

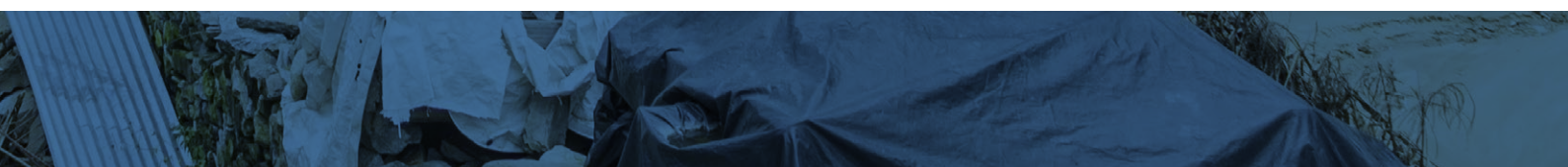
LESSONS LEARNED FROM POST-EARTHQUAKE POLICY IN NEPAL

GUIDANCE FOR FURTHER HOUSING,
LAND AND PROPERTY DISASTER
AND RECONSTRUCTION LAW
AND POLICY REFORM

April 2019



DISPLACEMENT SOLUTIONS



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I. EXECUTIVE SUMMARY

Displacement Solutions was approached and commissioned by DFID to carry out research on the housing, land and property rights issues arising from the reconstruction process, with an emphasis on the planned relocation aspects thereof. Displacement Solutions undertook a three-person mission to Nepal in November 2018 during which time extensive interviews were carried out, field visits made, and film footage taken for the production of a short documentary film which has since been completed. Based on this methodology, this report focuses on aspects of progress to date related to survivors access to housing, land and property either at their homes of origin, or through various relocation and resettlement schemes underway since government led reconstruction work was initiated in late 2015.¹ The baseline for this assessment and analysis will be a review of progress to date by the National Reconstruction Agency (NRA) 'Durable Solutions' project implemented by the Czech NGO 'People in Need' (PIN) in partnership with Community Self Reliance Centre (CSRC) with funding and technical support from DFID. Durable Solutions has the long-term objective of creating a national precedent and framework for the fair and voluntary relocation of citizens following natural disasters or because of structural landlessness, and in doing so provides support to the NRA which maintains overall responsibility for post-earthquake housing, land and property matters.² The report also takes into account the important work on geohazard mapping carried out by Durham University.³

¹ In particular, Displacement Solutions was asked explore the post-earthquake policies affecting IDPs, including the reconstruction policy of cash grants to geo-hazard / landslide-affected households, and how these policies affected the rights of those affected. The study will also examine policies affecting PDHs who may be relocated as part of the relocation grant process. In particular, it will explore the following questions: What happened in the immediate aftermath of the earthquake in terms of how IDPs affected by geo-hazards/landslides and PDHs were understood and managed? This will also take into consideration particularly vulnerable groups such as squatters, those with inadequate security of tenure protections, women, non-citizens, refugees and others?; How did pre-existing housing, land and property (HLP) laws and policies influence post-earthquake policy responses, and did these responses play any role in expanding rights protections to vulnerable groups?; How were post-earthquake policies actually implemented in practice? What obstacles - both predictable and unpredictable - were encountered and how were these addressed? What were the policy design limitations/gaps and the historical realities and perceptions of the periphery vis-à-vis the state and in which ways did these influence how centrally-driven policies have been received/implemented on the local level?; How do Nepal's post-earthquake policies compare to those of other countries, both developed and developing, experiencing similar challenges?; What can be learned by others from the approaches taken in Nepal, and what can others learn from Nepal?; and On the basis of this experience, what measures might the Government of Nepal and international partners consider as it moves forward on developing laws and policies to deal with future disasters, including the Earthquake Geohazard relocation process?

² For an overview of these efforts, see: <http://www.durablesolutionsnepal.org>.

³ For an overview of these efforts, see: <https://community.dur.ac.uk/nepal.2015eq/>.

On April 25, 2015, a 7.8 magnitude earthquake struck Nepal. Following a second strong earthquake on May 12 (7.3 magnitude), and a sequence of aftershocks, the Government of Nepal (GoN) reported the death toll at 8,700, while those injured reached 25,000. A Post-Disaster Needs Assessment (PDNA), completed in June 2015, found that total damages and losses amounted to about US\$7 billion, with reconstruction needs of about US\$6.7 billion. As the earthquake sequence destroyed 490,000 houses - mostly traditional mud-brick and mud-stone houses built and occupied by the rural poor - and rendered another 265,000 houses at least temporarily uninhabitable, the largest single need identified in the PDNA was housing and human settlements, accounting for US\$3.27 billion or almost half of the total reconstruction needs. (*Government of Nepal, National Planning Commission, 2015*)

Much has been written about the various responses by the Government of Nepal, the international aid and NGO community, donors, and local non-governmental organizations to the 2015 earthquake that caused widespread death, destruction and displacement in 31 of Nepal's 75 districts.⁴ The 2015 seismic events had a devastating impact on the country, resulting in large-scale displacement and the destruction or damage of some 900,000 homes. Government of Nepal policies, combined with donor, INGO and local NGO and CBO responses to the impact of the earthquake included the provision of reconstruction grants, determining the rights of internally displaced persons (IDPs) forced from their damaged and destroyed homes and additional measures relating to the relocation and resettlement of communities residing in highly vulnerable areas.

These and other policies were carried out within broader housing, land and property legal and policy contexts wherein significant portions of Nepali society were already living in precarious and inadequate conditions, and where the country was continuing to recover from a decade-long conflict and resultant fundamental changes to its political structures. While much has been achieved, despite the well-intended efforts of many actors (both governmental and non-governmental) as of April 2019, a considerable proportion of those who suffered housing, land and property losses as a result of the devastating 2015 earthquakes in Nepal remain inadequately housed.

As a result, a range of important lessons can be learned from the reconstruction process which may have a bearing on relevant HLP laws, policies and practices in the near future. These form the foundations of the present report which addresses aspects of the government of Nepal's responses to issues such as addressing rights to housing, land and property for displaced families, vulnerable groups, pre-and post-earthquake policy and legislation, alignment with international normative frameworks, what worked well and could be shared elsewhere, and what didn't work and in future could be enhanced from experience elsewhere.

⁴ See, for instance, Care, *Housing, Land and Property Issues in Nepal and their consequences for the post-earthquake process*, Care Nepal, 2016; Government of Nepal, National Reconstruction Authority, Acts, Rules, Standards and Procedures Relating to Reconstruction, Singha Durbar Kathmandu; Oxfam, *Building Back Right: Ensuring equality in land rights and reconstruction in Nepal*, Joint Agency Briefing Paper, 21 April 2016; The Himalayan, *Second grant tranche: 385,657 beneficiaries miss deadline*, 10 September 2018, et al.

Based on these lessons, and grounded in the sentiments expressed and rights contained within the Nepal Constitution of 2015⁵, this report posits 12 actionable recommendations to assist the Government of Nepal (and partners) as it moves forward on developing laws and policies to deal with future disasters, including the earthquake geohazard relocation process. The key recommendations outlined in Section VI below are summarized here:

REC 1: PLAN AHEAD OF TIME – NEPAL NEEDS TO BE READY FOR THE NEXT DISASTER

Action 1: Direct participation by survivors should be far more significant in guiding responses to disaster in particular those situations where relocation/resettlement are required. This should be included either as amendments to existing legal frameworks, or in new laws, regulations or official procedures;

Action 2: More advanced regulatory systems under the new disaster laws being prepared should be guided by lessons emerging in Nepal since the 2015 earthquakes; and

Action 3: The mandate conferred upon the NRA in the “Act Relating to Reconstruction of the Earthquake Affected Structures, 2015”, and in particular the “Procedure Relating to Registration of Land in the Name of Earthquake Affected Person, 2016”, specifically Article 3(2)(c) on landless survivors, should be conferred in legislation governing the new national disaster management agency, regulating the responsibilities of the Government of Nepal at all Federal levels.

REC 2: WEAVE TENURE IMPROVEMENTS INTO DISASTER PLANNING AND RESPONSE PROCESSES

Action 1: Dimension the scale and scope of loss of HLP rights and grievances by undertaking a preliminary assessment of HLP issues during IDP registration. This data provides a ‘placemaker’ registering these losses, and providing a consolidated source of reference when time and resources permit relocation, restitution, compensation or other forms of redress and a baseline for the HLP Checklist found in Annex 2.

Action 2: Ensure that relevant provisions (law, regulation and procedures) in the NRA mandate are commuted to the future national disaster management agency mandate currently under development.

⁵ The preamble of the Constitution is particularly instructive in outlining the collective vision of the 30 million people of Nepal as to the type of country they aspire to build. It is worth quoting here in full: “We, the Sovereign People of Nepal, Internalizing the people’s sovereign right and right to autonomy and self-rule, while maintaining freedom, sovereignty, territorial integrity, national unity, independence and dignity of Nepal, Recalling the glorious history of historic people’s movements, armed conflict, dedication and sacrifice undertaken by the Nepalese people at times for the interest of the nation, democracy and progressive changes, and respecting for the martyrs and disappeared and victim citizens, Ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance, Protecting and promoting social and cultural solidarity, tolerance and harmony, and unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability, and Being committed to socialism based on democratic norms and values including the people’s competitive multiparty democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, and independent, impartial and competent judiciary and concept of the rule of law, and build a prosperous nation, do hereby pass and promulgate this Constitution, through the Constituent Assembly, in order to fulfill the aspirations for sustainable peace, good governance, development and prosperity through the federal, democratic, republican, system of governance.

Action 3: Compile a reference library of tools, guidelines, standards, and procedures for addressing HLP rights in post-disaster/crisis environs as a resource for future disaster management including disaster response protocols.

REC 3: TREAT ALL FORMS OF TENURE EQUITABLY

Action 1: Ensure that applicable law, regulation and procedures mandating the NRA to address housing, land and property rights for all are adapted and commuted to the mandate of the forthcoming national disaster management agency in line with the provisions of the *Constitution* and *Comprehensive Peace Accord*. In this regard, assurances should be given that no discrimination of any sort should be tolerated that confers greater HLP rights protections to different tenure statuses over and above other such statuses;

Action 2: In line with the aims of the Government of Nepal, as noted in the National Disaster Report 2017, provide appropriate training and capacity building measures to ensure responsible offices charged with implementation of the *Disaster Risk Reduction and Management Act* are capable and competent to ensure equitable tenure is applied in all future post-crisis scenarios. In addition, a range of advocacy measures designed to raise awareness both within government and within the broader community should be undertaken.

REC 4: WOMEN'S (AND GIRL'S) HLP RIGHTS NEED HIGHER PRIORITIZATION

Action 1: Policy and plans should be implemented to ensure gender proportionate and inclusive participation (50:50) for gender responsive disaster management in the context of post-earthquake⁶, (or any post-crisis) reconstruction processes. Any decision-making body linked to reconstruction processes should have equitable gender representation and be specifically mandated to formally and mandatorily address women's and girl's HLP rights issues;

Action 2: Develop programmes to implement constitutional guarantees to meet the Sendai Framework for DRR "Whole of society" goals for people of all age, gender, class, ethnicity, indigenous nationalities, and religion the basic and special rights of women of all kinds of physical, mental and marital status, in order to address existing gender inequality – and in addition specifically in terms of housing, land and property in Nepal should be developed.

REC 5: ESTABLISHING A NEPAL DISASTER LAND BANK (NDLB) CAN ASSIST IN TACKLING LANDLESSNESS THAT OCCURS DURING DISASTER RESPONSES

Action 1: Given the general scale of residential disruption within the land sector resulting from many disasters, it is appropriate to develop concrete measures to secure access to land for households that were landless at the time of the disaster concerned. The establishment of a Nepal Disaster Land Bank (NDLB) could help. Such a land bank could set up land set-aside programmes of parcels of State land in a bid to prevent land conflict and resolve disaster-generated displacement of landless household in a rights-based manner throughout the country. The establishment of such a land bank would be a further element of broader land reform measures to assist landless families, which are already underway in the country.

⁶ As called for by: Women(s) Group Working on Common Charter of Demand on Humanitarian Response (2016) during The National Women's Conference on Gender Responsive Disaster Management held in Kathmandu (March 2016) and in line with the Sendai framework for DRR.

REC 6: ANY RELOCATION/RESETTLEMENT MUST BE COMMUNITY-INITIATED, DRIVEN AND CONTROLLED, WITH APPROPRIATE STATE SUPPORT, AND CONTAIN SPECIFIC HUMAN RIGHTS PROTECTIONS AGAINST FORCED EVICTIONS

Action 1: Consider using community contracting as a methodology for producing more sustainable and integrated resettlement programming both for the current backlog, and for future relocation and disaster risk reduction programming. A useful and proven model is the 'Peoples Process' approach used in Pakistan, Afghanistan, Sri Lanka, Indonesia, South Africa and elsewhere.⁷

Action 2: Develop specific eviction prevention measures within such policies in line with all relevant international standards, in particular, UN Committee on Economic, Social and Cultural Rights General Comment No. 7 on Forced Evictions (1997).

REC 7: COMMUNITY INFRASTRUCTURE IS AS IMPORTANT AS INDIVIDUAL LAND PLOTS

Action 1: In recognition of the fact that relocation/resettlement is always far more than the mere movement of people from one place to another, emphasis should be placed on developing new capacity building programming in existing 'integrated settlements' created following the earthquake and focusing on remedial planning and development aims of both the resettled communities, and where applicable, the host community specifically focusing on physical, economic and social infrastructure.

REC 8: THE INTERNATIONAL HLP LEGAL AND POLICY FRAMEWORK IS DIRECTLY RELEVANT TO NEPAL'S NEEDS

Action 1: Direct reference should be made in all future government of Nepal policy and legal documents relevant to disasters to, at a minimum: (a) All existing international human rights treaties duly ratified by the government, in particular the rights, duties and norms contained within the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and others which in any way address the HLP rights of persons affected by disaster⁸; and (b) The UN Guiding Principles on Internal Displacement.

REC 9: CARRY OUT EXCHANGES WITH SUCCESSFUL RELOCATION/RESETTLEMENT ELSEWHERE

Action 1: Host an international conference of countries faced with disaster-driven displacement, and/or coordinate exchanges with such groups in Fiji, Solomon Islands, Vietnam, Maldives and others may be useful in learning how best to implement relocation and resettlement objectives, and what pitfalls should be best avoided and how.

⁷ See: http://www.fukuoka.unhabitat.org/docs/hpress/pdf/Habitat_PP.pdf

⁸ For a full list of the treaties the government of Nepal has ratified, see: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>.

REC 10: DEVELOP A QUICK ACTION CHECKLIST FOR DISASTER RESPONSE TO HLP CHALLENGES

Action 1: Those involved in disaster planning and response in Nepal should develop a housing, land and property rights checklist to guide action in the event of a future disaster, and distribute these to all local and regional government offices throughout the country. Items that could be included within such a checklist are found in Annex 2 below.

REC 11: CARRY OUT COMPREHENSIVE NATIONAL DIAGNOSTIC WORK ON VULNERABLE HOUSING SITES

Action 1: Develop a national plan of action, with requisite costings, designed to complete the national geo-hazard maps complimented by assessments of other hazards the country is exposed to: promulgate the legal framework required to expropriate at fair market value and in a manner fully consistent with relevant human rights norms, land deemed unsafe for human habitation and converting its legal disposition to 'public' and protected land; undertake a comprehensive national land inventory to identify future resettlement sites and consider the means of acquiring and protecting them in some form of land bank. In the event financing for national diagnostic work is not forthcoming, measures should be taken to assist local governments to carry out as much of this work as possible at the local level.

REC 12: IMPLEMENT ADDITIONAL MEASURES TO PROVIDE NEW PERSONAL IDENTIFICATION AND HLP DOCUMENTATION

Action 1: Foundation work on improving land information, in particular related to HLP rights is required to define the typologies of claims, to enumerate the scale of each type, to consolidate applicable existing law and where necessary promulgate new law to resolve the various types of claims, to identify jurisdictional competence (decision making institutions) with appropriate adjudication mandates, and critically to build a system of recording and registering these rights once conferred, and tracking future disposition, transactions, and passing on of those rights to others.

Action 2: Continue rolling out and scaling up community training, orientation, and guidance on accessing necessary documentation to validate access to and rights on land and property.

II. BACKGROUND TO THE ISSUES

In setting the context for the analysis of housing, land and property elements of the post-earthquake recovery and reconstruction process, it is important to understand the history of land related matters in Nepal. “Land to the tiller”⁹ – a decade-long political rallying phrase in the 1950’s meant to galvanise support for the abolishment of the historic feudal/overlord control of land, property and labor, eventually resulted in the first national land policy. The *Lands Act of 1964*, together with its amendments set in place certain laws regulating the size of farm parcels, introduced registration and redistribution of private land, and established a range of taxation measures reluctantly agreed to by the King, (even though he dismissed the Nepali Congress government that won the first ever multi-party election in the country¹⁰), the Act represented a pivotal moment in the attempt to reform land matters in Nepal.

“After half a century land to the tiller has simply not occurred... distribution is still skewed, indebtedness and thence exploitation is rife, serfdom continues, functional landlessness affects at least 60% of the rural population (those with no land or not enough land to live on), recourse to offices and courts is limited for the poor, customary and community land rights to collective assets are denied and thousands evicted from their rightful home areas, idle lands are common and absentee landlordism legally and practically tolerated.”
(Liz Alden Wiley, 2009)

However, in spite of this moderate effort to establish hitherto unrecognized rights and obligations of land owners, tenants, and landless, grievances continued to build, and in the mid-1990’s were one of the root drivers of the so-called ‘Maoist insurgency’ that plunged the country into what was a decade long, civil war claiming thousands of lives and provoking a major surge of displacement – mostly to Kathmandu, but also in other larger towns and cities throughout Nepal.

So critical was the issue of land rights, that it formed one¹¹ of the three main pillars (including disarmament, and integration of insurgents in the Nepali armed forces) of the *2006 Comprehensive Peace Accord*. The Accord ended the insurgency and ushered in a decade of political flux that achieved little in terms of delivering a comprehensive land reform, and in the midst of recurrent flood/monsoon disasters and the devastating earthquakes of 2015 continued to displace hundreds of thousands of people adding to an already delicate and politically charged situation.

⁹ This political slogan was a reaction to the existing ‘Kamaiya’ system of bonding laborers and ‘Haliya’ or ‘tiller’ practice of bonding agricultural workers largely in the Western parts of the country. This law was officially abolished in 2002.

¹⁰ The NC won a landslide victory in the national elections in May 1959, but the government was dissolved, and the party leaders imprisoned by the King in December 1960. Peter Gill, “THE POLITICS OF LAND REFORM IN NEPAL: 1951–1964 (p. 3 footnote 4)

¹¹ See: Comprehensive Peace Agreement 2006, *inter alia*: Article 3 on “Political, Economic and Social Transformation and Conflict Management” addressing the nationalization of all the Royal family’s land and properties, the abolishment of feudalism, and the equitable redistribution of land to those previously without rights of use, occupancy or ownership. Elsewhere (Article 7) on the prohibition of illegal seizure of land, and land amassed through corruption.

The 2015 Gorkha earthquake marks another turning point in Nepal, both in terms of the immediate response to the earthquake, as well as with the promulgation of the *Disaster Risk Reduction and Management Act* (October 2017). The Act contains provisions for a national DRRM agency with a permanent mandate to prepare the nation for future disasters through risk reduction and resilience based programming at central, provincial and local levels in line with the new Federal governance structure. This clearly signals the commitment of the Government of Nepal to transform from a reactive and *ad hoc* disaster response regime regulated until 2017 by the *Natural Calamity (Relief) Act*¹², 1982, to one which, in line with the international commitments such as the *2015 Sendai Framework for DRR* commits to reducing the risk and vulnerability of all Nepali citizens to the widest array of natural and human induced hazards.

“Due to its rugged topography, ecological adversity, prevalence of a number of flood-prone rivers, rapid and unplanned urbanization, poverty, inequality and uneven development, Nepal is exposed to a variety of natural and man induced disasters. More than 80 percent of the total population of Nepal is at risk from natural hazards, such as floods, landslides, windstorms, hailstorms, fires, earthquakes and Glacial Lake Outburst Floods. Nepal is also in a seismically active zone with a high probability for massive earthquakes. All these factors place Nepal among the 20 most disasterprone countries in the world.”
(Ministry of Home Affairs, *National Disaster Report 2017, The Road to Sendai*, p. xi)

Nevertheless, historic structural challenges such as a plethora of conflicting and overlapping legal instruments¹³ and their various regulatory systems will have to be overcome to streamline the legal and institutional system to ensure the operability of the *Disaster Risk Reduction and Management Act* noted above, and significant capacity building will be required for local governments mandated to implement the Act under the authority of the planned new national disaster management authority.

In terms of creating the policy and regulatory framework addressing housing, land and property rights of Nepali citizens, the *National Constitution* and multiple Acts including the *Land Act*, the *Land Use Act*, the *Housing Act*, the *Environment Act*, and all of the policy and regulatory elements necessary for implementation of these legislative instruments remain somewhat in flux as governments have changed throughout the post-conflict *and* post-earthquake period. Notwithstanding, the introduction of the new Federal structure of governance in 2017, the legal framework provides for both decentralized, and in many cases, devolved mandates from central to provincial and local levels.

An historically thorny issue, the disposition, resolution, equitable redistribution and restitution of rights of use, occupancy, and ownership of land in Nepal - regardless of the laudable aspirations of the Nepali Constitution or the earnest commitments in the *Comprehensive Peace Accord* - remain a sector where few - at least at national, or even international level - dare to tread¹⁴.

¹² According to Pashupati, et al in: “Policies and institutions for disaster risk management in Nepal: A review” (2018), this Act emphasized preparedness and response to specific risks with very little reference to local action, or risk mitigation, and clearly spelled out conflicting mandates between central Ministries and the Acts that govern them; and local governments as articulated in “The Local Government Operation Act (LGOA) 2017”.

¹³ Such as: *The Water Resource Act* (1992), *Building Act* (1998), and the *Local Government Operation Act* (2017), etc., *ibid*.

¹⁴ Notwithstanding significant advocacy, lobbying, and engagement by civil society organizations in Nepal, interviews with international aid actors reveal reluctance on their part to engage in matters relating to land reform, land justice, and resolution of grievances built up over decades.

Consequently, issues that drove movements such as “Land to the tiller”, “Sukumbasi”, and other landless advocates remain inadequately addressed, and the mandate to adjudicate and administer land has thus far not been devolved. It is worth noting that several interviewees expressed concern that a complete devolution of authority to local governments for the management of land related matters in their districts could be problematic in terms of the uneven application of laws and regulations conferring differential rights between districts.

A strong land administration system must have a strong national level coordination, legislation and oversight powers to maintain continuity and align the various rights of land occupiers, and users, and to protect land and the natural resources they hold, for the benefit of the state. Devolved authority at provincial and local levels should be to empower those institutions to develop their regulatory systems within the national architecture, and at the scales they represent.

These would include for example; land use planning, zoning and local land development for infrastructure and public lands at both scales; physical and social infrastructure development at local levels, and collecting-transferring land transactions, including the management of grievances, at local levels to a single national cadastre maintained by the state. Whilst the 2015 Constitution articulates devolution of land administration and management somewhat along these lines¹⁵, at the time of this writing little has been actually transferred.

With particular regard to the question of relocation and/or resettlement, a study conducted by NRA to identify vulnerable settlements after the 2015 earthquake, recommends a total of 2,751 families from 112 communities that would need to be relocated to safer places. As of early 2019, this has increased to approximately 3,800 families. Furthermore, the NRA has enacted new procedures for the relocation/resettlement of the affected families in hazard prone settlements and has begun acquisition of suitable land in safer locations. Similarly, policy and procedures for establishing integrated settlements have been prepared.

The National Disaster Report 2017 Nepal summarizes measures taken thus far by the National Reconstruction Authority as follows: “Relocation of Hazard-Prone Settlements. NRA has enforced a new procedure to make necessary arrangements for the beneficiaries and families of the hazard-prone settlements that have been affected by the earthquakes.

The Procedures for the Relocation and Rehabilitation of Hazard prone Settlements, 2073 (2017) has been enforced from 7 April 2017 as per the authority provided by Clause 31 of the *Reconstruction and Rehabilitation of Structures Affected by the Earthquakes Act, 2072*. As per the new procedure, “hazard-prone settlement” refers to “... settlements or families residing in [areas] ... identified as hazard-prone” by NRA based on official geological reports.” With a robust policy and regulation framework in place and where relocation and resettlement are unavoidable, beneficiaries are encouraged to create users’ groups of at least 10 families to enable user committees and authorities to select a safe location for the development of an integrated settlement. The lands shall be integrated and the relocation and rehabilitation plan prepared, after which separate programs will be implemented to gradually develop structures such as housing, public buildings, etc. The process also envisions the gradual establishment of

¹⁵ Specifically in the Constitution (2015): Schedule 5: List of Federal Power; Schedule 6: List of State Power; Schedule 7: List of Concurrent Powers of Federal and State Powers; Schedule 8: List of Local Level Powers; and, Schedule 9: List of Concurrent Powers of Federation, State and Local Powers.

basic-needs structures such as roads, drinking water supply, electricity, health centers and educational institutions for the integrated settlement. Of note in the five point strategic plan to expedite housing reconstruction we find that: “Devolution and allocation of reconstruction work among the newly elected local representatives in respective districts; To speed up the grant distribution process, necessary technical assistance to be disbursed in affected districts; Required technical and economic support to be provided to shift the vulnerable settlements to safer locations; Several programs on livelihoods to be continued, including agriculture, animal husbandry, irrigation, etc; and NRs. 50,000 additional grant or technical support (or both) be made available to single women, Dalits, elderly and differently able-person to enable them to build earthquake resilient houses in compliance with the prescribed standards.” This last point signals the intent of government to ensure the needs of vulnerable groups; at least those amongst the survivors of the earthquake are met, ostensibly with respect to their HLP rights. Thus far however, there appears to be limited data on the number of integrated settlements delivery underway, that have adopted all the requirements set out above, nor specific data on the progress made in reconstruction for ‘single women, Dalits, elderly and differently able-persons’.

III. KEY REFLECTIONS

In all countries that have suffered severe natural disasters, there are a series of common legal, policy and other obstacles within the housing, land and property sectors that can impede rapid and equitable emergency and interim shelter solutions after natural disasters.

These include differential treatment based on tenure status, unclear determination of HLP rights, HLP rights issues in informal, customary or extralegal settlements, regressive planning measures, inequitable inheritance and succession rights, lack of appropriate government HLP and land allocation policies, insufficient land for; emergency, transitional shelter and permanent housing, un(der)-regulated or unlawful land acquisition, lack of governmental HLP policy coordination, involuntary resettlement and forced evictions, among others. All of these are apparent in Nepal.

Many of these HLP issues that existed in Nepal prior to, and were exacerbated by, the 2015 earthquakes as noted above, have been outlined in a series of previous reports by various institutions¹⁶, and with which - in general terms - Displacement Solutions largely concurs. These would concern recommendations relating to the need to expand security of tenure protections, the issues surrounding the registration of land, such as documentation validating rights of use/occupancy, and broader issues of land administration such as unclear mandates and limited capacity at some levels, particular challenges facing women, certain castes and other vulnerable groups, such as tenants¹⁷ in the HLP sector and many others.

¹⁶ Notably recent publications by Care, Oxfam UK, Amnesty International, Community Self Reliance Centre (CSRC), Asia Foundation among others reviewed for this report. (see bibliography for the complete reference/resource library compiled by the authors)

¹⁷ There are basically four types of tenure currently existing in Nepal, namely Private (ownership or leasehold – roughly 28%); State owned (all public, forestry, park, etc); Guthi (all land owned or managed for philanthropic purposes – about 0.03%); and sharecropping or ‘adhiya’ or ‘thekka’ – both highly exploitative in favor of the landlord and essentially a system of continuing the old feudal system in spite of seven decades of attempts to abolish it.

These matters clearly affected both the nature and scope of the reconstruction response by the authorities beginning in the immediate aftermath of the earthquake. In reviewing the array of efforts undertaken by the government and other actors in the aftermath of the 2015 events, it is clear that many positive attributes of these processes can be identified, even if these may not have always been easy to implement as comprehensively or as rapidly as may have been thought possible.

Some of the key reflections that stand out in our view are the following:

Political commitment is high

The government has exhibited a high degree of political commitment to ensuring the success of the reconstruction effort, and its specific public commitment to assist every single earthquake survivor is to be applauded. The ongoing efforts of the National Reconstruction Authority (NRA), the Nepal Rural Housing Reconstruction Program (RHRP), the Durable Solutions project, the recent decision by the government to establish a National Disaster Management Agency governed by an Executive Committee chaired by the Prime Minister and other related programmes, should receive continuing support until all of their aims and objectives can be met in a comprehensive manner.

The relevant constitutional and legal framework are comparatively strong, and provide a solid (albeit imperfect) foundation on which to achieve political commitments to earthquake affected households

The recognition in Article 37 of the *National Constitution* of the right to housing and protections against forced evictions, combined with several other related rights are legal cornerstones on which a more effective disaster response now and in the future can be built.¹⁸ Additionally, the Constitution explicitly recognises a wide spectrum of equally relevant rights to people's residential realities, (eg. the place where they reside), and these are also worth noting - for viewed as a bundle of rights, the legal framework in place already has much to offer.

Thus, in Part 3 of the *Constitution* (Fundamental Rights and Duties) we find that "every person shall have the right to live with dignity" (Art. 16(1)), the right to freedom to move and reside in any part of Nepal (Art. 17(e)), the right to equality (Art 18), the right against untouchability and discrimination (Art. 24), the right to property (Art. 25), the right to information (Art. 27), the right to a clean environment (Art. 30), the right to health (Art. 35), the rights of women (Art. 38), the rights of Dalit (Art. 40), rights of senior citizens Art. 41), rights to social justice (Art. 42), rights to constitutional remedies (Art. 46), and others. Moreover, the ratification of many international human rights treaties containing these rights can equally assist in providing a legal framework supportive of additional measures to secure the rights of all earthquake survivors.¹⁹

¹⁸ 37. Right to housing: (1) Every citizen shall have the right to an appropriate housing; (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with law.

¹⁹ The government of Nepal has voluntarily signed and ratified, and thus legally bound itself to comply with, numerous international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and many others. For a full list of the treaties the government of Nepal has ratified, see: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>.

Building on the recognition of housing, land and property rights issues within the wider body of international human rights and humanitarian law, the past two decades have been witness to very important advances in the recognition by the global humanitarian movement of the centrality of HLP rights within the context of post-disaster responses. Indicatively, the *IASC Operational Guidelines on Human Rights and Natural Disasters* clearly assert that “human rights underpin all humanitarian action” and that “Humanitarian organizations shall not promote, actively participate in, or in any other manner contribute to, or endorse policies or activities, which do or can lead to human rights violations by States. They shall strive to enable the affected people to exercise their own rights”.²⁰ They stress that “Persons affected by natural disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against”.

Land grabbing by the authorities does not appear to have been a major issue compared to many other disasters or historically in Nepal

Following many natural disasters in recent years such as the Asian Tsunami of 2004 and Superstorm Haiyan in the Philippines in 2014, efforts were made by the authorities to create no-build zones along affected coastal areas thus making return home by the survivors of these disasters an impossibility, particularly for anyone without fully recognised title to the land concerned.

Though often couched in terms of preventing future displacement by removing human settlements from coastal areas, these efforts were more often seen as attempts by the authorities to achieve what would have never otherwise been politically possible to achieve, using the disaster as a convenient pretext for land acquisition by powerful political interests. Similarly, following the Kobe earthquake in 1995 in Japan, a clear bias was given to property owners with many tenants not afforded the chance to return to their former areas as the land concerned was re-zoned for other, generally, commercial purposes.

While there was certainly potential for similar approaches to be applied in Nepal, from the interviews we have conducted and documents reviewed, this does not appear to have been a major problem. This is not to say, however, that the reconstruction process is free from political concerns or related structural hurdles towards better governance, but simply to point out that outright land acquisition by the state, based on the evidence available, appear to manifest in Nepal in either the manner or scale that it has in many other countries.

The ‘owner-driven approach’ adopted by the NRA has several benefits

This is true in terms of enabling people to generally construct what they want within the constraints of grant and credit finance, and applicable building standards, or at least as they are interpreted by the local experts deployed to oversee self-construction. However, there are drawbacks for those who are tenants, landless, whose documents have been lost or destroyed, or have been prevented from reconstructing on their own land due to geo-hazard risk. In these cases, time is a major factor - in the first instance, validating beneficiaries, issuing (or re-issuing) required documentation, and finding, servicing, and allocating new land for resettlement. In the

²⁰ The Guidelines add that “Competent authorities should be requested to protect, to the maximum extent possible, against looting, destruction, and arbitrary or illegal appropriation, occupation or use of property or possessions left behind by persons or communities displaced by the natural disaster”.

second, delays in designing, creating the legal frameworks, and commissioning the necessary institutions to deliver the reconstruction programme have resulted in the new imperative for the NRA to conclude its mandate and deliver on all of the commitments made following the earthquake, as soon as possible which is creating significant pressure on the beneficiaries to work faster with the result of a noticeable deterioration in the quality and size of houses reaching 'completion' and an alarming rise in indebtedness, at very high interest rates.

An overlooked component of the 'owner-driven approach' however, is simply the capacity of the 'owner'. As one representative of the Housing Recovery and Reconstruction Platform put it "Owner driven reconstruction will move at the pace of households; don't think you can fully plan or control shelter or housing, you have to continuously respond to the momentum people drive themselves."

The intention and design of the cash grant system was good, but could be improved in the future

The cash grant system developed in the immediate aftermath of the earthquake is the cornerstone of the government's response to the HLP aspects of the disaster. However, the most obvious repercussions of subsidy are the noticeable adjustments; upwards in the cost of construction materials and downwards in terms of the size of land that can be purchased for the subsidy grant.

For example: 2 – lakh NPR (roughly USD 2,000) used to buy much more land before the earthquake than afterwards. The net effect of any subsidy programme is a market adjustment, and Nepal is no exception. Various approaches and strategies to control these inflationary bubbles can be deployed. From government led mass procurement of essential building supplies (ie. Fixed pre-crisis price supply contracts; wholesale material distribution centers; coupled with necessary technical support) to moratoria on land transactions until government-led land acquisition initiatives have sufficient, appropriate size resettlement sites purchased, or set aside, or acquired through other means.

As well as a suspension of land division or sub-division to limit the current situation where very small plots are being allocated to displaced farmers without any possibility of a sustainable livelihood being earned on them can be considered. While convenient and reasonably efficient, cash grant subsidy approaches for reconstruction programming in Nepal and elsewhere require further refinement to counter the negative impacts of crisis inflation.

Local authorities lack the capacity to implement reconstruction measures decided by Kathmandu

The transformation of the entire governance framework in Nepal from a centralised republican/monarchic structure to a decentralised, devolved federalist structure (state, province, local) and the 2017 election process have had major repercussions in terms of the capacity of nascent government representatives particularly at provincial and local levels to deliver their new mandates, including those related to the completion of the post-earthquake reconstruction in those 31 affected districts.

Complicating matters further, the mandate of the NRA is not open-ended, and will likely end without *all* survivors needs being met. Their exclusive mandate will have to be re-distributed to 'normal' line ministries; however all of these are already consumed (at differential rates) with devolution to provincial and local structures – themselves bereft of capacity (or even understanding) of their roles. With new personalities emerging at the local level and uncertainties about the role of provincial authorities, incentives and dis-incentives for transferring state government officials to provincial and local governments, further uncertainties related to the degree of autonomy and responsibility at both levels are apparent.

The lack of clarity on mandates means there is significant scope for whatever support the government of Nepal requests to assist in the operationalization of the federal system architecture. Nevertheless, and in spite of apparent capacity constraints, there is a strong will to contribute to speeding up delivery. As one Vice Chair of a *gaunpolika* put it, “There were also rumours about the works of reconstruction to be transferred to the rural municipality but so far it has not been done. If that happens then the works would be carried out smoothly. The people have to suffer and have to go through several bureaucratic processes so they are suffering due to that”²¹.

The government of Nepal is only now stabilizing after 12 years of political flux

The slow pace of housing, land and property recovery is due to a variety of factors. It took nearly a year to complete the survey of damaged households and establish victim lists. The NRA was only established in December 2015 - nearly eight months after the earthquakes hit. Meanwhile, aftershocks continued long after the initial quake, and annual monsoon rains and a lack of roads to quake-hit areas complicated reconstruction.

Political factors played a role too: an unofficial four-and-a-half month blockade by India in 2015-16 squeezed supply lines; local, provincial, and national-level elections in 2017 created distractions and delays; and a government devolution process currently underway has sometimes created administrative confusion. In many areas, there was an initial lack of trained manpower and government engineer-inspectors to ensure that reconstruction followed the building code.

The institution of federalism in Nepal follows two separate pathways - decentralization and devolution. The former has been legislated with the architecture of: one central body; seven Provincial bodies; 77 Districts; and 753 local units comprised of six metropolises; 11 sub-metropolises; 460 '*gaunpolikas*' (rural municipalities), and 276 *nagarpolikas* (urban municipalities) all of whom have new representatives elected in 2017 and of these, very few at provincial or local levels have much experience or capacity to deliver what mandates *are* being devolved to them.

In the case of land, housing and property matters the central government has seemingly not made up its mind on the degree or scope of mandates for land administration matters to be devolved notwithstanding the specific measures set out in the Constitution²². However, according to one interviewee, a new department in MOHA will be initiated to manage decentralization, devolution AND technical assistance to address capacity gaps.

²¹ See the short film: “After the Quake – Rebuilding Nepal”, Displacement Solutions & Youthworx, 2019.

²² (See para. 9, p. 7 footnote 9)

Notwithstanding, there is a two pronged recommendation emerging - first some kind of scheduling map for operationalizing the decentralisation and devolution process indicating what powers and authorities are devolved to what level to ensure all players/stakeholders understand when and how the final federal architecture will be under implementation at all levels; and second, target (where appropriate and where requested) integrated capacity building in both local and provincial structures.

Status determination of IDPs/beneficiaries could have been more equitable

Highly vulnerable groups such as the elderly, single/child-headed households, differently abled, squatters and those with document losses and citizenship issues did not always have equitable access to assistance and in many cases struggle with reconstruction financing. Most everyone interviewed made reference to the 'most vulnerable' (with differing opinions of who they actually are) falling through the cracks and not receiving support through the reconstruction programme.

This is due to: lack of documentation; lack of actual rights of use or occupancy; historic ethnic, economic and caste based discrimination; and structural (governance and historic related) barriers. There is even reluctance on the part of governments to formally engage with these people as that would indicate some form of recognition - hence opening a pathway for new demands to be made and subsequently met. Some interviewees even expressed the opinion that the housing grant system worked best for people that had money and affordable debt, title to land, and potentially other options and these represent the bulk of the finished house reconstructions.

Nonetheless the Durable Solutions project has developed mechanisms by which landless survivors are being resettled with formal tenure on public (municipal) land and on sites acquired through private transactions, and these precedents with some modification are portable enough to address other aspects of land grievances in Nepal - notably and perhaps strategically applying them in areas where the annual monsoons regularly displace people, and where land is actually disappearing due to alluvialization and erosion.

Relocation/resettlement efforts have been undertaken with positive intentions, but additional care needs to be exercised to ensure that the implementation of such efforts matches intent

In general terms, and specifically in terms of international human rights law, relocation/resettlement should only be implemented by projects such as Durable Solutions when the need to move is recognised and then instigated by processes driven by the communities concerned.²³ While many communities may have specifically requested to be relocated to safer places of habitation, it is important to point out that as important as the principle of free and informed consent may be, the highly complex processes that are inevitably part of relocation (even if planned) will only ever work if they are initiated by the communities themselves. But simply requesting relocation is insufficient; support by competent and impartial technical assistance will be indispensable if relocation is to be sustainable.

²³ See, for instance, <http://www.durablesolutionsnepal.org/2018/10/03/geo-hazard-scoring-orientations-for-better-decision-making-at-local-level/>.

While the goals of the NRA resettlement guidelines call for the formation of 'user committees' to be formed by (at least) 10 families as a platform for consultation and decision making, the resettlement process where it includes multiple families in one area must be carried out considering a strategic long-term urban development plan that recognizes an integrated economic development agenda beyond a simplistic 'livelihood' based approach to one that envisions prosperity, resilience, and sustainability as the long term goals. It is encouraging in this regard, to take note of the commitment of the National Urban Development Strategy's (NUDS) aims to, "...address critical issues related to urban development sectors such as system, infrastructure, environment and economy and also indicates the social, economic and cultural vision of urban areas reflecting the highest values of society. NUDS deals with mechanisms vital for realizing the desirable condition of the four development sectors, namely investment, finance, governance and land management. With a vision of balanced and prosperous national urban systems, the strategy provides desirable conditions considering the changes in urban landscape and introduction of federal system in the country in line with new urban agenda 2016 on Housing and Sustainable Urban Development (Habitat III) declared in Quito, Ecuador, on 20 October 2016.

While the observation that the implementation of relocation/ resettlement efforts must meet the intent of the commitments made by government, it is equally clear on reflection that all human settlements should benefit from strategic long-term development measures taken in Nepal. In this regard, the Durable Solutions Project has created a number of precedents, namely: the first practical application of the *intent* of the emerging Land, Land Use, Housing and Environment Acts and policies, and a prototype for classifying and validating beneficiaries and distributing the reconstruction grant tranches. This methodology, while catalyzed by the earthquake, provides a model that could/should be taken up by government for addressing landless, displaced, or even undocumented people without the necessity of an earthquake or other disaster.

Human rights laws and specific measures to enhance relevant HLP rights protections did not figure prominently enough in the official reconstruction response

While the 2015 Constitution, as noted above, offers considerable protection to survivors of natural disasters in Nepal, a vast array of international standards are equally relevant to the country and could have been of additional assistance in developing appropriate responses to the 2015 Earthquakes. Beyond the many human rights treaties that Nepal has voluntarily ratified and thus agreed to comply with in full, countless other international standards could have been utilised in developing policy responses.

Because the international legal and policy framework is directly relevant to Nepal's disaster-response needs, it is clear that instruments such as the UN Guiding Principles on Internal Displacement (1998), the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005), the UN IASC Disaster Response Framework (2006), the Peninsula Principles on Climate Displacement Within States (2013), the Sendai Framework for Disaster Risk Reduction (2015), the Sphere Standards on Humanitarian Response (2018) and many others should have figured more prominently in developing relevant policy in Nepal.²⁴ While all of these are of direct relevance, the UN Guiding Principles on Internal Displacement are of particular utility.

²⁴ Similarly, assistance could also be provided by groups such as the Global Alliance for Urban Crises - <http://www.urbancrises.org>.

ENGENDERING HUMANITARIAN RESPONSE:

Women—who represent 51 per cent of the population of Nepal—have been the single-highest adversely affected group. The 14 most affected districts include about 327,000 female-headed households (26.5 per cent of all households), 40,000 women and girls with disabilities, and over 163,000 women over the age of 65. More women and girls died than men and boys, partly because of gendered roles that disproportionately assign indoor chores to women and male migration out of the country.

UN Women – Asia-Pacific,
<http://asiapacific.unwomen.org/en/countries/nepal/a-year-after-the-earthquakes#ft1>

The imperative of meeting the distinct needs of women and girls

Lessons learned from previous disaster response events including the Indian Ocean Tsunami, Hurricane Katrina in the US, and the Kashmir Earthquake in Pakistan highlighted criticism for gender-insensitive and gender blind practices that actually worsened conditions for women and girls throughout and following the responses. In Nepal, structural, historic, and cultural discrimination and subjugation of women was both exacerbated following the earthquake, and positively responded to by a wide array of support programmes. Some of these stand alone, while others integrated within the humanitarian system programmes, but many of these efforts actually opened up new opportunities including the recognition that the rights of women in general in Nepal were not being met.

Nevertheless, women and girls suffered disproportionately following the earthquake. In a report issued in July 2015, the Interparty Women’s Alliance found “1) Single, unmarried, widowed, divorced and women whose husbands practice polygamy are facing particular problems in accessing government relief, 2) Lack of representation of women in disaster management, 3) Lactating, pregnant and menstruating women facing problems staying in temporary and integrated shelter due to lack of women friendly facilities, 4) Increase in cases of violence against women and even girls, 5) Lack of water and toilet facilities in temporary and integrated shelter, 6) Trafficking of women and children with Chitwan as a key transit route, and 7) Cases of men selling relief material to spend money on buying alcohol.”²⁵ Further assessment by Durable Solutions found the incidence of depression, anxiety and suicide were increasingly evident²⁶.

Efforts to address these impacts are ongoing, and in collaboration with UN Women, the UN Country Team, multiple INGO’s and dozens of Nepali NGO’s and Women’s organizations programmes are delivering both physical and material support, and a range of engendered psycho-social, training, advocacy and safety programmes. Furthermore, the Government of Nepal has responded to the National Women’s Conference on Gender Responsive Disaster Management held in Kathmandu (March 2016) (which) “...called upon the Government to adopt

²⁵ UN Women: Gender Equality Update N. 4, Key Findings on Gender Equality in the Post Disaster Needs Assessment Vol B. p.3. <http://www.unwomen.org/-/media/headquarters/attachments/sections/news%20and%20events/stories/2015/gender%20equality%20update%20no%204.pdf?la=en&vs=5514>.

²⁶ See also: Nepal: Property Rights and Resource Governance Profile p.17 Box 4 “Women and Property Rights” for a useful summary of the current and past issues related to women in Nepal. (USAID, 2017).

gender, age, disability and culture in all policies and practices and promote women and youth leadership, and new provisions to strengthen the role of women and girls for community's disaster resilience, gender equality and women's empowerment (Women Group Working on Common Charter of Demand on Humanitarian Response (2016) in accordance with the "Sendai Framework,". It calls for NRA to draft and implement necessary policy and plans to ensure gender proportionate and inclusive participation (50:50) for gender responsive disaster management in the context of post-earthquake reconstruction. It further calls for developing (a) "humanitarian assistance national standard" by the government in order to implement disaster response programmes fully guaranteeing people of all age, gender, class, ethnicity, indigenous nationalities, religion the basic and special rights of women of all kinds of physical, mental and marital status, in order to address the existing gender inequality."

While it remains to be seen how the government will rise to the challenge, it has at least integrated gender throughout its longer term planning as articulated in the National Disaster Report 2017, The Road to Sendai (Chapter 6 Key Challenges and Priorities Ahead) which states: "Nepal's long term vision to make Nepal a safer and resilient nation by 2030 is well reflected in the draft "National DRR Policy & Strategic Action Plan for Nepal" (2017-2030) which is aligned with four priority areas of SFDRR: a) understanding disaster risk; b) strengthening disaster risk governance to manage disaster risk; c) investing in disaster risk reduction for resilience; and d) enhancing disaster preparedness for effective response and to "Build Back Better" in recovery, rehabilitation and reconstruction.

The Action Plan further identifies baselines and targets under the above four priority areas for five key sectors, productive, social, infrastructure, environment and natural resources, and gender and social inclusion". Provisions made by the Financial Bill 2072 BS (2015/16 AD) have been made to ease access to land and property for women to reduce the cost of registration for single women, joint ownership (with the husband), senior citizens of either gender, inheritance by daughters or grand-daughters, martyrs of several movements, disable, Dalit, highly marginalized, freed Haliya and Kamiya with few if any restrictions.²⁷ Although these progressive measures exist in law, among the populations targeted, there is limited understanding that they are available.

CONTROLLING LAND MARKETS FOR SUSTAINABILITY AND SAFETY

"..v. Some resettlement programming will limit potential economic growth and productivity through allocation of small individually held parcels of land. The pattern of allocating individual plots of 3-5 katha* either through resettlement programmes, or informally self allocated as observed in several squatter settlements, will doom those occupants to perpetual poverty without a rational settlement planning programme that prioritises agricultural productivity for profit – not subsistence. The annual yield of maize, rice or lentils on these small plots provides only a month of food for each family. It is strongly recommended that one critical area for the UN to assist the government of Nepal and its people is in integrating agrarian and land reform programming with a settlements planning and development strategy to maximise land resources, minimise infrastructure demand, and promote prosperity over subsistence."

UN Habitat – HLP Assessment (2008) Dan Lewis

* 1 katha = +/- 340 square meters

²⁷ CSO Report on Land Reform in Nepal, pp 20-21.

Adequately Financing Reconstruction

The Nepal Post Disaster Needs Assessment (PDNA) conducted by the National Planning Commission shortly after the earthquakes in April and May 2015 estimates direct damages in the order of USD 5.174 billion with losses amounting to an additional USD 1.89 billion across social, productive, and infrastructure sectors, and to the cross-cutting issues of governance, disaster risk reduction, environment and forestry related elements of the economy. In the early days following the earthquake the international community pledged roughly USD 4.4 billion in aid to the country; half of which came in the form of loans, the other in grant funding modalities including; direct funding to the Government, targeted project funding, and support to international aid programmes.

The largest single donor was the government of India who pledged approximately USD 1 billion (comprised of both grants and loans) to support the governments efforts in agriculture, housing, roads and transport, electricity, health, education, cultural heritage and disaster risk reduction. The development banks (World Bank and Asia Development Bank) committed finance totalling USD 1.1 billion, and China, Japan, the US, European Union, UK and IMF made up the bulk of the rest, with multilateral agencies, and many other countries funding specific projects, programmes and aid organizations. However, in spite of the commitment of the international community to provide funds for the reconstruction process, and in spite of the laudable aims of the Government of Nepal in providing cash to survivors for rebuilding their homes, several challenges (some noted above) emerged. Among the most daunting for the 'owner driven' beneficiary of the grant system is the reality that the actual cost of rebuilding is more or less double the total value of the grant, even with the land purchase supplementary grant. Consequently, in order to build a habitable, standard compliant house on certified safe land, there is a need for access to credit. While some banks have been persuaded to fast-track low interest or soft loans, very few people have accessed these, and risk averse commercial banks have routinely made the loan application process so complicated that even fewer are accessing credit there. The most successful instances of reconstruction of housing have taken place in areas where people have been able to rebuild or rehabilitate their houses on their own land, and the potential to generate income to repay those debts is reasonable. However, for those more vulnerable groups resettling in new plots, or in integrated settlements, the potential to access credit is limited through normal channels, and they often fall prey to high cost loans – up to 36% per annum – a situation likely to result in deeper vulnerability, and possibly loss of what small (HLP) rights and assets they have acquired through the reconstruction programme.²⁸

HLP Registration and Land Administration

In the process of determining those who had a right to benefit from the reconstruction process, based on the policies of both the NRA and the Government, Durable Solutions created a classification and validation system that could remain useful if adapted to other displacement and landless scenarios, disaster induced or not. With millions of people affected, hundreds of thousands displaced, thousands needing to relocate, and many thousands without land, the challenge for those responsible for ensuring the HLP rights for those survivors of the earthquake is already met at least on paper, in the first instance, and in the second could be leveraged, with the principles of equity in mind, to meet the needs of the rest of Nepal's population who continue to suffer from a lack of rights to use, occupy and own land and property in safe, productive space.

²⁸ See <http://www.hrrpnepal.org>.

Within the 31 earthquake affected districts however, the challenge is exacerbated by the exclusion of the right to return and resettle for families on land deemed a high geo-hazard risk and their only recourse is purchasing alone or within a group of 10 or more other families in new integrated settlements on land provided by the state or purchased land. Another precedent that has some utility at a national scale bearing in mind the further limitations on availability of safe land. Defining exclusionary zones based on the level of geo-hazard, is one pre-condition for reducing risk and contributing to resilience in countries like Nepal that are highly exposed to earthquakes, land slides, fracturing, and flooding.

The Durable Solutions exercise of geo-hazard mapping over 900 sites across the 31 earthquake-affected districts sets a baseline for determining who is, should or must be displaced, relocated and resettled, who, with some remediation of the site using some more affordable land stabilization measures (which might include: deep root ground cover, terracing, engineered foundation road construction where new roads are being built, or damaged roads repaired, slope drainage entrenching, etc.) can return to their land and, who can rebuild or rehabilitate their homes *in situ*.

This methodology and typology for classifying 'safe land' has been applied only in the current earthquake affected districts, but could or perhaps should form the basis of a national geo-hazard map informing the various agencies responsible for land administration where development of inhabited land can and cannot be planned. With the same objectives and principles in mind, this process could be expanded to determine exclusionary development land exposed to a full range of hazard types. Most obvious would be those areas recurrently impacted by monsoon floods, but Nepal is exposed to other hazards affecting land that have an impact on life and livelihoods in all parts of the country.

An example of determining exclusionary development plans incorporating a multi-hazard approach is the Philippines (see below) following typhoon Haiyan. However, in the process of legislating exclusion zones, the potential impact on land markets is high. Ultimately anyone owning land in these areas will see its value deteriorate unless a fair market value expropriation mechanism is financed and executed with the ownership devolving to the state. Without it, the political and economic risks are high. Furthermore, with land in short supply in Nepal, these forms of protective land banking require institutions sufficiently competent to manage, regulate, and sanction illegal use.

History informs us that squatters in public lands such as forestry reserves and parks is already happening in many parts of the country sometimes with assistance from donor funded INGO's²⁹; the expropriation of significant tracts of land unsuitable and unsafe for human occupation; essentially taking land out of the market, puts additional pressure on those responsible for addressing the plight of the landless and meeting the commitments of both the CPA and the Nepal Constitution.

²⁹ An example is the upgrading of squatter settlements by providing access to social and physical infrastructure. The perception – and the reality – is that doing this implies a degree of permanence that demands regularisation of rights of land occupants in areas that are unplanned, not within the service infrastructure grids, or privately or publicly owned. In the latter case, there must be an assumption of restitution or compensation; in the former cases – the cost of eventual service infrastructure may (and in most cases will) be uneconomical, and families regularised are doomed to far longer limitations on development and prosperity. (UN Habitat – HLP Assessment 2008).

One additional consequence of taking unsafe land out of the market is the continued practice of sub-division of productive land parcels into smaller and smaller plots for resettlement, through inheritance, and as a means of income for landowners. The expectations of many landless are simple: one family – one plot. However an assessment done by UN Habitat in 2008, investigating the risk of inaction on the land based commitments in the CPA found the practice of micro-parcelation (see box) rendering those who were being resettled placed in circumstances that were completely unsustainable. This finding, was further articulated in 2011 in CSRC's 'Land Tenure and Agrarian Reform', and again in the 2017 'Nepal: Property Rights and Resource Governance Profile' published by USAID. Whilst the NRA's earthquake reconstruction programme set minimum standards on plot size, the amount available to purchase on the market for the two lakh subsidies is typically 20-40% smaller, rendering any potential for subsistence, let alone prosperity, impossible.

Amongst the recommendations of the UN Habitat 2008 HLP Assessment noted above, was one that suggested further in depth assessments to determine the numbers, typology, and location of the population that had legitimate, validated HLP grievances as (at that time, and likely now) this quantitative data did not exist.³⁰

To a large extent, the Durable Solutions programme has been able to do this for survivors of the earthquake in the affected districts. As noted above, this methodology is one critical element of informing land administration institutions strategic goals, and operational objectives to meet the commitments of the CPA and Constitution as they pertain to housing, land and property rights of all citizens of the country.

With some adaptation, and integration into some form of registry, the Durable Solutions methodology can facilitate the establishment of a permanent record of outstanding and resolved HLP claims, land redistribution, usable and non-usable land inventory, and parcel consolidation (where community/communal land is farmed), an improved cadastre, and more transparent and efficient land administration regime at local, provincial and central levels.

³⁰ For a comprehensive though somewhat dated statistical review of land rights, see: CSRC Land Tenure and Agrarian Reform, 2011, Chapter 4.

IV. LESSONS FROM OTHER COUNTRIES

In determining how best to continue reconstruction efforts and to plan better for future disasters, it may be useful to look at several examples of how other countries have addressed HLP issues similar to those confronting the government and people of Nepal. Some of these have come in the aftermath of acute disasters such as landslides and earthquakes, while others have appeared in recent years as responses to the HLP impacts of climate change and climate displacement throughout the world.³¹

Landslides in Gramalote, Colombia – Total government commitment to rebuild an entire town

On 11 March 2017, a group of 54 families moved into the newly built town of Gramalote, Colombia some seven years after the decimation of the town as a consequence of the La Niña phenomena. They are part of the nearly 3,300 displaced people who were affected by the massive mudslide that destroyed their community in December 2010. It is expected that the 1,000 new houses planned for this town will be completed by the end of 2019.

Despite challenges during the reconstruction process, especially during the initial stages, the outcomes so far are very encouraging. In many ways, Colombia is setting a positive example of how to deal fairly and equitably with planned relocation following acute disaster. In the immediate aftermath of the tragedy, the government of Colombia committed itself to rebuilding the entire town and ensuring that those affected would receive new homes for the homes they lost. Nine years later, it appears that the government is admirably keeping its promise.

Perhaps not surprisingly, the ambitious relocation project promised by the government was initially beset by problems, delays, and frustrations, causing additional stress and suffering for the victims of the disaster. However, despite those initial problems, from a longer-term perspective the relocation of Gramalote can also be characterized as well conceived, ambitious, comprehensive, participatory, and well funded.

All these latter characteristics, not generally typical of most post-disaster relocation projects, suggest that the Gramalote project has significant potential to be successful and perhaps possess elements that could be incorporated into and enhance chances of success for future relocation projects nationwide and worldwide. In effect, Gramalote's relocation provides a unique context to examine whether relocation can be seen as an opportunity for people displaced and dispersed by disaster to recover and reconstitute their former community.

³¹ The issue of climate displacement – the involuntary movement of people due to the effects of climate change – has not yet become prominent in Nepal, however, with certainty it will, particularly bearing in mind the increasing frequency of major flooding in the Terai and elsewhere. Though the forms and scales of climate displacement in Nepal will superficially appear distinct from more well-known cases on Pacific Islands or nearby countries such as Bangladesh or Thailand, much can be learned from constructive approaches to climate displacement, particularly planned relocation measures in countries such as Colombia, Peru, Fiji, Pakistan and Panama, and other countries noted below where some form of crisis induced displacement has occurred. These are of direct relevance to post-disaster responses in Nepal.

Although relocating communities facing natural hazard-related disasters (including climate change) presents undeniable risks and challenges, it can also provide opportunities to individuals and communities. When an entire community has been dispersed after a disaster and/or climate change effects, resettlement if done well, can provide an opportunity for community recovery for a displaced and fragmented population to come together and reconstitute the social fabric.³²

The key lesson emerging from the Gramalote case relates to the principle of keeping communities together in the case of inevitable relocation and resettlement. A second principle is linked to urban extensions or villagisation (what in Nepal might be 'integrated settlements') where the access to urban markets, jobs, and economies is made easier for new in-migrants, and the cost of extending urban infrastructure is lower compared to building roads, and social infrastructure to service needs in isolated settlements.

Earthquakes in Peru - Transforming insecure tenure and verifying land titles

The 2007 earthquake in Peru damaged or destroyed some 75,000 homes and affected approximately 722,000 persons in the south of the country. The impact of the earthquake and the subsequent reconstruction effort brought to the surface a number of issues concerning land tenure. The earthquake highlighted the necessity to regularize a regime of land tenure that in many cases had not been updated for years.

The reconstruction effort required local and international actors to clarify questions of tenure. In this sense, the earthquake represented an opportunity to establish a system of good land administration and governance as well as to implement housing policies for those that until the disaster were tenants or did not own the land on which they lived. In rural areas, it was estimated that only one-third of the population has a valid property certificate. Another one-third was estimated to have a title that can be validated, i.e. by registering it in the land books, and the final one-third were those occupying land without title.

One study identified 17 different irregular tenure situations which preceded the earthquake and that required legalisation and technical assistance to be provided by the municipalities. The same study identified ten illegal situations that arose following the earthquake, such as when families that split up after the earthquake and create more households than the initial ones, thus requiring more housing units, or families that occupy private land or families that start rebuilding their houses without any technical advice thus recreating the precarious housing conditions that existed before the earthquake.

The earthquake represented an opportunity to solve the issue and provide titles to the land. However, this required a coordinated effort comprehending both legal and technical assistance for the families affected by the earthquake. Another challenge facing the international community related to clarifying the existence of property titles for the land potential beneficiaries occupy.

To do this, the IFRC, the American Red Cross and the German Red Cross developed procedures to select reconstruction beneficiaries. Those procedures relied on vulnerability criteria (i.e. elderly persons, disabled persons, children and others) as well as criteria related to the tenure of the

³² Carlos Arenas and Anthony Oliver Smith, Displacement Solutions, *Gramalote, Colombia: A displaced community in transition*, October 2017.

land and properties built on it. With the purpose of assessing titles to the properties, the IFRC, through the Peruvian Red Cross, required the provision of any of the following documents: Certificate of property; Minutes/copy of purchase contract; or the Certificate of inscription in the land registry. Those who could not provide such documents entered a second phase of reconstruction, and could be assisted by a legal aid service to gather the necessary documents.

These activities did not give rise to land-related conflicts or disputes, but nevertheless the IFRC found itself in the position of having to verify the titles to the property they will be reconstructing. While the IFRC did not have in itself a legal capacity to carry out similar checks, it achieves the same goal through specific partnerships with local institutions and/or NGOs. While HLP rights issues in Nepal are somewhat different, the experience in Peru of the disaster revealing weaknesses and gaps in the administration of land and property rights is similar in Nepal.

The models used in Peru to select beneficiaries, validate their claims, and open the space to legitimately reconstruct ultimately spurred government and the international aid community to action and eventually resolved these historic weaknesses and improved land administration in the affected areas.

The key lesson here is that the process of resolving the loss of rights to land and property relies on a comprehensive understanding of the typologies and scales of various grievances as a pre-condition to assembling (or promulgating) applicable laws and regulation, and conferring transparent and unambiguous mandates on the institutions charged with the responsibility to resolve them. The Global Land Tool Network (GLTN)'s Social Tenure Domain Model is a useful preliminary tool for participatory enumeration that would be useful in generating the typology of HLP rights and claims in Nepal as it recognizes multiple forms of rights of use and occupancy, and provides an online database tool to organize and store pertinent land data.

Planned relocation in Vunidogoloa, Fiji – Lessons on climate displacement

In the case of Vunidogoloa, Fiji, this village of 132 residents became the first village in Fiji to officially move because of the effects of climate change. Following a request by the community to the government to move in 2007, the planned relocation took place in 2014 after years of indecision and eventual acceptance of the need to move as the village became increasingly unable to sustain human habitation. The coastal village moved two kms inland, with the community moving into 30 identical green houses made of wood, built on higher ground away from the encroaching sea which is rising at a rate of 6mm each year.³³

The government of Fiji has discussed a national planned relocation strategy and is likely to assist in the relocation of more than 40 additional coastal villages in coming years as the climate conditions worsen. Here, as above with Gramalote, the process of government acquiring and allocating land for an entire village at risk provides interesting lessons of other countries where local communities, understanding future risk, take the initiative to pressure government assistance, rather than government imposing exclusionary zoning and forcing communities to move.

³³ Karen E. McNamara and Helene Jacot Des Combes, 'Planning for Community Relocations Due to Climate Change in Fiji' in *International Journal of Disaster Risk Science*, Vol 6, Issue 3, September 2015, pp. 315-319.

Of interest in Nepal, efforts at social mobilization with communities at risk put the imperative to respond onto government. This is already underway in some respects in Nepal, notably in the Terai region, but in this manner, government is responding to people's well-thought and ultimately inevitable need for safe, productive land.

Pakistan's floods and the tenure diversity of those affected

The 2010 floods in Pakistan revealed the immense tenure diversity of persons affected by acute disaster, including: people who were owners of land that has fully or partially been taken away by river action. Some of these owners may become 'Landless'; people who still have land but it has become uninhabitable i.e. virtually landless; people who had built houses on the State land allotted to them but the land has been taken away by floods; people who had built houses on State land under illegal occupation and land has been washed away; people who had land acquisition rights that were in the process and now the land has been washed away or become uninhabitable; slum dwellers in urban areas who had houses built on encroached land with some legal rights or without any legal right; tenants, who are registered in land records, and who had been provided houses, by land owners on their titled land, without any legal entitlement; tenants, who are not registered in the land records, who had been provided houses, with no legal entitlements, by land owners on the titled land; the artisans in rural areas e.g. carpenter, potter, barber, blacksmith, tailor, etc, who were provided houses by the land owners on their lands but without any legal entitlements, in return for some services or under some custom; various classes of the people who lived in river belts that are traditionally inundated only in summer and now under water; people who inhabited lands which have now become waterlogged; Afghan refugees or internally displaced persons who had their houses built on state or private land, without entitlement; and bonded labourers and their future in case of return.³⁴

These examples illustrate the wide range of typologies of claims for acquiring rights of use, occupancy or ownership which resonate with those in Nepal.³⁵

³⁴ Protection Cluster: Land and Property Rights Working Group Pakistan: Concept Note and Recommendations – Housing, Land and Property Rights Issues Arising from the Floods, 2010.

³⁵ For information on the 'continuum of land rights' that articulate the range of possible options for government and landless or 'virtually landless', see GLTN: Continuum of Rights (<http://mirror.gltm.net/index.php/land-tools/gltm-land-tools/continuum-of-land-rights>).

“MAKE LAND AVAILABLE BEFORE DISASTER STRIKES”

In the opinion of one shelter respondent outlined in a publication by the IFRC, “Make land available before the disaster strikes. In Pakistan (2005 earthquake) and India (2001 Gujarat earthquake), for example, a lot of land was government owned and made available quickly after the disaster for temporary shelter. Some NGOs actually buy land specifically to be used for temporary and permanent shelter in the post-disaster context....I think this was done in Haiti and Sri Lanka. I would also suggest improved contingency planning by bringing government and shelter agencies together. If possible, identify plots of land for temporary use beforehand and make arrangements within the government first; this will avoid disputes amongst government agencies. Make arrangements between government and private land owners. This is all part of pre-disaster planning (financial planning too)”.

Displacement Solutions, Housing, Land and Property (HLP) Rights in Post-Disaster Settings: Proposals for IFRC Shelter Policy and Response: An HLP Rights Scoping Study, IFRC & Displacement Solutions, 2008

Planned indigenous relocation in Gunayala, Panama – When indigenous people reluctantly realise they will need to move

In a similar case in Gunayala, Panama, indigenous Guna islanders from the area of Gardi Sugdub has been an initiative undertaken by the community itself. Several years ago the community made the necessary internal arrangements to make available 17 hectares of land to relocate to the mainland, near a health center and school complex currently under construction by the Panamanian government, with funding from the Inter-American Development Bank.

The Gardi Sugdub community in particular has had an attitude of active engagement in moving the relocation project forward, instead of waiting patiently for uncertain government support. In April 2015, bulldozers that the community hired and paid with their own money cleared the land on the mainland where the community plans to relocate. As a result, the relocation of Gardi Sugdub has reached a point of no return. In June 2015 the Deputy Minister of Housing visited Gardi Sugdub after the community sent a letter directly to President Varela, and announced that the Panamanian government would build 300 houses at the relocation site.

The Deputy Minister indicated that the housing project was needed because the island of Gardi Sugdub was “sinking” as a result of climate change and that the relocation of Gardi Sugdub would serve as a model for climate displacement in Gunayala and other parts of the country. As always, the process of relocation is complex and will require careful planning. Based on experience elsewhere, it is well known that the process of displacement and relocation very often ends in a process of increasing impoverishment. Relocation therefore must be based on a holistic and integrated plan that will ensure that in the new location there is culturally appropriate housing, services, employment, and an economic base to enable the community to reconstitute itself. Another example of an empowered community taking matters into their own hands, and collectively purchasing and site servicing enough safe land to relocate the entire island’s residents. This investment by the community was sufficient to motivate the state to respond in kind, and deploy resources to connect the new village to the state infrastructure, and support the construction

of housing. It remains to be seen how sustainable the new village might be considering the maritime livelihoods may not easily transfer to a mainland location, but the building blocks are there, and the community and government working hand in hand to make it work.

This, like other community driven relocation processes provide relevant lessons for Nepal, both following the earthquake and in future cases where safe land is needed. The key point here is simply that communities must 'own', guide and fully influence all aspects of any planned relocation process.

Tsunami in Sri Lanka - The much maligned 100 meter buffer zone

On 3 February 2005, less than six weeks following the Asian tsunami, a Presidential Secretariat's *Notice on Reconstruction for Housing, Businesses & Fishing Industry Affected by the Tsunami* in Sri Lanka asserted that no new construction would be permitted within 100 metres of the mean sea level. It made further bold promises that the Government will identify lands closest to the affected village and build a house for every affected house owner who lived within the 100 metre buffer zone.³⁶ The Government indicated that they would provide these houses free of charge. Privately owned land within the 100 metre zone will remain the property of the original owners, and the Government states that it will not 'in any way claim ownership to such property'. The area within the zone, therefore, was to constitute an exclusionary zone where people displaced by the Tsunami *would not be allowed* to rebuild their damaged or destroyed homes or to return to reside upon the land on which they lived at the time of the disaster, notwithstanding whatever legal rights they may have to do so, potentially affecting tens of thousands of tsunami survivors.

This decision had many detractors from the start because of the marked impact it would have upon the possibilities of return by those displaced by the Tsunami. Indeed, the World Bank and others recognised as much within its extensive post-Tsunami *Needs Assessment* report where it asserted in reference to the buffer zone that: "Left pending, this issue poses the single most critical threat to the entire recovery and reconstruction process".³⁷ Although the buffer zone was eventually returned to its pre-tsunami dimensions (between 35 and 50 m), and restitution of coastal lands to former residents occurred, evidence suggests that the establishment of the buffer zone was intended principally to free up prime ocean front locations for national and international investors in tourism activities. Consideration of the livelihood needs of the families who had been there previously appears to have been shallow and taken on as an afterthought, even by donors. According to one humanitarian official interviewed in 2008, "The decision to establish a buffer zone of no reconstruction was ill-conceived, and when it was finally repealed/scaled back it caused many projects to become redundant, as the investments already made in planning and constructing facilities that were no longer needed, and left wasting."

³⁶ More than one month earlier, the UDA issued Public Notice 31 December 2004 which asserted that "Ministry of Urban Development & Water Supply has decided to guide development activities in the areas affected due to the recent Tsunami along the Coastal Zone of the country in compliance with the Urban Development Authority Planning and Building Requirements formulated as per the UDA Law No. 41 of 1978. This Zone falls within the limits of 1 km from Mean High Water Line of the sea landwards already declared as an Urban Development Area by the Gazette (Extraordinary) No. 223/16 dated 17th December 1982. Accordingly, any Government Agency or any person is required to obtain prior approval of the UDA for any development activity undertaken within the said Special Control Zone. Note that the powers delegated to Local Authorities by UDA in approving development activities within those areas have been temporarily suspended until further notice".

³⁷ ADB, JBIC and World Bank (January 2005) *Sri Lanka 2005 Post-Tsunami Recovery Program - Preliminary Damage and Needs Assessment*.

The key lessons for Nepal derived from the Sri Lanka experience relate to the lack of due diligence by the Sri Lankan government in hastily declaring land previously occupied as unsafe for human habitation and the cost to reverse that process and implement restitution measures. In Nepal, therefore, a more robust process, recognizing the loss of rights to housing, land and property as a consequence of exclusionary occupation procedures as a result of geo-hazard mapping would include ensuring the engagement, consultation, and support of families, communities and other stakeholders through the process of investigation, assessment, and eventual relocation.

Earthquakes in Pakistan - Resolving Landlessness

The 2005 Kashmir earthquake was centered in the mountainous regions of the Pakistan administered areas of Kashmir near the city of Muzaffarabad, roughly 100 km NE from the capital Islamabad, in Azad Kashmir (AJK) and also Pakistan's Khyber Pakhtunkhwa (KP) province and Indian-administered Jammu and Kashmir. Over 85,000 people died, and more than four million were in some manner affected. Schools, hospitals, infrastructure, and housing were most severely damaged with some 84% of houses destroyed in AJK and 36% in KP³⁸ causing some USD five billion in overall damages. The government of Pakistan created the Earthquake Reconstruction and Rehabilitation Authority (ERRA) as an independent, autonomous, and federal institution of Pakistan tasked and responsible for the operational planning, coordinating, monitoring, and regulating the reconstruction and rehabilitation operations in the earthquake affected areas of the country.

LOCAL VERIFICATION UNITS TO VALIDATE LANDLESS CLAIMS:

In order to facilitate and expedite the process of land transactions in Pakistan, the Government set up Land Verification Units (LVUs) at the local level. These functioned as one-window operations to process landless cases. Legal, administrative, and financial transactions were processed through formal mechanisms, accelerated processes, and binding agreements. LVUs and one-window operations were extremely efficient: the land mutation process which normally took weeks was completed in a single day, with significantly reduced costs as well. In total, 48,000 cases were considered, leading to 14,000 families receiving land purchase grants. Out of these, 15 percent were extremely vulnerable families.

World Bank Reconstruction Manual - Pakistan (Ch. 12 Social Aspects in Programme Design and Implementation p. 73)

Among its many sector specific programmes, ERRA set up the Rural Landless Programme (RLLP) to address the plight of families whose land was lost as a result of landslides or could not be resettled upon due to severe geo-hazard exposure. Designed and implemented by UN Habitat, the policy framework was derived based on the UN Principles for Housing and Property Restitution for Refugees and IDPs, otherwise known as the *Pinheiro Principles*. A 'One Window' operation was set up to validate and service landless claimants based on the GLTN (see below) objectives of facilitating measures that are; (a) pro-poor, (b) transparent, (c) efficient, and (d)

³⁸ See: Earthquake Reconstruction and Rehabilitation Authority, Review ERRA 2011.

gender and vulnerable sensitive, and a robust Grievance Redress Mechanism implemented to ensure quality control, transparency and impartial adjudication of grievances related to the implementation of the RLLP and other reconstruction initiatives including the Rural Housing Reconstruction Programme (RHRP).

With the overall reconstruction target of rebuilding 600,000 houses, and resettling some four million displaced people, the task of creating the applicable laws, regulations and capacity building for implementation was complex and time consuming. Nevertheless, the ERRA programme together with its partners in government and within the international aid community were able for the most part to complete these aims. While many challenges remain some 14 years after the earthquake in Pakistan, much has been accomplished.

The parallels and comparisons of strategy and approach in Nepal are many, with similar pathways for managing the reconstruction under the aegis of the National Reconstruction Agency, and the work of the 'Durable Solutions' project. Of particular interest are the mechanisms employed by the ERRA to address the plight of the landless and most vulnerable via the same approach used to allocate land to families who's land was lost to landslides, or located in areas highly exposed to geo-hazards.³⁹

Storms in the Philippines - Building Back Better

One year after Typhoon Haiyan hit China, Micronesia, Palau, Vietnam and slammed in to the Philippines Region VIII (covering the provinces of Biliran, Leyte, Southern Leyte, Western and Eastern Samar), Oxfam GB published "Beyond Safe Land" a review of policy and practice that concludes the rationale for integrating secure tenure programming as a critical aspect of the "Build Back Better" approach adopted by government in the immediate and recovery stages of post-crisis response.

Typhoon Yolanda (as it was known in the Philippines) claimed 6,000 lives, over 25,000 injuries, and left almost four million people homeless. Already one of the poorest areas of the country, in those hardest hit provinces approximately 32% of the population were informal settlers surviving under the highest rates of poverty. The storm wiped out major economic sectors and sources of livelihoods in the affected regions. The livelihoods of 5.6 million workers were affected, 2.5 million of whom were classified as vulnerable to begin with. More than 42 million coconut trees were damaged or destroyed, putting at risk the livelihoods of over a million farming households. Nearly two-thirds of fishing communities, also extremely poor, were severely affected. Nearly three million farmers were affected as well, 70 percent of whom were vulnerable temporary workers. Notably, the UN's 'Strategic Response Plan' published in December 2013 one month after the typhoon, focused on key risks such as communicable disease outbreaks, food insecurity, lack of clean water, emergency shelter and protection.

³⁹ See: World Bank, *Rural Housing Reconstruction Programme: Post 2005 Earthquake, Learning from the Pakistan Experience, Earthquake Reconstruction and Rehabilitation Authority, Review ERRA 2011* and UN Habitat Country Programme Document 2008-2009 - Pakistan.

Key crosscutting challenges were also identified early on, including problems of land rights and supply chain bottlenecks⁴⁰. As far as the cross-cutting ‘problems of land rights’ taking time to develop goes, it never featured as a ‘cross-cutting element’ of the international humanitarian agenda as differences between the international aid agencies and the government of the Philippines caused the abrupt closure of the ‘humanitarian phase’ of the response on 31 August 2014 some 8 months after its inception, although the Shelter Cluster remained operational for some months after, and eventually did deploy a single HLP advisor⁴¹ that worked with national and local authorities Protection and CCCM Clusters in Manila, Tacloban, Guiuan, Roxas, Ormoc and Cebu. Alice R. Thomas, in her paper: “Resettlement in the wake of Typhoon Haiyan in the Philippines: A strategy to mitigate risk or a risky strategy”⁴² analyzes further key challenges arising from the imposition by the Office of the President of ‘No Build Zones’ (NBZ’s). Initially imposed as a hard 40 m boundary from the sea, and for a variety of reasons of impracticality, subsequently modified following an in depth multi-hazard assessment to restrict the types of structures that could be built for residential, commercial and economic purposes in all 171 municipalities and in any areas exposed to typhoons, floods, earthquakes and landslides. While laudable in terms of protecting the lives and property of its citizens, needless to say, this assessment and delineation of restricted use land delayed the resettlement process and left hundreds of thousands in camps, barracks, or for many – simply defying the regulations, self rebuilding on land they previously occupied, in the NBZ’s thereby re-exposing themselves to risk and exacerbating their vulnerability. Furthermore, it relegates a considerable additional proportion of the survivors into the category of landless, adding to the 32% of the population before Haiyan of tenants, informal settlers, and those living free on private land with the consent of the landowners.

The key message and lessons from Typhoon Haiyan in terms of the scale of the disaster, the implications of exclusionary or restrictive land use, the implications for vulnerable groups including the landless, and the necessity of integrating secure tenure focus in the immediate aftermath of catastrophic crises hold insight for the reconstruction process in Nepal as well.

In particular, the inability of the international aid community to take up the responsibility as impartial custodians of human rights to housing, land and property, to integrate early measures addressing security of tenure for the beneficiaries of international aid programmes, and to advocate for equity both within affected populations, and without. As one interviewee for this report remarked, “... the HCT agencies are ‘allergic’ to the prospect of entering into the land rights arena...” Ultimately, building back better after Typhoon Haiyan requires more than houses on safe land. It requires measures to improve the security of land tenure for poor and vulnerable people. Security of land tenure is essential to re-establish shelter and livelihoods and to reduce the risks of chronic poverty. Without measures to promote land tenure security in the Philippines, there are risks that those most affected by the disaster will be more vulnerable to future disasters.⁴³

⁴⁰ IASC, *Inter-Agency Humanitarian Evaluation of the Typhoon Haiyan Response*, Oct 2014 p. 5.

⁴¹ Displacement Solutions (author of this report) deployed an HLP Advisor to the Shelter Cluster and produced a series of guidance notes on several key HLP themes, including relocation and the HLP rights of indigenous peoples. (see: <https://displacementsolutions.org/?s=philippines>).

⁴² Brookings-LSE Project on Internal Displacement (June 2015).

⁴³ Oxfam “*Beyond Safe Land*” October, 2014.

Fires in Bosaso, Somalia – Urban Extensions and Incremental Tenure

Situated on the Northeastern tip of Africa, Bosaso; the capital of the self declared region of 'Puntland' has attracted refugees escaping wars in many places on the continent, as well as IDP's fleeing protracted conflict, drought, floods and hunger from all over Somalia. Its geographical location on the Gulf of Aden, and primary economic activity as a port has driven an urban population growth from an estimated 15-25,000 inhabitants before the 1991 Somali civil war, to an estimated 5-700,000 in 2015, 100,000 of which were, according to UNHCR, living in 32 informal settlements scattered throughout the city and in its periphery. Following a series of wildfires that blazed through several of these informal settlements (see text box), the local government eventually agreed with a UN Habitat proposal to develop an urban extension that would compliment a planned new transport corridor along the eastern boundary of the city providing space for a planned settlement complete with physical and social infrastructure, commercial and public zones, and reasonable access for its residents, namely migrant families formerly in informal settlements, to markets, jobs, and commerce, as well as for existing commercial access to potential customers. Plots were granted to *bona fide* beneficiaries on an incremental tenure basis, where in essence, "Beneficiaries would not be able to sell, rent, transfer, mortgage or donate their land until they have lived on it continuously for 15 years. In the event of death, the lawful dependent(s) would inherit the right to occupy the land. After 15 years, full ownership is transferred. If a beneficiary leaves their land before the 15-year period is up, it reverts back to the municipality for reallocation. Disputes are heard by the city's district court."⁴⁴

While the drivers of displacement in Bosaso are different than those of the survivors of the 2015 earthquake in Nepal, what may be of value is the understanding that in Somalia as well as many other countries, IDP's invariably migrate to cities or other human settlements where they perceive better opportunities for jobs, access to services, and potential livelihoods. Where this case study may influence the integrated settlements aspects of the Nepal case, is for families whose land is no longer inhabitable due to geo-hazard conditions, or those who are otherwise 'landless'. The principle is that land is granted within a planned settlement or urban extension under the condition that its ownership remains formally with the local government for a certain period of time and is conditional on permanent occupation by a *bona fide* beneficiary, that the plot is improved upon by the beneficiary, and a minimum period of time during which sale is prohibited.⁴⁵

In sum, much important knowledge can be gained from examining the experiences of countries which have also experienced severe acute natural disasters such as the 2015 earthquake in Nepal. Some of the particularly noteworthy lessons include:

- Even if onerous, lofty governmental HLP promises can (and must) be kept (Colombia).
- Disasters provide a unique opportunity for improving security of tenure protections, and thus reducing the likelihood of future forced evictions (Peru).
- People and communities know best when it comes to planned relocation (but they need government/NGO/Donor support to do this in the best way possible (Fiji, Panama).

⁴⁴ References: IDMC "Home Sweet Home" Housing practices and tools that support durable solutions for urban IDPs, March 2015, pp. 8-9. See also UN Habitat-IFRC "Shelter Projects 2009".

⁴⁵ Id, pp. 29-30.

- Disasters affect all tenure types, and policies that recognise this respond best to ongoing needs (Pakistan).
- Using post-disaster periods as pretexts for achieving (usually private) aims that would otherwise be illegal or politically impossible must be avoided (Sri Lanka).
- Landlessness can be effectively addressed during post-disaster reconstruction (Pakistan).
- Address HLP issues immediately and ensure that all tenure types are addressed (Philippines).
- Incremental tenure as an interim measure aiming towards fuller forms of tenure is sometimes useful (Somalia).

Many of Bosaso's IDPs have been living in 32 settlements in and around the city for several years. Others are dispersed among the urban poor, asylum seekers, returning refugees and refugees from neighbouring Ethiopia. Public land was all but unavailable in the early 2000s and most IDPs settled on private land, making deals with local landlords. These, however, were often contested. The fact that secular, sharia and customary law govern land rights often makes them unclear, and land grabs became widespread following the breakdown of the state and its institutions. Those who control the peri-urban land on which some of IDPs' settlements are based often use their presence to secure a return through rent and to hold on to the land until they were ready to formally develop it. There has been a tendency towards making populations as dense as possible to maximise rent returns, and a reluctance to invest in building latrines and improving shelters. The spread of informal settlements has placed extra pressure on the already strained public infrastructure and the conditions in many have become dire. The rapid spread of the fire, whether started deliberately or by accident, has burned down a quarter of the shelters in some settlements each year. The presence of inflammable shelter materials, high seasonal winds and population density all serve to make fires worse.

A major blaze displaced 507 families in May 2006, and the local authorities used the event to propose the resettlement of all IDPs to another site more than 10 kilometres south of the city.

The proposal was ultimately rejected because it would have led to an unsustainable increase in transport, food and water costs for families who would no longer have access to local markets, and to their social segregation. Experience in other cities, such as Burao, had also shown that IDPs in remote relocation areas would gradually move back to informal settlements sites in town, drawn by the livelihood opportunities on offer there.

Following criticism from several organisations, the government agreed to review resettlement options and criteria, which it did via a June 2005 assessment led by UN-Habitat.

Global Home Sweet Home, IDMC 2015, (Ch. 6 Incremental Tenure, p. 4, Case Study 1, Bosaso)

V. GENERAL GUIDELINES AND TOOLS

“Land and Natural Disasters – Guidance for Practitioners”⁴⁶ - UN Habitat with the support of FAO, the IASC Early Recovery Cluster, and the Global Land Tool Network, in response to recurrent challenges transitioning from the need for humanitarian assistance to a more self-autonomous recovery process in disaster affected communities, towns and cities, issued guidelines to assist government, international aid organizations including donors, NGO and civil society, and HLP practitioners to initiate and lead efforts to assist survivors of natural and human-induced disasters to return to their housing, land and property, or to address rights to those assets in the event of relocation or resettlement. The guidelines have been designed as an integrated framework responding to disasters, derived from natural phenomenon and human vulnerabilities which: Outline an analytical framework to understand post-disaster land contexts; Provide guidance on specific humanitarian sectors or clusters dealing with land; Describe responses to land issues that cut across humanitarian sectors; Identify potential tools to be adapted to specific country contexts; and Identify key measures that can help reduce risks and a country’s vulnerability to natural phenomena from a land perspective.”⁴⁷

DISASTERS CAN CREATE OPPORTUNITIES FOR CHANGE:

Post-disaster contexts create extremely dynamic and fluid circumstances, relationships between people, resources and institutions. In post-disaster situations, intense periods of social rearrangement can occur, and legitimacy, authority, and rules are much more fluid and open than perhaps at other times. While such situations present challenges such as low predictability, on the other hand they can also provide a window of opportunity for implementing positive changes. Care must be taken, however, to ensure that good intentions are grounded in “Do no harm” principles for humanitarian action. These guidelines take as a starting point the need to understand land tenure systems and to support livelihood strategies. Equally important is the need to support the capacity of Government institutions to recover and re-establish themselves. By building on existing capacities and opportunities instead of focusing on weaknesses, this approach can facilitate constructive analysis of and responses to changes in land and natural resources access in post-disaster situations.

Land and Natural Disasters – Guidance for Practitioners, (Chapter 2.1 p. 10)

⁴⁶ United Nations Human Settlements Programme (UN-HABITAT), 2010.

⁴⁷ Id, p. 7.

In setting the context for use of the guidelines, care is taken in the first and second chapters to offer insight and guidance on ensuring an understanding of land systems, articulating common predictors of vulnerability of these systems, and the consequences, impacts, and resilience of both people and land related matters in the aftermath of disasters. Chapters 3, 4 and 5 cover essential elements of the initial humanitarian response, including the requirements for rapid and more detailed assessments, planning coordination and advocacy identifying critical sectors of the humanitarian assistance system, planning, coordination and advocacy and cross-cutting issues such as security of tenure, land and landless, restoration and improvement of land administration systems, land use planning, and land acquisition for infrastructure. Chapter 6 of the guideline provides a suggested two-year timeline for engagement by the humanitarian community, government, and other stakeholders starting within the first five days, and the final chapter focuses on ongoing monitoring and support as return, resettlement and/or relocation measures are undertaken to build durable, resilient outcomes for the survivors of disaster. While generic in nature, these guidelines contain specific aspects relevant to the Nepal earthquake even though the early response period is over, and the process of restoring rights to housing, land and property for the survivors continues.⁴⁸

The Global Land Tool Network (GLTN) is an alliance of international partners committed to increasing access to land and tenure security for all, with a particular focus on the poor and women. The Network's partners include international civil society organizations, research and training institutions, bilateral and multilateral organizations, and international professional bodies. GLTN's philosophical framework includes the principles of: *Land tools as an entry point to the land sector* whereby various tools are used to solve problems in land administration and management. Their emphasis is on practicality of a wide range of methodologies (tools) from simple checklists for surveys, to software, to broader and deeper guidelines putting land based law, policy and principles into action; *Partnerships and collaboration* understanding "... access to land and tenure security for all, including the poor and women, requires the aligned and well-coordinated action of all land actors: civil society, professionals, research and training organizations, bilateral and multilateral agencies, governments and the private sector."; *Continuum of land rights* taking note that in developing countries, it is estimated only about 30% of land is covered by conventional land administration systems. Therefore, whilst a small proportion of the population may be covered in this manner, the majority of the populations of these countries do so under a broad range of land rights ranging from informal, to customary, to group or collective rights among others; and, *Fit-for-purpose Land Administration* accepting that conventional land titling approaches are rarely successful in developing countries due to the cost of development and implementation, requirements for higher level technological competence, or simply the unavailability of those technological systems required to maintain the rigid and high-end requirements of titling.

⁴⁸ Reference: Land and Natural Disasters – Guidance for Practitioners (2010), (<https://unhabitat.org/books/land-and-natural-disasters-guidance-for-practitioners/>).

DEFINING “LAND”:

While the definition of land may seem obvious, distinctions are often drawn between:

- Land that is unimproved except for any municipal services delivered to the property boundary line.
- Land that has been improved through the installation of buildings or other permanently attached constructions on the land.

When GLTN refers to “land”, the reference is generally to land without permanent improvements. Permanently attached structures and other improvements are usually referred to as property, though in some countries the term property can also include the land under any improvements.

GLTN “Handling Land”, (Box 1, p. 2)

The fit-for-purpose approach (re-)focuses land administration to meet the needs of the people “...to sustainably manage land use and natural resources using flexible and pragmatic approaches, is cheaper to establish and maintain, and is built on existing available technical, financial and human capacities...”⁴⁹ GLTN’s library of tools cover a broad range of circumstances, context, challenges and problems encountered both in times of crisis, and in more stable development trajectories. These tools must minimally meet the criteria GLTN has established for continuity with its stated goal of “...to increasing access to land and tenure security for all, with a particular focus on the poor and women.”. These criteria demand that the tools are: Pro-poor; Equitable and gender responsive; Affordable; Sustainable; Foster subsidiarity; Address governance; and are Systematic and scalable. While not solely a post-disaster resource, throughout both the literature, and interviews with stakeholders conducted as part of the Displacement Solutions mission to Nepal, the recurrent theme of ensuring a linkage between successful outcomes and efforts undertaken in the early response and recovery stages of the 2015 earthquake, to longer term, sustainable development of those areas affected by the earthquake; GLTN’s range of tools and guidelines would assist leveraging humanitarian support of both the Government and external actors to improve land administration and meet the needs of the poorest of its citizens with the appropriate federal structures at central, provincial and local levels.⁵⁰

⁴⁹ <https://glttn.net/about-glttn/>.

⁵⁰ Global Land Tool Network website (<https://glttn.net/about-glttn/>) GLTN Handling Land, Innovative Tools for Land Governance and Secure Tenure (2012).

VI. RECOMMENDATIONS

Having reviewed the collective policy, programme and legal responses, including governmental, donor and civil society efforts, to the 2015 earthquakes in Nepal carried out over the past three years, we have identified 12 general and 20 specific actionable recommendations to all relevant actors. We believe the implementation of these recommendations can lead to a series of policy and legal steps that will contribute to Nepal being in a far better position than it is today to respond to natural disasters in the future:

REC 1: PLAN AHEAD OF TIME – NEPAL NEEDS TO BE READY FOR THE NEXT DISASTER

The 2015 earthquakes spawned an array of ambitious commitments from government which in turn catalyzed *some* new thinking, including strong public commitments to assist all survivors of the disaster, the expenditure of large sums of money in the reconstruction effort, the establishment of a well-funded, specialised agency with a specific mandate to respond to the needs of all survivors, and modest enough to listen to experts including NGOs.

Moreover, the precedent-setting resettlement of vulnerable landless people supported by the Durable Solutions Project is a positive advancement, subject to some of the issues addressed below. There is considerable value in this approach that could be leveraged in small steps (such as with the recurrent flood victims in the Terai).

The adoption in 2017 of the *Disaster Risk Reduction and Management Act* and subsequent creation of a similarly named Agency hosted in the Office of the Prime Minister are valuable steps, and indicative of the political support given to the disaster issue. Combined with the ever-evolving and largely progressive legal reforms that have taken place in recent years, these various measures clearly place Nepal on better footing to grapple with future disasters than previously, but it remains questionable whether these will prove sufficient when the next disaster comes, as it unfortunately inevitably will⁵¹.

In addition, what appears to be on hindsight an over-reliance on cash grants which has led to (perhaps unexpected) inflationary pressures on land and building costs, that in turn may have negatively effected the ultimate outcome of this approach. Some interviewees also noted an over-reliance on financial and beneficiary ‘numbers’ as a measure of success skewed a range of gaps in the broader earthquake reconstruction response. Some respondents also noted the sense of urgency-driven impacts on the quality of reconstruction which involved, for instance, engineers being deployed to certify code compliance having been pressured both by NRA and beneficiaries to get the roofs installed and grants fully deployed, which in turn were occasionally declared unsafe or of poor quality.

⁵¹ For a comprehensive review of historic disaster events and trends, see: Desinventar, Nepal Profile; or the more recent update (1971-2016) National Disaster Report 2017, Nepal: Annex 1, p. 62.

Action 1: Direct participation by survivors should be far more significant in guiding responses to disaster in particular those situations where relocation/resettlement are required. This should be included either as amendments to existing legal frameworks, or in new laws, regulations or official procedures;

Action 2: More advanced regulatory systems under the new disaster laws being prepared should be guided by lessons emerging in Nepal since the 2015 earthquakes; and

Action 3: The mandate conferred upon the NRA in the “Act Relating to Reconstruction of the Earthquake Affected Structures, 2015”, and in particular the “Procedure Relating to Registration of Land in the Name of Earthquake Affected Person, 2016”, specifically Article 3(2)(c) on landless survivors, should be conferred in legislation governing the new national disaster management agency, regulating the responsibilities of the Government of Nepal at all Federal levels.

REC 2: WEAVE TENURE IMPROVEMENTS INTO DISASTER PLANNING AND RESPONSE PROCESSES

Nepal remains a country with highly inequitable land ownership, widespread insecure tenure protections and large-scale landlessness. Improving these and other HLP rights protections have been addressed to a degree in the earthquake response⁵², however, there remains a need to weave security of tenure and other social protection mechanisms into the disaster planning process as noted throughout the National Disaster Report by linking these aims to the broader development agenda, including leveraging earthquake reconstruction measures, and addressing the capacity constraints of the institution and offices of the planned new disaster management agency.

More specifically, security of tenure enhancement programming should be included within all existing and future disaster planning and response processes, leading to everyone resident in Nepal enjoying full tenure protections within the shortest possible time-frame. Rather than promulgating new law; the existing provisions in the NRA mandate can be adapted and transferred to a new permanent disaster management institution within the relevant government organs at all levels, national, provincial and local. Furthermore, there are multiple methodologies and tools for ensuring equitable tenure issues in post-crisis environs; the key point is to gather as much information as limited time and humanitarian imperative can accommodate.

Action 1: Dimension the scale and scope of loss of HLP rights and grievances by undertaking a preliminary assessment of HLP issues during IDP registration. This data provides a ‘placemaker’ registering these losses, and providing a consolidated source of reference when time and resources permit relocation, restitution, compensation or other forms of redress and a baseline for the HLP Checklist contained in Annex 2 below.

Action 2: Ensure the provisions (law, regulation and procedures) pertinent in the NRA mandate are commuted to the future national disaster management agency mandate currently under development.

⁵² Procedure Relating to Registration of Land in the Name of Earthquake Affected Person, 2016 specifically Article 3(2)(c).

Action 3: Compile a reference library of tools, guidelines, standards, and procedures for addressing HLP rights in post-disaster/crisis environs as a resource for future disaster management including disaster response protocols.

REC 3: TREAT ALL FORMS OF TENURE EQUITABLY

In general terms, and within the specific context of disaster planning and response, there should be no discrimination, disadvantage or inequitable treatment exercised against people on grounds relating to their tenure status. Every effort should be made by the authorities to ensure that mistakes made in Sri Lanka and in other post-disaster contexts are not repeated in Nepal.

With housing and related rights being so widely recognised within the national Constitution, it is clear that *everyone* affected by disasters should be subject to the same degree of assistance as everyone else, and not excluded from support simply because of a tenure status lesser than outright ownership. The historic forms of unequal land rights in Nepal have been the source of decades of activism, conflict, and politics that have resulted in the abolition of the feudal and birta rights that favoured only the elites.

They have been replaced by essentially four tenure types as noted above, although much remains to be done, the legal framework is robust enough to ensure a coherent and equitable range of secure tenure for all people resident in Nepal. Nevertheless with over 60 Acts, and 125 Regulations governing land in Nepal, there is an urgent need to streamline and consolidate applicable law and ensuring its integration in future disaster management institutions.

Action 1: Ensure applicable laws, regulations and procedures mandating the NRA to address the housing, land and property rights for all are adapted and commuted to the mandate of the forthcoming national disaster management agency in line with the provisions of the Constitution and Comprehensive Peace Accord. In this regard, assurances should be given that no discrimination of any sort should be tolerated that confers greater HLP rights protections to different tenure statuses over and above other such statuses;

Action 2: In line with the aims of the Government of Nepal as noted in the National Disaster Report provide appropriate training and capacity building measures to ensure responsible offices charged with implementation of the *Disaster Risk Reduction and Management Act 2017* are capable and competent to ensure equitable tenure is applied in all future post-crisis scenarios.

REC 4: WOMEN'S (AND GIRLS') HLP RIGHTS NEED HIGHER PRIORITIZATION

A publication by UN Women has noted that: “Substantive efforts to promote gender equality and women’s empowerment in Nepal include affirmative policies and laws, mandatory participation of women in all civil and security agencies, and a zero-tolerance policy on sexual and domestic violence. The national women’s commission has constitutional status, and gender features across all development policies and programmes, including through a gender-responsive budgeting system that covers 22 per cent of the total budget.

Women enjoy all fundamental rights and freedoms enshrined in Nepal's new Constitution, with article 43 devoted to rights to lineage, safe maternity and reproduction, protection against all forms of exploitation, and equality in family matters and property. The Constitution ensures at least 33 per cent of parliamentarians are women, and requires the president and the vice-president to be different genders⁵³. Yet - the specific HLP rights of women and girls were not adequately taken into account during the earthquake response process⁵⁴. To remedy this, and facilitate implementation of applicable constitutional law, the following two actions should be undertaken by the government:

Action 1:) Policy and plans should be implemented to ensure gender proportionate and inclusive participation (50:50) for gender responsive disaster management in the context of post-earthquake⁵⁵, (or any post-crisis) reconstruction processes. As such, any decision-making body linked to reconstruction processes should have equitable gender representation and be specifically mandated to formally and mandatorily address women's and girl's HLP rights issues; and

Action 2: Develop programmes to implement constitutional guarantees to meet the Sendai Framework for DRR "...Whole of society" goals for people of all age, gender, class, ethnicity, indigenous nationalities, religion the basic and special rights of women of all kinds of physical, mental and marital status, in order to address the existing gender inequality – and in addition specifically in terms of housing, land and property in Nepal.

REC 5: ESTABLISHING A NEPAL DISASTER LAND BANK (NDLB) CAN ASSIST IN TACKLING LANDLESSNESS THAT OCCURS DURING DISASTER RESPONSES

Disaster planning processes should ensure that concrete measures are taken to address resolving landlessness during disaster responses. Given the general scale of residential disruption within the land sector resulting from many disasters, it is appropriate to develop concrete measures to secure access to land for households that were landless at the time of the disaster concerned.

Action 1: Establish a Nepal Disaster Land Bank (NDLB). Such a land bank could set up land set-aside programmes of parcels of State land in a bid to prevent land conflict and resolve disaster-generated displacement of landless household in a rights-based manner throughout the country. The establishment of such a land bank would be a further element of broader land reform measures, which are already underway in the country albeit limited and in their nascence. Without such a bank in place, landless household disaster survivors, (and the growing numbers of people facing displacement due to the effects of climate change), will increasingly have nowhere to go and thus be forced into urban slums or new residential options that are wholly inadequate to meet their basic human rights requirements.

⁵³ UN Women: "Nepal advances guarantees of rights related to reproduction, property and political participation", <http://www.unwomen.org/en/get-involved/step-it-up/commitments/nepal>

⁵⁴ Ibid.

⁵⁵ As called for by: Women(s) Group Working on Common Charter of Demand on Humanitarian Response (2016) during The National Women's Conference on Gender Responsive Disaster Management held in Kathmandu (March 2016) and in line with the Sendai framework for DRR.

Arguably, failing to act in policy and legal terms to address this merging crisis would clearly be contrary to a range of pre-existing legal commitments of the government of Nepal, both under domestic law as well as under its international obligations generated, *inter alia*, by its 1991 ratification of the International Covenant on Economic, Social and Cultural Rights.

In practical terms, a NDLB would act as a central repository or ‘Land Bank’ for State land that has been formally designated and held in trust exclusively for the use of disaster-affected households and communities needing to engage in voluntary planned relocation. Once established and placed under the democratic control of the most appropriate government ministry, the NDLB would be entrusted with identifying viable State land resources in all vulnerable areas in the country which would then be earmarked and held in trust as relocation sites for affected communities that have chosen to engage in planned relocation. Once a sufficient land base has been identified and classified, the NDLB would then begin considering community requests for new land, in accordance with agreed procedures from communities that require planned relocation because of the direct effects of disaster (and climate change) upon the viability of their present communities.

REC 6: ANY RELOCATION/RESETTLEMENT MUST BE COMMUNITY-INITIATED, DRIVEN AND CONTROLLED, WITH APPROPRIATE STATE SUPPORT, AND MUST CONTAIN HUMAN RIGHTS PROTECTIONS AGAINST FORCED EVICTIONS

As the policy of planned relocation expands in the country, it is vital that these processes are initiated by the communities affected themselves. Coercion should be absent in its entirety in these processes, and legally entrenched protections against forced evictions and other human rights violations should be provided in full. One recommended set of tools that can facilitate this and has been widely used globally and in the region by UN Habitat is the ‘People’s Process’ programme that places communities at the heart of their own development.⁵⁶

Such processes will work best when substantive information is provided to those participating that ensures that people are aware of their rights, their options and the agencies responsible both within and external to government.

Action 1: Consider using community contracting as a methodology for producing more sustainable and integrated resettlement programming both for the current backlog, and for future relocation and disaster risk reduction programming. A useful and proven model is the ‘Peoples Process’ approach used in Pakistan, Afghanistan, Sri Lanka, Indonesia, South Africa and elsewhere.⁵⁷

Action 2: Develop specific eviction prevention measures within such policies in line with all relevant international standards, in particular, UN Committee on Economic, Social and Cultural Rights General Comment No. 7 on Forced Evictions (1997).

⁵⁶ See: www.fukuoka.unhabitat.org/docs/hpress/pdf/Habitat_PP.pdf.

⁵⁷ id.

REC 7: COMMUNITY INFRASTRUCTURE IS AS IMPORTANT AS INDIVIDUAL LAND PLOTS

While the cash grant policy for house (re-)construction for earthquake survivors is in many respects admirable, future disaster planning should enhance funding for community infrastructure to ensure that viable communities emerge from the reconstruction process. The NRA procedures and standards for integrated settlements are on paper reasonable, but in practice have left some communities without the elements of physical, economic and social infrastructure required to ensure sustainability and socio-economic development potential. The reasons vary, but common throughout the literature and interviews informing this report, is that there was little or no involvement of the relocated families in actually planning or implementing measures to ensure sustainable settlements.

Nevertheless, it is not too late to consider a remedial planning/development agenda in those settlements already occupied. In principle, this should be undertaken in parallel with planned capacity building within the new federal structures, in particular at *gaunpalika/nagarpalika* levels to ensure any community development agenda is coherent with capacity, understanding and support from their government representatives. As noted above in Recommendation 6, the 'People's Process' is one which prioritizes direct engagement of communities in their own development, directs resources to the community through contracts, and subsequently provides a valuable human resource to local government for recovery, reconstruction and development efforts.

Action 1: In recognition of the fact that relocation/resettlement is always far more than mere movement of people from one place to another, emphasis should be placed on developing new capacity building programming in existing 'integrated settlements' created following the earthquake and focusing on remedial planning and development aims of both the resettled communities, and where applicable, the host community specifically focusing on physical, economic and social infrastructure.

REC 8: THE INTERNATIONAL LEGAL AND POLICY FRAMEWORK IS DIRECTLY RELEVANT TO NEPAL'S NEEDS

The international legal and policy framework on disaster responses did not figure prominently in policy development following the 2015 earthquakes, as noted above. The apparent reluctance of the government to classify survivors as internally displaced persons (IDPs) and thus refraining from according such survivors the full protection that such a status confers may have hindered the overall effectiveness of the disaster response process. As noted above, a range of international standards can provide useful guidance to the government and should be centrally enshrined in any future disaster planning process.

Action 1: Direct reference should be made in all future government of Nepal policy and legal documents relevant to disasters to, at a minimum: (a) All existing international human rights treaties duly ratified by the government, in particular the rights, duties and norms contained within the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and others which in any way address the HLP rights of persons affected by disaster⁵⁸; and (b) The UN Guiding Principles on Internal Displacement.

⁵⁸ For a full list of the treaties the government of Nepal has ratified, see: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>.

REC 9: CARRY OUT EXCHANGES WITH SUCCESSFUL RELOCATION/RESETTLEMENT ELSEWHERE

Any process involving relocation/resettlement is always fraught with potential failure notwithstanding how voluntary or necessary such planned movement may be. Because these processes are now underway in Nepal, it may be useful for groups such as Durable Solutions and others to carry out exchanges with groups in other countries which have undergone similar processes. Exchanges with groups in Fiji, Solomon Islands, Vietnam, and others may be useful in learning how best to implement relocation and resettlement objectives.

Action 1: Host an international conference of countries faced with disaster-driven displacement, and/or coordinating on-site exchanges with such groups in Fiji, Solomon Islands, Vietnam, and others may be useful in learning how best to implement relocation and resettlement objectives, and what pitfalls should be best avoided and how.

REC 10: DEVELOP A QUICK ACTION CHECKLIST FOR DISASTER RESPONSE TO HLP CHALLENGES

A standard, government-wide policy on HLP response following disaster could assist in improving overall disaster response.

Action 1: Those involved in disaster planning and response in Nepal should develop a housing, land and property rights checklist to guide action in the event of a future disaster, and distribute these to all local and regional government offices throughout the country. Items that could be included within such a checklist are found in Annex 2 below.

REC 11: CARRY OUT COMPREHENSIVE NATIONAL DIAGNOSTIC WORK ON VULNERABLE HOUSING SITES

Although important progress has been made to identify highly vulnerable housing sites in Nepal, this geo-hazard mapping has only been done for 900 areas in 31 of the 77 affected districts. While it is recognised that a national exercise covering the entire country would require considerable financial inputs, that does not remove the fact that there is a need for a comprehensive national geohazard map reflecting diagnostic work designed to structurally address highly vulnerable housing sites. Without such information the formulation of effective and comprehensive national law and policy in support of the rights of the affected communities will simply not be possible.

Furthermore, Nepal is not only exposed to earthquake hazards. The precedents set in terms of exclusionary land use for geo-hazardous zones should be leveraged to encompass and inform multi-hazard risk-based land use planning in line with the stated aims of the National Disaster Report 2017 'Road to Sendai' document produced by the Ministry for Home Affairs.

Action 1: Develop a national plan of action, with requisite costings, designed to complete the national geo-hazard maps complimented by assessments of other hazards the country is exposed to; promulgation of the legal framework required to expropriate at fair market value and in a manner fully consistent with relevant human rights norms, land deemed unsafe for

human habitation and converting its legal disposition to 'public' and protected land; undertaking a comprehensive national land inventory to identify future resettlement sites and consider the means of acquiring and protecting them in some form of land bank.

REC 12: IMPLEMENT MEASURES TO PROVIDE NEW PERSONAL IDENTIFICATION AND IMPROVE HLP DOCUMENTATION

As noted above, not everyone has the necessary documentation required to register themselves as claimants to rights of housing, land and property; nor do many possess the knowledge to navigate the complexity of Nepal's land administration systems. The new federal structures, without clear mandates or authority complicate even further the process of acquiring proper documentation including; personal identification, certification/ validation, citizenship, marriage, or even access to the forms required to acquire these. However, as with the precedents set for settling landless people through the Durable Solutions project, there are ongoing efforts that could be useful leverage for creating mechanisms within the land administration institutions, and others in government. Notably, lessons learned from Oxfam's ongoing campaign to register joint ownership are helpful road maps to achieve the acquisition of rights to housing, land and property for others. Whilst originally conceived in 2011 as a movement to secure land rights for women, it's success thus far, including in the post-earthquake period is worth taking note of. Bearing in mind that all rights are equal however, it is important to recognise the pathways to achieving those rights are different for differing contexts and bases for claimants.

Action 1: Foundation work on improving land information, in particular related to HLP rights is required to define the typologies of claims, to enumerate the scale of each type, to consolidate applicable existing law and where necessary promulgate new law to resolve the various types of claims, to identify jurisdictional competence (decision making institutions) with appropriate adjudication mandates, and critically to build a system of recording and registering these rights once conferred, and tracking future disposition, transactions, and passing on of those rights to others.

Action 2: Continue rolling out and scaling up of community training, orientation, and guidance on accessing necessary documentation to validate access to and rights on land and property.

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Yonder, Ayse (with Sengul Akcar and Prema Gopalan), *Women's Participation in Disaster Relief and Recovery*, 2005.

USAID Country Profile: Property Rights and Resource Governance 2017 (updated 2018) see: <https://www.land-links.org/country-profile/nepal-2/#land>

ADDITIONAL USEFUL REFERENCE MATERIAL/TOOLS:

Oxfam, together with Nepali NGO's CSRC and GROW have produced a publication entitled "Joint Land Ownership Certificate for Equality, Dignity and Prosperity – A Resource Manual" that spells out step by step the advocacy, training, outreach, community mobilization, documentation required, and necessary engagement with local and national authorities that bears adaptation and replication for other aspects of validating and registering HLP rights for earthquake survivors and those facing HLP challenges elsewhere in the country.

Already noted above, the Global Land Tools Network has a series of useful land information gathering/storing tools and methodologies, notably the Social Tenure Domain Model, which recognizes a hierarchy or continuum rights to land, potentially useful for recognizing rights of use and occupancy in Nepal.

ANNEX 1 - BRIEFING NOTES

The following briefing notes are derived from observations, reflections and analysis of lessons learned in Nepal and elsewhere. They are intended as public documents subject to the discretion of PIN/DFID and may have different values and/or interpretations by different stakeholders in the PIN – Durable Solutions programme.

BRIEFING PAPER ONE – TREATING ALL VICTIMS OF DISASTER AS EQUAL CITIZENS

Guiding question: What happened in the immediate aftermath of the earthquake in terms of how internally displaced persons (IDPs) were understood and managed, with a focus on particularly vulnerable groups such as slum dwellers, those with inadequate security of tenure protections, women, non-citizens, refugees and others?

LESSONS LEARNED

Marginalized groups are often the hardest cases to resolve: Due to chronic poverty, discrimination, lack of necessary documentation, and latent rights abuses, they regularly fall through the cracks. They often receive no benefits or their cases are put to one side until all other cases are resolved. While the Durable Solutions project designed mechanisms for classifying, verifying and validating beneficiary entitlements, thus far the actual resolution and allocation of land rights to ‘vulnerable groups’ has been limited. Nonetheless, government, the international aid community including donors, and local civil society all concur with the principles that the victims of disasters must be treated equitably. This applies to men and women, all ethnic groups and all types of tenure status (owner, tenant, slum dwellers and others).

Political commitment to deliver is not enough: In Nepal, in spite of both political and regulatory recognition, prioritising and delivering benefits to the most vulnerable has proven difficult and time consuming. In the immediate aftermath of the earthquake, there were delays in formulating and promulgating the various legal frameworks, establishing and resourcing the NRA, assessing damage and geo-hazard profiles in the affected districts, and getting the federalist system installed. Moreover, election processes seemed to compete with the imperative to find and validate beneficiaries, plan and proportionally distribute resources across all affected districts, in order to begin delivering the reconstruction programme. This had the net effect of pushing back the necessary timelines required to fully complete the reconstruction process. In turn, this generated unrealistic pressures both on the NRA and on beneficiaries and homeowners. As a result, the quality and the quantity of delivery suffered. The bulk of resolved reconstruction cases are with economically advantaged landowners undertaking *in-situ* reconstruction on their own land. This pushes the numbers up, and gives the impression of a successful reconstruction

campaign, while leaving those more difficult cases under pressure to complete in times of dwindling resources, winding up mandates (of donors, INGO's, and the NRA) and when there is an intensifying imperative to complete the reconstruction and move on to other priorities.

The reconstruction policy framework is robust: The reconstruction policy and regulatory system is clearly in line with the Constitution, and addresses lingering elements of the *Comprehensive Peace Accord* in terms of recognizing equal rights to housing, land and property of all of Nepal's citizens. However, as with the political commitments made, there are gaps in terms of the capacity of the still young government institutions, and particularly at local level, to deliver on the policy. Ultimately, time is a factor and support must be provided to ensure some continuity of the reconstruction process should the mandates of reconstruction agencies and in particular the NRA conclude with significant needs unmet.

PLANNING FOR THE FUTURE

Treating all people as equal rights-holders: There is little to be done in terms of the legal and regulatory systems in place already both for the reconstruction process, and as far as the Constitution, as noted above. However, many of the Acts, laws, policies and regulations addressing housing, land and policy (among others) are currently being revised or rewritten by the Ministry of Law to meet the conditions of a new federal state. In designing and developing these instruments, it is worth noting additional commitments made at various Ministerial and Departmental levels to such international norms as the Sendai Framework, the New Urban Agenda and the Sustainable Development Goals that inherently address equity, safety, sustainability and resilience for all human settlements.

Mainstream precedents delivered from reconstruction: The NRA's Durable Solutions programme has developed working mechanisms to classify and deliver benefits including the allocation and registration of land rights to marginalised persons granting them equal (albeit conditional) rights to use, occupy, improve and eventually own their land. These are precisely the mechanisms required to address landlessness in other parts of Nepal. As such, they should be considered when responding to other crises such as recurrent flooding and loss of land in the Terai and Western Provinces. With some adaptation these can be used generically for all land (re-)distribution measures and overall land reform programming initiatives in the future.

Capturing data to record evidence and build rationale for leveraging the reconstruction accomplishments for broader development gains: While much has been done in past years in Nepal regarding the plight of landless marginalised people, the reconstruction process has generated relatively large data sets disaggregated into useful strata for further development planning. The various typologies of data acquired could form the basis for a national level initiative to map needs throughout the country, and without reinventing the structure and analytic systems already in place. Aligned with this process, the mechanisms for issuing or re-issuing documents, registering rights, and rebuilding the local, provincial and national land administration systems are practical, replicable, and sustainable tools that deliver the commitments to equality in terms of HLP rights of everyone in Nepal.

Guiding question: How did pre-existing housing, land and property (HLP) laws and policies influence post-earthquake policy responses, and did these responses play any role in expanding rights protections to vulnerable groups?

LESSONS LEARNED

The legacy of historic exclusion, discrimination, and isolation of certain groups is difficult to overcome: 58 years since the first democratic elections were fought and won on a platform of land reform, Nepal still struggles to overcome the legacy of hundreds of years of monarchy, feudalism, and exclusive rights of elites to own and manage land. Conflict, insurgency, mass demonstration, lobbying and pressure from outside have ensued, and consequently the political capital required to implement it was limited. The 2015 Constitution represents a turning point in this respect, and four years hence, and following successive disasters, new laws and regulations in line with the Constitution are being drafted to meet the requirements of a new 2017 federal state both in terms of addressing the rights of earthquake survivors, and in the administration of governance at local, provincial and national levels. While clearly an issue prior to the earthquake, the government has not yet been able to generate sufficient political will and/or momentum to adequately address the housing, land and property rights of those historically excluded from enjoying them.

New institutions are being put in place to manage risk and build resilience: Unlike previous disaster response regimes in Nepal, the 2015 earthquake response took note of successful programmes elsewhere, in particular the government strategy in Pakistan, to rapidly set up a separate quasi-governmental body; the National Reconstruction Agency (NRA) to manage the delivery of the USD 4.1 billion reconstruction programme. Seized also by its commitments to the 2015 Sendai Framework for Disaster Risk Reduction (SFDRR), the government recently announced its intention to set up and resource a national disaster management agency (NDMA) under the Ministry of Home Affairs, but answerable to an Executive Committee chaired by the Prime Minister. The SFDRR contains guidance on the importance of land, land use planning, and the needs of displaced and marginalised groups to meet the goals of its agenda, and the 2017 National Disaster Report – Nepal makes reference to the commitment of the government to meet these goals.

PLANNING FOR THE FUTURE

Other international frameworks can provide normative guidance on building safe, equitable, resilient and sustainable human settlements: The SDG's and New Urban Agenda both prioritise sustainable and resilient urban development with equity for all. Extracting targets and goals for strategic management of urbanisation in Nepal, from these normative frameworks demands the integration of multiple levels and departments of governance. The newly formed NDMA presents one opportunity for a platform that benefits from expertise in land administration, justice, law, and planning throughout the federal structures and conversely can enhance capacity, understanding and commitment to risk reduction and resilience building throughout the country.

Human rights laws need to be central in all post-disaster processes: Nepal has voluntarily ratified many of the key international human rights treaties, as well as recognising the vast array of human rights within the 2015 Constitution. The recognition of these rights is critical and can assist in providing the legal frameworks provided for additional measures to secure the rights of all earthquake survivors.⁵⁹ Building on the recognition of housing, land and property rights issues within the wider body of international human rights law, to cite but one of many examples, the *IASC Operational Guidelines on Human Rights and Natural Disasters* clearly assert that “human rights underpin all humanitarian action” and that “Humanitarian organizations shall not promote, actively participate in, or in any other manner contribute to, or endorse policies or activities, which do or can lead to human rights violations by States. They shall strive to enable the affected people to exercise their own rights”.⁶⁰ They stress that “Persons affected by natural disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against”.

BRIEFING PAPER THREE – GETTING POST-DISASTER RECONSTRUCTION RIGHT

Guiding questions: How do Nepal’s post-earthquake policies compare to those of other countries experiencing similar challenges? What can be learned by others from the approaches taken in Nepal, and what can others learn from Nepal?

LESSONS LEARNED

The reconstruction policy framework is robust: The reconstruction policy and regulatory system is clearly in line with the Constitution. These address lingering elements of the Comprehensive Peace Agreement in terms of recognising equal rights to housing, land and property of all of Nepal’s citizens. However, as with the political commitments made, there are gaps primarily in terms of the capacity of new federal institutions, and particularly at local level, to deliver on the policy, regulation and standards.

The influence of experience elsewhere informed Nepal’s post earthquake reconstruction agenda: It is unknown whether there was an exchange of experience with other countries prior to the establishment of the Nepal reconstruction programme, but it is known that many experts involved with the reconstruction of Pakistan following the Kashmir Earthquake in 2005 are present in Nepal today. The architecture of the Nepal response – policy, institutions, and mandates - are thus quite similar. This is good news, it likely took less time to adapt and improve upon the Pakistan experiences, helped in marshalling both funding and expertise, and external political flux aside, got the programme going on a steadier footing than if it had to be conceived and negotiated from nothing.

⁵⁹ The government of Nepal has voluntarily signed and ratified, and thus legally bound itself to comply with, numerous international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and many others. For a full list of the treaties the government of Nepal has ratified, see: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>.

⁶⁰ The Guidelines add that “Competent authorities should be requested to protect, to the maximum extent possible, against looting, destruction, and arbitrary or illegal appropriation, occupation or use of property or possessions left behind by persons or communities displaced by the natural disaster”.

Unrealistic timeframes expose marginalised groups to greater vulnerability: Ultimately time is a factor in meeting the needs of millions of survivors. Less than four years since the earthquake, momentum is waning, considerable unmet needs remain, and with the mandate of the NRA under pressure indicate that, irrespective of emerging new priorities, a three-year window for such institutions is too short. However, the temptation to facilitate the easier caseload of beneficiaries first, and muddle through the complexity of addressing the needs of more marginalised and vulnerable groups last, dooms them to longer periods, requiring humanitarian assistance which has limited long term value, leaves them stuck in a limbo of uncertainty, and exposes them to greater vulnerabilities of weathering temporary shelters, indebtedness, poverty with no viable income, and despair. Experience in other countries is no different however, and the opportunities to learn from those seem to have been lost.

PLANNING FOR THE FUTURE

Prepare for the worst: Despite its critics, and in spite of all the challenges it has faced, the reconstruction programme in Nepal, including the performance of the NRA, has gone a considerable way in meeting its mandate. What has been accomplished should not be lost, and what has not or will not be accomplished can serve as constructive guidance for the future. Notably the momentum generated by commitments made at the highest levels of government, the rapid and robust reconstruction policy and programming, and the initiation of new critical planning, risk assessment, and land rights principles should all inform the new institutions and mandates of the NDMA, the federal institutions at all levels, and civil society in planning for what inevitably in a country exposed to seismic, climate, and social risks will happen in the future. At the same time, it must be ensured that neither the NRA nor the government abandon those who have yet to access dignified housing, land and property rights. Indeed, it would seem beneficial for the government to re-commit to ensuring all earthquake-affected persons and families are supported to rebuild safe homes on safe land with equitable access to livelihoods. This responsibility could be handed on to local and provincial governments with a commitment from federal government to provide adequate financing and other supports.

Consciously integrate lessons from outside Nepal: While there is no shortage of skill and expertise in disaster management and risk reduction in Nepal, some examples of applicable lessons learned are noted in the accompanying report and its recommendations which provide examples related to: securing rights of women and marginalised communities; mainstreaming secure tenure programming in relief and response agendas, linking relief to development programming, using urban extensions as a means of designing more affordable and sustainable durable solutions, using and leveraging collective community commitments to change, understanding that crisis can catalyze positive change and capitalising on this, and creating opportunities for Nepali institutions, government officials, civil society and others to engage in dialogue, debate and networks of their counterparts in other countries recovered or recovering from the impacts of hazards Nepal has or will be exposed to in the future.

Consciously integrate lessons from inside Nepal: As robust as the policy, political commitment, and support from the international community has been, there will always be room for improvement. As the capacity of new federal institutions are developed and resourced, aspects of urban planning, disaster risk reduction, land use regulation, administration and policy, environmental planning, economic development and other functions of governance should be informed by the experience and lessons learned from the 2015 earthquake recovery and reconstruction process. In the future these should inform and enhance the policy, regulation and implementation of the national risk reduction and resilience agenda coordinated by national line ministries, and the NDMA.

Give it time: Experiences around the world clearly shows that considering the scope and scale of destruction caused by the 2015 earthquake rushing to meet unrealistic deadlines such as the three year mandate handed to the NRA, meets the imperative to ensure the people affected by the earthquake are settled in new homes, in new communities, and in areas safe from further risk. However, the standards set by the reconstruction policy might be better achieved by a more incremental strategy that ensures the safety and well being of survivors first. Temporary or (preferably) transitional housing can be built safely and quickly alleviate continuing vulnerabilities. Spacing the timing of grant tranches to accommodate the pace of resettled families capacities can also be beneficial. This could take years in Nepal, as it has in other countries. Care must be taken not to discontinue incentives to help people to complete their houses, to build them correctly, to settle comfortably in new communities with the necessary physical and social infrastructure, and to find employment or establish new livelihood opportunities that are economically integrated for their region, and sustainable.

BRIEFING PAPER FOUR – PLANNED RELOCATION/RESETTLEMENT: CHALLENGES AND PROSPECTS

Guiding questions: On the basis of this experience, what measures might the Government of Nepal and international partners consider as it moves forward on developing laws and policies to deal with future disasters, including the Earthquake Geohazard relocation process?

LESSONS LEARNED

Relocation/resettlement efforts have been undertaken with positive intentions, but additional care needs to be exercised to ensure that the implementation of such efforts matches intent:

Social mobilisation targeting both displaced families and host communities was essentially non-existent in the aftermath of the 2015 earthquakes. Discussions with stakeholders in one resettlement scheme reveal that while people were happy to finally acquire land and build their houses, the reality was that the integrated settlement scheme often failed to deliver essential basic services such as water, electricity, communication and roads. Moreover, host community members frequently complained about additional pressure being placed on schools, water resources, and other social infrastructure because of the newcomers. By way of example, the two lakh land purchase allowance enabled ten families relocating to a new village to purchase land, but the amount they were able to acquire was insufficient to provide adequate livelihood options for everyone. Also, they are now too far away from their previous land plots which are now certified as unsafe. Thus, they can no longer farm in their original locations nor transport their produce to the new village. The present report recommends that the relocation/resettlement

process, where it includes multiple families in one area must be carried out considering a strategic long-term urban development plan that recognizes an integrated economic development agenda beyond a simplistic 'livelihood' based approach to one that envisions prosperity, resilience, and sustainability as the long-term goal. That this was not done, is not an error of omission, rather it is a matter of time, financial and human resources in too short supply to meet the laudable conditions in the policy and commitments from the NRA and government.

Exclusionary zoning has a price: The drivers of displacement are varied. But in cases of land once deemed safe and under tillage or other agricultural management that is rendered 'unsafe' due to emergent geo-hazard, the onus should not be on the land owner/user to bear the liability and loss of his or her land. Where land records provide evidence of the government's approval of use, occupancy and/or ownership, the loss of that land to the rightful occupants also means loss of income, livelihood, culture, and kinsmanship that cannot easily be repaid in any relocation/resettlement scheme. In some cases, the price to pay and delays in relocation/resettlement have forced people to return to their unsafe land in spite of the potential danger, putting them, and by association, the government at risk.

PLANNING FOR THE FUTURE

"Seamless transition" is a myth: In international aid jargon, the oft-written goal of passing humanitarian agendas to willing long-term development actors that leverage investments in immediate measures taken following crisis, rarely happens. Nevertheless, governments have a better chance at ensuring what has been delivered thus far is well integrated with line ministries responsible for the country's future development including in Nepal, those ministries addressing land and land use, economy and finance, local government, health, education, infrastructure, environment, security and disaster management. These line ministries, and their provincial and local counterparts will need to become stakeholders and shared 'owners' of mandates distributed once the NRA is wound up. Planning for this should begin as soon as possible with suggested prospective goals related to: ensuring any latent need of survivors of the earthquake in terms of housing, land, property, and infrastructure are met; completion of the national geo-hazard maps complimented by assessments of other hazards the country is exposed to; promulgation of the legal frameworks required to expropriate at fair market value, land deemed unsafe for human habitation and converting its legal disposition to 'public' and protected land; undertaking a comprehensive national land inventory to identify future resettlement sites and consider the means of acquiring and protecting them in some form of land bank; among many others could be based on initial work already completed, precedents set and delivery mechanisms developed and functional in each of these sectors through the NRA's Durable Solutions programme.

Urbanisation and reconstruction should not become competing priorities: Nepal is one of the fastest urbanizing countries in the region and is expected to increase in coming years.⁶¹ The government of Nepal's 15 year National Urban Development Strategy (NUDS) published in 2017 is highly self-critical of the current state of urban development in the country, and highly aspirational in terms of filling gaps and correcting deficiencies throughout the country's urban landscapes. With its mandate covering the four development sectors of investment, finance, governance and land management inherent in the new federal system, the Ministry of Urban Development is key to ensuring that reconstruction, and in particular the integrated settlements relocation and resettlement initiatives are coherent with the long term goals and commitments set out in the NUDS. In this regard, the strategy contains goals related to community engagement in urban development and through public-private-community partnerships and if implemented in areas affected by the earthquake will address some of the outstanding engagement (not 'consultation') of relocated families in integrated settlements initiated by the NRA. Furthermore, the strategy outlines programming intended to: "Promote multi-hazard approach in dealing with disasters including climate change" (S 50. P 20) and "Promote integrated safer settlement" (S 51. P. 21) through multi-hazard mapping, risk sensitive land use planning, data gathering on climate issues, preparation of a National Adaptation Plan, and defining risk and environmentally sensitive exclusion zones and linking the National Building Code with Building Regulations. Hence the linkages are made between the mandate of the NRA in its settlement development initiatives and the Ministry of Urban Development in its 15 year plan and the challenge remaining is to ensure the operational momentum of the NRA is kept and enhanced through the NUDS and with the support of the Ministry and it's provincial and local counterparts.

BRIEFING PAPER FIVE – CASH GRANTS AND RECONSTRUCTION FINANCING: PLANNING AHEAD AND SECURING TENURE FOR ALL

Guiding Question: Did the cash grant system deliver on the commitments made to survivors in terms of housing, land and property elements of the reconstruction programme?

LESSONS LEARNED

Positive and negative perspectives: The good news is that people have been receiving the grants and for the most part using them to reconstruct their homes. The cash grant system has been designed, tested, and it works; if its ever needed again it can be replicated with some modification. However, it's not all good news. Assumptions that the banking system would be able to service the grant distribution requirements pending beneficiaries opening bank accounts only worked partially because long distances, bureaucracy, and countless delays in transferring funds, frustrated many. The 'crisis inflation' phenomena associated with the grant scheme bloated markets for construction materials, land, infrastructure and skilled labor. A low-interest loan promised by the NRA never materialised leading many to take high cost loans which could have detrimental impacts for generations. The NRA and its partners, however, understand these challenges, and for the most part they are all manageable in the event the cash grant system needs to be used in the future.

⁶¹ See, <https://thehimalayantimes.com/nepal/pace-urbanisation-rapid-nepal-says-report/>.

The cost of re-housing 800,000 families was underestimated: The reality, with almost four years of hindsight, is that what the architects of the reconstruction policy and programming thought a reasonable value for one family to build one house was in fact an underestimation of around 50%. Multiple factors including the crisis inflation noted above, complicated logistics in transport of materials, supply chain disruptions, limitations on deployment of technical assistance and training, delays associated with political flux in the early days following the earthquake, all contributed to misunderstanding what rehousing all of the affected families would cost. Noting, however, that government cannot afford to cover all the costs associated with constructing safe, resilient homes on safe productive land, and that many beneficiaries of the scheme require credit to ultimately finish the houses and make them habitable is one strategic enhancement to the cash grant system that could be considered should it be necessary the scheme is mobilised at some point in the future. Models for linking small loans for housing improvements exist in many parts of the world, and handled correctly work extremely well.

PLANNING FOR THE FUTURE

Consider ‘State of Emergency’ protocols: These should enable government to set/fix prices (at pre-crisis levels) for construction materials, land, and other essential goods; set moratoria on land transactions in affected areas; limit land subdivision; and mandate government authorities to expropriate at fair pre-crisis market value land deemed unsafe for human habitation, and private or public land required to resettle displaced populations.

Streamline and prioritise secure tenure options for all: Much of the delays suffered by many beneficiaries arose from lack or loss of documentation, reissuing titles, citizenship, marriage, death, and other certificates. Understanding the need for due diligence on the part of the NRA and its local agents, some form of rapid assessment of peoples’ rights to housing, land and property might speed up the allocation of rights and incentivise personal investment on HLP attributes. Models of this type of quick HLP survey can be integrated in IDP registration protocols with a simple set of questions that put a placemark on each family’s losses, and better inform responses and support to regain their rights either on their own land, or elsewhere if necessary.

Control markets: While onerous and cumbersome, government and/or its agents could consider wholesale procurement, storage and distribution of building material packages to beneficiaries of future earthquake (or other catastrophic disaster) reconstruction programmes. Subsidised material processes could be considered, such as timber treatment, aggregate crushing and sand extraction could reduce cost and ensure national standards are followed. This would guarantee more affordable, equitable and accessibility for survivors construction needs and would also ensure better quality. Additionally, it would limit the need for cash-in-hand transactions which sometimes resulted in loss or wasting of the grant, eliminate the need for banks to engage freeing up time lost in travel and bureaucratic procedures, and curtail the market inflation that rendered a large degree of unaffordability for many beneficiaries of the reconstruction programme.

Building credit into the financing strategy for reconstruction: Understanding that the full burden of cost of reconstructing at such scales, cannot be born solely by government, and that it takes time for people to recover their livelihoods. This is particularly acute when the survivors are expected to build their own homes, and the government or its agent (such as a future version of the National Reconstruction Authority for example) could consider designing and integrating in policy, regulation and law governing future reconstruction programming, including credit schemes that defer repayment, generate limited interest charges, and are purpose driven and managed specifically for housing improvements. This relieves the burden of time and direct cost to government, and if combined with a robust materials management system as suggested above, ensures continuity and quality of the final outcomes. Models for these kinds of credit schemes are being used in many countries, and with proper management work well.

ANNEX 2 - CHECKLIST FOR POST-DISASTER HLP INTERVENTIONS

1. **Overarching principles** - Do no HLP harm; Ensure secure tenure for everyone; Be flexible and pro-poor in orientation; and Base HLP responses on community-led initiatives;
2. **HLP-related practices to avoid and resist** - Land grabbing; Regressive planning measures; Involuntary permanent resettlement/relocation; and Restrictions on freedom of movement and other rights;
3. **Understand the specific rights of disaster affected persons** - People affected by disaster have human rights, including housing, land and property rights. These need to be understood and taken seriously throughout the recovery process;
4. **Identify local and international HLP actors** - Many institutions and individuals have responsibilities within the HLP sector. These HLP actors need to be identified and consulted at the earliest possible time;
5. **Understand the HLP legal and policy framework** - Housing, land and property law and policy are often complex and unique. HLP law and policy in affected countries need to be properly understood and contextualized in order to ensure optimal shelter responses;
6. **Clarify HLP ownership and tenure rights** - Existing HLP ownership and tenure rights should be quickly and accurately clarified, ensuring that owners, tenants and informal sector dwellers are treated equitably;
7. **Determine the type and likely scale of any HLP or ownership disputes** - HLP Disputes arise in many post-disaster settings. Both the type and likely scale of such disputes needs to be determined;
8. **Focus on tenure security** - All disaster-affected persons must be guaranteed adequate security of tenure protection throughout the entire post-disaster period and recovery process;
9. **Identify groups with special HLP needs** - Many different social groups may be disproportionately affected by disasters, including women, children, persons with disabilities, the elderly and others. These groups need to be identified and disaggregated. Special measures will be required to ensure that the rights of such groups are met in full;

10. **Determining the scale of HLP damage and destruction** - The scale of housing, land and property damage and destruction needs to be assessed and analyzed as promptly as possible;
11. **Understand local methods and capacities of HLP administration** - methods and procedures for housing, land and property administration may vary between countries. These need to be understood prior to developing longer-term HLP recovery policies.
12. **Understand the human rights implication of return, resettlement and relocation** - When return to one's original home is neither materially possible nor desired by the affected population, resettlement and relocation of some disaster-affected communities may be required. The human rights implications of any proposed resettlement or relocation needs to be fully understood, and only engaged in subject to the full participation of the people affected;
13. **Identify possible and adequate land sites for transitional and permanent housing** - New land sites may be required to transitionally house or provide permanent new housing to disaster-affected persons. Such sites should be promptly identified and registered;
14. **Identify possible HLP advocacy strategies for the donor community** - Officials may identify important legal, policy and practical gaps in HLP protection. In some instances, it may be appropriate for civil society to strategically advocate for improved approaches to such HLP areas and
15. **Identify sources of HLP expertise and assistance** - In some instances, officials may have the expertise required to fully address HLP concerns. In cases where such expertise or capacity does not exist, efforts should be made to identify local and international sources that can provide the expertise and assistance required.⁶²

⁶² Displacement Solutions, *Housing, Land and Property (HLP) Rights in Post-Disaster Settings: Proposals for IFRC Shelter Policy and Response: An HLP Rights Scoping Study*, IFRC & Displacement Solutions, 2008.

DISPLACEMENT SOLUTIONS

Displacement Solutions (DS) was the lead author of this report, which was drafted by Dan Lewis and Scott Leckie. DS was established in December 2006 as a not-for-profit international NGO to fill a major gap in global efforts to prevent and resolve forced displacement, and to protect and restore the housing, land and property rights for those who are displaced. DS conducts field-level projects focusing on policy, legal and educational issues in specific countries, as well as broader thematic projects designed to raise the profile of displacement issues on the international agenda. DS has worked in more than 30 countries and played a catalytic role in facilitating innovative policy, normative and legal changes protecting displaced communities who have lost their homes and lands. It has produced more than 100 cutting edge books, publications, reports and films and designed the world's first law school course on climate displacement. Our work is increasingly focused on procuring land for climate-displaced communities in countries including Bangladesh, Colombia, Fiji, Kiribati, Maldives, Myanmar, Panama, Papua New Guinea, Solomon Islands and Tuvalu. A comprehensive overview of DS' advocacy, normative and operational work is available on www.displacementsolutions.org.



PEOPLE IN NEED

People in Need (PIN) is a non-governmental, non-profit organization founded in the Czech Republic in 1992. PIN arrived in Nepal as part of the humanitarian response to the April 25th, 2015 earthquake. Since its inception, PIN has assumed a strong role in advocating for, and addressing, the needs of the most vulnerable populations in Nepal. This has included people living in geographically remote areas of Nepal, historically marginalized caste and ethnic groups, and those marginalized because of their age and/or gender identity. More recently, PIN has supported Nepal's post-earthquake reconstruction and recovery efforts, including through the Durable Solutions program.

COMMUNITY SELF-RELIANCE CENTRE (CSRC)

Community Self-Reliance Centre (CSRC) has been facilitating land and agrarian rights campaign in Nepal for 25 years. CSRC educates and organizes people who are deprived of their basic rights to land and empowers them to lead free, secure and dignified lives. Since its establishment, CSRC has constantly worked to transform discriminatory and unjust social relations by organizing landless, land poor and marginalized communities to claim and exercise their rights. The mission of CSRC is to empower land-poor women and men enabling them to claim and exercise their basic rights, including right to land resources, contributing to eradicating poverty and injustice.



DURABLE SOLUTIONS

The Durable Solutions is a DFID-funded project that supports Nepal's National Reconstruction Authority (NRA) in facilitating the implementation of its resettlement program for earthquake-affected populations. It has been implemented jointly by People in Need (PIN) and the Community Self-Reliance Center (CSRC). The long-term objective of Durable Solutions is to create a national precedent and framework for the fair and voluntary relocation of citizens following a disaster or due to landlessness. More information about the program can be found at durablesolutionsnepal.org.

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