.I. Form and all supporting documents. All documents are verified by Customs and, if correct, returned to the importer who will, then, contact the Goods Examination Division for the release of the privileged goods.

- **Imported Goods under the Technical Assistance Cooperation Programs Granted through the DTEC**  
The minimum amount of documentation required for Customs clearance comprises a completed Import Declaration Form, an air waybill (AWB) or bill of lading (B/L), a delivery order, and other documents relating to the importation (if any).

In case where the Technical Assistance Cooperation Programs are granted through the DTEC, the DTEC is responsible for duty free allowance, importation and clearance of goods under these programs. An Import Declaration Form must be completed and submitted to the Privileges and Investment Promotion Section at the port or place of entry, together with all supporting documents.

- **Imported Goods under the Technical Assistance Cooperation Programs Not Granted through the DTEC**  
An application for tax and duty free allowance must be submitted to the Customs Tariff Group, the Customs Department, together with supporting documents: an invoice, a bill of lading, a complete Agreement between Foreign Donors and the Thai Government, a letter from the Office of Secretariat of the Prime Minister certifying that the Agreement is approved by the Cabinet.  
  
Once the application for tax and duty free allowance submitted to the Customs Tariff Group, the Customs Department is approved, the Import Declaration Form must be completed and submitted to the Privileges and Investment Promotion Section at the port or place of entry, together with all supporting documents.
- **Imported Goods under the Florence Agreement Approved by the Committee on Tax and Duty Free Allowance of Educational, Scientific and Cultural Materials**  
Prior to importation of the goods under the Florence Agreement, an application for tax and duty free allowance must be submitted to the Office of the Secretariat of the Thai National Commission for UNESCO, Ministry of Education for approval. When the application for tax and duty free allowance submitted is approved, the Thai National Commission for UNESCO will notify the Customs Department of the approval, including the list of goods to be granted tax and duty free entry and the name of importing institutes/government agencies.

An Import Declaration Form must be completed and submitted to the Privileges and Investment Promotion Section at the port or place of entry, together with all supporting documents.

### Important Notices

- Tax and duty free entry granted for privileged goods is exclusively for the agencies or staff members of the entitled organizations only. They must not be transferred to any other persons or places.
- In case where the entitled persons or agencies transfer the goods exempted from import taxes and duties to a person not entitled to privileges, agencies or projects, taxes and duties will be charged on such items, except for the following items:
  1. The imported household provisions, medicines, consumable items and personal effects of entitled persons for their personal use which are left in stock at the date the grant for tax and duty exemption/reduction is terminated;
  2. Household effects imported by entitled persons for their personal use and of which age are more than 2 years old;
  3. Items proved to Customs that they are seriously defected and irreparably damaged; or
  4. Other items imported by entitled persons for their personal use of which age are more than 5 years.

However, these conditions are not applied to the import of motor vehicles or other type of vehicles with engine under the diplomatic missions, agreements with international organizations, and technical assistance cooperation programs.

- The sale or transfer of ownership of motor vehicles to a person not entitled to privileges, or export of motor vehicles, is subject to the payment of Customs duty and taxes and other related laws and regulations. The owner shall be responsible for the payment of import duty and taxes which will be determined by Customs. However, the motor vehicle will be exempted from the requirements to pay applicable duties and taxes provided that:
  1. It is imported in the country more than five years from the date on which it was imported; and
  2. It is transferred to government agencies under the Administrative Laws.

### Contact

For additional information in relation to the clearance of privileged goods, interested person may contact the Privilege and Investment Promotion Sub-Division, Import Formalities Division, Bangkok Port Customs Bureau; or Privilege and Investment Promotion Sub-Division, Import Formalities Division, Bangkok International Airport Customs Bureau; and all ports of entry during office hours.

## Extract from Customs Department information on Temporary Imports and Exports

<http://www.customs.go.th/Customs-Eng/ATACarnet/ATACarnet.jsp?menuNme=ATA>

### Guidelines for Temporary Imports and Exports

A carnet is an international Customs document that allows goods to be brought into Thailand without the payment of Customs duties and taxes and without the need for a formal Customs declaration form. The issuing association takes a security when the carnet is issued. The use of the carnet to cover the temporary admission of goods considerably simplifies and expedites the formalities for temporary importation for both the importer and Customs. In simple terms the carnet is a passport for goods. When carnet goods arrive in Thailand, the carnet holder needs to present the carnet and goods to Customs for processing. They must also be produced to Customs on export for processing. The goods will need to be identified. The carnet itself will be the proof of export. If importers do not produce the carnet and goods on export, a claim for the duty and taxes will be issued.

### What is an A.T.A. Carnet?

An A.T.A. Carnet (Admission Temporaire – Temporary Admission) is a standard international Customs document to be used as the Customs documents for temporarily admitted goods e.g. an import declaration form, export declaration form, re-importation certificate, transit document controlling exports from one Customs House to the other Customs House. It is designed for incorporating international guarantee required for imports granted temporary duty free admission under the A.T.A. Convention.

### The A.T.A. Carnet System

A.T.A Carnets are used for a wide variety of goods coming into Thailand temporarily. The ATA carnets will only be accepted for goods being temporarily imported under the Conventions listed below, which have been acceded to by Thailand:

- The International Convention to Facilitate the Importation of Commercial Samples and Advertising Materials;
- The Customs Convention on the Temporary Importation of Professional Equipment (1952);
- The Customs Convention Concerning Facilities for the Importation of Goods for Display or Used at the Exhibitions, Fairs, Meetings or Similar Events (1961); and
- The Customs Convention on the Importation of Scientific Equipment (1968).

The A.T.A. Carnet allows goods to be temporarily imported into Thailand without payment of duty or taxes if the goods are entitled for admission under the provisions of the international agreements that Thailand has acceded to. The duty and taxes are payable if the goods are not exported within the approved period.

The A.T.A Carnet is a document made up of the following forms:

- A **Green** Front and Back Cover, including a **white** continuation sheet;
- A **Yellow** Exportation Form consisting of two portions:
  1. Exportation Counterfoil; and
  2. Exportation Voucher.
- A **Yellow** Re-Importation Form consisting of two portions:
  1. Re-Importation Counterfoil; and
  2. Re-Importation Voucher.
- Two **White** Forms consisting of:

1. A White Importation Form made up of two portions: Importation Counterfoil; and Importation Voucher.
  2. A White Re-Exportation Form made up of two portions: Re-Exportation Counterfoil; and Re-Exportation Voucher.
- Two **Blue** Transit Forms consisting of two portions:
    1. Transit Counterfoil; and
    2. Transit Voucher.

#### What items are covered by the A.T.A. Carnet System?

- Professional equipment for the press, or for sound or television broadcasting
- Cinematographic equipment
- Other professional equipment:
  1. Equipment for erection, testing, commissioning, checking, control, maintenance or repair of machinery, plants, means of transport;
  2. Equipment necessary for businessmen, business efficiency consultants, productivity experts, accountants and members of similar professions;
  3. Equipment necessary for experts undertaking topographical surveys or geophysical prospecting work;
  4. Instruments and apparatus necessary for doctors, surgeons, veterinary surgeons, midwives and member of similar professions; and
  5. Equipment necessary for entertainers, theatre companies and orchestras, including all articles used for public or private performances.
- Goods intended for display or use at exhibitions, fairs, or meetings
- Goods intended for use in connection with the display of foreign products at exhibitions, fairs, or meetings
- Equipment including interpretation equipment, sound and image recording apparatus and films of educational, scientific or cultural character intended for use at international meetings
- Small samples supplied free of charge to the visiting public at the event
- Goods imported for the purpose of demonstration and consumed or destroyed in the course of such demonstration
- Products of low value used up in constructing, furnishing, or decorating the temporary stands
- Printed matter, catalogues, trade notices, price lists, advertising posters, calendars, and photographs
- Files, records, forms, and other documents which are imported for use in connection with international meetings
- Commercial samples imported to display or demonstration for the purpose of encouraging the purchase of goods
- Positive advertising films of which size is less than 16 mm. with pictures displaying or demonstrating the operation of products or equipment which is unable to demonstrate or display by samples or catalogues
- Scientific equipment and spare parts thereof imported in connection with educational or scientific research
- Tools designed for the maintenance, checking, gauging, or repair of scientific equipment imported in connection with educational or scientific research

#### How to Export Goods under an A.T.A. Carnet?

The procedure is straightforward and comprise:

- **Documentation**
  1. A Yellow Exportation Form
  2. A Foreign Transaction Form in case where the exports exceeding 500,000 Baht, except for the exports of the following goods:
    - (a) Commercial samples;
    - (b) Goods imported free of charge and re-exported within the time limits as agreed by Customs; and

- (c) Goods, in the opinion of Customs, imported temporarily for display in public or international meetings.
- 3. Supporting documents to the Exportation Form and the Re-Exportation Form namely an invoice and a packing list are not required; but the exporter must declare all details of goods in the Exportation Form and the Re-Exportation Form for Customs verification.
- **Export procedures under the A.T.A. Carnet System**
  1. The exporter completes the Yellow Exportation Forms, both the counterfoil and voucher, and submits them together with the supporting documents to the Customs office at the port of exit;
  2. Customs verifies the documents and allocates a Duty-Free Allowance Number or Duty-Paid Number (if any) and returns all documents to the exporter for the release of goods or payment of applicable taxes and duties, as the case may be; and
  3. The exporter contacts the Goods Examination Division for the release of goods.

#### Important Notices for Exports under an A.T.A. Carnet

- The Exportation Voucher is accepted as an Import Declaration Form and the Exportation Counterfoil is accepted as a Re-Importation Certificate.
- Under the A.T.A. Carnet System, importers/exporters are allowed to use an A.T.A. Carnet as security for the payment of taxes, duties and other charges for temporary admission goods only. In case where exports are subject to other taxes and duties, the exporter is obliged to pay such amount of taxes and duties.
- Relief from licenses/permits shall be granted to only imported goods and under the conditions laid out in the four Conventions mentioned earlier. However, the exported goods shall be subject to the criteria listed below:
  1. The exported goods using a Yellow Exportation Form and intended to be re-imported are subject to normal export licenses/permits if the relevant laws and regulations required so during the exportation; and
  2. Given that the licenses/permits granted to goods temporarily imported and, then, re-exported using the White Re-exportation Form normally specify the date of exportation, such licenses/permits granted at the time of importation are also accepted as export licenses/permits.
- In case of the destruction, loss or theft of the temporary admission papers, the importer may request the International Chamber of Commerce to issue the replacement papers.

#### How to Re-Import Goods under an A.T.A. Carnet?

- **Documentation**
  1. A Yellow Re-Importation Form;
  2. A Delivery Order; and
  3. Other Documents (if any).
- **Import procedures under the A.T.A. Carnet System**
  1. The importer completes the Yellow Re-Importation Forms, both the counterfoil and voucher, and submits them together with other supporting documents to the Customs office at the port of entry;
  2. Customs verifies the documents against the given information at the time of exportation and returns all documents to the exporter for the release of goods; and
  3. The importer contacts the Goods Examination Division for the release of goods.

#### How to Import Goods under an A.T.A. Carnet?

- **Documentation**
  1. A White Importation Form;
  2. A Foreign Transaction Form in case where the import value exceeding 500,000 Baht;
  3. A Delivery Order; and
  4. Other Documents (if any).

- **Import procedures under the A.T.A. Carnet System**

1. The importer submits the White Importation Forms, both the counterfoil and voucher, the Delivery Order, and other supporting documents to the Customs office at the port of entry;
2. Customs verifies the documents and allocates a Duty-Free Allowance Number or Duty-Paid Number (if any) and returns all documents to the importer for the release of goods or payment of applicable taxes and duties, as the case may be; and
3. The importer contacts the Goods Examination Division for the release of goods.

### Important Notices for Imports under an A.T.A. Carnet

- Imported goods under the A.T.A. Carnet must be those listed in the four Conventions mentioned above. Goods imported for other purposes e.g. those imported for use in production of other goods or repair are not covered by the A.T.A. Carnets. The importer is not allowed to add any other items in a White Importation Form.
- Goods imported under an A.T.A. Carnet must not be sold. The A.T.A. Carnet is valid for one year from the date of issue. The goods imported under the A.T.A. Carnet system must be exported within 6 months from the date of importation but not exceed the period of validity of the temporary admission paper. Failure to do so may well lead to Customs duty and a penalty or tax being imposed.
- The list of countries in which the temporary admission papers are valid and the name of the guaranteeing associations are appeared on the green front cover of the A.T.A. Carnet.
- In case where the importer under the A.T.A. Carnet system is unable to re-export the goods within the time limit or breach the conditions for temporary admission in any cases, the Thai Chamber of Commerce, as a guarantor, is liable to pay taxes, duties, and charges to Customs for an amount equal to the rate of duty and taxes applicable to the goods, plus a further 10 percent of import taxes. Customs shall charge the exceeding amount from the importer.
- A.T.A. Carnet Forms or a part of the Forms using in importation and exportation under the A.T.A. Carnets are exempted from duty, including prohibitions and restrictions.

### How to Re-Export Goods under an A.T.A. Carnet?

- **Documentation**

1. A White Re-Exportation Form;
2. A Delivery Order; and
3. Other Documents (if any).

- **Export procedures under the A.T.A. Carnet System**

1. The exporter completes the White Re-Exportation Forms, both the counterfoil and voucher, and submits them together with other supporting documents to the Customs office at the port of exit;
2. Customs verifies the documents and allocates a Duty-Free Allowance Number or Duty-Paid Number (if any) and returns all documents to the importer for the release of goods or payment of applicable taxes and duties, as the case may be; and
3. The exporter contacts the Goods Examination Division for the release of goods.

### Contact

For additional information, interested person may contact the Privilege and Investment Promotion Sub-Division, Import Formalities Division, Bangkok Port Customs Bureau; or Privilege and Investment Promotion Sub-Division, Import Formalities Division, Bangkok International Airport Customs Bureau; and all ports of entry during office hours.