

UN-NGO Impact Initiative

Human Rights and Tsunami Recovery

KEY FINDINGS AND RECOMMENDATIONS

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I. Background

Human rights discourse began taking centre stage in international development circles over the past decade and many agencies are currently using a rights-based focus for long-term programming. In humanitarian assistance programming, much of the discourse has centered on the complex relationship between human rights and humanitarian action in situations of violent insecurity¹. As such, there has been a disproportionate focus on the civil and political rights agenda. Less well documented are the issues involved in protecting and promoting social, economic and cultural rights in a natural disaster setting.

Humanitarian assistance often centers on the logistics operation to address immediate life-saving needs. This may be true during the first few weeks after a disaster -- the initial rapid response phase -- but humanitarian assistance programming often continues for several years, as has certainly been the case for many INGOs following the tsunami of 2004. Humanitarian responders have *typically* not started to focus on protecting and promoting social, economic, and cultural rights until this more protracted recovery and rehabilitation period. However, Buchanan-Smith and Fabbri (2005) challenge ‘continuum’ thinking, the notion that relief, recovery, and development are distinct phases of a relief effort that should drive such phased programming. Goyder et al. (2006) argue that in response to a natural disaster, recovery and rehabilitation should be addressed from the earliest possible stage of relief operations. Consistent with this, the initial findings in the TEC evaluation of the international tsunami response concluded that missing this window undermined the opportunity to address issues of equity, gender, and governance in an integrated and holistic way (Cosgrave 2005).

¹ For example, *Rights-based Approaches to Humanitarianism: A Review of the Debates*, ODI-HPG Research Report forthcoming 2006 (contact m.bradley@odi.org.uk for details); and *Rights in extremis: do human rights help to achieve humanitarian outcomes?*, ODI-HPG Work in Progress due 2006.

The rights-based approach (RBA) to programming -- that shifts the focus from charitable fulfillment of needs to duty-driven advancement of rights -- offers a conceptual link that may help the humanitarian community better integrate its relief and development agendas (Darcy 2004, 5). Many INGOs aim to address 'rights' in their tsunami recovery programs, yet there is much to learn about how RBA can best be operationalized in emergency response programs. To advance this learning the Human Rights Thematic Working Group therefore chose the implications of RBA in a natural disaster response as the focus of our work.

While there is no generally agreed upon definition of the term 'rights-based approach', there is some consensus on the concepts implied. We explore the four concepts highlighted below.

What do we mean by a focus on a "Rights-Based Approach"?

RBA is not a fixed set of interventions but rather a conceptual framework that can inform all humanitarian assistance decisions and activities.

RBA recognizes a need to provide goods and services during an emergency but it views this support as a *right* rather than as a *handout*.

RBA considers rights to be *relational*: they imply duties and responsibilities.

Rather than viewing 'vulnerability' as consequence of disaster that can be addressed with a technical fix, RBA focuses on identifying and exposing the root causes of ongoing vulnerabilities, and offers a correspondingly expanded range of responses.

Our working process has been consistent with that employed by all five UN-NGO Impact Initiative Working Groups. We circulated for comment by INGO staff an outline of major issues surrounding human rights in emergency context based on a desk review of relevant literature. Based on comments received, we drafted questions (Annex 1) to guide discussion during our field consultations. To further explore specific experiences implementing RBA in tsunami recovery, we interviewed LNGO, INGO, and UN field staff in Colombo and Banda Aceh. We summarize our findings and analysis below with respect to their implications for: training, accountability, and assessment. Our concluding recommendations represent the collective views of the many people who have participated in this reflection process.

II. A Rights-Based Approach in the Tsunami Response

The research of our Working Group revealed three major issues that will need to be addressed in order to move forward on human rights promotion and protection in emergency recovery: current general perceptions on the impact of training, the focus of accountability, and the methods of assessment.

Training

RBA is an attempt to operationalize a commitment to respect humanitarian principles and protect the rights embodied in the International Bill of Rights and humanitarian law. While these same principles and rights inform the *Red Cross and Red Crescent Code of Conduct*², the *Sphere Project Charter and Standards*³, and the *Do No Harm Framework*⁴, humanitarian assistance staff members continue to struggle to implement them during emergency response. When asked what limited NGOs from more broadly implementing RBA in the tsunami response, the most common response we heard was a lack of staff training in human rights. Excellent training materials exist⁵ and RBA concepts should be included in any accreditation/validation process. But INGOs are chronically overtaxed and it may not be realistic to expect such training to be extended to the large numbers of staff involved in urgent response to disasters.

An additional constraint is that although training introduces concepts and information, it does not substitute for the necessary skills that come with practice. Further the management, technical, and operational skills required for excellent emergency response may be very different from the strategic, social, and analytical skills needed to promote RBA. Thus it may not be realistic to expect all staff to possess both skill sets.

For this reason, some NGOs hired specialized gender, accountability, partnership and/or advocacy advisors to assist their staff in responding to the tsunami. But their limited numbers and the enormity of their task has spread these advisors thin, a situation exacerbated by frequent demands on them to assist with ongoing logistics and management activities.

The Oxfam UK commitment in Banda Aceh to entire partnership and advocacy units staffed with non-management personnel is one of the most successful attempts to ensure availability of the necessary technical skills. While this approach has driven improved advocacy initiatives, advocacy is only one aspect of RBA. Context-specific experience is also required to understand the complexity of issues preventing rights from being enjoyed.

Finally, the ‘experience’ requirements for RBA refer not only to technical experience but context specific experience. This perhaps explains why participants of the Chennai consultation claimed that Indian NGOs are more capable of developing and implementing a rights-based approach than their international counterparts. There are success stories of INGOs implementing RBA concepts in tsunami response, but they tend to be in geographic areas where the responding agency had a presence prior to the tsunami⁶. In a disaster the magnitude of the tsunami, prior presence – of either LINGOs or INGOs - cannot be expected in all affected areas. As illustrated in the case study, there is no magic formula or simple solution to the problem

² Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief.

³ The Humanitarian Charter and Minimum Standards in Disaster Response, Sphere Project.

⁴ Do No Harm: A Framework for Analyzing the Impact of Assistance on Conflict, Local Capacities for Peace Project.

⁵ For example, Action Aid’s *Learning About Rights* series (available at www.actionaid.org.uk) and The Sphere Project Training Module 2: *The Humanitarian Charter* (available at www.sphereproject.org).

⁶ For example, CARE’s Confronting Gender-Based Violence in Batticaloa project in Sri Lanka.

RBA requires more than training.

The International Rescue Committee (IRC) had operated in Ache for several years when the tsunami struck. With experienced national staff in place, the IRC was much better prepared than other INGOs to incorporate RBA into their tsunami response. To do so, IRC hired new 'community facilitators,' provided them with two to three days of rights-based training, and reassigned long-term staff to supervise and support them. Constant reflection on program quality by project staff highlighted several lessons learned. Because the IRC had stipulated minimum educational achievement as a condition for employment as a Community Facilitator, most hires were young women from well-to-do urban families. As such, they lacked the authority to 'empower' communities. Two days of intensive training were sufficient only to impart concepts; most Community Facilitators struggled to apply them. Support from seasoned supervisors was helpful but a much larger number were needed. The IRC is currently addressing these issues and has made this a long-term commitment.

Source: Ali Aulia Ramly, interview, 23 August 2006, Colombo.

The success stories of INGOs implementing RBA concepts during the tsunami response tend to come from geographic areas where the responding agency had a presence – and context-specific experience - before the tsunami⁷. This may explain why participants of the Chennai consultation asserted that Indian NGOs are more capable of developing and implementing a rights-based approach than are their INGO counterparts. In a disaster the scale of the tsunami however, one cannot assume that established NGOs will be present in all affected areas. More importantly, as illustrated in the case study (see box above), successful incorporation of RBA into emergency response requires more than simply determining the correct 'mix' of training, skills and experience.

Accountability

Traditionally, humanitarian organizations have focused on meeting basic needs. A fundamental difference in RBA is rights are relational: they imply duties. Whereas needs can exist in isolation, rights are meaningless apart from responsibilities and committed actors (Jones nd). The practical application of RBA thus involves identifying the responsible actors and holding them accountable to respect, protect, fulfill and/or claim rights. The three most important actors in humanitarian assistance are host governments, the disaster-affected population and the humanitarian assistance community itself. We discuss each in turn below.

Host Governments

The State is typically understood to be legally responsible for ensuring human rights are enjoyed by its citizenry⁸. In response to a catastrophic disaster however, States often can not immediately meet all the needs of the affected population and INGOs play a major role in

⁷ For example, CARE's Confronting Gender-Based Violence in Batticaloa project in Sri Lanka.

⁸ For example, the Humanitarian Charter affirms States' obligations under international law for ensuring rights are met and calls on humanitarian assistance agencies to advocate for the fulfillment of such obligations.

assisting them. But does assuming the responsibility to provide services automatically transform INGOs into duty-bearers?

Much of the debate around this question stems from the fact many emergencies occur in countries with weak or failed States. In countries with a strong, credible State however, research indicates that emergency response is more effective if the State is supported rather than replaced as duty bearers (Vaux 2006). This conclusion is reinforced by studies conducted tsunami-affected countries (see for example, Goyder et al. 2006). It is outside the scope of this paper to present a full discussion of this debate; however relevant issues and concerns surrounding the concept of duty-bearer were raised in our field consultations.

These include reported instances of struggling to:

- Identify legal duty-bearers (for example, in northern Sri Lanka both the State and the LTTE have controlling interests);
- Give full responsibility to the State (for example, when it appeared housing targets were being based solely on political campaign concerns); and
- Assume the role of duty-bearer given the limitations of INGO power (for example, newly constructed housing sat vacant when located in areas with no basic services).

In recognition of the fact this is not an ‘either-or’ issue, there was tentative agreement among those interviewed that, while acceptance of funding by NGOs implies certain responsibilities⁹, the long-term responsibility of legal duty-bearer should remain with the State. This stems in part from a concern that the State must ultimately assume this role when INGOs depart.

To address this issue, RBA promotes the practice of ‘lateral accountability’. Rather than focus predominately on INGO accountability to beneficiaries (which reinforces the notion of the INGO as duty-bearer), RBA also emphasizes INGO accountability to the legal duty-bearer. Lateral accountability therefore requires respect for the primary authority and responsibility of the State, and efforts aimed at enabling the State to fulfill its responsibilities. At a minimum, this implies INGOs should be fully aware of the national and local political environment and that they use this knowledge in their advocacy activities and reconstruction programs (Goyder et al. 2006). Lateral accountability also implies that INGOs are obligated to ensure that local and national government authorities are aware of the codes of practice informing the humanitarian sector and that all have a common and realistic understanding of rights and responsibilities.

It must be kept in mind, however, while lateral accountability may reduce the potential for aid to undermine State accountability, it is not simply a technocratic exercise; “governments and bureaucracies make political choices about what should be prioritized. The presence or absence of political will is therefore a determining factor in the realization of rights” (O’Neil 2006, 4). Nonetheless, RBA provides a different way of analyzing such political choices, and assessing how governments are acting. While there are examples of INGOs working to bridge this

⁹ For example whether or not INGOs are considered ‘legal’ duty-bearers, they always have a moral obligation to provide quality services and goods in a professional manner.

current gap between ‘legal’ duty-bearers and rights-holders, as illustrated in the case below, many others are struggling with the concept.

RBA supports Host Governments.

Oxfam has moved beyond simply advocating for the rights of tsunami-affected populations to negotiating directly with local administration officials who have some leeway to interpret government policies and decisions. The strength of this approach over national-level advocacy is its direct relevance to the service delivery role.

For example, local land-rights advocacy can facilitate the provision of shelter. Also, following work with communities on site plan development - and before construction begins - one can negotiate with local authorities to assure they deliver required services.

Oxfam is also advocating for the resources duty bearers need to fulfill their rights-related responsibilities (through *Paris Club* advocacy and work related to the *Drop the Debt* campaign and the *Multi Fibre Agreement*).

Source: Cleary, 2006

Disaster-Affected Populations

In an attempt to operationalize the Universal Declaration of Human Rights concept that all people are “equal in dignity and rights,” many NGOs have stated a commitment to help the people they serve achieve this basic right to life with dignity. This involves respect for the disaster-affected population’s right to participate in decision-making processes that affect their lives (Jones nd).

All human beings are born free and equal in dignity and rights. Universal Declaration of Human Rights 1948

Public access to information about aid activities is an essential first step to participation. There has been considerable discussion around the lack of information provided to tsunami-affected populations during the initial response phase though by now most INGOs have designed mechanisms to address the issue. Some disseminate information through local leaders or officials. Because information about aid flows is a source of power and is sometimes tightly held by people in power (Christoplos 2006), others distribute documents in local languages to make them broadly accessible. The most promising approach may be the publicly accessible ‘information centre’ (Collaborative for Development Action 2005).

Recognizing the need for two-way information flow, INGOs have established many ways to gather community input and feedback, including suggestion boxes, grievance committees, complaint cards, watchdog committees, community consultations, and even a “help line”¹⁰. Information about aid activities alone however, is not sufficient. RBA implies that INGOs promote information flow about rights, about how NGOs are promoting them, and about obstacles to their realization for local populations (Jones nd). It also implies providing any support populations may need to utilize this information.

¹⁰ Devanand Ramiah and Dilrukshi Fonseka, interview, 24 August 2006, Colombo.

Ensuring that affected populations have a voice to exercise their rights is also an aspect of participation. INGOs have been active in advocating for the tsunami-affected populations, most notably the right to return to previously occupied land; land and property rights; women's rights; equal access to humanitarian assistance and recovery processes; and children's rights. Successful techniques have included:

- Working within, and sometimes even forming, an NGO consortium to enhance NGOs' voice and to promote skill- and experience-sharing;
- Putting advocacy on the agenda of technical working groups;
- Framing issues in a rights perspective; and
- Becoming involved in an issue such as housing to have more impact on relevant decision-making.

These activities help to protect basic human rights, but they do not necessarily promote the tsunami -affected population's right to participate as they often involve speaking 'for' the population. To have their own voice, the affected population – or claim holders – must have a functioning relationship with government officials – or duty-bearers. Some INGO activities have focused on building such relationships. For example, rather than advocating 'for' communities, one INGO is forging links between community organizations and government officials or the Human Rights Commission so that they can directly advocate for themselves.

These relationships are constrained by more than simply a lack of venue for discussion, however. For many, especially the most vulnerable populations, relationships are constrained by issues of power, governance and social position. In the presence of INGOs during humanitarian assistance operations, affected populations may appear to have a voice. But if the underlying patterns of exclusion are not addressed, these same populations may not be able to continue to participate after the aid community leaves.

Changing underlying patterns of exclusion requires a long-term commitment. Nonetheless, the tsunami recovery period provides an opportunity to begin the process as emergencies tend to expose existing patterns and create space for change and reform (Morago-Nicolás 2000). Also, research indicates the most effective emergency responses have focused on rebuilding social relationships (Vaux 2006).

Building social relationships requires more than building houses; and is especially difficult in tsunami-affected areas where many of the settlements being planned do not represent genuine 'communities'. As one field staffer noted:

*We can't suddenly start a representative body, decision-making structures, accountability, etc. just because a disaster happened; we need to have something in place to start with.*¹¹

Also, in Banda Aceh and Sri Lanka, a vision of social transformation must be informed by careful conflict analysis to avoid interventions that aggravate pre-existing conflicts or trigger new

¹¹ P.B. Gowthaman, interview, 23 August 2006, Colombo.

ones (Goyder et al. 2006). The process of addressing social exclusion and related power imbalances will almost always exceed the timeframe of humanitarian assistance operations yet initial steps towards promoting participation can – and should – begin during the initial stages of response (see box below).

RBA promotes participation to improve response outcomes.

About four weeks after the Tsunami, relocation sites for internally displaced people (IDPs) being housed in schools in Vaaharai, Batticaloa district were selected by the government and some of the NGOs. Groups of IDPs were then neatly assigned to relocation sites without consultation. ‘Speed’ it was said was of the essence and consulting people could be ‘messy’.

OCAA and *KPNDU*, its local NGO partner, challenged this assumption and carried out a rapid survey of over 85% of the 2,656 displaced families to better identify people’s relocation preferences. The results were telling. Over a third of the people surveyed did not know where they were assigned to move and most believed, wrongly, that they would lose their entitlements if they did not go to their assigned site. The survey demonstrated that it was neither time consuming nor ‘messy’ to consult people during an emergency.

More importantly, the process illustrated the importance of participation in decision making. People became aware of their options and discussed them with relatives and neighbors. They critically considered such factors as security (there are military and rebel camps dotted in the area), soil fertility and dry season water availability, none of which had been of much concern to the planners. The findings helped Oxfam Australia to raise these issues at district coordination meetings and ultimately led to the formation of a shelter policy group that continues to play an important role in shelter and relocation issues. As a result, the people in Vaaharai relocated more sites than were initially identified. Their right to transitional shelter on their own land, if preferred, was also respected.

Source: Roche et al, 2005.

Humanitarian Assistance Community

As discussed above, lateral accountability implies respect for the primary authority of the State and improved knowledge and information exchange. It also implies that, just as INGOs scrutinize the practices of the State and advocate for compliance to international standards, the State has an equal right to scrutinize INGO practices and hold them accountable to the international principles of humanitarian assistance. Few INGOs have thus far exposed themselves to such scrutiny. Indeed, the TEC LRRD synthesis report concludes that the major stumbling blocks to genuine implementation of RBA are “the weakness of relationships between the government (at all levels) and the international aid community, as well as mutual distrust” (Christoplos 2006). It is not just the INGO community that resists scrutiny, however. One of the issues Action Aid faced in trying to ‘hold governments to account’ is that their leverage to scrutinize donors’ human rights approaches is compromised by their financial dependency (Luttrell and Piron 2005).

The Accountability Thematic Working Group report discusses ways to promote INGO accountability. Nonetheless, as RBA implies placing human dignity at the heart of every decision (Piron 2005), INGOs should be held accountable for respect for this right. What organizations and individual staff members must recognize is that every aspect of their demeanor and activity conveys how well they have internalized the concept of respect for the dignity of every disaster-affected individual (Harvard Humanitarian Initiative 2006). To ensure such accountability will require each organization to re-examine, through a rights-based lens, all management, human resource and programming policies and practices. INGOs active in tsunami recovery have developed two approaches that may help launch these efforts: the Value for Money Audit¹² being conducted by Transparency International in Sri Lanka and the Social Equity Audit¹³ implemented by CARE in India (see box below).

The CARE Social Equity Audit in India.

A wide spectrum of development professionals and stakeholders in India agreed on the need for systematic and reflective inquiry into the processes of social exclusion and discrimination in tsunami relief and rehabilitation activities. The Social Equity Audit (SEA) emerged as a tool to support this process. It has been used thus far to assess both the programming and organizational practices of four grassroots organizations and one INGO. Lessons learned are being used to improve the audit protocol.

Source: CARE 2006b.

Assessment

Most emergency response evaluations discuss the quality of needs assessments. Indeed, the TEC devoted an entire study to this topic (de Ville de Goyet and Morinière 2006). This study recommends differentiation (and subsequent prioritization) be made between different kinds of need; specifically those that:

- Are truly life-threatening
- Are better met locally
- Are perceived as priority by the ‘beneficiaries’ themselves and
- Result from pre-existing conditions (ibid).

Guidelines to help INGOs identify life-threatening needs and examine local capacities are available¹⁴ and every agency professes to employ a participatory needs assessment process. Unfortunately, time constraints and management pressures often constrain quality needs assessment, at least during the early days and weeks of a disaster response. Instead, initial

¹² Rukshana Nanayakkara, interview, 28 August 2006, Colombo.

¹³ Sandhya Venkateswaran, personal correspondence, August 2006.

¹⁴ For example Save the Children’s *Emergency Nutrition Assessment: Guidelines for Field Workers* and Mary Anderson’s *A Manual for Training in Capacities and Vulnerabilities Analysis*.

assessment exercises tend to focus on quantifying needs that the agency can address, with emphasis placed on ‘traditional’ vulnerable groups, such as women, children and the physically disabled. More importantly, these assessments tend to frame needs and vulnerabilities in their current ‘situation’ – the disaster context, and fail to distinguish those that existed before the disaster hit. In many tsunami-affected countries these ‘pre-existing conditions’ include chronic poverty resulting from structural inequity and social exclusion. In Indonesia and Sri Lanka, focus on the ‘situation’ also has tended to exclude an entire vulnerable group: those displaced by civil conflict.

The TEC Synthesis Report clearly calls for increased attention to social inequality, exclusion and hierarchy; and asserts that identification and inclusion of the most marginalized groups should be a fundamental humanitarian principle. To accomplish this, INGOs need to improve their abilities to identify vulnerability and better understand its causes. The goal is not simply to better or more efficiently target response programs, but to address the underlying dynamics of vulnerability which is central to recovery. The TEC Synthesis Report concludes that some rehabilitation efforts uninformed by such knowledge risk being ineffective and unsustainable. Worse, some of these interventions may actually undermine future development (Christoplos 2006). This study also argues that chronic poverty has actually increased post-tsunami in many cases due (in part) to loss of family labor and skills; social capital, especially where communities have been devastated and fragmented; and public service institutions (ibid.). As ACFID (2006) stated in their input to this initiative, “consider as a right the right not to be left more vulnerable after the disaster response and recovery.”

The issue therefore is how to identify vulnerable groups not included in current assessment procedures, and understand their vulnerability adequately to design appropriate response programs. A simple solution is to change assessment processes. Shifting the focus from ‘vulnerability due to the situation’ to ‘the structural causes of vulnerability’ requires emphasizing individuals’ and groups’ *position* in society, rather than just their *situation* (Morago-Nicolás 2000). Such an assessment process will involve gathering information on the pre-disaster human rights context and its relationship to pre-existing vulnerabilities; identifying the patterns and causes of inequality and exclusion; and analyzing power structures and the local values, principles and norms proclaimed in the wider legal system applicable in the society. Relevant assessment tools exist, such as that employed in the CARE Social Equity Audit profiled above.

One lesson to take from the Social Equity Audit is the need to view such assessments as inter-agency efforts. The process of identifying and understanding social exclusion requires a wide variety of skills and knowledge that are generally not available to every INGO. Joint assessments could improve analysis and sharing of a comprehensive understanding of the situation (de Ville de Goyet and Morinière 2006). They could also foster inter-agency programming required to operationalize the beneficiary-centered approach called for in the TEC Synthesis Report.

The recovery process is a dynamic; ongoing, political, economic, and social process that enables and constrains affected populations (Christoplos 2006) and peoples’ needs and vulnerabilities change over time. INGO interventions themselves impact the recovery process, and not necessarily in the intended positive manner. For example, the exclusion of ‘conflict-affected’ people from many tsunami assistance programs in Banda Aceh and northern Sri Lanka

provoked increased tension. Ongoing monitoring of the recovery process is also needed to inform constructive adjustment of INGO activity (Lowrie et al. 2005).

III. Recommendations

It is not the intention of this paper to present a definitive statement on RBA in emergencies. The reflective process has been plagued by the same constraint that keeps many INGOs from addressing RBA in emergencies: inadequate time allocated to research and analysis. Another major constraint to implementing RBA in emergencies is the timeframe of humanitarian assistance operations; NGOs attempting to implement RBA in their long-term programming are committing to a period of at least 10 years.

Instead, this paper attempts to provide a preliminary response to tsunami evaluation recommendations that “all relief and rehabilitation must be informed by a human rights *framework* and all disaster response *policies* must be based on a human rights approach” (emphasis added) (Action Aid International 2006, 54). As such, the implementation of RBA is viewed as a series of processes, not simply the end goal of empowerment. And the process of implementing RBA in emergencies has already begun for several NGOs.

Through the traditional humanitarian assistance mandate of providing protection and services to ‘rights-holders’ when other institutions are unable to meet their obligations, INGOs have long been protecting rights. This paper illustrates that some INGOs are also promoting rights, from the earliest stages of tsunami response, through a variety of activities. Others are beginning to grapple with the complex issues surrounding social exclusion and the underlying causes of vulnerability. These processes are a long way from perfect; but emergency response does not occur in a perfect environment. It must be kept in mind that to respond to the tsunami, most INGOs were required to expand by upwards of 400% - almost overnight. There is no private or public sector entity that could expand to such an extent without sacrificing quality¹⁵. It must also be kept in mind that shifting towards a rights-based culture throughout the humanitarian response community will require more than simply adding additional activities and requirements to already overburdened emergency response staffs.

In recognition of the primary TEC recommendation calling for a fundamental reorientation from supplying aid to supporting and facilitating communities own relief & recovery priorities, (Telford and Cosgrave 2006), the following recommendations are made:

1. Articulate Human Rights Strategies

Require all INGOs that state a commitment to human rights in their mission statement to articulate strategies for protecting and promoting all human rights in their emergency response programs.

While RBA can be operationalized by applying human rights principles, in particular accountability, participation, and equality, INGOs need to avoid ‘repackaging’ traditional approaches by simply using the language of rights (Luttrell and Piron 2005). What is needed to avoid this pitfall is an institutional commitment to building a rights-based culture, not a short

¹⁵ Christopher Necker, interview, 28 August 2006, Colombo.

term fix in response to emergencies like the Tsunami. At a minimum, the long-term strategies should contain the following components:

- A human rights review of organizational management, human resources, and programming policies and practices to identify how internal rules, processes, culture or resource allocation are shaping behaviour and practice.
- Training plans to ensure all staff receive a minimum amount of human rights education.
- ‘Learning’ plans to ensure practices in the field are documented, analyzed and distributed.
- Measures to ensure all program development staff are fully aware of the national laws and policies in the countries in which they work, as well as regional and international treaties, declarations and agreements; and this information is used during disaster response operations.
- A participatory process that listens to – and acts upon – the concerns and priorities of claim-holders, no matter how this may ‘inconvenience’ the plans of the INGO.
- Contingency plans to a.) ensure both local authorities and affected populations are aware of the legal and policy framework of rights, and b.) strengthen the lines of communication between local authorities and affected populations.
- Exit strategies that clearly illustrate steps needed to enable affected communities to claim their rights and local and national governments to respond to these claims. While completing these steps within the timeframe of humanitarian response may not be feasible, the practice will encourage a cultural shift towards RBA.

2. Establish Inter-Agency Team to Support RBA

At each large-scale emergency response, establish an inter-agency team dedicated to providing the ongoing contextual assessment and monitoring information, as well as technical support, needed by all operational INGOs.

Humanitarian assistance staffs are already struggling to simultaneously implement quality programming and meet demands for upward accountability in a difficult and challenging environment. It is not reasonable to expect them to take on the additional responsibilities for context analysis and monitoring to better address rights and the underlying causes of vulnerability. Also, not all NGOs have the resources or mandate to undertake these activities themselves; yet most could improve their response programmes through access to quality information. In addition to addressing these issues, a dedicated¹⁶, inter-agency team will:

- Ensure coordinated data collection and analysis to improve program quality, reduce gaps and avoid duplication of efforts in emergency response.

¹⁶ To avoid conflicting priorities, RBA Support Team Member should be viewed as a full-time position.

- Build on the diversity of humanitarian actors and comparative advantages of each. In addition to INGO/LNGO staff members with strong social, anthropological, context analysis, and human rights skill, the team should include representatives of the local communities. A skills audit of the 'beneficiary' populations should identify qualified candidates.
- Improve coordination with, and capitalisation on the specific skills and mandates of, other international bodies such as the UN Cluster System, ProVention¹⁷, IDRL¹⁸, and the Emergency Capacity Building Project¹⁹.
- Promote a common understanding of RBA throughout the community. It can also help to promote inter-sectoral programming and a focus on root problems which are common to all rights areas, such as gender inequality and power imbalances. Additional activities of the team may include establishment of longitudinal studies to assess the impact of RBA in emergencies; analysis and documentation of successful RBA implementation claims; and evaluation of the effectiveness and ease of use of the variety of assessment tools available²⁰.
- Specifically address concerns of Jan Egeland (2006) as stated in his presentation during the launch of the TEC Report:

It is important that we all work in partnership rather than in isolation of each other...Efforts should be complimentary rather than divisive and relationships should be built on mutual trust rather than on competition for space, turf or money. ... We should recognise our limits and areas of expertise and not pretend that each actor has the know how to do it all. Agencies should not treat recovery activities as extensions to relief operations or simply overstretch themselves and operate outside areas of competence.”

3. Develop monitoring indicators

Develop monitoring indicators to measure both the processes and outcomes of implementing a human rights framework. A consultative process is recommended for such development to ensure the indicators are effective and to help build capacity and common understanding throughout the community.

¹⁷ Formed in 2000 by World Bank to provide a forum for dialogue and a framework for collective action, ProVention has identified 'social and political contexts' and 'policy environments that enable (or hinder) the implementation of effective risk reduction measures' as areas of further study.

¹⁸ International Disaster Response Laws, Rules and Principles. The TEC Synthesis Report recommends development of IDRL as a means of "clarifying and strengthening respective responsibilities, accountabilities and authority of affected states and international agencies" (Telford and Cosgrave 2006, 115).

¹⁹ Jointly implemented since 2003 by Oxfam GB, SAVE US, WVI, CRS, IRC, CARE and Mercy Corps, the ECB project has a focus on program quality through its Accountability and Impact Measurement initiative. It has also implemented inter-agency evaluations of tsunami response programs.

²⁰ Activities planned in 2006 by the UN Early Recovery Cluster include development/ improvement of common tools for analysis to ensure recovery is planned from the very early stages of a crisis in such a way that it integrates risk and vulnerability reduction measures (OCHA 2006).

When asked to describe their experience implementing RBA, many NGOs staff referred to their adherence to Sphere standards. At a philosophical level, the Sphere Charter and Minimum Standards represent a practical articulation of RBA (Lowrie et al. 2005), yet they are limited in the scope of rights addressed²¹. A further criticism is the Minimum Standards appear to treat “rights as susceptible to technical fixes by agencies through relief and development programmes” (Darcy 2004, 12). While the value of Sphere is not in question, the point is that Sphere compliance is not the same as ‘doing’ RBA.

Work is currently being undertaken by IASC to produce a Manual for the Operational Guidelines on Human Rights Protection in Situations of Natural Disasters which provides detail on what the general human rights norms mean in the specific circumstances of natural disasters. While this document goes beyond the current scope of Sphere, it also has limitations. For example, while cognizant of the indivisibility of rights, in practice many agencies implementing RBA focus on root problems common to all rights areas, such as gender inequality and power imbalances. Also, rights imply responsibilities of both duty-bearers and claim-holders. There are no standards proposed to address these issues. Also, the document is intended for a wider audience than the NGO community and therefore includes standards that exceed the mandate of NGOs. Finally, a limitation recognized by the author is the lack of indicators. “The key indicators, as measures to the standards, ...function as tools to measure the impact of processes used and programmes implemented. Without them, the standards would be little more than statements of good intent, difficult to put into practice” (Sphere Project 2004, 8).

In developing human rights framework monitoring indicators, the following issues will need to be addressed:

- Due to the breath of human rights, it is fully recognized that it may never be possible to compile a single, comprehensive document of minimum standards for RBA; or that such a document is even desirable. A similar issue was faced during the development of Sphere. Work should therefore begin with a close examination of existing international standards²² to avoid duplication or contradiction; and priority should be given to developing indicators for those standards.
- Indicators will need to be designed to assess the degree to which project activities enable the state to fulfil the rights of the disaster-affected population (Christoplos 2006), and the communities to claim their rights (e.g. to participate; contribute and express opinions; and decide²³). Work in this area should build on that already underway in the ‘development’ field²⁴.
- Methods will need to be designed to facilitate the rapid development of indicators for host government standards,²⁵ as needed.

²¹ For example, there is little discussion concerning one of the major unmet rights in tsunami response: the right to livelihoods.

²² Including the IASC Manual, Sphere, and DAC criteria (ALNAP 2006).

²³ P.B. Gowthaman, interview, 23 August 2006, Colombo.

²⁴ For example, Action Aid has developed qualitative indicators for measuring ‘empowerment’ and Plan has a benchmarking tool to allow it to assess its progress in implementing RBA.

²⁵ For example, the constitution of a country that spells out rights and obligations within the national framework (van Brabant 2003) as well as those included in national monitoring mechanism.

Annex 1 - Guiding Questions for Consultations

Question 1: What are some specific examples of successful rights-base approaches by NGOs in the tsunami response? How did these approaches differ from the needs-based approaches? What are the challenges faced by NGOs while integrating rights-based approaches to emergencies?

Question 2: What are the major unmet rights of tsunami affected populations at this time? What should the role of the NGO community be in addressing these unmet needs?

Question 3: What constraints or obstacles must we overcome to fulfil this/these role(s)?

Annex 2 - Persons Interviewed

Adrian Ouvry	ARC	Partnership Coordination Delegate - Sri Lanka & the Maldives
Alison Cleary	Oxfam Australia	Tsunami Information and Advocacy Coordinator
Ashika Serasundara	CARE	Director-PQ&L
Cherian Mathews	Oxfam-UK	Campaigns & Policy Manager, Colombo
Chris Necker	CARE	Emergency Coordinator, Colombo
Devanand Ramiah	UNDP	Peace and Development Analyst, Colombo
Dilrukshi Fonseka	UNDP	Project Liaison Officer, Colombo 5
		Humanitarian Assistance Director-
		Kilinochi/Mullaihivu
Donald Lees	CARE	Advocacy Coordinator-HSRP
Nayomi Dharmatileke	CHA	Program Quality & Learning Unit
Priyanka Shamal Samarakoon	CARE	Program Quality & Learning Unit
Nijananthy	CARE	Program Quality & Learning Unit
Nikki Burns	CARE	Colombo
P.B. Gowthaman	Oxfam Australia	Advocacy and Humanitarian Protection Manager
Patricio Cuevas-Parra	WVI	Partnership Advisor
Paul Adams	CARE	Strategic Programme Advisor
R. Ravi Shankar	SCF	
	Transparency	
	International	Project Director, Colombo
Rukshana Nanayakkara	CARE	Humanitarian Assistance Director- Jafna
S. Karunakaran	CARE	Assistant Country Director, Colombo
Sally Austin	CARE	Colombo
Sandhya Venkateswaran	CARE	Colombo
Simon Eccleshall	IFRC	Colombo
Sophie Harding	Tearfund	Policy advisor-Tsunami Task Force
	ACEH NGO Coalition	
Faisal Hadi	for Human Rights	Executive Director, Bande Aceh
		Information Coordinator - Humanitarian
Udeshi Amarasingh	CARE	Management Unit, Colombo
Salbiah Ahmad	UNFPA	Gender Advisor, Bande Aceh
		Programme Manager, MDGs Support Unit,
		Colombo
Yanti, Lacsana	UNDP	RBA + HAP Advisor, Bande Aceh
Ingvild Solvang	CARE	Emergency Coordinator, Bande Aceh
Christophe Legrand	CARE	Bande Aceh
Rossella Bartoloni	CARE	PM-Operations, Bande Aceh
Melinda Young	Oxfam-UK	Coordinator of Child Protection, Bande Aceh
Ali Aulia Ramly	IRC	
	TI Transparency	
	International	Director, Bande Aceh
Nomas Winoto	American Red Cross	Sr. Country Representative, Bande Aceh
Dellaphine Rauch-Houekpon	Director	Lembaga Posko Kemanusiaan, Bande Aceh
Ismet Nur	IOM	Head of Stakeholder Relations, Bande Aceh
Nicky Rounce	Flower Aceh	Bande Aceh
Erwin Setiawan	SIA-Aceh	Bande Aceh
Cut Ratna Hayati	Aceh Bangkit	Bande Aceh
Gunawan Adnan	Muslim Aid	Bande Aceh
Fadullah Wilmott	Lembaga Posko	
	Kemanusiaan	Bande Aceh
Ismed Nur	Plan	Bande Aceh
M. Taufan		Bande Aceh

Annex 3 - Bibliography

- ACFID (2006) Human Rights Paper Review: Comments Clinton NGO Initiative, ACFID Consultation, Melbourne, 1 September.
- Action Aid International (2006) *Tsunami Response: A Human Rights Assessment*, PDHRE, People's Movement for Human Rights Learning, Habitat International Coalition – Housing and Land Rights Network,
http://www.alnap.org/tec/pdf/actionaid_tsunami_hro_jan2006.pdf
- ALNAP (2006) *Evaluating Humanitarian Action Using the OECD-DAC Criteria - An ALNAP Guide for Humanitarian Agencies*, Overseas Development Institute, London.
- Article 19 (2005) *Humanitarian Disasters and Information Rights: Legal and Ethical Standards on Freedom of Expression in the Context of Disaster Response*, London,
<http://www.article19.org/pdfs/publications/freedom-of-information-humanitarian-disasters.pdf>
- Bhattacharjee, A., Rawal, V., Fautin, C., Moore, J., Kalonge, S., and Walden, V.M. (2005) *Multi-Agency Evaluation of Tsunami Response: India and Sri Lanka*, prepared for CARE International, Oxfam GB and World Vision International,
<http://www.ecbproject.org/publications.htm>
- Buchanan-Smith, M. and Fabbri, P. (2005) *Linking Relief, Rehabilitation and Development - A Review of the Debate*, TEC Thematic Evaluation on LRRD, Tsunami Evaluation Coalition, London.
- CARE (2006a) *Human Rights and Emergencies*, Atlanta.
- CARE (2006b) *Social Equity Audit (SEA): A Tool for Inclusive Development*, Briefing Paper, India Policy Series.
- Chhotray, V. (2005) *Participation or Local Politics? The Illusion of Development Projects*, id21 Global Issues, Research Highlight 11, April, <http://www.id21.org/society/s8bvc1g1.html>
- Christoplos, I. (2006) *Links Between Relief, Rehabilitation and Development in the Tsunami Response: A Synthesis of Initial Findings*, Tsunami Evaluation Coalition, London.
- Cleary, A. (2006) OXFAM Consolidated Answers - Clinton Tsunami NGO Initiative, Human Rights Paper, Oxfam Australia, 5 September 2006.
- Collaborative for Development Action (2005) *Report of Listening Project - Aceh, Indonesia*,
http://www.tsunami-evaluation.org/NR/rdonlyres/A8727B88-9BD2-4045-8155-517CDD616AC6/0/listening_project_aceh_nov_2005.pdf

- Cosgrave, J. (2005) *Tsunami Evaluation Coalition Initial Findings*, ALNAP, <http://www.alnap.org/tec/pdf/low-resA5%2020060221.pdf>
- Cotterrell, L. (2006) 'Approaches to Human Rights in Humanitarian Crisis' in *Human Rights and Poverty Reduction: Realities, Controversies and Strategies*, T. O'Neil (ed), ODI Meeting Series, http://www.odi.org.uk/rights/Publications/Rights%20Meeting%20Series%20Publication%202006/RightsPublication_screen.pdf
- Darcy, J. (2004) *Human Rights and Humanitarian Action: A Review of the Issues*, A background paper prepared for the workshop on Human Rights and Humanitarian Action convened by the IASC Sub-Working Group and co-hosted by UNICEF, the UN High Commission for Human Rights and ICVA Geneva, April 2004, Human Rights and Humanitarian Action – HPG Background Paper Humanitarian Policy Group, Overseas Development Institute, London, <http://www.odi.org.uk/rights/Publications/HPGBackgroundPaperforIASC.pdf>
- de Ville de Goyet, C. and Morinière, L.C. (2006) *The Role of Needs Assessment in the Tsunami Response*, Tsunami Evaluation Coalition, London.
- Disaster Relief Monitoring Unit, Human Rights Commission Sri Lanka (2005) *The Report on People's Consultations on Post-Tsunami Relief, Reconstruction and Rehabilitation in Sri Lanka*, July - September, UNDP.
- Egeland, J. (2006) Transcript of speech during the launch of the Tsunami Evaluation Coalition Report, 14 July 2006, Geneva, http://www.sphereproject.org/dmdocuments/TEC_launch_transcript.pdf
- Emergency Capacity Building Project (2006) *The 'Good Enough' Guide to Impact Measurement and Accountability in Emergencies*, (May draft) CARE International, Catholic Relief Services, International Rescue Committee, Mercy Corps, Oxfam GB, Save the Children US, World Vision International, <http://www.ecbproject.org/publications/Guide%20to%20Impact%20Measurement%20and%20Accountability%20in%20Emergencies.pdf>
- Goyder, H., Coventry, C., Adams, J., Kaiser, T., Williams, S. and Smillie, I. (2006) *Linking Relief, Recovery, and Development (LRRD) – Policy Study*, A report for SIDA by International NGO Training and Research Center, Tsunami Evaluation Coalition, London.
- HAP Editorial Steering Committee, Standards Development Working Group 3 (2006) *Humanitarian Accountability and Quality Management Standard, Draft – Version 3*, HAP International, Geneva, http://www.hapinternational.org/pdf_word/347-HAP%20Standard%203rd%20Draft%2027%20July%202006.pdf
- Human Rights Center-University of California Berkeley and East-West Center (2005) *After the Tsunami: Human Rights of Vulnerable Populations*, http://www.alnap.org/tec/pdf/Berkeley_human_rights_of_vulnerable_populations_20051020.pdf

- IDRL (2005) Asia-Pacific Study – *Indonesia: Laws, Policies, Planning and Practices on International Disaster Response*, International Federation of Red Cross and Red Crescent Societies, Bangkok Regional Delegation, <http://www.ifrc.org/docs/pubs/idrl/idrl-indonesia.pdf>
- Inform (2005) *Human Rights Issues in the Post-Tsunami Context*, April Update, Human Rights Document Center, Sri Lanka.
- Jones, A. (nd) *The Sphere Charter and Minimum Standards*, CARE.
- Leaning, J., Greenough, G., and VanRooyen, M. (2006) *Comments on Reports Relating to Special Envoy/NGO Impact Initiative (for discussion in Geneva, September 25, 2006)*, Harvard Humanitarian Initiative, Harvard University, 22 September.
- Local Capacities for Peace Project (2004) *The Do No Harm Handbook (The Framework for Analyzing the Impact of Assistance on Conflict)*, Collaborative for Development Action, Inc. and CDA Collaborative Learning Projects, <http://www.cdainc.com/dnh/docs/DoNoHarmHandbook.pdf>
- Lowrie, S., Smith, C. and Austin, S. (2005) *Conflict, Compliance and Sphere - What it Means for CARE Sudan in Darfur*, version 3, Discussion Paper, CARE UK, 5 August.
- Luttrell, C., Piron, L. and Thompson, D. (2005) *Operationalising Norwegian People's Aid's Rights-Based Approach - A Review of Lessons From International Non-governmental Organisations of Relevance to Norwegian People's Aid's Adoption of a Rights-based Approach*, Overseas Development Institute, http://www.odi.org.uk/rights/Publications/Luttrell_NPA.pdf
- Mashni, A., Reed, S., Sasmitawidjaja, V., Sundhagul, D. and Wright, T. (2005) *Multi-Agency Evaluation of Tsunami Response: Thailand and Indonesia*, prepared for CARE International and World Vision International, <http://www.ecbproject.org/publications.htm>
- Morago-Nicolás, L (2000) *A Rights-based Approach to Emergencies: Rights-based Analysis in Practice*, ActionAid Briefing Paper, Emergencies Unit, http://www.actionaid.org.uk/doc lib/111_1_rights_based_approach_practice.pdf
- OCHA (2006) *Appeal for Improving Humanitarian Response Capacity: Cluster 2006*, Consolidated Appeal Process (CAP), <http://ochaonline.un.org/humanitarianappeal/webpage.asp?MenuID=7229&Page=1355>
- OHCHR (2004) *Human Rights and Poverty Reduction: A conceptual Framework*, United Nations, Geneva, http://www.ohchr.org/english/about/publications/docs/Broch_Ang.pdf
- O'Neil, T. (2006) *Human Rights and Poverty Reduction: Realities, Controversies and Strategies*, ODI Meeting Series, http://www.odi.org.uk/rights/Publications/Rights%20Meeting%20Series%20Publicatio n%202006/RightsPublication_screen.pdf

- Piron, L. (2005) *Human Rights: Promoting accountable aid*, Opinions, Number 56, ODI, http://www.odi.org.uk/rights/Publications/LHP_accountabilityopinion_sept05.pdf
- Roche, C., Kasynathan, N. and Gowthaman, P. (2005) *Bottom-up Accountability and the Tsunami*, Paper prepared for the International Conference on Engaging Communities, Brisbane, 14-17 August, Oxfam Australia.
- Secretary General on the Human Rights of Displaced Persons (2006) *Draft Manual for the Operational Guidelines on Human Rights Protection in Situations of Natural Disasters*, Draft 4, 21 April 2006.
- Sphere Project (2004) *The Humanitarian Charter and Minimum Standards in Disaster Response*, Oxfam Publishing, Oxford.
- Sphere Project (nd) *Module 2: Humanitarian Charter - Trainers' Notes*, Sphere Training Resources, <http://193.193.144.30/sphereproject/training/matpdf/m2.pdf>
- Telford, J. and Cosgrave, J. (2006) *Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report*, Tsunami Evaluation Coalition, London.
- Ternström, B., Girard-Barclay, E., Rajasingham, D., Deshmukh, Y. and Pedersen, S.B. (2006) *Evaluation of the Linkage of Relief, Rehabilitation and Development (LRRD) Regarding Interventions in Connection with the Tsunami Disaster in December 2004 - Sri Lanka Case Study*, Channel Research, Tsunami Evaluation Coalition, London.
- Thampi, G.K. (2005) *Ensuring Effective Project Monitoring and Evaluation in Tsunami Relief Operations: Exploring the Role of Community Feedback Mechanisms*, Transparency International, www.transparency.org/in_focus_archive/tsunami/tsu_tampi.pdf
- Toner, A. (2006) *Does Community Participation Worsen Inequalities?*, id21 Research Highlight:20 July 2006 [online], <http://www.id21.org/zinter/id21zinter.exe?a=i&w=s8bat1g1.html>
- Toner, A. and Cleaver, F (2005) *Democratizing Access or Localizing Inequity? Local Participation in Delivering Services May Not Be Good for the Poor*, BCID Research Briefing, (1), December, <http://www.bradford.ac.uk/acad/bcid/research/Researchbriefing/>
- Transparency International (2006) *Corruption in Humanitarian Aid*, Working Paper #03, http://transparency.org/content/download/6474/38543/file/working_paper_humanitarian_aid.pdf
- van Brabant, K (2003) *Benchmarks and Yardsticks for Humanitarian Action: Broadening the Picture*, Forced Migration Review 17, May, pp.43-45.
- Vauk, T. (2006) *Service Delivery for Sustainable Peace*, id21 Research Highlight 5 July, (original source: Service Delivery in Countries Recovering from Conflict; DFID, Final Report, January 2005), <http://www.id21.org/society/s10btv1g1.html>

Annex 4 - Terms of Reference for Consultancy

Consultant shall perform the following duties and complete the following work, as requested pursuant to the terms hereof:

Title: Human Rights Consultant for NGO Tsunami Initiative

- Conduct a brief literature review of available documentation on human rights and emergencies. Upon completion and before the June 15, 2006 consultation, issue a briefing paper outlining the main issues and challenges as detailed in the review she conducts.
- Participate in the field consultations in Banda Aceh, Indonesia and Colombo, Sri Lanka. If required, she would be available to plan the consultation sessions at the field level.
- Conduct a more thorough research after the consultations to contrast with what has been developed so far and attempt to relate the findings/recommendations from the consultations to current work on the topic. Once this is completed, she will draft the 5,000 word write-up.