



ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

HUMANITARIAN DISASTERS and INFORMATION RIGHTS

Legal and ethical standards
on freedom of expression
in the context of disaster response

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HUMANITARIAN DISASTERS AND INFORMATION RIGHTS

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Summary

International and national responses to disasters so far suggest that insufficient weight has been placed on the need to promote and respect freedom of expression and information. As a result, humanitarian disasters will be, at some points or throughout, an information crisis. ARTICLE 19 is concerned that those involved in responding to the Asian earthquake and tsunami will also fall into this trap.

The Report aims to illustrate, for the benefit of disaster-affected populations, people acting on their behalf, journalists and relief workers, the importance of information in disaster relief operations, in some cases based on binding legal standards. We hope this Report will add to the growing realisation about the centrality of information in disaster response and will strengthen the protection and promotion of disaster-affected populations' right to know and right to be heard.

The rights to information and expression are fundamental human rights. They underpin all human rights and are central to human development. In the context of a large-scale natural disaster, fulfilling these rights takes on particular importance: appropriately targeted information cannot only ensure that assistance is effective and locally relevant, but it can also save lives and preserve human dignity.

Access to information is of particular importance in the aftermath of a disaster:

- to mitigate the loss of life;
- to reduce panic;
- to direct people on how and where to get essential services;
- to facilitate contact with relatives and friends;
- to assist in the discovery of the missing and in burying the dead appropriately;
- to provide an outlet for grief and counselling;
- to provide watchdog oversight over assistance activities and help guard against corruption; and

- to ensure two-way communication between assistance providers and the affected communities.

This Report sets out the legal, ethical and policy basis and arguments for the protection and fulfilment of freedom of expression and access to information in disaster situations, from the pre-disaster phase or early warning, to the reconstruction efforts.

It argues that the existence of a humanitarian disaster does not preclude states and other actors from exercising their legal obligations and ethical responsibilities with regard to the protection and fulfilment of freedom of expression and freedom of information. While international legal standards do allow for restrictions to the right to freedom of expression, such restrictions need to abide by strict tests that are unlikely to be met in the context of disaster response.

States are therefore under a number of obligations flowing from the right to freedom of expression and information, including putting in place appropriate early warning systems, ensuring that survivors have access to the information they need to make the most of the relief and reconstruction efforts, ensuring transparent and accountable delivery of assistance and providing the information necessary for effective participation by those affected in rehabilitation and reconstruction efforts.

This Report also identifies a set of minimum recommendations that should be implemented to ensure that governments, inter-governmental and non-governmental organisations engaged in relief efforts respect, protect and fulfil the right to freedom of expression of affected populations and individuals.

RECOMMENDATIONS

Recommendations - Early Warning

To States and Inter-Governmental Bodies:

- The right of everyone to communicate messages about pending disasters should not be subject to limitations.
- The authorities should make all possible efforts to ensure that any information they hold about immediate disaster risks is communicated as quickly and as widely as possible to those likely to be affected.
- Appropriate systems should be put in place to ensure adequate dissemination of information about disaster risks and threats. The precise nature of these systems will depend on the degree of risk in a particular area but the following should be respected:
 - Warnings should be in simple language and in local dialects.
 - A variety of channels and warning devices, including the media, should be developed to ensure that as many people as possible in high-risk areas receive warning messages as rapidly as possible.
 - Warning messages should contain all relevant information such as how imminent and serious the threatened event is, the risk of the event occurring, and suggestions for preventive action.
 - Local communities and authorities should be involved in information dissemination strategies and should be priority information targets.

- Measures should be taken as necessary to ensure that populations in high risk areas are informed about the preventive or mitigating measures that may/should be taken in case of a pending/imminent disaster.

To NGOs and other Private Actors:

- Private groups with access to early warning information about pending disasters have a moral and social obligation to take all reasonable measures to promote broad dissemination of this information.
- The media, especially local media, have a professional and moral obligation to inform the public about pending disasters and, as part of this, should build their capacity to convey alert messages to the people effectively in a timely fashion.

Recommendations – Survivors’ Right to information

To States:

- Clear lines of communication should be established with relief organisations, the media and affected populations.
- No undue restrictions on freedom of expression should be imposed and, in particular, media workers should be allowed adequate access to all affected areas.
- Threats, attacks, and killings of media workers constitute human right violations, which should be immediately investigated. Perpetrators should be brought to justice.
- States should take all necessary measures to ensure the protection by the competent authorities of media workers against any violence, threats, retaliation, pressure or any other arbitrary action.
- Authorities involved in relief, reconstruction or rehabilitation should make all possible efforts to ensure that survivors have access to key information including information on the provision of food, water, shelter, and medical and other services.
- Effective measures to trace those missing or dead, to identify the dead and to inform relatives should be put in place.

To Inter-Governmental and Civil Society Organisations:

- The international community and UNHCR should be part of a system of information sharing. UNHCR should coordinate more effectively with its implementing partners and work towards a common goal.
- Actively inform crisis-affected populations about the nature of the assistance programme and report on its implementation
- Resources should be allocated towards information campaigns and public awareness raising programmes on the relief programs, the rights of the survivors, the specific provisions for women and children, etc.
- Information should be circulated in the most effective format and in the languages understood by disaster-affected populations;
- Information mechanisms should be set up. Providing information at the economic and social source points disaster-affected populations easily access, will make use of an already existing informal information and communication network.
- Disaster-affected populations should have access to several sources of information to enable them to make informed decisions regarding
- Disaster-affected populations should be provided with radio sets and batteries. Camp based radio stations should be encouraged and these stations should be able to broadcast in the language of their choice. Radios provide a variety of information from several

different sources and are an effective and efficient source for health, education and security issues.

- Several forms of expression should be encouraged within the camps; these can include radio, newspapers, theatre and song. Disaster-affected populations should be provided with paper and writing utensils and existing educational and literacy programmes should be supported and strengthened.

To the Media:

- The media are under a professional obligation to respect any professional codes of conduct. In particular, they should assist in the provision of key information to survivors and they should act responsibly when reporting on the disaster, and the relief operations.

Recommendations- Participation

To States and the International Community:

- The participation of local communities should be incorporated as a central aspect of disaster response strategies, including relief, reconstruction and rehabilitation efforts.
- The need to provide rapid relief should override this only where consultation with those affected would place lives at stake.
- Effective systems for ensuring the two-way flow of information to and from affected communities should be put in place as part of the overall strategy to ensure effective participation. The potential role of the media in this regard should be taken into account.

To NGOs and other Private Actors:

- NGOs and other private actors involved in assistance efforts should similarly place participation at the very centre of their work.

Recommendations - Accountability

To States and the International Community:

- Reports on funds received and spent, as well as strategies for relief and reconstruction work, should be produced and made publicly available.
- Independent oversight bodies should be established to monitor the distribution of aid and implementation of projects and to respond to complaints.
- Effective measures should be put in place to ensure that affected communities can monitor the delivery of assistance.
- The media should not be hindered in its efforts to report on and to gain access to information on assistance efforts, and this should include access to the affected areas.
- Tenders for work relating to disaster response should be transparent and fair.
- Whistleblowers should benefit from legal protection as outlined above.

To NGOs and other Private Actors:

- Transparent accountability systems should be put in place for all disaster response activities.
- Consideration should be given to adopting and implementing codes of conduct or principles governing disaster response work, such as those noted above or as developed by individual actors.

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Introduction

The earthquake and tsunamis that hit South and Southeast Asia on 26 December 2004 resulted in a tragedy of enormous proportions. More than 178,000 people have died and around 130,000 are missing, presumed dead. Many more have seen their homes and livelihoods destroyed. The cost of the recovery stage of the relief operation is estimated to amount to £21.5bn and it will be years before lives return to anything like normal in the affected regions.

The international response to these tragic events has been impressive. People all over the world have responded by giving generously and by extending unprecedented expressions of solidarity to those affected. Pictures of children emptying their piggy banks have made front-page news while those spared the worst effects have shared what little they have with those less fortunate. As of 28 March 2005, the total amount pledged and committed is almost US\$12 billion. This contribution came from donor countries as well as private donors and is channelled through different UN agencies and NGOs.¹

The focus in the days and weeks following the disaster has been on assessing the extent of the damage, burying the dead and providing basic services – water, shelter and food – to those who survived. These developments will have an important long-term impact on the affected regions and the people who live in them.

As importantly, people's right to accurate and appropriate information also needs to be protected and enhanced. The rights to information and expression are fundamental human rights. They underpin all human rights and are central to human development. In the context of a large-scale natural disaster, fulfilling these rights takes on particular importance: appropriately targeted information cannot only ensure that assistance is effective and locally relevant, but it can also save lives and preserve human dignity. Access to information is of particular importance in the aftermath of a disaster:

- to mitigate the loss of life;
- to reduce panic;
- to direct people on how and where to get essential services;
- to facilitate contact with relatives and friends;
- to assist in the discovery of the missing and in burying the dead appropriately;
- to provide an outlet for grief and counselling;
- to provide watchdog oversight over assistance activities and help guard against corruption; and
- to ensure two-way communication between assistance providers and the affected communities.

¹ This amount is the total amount of contribution to projects listed in CAP and other humanitarian contributions to projects not listed in CAP. To see the breakdown please see: http://ocha.unog.ch/fts/reports/daily/ocha_R10_E14794_05032621.xls and http://ocha.unog.ch/fts/reports/daily/ocha_R4_A669_05032621.pdf

Unfortunately, freedom of expression and access to information in disaster contexts, as both a right and a developmental objective and condition, remain too often forgotten.

As a result, humanitarian disasters will be, at some points or throughout, an information crisis. To paraphrase ARTICLE 19 report on famine², censorship and the absence of credible and accurate information include not only the banning of newspapers or of radio and TV programmes, and the imprisonment of journalists, but it is also a far more pervasive and insidious abuse involving the suppression of legitimate cries for help and of calls for the more equal distribution of assistance.

This report sets out the legal, ethical and policy basis and arguments for the protection and fulfilment of freedom of expression and access to information in disaster situations, from the pre-disaster phase or early warning, to the reconstruction efforts³. It argues that the existence of a humanitarian disaster does not preclude states and other actors from exercising their legal obligations and ethical responsibilities with regard to the protection and fulfilment of freedom of expression and freedom of information. Indeed, while international legal standards do allow for restrictions to the right to freedom of expression, such restrictions need to abide by strict tests that are unlikely to be met in the context of disaster response. States are therefore under a number of obligations flowing from the right to freedom of expression and information, including putting in place appropriate early warning systems, ensuring that survivors have access to the information they need to make the most of the relief and reconstruction efforts, ensuring transparent and accountable delivery of assistance and providing the information necessary for effective participation by those affected in rehabilitation and reconstruction efforts.

This report also identifies a set of minimum recommendations that should be implemented to ensure that governments, inter-governmental and non-governmental organisations engaged in relief efforts respect, protect and fulfil the right to freedom of expression of affected populations and individuals. The report aims to illustrate, for the benefit of disaster-affected populations, people acting on their behalf, journalists and relief workers, the importance of information in disaster relief operations, in some cases based on binding legal standards. We hope this report will add to the growing realisation about the centrality of information in disaster response and will strengthen the protection and promotion of disaster-affected populations' right to know and right to be heard.

² ARTICLE 19, *Starving in Silence, A report on famine and censorship*, London, April 1990.

³ International disaster response law is founded in the same source of authority as other subject matter of international law, e.g. in treaties, municipal laws, and regulations. However, IDRL has not been, until recently, the object of specific study or codification. As a result, in addition to inconsistencies across the various treaties, there are also some significant aspects that have been omitted, such as: freedom of movements, information exchange, accountability to disaster-affected populations, distribution and use of relief, etc. For a review of what is encompassed under international disaster law, please refer to: IFRC, *International Disaster response Laws, principles and practice: reflections, prospects and challenges*, Geneva, 2003

I. International Standards: Freedom of Expression and Access to Information

Throughout the 1990s, there has been a growing international consensus over the fundamental relationship between freedom of expression and information on one hand, sustainable development, and disaster response on the other.

For example, paragraph 37 of the declaration of the Johannesburg World Summit on Sustainable Development notes:

An integrated, multi-hazard, inclusive approach to address vulnerability, risk assessment and disaster management, including prevention, mitigation, preparedness, response and recovery, is an essential element of a safer world in the twenty-first century..... (f) Encourage the dissemination and use of traditional and indigenous knowledge to mitigate the impact of disasters and promote community-based disaster management planning by local authorities, including through training activities and raising public awareness; (h) Develop and strengthen early warning systems and information networks in disaster management, consistent with the International Strategy for Disaster Reduction;

It states, in its paragraph 26, that sustainable development requires a long-term perspective and broad-based participation in policy formulation, decision-making and implementation at all levels. Governments went on to commit themselves to continue to work for stable partnerships with all major groups, respecting the independent, important roles of each of them.

Governments that adopted the Phnom Penh Regional Platform for Sustainable Development recognised the need to establish an accurate database and integrated information systems in the countries of the region to promote informed decision-making and to provide the public with access to such information.

Running through the 27 principles of the 1992 Rio Declaration of the Earth Summit in Rio de Janeiro, and Agenda 21, the UN's blueprint for action, are guarantees for the rights of all citizens to freedom of expression, access to information and public participation in all developmental affairs. Principle 10 of the Rio Declaration for Sustainable Development states:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Explicit in the aforementioned documents, and implicit in the conditions necessary for disaster mitigation and disaster response, are two fundamental human rights: the right to freedom of expression and access to information, as guaranteed in ARTICLE 19 of the *Universal Declaration of Human Rights* (UDHR), and the right to political participation guaranteed in ARTICLE 21 of the UDHR.

I.1 Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights*⁴ guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.⁵

The *International Covenant on Civil and Political Rights* (ICCPR),⁶ a treaty ratified by over 154 States,⁷ imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all three regional human rights instruments, at Article 10 of the *European Convention on Human Rights*,⁸ Article 13 of the *American Convention on Human Rights*⁹ and Article 9 of the *African Charter on Human and Peoples' Rights*,¹⁰ as well as in the *UN Convention on the Rights of the Child*.¹¹

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."¹² As the UN Human Rights Committee has said:

The right to freedom of expression is of paramount importance in any democratic society.¹³

⁴ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

⁵ See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

⁶ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

⁷ As of 24 November 2004.

⁸ Adopted 4 November 1950, in force 3 September 1953.

⁹ Adopted 22 November 1969, in force 18 July 1978.

¹⁰ Adopted 26 June 1981, in force 21 October 1986.

¹¹ Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 44/25 of 20 November 1989, entered into force 2 September 1990.

¹² 14 December 1946.

¹³ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

The guarantee of freedom of expression applies with particular force to the media. As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.¹⁴

I.2 Restrictions on Freedom of Expression and Information

Restrictions on Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

These have been interpreted as requiring restrictions to meet a strict three-part test.¹⁵ First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”¹⁶ Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.¹⁷

Freedom of Expression and States of Emergency

International human rights law does recognise that during emergencies States may need to derogate from rights for the greater common good. In recognition of this, Article 4 of the ICCPR provides for emergency derogations in the following terms:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and

¹⁴ UN Human Rights Committee General Comment 25, issued 12 July 1996.

¹⁵ See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

¹⁶ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

¹⁷ *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 4 places a number of conditions, both substantive and procedural, on the imposition of emergency derogations, as follows:

- derogations may only be entertained in times of emergency which threaten the life of the nation;
- derogations must be officially proclaimed;
- derogations may only limit rights to the extent strictly required and may never lead to discrimination;
- no derogation is possible from certain key rights, including the rights to life, to be free of torture and slavery, not to be imprisoned for a contractual obligation, not to be tried or sentenced for something which was not a crime at the time of commission, to recognition as a person before the law, and to freedom of thought, conscience and religion;
- States imposing derogations must inform other States Parties of the rights to be limited and the reasons for such limitation; and
- derogating States must inform other States Parties of the termination of any derogations.

The case-law of the Human Rights Committee indicates a great reluctance to recognise as legitimate states of emergency which are declared in peacetime.¹⁸ As the Committee noted in its General Comment on Article 4:

If States parties consider invoking article 4 in other situations than an armed conflict, they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances.¹⁹

Among other things, it is clear that any application of emergency laws derogating from rights must be limited in time. The Human Rights Committee specifically stressed this in its General Comment on Article 4 stating:

Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature.²⁰

The *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, adopted by a group of legal experts in 1984, elaborate on these standards.²¹ Principle 48 provides that States shall “terminate such derogation in the shortest time required to bring to an end the public emergency....” Principles 55 and 56 provide that

¹⁸ See, for example, *Ramirez v. Uruguay*, UN Doc. CCPR/C/10/D/4/1997, *Silva v. Uruguay*, UN Doc. CCPR/C/12/D/34/1978 and *Montejo v. Colombia*, UN Doc. CCPR/C/15/D/64/1979.

¹⁹ General Comment No. 29: States of Emergency (Article 4), 24 July 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 3.

²⁰ *Ibid.*, para. 2.

²¹ Reproduced in 7 *Human Rights Quarterly* 3.

derogations shall be subject to independent legislative review and that individuals who question the need for derogation measures shall have an effective remedy. These points are restated and reinforced by the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted in 1995 by a group of experts in international law, national security and human rights.²²

I.3 Access to Information held by public bodies

The right to access information held by public bodies was not specifically elaborated in the international treaties referred to above. This right, however, is increasingly being recognised as part of the right to freedom of expression which, as noted above, includes the right to seek, receive and impart information. In particular, there is a growing body of authoritative opinion which supports recognition of this right.²³

Special Rapporteurs

The right to access publicly-held information as an aspect of freedom of expression has repeatedly been recognised by various UN bodies. The UN Special Rapporteur on Freedom of Opinion and Expression has provided extensive commentary on this right in his Annual Reports to the UN Commission on Human Rights. In 1997, he stated: “The Special Rapporteur, therefore, underscores once again that the tendency of many Governments to withhold information from the people at large ... is to be strongly checked.”²⁴ In his 1998 Annual Report, the Special Rapporteur declared that freedom of information includes the right to access information held by the State:

[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems....²⁵

Regional Systems

The right to freedom of information has also been explicitly recognised in all three regional systems for the protection of human rights. The African Commission on Human and Peoples’ Rights recently adopted a *Declaration of Principles on Freedom of Expression in Africa*,²⁶ Principle IV of which states, in part:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.

²² (London: ARTICLE 19, 1985). These standards are reflected, for example, the Preamble and Principle 3.

²³ The various international statements in support of this view are elaborated in Mendel, T., *Freedom of Information: A Comparative Legal Survey* (New Delhi: UNESCO, 1993).

²⁴ Report of the Special Rapporteur, 4 February 1997, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1997/31. His commentary on this subject was welcomed by the UN Commission on Human Rights, which called on the Special Rapporteur to “develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications.” Resolution 1997/27, 11 April 1997, para. 12(d).

²⁵ Report of the Special Rapporteur, 28 January 1998, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, para. 14. Once again, his views were welcomed by the Commission on Human Rights. Resolution 1998/42, 17 April 1998, para. 2.

²⁶ Adopted at the 32nd Session, 17-23 October 2002.

In October 2000, the Inter-American Commission on Human Rights approved the *Inter-American Declaration of Principles on Freedom of Expression*.²⁷ The Principles unequivocally recognise freedom of information, including the right to access information held by the State, as both an aspect of freedom of expression and a fundamental right on its own:

3. Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
4. Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

Within Europe, the Committee of Ministers of the Council of Europe adopted a Recommendation on Access to Official Documents in 2002.²⁸ Principle III provides generally:

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

The rest of the Recommendation goes on to elaborate in some detail the principles which should apply to this right.

The Aarhus Convention

The legally binding *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (the Aarhus Convention)²⁹ sets out a number of obligations on States Parties to provide access to information of an environmental nature, including in the context of a natural disaster.

International Humanitarian Law

Access to information is also protected under International Humanitarian Law.³⁰ The Geneva Convention IV, on the protection of civilians, provides for the establishment of Official Information Bureau. These Bureaux are required to provide information about protected persons (those who find themselves in the hands of foreign powers) to their State of nationality in a manner that enables them to be identified to their next of kin, to identify orphaned children and to provide other related information.³¹

Scope of the Obligation to Provide Access

The right to access information held by public authorities should be guided by the principle of maximum disclosure, which establishes a presumption that all information will be disclosed, subject only to narrowly drawn exceptions to protect overriding public and private interests. The right to information may be limited in accordance with the three-part test set out above. The necessity part of this test means that a restriction on the right to information will be justified only

²⁷ 108th Regular Session, 19 October 2000.

²⁸ Recommendation No. R(2002)2, adopted 21 February 2002.

²⁹ UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the “Environment for Europe” process, 25 June 1998, entered into force 30 October 2001.

³⁰ 56 *ASIL Studies in Transnational Legal Policy* • No. 32

³¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted 12 August 1949, entered into force 21 October 1950. See Articles 136-137, and 50, 110 and 130.

if (a) disclosure of the information would, or would be likely to, cause harm to a legitimate interest and (b) the harm caused by the disclosure of the information outweighs the public interest in the disclosure.³²

The right is most commonly understood as an obligation to respond to requests for information, but it includes an obligation to disseminate, proactively and in the absence of a request, information of key public interest.

ARTICLE 19 notes that a new aspect of this right is beginning to emerge, namely the obligation on officials to create, compile or collect information in certain contexts. This obligation is perhaps most recognised in the context of the aftermath of massive human rights abuses, where it has been described as ‘the right to truth’.³³ States have an obligation to discover the truth about past human rights obligations, and make it public, because of the importance of such information to the dignity of those who have survived, to ensuring that an event of this sort does not happen again and to taking such action as is possible to mitigate the effects.

This powerful rationale suggests a similar obligation for governments in relation to disasters and disaster responses. If States are required to shine a light into past human rights violations, surely they must also be under a similar obligation to do all within their power to harness the power of information to mitigate the threat from and effects of natural disasters. As with past human rights abuse, this is essential to preserving the dignity of survivors, and to mitigating the possible effects of the disaster, including the very loss of life.

II. Freedom of Expression and the Responsibilities of Non-State Actors

For purposes of the right to access information, the definition of public bodies should focus on the type of services that are provided rather than the actual structure and official classification of the body. It will thus include all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or QUANGOS (quasi non-governmental organisations), judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines).

II.1. Inter-Governmental Organisations

ARTICLE 19 is of the view that inter-governmental organisations (IGOs) are also obligated to respect and promote the rights to freedom of information and expression.

The UDHR proclaims that its provisions are a common standard of achievement for all peoples and all nations. In line with the spirit and objectives of the UDHR, States’ universal legal human rights obligations should apply to bodies they create collectively, as part of the global community, just as they apply to bodies they create on their own, such as national public bodies. In this regard, the responsibility of IGOs is a necessary procedural means by which to safeguard the

³² See ARTICLE 19, *The Public’s Right to Know: Principles on Freedom of Information Legislation* (London: 1999). Available at: <http://www.article19.org/docimages/512.htm>.

³³ See ARTICLE 19, *Who Wants to Forget?: Truth and Access to Information about Past Human Rights Violations*, (London: 2000), available at: <http://www.article19.org/docimages/869.htm>.

universal application of human rights³⁴. Without such a corresponding obligation, States could sidestep their human rights obligations simply by establishing collective bodies and assigning certain responsibilities to them. Furthermore, it is established that IGOs are responsible to States for breaches either of their direct treaty obligations or the principle of customary international law.³⁵ There is no principled ground for differentiating between customary legal obligations owed to States and those owed to individuals.

II.2. For Profit and Non-Governmental Organisations

To what extent do NGOs and corporate actors hold responsibilities as far as freedom of expression and freedom of information are concerned? Indeed, while there have been instances where private actors have been included within the scope of public international law,³⁶ this latter has focused almost exclusively on the actions of states or state agents.

Over the years, however, interpretations of international human rights law have increasingly focused on private actors, largely by holding governments responsible for their failure to act with due diligence vis-à-vis the actions of private individuals or institutions.³⁷ At one level, States have been found to be directly responsible for the activities carried out by these non-state actors when they have contracted out or delegated activities to these actors. In an important development, however, States have also been found to have an obligation to ensure that private actors do not act in ways that render rights inaccessible, regardless of whether or not they have any direct relationship with those private actors.³⁸ Similarly, looking at health care and housing, the Committee on the Elimination of Racial Discrimination noted that protection of rights,

may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention... To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.³⁹

The Committee on the Rights of the Child, in a 2002 discussion on the private sector as service providers, insisted on the primary responsibility of the State for compliance with the provisions of the

³⁴ Even if the obligation to respect the human right to freedom of expression and information, universally binding on States, is not formally binding on IGOs, it is clear that the latter have a strong moral and social obligation to respect these rights. Put another way, it is simply not open to IGOs to flout basic human rights even if from a formal legal perspective they do not consider themselves to be bound to respect them.

³⁵ See *WHO Regional Office Case*, ICJ Reports, 1980, P. 73. See also Shaw, M., *International Law*, 4th Ed. (Cambridge: Cambridge University Press, 1997), pp. 919-920.

³⁶ Examples of this include the international treaties to end slavery, which prohibit the actions of individuals, in particular slave traders. See International Council for Human Rights Policy, "Beyond Voluntarism: Human rights and the developing international legal obligations of companies", Geneva: International Council on Human Rights Policy (February 2002).

³⁷ See for instance Amnesty International, *Broken Bodies, Shattered minds: Torture and Ill-treatment of Women* (2001); Amnesty International, "Respect, Protect, Fulfil" (2000).

³⁸ See, for example, *Miranda v. Mexico*, 13 April 1999, Report No. 5/99, Case No. 11.739 (Inter-American Commission on Human Rights) and *Ozgun Gundem v. Turkey*, 16 March 2000, Application No. 23144/93 (European Court of Human Rights).

³⁹ Committee on the Elimination of Racial Discrimination, General Recommendation 20, "Non-discriminatory implementation of rights and freedoms (15 March 1996), art 5.

Convention on the Rights of the Child.⁴⁰ In particular, States were deemed to have an obligation to set standards in conformity with the CRC and to ensure compliance through the implementation of appropriate monitoring of institutions, services and facilities of both public and private actors.

It could therefore be argued that States' obligation to provide key information places them under a corresponding obligation to require private bodies to disclose information on key public interests, in this specific context, information relating to natural disasters and the provision of relief.

Secondly, non-state actors have been found to be directly responsible, including under international human rights law.⁴¹ Hence, the activities of multinational corporations and other businesses have been assessed for their compatibility with human rights.

The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, elaborated by the UN Sub-Commission for the Promotion and Protection of Human Rights,⁴² recognise that trans-national corporations and other business enterprises, as organs of society, have a responsibility to promote and secure human rights. These Norms state:

Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law....⁴³

In its 2002 aforementioned discussion, the Committee on the Rights of the Child called on all non-state providers to respect the principles and provisions of the convention. It encourages non-state service providers to ensure that service provision is carried out in accordance with international standards, especially to the convention. It further encouraged non-state service providers to develop self-regulation mechanisms, which would include a system of checks and balances.

Thirdly, independently of the legal interpretation of international human rights obligations, private bodies – trans-national corporations and business entities, but also civil society actors – have a clear moral and social duty to respect human rights, including the right to information and expression. This obligation is engaged where these actors become involved in disaster situations, and specifically in the relief, reconstruction and rehabilitation efforts relating to the Asian earthquake and tsunamis. The humanitarian sector itself has clearly recognised the scope and nature of its ethical responsibilities.

II.3. Self-regulation and Code of Ethics

Over the last decade, non-governmental organisations and International Federation of Red Cross and Red Crescent Societies has made strong moves towards adopting code of ethics or self-regulatory framework that insists upon its human rights responsibilities vis-à-vis affected populations. These include the Sphere Humanitarian Charter and Minimum Standards, the Principles of Conduct for

⁴⁰ Committee for the Right of the Child, “The private sector as service provider and its role in implementing Child Rights”, 31st session (20 September 2002).

⁴¹ International Council for Human Rights Policy, “Beyond Voluntarism: Human rights and the developing international legal obligations of companies”, Geneva: International Council on Human Rights Policy (February 2002), pp.55-76.

⁴² U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). Available at: <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>.

⁴³ Norm 1.

The International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes and the Humanitarian Accountability Partnership International's Principles of Accountability.

The development of these initiatives indicates the commitment of humanitarian actors not only to integrate their actions within a human rights context but also to define their roles in terms of human rights responsibilities.⁴⁴

HAP International's Principles of Accountability insist upon humanitarian actors' obligations to inform and consult with disaster-affected populations, involve them in program design and implementation, and respond to their complaints.

While the other charters or code do not explicitly recognize the right of disaster-affected population to freedom of expression and access to information, this right is implicitly recognized. For instance, Sphere first minimum standard states that disaster-affected population actively participates in the assessment, design, implementation, monitoring and evaluation of the assistance program. One key indicator towards the implementation of this standard is that "Women and men of all ages from the disaster-affected and wider local populations, including vulnerable groups, receive information about the assistance program, and are given the opportunity to comment to the assistance agency during all stages of the project cycle."⁴⁵

III. Freedom of Expression and Advance Warning

There is little that can be done to prevent natural disasters like the recent earthquake and tsunamis in the Indian Ocean from occurring. On the other hand, there are ways to mitigate the impact of these disasters, in particular through early warning systems and disaster preparedness. Accurate, reliable and understandable information plays crucial a role in both of these systems.

The response to the recent tsunamis has highlighted a serious failure in communicating early or advance warning, as well as in disaster preparedness systems. It was immediately obvious that, had an early warning system been in place, the extent of destruction, and particularly the loss of life, could have been lessened. There was not enough time to warn people living at or close to epicentre of the earthquake, for example in Aceh, but this was not the case in more distant locations. In Sri Lanka, the Maldives and India, measures could have been taken to limit the impact of the tsunamis given that more than an hour and one-half elapsed between the original earthquake and the tsunami hitting these coastal regions.⁴⁶

⁴⁴ Agnes Callamard and Konraad van Brabant, Accountability: A question of Rights and Duties, in World Disaster Report 2002, Geneva: IFRC, 2002

⁴⁵ Please refer to Sphere website: www.sphereproject.org

⁴⁶ The Tsunami timeline (26 December) (See: <http://www.globalresearch.ca/articles/CHO412C.html>):
00.57-00.59 GMT: an earthquake measuring 8.9 on the Richter Scale occurs just off the coast of northern Indonesia; the Pacific Tsunami Warning Center in Hawaii registers the earthquake on its seismic instruments

Shortly after 01.00 GMT: the earthquake hits several cities in Indonesia

01.30 GMT: a tsunami hits Phuket and the Thai coast shortly after 8.30 am local time; news of the earthquake is reported

02.30 GMT: a tsunami hits the coastal region of South and Eastern Sri Lanka at 8.30 am local time

02.45 GMT: a tsunami hits India's eastern coast at 6.15 am local time

04.00 GMT: a tsunami hits the Maldives and Male and other parts of the country are flooded

The response in South Asia may be contrasted with that on the coast of Africa, which had much longer to prepare. Although there was damage to infrastructure and properties, the Seychelles and Kenya managed to minimise the number of human casualties and only one person died in each country. In the Seychelles, the National Disaster Committee immediately set up a base to monitor what was happening and instructed the Seychelles Broadcasting Corporation to send out alerts to warn members of the public. In Kenya, an emergency plan was immediately put into action. National media were quick to broadcast alerts and all commercial vessels along the Kenyan coast were warned.⁴⁷

III.1 The Failure to Inform

Asian officials have admitted that they failed to issue disaster warnings but claimed that they did not realise the nature and extent of the disaster⁴⁸, largely due to inadequate alert systems and technology. Meanwhile, agencies which do have the technology, such as the Pacific Tsunami Warning Center (PTWC)⁴⁹ in Ewa Beach, near Honolulu, Hawaii, failed to disseminate the information they had in a timely and effective manner.

The PTWC issued a Pacific-wide tsunami bulletin by email 18 minutes after the earthquake hit but they soon realised that most potential victims were not among the Center's Pacific nation clients.⁵⁰ Indonesia, as a member of the Pacific Warning network, was notified, but it was already too late to take effective preventative action. Authorities in many other affected countries, notably those in South Asia, were not notified, apparently because the Center did not have relevant phone numbers on file. Claims have been made, however, that while PTWC notified the US Military and the State Department, as well as the American Navy base on the island of Diego Garcia in the Indian Ocean, US diplomats in Madagascar and Mauritius were notified only after the first waves hit Sri Lanka.⁵¹

It has been suggested that the Thai authorities knew about the upcoming earthquake but opted not to issue a warning. Thammasarote Smith, a former senior forecaster at Thailand's Meteorological Department, was quoted in the *Bangkok Post* as stating: "The department had up to an hour to announce the emergency message and evacuate people but they failed to do so. ... It is true that an earthquake is unpredictable but a tsunami, which occurs after an earthquake, is predictable."⁵²

The Thai government claimed that they knew about the earthquake but could not predict the coming tsunamis.⁵³ Kathawudhi Marlairojanasiri, the Meteorological Department's chief weather forecaster, said it sent out warnings through radio and television after the first waves hit, from

11.00 GMT: a tsunami hits the East Coast of Africa

⁴⁷ See: <http://www.afrol.com/articles/15120>.

⁴⁸ From various articles, such as the one published in: http://news.xinhuanet.com/english/2004-12/28/content_2388704.htm.

⁴⁹ The [National Oceanic and Atmospheric Administration](#)'s (NOAA) [National Weather Service](#) operates two tsunami warning centres. One is the Pacific Tsunami Warning Center in Ewa Beach, Hawaii, which serves as the regional tsunami warning centre for Hawaii and as a national/international warning centre for tsunamis that pose a Pacific-wide threat.

⁵⁰ "Ewa Center tried in vain to help", <http://the.honoluluadvertiser.com/article/2004/Dec/29/In/In05p.html>.

⁵¹ http://www.freepressinternational.com/us_tsunami_81726300188355.html.

⁵² http://www.bizasia.com/crisis /dt86g/tsunami_also_brings_financial.htm.

⁵³ "Pointing the Finger: Bureau did all it could: Burin", *The Nation*, 6 January 2005.

9am that morning, and a website warning went up three hours later.⁵⁴ Another report, based on an informal interview with an official at the Department, suggests that the Department was aware of the earthquake minutes after it struck but that they did not issue a warning out of concern for tourism and the department's own interests in case the earthquake did not cause a tsunami.⁵⁵

The Thai media has also been criticised for not doing enough to disseminate information widely about the impending disaster. Somsak Potisat, Chief of the Mineral Resources Department, learned of the earthquake and subsequent tsunami at about 8am on 26 December. He rushed to phone a radio station, and then asked a TV channel to break the news to the public immediately. "I was told another programme was on air and that it couldn't be interrupted until 11am. I explained that it would then be too late and requested that the channel provide running messages," he said. Mr. Somsak said he had no idea when the station did broadcast a warning but he did not see any kind of coverage of the event until 11am.⁵⁶

Improvement in Tsunami Advance Warning

Shortly after the earthquake off the west coast of Sumatra, Indonesia, on 28 March 2005, authorities in most countries affected by the earlier, December 2004, tsunami issued warnings that the quake could set off another tsunami. In Thailand, these warnings were broadcasted by radio stations. In India, police used loudspeakers to ask people to keep away from the sea. In Sri Lanka, officials called disaster agencies which then alerted the media, while monasteries warned people over loudspeakers. Sadly, people in Indonesia were not given such warnings. In an interview with the BBC, Jon Kennedy, who works for Tear Fund and was in Medan-Sumatra at the relevant time, stated that he had to go online to learn what happened. Residents in Banda Aceh said that the first official announcement came several hours after the earthquake.⁵⁷

III.2 State Obligations

States should not prevent private actors from communicating early warning or related information to the general public and other governments. It may be noted that, in theory, this right of private actors may be restricted, as all freedom of expression rights may be, in accordance with the three-part test mentioned above. The interference must be provided by law, it must pursue a legitimate aim, and it must be necessary. In practice, however, it is almost impossible to imagine an aim that would justify a restriction on information and expression related to early warning to an impending disaster.

States are also under an obligation to take all necessary measures to ensure that any information they hold about an impending disaster is disseminated as widely and as effectively as possible. This obligation can be derived from the general obligation, noted above, to proactively disseminate information of key public importance, which clearly includes information warning of an imminent disaster. Again, it is almost impossible to imagine an aim that could justify

⁵⁴ "Asia Officials Failed to Issue Warnings",
http://www.news14charlotte.com/content/top_stories/default.asp?ArID=82457.

⁵⁵ "What if an early warning had been given?", *The Nation*, 31 December 2004,
<http://www.nationmultimedia.com/search/page.arcview.php?clid=11&id=110609&date=2004-12-31&usrress=>.

⁵⁶ "Thailand: Media Role in Tsunami Alert System",
<http://www.asiamedia.ucla.edu/article.asp?parentid=19874>.

⁵⁷ <http://www.irrawaddy.org/aviewer.asp?a=4518&z=150>.

overriding this obligation. Significantly, Article 5(1)(c) of the aforementioned Aarhus Convention, dealing with environmental information, provides:

In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by public authority is disseminated immediately and without delay to members of the public who may be affected.

It is also arguable that States are under a general obligation to provide appropriate warning systems, taking into account the level of risk facing their citizens. An obligation of this sort would be based on the emerging right to truth or to have information about matters of great public importance. The Hyogo Declaration 2005, adopted at the World Conference on Disaster Reduction held in Hyogo from 18-22 January 2005 in the aftermath of the Tsunami in South East Asia, affirms that States have the primary responsibility to protect people and property on their territories from hazards.⁵⁸ This obligation would go beyond simply disseminating early warning messages and extend, perhaps even more importantly, to broader systems, including providing guidance and training on what actions should be taken in the context of a disaster.

The type of system required will depend on a number of factors, including cost and level of risk. The sensor technology for detecting pending tsunamis is expensive and this may also be true for other early warning detection systems. However, a system which relies only on information dissemination and alerts is nowhere near as expensive, although presumably it runs the risk of making some mistakes and hence issuing warnings in some cases where there is in fact no threat. Notably, the Hyogo Framework for Action emphasises that both communities and local authorities should be empowered to manage and reduce disaster risk by having access to necessary information, resources and authority to implement actions for disaster risk reduction.⁵⁹

Consensus is now emerging over the need to set up an early warning system for tsunamis in the Indian Ocean. At the Tsunami Summit in Jakarta in early January, there was broad support for the ASEAN's decision to establish regional mechanisms on disaster prevention and mitigation, including a regional early warning system, and promoting public education and awareness, and community participation in disaster prevention and mitigation.⁶⁰ These plans found support at the UN World Conference on Disaster Reduction in Hyogo, Japan, less than a month after the earthquake and tsunami. As a part of the UN ten-year plan to tackle natural hazards, an International Early Warning Programme was launched. The UN initiative will emphasize the importance of people-centred early warning systems and community education about disaster preparedness.⁶¹ Furthermore, the UN has proposed that individual nations set up separate tsunami alert systems, and then establish a regional centre to collect data from those networks, analyse it and issue warnings.⁶² The new system will draw on the experience of the Pacific Ocean tsunami early warning systems making use of the existing coordination mechanism of UNESCO's Intergovernmental Oceanographic Commission. Meanwhile, before the regional warning system is operating, the UN is developing an interim warning system.⁶³ Some US\$ 8 million have already

⁵⁸ Clause 4. Available at: <http://www.unisdr.org/wcdr/>.

⁵⁹ Page 4. Available at: <http://www.unisdr.org/wcdr/>.

⁶⁰ Declaration on Action to Strengthen Emergency Relief, Rehabilitation, Reconstruction and Prevention on the Aftermath of Earthquake and Tsunami Disaster of 26 December 2004. Available at: <http://www.kbri-canberra.org.au/press/press050106De.htm>.

⁶¹ See: <http://www.un.org/apps/news/story.asp?NewsID=13077&Cr=natural&Cr1=disaster>.

⁶² See: <http://news.scotsman.com/latest.cfm?id=4062545>.

⁶³ See: <http://www.un.org/apps/news/story.asp?NewsID=13182&Cr=tsunami&Cr1>.

been provided by Japan, Sweden and Norway to support the setting up this system in the Indian Ocean and a preliminary system could be in place by June 2006. From within the region, Thailand has offered US\$ 10 million to a special fund to support a regional warning centre and the countries affected by the tsunamis have committed to set up national tsunami centres.⁶⁴

III.3 Role of the Media

The media plays a key role in an effective advance warning system, in particular in relation to the dissemination of warning and disaster mitigation messages. Indeed, in many areas affected by natural or other disasters, the mass media are the only means by which messages can be disseminated quickly and widely.

One of the principles the Yokohama Strategy and Plan of Action for a Safer World, adopted at the 1994 World Conference on Natural Disaster Reduction,⁶⁵ is: “Early warnings of impending disasters and their effective dissemination using telecommunications, including broadcast services, are key factors to successful disaster prevention and preparedness.” In the Seychelles and Kenya, as noted above, the national media actively disseminated alert news, apparently with some effect. In Hawaii, one of the most tsunami-ready places in the world, when an alert is issued, urgent messages are flashed on television.

The media’s role is not limited simply to providing a channel for official information dissemination. The media can also play a key role in ensuring that complex messages are translated into a meaningful and understandable form for the public. In order for it to be able to perform this role, the media needs to be able to access accurate and timely information from credible sources. In the longer term, the media can also play a key role in raising awareness and facilitating discussions on disasters and other risks, with a view to educating people on preventive and survival actions.

Recommendations

To States and Inter-Governmental Bodies:

- The right of everyone to communicate messages about pending disasters should not be subject to limitations.
- The authorities should make all possible efforts to ensure that any information they hold about immediate disaster risks is communicated as quickly and as widely as possible to those likely to be affected.
- Appropriate systems should be put in place to ensure adequate dissemination of information about disaster risks and threats. The precise nature of these systems will depend on the degree of risk in a particular area but the following should be respected:
 - Warnings should be in simple language and in local dialects.
 - A variety of channels and warning devices, including the media and different communication methods such as phone text message alert, should be developed to ensure that as many people as possible in high-risk areas receive warning messages as rapidly as possible. Another possible effective method of

⁶⁴ <http://www.un.org/News/Press/docs/2005/iha1023.doc.htm>.

⁶⁵ Adopted at the World Conference on Natural Disaster Reduction, Yokohama, Japan, 23-27 May 1994. Available at: http://www.unisdr.org/eng/about_isdr/bd-yokohama-strat-eng.htm.

disseminating information in places where religion takes a central stage is by using existing places of worship, such as mosque, church or temple.

- Warning messages should contain all relevant information such as how imminent and serious the threatened event is, the risk of the event occurring, and suggestions for preventive action.
- Local communities and authorities should be involved in information dissemination strategies and should be priority information targets.
- Measures should be taken as necessary to ensure that populations in high risk areas are informed about the preventive or mitigating measures that may/should be taken in case of a pending/imminent disaster.

To NGOs and other Private Actors:

- Private groups with access to early warning information about pending disasters have a moral and social obligation to take all reasonable measures to promote broad dissemination of this information.
- The media, especially local media, have a professional and moral obligation to inform the public about pending disasters and, as part of this, should build their capacity to convey alert messages to the people effectively in a timely fashion.

IV. Survivors' Right to Information

*“International actors must make sure that displaced communities are given a say in decisions that affect them. Displaced communities are not passive. They create their own strategies for addressing their needs by exchanging limited resources, services, information and shelter. Their involvement in identifying needs, in other decisions that affect their lives, and in implementing aid programmes is therefore essential”.*⁶⁶

The importance of information to survivors is immediately apparent, even to those not directly involved in disaster relief. Respect for human rights and restoration of human dignity mandate the dissemination of appropriate and accurate information, and activities geared towards the effective and meaningful participation and consultation of disaster-affected populations. Instead, populations are often left without any formal avenues to access information, or raise their concerns, complaints or fears. Current mechanisms of humanitarian operations fail to provide individuals and communities with an effective say in decisions that affect them⁶⁷.

In the context of a humanitarian disaster, survivors have a wide range of key information needs. In many cases, this information is needed to prevent further loss of life or disease. In other cases, it is required to respect or restore human dignity. It is beyond the scope of this Report to attempt to provide a comprehensive list of the key information needs of survivors but these at least include information regarding:

- those who are dead or presumed to be dead;
- the whereabouts of missing relatives or friends;
- the provision of food, water, shelter, medical, reproductive health, and other basic services;

⁶⁶ UN Secretary-General, *Report on the Protection of Civilians in Armed Conflicts*, March 2001.

⁶⁷ See for instance, Koenraad van Brabant, *The right to Information: Exploring the Challenges of Transparency, Responsiveness and Accountability in Post-Earthquake Gujarat, India*, Geneva: HAP International, 2001

- plans for relief, reconstruction and rehabilitation, including the proposed distribution of aid;
- specific protection measures, including those aimed at protecting women and children victim of sexual and domestic violence, widows, orphans, disabled people and so on;
- refugee status and refuge protection measures;
- accurate information regarding the situation in the country or area of origin in the case of displaced populations;⁶⁸ and
- the policies, procedures and criteria for assistance used in the relief assistance programmes and by relief agencies.

Information not directly related to disaster response can be equally relevant, such as existing governmental social welfare schemes: people, whose situation or status has changed as a result of a disaster (for example women who have become widowed) may become entitled to claim welfare support. Thought needs to be given, not only to what information needs to be provided, but also to how it should be presented, to be accessible and understandable to a variety of intended ‘users’?

Provision of this information does not only satisfy a need; it is a basic human right of survivors. Access to this information is essential to the protection of the most fundamental right of all – the right to life as embodied in the Universal Declaration of Human Rights. It is also crucial to the realisation of other rights, including the right to family life, or the right to health. The provision of this information is also essential to the rights of refugees and asylum seekers, as embodied in the UN Convention Relating to the Status of Refugees (Refugee Convention).

Finally, even if linguistic rights are not explicitly addressed in most human rights treaties, the right to express oneself and receive information and in a language one understands is an element of the recognized right to freedom of expression.

IV.1 Positive Obligations to Provide Information

At the very minimum, States are under an obligation not to place undue obstacles in the way of the free flow of information in disaster situations. Unfortunately, governments of the countries hit by the Tsunami have not respected this obligation.

In Aceh, for example, the Indonesian government has continued its policy of limiting the freedom of movement of journalists, a policy which ARTICLE 19, along with others, has protested for some time.⁶⁹

The Burmese government has gone even further, prohibiting the transmission of disaster news from neighbouring countries. People with satellite receivers who copied the video images of tsunami disaster news from satellite TV stations and showed it to the public have been fined Kyat 40,000 (approximately USD6400). The State controlled newspaper and television stations have

⁶⁸ The UNHCR has stressed the need for refugees to make an informed decision regarding their voluntary return (Executive Committee Conclusion No. 18 (XXXI/1980) on Voluntary Repatriation). While no refugee should be forced to repatriate, particular safeguards are required to ensure that a refugee woman’s decision to repatriate is truly voluntary and not a result of coercion, either direct or circumstantial (Conclusion No. 73 (XLIV/1993)).

⁶⁹ See ARTICLE 19 and Forum-Asia, “Freedom of Expression under Attack in Aceh”, 5 June 2003. Available at: www.article19.org.

provided almost no coverage of news of the disaster either relating to neighbouring countries or Burma.⁷⁰ It was also feared that the authorities had provided doubtful information to the international community, claiming only 60 deaths and 100 injured and missing persons. Many were concerned that the true figure was much higher, given the frontage of Burma to the Andaman Sea and the much higher death toll in its neighbouring countries.⁷¹

As noted above, the right to freedom of expression may be subject to certain restrictions. However, in accordance with international law, such restrictions must be necessary for the protection of a legitimate interest. General restrictions such as the one imposed in Burma, aimed at limiting media access to affected areas, can never be justified. Indeed, given the key role of the media in facilitating the flow of key information, it is, more than ever, vitally important that media workers are able to gain reasonable access to affected areas and to report on their findings without hindrance.

States are not only under an obligation to protect and respect the provision of information by others, but they are also under an obligation to take positive measures to provide affected populations with key information. Public bodies are under an obligation to provide access to information they hold upon request. Increasingly, this obligation has been interpreted by international, regional and national actors as including the wide dissemination of key information on a proactive basis.

The Recommendation on Access to Official Documents of the Committee of Ministers of the Council of Europe states:

XI. Information made public at the initiative of the public authorities

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.

Principle IV of the *Declaration of Principles on Freedom of Expression in Africa* states, in part:

2. The right to information shall be guaranteed by law in accordance with the following principles:
 - ...
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;

This obligation has rarely been tested in the context of a disaster. However, the principles which underpin the general obligation to disseminate key information apply with at least equal force in that context.

The Aarhus Convention provides for extensive positive obligations to disseminate environmental information and, as noted above, specifically provides for advance warning to be given of pending environmental disasters.⁷² Some national access to information laws also envisages proactive provision of information in the context of threats to life or health. The Bulgarian Access

⁷⁰ See: <http://english.dvb.no/news.php?id=3913>.

⁷¹ Roby Alampay, "Disastrous Governance", in *the Hong Kong Standard*, 13 January 2005. Available at: www.seapa.org.

⁷² Article 5 generally and Article 5(1)(c) specifically for disasters.

to Public Information Act,⁷³ for example, requires public bodies to publish information where this may prevent a threat to life, health, security or property, or where this is in the overall public interest.⁷⁴

Access to information on dead or missing relatives under International Humanitarian Law

Walter Kalin⁷⁵ notes that in situations of international armed conflict, Article 26 Geneva Convention IV obliges each party to the conflict to “facilitate enquiries made by members of families dispersed owing to the war.” At least implicitly, these provisions lay down a duty to transmit information about missing persons to their relatives regardless of their nationality.

The ICRC Commentary to Protocol I of the Geneva Convention also notes: “The recognition of such a right in international armed conflicts should have further repercussions, particularly with regard to the families of missing persons in non international armed conflicts and in the framework of human rights, even during internal disturbances or tensions” However, it must be noted that even though a right to know the whereabouts of relatives of internally displaced persons is expressly recognized in international humanitarian law, “the content of the obligation imposed on States, on other Parties to the conflict, and on the organizations concerned, is not easy to determine.”⁷⁶

Principle 16 of the UN *Guiding Principles on Internal Displacement*⁷⁷ specifically recognises that persons displaced by natural catastrophes have “the right to know the fate and whereabouts of missing relatives.” The same principle goes on to provide:

*The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.*⁷⁸

Access to information on dead or missing relatives in humanitarian disaster context

It can be argued that the same principles which underpin this obligation in conflict situations apply to disasters. Further, these obligations extend, by analogy, to a duty to prevent the dissemination of misinformation about the disaster and to correct such information where it is disseminated. There were reports, for example, that looters spread information in Sri Lanka that another tsunami was imminent, prompting people to vacate homes on the coast, leaving them free for the looters to pillage.⁷⁹ There were also reports about misinformation relating to the potential health hazards associated with the large numbers of fatalities, which has resulted in mass burials in violation of the victim’s families’ right to identify and bury the dead.⁸⁰

⁷³ Adopted 22 June 2000. Available at: <http://www.aip-bg.org/documents/access.htm>.

⁷⁴ Aarhus Convention, Article 14(2).

⁷⁵ *ASIL Studies in Transnational Legal Policy* • No. 32

⁷⁶ ICRC, Commentary on Article 32 Protocol I, p. 346, cited in ASIL, Ibid

⁷⁷ Available at: http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.

⁷⁸ See also the Pan American Health Organisation and World Health Organisation publication, *The Management of Dead Bodies in Disaster Situations*, available at:

<http://www.paho.org/english/dd/ped/DeadBodiesBook.pdf>.

⁷⁹ See <http://www.guardian.co.uk/tsunami/story/0,15671,1381288,00.html>.

⁸⁰ See for example, media reports at: <http://www.chicagotribune.com/news/nationworld/world/bal-te.tsunami28dec28.1,1698521.story?ctrack=1&csset=true> and <http://in.news.yahoo.com/050112/43/2iysa.html>.

This positive obligation should apply as well to international organisations⁸¹ and non-governmental whose mandate includes the protection of disaster-affected populations, and the provision of assistance. The provision of assistance surely includes, at a minimum, communicating to affected populations what this assistance is about, the modalities of distribution, and who is entitled to receive it.

IV.2 A Question of Priorities?

The positive obligations noted above can only be met through the allocation of certain resources – both human and material – although the extent of the resources required will normally be relatively modest. The scale of the devastation caused by the tsunami requires a substantial amount of resources to be made available for relief, rebuilding and rehabilitation efforts. This necessarily raises the question of where on the list of priorities the provision of information should be placed.

ARTICLE 19 notes, in the first place, that freedom of expression and information are basic human rights, based on respect for human dignity. The indivisibility and interdependence of all rights has repeatedly been emphasised by the international community.⁸² While the context of a disaster presents special challenges, all rights should be respected equally. The importance of knowing whether or not one's relatives have died, for example, is central to the dignity and rehabilitation of survivors and warrants substantial attention as part of the relief effort.

Secondly, it would be wrong to juxtapose informational and relief/reconstruction efforts. The provision of information and respect for freedom of expression are central to the success of assistance programmes. The extent to which relief efforts are effective is closely linked to ensuring survivors gain access to key information, for example about the provision of services, about medical risks and remedial measures that may be taken, about how to deal with dead bodies and so on. Rebuilding media outlets and even enhancing communication infrastructure can help ensure that all communities are able to take advantage of the relief efforts and that such efforts may be undertaken to maximum effect.

Thirdly, the provision of information is essential to ensuring and sustaining security. In 2003, ARTICLE 19 investigated the existence of parallel information and communication networks within refugee camps in Tanzania⁸³. The in-depth study pointed out that though the United Nations has long recognized the relationship between communication and security, there is very little contextual evidence of successful practice in the area of information exchange and direct communication occurring in the refugee-populated areas. The report also showed that curbing the availability of information to refugees strengthens not only the power of a single message (and its messenger), but also reinforces a particular perspective on the conflict and the different players within it. In such a context, tensions are stoked over and over again, rather than quenched: "The very methods by which those in power mean to control information have, in fact, caused the government and the international community to lose control of information flows."

⁸¹ For instance, according to UNHCR's Public Access Policy, *The refugee, his heirs or assigns or his legal representative, may have access to information related to himself*..

⁸² See, for example, the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights.

⁸³ ARTICLE 19, *Left to their own devices*, London: ARTICLE 19, December 2003

Similar dynamics are to be observed in disaster-struck areas: Security is not just the provision of military or police presence and the assurance of basic relief, it includes also meeting individual's inherent need to have some control over what he or she understands of a situation and to whom he or she is able to communicate his or her understanding. The provision of information by governments, inter-governmental and non-governmental organisations involved in the relief assistance program, and allowing for a diversity of communication channels will ensure that no one stakeholder has ultimate control over any one message.

IV.3 Role of the Media

In 1990, ARTICLE 19 published a report on famine and censorship⁸⁴ analysing the patterns of, and responses to, famine in China in 1959-61, Ethiopia and Sudan in the 1980s. The report showed that if timely information can be collected and if it is made freely available, widespread damage and loss of life can be mitigated. The 1990 report went on to demonstrate that a widespread and free media, at national and local level, which reaches a substantial percentage of the population reduces the likelihood of devastating famine.

Similar conclusions have been reached as far as armed conflicts are concerned. ARTICLE 19 conducted extensive research on the role of media in the former Yugoslavia, where it demonstrated that all war leaders systematically manipulated the media as part of their military and nationalist strategies.⁸⁵

In 2004, UNESCO led a discussion that produced a Declaration on the role of media in conflict and post-conflict situations. It stresses the importance of access to a free flow of information from a range of sources about conflict situations to expose any abuses that may occur and to create a climate in which the conflicts may be resolved. The Declaration also insists that credible and practical humanitarian information as well as information about any peace negotiations or other reconciliation processes should be made available both to the local population and to international assistance organizations, including through the creation of special information outlets for as long as they may be needed. The Declaration goes on to insist that authorities mandated by the international community to administer conflict or post-conflict zones should promote and defend media freedom and other human rights – not restrict them⁸⁶.

These principles apply as well to disaster and post-disaster situations. The media plays a central role in providing key information to survivors, as well as in monitoring relief efforts, and strengthening the transparent and accountable delivery of aid. The media can also serve to relay back key messages from those affected to officials and others trying to respond to the disaster. This role is very much in evidence in the response to the earthquake and tsunamis.

In Sri Lanka, for example, Community Multimedia Centres (CMC) and local radio stations are providing a lifeline to affected populations. The Matara CMC has reportedly been broadcasting information regarding those missing. A second CMC radio station, Uva Community Radio, in Bandarawella, reaches communities along the affected Eastern coast. Reporters attend daily progress meetings and broadcast vital information from government officials and NGOs to local

⁸⁴ ARTICLE 19, *Starving in silence, a report on famine and censorship*, London: ARTICLE 19, 1990.

⁸⁵ Mark Thompson, *Forging War*, London: ARTICLE 19 University of Luton Press, 1999

⁸⁶ UNESCO, *Belgrade Declaration*, May 2004 - http://portal.unesco.org/ci/en/ev.php-URL_ID=15654&URL_DO=DO_TOPIC&URL_SECTION=201.html

populations. They also relay information back from members of the community on their problems and needs to those managing the crisis.⁸⁷

In Aceh, the daily newspaper *Serambi Indonesia* has a section devoted to listing missing persons. Metro TV in Jakarta provides a video search service whereby those seeking lost relatives can review their broadcast coverage. The station then tries to identify where the pictures were taken and coordinates with the many humanitarian and command posts that are spread across Aceh to help locate the identified persons.⁸⁸ The Suara Muhammadiyah Community Radio, based in Aceh, has made humanitarian issues the focus of its five programmes – news, information on missing persons, health information, counselling and religious programmes – in the aftermath of the earthquake and tsunami.⁸⁹ Now, as the focus of attention of the mainstream media has shifted to other issues and news on tsunami are given less prominence anymore, community media plays a significant role in continuing to provide information about the aftermath of the disaster, particularly on the reconstruction phase.

At the same time, the media has a professional responsibility to act in an appropriate manner, in accordance with any codes of conduct. This includes obligations to help satisfy the public's need for information, to ensure that information disseminated is as accurate as possible in the circumstances and, subject to the duty to provide information, to avoid interfering with or undermining relief efforts. These values should be reflected in many of the professional codes of conduct adopted by journalists and/or media organisations.⁹⁰

Recommendations

To Inter-Governmental and Civil Society Organisations:

- UN agencies, foreign governments and other official bodies involved in the relief and rehabilitation efforts should be part of a system of information sharing and should coordinate effectively with their implementing partners in this regard.
- Active measures should be taken to ensure that crisis-affected populations are aware of the nature of assistance programmes and of their implementation.
- Resources should be allocated towards information campaigns and public awareness raising programmes on the relief programs, the rights of the survivors, the specific provisions for women and children, etc.
- Information should be circulated in the most effective format and in the languages understood by disaster-affected populations.
- Information mechanisms should be set up. Providing information at public economic and social gathering points which disaster-affected populations easily access, such as religious institutions, markets and so on, build on pre-existing informal information and communication networks.
- Efforts should be made to ensure that disaster-affected populations have access to several sources of information to enable them to make informed decisions regarding key aspects of their daily life and survival, as well as plans for the future.
- Disaster-affected populations should be provided with radio sets and batteries. For longer-term situations, radio stations located in displaced or refugee camps should be encouraged and these stations should be able to broadcast in the language of their choice.

⁸⁷ <http://asiapacific.amarc.org/page.php?topic=tsunami>.

⁸⁸ <http://www.asiamedia.ucla.edu/article.asp?parentid=19821>.

⁸⁹ <http://www.asiamedia.ucla.edu/article.asp?parentid=19604>.

⁹⁰ See, for example, the IFJ Declaration of Principles on the Conduct of Journalists. Available at: <http://www.ifj.org/default.asp?Issue=ETHICS&Language=EN>.

- Radios provide a variety of information from several different sources and are an effective and efficient source for health, education and security issues.
- Several forms of expression should be encouraged within the camps; these can include radio, newspapers, theatre and song. Disaster-affected populations should be provided with paper and writing utensils and existing educational and literacy programmes should be supported and strengthened.
- Local and community media should be encouraged and supported to provide special information and slots for disaster-affected populations to express their opinions.

To the Media:

- The media are under a professional obligation to respect any professional codes of conduct. In particular, they should assist in the provision of key information to survivors and they should act responsibly when reporting on the disaster, and the relief operations.
- The media should provide a special slot/space on the disaster should be available on the media (local and national media at least).

V. Participation

The right to participate in public affairs is essential to people's ability to play a role in determining the social and political environment in which they live. In the context of a natural disaster, survivors' right to participate in the relief and rebuilding efforts is vital. In many cases, these efforts will have a profound effect on the community, in some cases almost totally transforming it.⁹¹ Those affected have a fundamental right to be involved in and consulted about all aspects of this work. Although there is pressure for relief, in particular, to be delivered rapidly, decisions exerting a profound effect on local communities cannot be driven by the imperatives of aid. The profound impact assistance measures can be expected to have means it is of the greatest importance that local communities be consulted as fully as possible.

Local participation is not only a right, it is also central to the effective delivery of assistance efforts. Lessons from previous development and disaster situations have demonstrated that assistance is far more effective when it is based on local needs, priorities and interests. Finally, local participation itself serves an important rehabilitative role for survivors, a role that is increasingly being recognised as central to post-disaster interventions.

Effective local participation depends on the existence of a two-way flow of information to and from local groups, as well as specific opportunities to engage with donors and implementers. The media have a key role to play here, along with other informational mechanisms.

V.1 The Right to Participate – Some Legal standards

The Universal Declaration of Human Rights (UDHR) refers to the right of everyone to 'take part in the government of his country' and to the requirement that the will of the people, as expressed through elections, be the basis of the authority of government.

⁹¹ For example, the Sri Lankan authorities were proposing to move the entire community of Hambantota a few kilometers inland.

The right to political participation is guaranteed in Article 21 of the UDHR, and codified in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), as well as Article 3 of Protocol I to the European Convention on Human Rights (ECHR), Article 23 of the American Convention on Human Rights (ACHR) and Article 13 of the African Convention on Human and People's Rights (AfCHPR). This has subsequently been interpreted to include a general right to participate in public affairs.

The UN Declaration on the Right to Development states that:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.⁹²

The UN Guiding Principles on Internal Displacement also provide that:

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

...

- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right;

The importance of participation has been recognised in the specific context of the Asian earthquake and tsunami. For example, a joint press release by 26 mandate-holders of special procedures of the UN Commission on Human Rights, issued shortly after the disaster, states:

In this respect we strongly believe that the full participation and involvement of the communities concerned, including women, in the reconstruction of their lives and homes is of the utmost importance for sound, appropriate and quick resettlement and rehabilitation. Coordinated and participatory planning processes will be essential in securing a place for the human rights and sustainable development agenda, which is vital for ensuring a safe future for the people of the region. They will also help to ensure full transparency and accountability in bringing resources to those people and areas most in need.⁹³

V.2. The Right to Participate – Ethical principles

NGOs have also recognised the key role of local participation. The fourth HAP-I Principle of Accountability calls upon humanitarian organisations to

meaningfully involve beneficiaries in project planning, implementation, evaluation and reporting⁹⁴.

The very first Sphere Common Minimum Standard addresses the need for participation:

⁹² UN General Assembly Res. 41/128, 4 December 1986, <http://www.unhchr.ch/html/menu3/b/74.htm>, Article 1(1).

⁹³ Press Release from the mandate-holders of the Special Procedures of the UN Commission on Human Rights, 11 January 2005. Available at: <http://www.un.org/News/Press/docs/2005/hrcn1104.doc.htm>.

⁹⁴ HAP International, Principles of Accountability, 2004, www.hapinternational.org

The disaster-affected population actively participates in the assessment, design, implementation, monitoring and evaluation of the assistance programme.⁹⁵

The NGOs Code of Conduct states that “ways shall be found to involve programme beneficiaries in the management of relief aid.”⁹⁶

A report released on 10 January 2005 by the Operations and Evaluation Department (OED) of the World Bank group sets out a number of lessons learnt from project evaluations that OED has conducted over the past decade. Among their numerous findings, they stress the need for extensive participation in projects by local communities and beneficiaries.⁹⁷ Reiterating this, the President of the World Bank stated, specifically with reference to the Asian disaster: “It’s my judgment that to hurry that process without getting the people involved is probably not going to work. Their involvement is also an essential part of the healing process for the survivors”.⁹⁸

V.3. The Role of Local Media

Local media outlets, including community radios, newspapers and even television services, have a central role to play not only in disseminating information regarding the provision of relief but also in ensuring an effective two-way flow of information that should underpin effective participation. They can, in particular, provide a voice to local communities in the process of rehabilitation and development, and also portray the actual situation on the ground to those providing assistance, as well as to the international community as a whole.

In some of the affected areas, efforts have already been made to rebuild community media services. In Indonesia, *Serambi* newspaper, the only daily paper based in Banda Aceh, managed to start publishing only days after the tsunami struck, despite the loss of many of its staff. This newspaper has provided a vital source of information for the survivors in that area. Eddy Suprpto of the Alliance of Independent Journalists stated: “*Serambi* has played an extraordinary role in Aceh, not only in providing information and education on the conflict but also in brightening the minds of Acehnese people.”⁹⁹

Suprpto’s comments highlight the important role of local media in the rehabilitation process. In some places, community radio has been used to provide counselling services to survivors. In India for example, the Delhi Psychiatric Society is planning to produce a series of radio programmes aimed at helping survivors cope with post-traumatic stress.¹⁰⁰ These types of initiatives are of particular importance to the more remote and inaccessible areas of the affected countries. Less dramatically, media can provide much-needed entertainment to divert affected populations, however briefly, from the calamity they have endured and the uncertain future they face.

⁹⁵ http://www.sphereproject.org/handbook/hdbkpdf/hdbk_c1.pdf.

⁹⁶ Principle 1. Available at: <http://www.ifrc.org/publicat/conduct/code.asp>. These Principles have been adopted by over 300 NGOs working in the area of disaster response.

⁹⁷ “Lessons Learnt from Natural Disasters and Emergency Reconstruction”, OED, 10 January 2005.

⁹⁸ “World Bank President Urges Tsunami Reconstruction Be Driven By The Affected Communities” World Bank Press Release, 12 January 2005. Available at: www.worldbank.org.ph.

⁹⁹ See: http://199.249.170.220/eandp/news/article_display.jsp?vnu_content_id=1000744466.

¹⁰⁰ See: <http://www.theradiomagazine.co.uk/News.htm>.

The Internet is also an effective tool both to promote participation generally and to assist in rehabilitation efforts. Websites focused on the local population and established after the disaster struck, provide information on the missing, relief efforts, including which local and international organisations are involved and how to contact them, and official information from the government. Some also provide chat rooms for survivors, relatives and families to exchange stories, which may help to assist in the process of coming to terms with their loss.¹⁰¹

Recommendations

To States and the International Community:

- The participation of local communities should be incorporated as a central aspect of disaster response strategies, including relief, reconstruction and rehabilitation efforts.
- The need to provide rapid relief should override this only where consultation with those affected would place lives at stake.
- Effective systems for ensuring the two-way flow of information to and from affected communities should be put in place as part of the overall strategy to ensure effective participation. The potential role of the media in this regard should be taken into account.

To NGOs and other Private Actors:

- NGOs and other private actors involved in assistance efforts should similarly place participation at the very centre of their work.

VI. Accountability and Controlling Corruption

The role of transparency, access to information and freedom of expression, and a free media in particular, in promoting accountability and good governance, and in reducing corruption, has been well documented.¹⁰² Open, effective systems of accountability are essential for the proper management of public funds. The media and civil society watchdogs can play a key role in monitoring and reporting on both expenditure and the impact of monies spent.

Two different aspects of accountability are relevant here. First, there is financial accountability for the expenditure of funds, in the sense of these meeting reporting rules, owed to the public as a whole in the case of official funding and to those who have donated money in the case of private funds. Second, there is the broader question of accountability for the impact of the activities funded and the way in which they were carried out. This accountability is owed, among others, to the affected communities.

The context of disaster assistance in general, and the earthquake and tsunami relief effort in particular, is one of large sums of money, often contributed by a wide range of concerned citizens, being channelled quickly to areas where infrastructure is weak. These situations therefore raise legitimate concerns regarding accountability, good management of monies donated, corruption and the effective use of donations.

¹⁰¹ See, for example, The South-East Asian Earthquake and Tsunami Blog: <http://tsunamihelp.blogspot.com/>.

¹⁰² See, for example, World Bank Institute, *The Right to Tell: The Role of Mass Media in Economic Development* (Washington: International Bank for Reconstruction and Development and the World Bank Institute, 2002).

An important focus of openness during the relief and reconstruction process should be on providing access to information about both sources and expenditure of funds. This should include information about the amount of money received, the type and amount of other donations received, exact information on how funds and aid were or are being distributed and to whom, audited accounts and the progress of project implementation. Available technology, as well as the media and other dissemination systems, should be used to distribute this information.

VI.1 Transparency Obligations

Both States and IGOs have an obligation to provide information about their relief and reconstruction work. The military forces as well, when involved in providing relief, have an obligation to be accountable to local communities for the impact of their work. Private actors have moral, social and professional obligations to operate in an open, accountable manner.

Lessons learnt, for example from the allegations of misuse within the UN Oil for Food programme in 2004¹⁰³ and the provision of humanitarian aid to Rwanda following the 1994 genocide,¹⁰⁴ demonstrate the importance of appropriate systems of accountability and transparency to ensure that aid actually reaches the intended recipients and to inspire public confidence in the process, thereby assisting the long-term sustainability of the aid efforts. ARTICLE 19 therefore welcomes the announcement made by the UN's Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland, that the UN was working with international financial experts to establish a public monitoring system for some of the relief funds.

Accordingly, accountability and transparency within the relief and reconstruction efforts should be made a priority. Those delivering aid should put in place internal control systems to maintain accurate, publicly available records of all financial transactions. Independent oversight bodies with the power to review the distribution of aid and project implementation, and to respond to complaints, should be established as a matter of priority. These oversight bodies should work in a transparent manner themselves, and information received and collected by them should be publicly available. The monitoring mechanisms being explored by the UN and financial companies such as Pricewaterhouse Coopers, represent an interesting approach to this issue which other donors might wish to study.

Civil society organisations play a central role in the provision of relief and reconstruction assistance and it is vitally important that these organizations uphold principles of accountability and transparency in their own work. Over the years, various international humanitarian organisations have developed self-regulatory practices and accountability standards for their work. These standards should be actively promoted and followed by the various organisations involved in the relief and reconstruction process.

Profit-making bodies involved in disaster response should act in transparent, accountable ways, for example along the lines of the Business Principles for Countering Bribery developed by Transparency International and Social Accountability International.¹⁰⁵

¹⁰³ <http://www.un.org/Depts/oip/index.html>.

¹⁰⁴ <http://www.eldis.org/static/DOC1366.htm>.

¹⁰⁵ http://www.transparency.org/building_coalitions/private_sector/business_principles/dnld/business_principles2.pdf.

Participation of local communities is an important means of ensuring accountability and transparency. Civil society organizations in the affected countries should be part of any monitoring process, and those affected should be involved in decision-making processes relating to aid distribution and implementation. This is a vital safeguard against abuse and it can also help ensure that assistance provided is effective.

VI.2 The Role of the Media

The media has a vital role to play in monitoring relief and reconstruction efforts, strengthening the transparent and accountable delivery of aid and reconstruction efforts, and helping to ensure that the views of those affected are taken into account in programme design. A free media is able to monitor the progress of relief and rebuilding efforts, ensuring that these involve local communities and serve their best interests. It is also able to help provide a two-way communication channel between affected communities and those delivering assistance or setting assistance policy.

The media also have an important role to play in exposing instances of abuse and corruption. Frequently, assistance activities take place in regions characterised by corruption and/or conflict, as well as weak infrastructure. This, along with the very nature of assistance, involving rapid disbursement of large sums of money, almost invites corruption. Without ensuring the rights to know and freedom of expression, corruption can develop unchecked, further harming an already afflicted society. A free and professional media can act as a check against corruption, by holding those responsible to account and facilitating public awareness

VI.3 Protection for Whistleblowers

Whistleblowers, those who release information on wrongdoing, should be protected from any legal, administrative or employment-related sanctions. “Wrongdoing” may include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, breach of international human rights or humanitarian laws, or serious maladministration. It should also include a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not. Whistleblowers should benefit from protection as long as they have acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement. The importance of whistleblower protection is reflected in a number of national laws providing legal protection, as well as in recognised principles and authoritative statements by international actors.¹⁰⁶

Recommendations

To States and the International Community:

- Reports on funds received and spent, as well as strategies for relief and reconstruction work, should be produced and made publicly available.
- Independent oversight bodies should be established to monitor the distribution of aid and implementation of projects and to respond to complaints.

¹⁰⁶ See, for example, *The Public’s Right to Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, 1999). Available at: <http://www.article19.org/docimages/512.htm>.

- Effective measures should be put in place to ensure that affected communities can monitor the delivery of assistance.
- The media should not be hindered in its efforts to report on and to gain access to information on assistance efforts, and this should include access to the affected areas.
- Tenders for work relating to disaster response should be transparent and fair.
- Whistleblowers should benefit from legal protection as outlined above.

To NGOs and other Private Actors:

- Transparent accountability systems should be put in place for all disaster response activities.
- Consideration should be given to adopting and implementing codes of conduct or principles governing disaster response work, such as those noted above or as developed by individual actors.

Conclusion

Information plays a central role in the way in which societies deal with disasters both in terms of being prepared for the disaster before it strikes and in dealing with its aftermath.

Early warning systems, a major issue following the Asian earthquake and tsunami, are information-based systems. An immediate post-disaster need is to assess the extent of the damage, and particularly of casualties, identify the dead and inform living relatives of their loss.

Relief efforts depend for their effectiveness on informing local populations about what is being provided, by whom and where. In the medium term, information is central to the effective delivery of assistance and, in particular, to participation. A free flow of information is also central to ensuring the accountability of aid activities and to preventing corruption.

The right to “seek, receive and impart information and ideas”, as guaranteed under international law and most national constitutions, has a number of specific implications in the context of disasters. These have been outlined above. Two key points emerge from the analysis. First, the rights to information and freedom of expression are fundamental human rights, closely linked to preserving the dignity of those affected by disasters, as well as many of their other human rights. As such, the States involved, as well as inter-governmental organisations, should make ensuring respect for this key right central to their disaster response.

Second, promoting a two-way flow of information to and from affected communities, as well as providing a climate in which a free media can operate, is central to effective disaster response. This is true for all stages of the response, from the warning and preparedness stage to the immediate post-disaster response to the longer-term reconstruction and rehabilitation efforts. Informing and involving local communities, responding to their needs in an ongoing, dynamic way and operating under the spotlight, and with the assistance, of a free media are central to the success of all stages of disaster response.