



Regulatory barriers to providing emergency and transitional shelter after disasters

Country case study: Nepal

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About this report

This report contains an analysis of the potential regulatory barriers to emergency and transitional shelter response efforts in Nepal. It identifies existing positive developments which can reduce regulatory barriers, and includes several suggested ways forwards to enhance the effectiveness of shelter activities. The summary version of this report, entitled "Regulatory barriers to providing emergency and transitional shelter after disasters, Country Case Study: Nepal (Summary Report)" is also available on this website.

About the Disaster Law Programme

The Disaster Law Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. The Disaster Law Programme works in three key areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders in disaster law; and (3) dissemination, advocacy and research.

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Cover photo: A house in Khandbari, Sankhuwasava district, Nepal, was destroyed by a magnitude 6.9 earthquake on 18 September 2011. Sixteen such houses have been fully damaged in the locality.

Photo by: Dipendra Shakya/local journalist.

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Executive summary

About this study

This study examines the effectiveness of national legal and regulatory frameworks with regard to emergency and transitional shelter following natural disasters in Nepal. It provides an overview of the relevant laws, policies and procedures that have a bearing on different aspects of emergency and transitional shelter response. It also examines the application of those regulations in practice during previous disaster response operations, or anticipates how they might be applied in such a situation in the future. The findings identify potential regulatory barriers to emergency and transitional response efforts, as well as a range of existing positive developments and initiatives which can enhance the effectiveness of shelter activities. A number of “suggested ways forward” for strengthening the effectiveness of shelter response are then proposed.

The findings of the report are divided into four parts:

1. Disaster response framework and links to emergency and transitional shelter framework
2. Access to shelter assistance
3. Land for emergency and transitional shelter
4. Shelter construction

Overall conclusions and suggested ways forward

Recent experience of emergency shelter in Nepal has mainly been in relation to small and medium-scale disasters and consequently, shelter responses have often been focused on the provision of basic shelter materials and small compensation payments, with some exceptions including the establishment of temporary camps, reconstruction/resettlement and large compensation payments. No instances were found of transitional shelter, with displaced people tending to move directly from emergency shelter to permanent housing. However, in the event of a mega-disaster such as the predicted powerful earthquake in dense urban areas like the Kathmandu Valley, a much wider range of shelter responses will be required.

This study has found that laws, policies and regulations are rarely applied for the provision of emergency shelter in Nepal. This may be due to a number of factors, including an absence of relevant laws, policies and regulations, a lack of sufficient detail to enable their effective application, or that situations have not yet arisen where they might be applied or they may have been overlooked. There have been cases where relevant laws, policies and regulations were applied, but were found to be inadequate or applied poorly or selectively. All of the above circumstances have the potential to hamper the provision of effective emergency shelter in different ways.



Gaps and barriers for shelter assistance

Overall framework for disaster management and emergency shelter

The findings of this research revealed an absence of comprehensive disaster management laws and policies, which at the moment remain dispersed with insufficient planning for a major earthquake in Kathmandu Valley. The existing shelter contingency plan has largely been prepared by the humanitarian sector but still does not contain sufficient detail. The Internally Displaced Persons (IDP) Policy and Procedures which technically applies to natural disaster situations and contains many comprehensive and useful provisions, does not appear to be widely recognised or acknowledged as being applicable, therefore clarification around the application of these documents could be improved. Many of these issues may be addressed by the draft Disaster Management Act pending adoption and the work underway to update shelter contingency planning by the humanitarian sector.

Access to shelter assistance

Access to emergency shelter is a major regulatory barrier, largely due to a number of legal and procedural requirements that can effectively exclude individuals or certain groups from accessing the documentation needed to establish identity, property ownership, tenancy and property boundaries. Although processes for establishing this information do exist, in practice these are generally informal, undocumented and have the potential to expose some people to further discrimination.

The study also found a number of additional barriers for people accessing shelter assistance, including issues concerning inheritance for women, exclusion of people from lower castes, difficulties for families of the missing and challenges for both urban and rural tenants.

Land for emergency and transitional shelter

The study found that existing legislation enables the use, protection and acquisition of land for meeting the needs of emergency and transitional shelter after a disaster. However, its effectiveness has been limited by long bureaucratic processes and delays, and the allocation of land in marginal and unsuitable locations, as well as by an absence of clear standards or adherence to Sphere minimum standards together with inadequate consultation with communities. Clarity about when and how the use of schools, places of worship, host families and areas protected for environmental reasons may be utilised and adequately managed for emergency shelter following a disaster could also be improved, for example through the development of appropriate guidelines or standards.

Shelter construction

The main barrier concerning the construction of emergency and transitional shelter and related materials is not an absence of adequate regulation, but inadequate implementation of the relevant regulations, particularly with regard to the National Building Code (NBC). Improved allocation of resources, stronger political will and enhanced public interest could improve the application of the relevant standards in practice, especially if complemented by a stronger capacity for monitoring and enforcement. There is also little capacity for conducting damage assessments and there is a need to ensure that existing guidelines developed for this purpose are officially adopted and

applied. There are also limitations on the availability of suitable shelter materials and potential challenges associated with procurement and the entry of imported goods.

Positive developments and solutions

A number of positive developments, good examples and innovative solutions have been identified in this study which may help to improve the provision of emergency and transitional shelter after disasters in Nepal. Some major initiatives are highlighted below and further explained in the body of the report:

- Systematic development of disaster preparedness plans at district level and the development of a new Disaster Management Act (pending adoption).
- Plans to increase the availability of suitable land for emergency and transitional shelter through the “Open spaces” initiative in Kathmandu city, which has protected 83 sites from development for use as temporary camps or other humanitarian purposes. The spaces include a mix of large and medium sites on government owned land, which have been legally protected by publication in the national Gazette and are managed by an inter-ministerial committee.
- Additional programmes to address ‘risk sensitive land use planning’ so as to better manage urban planning. This will be supported by new policies and the proposed development of resettlement guidelines and a recovery plan, which include further efforts to expand the number of open spaces in the wider Kathmandu valley and to implement the “one tole¹, one open space” concept.
- Initiatives to strengthen the implementation of the NBC, including: digitization and automation of building code approvals; integration of the NBC into municipality by-laws; and initiatives to improve building code compliance through advocacy and training.
- Plans to adopt the emergency shelter models and standards into national policy and the development of detailed recovery guidelines.
- Existence of Legal Status Agreements with international humanitarian organisations and adoption of the Model Customs Agreement to provide expedited procedures and tax waivers for the import of materials for emergency response materials following a disaster.

Suggested ways forward

This study proposes a number of “suggested ways forward”, which highlight areas which would benefit from further consideration or integration into new/existing instruments concerning emergency and transitional shelter.

Among these suggestions are:

- **Ensure a comprehensive and harmonised policy approach for the provision of emergency and transition shelter in Nepal.** This could be achieved either through improved integration of the key disaster response instruments such as policies and plans to follow the adoption of the new Disaster Management Act, but should also

¹ A tole is a small neighbourhood or block



include further references/linkages to other relevant plans/policies/technical specifications for emergency and transitional shelter in other instruments and should address the key issues of clarification of institutional responsibilities, funding mechanisms and (if possible) annual budget allocations.

- **For more practical use, consider the development of an emergency and transitional shelter handbook or manual** targeted towards practitioners working in Nepal and capturing these elements in summary for operational use.
- **Development of a detailed, government-owned contingency plan for the provision of emergency and transitional shelter in the event of a major earthquake in Kathmandu Valley.** This should take into account the likely impact on government or humanitarian capacities and integrate learning from other similar events in other countries. It could also include provisions concerning the prepositioning of shelter materials and the promotion of new techniques for using renewable local materials for disaster-resistant shelters, which could improve the speed, cost-effectiveness and safety of post-disaster shelters, provided they are acceptable to local communities. It should also include reference to the various regulations and standards applicable to different shelter responses and strategies for accountability, monitoring and compliance, which should form part of wider earthquake contingency planning processes.

Overcoming implementation challenges

The study also highlights the major challenge in the effective implementation of laws, policies and regulations in Nepal and a need for improved enforcement and compliance. This issue is often linked to sensitive issues of equality and non-discrimination, land and property ownership and overall control of resources by certain socio-economic, caste and political groups as well as the existence of corruption.² While there are no simple solutions to overcome this, some steps are suggested to enhance the prospect of effective implementation of any new laws, policies, regulations or other instruments including;

- Ensuring that any new initiatives are agreed as a priority, in the wider context of disaster management and preparedness planning.
- Ensuring discussions and consultations are inclusive of a wide range of stakeholders including ministries and departments at various levels, non-government organisations (NGOs), community groups and the wider public in order to raise awareness of the key issues behind the development of a new instrument and ensure the content is informed by the feedback received.
- Ensuring the financial implications of any new instrument are fully explored, discussed and agreed to by the relevant government ministries, in particular the Ministry of Finance (MoF).

² See for example, “Anti-corruption Profile – Nepal”, TrustLaw (undated) at: www.trust.org/trustlaw/country-profiles/good-governance.dot?id=6ab81711-3750-49ab-ae70-c4481611e7be accessed on 9 April 2013; Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008) and “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal”, DFID and World Bank (2010).

- Following up the development of any new instrument with awareness and training of a wide range of government and non-government partners as well as on-going public awareness-raising and a regular review process, including immediately after disasters.

Next steps

It is hoped that the government of Nepal will consider the suggested ways forward presented in this report in its continued development of Nepal's regulatory framework to promote the timely and equitable provision of shelter after disasters. The International Federation of Red Cross and Red Crescent Societies (IFRC) and Nepal Red Cross Society (NRCS) are ready to provide further technical support toward this aim.

The report and the findings highlighted throughout may also serve as a useful reference for other humanitarian actors (e.g. incoming relief agencies) active in Nepal. In addition, the research will be considered as part of a global synthesis study, informing broader global conclusions and recommendations on how to address regulatory barriers to emergency and transitional shelter assistance.



Acronyms and abbreviations

ADB	Asian Development Bank
CDO	Chief District Officer
CDRC	Central Disaster Relief Committee
DDC	District Development Committees
DDRC	District Disaster Response Committee
DoLIA	Department of Land Information and Archive
DPRF	Displaced Persons Relief Fund
DUDBC	Department of Urban Development and Building Construction
EMI	Earthquake and Megacities Initiative
ESC	Emergency Shelter Cluster
IASC	Inter-Agency Standing Committee
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Persons
IFRC	International Federation of Red Cross and Red Crescent Societies
IOM	International Organisation for Migration
JICA	Japan International Cooperation Agency
KVDA	Kathmandu Valley Development Act
LRO	Land Revenue Office
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MoHA	Ministry of Home Affairs
MoLRM	Ministry of Land Reform and Management
MoUD	Ministry of Urban Development
NBC	National Building Code
NEOC	National Emergency Operations Centre
NDRF	National Disaster Response Framework
NFI	Non-Food Item
NGO	Non-government Organisation
NRCS	Nepal Red Cross Society
NRRC	Nepal Risk Reduction Consortium
NSDRM	National Strategy for Disaster Risk Management of 2008
NSET	National Society for Earthquake Technology
UNDP	United Nations Development Programme
VDC	Village Development Committees

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The study also could not have been completed without the assistance of all stakeholders who gave generously of their time and experience in interviews during the consultant's country visit. A full list of those interviewed is included in Annex D.

Regulatory barriers to providing emergency and
transitional shelter after disasters
Country case study: Nepal

Part A

Background and project objectives

Background

In many recent disasters, legal and procedural issues have posed significant challenges to the provision of emergency and transitional shelter solutions to families and individuals whose homes have been damaged or destroyed. National Red Cross/Red Crescent Societies, as first responders to disasters, have repeatedly faced regulatory barriers as major obstacles to meeting the shelter needs of disaster-affected populations. Removing or reducing these barriers as a preparedness measure before a disaster can be critical both to long-term recovery and short-term solutions after a disaster. A resolution was adopted at the 31st International Conference of the Red Cross and Red Crescent Movement (International Conference) in November 2011 (Resolution 7), encouraging states, with support from their National Societies, the International Federation of Red Cross and Red Crescent Societies (IFRC) and other relevant partners, to review their existing regulatory frameworks and procedures relevant to post-disaster shelter.³

While most countries have a regulatory framework that applies to housing, land management, urban planning and building codes, these regulations and administrative procedures are often inappropriate or inadequate to effectively deal with the realities of a sudden-onset disaster. It is also the case that some countries have little or no formal title registration system or the system they do have may have lapsed over time or acquired contradictory layers and practices. In many cases, customary or informal land rights systems are used instead of formal processes, particularly at the community level.

Often, the regulations which the humanitarian community are required to conform to in post-disaster settings are not easily adaptable to situations where large numbers of people are displaced. These laws, regulations and procedures may therefore be inappropriate to post-disaster situations and actually be a barrier to recovery. Furthermore, in many countries, there remains for the most part, little knowledge of the regulatory framework which the humanitarian community enters into after a disaster.

In response to Resolution 7, and to assist governments and National Societies in addressing these issues, the IFRC has commenced on-going research looking at the relevant national laws and procedures relating to shelter and housing, land and property rights and how these have been implemented in practice. This research will incorporate country case studies, including this report, which seek to provide an analysis of the effectiveness of these existing legal frameworks and its application in theory and practice, taking into account experiences in previous disasters. It is expected that these case studies will form the basis of recommendations to governments and other humanitarian actors (e.g. incoming relief agencies) on how to develop regulatory frameworks to ensure the timely and equitable provision of shelter after disasters in each country. This research will also be considered for a wider global synthesis study, which will inform broader global conclusions and recommendations on how to address regulatory barriers to emergency and transitional shelter assistance.

³ IFRC, Resolution 7 on “Strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery”, adopted by the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November – 1 December 2011

Project objectives

This project is a joint initiative between the IFRC's Disaster Law Programme (DLP) and Shelter and Settlements Department, implemented in close collaboration with the Nepal Red Cross Society (NRCS). Specifically it aims to:

- a. Map and analyse relevant laws, regulations, rules, decrees, codes and standards relating to the equitable provision of emergency and transitional shelter after disasters in Nepal. This analysis includes both urban and rural contexts with consideration also being given to statutory and customary practice and formal and informal land rights systems;
- b. Document the relevant procedures for providing emergency and transitional shelter according to the regulatory and administrative framework;
- c. Assess the practical impact and implementation of the relevant laws, regulations rules etc., and identify strengths, gaps and weaknesses;
- d. Outline any methods or innovative solutions developed to overcome the legal and regulatory barriers identified in the report, identify areas for improvement, and measures which may be adopted to minimise legal and regulatory barriers in future disaster situations.

Methodology

The research for this study was conducted over a three month period from April-July 2013 by an international consultant with support from the IFRC Country Office in Nepal and NRCS. This research was further supplemented with additional discussions with key stakeholders in Nepal in December 2013.

Research areas were based on those identified during preliminary research undertaken by the IFRC on regulatory barriers to post-disaster shelter, including the 31st International Conference background paper on "Addressing regulatory barriers to providing emergency and transitional shelter in a rapid and equitable manner after natural disasters"⁴ hereinafter referred to as the "International Conference paper") as well as specific areas of focus contained in the Terms of Reference for this report.

Initial research

The initial research phase involved the collection and analysis of key national laws, regulations, decrees, codes, and standards, and the relevant sub-national laws relating to the regions and communities visited in Nepal during the in-country consultations, as well as recent reports, evaluations and other secondary materials. These were collected both electronically and from government departments and organisations based in Kathmandu.

⁴ IFRC, "Addressing regulatory barriers to providing emergency and transitional shelter in a rapid and equitable manner after natural disasters", background report for the 31st International Conference of the Red Cross and Red Crescent, Geneva, October 2011

Disaster case studies

Research was conducted on several recent disasters selected on the basis of differences in type, scale and shelter responses. These were the Koshi floods of 2008, the Taplejung earthquake of 2011, and the Siraha fire of 2012. Analysis was also made of the scenario of a major earthquake affecting Kathmandu Valley and the needs and shelter responses likely to arise.

In-country consultations

The international consultant conducted an in-country visit to Nepal in late May/early June 2013 to conduct meetings and interviews with key stakeholders based around the research.

Interviews were conducted at the national, regional, local and community level, with a variety of stakeholders including:

- a. senior personnel from the relevant national ministries/departments/committees
- b. national or international development or humanitarian assistance agencies, non-government organisations (NGOs) and technical experts (including organisations concerned with equality in access to shelter/housing, land and property, for example)
- c. local/regional/provincial/level government officials, and disaster-affected communities.

Interviews were conducted in Kathmandu and in the eastern Terai districts of Sunsari and Siraha, which had been affected by the Koshi Floods of 2008, and the Siraha fire of 2012. A full list of those interviewed is contained in Annex D.

The international consultant, Ms Victoria Bannon, had previously served a three year mission as the IFRC Country Representative to Nepal, including the role of Emergency Shelter Cluster (ESC) lead, which also added value and knowledge to this report.

Regulatory barriers to providing emergency and
transitional shelter after disasters
Country case study: Nepal

Part B

Analysis of regulatory barriers

This part provides an overview of the relevant laws, policies and procedures which have a bearing on different aspects of emergency and transitional shelter response. It also examines the application of those regulations in practice during previous disaster response operations, and analyses how they might be better applied in future situations. From this, a number of conclusions are drawn, identifying potential regulatory barriers to emergency and transitional shelter response efforts, as well as positive developments and “suggested ways forward” to enhance the effectiveness of shelter response in Nepal.

The section is divided into four parts:

1. Disaster response framework and links to emergency and transitional shelter
2. Access to shelter assistance
3. Land for emergency and transitional shelter
4. Shelter construction

1. Disaster response framework and links to emergency and transitional shelter

This section provides a general overview of the disaster profile and the laws, policies and regulations that establish the overall disaster response framework in Nepal, including institutional responsibilities, funding mechanisms and coordination, with a specific focus on the provisions relating to emergency and transitional shelter as well as types of emergency and transitional shelter responses.

1.1 Disaster profile

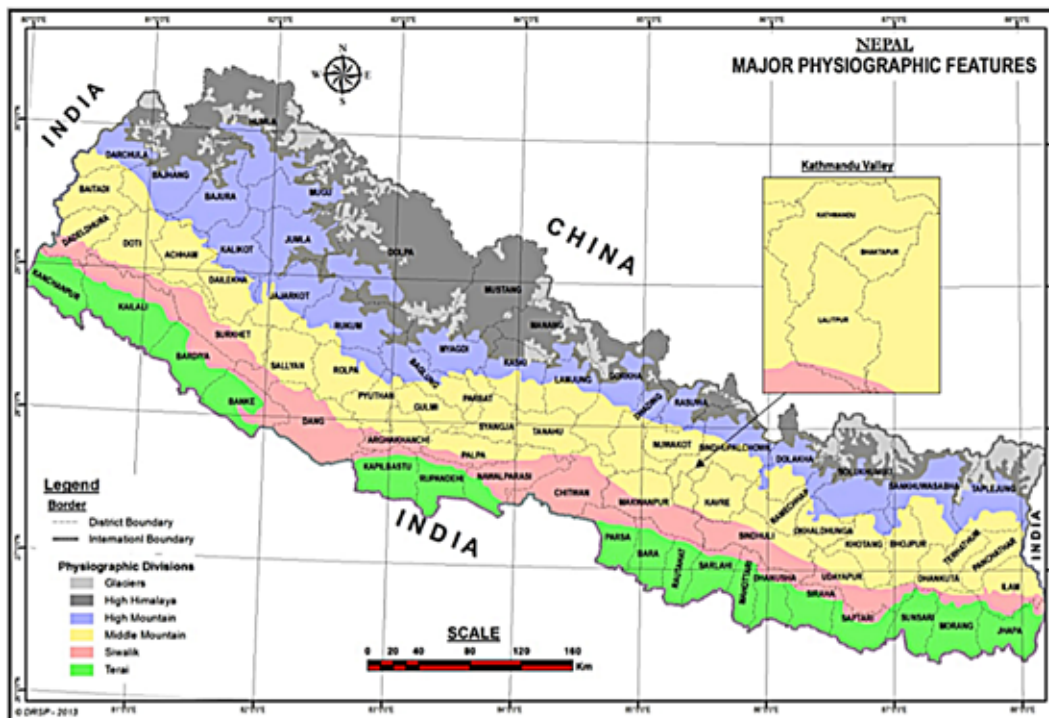
Nepal is a small landlocked country of 147,181 square kilometres, bordering India and China, with terrain divided between the highest mountain range in the world (the Himalayas), to lower lying hilly districts and the flat, sea level plains of the Terai. The climate varies in these different topographic areas from alpine in the mountainous region, temperate in the hilly regions and sub-tropical in the Terai.⁵

The country has recently become a republic governed by an Interim Constitution⁶ and is administratively divided into 5 Development Regions and 75 Districts. Each district is divided into smaller Village Development Committees (VDCs), and in more densely populated urban areas into Municipalities, which include 9 or more wards depending on their size.⁷ Nepal has the lowest GDP per capita of all South Asian countries, characterized by slow economic growth and a largely agriculture-dependent population of which over 30 per cent are living below the poverty line. The country experienced a

⁵ See “Nepal Country Report: Global Assessment of Risk”, UNISDR Global Assessment Report on Poverty and Disaster Risk (2009), pp3-5

⁶ Interim Constitution of 2007

⁷ “Nepal Country Report: Global Assessment of Risk”, UNISDR Global Assessment Report on Poverty and Disaster Risk (2009), pp4-5



Source: Swiss Agency for Development and Cooperation

time of significant social and political upheaval following a Maoist insurgency, which ended after 10 years of conflict with the Comprehensive Peace Agreement in 2006.

Nepal is often described as one of the most disaster-prone countries in the world, experiencing a wide range of disasters due to its topographical and climatic diversity. Based on data gathered between 1988-2007, it was ranked 23rd in the world for the highest number of deaths from natural hazards, 8th for flood-related deaths and 7th for flood, landslide and avalanche deaths. Annually occurring disasters are responsible for losses equivalent to around 1 per cent of GDP, and significantly higher losses are experienced in years with larger scale events. These disturbing statistics are in spite of likely under-reporting of disaster information across the country, suggesting that the true impact of disasters could be greater still.⁸

Floods and landslides are the most frequent hazards occurring in the hills and Terai region particularly during the monsoon season, which accounts for 80 per cent of the total annual rainfall and can result in widespread displacement. Fires also have a devastating localised impact sometimes destroying the homes of whole villages and communities, particularly during the hot, dry months. Epidemics, storms, glacial lake outbursts, cold waves, droughts, storms and lightning strikes also take a significant annual toll. In fact, every region of the country is exposed to one or more natural hazards, which occur more frequently than the global average⁹

With less frequency although potentially far greater consequences, is the risk of a major earthquake. Located directly above the collision of two major tectonic plates, which are still in motion and continue to increase the height of the Himalayas, Nepal experiences

⁸ Benson C et. al, "Economic and Financial Decision Making in Disaster Risk Reduction", UNDP and Government of Nepal (2009), pp1-10

⁹ "Nepal Country Report: Global Assessment of Risk", UNISDR Global Assessment Report on Poverty and Disaster Risk (2009), pp10-11

frequent small tremors across the country and historically around every 75 years, a major devastating earthquake.¹⁰ The last catastrophic event occurred in 1934 and was estimated as a level IX Modified Mercalli Intensity. During the 1980's, two smaller earthquakes damaged or destroyed an estimated 78,000 buildings, representing 88 per cent of all building damage. Most recently, a smaller earthquake (6.8 on the Richter Scale) occurring near the Nepal/Indian border in the north-eastern mountainous district of Taplejung affected some 29,000 people across 18 districts, including three deaths in the capital Kathmandu. Indeed, located at the potential epicentre of a major earthquake, Kathmandu itself has been ranked as the 2nd most at-risk city in the world.

A number of studies and assessments have been undertaken to determine the potential impact of a large-scale earthquake (above magnitude of 8 on the Richter Scale) within close proximity to the Kathmandu Valley, the most comprehensive of which was undertaken by the Japan International Cooperation Agency (JICA) in 2002, but which has been updated to account for recent changes including population growth.¹¹ Indeed Nepal has been experiencing rapid urbanisation, with the major cities and towns becoming congested and placing a huge strain on existing infrastructure. This is compounded by the lack of seismic resistance of most buildings – including houses, hospitals, schools and government offices. An earthquake of this magnitude has not been experienced in recent years in Nepal but many predict the impact and response will exceed the scale and complexity of the recent earthquake in Haiti in 2010 (the expected impact is detailed in Annex A).

The combined effect of the hazard, land and housing profiles described above indicates an extreme vulnerability to natural disasters combined with a challenging and complex environment for the provision of emergency and transitional shelter assistance.

1.2 Typical shelter responses in Nepal

In Nepal, the numbers of people affected by the most frequent individual disaster events are small scale (for example fewer than 100 households). In these situations, the most typical response for families whose homes have been damaged or destroyed by disaster is the distribution of a small amount of cash from the District Office (NPR5,000) and/or a Non-Food Item (NFI) set, which includes materials such as plastic sheeting, tarpaulin and rope, usually provided by NRCS but sometimes also by local NGOs. (See Annex A for further details).

For larger disaster situations, a number of other shelter responses have also been applied, including:

- Construction of emergency shelters and camps
- Large compensation payments to property owners
- Financial and technical support for the repair and reconstruction of existing houses
- Provision of new land and housing

¹⁰ "Nepal Country Report: Global Assessment of Risk", UNISDR Global Assessment Report on Poverty and Disaster Risk (2009), p10

¹¹ See "Earthquake Scenario of Kathmandu Valley", prepared by Kathmandu Valley Earthquake Risk Management Project (KVERMP) of NSET in 1997; "Study on Earthquake Disaster Mitigation (SEDM) for the Kathmandu Valley" in 2002 by JICA; and "Cross-Cutting Theme Initiative for Kathmandu Metropolitan City (KMC)" in 2003 by UNESCO, NSET and KMC

For the purposes of this study, several recent disasters were identified as case studies to illustrate the different approaches used and, in the case of a major earthquake, the likely responses based on current scenarios and contingency planning. A summary of these disasters are included in Annex A of this report.

In all cases examined for this study, shelter assistance has moved directly from emergency and temporary shelter to permanent shelter, without any transitional shelter construction. The reasons for this are largely practical: the desire of families to return to their original locations/housing as quickly as possible, even if their housing is not yet fully habitable (as for example during the Koshi Floods of 2008 and the Taplejung Earthquake of 2011), the logistical challenges of procuring and delivering transitional shelter in a timely manner prior to longer term recovery, as well as a lack of funding to address transitional shelter needs (as for example during the Taplejung Earthquake of 2011).

A major earthquake affecting Kathmandu Valley, on the other hand, will require a completely different approach to managing emergency and transitional shelter. The numbers of people affected, the massive damage to infrastructure and buildings, the web of land ownership and usage rights and the challenges of logistics will create a complexity that has never been experienced in Nepal before. As will be seen below, planning for this type of response has begun but the effectiveness of these plans are yet to be tested.

1.3 Major disaster laws and policies

In 2011, a National Disaster Response Framework (NDRF) was prepared to provide greater clarity on the existing legal framework, sectoral responsibilities, functions, communications channels and capacities for emergency response within government and the wider humanitarian community, including for emergency shelter. The NDRF seeks to capture existing legal requirements and current practice in a more accessible format.

The Natural Calamity (Relief) Act of 1982 is considered the main institutional and legal framework for responding to disasters in Nepal, which grants fairly wide-ranging powers to the government to conduct relief work in disaster-affected areas including the evacuation of people to safe areas and “other necessary safety measures”.¹² However this Act has generally been recognized as providing insufficient detail or scope for meeting disaster needs and a new Disaster Management Act has been drafted, setting out a revised institutional framework and addressing a wider range of topics including disaster risk reduction and the coordination of humanitarian assistance (this is yet to be promulgated despite significant advocacy efforts in recent years).¹³

The Interim Constitution of 2007, currently the overarching legal instrument in the country, does not directly address disaster situations but contains Emergency Power provisions allowing necessary measures and orders to secure public safety for any “grave crisis”.¹⁴ This can be applied following a major disaster situation which has exceeded government capacities, as envisaged by the NDRF, which refers to a declaration by Cabinet upon recommendation of the Central Disaster Relief Committee (CDRC).¹⁵ There are also provisions relating to the relief and rehabilitation of displaced

¹² Natural Calamity (Relief) Act of 1982, art 4(e), (l)

¹³ National Strategy for Disaster Risk Management, Government of Nepal, March 2008, pp11-12

¹⁴ Interim Constitution of 2007, art 183 (1), (6)

¹⁵ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), section 3(4)

persons and their property, however it is intended for those displaced by conflict rather than natural events.¹⁶ It is noted that a new constitution is expected to be promulgated sometime in 2014 or 2015, which may contain significantly different provisions to the Interim Constitution of 2007.

In 2007, the government of Nepal adopted the National Policy on Internally Displaced Persons (IDP Policy) to facilitate the provision of security, humanitarian assistance, return and resettlement for people displaced by conflict, development/construction/industrial projects and – importantly for this study – natural disasters.¹⁷ The IDP Policy provides for the development of strategies, policies, arrangements and programmes on a number of wide-ranging topics including beneficiary identification, registration and documentation, the right to information, provision of legal aid, specially targeted programmes for women, the elderly, children, orphans and other vulnerable groups, the provision of humanitarian assistance including temporary shelter as well as strategies and principles for return, resettlement and rehabilitation. It is also supported by Procedural Directives (IDP Procedures), which provide additional detail and clarifications to support its implementation, and which extend far beyond other disaster management instruments referred to in this report.¹⁸

However, the IDP Policy and Procedures also have several limitations. Firstly, it is limited in its application to those who have been displaced from their homes or habitual residence¹⁹ (and not, for example, to those who are continuing to live on their own land or in damaged homes, or even to people who have been displaced by natural disaster but were living in “government-prohibited areas”²⁰). Secondly, the detail and complexity of its procedures may limit its effectiveness in emergency settings or following a large-scale earthquake when normal administrative processes and capacities will be severely affected (this is addressed later in this report).

Most significantly, despite its specific application to situations of “natural disasters”,²¹ the IDP Policy and IDP Procedures are not directly referenced in the NDRF, or by any of those interviewed for this study, suggesting that in practice, they are not considered to apply to disaster situations. Whether this is intentional or a mere oversight is unclear, however, it has been well documented that the Policy and Procedures are also suffering from a lack of knowledge and implementation even for their more clearly intended application in conflict situations.²²

Nevertheless, the IDP Policy is the most comprehensive instrument for setting out the principles, standards and detailed procedures for supporting displaced people affected by disasters and hence have been referred to throughout this report to illustrate its potential usefulness, or limitations, for addressing various shelter-related issues.

¹⁶ Interim Constitution of 2007, art 33(r)

¹⁷ National Policy on Internally Displaced Persons of 2007

¹⁸ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007

¹⁹ National Policy on Internally Displaced Persons of 2007, art 3(a)

²⁰ National Policy on Internally Displaced Persons of 2007, art 3(d)

²¹ National Policy on Internally Displaced Persons of 2007, art 3(d)

²² Ferris E, Mooney E and Stark C, “From Responsibility to Response: Addressing National Approaches to Internal Displacement”, The Brookings Institution, London School of Economics, Project on Internal Displacement (November 2011), pp32-3

1.4 Institutional responsibilities

At the national level, the Natural Calamity (Relief) Act establishes a CDRC as the “apex body” for disaster management comprising most major ministries, representatives of some relevant departments as well as from the Nepal Army, Nepal Police, Nepal Armed Police, Nepal Scouts and NRCS, chaired by the Ministry of Home Affairs (MoHA).²³

Overall responsibility for emergency shelter rests with the Ministry of Housing and Physical Planning, now the Ministry of Urban Development (MoUD), which coordinates the Supplies, Shelter and Rehabilitation Sub-Committee. The role of the Sub-Committee is to “give necessary advice and suggestions to the Central Committee, to help execute policies and directives of the Central Committee and to effectively operate the relief and rehabilitation work during Natural Calamity.”²⁴ Within the ministry sits the Department of Urban Development and Building Construction (DUDBC), which has the main policy and implementation role for shelter preparedness, response and recovery, through its national, regional and district level offices located throughout the country.²⁵

Regional and District Disaster Response Committees (DDRC) are also established, with the latter responsible for on-site coordination and delivery of disaster assistance, with oversight from MoHA.²⁶ DUDBC is also intended to be represented within the DDRCs, however in practice this is not always the case, particularly when the most common form of disaster assistance is the distribution of Non-Food Relief Item sets and/or cash disbursements, rather than more extensive shelter support. However, following the Taplejung Earthquake for example, DUDBC played an active role in undertaking damage assessments and supporting the (then) Ministry of Housing and Physical Planning to develop and implement aspects of the Recovery Plan.

A very similar institutional mechanism is envisaged in the IDP Policy, which establishes a Central Steering Committee, a Central Programmes Committee, District Programmes Committees, District-level Displaced Persons Identification Committees, and District-level Displaced Persons Relief Fund (DPRF) Board of Directors.²⁷ As noted above, the NDRF does not make reference to the IDP Policy and Procedures, thus posing the potential for duplication and contradiction, until its status is clarified.

1.5 Coordination mechanisms

Overall coordination for disaster response is the responsibility of MoHA, which has sought to further strengthen national coordination through the establishment of a National Emergency Operations Centre (NEOC) in December 2010. NEOC is tasked to receive, compile and disseminate information about hazards and small-scale disasters based on information received from the respective districts, as well as from local

²³ Natural Calamity (Relief) Act of 1982, art 5(1)-(2) and described in “Anti-corruption Profile - Nepal”, TrustLaw (undated) at: www.trust.org/trustlaw/country-profiles/good-governance.dot?id=6ab81711-3750-49ab-ae70-c4481611e7be accessed on 9 April 2013, p9

²⁴ Natural Calamity (Relief) Act of 1982, art 5(a), (c)

²⁵ “Contingency Plan for the Coordination of Emergency Shelter and Non-Food Items”, IASC/Humanitarian Country Team Nepal, Emergency Shelter and Non-Food Item Cluster 2011/12 (August 2009, updated 2011), p4

²⁶ See Natural Calamity (Relief) Act of 1982, arts 7 and 9; National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), section 3(2), and; described in “Anti-corruption Profile - Nepal”, TrustLaw (undated) at: www.trust.org/trustlaw/country-profiles/good-governance.dot?id=6ab81711-3750-49ab-ae70-c4481611e7be accessed on 9 April 2013, p9

²⁷ National Policy on Internally Displaced Persons of 2007, art 11

Emergency Operations Centres at the regional, district and municipality levels, which are in the process of establishment.²⁸ In the event of a large-scale disaster, NEOC is intended to become the command centre for managing the response operation, to which the focal persons from different line ministries, departments and security forces must report.²⁹ NEOC has already begun to collect and share disaster information during recent small-scale disasters, however the system is still in its infancy and there are concerns it may not be able to cope with a major disaster situation with its current level of staffing and resources.

Since the Koshi floods of 2008, the international cluster system has been operating as the major coordination mechanism between the various humanitarian agencies, led by the United Nations (UN) Resident/Humanitarian Coordinator in Nepal. This system involves 11 clusters, each led by their respective international agencies and includes regular meetings of the Inter-Agency Standing Committee (IASC) Operations and Principals groups in country. Although government participation in the clusters is varied, the mechanism was officially endorsed in the National Strategy for Disaster Risk Management of 2008 (NSDRM – see further below) as a means of strengthening humanitarian response “by demanding high standards of predictability, accountability and partnership in all sectors or areas of activity.”³⁰ This system however, was never intended to be a permanent coordination mechanism, nor is it intended to replace the government’s responsibility for the overall management and coordination of disasters. Recently, discussions have been underway to transition this system into a government-led mechanism until such time as the international system is reactivated following a major disaster.

The Emergency Shelter and Non-Food Items Cluster (Shelter Cluster) is currently led by the IFRC, in cooperation with DUDBC (as the government lead for shelter), NRCS as the lead organisation for the distribution of shelter and NFIs and UNHABITAT as the lead for shelter recovery. Following the Koshi Floods, the focus of the Shelter Cluster (as for the other clusters) has been more on preparedness including the development and regular updating of the Shelter Cluster Contingency Plan, discussed further below and in the shelter section of this report.

1.6 Disaster and emergency shelter plans

The NSDRM sets out the overall priorities and strategies for the disaster response and risk reduction system in Nepal, with a focus on preparedness, including the further development of policies, protocols, standards, guidelines and operating procedures. Specific sectoral strategies are also described, including for the “Shelter, Infrastructural and Physical Planning Sector”, of which the following activities are relevant to emergency shelter response:

- Undertake an inventory of current shelter capacities and equipment and prepare a plan for its mobilization following a disaster
- Improve shelter preparedness and response capacities at all levels³¹

²⁸ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), sections 5 and 8

²⁹ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), section 6

³⁰ National Strategy for Disaster Risk Management, Government of Nepal, March 2008, section 3.4.3

³¹ National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p52

- Improve institutional and engineer capacities for damage and needs assessments
- Prepare a roster of personnel experienced and trained in the construction of temporary shelter from local materials

The strategy also includes a number of measures for addressing underlying risks, such as improving implementation of the NBC and urban planning, as well as undertaking research on the vulnerability of existing buildings and infrastructure.³²

Since 2010, a process has been underway to progressively roll out district and regional disaster preparedness and response plans across the country, with 74 out of 75 districts completing this process as of May 2013. These plans are prepared collaboratively by district authorities, relevant response organisations and civil society representatives, and identify activities in key sectors, including shelter. Originally these plans were focused on flood disasters, but in 2011 MoHA developed a “Guidance Note on Disaster Preparedness and Response Planning”, which expands the focus of the plans to be multi-hazard and includes an annual review and updating process.³³ There have been concerns expressed however, about the level of commitment to ensure the plans are implemented.³⁴

With regard to the provision of emergency and transitional shelter following a major disaster, the NDRF includes a number of activities such as: guiding affected people to the nearest camp site; establishment of temporary camps in pre-identified sites; conduct of multi-sector initial rapid assessments; acquisition and transport of relief items; provision of cash and relief items “as per the approved standard”; provision of special protection in camps against gender-based violence and for the elderly, children and people with disabilities; and undertaking assessments for settlement and livelihood rehabilitation. It also identifies a number of priority actions to improve preparedness, such as the identification and site planning for open evacuation sites, mapping of evacuation routes, prepositioning of NFIs, development of guidelines for a policy on “one tole, one open space”³⁵ in densely populated areas, and the preparation of an early recovery plan.

Additional preparedness measures for shelter are also included in the Action Plans for the various Flagship Areas of the Nepal Risk Reduction Consortium (NRRRC) jointly led by relevant government ministries and international organisations. This includes activities such as improving assessment and response capacities from national to community level, stockpiling shelter materials, improving risk-sensitive land use planning and enhancing building code compliance.³⁶ The plans are being rolled out progressively over a number of years, subject to funding availability.

The above plans and initiatives, while certainly useful for developing emergency shelter capacities and planning, could be developed in a more complementary or comprehensive manner to provide clearer guidance for the delivery of emergency or transitional

³² National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p52

³³ See UN Website: <http://un.org.np/attachments/disaster-preparedness-and-response-plan-ning-2013>; Individual district plans are available (in Nepali only) at: <http://un.org.np/page/list/Preparedness2011/key%20document>

³⁴ Interview with ActionAID, 31 May 2013

³⁵ A tole is a small neighbourhood or block

³⁶ The Nepal Risk Reduction Consortium was established in 2009 by the Government of Nepal to generate visibility and funding for five of the most urgent risk reduction priorities (‘Flagship Areas’) identified from the NSDRM, with the support of a number of organisations from the humanitarian and development sector. More information available at: www.un.org.np/nrrc

shelter. Indeed, the more detailed “technical” aspects for the provision of emergency and transitional shelter are found dispersed in other documents such as the National Shelter Policy or the NBC, which are discussed in more detail in a later section of this report. Additionally, many of these initiatives for strengthening shelter preparedness identified in the above documents are still in progress and are yet to be fully realized. Moreover, there has been limited planning for the major earthquake scenario with little or no consideration given to the enormous impact this will have on national capacities and the complexities of addressing mass displacement in congested urban areas.

1.7 Shelter cluster contingency plan

The most comprehensive planning document in this regard is the Shelter Cluster Contingency Plan.³⁷ This document was largely developed by and for the international humanitarian community, with contributions from relevant government departments and ministries. The objectives of the Shelter Cluster Contingency Plan are to:

- Support the government of Nepal, NRCS and other shelter cluster members to undertake preparedness activities to meet emergency shelter and NFI needs caused by natural disasters;
- Promote cooperation and coordination amongst relevant organisations, as well as inter-cluster coordination in order to meet the needs of emergency shelter and NFIs during emergencies;
- Provide emergency shelter and NFIs for the people affected by natural disasters.

The Contingency Plan includes a chart showing the linkages and relationships between different agencies and clusters during emergency response and includes a simple timeline of coordination functions and major activities such as the distribution of NFIs and shelter materials, establishment of camps and preparation of recovery plans for major flood-related disasters and a separate timeline for a major earthquake. The annexes include extracts from the Sphere Minimum Standards in Shelter, Settlements and NFIs as well as recommended emergency shelter models and specifications for NFIs and shelter kits. The Plan also includes preparedness activities, which form the basis of the cluster work plan during times of non-emergency, including regular reviews of existing emergency shelter stocks in the country.

The use and effectiveness of the Contingency Plan in recent disasters is discussed in more detail in later sections of this report, with the general conclusion that the Plan provides useful guidance for shelter providers but again could benefit from more detail and stronger implementation to be considered truly effective. Moreover, as a planning and response tool for the major earthquake scenario, it will need to consider a wider range of shelter responses in addition to the provision of emergency and transitional shelters/materials, such as support for people continuing to live in damaged buildings, support for rental and host families and for people moving away from central urban areas. These issues have been recognized by the Shelter Cluster partners with recent efforts made to update and disseminate the plan more widely, however further work remains to be done. DUDBC representatives have also advised that the Shelter Cluster Contingency Plan will form the basis of official government strategy in future.³⁸

³⁷ Shelter Cluster Contingency Plan, available at: <http://un.org.np/coordinationmechanism/cluster-shelter>

³⁸ Interview with DUDBC, 6 June 2013

1.8 Funding

Although funding is not a major focus of this report, the availability of funding has had a major impact on the type and extent of shelter assistance provided in different disaster situations, and there remains an absence of a clear and adequate legal and regulatory framework as described below. The impact of this was illustrated most starkly during the Taplejung earthquake where a lack of timely and sufficient funding not only limited opportunities to provide transitional shelter but also delayed or even prevented some recovery efforts. Conversely, other disasters such as the Koshi floods and the Siraha fire, attracted extensive funding (at least initially) and a much greater range of shelter options were available. (See Annex A for further details.)

Domestic funding for disaster response, including shelter, is channelled from the National Calamity Relief Fund and/or through the Prime Minister's Relief Fund and Emergency Fund, from central to regional, district and local level as needed.³⁹ Additional funds are sometimes generated at the local level with contributions from the local communities or businesses. However the level of investment and mobilization of funding for disaster response (and risk management) in Nepal is considered to be inadequate, with a number of key challenges highlighted by a UNDP report as follows:

- Total budgetary provision for relief and response activities may be insufficient even in 'good' years of low loss, resulting in unplanned budgetary reallocations and possibly even funding-related delays in the recovery process.
- There has been no financial planning for a major earthquake.
- The disbursement of funds to the government line agencies and local government bodies can take a number of months, perhaps as many as 5 to 6 months for approval and release of funds.
- There is no criteria specifying when a disaster event is on a sufficiently serious scale to permit recourse to public funding.
- There is no single source of information on total government resources available for post-disaster response nor on actual spending on either disaster response or risk reduction expenditure.⁴⁰

International funding for disaster response has also been inadequate at times, due the absence or delay of a request for assistance by the government, sometimes necessitating the reallocation of existing resources from other local programmes in the absence of an international appeal for support. It has also been apparent that funding and requests for assistance are also dependent on the degree of public attention or social/political significance of the affected location, rather than on the basis of need alone or any "thresholds" or criteria to trigger different levels and types of assistance.⁴¹

³⁹ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), section 5

⁴⁰ Benson C et al, "Economic and Financial Decision Making in Disaster Risk Reduction", UNDP and Government of Nepal (2009), pp3-4

⁴¹ Interviews with UNDP, 30 May 2013; UNOCHA, 30 May 2013; ActionAID, 31 May 2013; and NRCS District Chapter Siraha, 3 June 2013

Summary

The population of Nepal is highly vulnerable to displacement from natural disasters, requiring frequent shelter support. The combined natural hazard, land and housing profile of Nepal results in frequent displacement from natural disasters and the need for emergency shelter across the diverse topography of the country, from low lying sub-tropical plains to the remote, mountainous Himalayas, to congested urban centres. Of particular concern is the impact of a major earthquake in Kathmandu Valley, which will completely overwhelm national capacities and will require shelter responses not previously undertaken in Nepal.

There has been no recent experience of providing transitional shelter, with typical shelter responses in Nepal shifting directly from emergency shelter to permanent solutions. Emergency shelter support usually takes the form of small cash payments by local authorities and the provision of a NFI set, which includes plastic sheeting/tarpaulin and rope, distributed by NRCS or sometimes by a local NGO to each affected family. In a few cases of widespread displacement, people have been accommodated in temporary camps. In other situations, displaced families have received significant financial compensation, technical support for repairs and reconstruction of homes, or have been allocated new land and housing. However, as noted above, a major earthquake in an urban area would require a different approach.

The overall legal, regulatory and planning framework requires further clarification on institutional responsibilities, funding mechanisms, principles and criteria for different types of emergency and transitional shelter assistance, in particular for a large-scale earthquake response. Existing provisions for disaster management and emergency shelter are dispersed among numerous legal and regulatory instruments, which can create confusion and duplication of institutional responsibilities. There are no detailed provisions describing the funding mechanisms and principles or standards for the provision of emergency and transitional shelter, or for determining the 'threshold' criteria for different shelter responses. Consequently, there are delays in decision-making, appropriate allocation of funding and a risk of greater discrimination and politicization of assistance. Shelter contingency plans have been developed by the humanitarian community but are insufficiently detailed or tested, particularly with regard to a major earthquake response.

Increased awareness of disaster risk in Nepal has led to improvements in disaster preparedness and the development of new laws and policies, but further clarification and strengthening is required. Recent years have seen the systematic development of disaster preparedness plans at district level and the development of a new Disaster Management Act, which is yet to be promulgated. The recent policy and procedures on IDPs also applies to persons affected by natural disasters and contains some of the most comprehensive principles and administrative arrangements, however it has the potential for duplication with other disaster-related instruments. Furthermore, because these documents are not necessarily recognised as key disaster response instruments, further socialisation is needed to enhance their implementation.

Suggested ways forward

- **Ensure a comprehensive and harmonised policy approach for the provision of emergency and transition shelter in Nepal.** This could be achieved either through improved integration of key disaster response instruments such as policies and plans

to follow the adoption of the new Disaster Management Act, but should also include further references/linkages to other relevant plans/policies/technical specifications for emergency and transitional shelter in other instruments (which are covered in more detail in later sections of this report).

- **For more practical use, consider the development of an emergency and transitional shelter handbook or manual** targeted towards practitioners in Nepal, which captures these elements in summary for operational use.
- **Clarify the application of the IDP Policy and Procedures to natural disaster situations.** If this policy is applicable, it would be important to clarify its relationship and application with regard to the more widely recognised disaster management framework contained in the Natural Calamities (Relief) Act and NDRF (and the Disaster Management Act once adopted). Should it be determined that this policy is not applicable, it would be useful to include many of its relevant provisions in any new policy documents relating to shelter assistance following natural disasters (these are further described in later sections of this report).
- **Further policy development and planning on emergency and transitional shelter should also consider the following elements:**
 - Guiding principles for the provision of emergency and transitional shelter, based on humanitarian principles and international standards and guidelines
 - Thresholds/criteria for different shelter responses
 - Institutional responsibilities for emergency, transitional and recovery shelter
 - Funding mechanisms and (if possible) annual budget allocations
 - Adequate procedures to ensure equitable and needs-based access to shelter assistance
 - Further technical guidance and specifications for shelter models and materials
 - Special contingency plans and procedures for addressing shelter needs following a large-scale earthquake, which takes into account the likely impact on government/humanitarian capacities and integrates learning from other similar events in other countries

2. Access to shelter assistance

This section examines the laws, policies, regulations and practices that determine who may receive shelter assistance after a disaster, how they are identified and the different types of assistance available depending on their recognized situation and status. Key issues addressed include access to documentation, procedural requirements, ownership and tenancy rights, as well as other cultural, social and political factors which may affect access to assistance.

2.1 Identification of disaster-affected people

The recent National Census conducted in 2011 estimates the current population of Nepal to be 26.49 million, with an urban population of around 4.5 million (17 per cent), of which just over a million reside in the capital Kathmandu. Just over half of the population live in the sub-tropical and fertile Terai region, whereas only 6.73 per cent of the population reside in the highest, mountainous regions of the country.

Total population	26.49 million	
Average annual growth rate	1.35% (61.23% growth in Kathmandu in 10 years)	
Population distribution	Terai (plains)	50.27%
	Hills	43%
	Mountains	6.73%
Rural/urban distribution	Urban	17%
	Rural	83%
Average household size	4.88 people	

Source: National Census, 2011

The 2011 census officially recognised 126 different caste/ethnic groups and 123 languages spoken as the mother tongue in Nepal. Generally the highest castes (Brahman-Hill and Chhetri) are dominant in terms of population, economic, political and social influence and have the fewest households living below the poverty line. Conversely, over half of the lowest caste known as Dalits (also referred to variously in policies and legislation as “untouchables”, “occupational castes”, “oppressed castes”, “backward classes”, “disadvantaged groups” among others), are living below the poverty line and represent the majority of the landless, squatters and bonded labourers, with limited access to land and property ownership. Similarly, the indigenous nationalities of Nepal, known collectively as the Janajatis, of which there are 59 different groups recognised by law (although this number fluctuates), are also considered to be under-represented in political spheres and most groups are considered to be “endangered”, “highly marginalized” or “marginalized” in socio-economic terms (though some have been categorized as “advantaged”).⁴²

2.1.1 Documentation required to access assistance

Immediately after a disaster, it is important to identify exactly who has been affected and to what extent, as well as the type of assistance they need and/or may be entitled to. Basic assessment and registration processes are usually included, in varying degrees of detail, in the relevant District Disaster Preparedness and Response Plans or other

⁴² “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal”, DFID and World Bank (2010), pp xiviii, 54-64.

official directives, as well as in the NRCS Disaster Response Operational Manual.⁴³ This usually requires people to show some kind of identification documentation. In Nepal the types of documentation required often depend on the scale of the disaster and the type of assistance being sought.

For small-scale disasters such as house fires, landslides or flooding which affect just a few households, identification requirements are fairly minimal to access funds from the DDRC (NPR5,000) or an NFI kit from NRCS. It would usually involve the presentation of a Citizenship Certificate to establish identity, together with a police report, a statement from the VDC office or physical assessments by NRCS, or local officials to confirm that their residence has been affected.

In the absence of a Citizenship Certificate, one or more of the following could also be used to support evidence of identity and residence:

- Birth certificate
- Passport
- Voter registration card/lists
- VDC or Ward lists
- Land title certificates
- Deeds of Sale
- Tenancy agreements
- Driver's licenses
- Bank account information⁴⁴

While this process is not particularly onerous for people who have access to the above documents, it can pose serious difficulties for people who, for various social, cultural or political reasons, are excluded from accessing official documentation. Indeed, it has been estimated that 3.4 million people do not have Citizenship Certificates and less than half the children in the country have birth certificates. Further details of the process and challenges for accessing the major types of personal documentation (Citizenship Certificates, birth certificates and passports) are summarised in Annex B of this report, but the key issues include:

- Requirements to travel back to the place of origin to apply for Citizenship/birth certificates and passports can be particularly difficult, time-consuming and/or too costly for people who have just been affected by a disaster and living in another district/area
- Documentation identifying permanent places of residence (such as Land Ownership Certificates, Tenancy Certificates and voter registration) is often required to apply for Citizenship, birth certificates and passports, which are not available to many people
- Certain groups, in particular women, IDPs and squatters, certain ethnic groups and castes, fear persecution by the authorities or community members when applying for official documentation and thus avoid obtaining official documents

⁴³ "Disaster Response Operational Manual", NRCS (2010)

⁴⁴ Above from various interviews conducted for this study, but no legal/policy documentation was identified

- In some areas, lack of information and/or literacy prevents people from applying for official documents
- Slow/inefficient application processes in some VDCs/District Development Committees (DDCs) when applying for documents act as a deterrent or create delays which cannot be addressed in time for people to receive assistance

Consequently, a reliance on official documents to verify the identity of people affected by disasters could exclude many people from being able to access shelter assistance. However, current practice in Nepal does enable people without documentation to be identified and to receive assistance, as described below.

2.1.2 Accessing assistance without documentation

In the absence of, or sometimes in addition to, formal documentation, great emphasis is placed on community identification. As communities in many rural areas are typically small, information from nearby friends or neighbours is often used to verify the names and particulars of affected households. Sometimes representative groups or committees of community members may be formed to assist in identifying the most vulnerable individuals or families, and to determine the most appropriate form of assistance. Though not prescribed or documented in official procedures, NRCS (as the organisation officially designated for distribution of relief in Nepal) has developed a Disaster Response Operational Manual, which encourages community consultation and participation as a key means of collecting assessments and identifies the following as potential sources:

- Men, women, children, elderly and people with disabilities of the affected and adjacent communities
- Government (local and national)
- Community healthcare staff
- Community elders and/or leaders
- Religious leaders/priests
- Other NGOs/Community-Based Organisations (CBOs)
- Teachers
- Traders/businessmen
- Police and the military (based on needs)
- VDCs
- NRCS sub-chapters and cooperation committees;
- NRCS Junior/youth volunteers
- Community-Based Disaster Risk Reduction Units⁴⁵

Relief organisations have also reported the establishment of consultation groups or committees as a means of identifying disaster-affected people and the most vulnerable within a community.⁴⁶

⁴⁵ “Disaster Response Operational Manual”, NRCS (2010), 3.1.2.2

⁴⁶ Interviews with ActionAID, 31 May 2013; NRCS Headquarters, 27 May 2013; UNOCHA, 30 May 2013; and Ministry of Home Affairs, 28 May 2013

In situations where a large number of people have been affected and/or the assistance is more substantial and of longer duration, there is a greater emphasis on being able to readily identify those affected. For example, during the Koshi Floods of 2008, many people were unable to produce the necessary identification, much of which had been lost during the flood, so the Sunsari DDRG issued beneficiary identification cards for those displaced in temporary camps. Initially, the head of each affected family was issued a green card, based on minimal evidence, which included details of family members and original address/location. Later, the green cards were replaced with yellow cards with photos, based on a more detailed verification and assessment process once people were able to retrieve copies of their documents from the relevant authorities. These included Citizenship Certificates, Land Ownership documents and evidence of school registrations for children.⁴⁷

Also during the Koshi Floods, the NRCS Sunsari District Chapter issued ration cards to the heads of each household to record all the assistance received from different organisations, as a way of further tracking the assistance received by each family.⁴⁸ A similar beneficiary ration card was also implemented following the Aurahi fire in Siraha District in 2012.⁴⁹

Although the identity cards and ration cards were accepted by all relief providers as evidence of having been affected by the disaster, it was anecdotally reported that during the Koshi response, the card allocation process was not entirely reliable. For example, it was reported that some families had claimed several cards by registering in multiple camps, had lied about the ages of children to receive additional assistance, had produced fake cards, or that identity cards and relief materials were given to some people as 'favours', as well as reports of some people being asked to pay a 'fee' to exchange their green ID card for a yellow card.⁵⁰ As a result, a number of agencies were also conducting their own beneficiary verification processes, in particular to target specific vulnerable groups such as women-headed households, marginalized groups or the landless.⁵¹

2.1.3 National IDP Policy approach to ensure access to assistance

Although the IDP Policy and Procedures have not yet been applied in disaster situations, as previously discussed, they nonetheless offer an approach for identifying and determining the eligibility of people for assistance which is useful to consider in the wider context of providing shelter assistance. The IDP Procedures establish a more sophisticated system of beneficiary registration involving an application to the District Administration Office of their current location using a prescribed form, which may be completed by just one adult family member on behalf of other family members. The relevant authorities "shall take steps to facilitate the registration of all displaced persons, whether they are in urban, rural or camp settings" and may issue a notice encouraging registration within a certain time through "all reasonable efforts" such as national and local media and in relevant languages (although registrations will still be accepted outside of the specified timeframes). Each individual IDP, including children, will receive

⁴⁷ Interviews with NRCS District Chapter Sunsari, 2 June 2013 and Land Revenue Office Sunsari, 2 June 2013

⁴⁸ Interview with NRCS District Chapter Sunsari, 2 June 2013

⁴⁹ Interview with NRCS District Chapter Siraha, 3 June 2013

⁵⁰ Interview with NRCS District Chapter Sunsari, 2 June 2013

⁵¹ Interview with ActionAID, 31 May 2013

an identity card, which must be collected in person from the District Administration Office, with the exception of minors, the sick and elderly, people with disabilities and others unable to travel.⁵²

Applications are then reviewed by the Displaced Persons Identification Committee to verify and confirm the details given, which may also use the following documentation as the basis for their decisions:

- Any documentation or statement deemed appropriate
- Depositions filed by the applicant or other persons
- Records maintained by the VDC Office, Municipality Office, Police Office or Local Administration Office
- Information provided by NGOs, CBOs and Human Rights Organisations⁵³

Decisions must be issued within 60 days from the date of application, and applicants who are rejected must be informed within 15 days of the decision, with an opportunity to submit a complaint within 60 days to the Chief District Officer or Regional Administrator. Final settlement of the matter must be completed within 2 months of the complaint.⁵⁴

The IDP Procedures also acknowledge the difficulties in accessing Citizenship Certificates and address this specifically through the provision stating that “the Ministry of Home Affairs will take whatever measures are necessary to facilitate the issuance or replacement of a Citizenship Certificate to an IDP without the imposition of unreasonable conditions, costs or delays, and without requiring that the displaced person return to their place of habitual residence”.⁵⁵

Similarly, IDP Procedures acknowledge the provisions of the Convention on the Rights of the Child regarding registration of birth and the right to an identity and name, and provide that the Ministry of Local Development will “instruct all local registrars offices to permit a parent (a mother or father) to register the birth of the child wherever they are residing.” Additionally, a sworn statement or deposition will be accepted in the absence of the documentation normally required.⁵⁶

While the process envisaged by the IDP Procedures may be too cumbersome to apply in the immediate aftermath of a disaster, the system outlined above could be used to great effect for large-scale disasters, such as widespread flooding or earthquake situations, where longer term assistance, such as IDP camps and transitional shelter is required. For smaller disasters, simplified procedures with reduced timeframes could be established, which also provide further clarification for identifying people without access to official documentation.

⁵² Above, Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, arts 7.7, 8, 9, and 10

⁵³ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 10(2)

⁵⁴ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 10(2)-(6)

⁵⁵ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 16.2.4

⁵⁶ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 16.2.2

Summary

Obtaining personal identification documentation is a challenge for many people, which can result in discrimination or exclusion from shelter assistance. A large number of people in Nepal are either without basic identification documents such as Citizenship Certificates, birth certificates and passports, or lose them during a disaster. The ability to obtain these documents can be hampered by:

- Cost, time and other practical constraints preventing travel back to the place of origin for the application process
- Lack of sufficient documents to identify permanent place of residence, including Land Ownership Certificates, Tenancy Certificates and voter registration
- Fear of discrimination or persecution by the authorities or community members for certain groups of citizens, in particular women, IDPs and squatters, certain ethnic groups and castes
- Lack of information and/or literacy about the need for documentation
- Slow/Inefficient application processes in some VDCs/DDCs

In the absence of personal identification documents, persons are often informally identified by local police, officials or the community. This process can ensure greater inclusiveness of those without access to documentation and can positively increase the involvement of communities in decision-making. However, notwithstanding the NRCS manual, the process is not officially documented and therefore subject to a potential lack of transparency and manipulation, which could potentially exacerbate social exclusion rather than prevent it, given the complex social and political situation in some areas.

The IDP Policy and Procedures contain useful and detailed provisions for the registration of displaced persons. They take into consideration the challenges of accessing documentation and include provisions for “making all reasonable efforts” to encourage registrations. The procedures facilitate obtaining documents without the usual requirements in particular for vulnerable groups, accepting other forms of verification such as information from NGOs, and setting clear time limits for determining eligibility. This mechanism would be best utilised for longer term support, such as transitional shelter in large-scale disasters where adequate time for assessment and decision-making is possible, and a simplified version of the procedures could also be developed to cater to the needs of smaller-scale disasters and immediate emergency response.

Suggested ways forward

- **Clarify and document the identification requirements and related procedures for receiving small-scale disaster assistance** to ensure greater transparency and contain adequate safeguards against bias and exploitation in the identification process. This could also be strengthened through a complaints/ombudsman system in the event that disputes arise.
- **Consider utilising the identification/registration process of the IDP Policy and Procedures**, particularly for large-scale disasters where longer term assistance may be required, and adapting/simplifying this process for emergency situations. This should include provisions for supporting people to access personal documentation quickly and setting clear and reasonable time frames for determining eligibility.

2.2 Property owners

Property rights are expressly included in the Interim Constitution, which provides that “[e]very citizen shall, subject to the laws in force, have the right to acquire, own, sell and otherwise dispose of the property.”⁵⁷ The Interim Constitution also establishes the inviolability of private residence and property⁵⁸ and gives the government the responsibility to “pursue a policy of establishing the rights of all citizens to [...] housing”.⁵⁹ There are many types of land and land ownership in Nepal identified in various laws and regulations, including government land, private land, public land (used historically for communal uses) and “Guthi land”, which is privately donated land for religious or philanthropic purposes.

Land is one of the most significant economic assets in Nepal and home ownership is regarded as essential for the financial security of families.⁶⁰ Consequently, over 80 per cent of housing in the country is owner-occupied, mostly registered in the name of the male head of household. However since the introduction of a government scheme to waive or reduce land registration fees for women and marginalized groups, the proportion of female ownership has been increasing and now stands at around 20 per cent, and higher in urban areas.⁶¹

Housing ownership	85.26% reside in own house
Urban population	17% (23% in Kathmandu, 20,289 people per square km)
Rented houses	12.81% (40.22% in urban areas, 58.65% in Kathmandu)
Female-headed households	25.73%
Female land/house ownership	19.71% (26.77% in urban, 18.02% in rural)

Land has also been a source of great social tension, particularly in rural areas where traditionally, large tracts of fertile agricultural land were held by a small number of higher caste, wealthy landlords who used bonded labourers from lower castes, denying them the means to acquire land of their own.⁶²

Overall, according to previous studies, land reform in the country has been characterized by poor implementation and a lack of political will.⁶³ Various land redistribution schemes have come into effect in past decades attempting to redress the imbalance, some of which have been partially effective such as the imposition of size limits for individual land holdings and allocation of land to poor families in the 1970s and 1980s. However, these legislative changes have also prompted efforts by land owners to conceal their total land holdings, for example by transferring portions of it to family members or tenants without relinquishing actual control, or by evicting tenants periodically to avoid potential land claims.⁶⁴

⁵⁷ Interim Constitution of 2007, art 19(1)

⁵⁸ Interim Constitution of 2007, art 28(1)

⁵⁹ Interim Constitution of 2007, art 33(h)

⁶⁰ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p9

⁶¹ “Country Profile: Property Rights and Resource Governance, Nepal”, USAID (updated 28 August 2012) at: <http://usaidlandtenure.net/nepal> accessed on 11 April 2013, pp9-10 and S15; Wily L et al, p78 (Box 8)

⁶² See “Nepal: Land tenure reforms urgently needed”, IRIN Asia, Kathmandu, 8 December 2010

⁶³ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp xiii and xvii

⁶⁴ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp xiii, xiv, xviii, 38 and 44; S9, 47

Consequently, equality of land distribution has remained central to the demands of many lower castes and disadvantaged ethnic groups in Nepal and was considered one of the driving forces behind the 10-year conflict.⁶⁵ The 2006 Comprehensive Peace Agreement, concluded between the government of Nepal and the Communist Party of Nepal (Maoist), contains a number of provisions concerning land and housing rights, including the adoption of policies to:

- End feudalistic land holding through scientific land reform
- Establish the rights of all citizens to housing
- Provide land and other economic protection to landless squatters, a number of specific minority groups and the economically backward
- Severely punish those in government who are amassing properties through corruption⁶⁶

The Interim Constitution also takes a proactive stance on this issue, declaring that “[t]he State shall pursue a policy of making provision of providing basic land to the liberated bonded labourers for settlement having determined their exact numbers.”⁶⁷ In this regard, some 180,600 hectares have been identified for partition to registered rural tenants in recent years, although the scheme has yet to be fully implemented.⁶⁸ Still today, some 60 per cent of rural households are landless (tenants/renters or squatters who do not own land), and of the total rural land holdings, nearly half are too small to even meet subsistence needs, forcing people to relocate to urban areas for work.

The complex social issues surrounding land rights and ownership have the potential to be exacerbated by disaster situations, which may call into question issues of proof of ownership, property boundaries and the types of shelter assistance to be provided. These issues are discussed further below.⁶⁹

2.2.1 Disaster assistance for property owners

There is no specific legislation or policy regarding the entitlements of property owners whose homes/buildings have been damaged or destroyed by natural disasters. In general, the provision of small-scale assistance to people affected by disasters (small amounts of cash/NFI sets) is given on the basis of minimal documentation requirements as described in the previous section, regardless of whether a person is a property owner, a tenant, a squatter or otherwise.

Limited provisions regarding compensation or other protective measures for property owners in the event of a disaster or similar situation are included in the following more general legislation:

⁶⁵ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p xiv and S9, p47

⁶⁶ Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), 22 November 2006, arts 3.7 and 3.9-11

⁶⁷ Interim Constitution of 2007, art 35(15)

⁶⁸ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p xiii

⁶⁹ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp38 and 44

- The Ownership of Joint Housing Act sets out a number of specific entitlements of owners in the event the building is damaged or destroyed. Specifically it provides that if the building “is totally destroyed in any manner, all apartment owners shall have proportionate right to the land where the building is located.” If the building is only partially damaged and can be repaired or built, “the developer or committee shall repair such damaged building within the prescribed period from the date of so damaged.” It is also the responsibility of the developer or committee to insure the building “against divine acts or incidents”, the cost of which is borne proportionately by the apartment owners.⁷⁰
- Special provisions are made in the case of a house situated within a buffer zone of a natural park or reserve which is destroyed by a flood or landslide, “the concerned national park or reserve, on the recommendation of the user committee [...] shall pay a reasonable compensation to him\her from the amount allocated for community development”.⁷¹
- In conflict situations, special provisions have also been put in place to benefit property owners: The 2006 Comprehensive Peace Agreement requires the immediate return of land and property seized or controlled during the conflict⁷² and the protection of private property from being usurped or seized, except through legal means.⁷³ The Interim Constitution also reinforces this by including government responsibility “to conduct special programs to rehabilitate the displaced, to provide relief for damaged private and public property, and to reconstruct the infrastructures destroyed during the course of the conflict.”⁷⁴

It is important to note that no examples were found during the research undertaken for this report where the above legislation has been directly applied in a disaster situation, nor were these instruments mentioned by those interviewed for this study. This suggests that awareness of these instruments is low, or that the exact situation necessitating their application is yet to arise. With regard to the Ownership of Joint Housing Act, this is most likely to become relevant in situations of large-scale disasters in urban areas, such as the earthquake scenario.

However, in some disaster situations, ad hoc decisions have been made (either at national or district level) to provide property owners with more substantial support packages or compensation for their homes or property being damaged or destroyed. Below are some examples of such assistance:

- During the Koshi Floods of 2008, property owners received financial compensation of NPR200,000, NPR150,000 or NPR50,000 to buy new land, depending on whether their land and house was situated in a ‘red’, ‘yellow’ or ‘green’ zone, graded according to the level of impact of the disaster.⁷⁵ Compensation was given according to the market value of the land and Ownership Certificates were required.

⁷⁰ Ownership of Joint Housing Act of 1997, art 21

⁷¹ National Parks and Wildlife Conservation Act of 1973, art 3(c)

⁷² Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), 22 November 2006, art 5.1.8

⁷³ Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), 22 November 2006, art 7.5.5

⁷⁴ Interim Constitution of 2007, art 33(r)

⁷⁵ Interview with Land Revenue Office Sunsari, 2 June 2013

- Following flooding in Holiya VDC in Banke District in 2007, 144 families were relocated for safety reasons from their original wards to a new location and received a new plot of land with a house.⁷⁶
- Following the Siraha fire of 2012, home owners received significant cash grants from multiple sources, as well as materials and technical support to rebuild their homes on their original land.⁷⁷

In these situations, some proof of ownership was required to verify the legal owner and, in some cases, also to determine exact property locations and boundaries, usually through the presentation of Ownership Certificates or in some cases through decisions of dispute resolution mechanisms. The discussion below provides an overview of property ownership documentation law and practices in Nepal, highlighting a number of areas which may pose challenges for identifying legal owners to access shelter assistance.

2.2.2 Land registration and Ownership Certificates

In principle all land owners in Nepal should receive a Land Ownership Certificate from their local District or Municipality Land Revenue Office (LRO) which indicates the property location and identifies the registered owner, with a duplicate held at the LRO.⁷⁸ This is the primary form of documentation used to demonstrate property ownership and location.

In spite of the requirement for land registration, it has been estimated that only 48 per cent of all land holdings across the country have been registered. This has partly been attributed to the reluctance of owners to declare the full extent of their land holdings if they are over the allocated size limit, or to avoid taxation, but there are also other types of land, such as customary land of self-identified groups or communities which have been handed down over generations but never formally surveyed or registered or recognised, and which are therefore at risk of being claimed by others.⁷⁹

Additionally, there are risks that the ownership documents themselves will be lost or destroyed, as was noted during visits to District and Municipality LROs where records are still kept in the form of paper copies in insecure locations with minimal protection. Indeed, an example was given of a District LRO in Palpa which was destroyed, along with all the original records. In this case, land holders were invited to bring their papers to the office for copying and re-registration, further compromising the accuracy of the system.⁸⁰

In the case where owners have lost their documentation, the process is also considered to be slow and cumbersome. For example, following the Siraha fire, many property documents were lost in the blaze, which was a cause of great anxiety in the community. The DDRRC and Chief District Officer (CDO) were involved in helping to obtain copies of citizenship and land registration documents, but over a year later, this is still in process and the documents are yet to be received.⁸¹ During the Koshi floods it was

⁷⁶ See, for example, the Banke District flood operation

⁷⁷ Interview with NRCS District Chapter Siraha, 3 June 2013 and Siraha community affected by fire in 2012, Aurahi VDC, 3 June 2013

⁷⁸ Land Survey and Measurement Act of 1963, arts 3(5) and 8(1)

⁷⁹ Wily L et al, "Land Reform in Nepal: Where Is It Coming From and Where Is It Going?", Scoping Study on Land Reform for DFID Nepal (2008), p70

⁸⁰ Interview with Land Revenue Office Sunsari, 2 June 2013

⁸¹ Siraha community affected by fire in 2012, Aurahi VDC, 3 June 2013

reported that while a number of Ownership Documents were lost, the procedures were “loosened” to allow time for owners to obtain copies from the LRO without further delaying assistance.⁸²

In 2010, a new Department of Land Information and Archive (DoLIA) was approved by Cabinet decision on 10 July 2010, formed under the Ministry of Land Reform and Management (MoLRM). Its main responsibility is to implement a Central Land Information System involving the digitization of all land records across the country. According to the most recent information, 82 of the 83 LROs have had their data entry completed and 38 are using the new system to register transactions and issue Ownership Certificates, with others in various stages of progress towards implementation.⁸³

2.2.3 Documentation of changes in ownership

It has been estimated there are around 450,000 registration and other land-related transactions each year taking place across the country in 83 district land revenue and survey offices.⁸⁴ Most changes in land ownership occur through private sale or inheritance, which are described below.

Deeds of Sale

The sale of land is concluded in a Deed of Sale, which includes a description of the property, details of the buyer and seller and the agreed price. All Deeds of Sale must be registered at the LRO, and it was reported by the LRO in Kathmandu that if the documentation is prepared by the buyer and seller, the deed registration process takes about 2 to 3 hours to complete.⁸⁵ The Land Survey and Measurement Act also provides for situations where houses may be divided between different owners,⁸⁶ and in the case of housing complexes or apartments, developers are required to conclude an agreement with the purchaser which includes “the location/plot number/land details, apartment number and description, price/rent details, common areas/facilities, terms of use, expenses/obligations, insurance etc.”⁸⁷ Hence, a Deed of Sale and agreements for the purchase of apartments may be useful documents to demonstrate ownership and land boundaries in the absence of a Land Ownership Certificate.

Inheritance

The process for acquiring property through inheritance is undertaken through the CDO and requires the completion of a form (described as a ‘relationship document’), which includes the applicant’s name, photograph, signature and thumbprint, and a list of family members, also with names and photographs. Copies of citizenship certificates, the death certificate of the property owner and a recommendation from the Ward or VDC confirming the information are also required. The cost is reported to be minimal (around NPR50-100). Once completed and approved by the CDO, this form can be used to facilitate the transfer of ownership through the preparation of a new Land Ownership Certificate by the LRO.⁸⁸

⁸² Interview with NRCS District Chapter Sunsari District, 2 June 2013

⁸³ See DoLIA website: <http://www.dolia.gov.np/about%20department.php>

⁸⁴ See DoLIA website: <http://www.dolia.gov.np/objectives.php>

⁸⁵ Interview with Land Revenue Office Kathmandu, 6 June 2013

⁸⁶ Land Survey and Measurement Act of 1963, art 6(5)(b)

⁸⁷ Ownership of Joint Housing Act of 1997, art 15

⁸⁸ Interview with Land Revenue Office Sunsari 2 June 2013 and anecdotally during the in-country visit

A particular challenge for claiming property entitlements through inheritance may be the absence of a death certificate of the legal property owner, who may be missing and perhaps killed following a disaster. It is possible that many people will remain missing for long periods of time or may never be found. Based on the experience of the recent conflict, death certificates are automatically issued after 7 years, during which time family members may not sell or mortgage the property. While it is possible for a family to officially declare the person deceased and thereby receive a certificate before the 7-year time period, this has proven to be a very traumatic experience and many families were unwilling to make that decision unless forced by dire economic circumstance.⁸⁹ This may prevent affected families from being able to claim shelter assistance which is dependent upon the presence of the legal owner.

An innovative solution is currently being explored by the government of Nepal with support from the International Committee of the Red Cross (ICRC), based on the recommendations contained in 'Missing Persons: A Handbook for Parliamentarians' which includes provisions for the legal recognition of missing persons.⁹⁰ In particular, it is proposed that a 'certificate of absence' could be issued which would enable inheritors to take 'provisional possession' of a missing person's estate (which could be used for drawing an allowance for example), while protecting the owner's legal interests through an appointed representative.⁹¹ It is recommended that such certificates should be issued only after one year of absence; however this could be shortened depending on the circumstances.⁹² While these recommendations have been developed with conflict situations in mind, they could be readily applied to missing persons following a natural disaster as a useful interim measure to provide greater security for family members prior to the issuing of a death certificate.

2.2.4 Documentation of property boundaries

Cadastral surveying and marking of land first commenced in the 1960's with the Land Survey and Measurement Act of 1963. This Act, primarily adopted for the purpose of collecting land revenue,⁹³ has been amended 10 times, most recently in January 2010. Under the Act, the government may "issue orders for the survey and measurement of all land in the country".⁹⁴

After giving notice to the LRO and the public in the concerned district, the General Survey Office may send teams to undertake the surveying process on any land in the area without restriction.⁹⁵ Errors identified prior to the issuance of registration certificates can be verified by a resurvey of the area, with action to be taken against employees who deliberately falsify surveys.⁹⁶ It is also possible for landowners to initiate their own surveys, including aerial surveys with the necessary permission,

⁸⁹ Interview with ICRC, 30 May 2013

⁹⁰ "Missing Persons: A Handbook for Parliamentarians", International Committee of the Red Cross/ Inter-Parliamentary Union, Handbook for Parliamentarians No. 17, (2009)

⁹¹ "Missing Persons: A Handbook for Parliamentarians", International Committee of the Red Cross/ Inter-Parliamentary Union, Handbook for Parliamentarians No. 17, (2009), p50, and; Interview with ICRC, 30 May 2013

⁹² "Missing Persons: A Handbook for Parliamentarians", International Committee of the Red Cross/ Inter-Parliamentary Union, Handbook for Parliamentarians No. 17, (2009), p50

⁹³ "Country Data – Nepal", Cadastral Template, (undated) at: www.cadastraltemplate.org/country-data/np.htm accessed on 9 April 2013, p3

⁹⁴ Land Survey and Measurement Act of 1963, art 3(1)

⁹⁵ Land Survey and Measurement Act of 1963, art 3(3)-(4)

⁹⁶ Land Survey and Measurement Act of 1963, art 3(5)

provided they cover the costs themselves.⁹⁷ In the event that any lands are omitted from a survey, or surveyed land remains unregistered, the Land Revenue Act provides that the LRO may make the necessary enquiries and ensure these processes are undertaken.⁹⁸

Surveying has been used to demarcate individual parcels of land as well as the various administrative boundaries within the country.⁹⁹ In rural areas in the Terai, the boundaries between small plots are often demarcated by soil ridges and/or small concrete land markers. In villages and urban areas, the plot size often directly correlates to the footprint of the building, sometimes also with concrete land markers. Under the Local Self Governance Act, the VDCs and Municipalities also have responsibilities to maintain inventories of population, houses and land with support from Ward Committees.¹⁰⁰ DDCs should also keep information and records “to identify the real situation of the district” including reports and development plans of VDCs and Municipalities.¹⁰¹ Municipalities also have the authority to update the block numbers of houses.¹⁰²

At times, the accuracy of land surveying and markers has been called into question. When the cadastral system was first applied, there were no effective quality control measures in place, creating inconsistencies in measuring systems, orientation of maps and reliability of information.¹⁰³ Efforts to resurvey were affected by misunderstandings about the process and the required documentation was difficult to gather due to the involvement of numerous government offices and organisations.¹⁰⁴ It has also been noted that “[p]roperty maps and parcel maps are seriously outdated and available only in elderly fragile paper copies, and without coordinates indicated in many cases.”¹⁰⁵ While it may be possible to also use the location descriptions in Deeds of Sale as evidence of property boundaries, the Muluki Ain¹⁰⁶ also states that a “boundary shall not be considered as final only for the reason that it has been mentioned in the deed”.¹⁰⁷

Issues with cadastral mapping were a problem following the Siraha fire of 2012, when many families lost their property documents. The area was mapped only as “village space” and did not include the boundaries of individual plots, requiring a special survey process to be implemented by the land survey office to officially demarcate the boundaries prior to the reconstruction of houses.¹⁰⁸ This case is also interesting as an example of a community dispute resolution process as described further below.

More recently, DoLIA has been undertaking a new cadastral mapping process, this time with the use of GPS mapping and digitization of information. So far the cadastral maps

⁹⁷ Land Survey and Measurement Act of 1963, arts 9 and 11D

⁹⁸ Land Revenue Act of 1978, art 7(1)

⁹⁹ Land Survey and Measurement Act of 1963, art 5

¹⁰⁰ Local Self Governance Act of 1999, arts 25(c), 28(k)(3), 93(a) and 96(j)(3)

¹⁰¹ Local Self Governance Act of 1999, art 212

¹⁰² Local Self Governance Act of 1999, art 96(j)(13)

¹⁰³ “Country Data – Nepal”, Cadastral Template, (undated) at: www.cadastraltemplate.org/country-data/np.htm accessed on 9 April 2013, p7

¹⁰⁴ “Country Data – Nepal”, Cadastral Template, (undated) at: www.cadastraltemplate.org/country-data/np.htm accessed on 9 April 2013, p7

¹⁰⁵ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p70

¹⁰⁶ The Muluki Ain is the Civil Code of Nepal, first adopted in 1962 and which has been the subject of many revisions to reflect current traditional and cultural practices. It is still applied throughout the country

¹⁰⁷ Muluki Ain 1962, chapter 21(16)

¹⁰⁸ Interview with UNHABITAT, 28 June 2013

in 29 survey offices have been completed, and efforts are also being made to properly archive plot registers and field books.¹⁰⁹

2.2.5 Property dispute resolution

According to DoLIA, the “traditional land related record and land administration system is very vulnerable [and] can be easily manipulated”.¹¹⁰ Given the current situation regarding the accuracy of land survey information and the lack of registrations, it may be little wonder that land disputes represent the most significant category of all court cases in Nepal – around 31 per cent, or an average of 40,000 cases per year, with an estimated backlog of around 103,000 cases pending, largely concerning land reform challenges.¹¹¹

It has been observed that the court system is accessed predominantly by those with sufficient wealth and education, with Dalits and marginalized groups being far less likely to bring cases through formal channels.¹¹² The IDP Policy and Procedures aim to ensure that IDPs can access legal aid to exercise their fundamental rights, subject to a recommendation from the District Programme Coordination Committee and provided they meet the criteria of the Legal Aid Act 1977.¹¹³ But even access to the court system is no guarantee of swift justice, with many cases lasting over a year, sometimes several years, in addition to reported concerns of biased judges favouring the wealthy and/or those willing to pay for a positive outcome.¹¹⁴ Thus, the number of land cases is considered to be ‘the tip of the iceberg’ with many land issues being resolved out of court at the local level.¹¹⁵

Indeed, much of the existing legislation and practice in Nepal encourages land disputes to be settled, at least in the first instance, at the local level. In the event of a dispute regarding ownership during surveying, the Land Survey and Measurement Act grants the prescribed authority power to make decisions on the registration of land, granting the unsatisfied party up to 35 days to bring a claim in court before the decision is considered final.¹¹⁶ Under the Local Self Governance Act, VDCs and Municipalities may also form Arbitration Boards to hear and settle at first instance, cases concerning:

- Border or boundary of land
- Public land
- Inconvenience on boundary or way out
- Encroachment on roads or ways out
- Construction of houses
- Hidden and unclaimed properties

¹⁰⁹ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p144, and; DoLIA website: <http://www.dolia.gov.np/index.php>

¹¹⁰ See DoLIA website: <http://www.dolia.gov.np/about%20department.php>

¹¹¹ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp73–4

¹¹² Ibid, p74

¹¹³ National Policy on Internally Displaced Persons of 2007, art 8.1.2 and Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 16.3

¹¹⁴ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p74

¹¹⁵ Ibid, p74

¹¹⁶ Land Survey and Measurement Act of 1963, art 6(7)

- Security of public property
- Forceful entry into houses, or attempts ¹¹⁷

Additionally, the Land Revenue Act provides for the establishment of a government “commission or committee comprising one chairperson and a maximum of four members in order to resolve any problem arisen in respect of registration of the land belonging to any person, class or area and make decision on the registration of land” by publishing notice in the Nepal Gazette. ¹¹⁸

In practice, it seems many land issues are resolved even outside of these local administrative structures, with a preference for informal negotiations facilitated by local authorities. ¹¹⁹ This may be due in part to the prohibitive cost of running the system, combined with the lack of clear procedural rules and guidance for settling disputes, ¹²⁰ but is also attributed to the absence of local elections and low motivation of many appointed VDC Secretaries, leaving the establishment of VDC/Municipality Arbitration Boards unimplemented. ¹²¹

An example of an ad hoc community dispute resolution in a disaster situation occurred following the Siraha fire when the village, having been almost completely destroyed, was the subject of debate about improving access and fire safety by widening the lanes and creating larger gaps between buildings. These discussions had been on-going before the fire when a land pooling scheme was proposed, whereby the land would be re-divided between the registered owners after sufficient space had been allocated to allow for the access lanes. However many property owners were not in favour of giving up any of their land for such purposes and the idea was abandoned. After the fire, attitudes had changed somewhat, however it was agreed that the total land occupied by the village would be extended to allow for the extra space, allowing owners to retain exactly the same amount of land as their original holding. For this purpose, surveyors from the district office were called in to make the measurements for each plot, witnessed by the owner and respective neighbours to avoid later disputes. ¹²²

The above example suggests that a lack of documentation does not completely preclude access to shelter assistance, at least within small communities where individuals are known to each other and there is trust in community solutions. However, in the absence of adequate procedural measures and safeguards to prevent unfair practices, such systems lack transparency and could be used to perpetuate existing inequalities. It is also doubtful whether such systems could function in urban areas following a major earthquake, where there is a high turnover of owners, a greater number of buildings occupied by tenants rather than owners, and less emphasis on community. In such cases it is likely that documentation will be heavily relied upon as evidence of ownership, thus the challenges for accessing assistance linked to property ownership are likely to be exacerbated.

¹¹⁷ Local Self Governance Act of 1999, arts 33- 34 and 101-102

¹¹⁸ Land Revenue Act of 1978, art 7(1a)

¹¹⁹ Interview with Land Revenue Office Sunsari, 2 June 2013

¹²⁰ DOLRM website in “Phase One report on Regulatory Barriers to Meeting Emergency and Transitional Shelter Needs in Post-Disaster Contexts”, (unpublished) 2011, p79

¹²¹ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p74; interview with Kathmandu Municipality, 28 May 2013, and; the comments of several other interviewees during this study

¹²² Siraha community affected by fire in 2012, Aurahi VDC, 3 June 2013, and; interviews with UNDP, 30 May 2013 and UNHABITAT, 28 May 2013

Summary

There have been cases where special assistance has been provided to property owners above and beyond the usual assistance of a small cash grant/NFI set; however there are no clear thresholds or guidelines as to when and how such assistance should be provided. Special assistance has included financial compensation for damage or loss of houses, financial assistance for the purchase of new land in other areas, donation of a new plot of land and house, and financial/material/technical assistance to rebuild damaged homes. While valuable for the beneficiaries' recovery, such assistance – when based on ad hoc decisions which are not necessarily related to the scale or severity of the disaster and not following any standard procedures or guidelines – is vulnerable to political or other influences.

There are few laws or provisions in place concerning specific assistance to property owners following natural disaster situations. Those that do exist are restricted to particular situations (such as compensation for apartment owners, or those situated in a national park or buffer zone) and have rarely, perhaps if ever, been applied in practice. Nevertheless there have been cases where property owners have received special assistance, requiring some evidence of ownership such as Ownership Certificates.

Property ownership rules and formal registration requirements also pose challenges for certain groups, making them more vulnerable to exclusion from shelter assistance. Such groups include: people who face difficulties accessing personal identification documentation (as described in the previous section); women who are excluded from inheritance by family members, thereby preventing their access to shelter assistance as a property owner and increasing their risk of landlessness; families of persons (who are also legal property owners) who are missing as a result of a disaster or conflict who are prevented from making legal claims and receiving entitlements in the absence of the legal owner. However, if extended to disaster situations, the legal recognition of missing persons through a 'certificate of absence', allowing the provisional possession and use of property in the absence of the legal owner, would allow greater protection and access to shelter assistance by family members.

Property owners may face challenges or delays in receiving assistance due to the absence of adequate documentation or evidence to prove legal ownership. Over half of all land holdings in Nepal are unregistered and without Ownership Certificates, with many owners lacking the required personal identification or other documentation to formalize or prove their ownership. This is particularly the case for groups that have exercised customary ownership of land that has never been formally recognised, making them especially vulnerable. Property documents kept only in paper copy are vulnerable to damage/loss and obtaining replacements is subject to significant delays. In the absence of fast track procedures for disaster situations, there are significant administrative delays in the replacement of missing documentation, in some cases of more than a year, which has the potential to hamper the provision of assistance.

Weaknesses in cadastral mapping and markers have also posed difficulties for proving property boundaries, particularly in village or urban areas where detailed mapping is largely absent. Inconsistencies and inaccuracies in land surveying and markers, particularly in villages and urban areas, combined with the fragile state of maps and other documentary information makes some property boundaries difficult to verify and may lead to boundary disputes between property owners or deliberate manipulation, creating potential delays in the provision of shelter assistance.

Fortunately, there is work underway to digitize land records and update cadastral mapping, including GPS coordinates, which will provide a much greater degree of clarity and continuity of land records, for both ownership and boundary determination.

In the absence of documentation, the determination of ownership and property boundaries has often been resolved at local level rather than through the courts or other arbitration systems, but remains informal and may be subject to bias. As in many countries, the legal resolution of land issues and property disputes through the court system is costly, time-consuming, can be subject to bias and may not be available in the immediate aftermath of a disaster. Local arbitration mechanisms envisaged for the resolution of property disputes in current legislation may offer a potential solution, however they have remained largely unimplemented. Consequently, local, informal, community-based solutions have been used to resolve disputes. However, they are not necessarily conducted with due process and would not be suitable for larger-scale disasters in urban areas. The IDP Policy and Procedures include provisions enabling greater access to the court system and legal aid for underprivileged and marginalized groups in order to resolve property disputes, however their application to disaster situations is not clearly established.

Suggested ways forward

- **Further policy development and planning on emergency and transitional shelter should consider the following elements:**
 - The development of clear guidelines, criteria and procedures for providing targeted shelter assistance to property owners whose homes/land has been damaged or destroyed by disasters
 - Fast track/priority procedures for providing copies of ownership documentation which has been lost or destroyed
 - Fair, transparent and timely procedures for identifying property owners in the absence of official documentation (e.g. customary/traditional owners, marginalized groups who have not registered their land and others who may have difficulty asserting their property rights)
 - A local dispute resolution mechanism/ombudsman, supported by fair and transparent rules of procedure, with the option to access the court system and legal aid as/when required as provided by the National IDP Policy and Procedures
 - Provisions reinforcing the protection of private property from unlawful seizure/land grabbing and for the rapid return of any such land, such as those provided by the Constitution and Comprehensive Peace Agreement of 2006 (which are currently limited to conflict situations)
 - Greater legal protection for families of missing persons to enable them to access assistance in the absence of the legal property owner, through the extension of the current work on “certificates of absence” to disaster situations
- **Strengthening the capacities of Local Arbitration Boards and the committees/commissions** for resolving land disputes and registration issues, as envisaged in the Local Self Governance Act and the Land Revenue Act. This may also help relieve congestion within the court system, reduce the time and cost of resolving land disputes and improve access to justice systems for underprivileged and marginalized groups who may not otherwise have access to the court system.

2.3 Tenants

2.3.1 Context

Across the country, rental housing comprises only around 12 per cent, with most of those located in Kathmandu. However in rural areas, tenancies (which often involve the construction of a house by the tenant) have been estimated at around 30 per cent of all rural households, representing some 1.5 million families. Rural tenancies take several forms, the most common being sharecropping (adhiya), whereby the landlord provides some or all of the capital outlay such as equipment, work animals, seeds and fertilizer, and the tenant provides the labour for a share in the yield. Other tenancy types, in order of frequency include: the payment of a fixed quantity of the yield by the tenant to the landlord (thekka) which is legally capped at no more than 50 per cent¹²³; monetary rental payments; and exchange of services.¹²⁴ Exceptionally, tenancy rights for cultivation on Guthi land may be sold and purchased.¹²⁵

As for property owners, tenants are not usually distinguished from other displaced people following a disaster for the purposes of disbursements of small amounts of cash, NFIs or assistance in temporary shelters and camps. However, tenants are vulnerable to a different set of challenges when trying to access additional assistance or to exercise their legal rights after a disaster. There are also differences between rural tenants, who are predominantly working as agricultural labourers in lieu of rent and may have constructed their own house on the land of another, as opposed to urban tenants who are usually renting rooms or housing for a monthly fee. As will be shown below, these different categories of tenant are often treated quite differently under the law, and as is the case for property owners, being able to show relevant documentation of their tenancy may also have a significant bearing on their eligibility for assistance.

2.3.2 Rural tenants

Tenants in many rural areas, who are living and working on leased land, tend to be from lower castes and marginalized ethnic groups, lacking access to adequate education, health care and employment opportunities. Many are living at subsistence levels, unable to accumulate sufficient resources to improve their economic situation. They may be from families who have lived and worked as agricultural labourers in the same area, even on the same land, for generations. A number may also be from neighbouring countries – India and Bangladesh in particular – who have migrated to Nepal for economic reasons and are making up the labour gap in some areas. In many cases, they may have been granted permission to build a house on the land as their only residence. Not all tenants are landless, however. It is not uncommon for a tenant to also own small plots of land for a homestead or farming purposes, but these tend to be in marginal areas with little or no crop yield and are insufficient for sustaining livelihoods.¹²⁶

The Land Act requires the registration of all tenants in the land registration book to claim legal ownership entitlements;¹²⁷ however only around 10 per cent are believed to be formally registered. Moreover, around 80,000 to 100,000 families are still considered

¹²³ Lands Act of 1964, art 33

¹²⁴ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p61

¹²⁵ Guthi Corporation Act of 1976, art 30

¹²⁶ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p60-62

¹²⁷ Lands Act of 1964, art 25(4)(b)

bonded labourers, particularly in the west of the country, in spite of legislative measures to prohibit this practice dating back as far as the 1950s as described previously. The actual number of tenants is also skewed because of efforts by landowners to conceal them as ‘workers on annual contracts’.¹²⁸ In the mid 1990’s, new land reform measures sought to abolish all rural tenancies through a national registration programme, which would result in tenants receiving property rights to half of the land on which they were working and living. By 2003, it was reported that some 541,800 tenants were registered, but the actual land distribution process was only partially implemented.¹²⁹

Many of the above measures, despite their good intentions, have in fact further increased the vulnerability of rural tenants, either through their location on marginal lands, which may be highly disaster-prone, their lack of official registration and documentation or due to frequent evictions so that landowners may prevent them from establishing potential land claims.¹³⁰

Disaster situations may provide a convenient opportunity for landlords to make forced evictions. Without official documentation or support from the landowner to verify their legal status and place of residence, tenants are likely to face difficulties not only in challenging their eviction but in proving they had built a house and thus may be excluded from compensation or assistance for repair or reconstruction. Rather than pursue legal channels, it was reported that such situations are often addressed through community consultation which could then be documented in a police report or letter of recommendation from the VDC and used for claiming assistance.¹³¹ However this system is also highly vulnerable to the social, political and cultural influences within the community, which may further disadvantage already vulnerable groups.

Conversely, there have been situations where a disaster situation has provided opportunities for rural tenants to more actively pursue their legal rights. In some areas in the Terai, it has been reported that political parties and minority groups have successfully demanded larger assistance packages for affected families, including the allocation of land to previously landless people.¹³² Some NGOs are also active in advocating for the rights of landless people after disasters and see disasters as opportunities to better implement land reform policies.¹³³ For example, following the Koshi Floods, the government reportedly identified new land for allocation not only for landless people displaced by the disaster, but also for an additional 1,000 families who had been squatters on public land but were unaffected by the disaster.¹³⁴

2.3.3 Urban tenants

Unlike many rural areas, the demographics of tenants in urban areas are quite varied, ranging from the wealthiest to the most marginalized. Therefore it is difficult to generalize as to their degree of vulnerability and access to shelter assistance after a disaster. The most recent census recorded that 40.22 per cent of households live in rented houses

¹²⁸ Above see Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp39 and 59

¹²⁹ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p57

¹³⁰ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p61

¹³¹ Interviews with NRCS Headquarters, 27 May 2013 and Ministry of Home Affairs, 28 May 2013

¹³² Interview with ActionAID, 31 May 2013

¹³³ Interview with ActionAID, 31 May 2013

¹³⁴ Interview with Land Revenue Office Sunsari, 2 June 2013

in urban areas, and in Kathmandu this figure rises to 58.65 per cent.¹³⁵ It is common for tenants to rent one or more rooms in a house which is also shared with the landlord and/or several other families.

There are no laws exclusively for residential tenancy agreements; rather they are governed by the general law of contract as provided in the Contract Act and the case of apartments in development complexes, by the Ownership of Joint Housing Act. The Contract Act contains a number of general provisions relating to competence to conclude a contract, the requirements for a valid contract, situations regarding bailees, payment of deposits and guarantees, voiding contracts and situations of breach of contract and remedies. There is no requirement for a contract to be concluded in writing, except in the case of a guarantee¹³⁶, however the Ownership of Joint Housing Act does require an agreement for the renting of an apartment covering “details about each party, the location/plot number/land details, apartment number and description, price/rent details, common areas/facilities, terms of use, expenses/obligations, insurance etc.”¹³⁷

In the event of a disaster affecting residences in urban areas, such as a major earthquake in Kathmandu, tenants may face a number of challenges in accessing shelter assistance. First, a great many rental agreements are not in writing and are not registered at the LRO, largely for the purpose of avoiding the rent tax that landlords are required to pay. Thus tenants may encounter difficulties providing any documentary evidence of their tenancy and may face exclusion from beneficiary lists or receiving materials and support to repair damaged homes in the absence of the owner.

Even in cases where tenants can prove an agreement existed, their landlord may have little or no obligation to honour such a contract. For example the Contract Act states that “[i]n case it becomes impossible to execute the contract due to emergence of such situations as war, floods, landslides, fire, earthquakes, and volcanic eruptions, which are beyond the control of human beings, the contract is deemed to be fundamentally changed.”¹³⁸ The landlord may therefore take the opportunity to terminate the agreement to provide space for other family members or friends, thereby displacing the tenants.

The Contract Act provides that in the event of anything essential to the contract being destroyed or damaged (in this case, the house or apartment), no payments (for example rent) shall be due after the change in the situation. Further, the Act provides for the restitution of moneys paid in advance in the case of a terminated or frustrated contract.¹³⁹ However, these provisions may be difficult to enforce in the absence of written agreements, receipts or other documentary evidence of a deposit or advance being paid by the tenant. Moreover, tenants may not be aware of their rights and may continue to pay rent on the insistence of the landlord, even in the event of a damaged building.

In the event that a tenant wishes to take legal action for the refund of advances paid, the Contract Act provides that reasonable expenses for the initiation of any legal action would also be reimbursed.¹⁴⁰ The initial cost and time for doing so however may be

¹³⁵ “National Population and Housing Census 2011 (National Report)”, Government of Nepal, Central Bureau of Statistics, Kathmandu, November 2012

¹³⁶ Contract Act of 2000, art 15(3)

¹³⁷ Ownership of Joint Housing Act of 1997, art 15

¹³⁸ Contract Act of 2000, art 79(2)(b)

¹³⁹ Contract Act of 2000, art 84(1)

¹⁴⁰ Contract Act of 2000, art 84(2)

prohibitive, and in the immediate aftermath of a large-scale earthquake, would be next to impossible. However, when discussing the situation, some people interviewed felt that although tenancy agreements usually favoured landlords¹⁴¹, they would generally not act against the interests of the tenants and did not feel that major legal challenges would be encountered.¹⁴² This is yet to be tested in the wake of a large-scale urban disaster, such as an earthquake.

Summary

Sensitivities around land reform, compounded by ambiguity in the legal framework for tenants, can create a highly politicized and complex environment for shelter providers. In general, tenants are not distinguished from property owners or other disaster-affected people for the distribution of minor emergency shelter assistance such as a small cash grant or NFI kit, provided they are able to produce adequate documentation or identity confirmation. While disaster situations can exacerbate social and political tension, they have also been used as opportunities for land rights advocacy and can facilitate the allocation of land to previously landless or displaced persons.

Rural tenants are especially vulnerable to exclusion from shelter assistance. Rural tenants tend to be disadvantaged by lower income, caste and social status and are particularly vulnerable to exclusion from shelter assistance following natural disasters. Deliberate concealment as ‘workers on annual contracts’ rather than registered tenants, place them at high risk of eviction, land grabs and denial of occupancy by landowners, seeking to avoid potential land claims under laws intended to benefit tenants through land redistribution. Poor implementation of the requirement to register all tenancies (currently up to 90 per cent of tenancies are unregistered) results in a lack of official documentation as evidence of residence or tenancy to receive shelter assistance, and then creates dependence on community identification, police reports and certification by VDCs for eligibility, which can be effective but also has the potential to exclude or further disadvantage already vulnerable groups through lack of fair transparent processes.

Urban tenancy rights in disaster situations are unclear in existing legislation. The Contract Act offers some measure of protection in the event of a disaster that fundamentally changes the contract, allowing the restitution of any advance payments and cessation of further due payments, and allowing the reimbursement of legal costs. However it does not include details specifically concerning the status of rental agreements following a natural disaster where a rented house or room may be fully or partially damaged, nor does it clarify the termination or on-going validity of a rental agreement following the repair or reconstruction of a rental property.

Urban tenants are also vulnerable to exclusion from assistance due to a lack of documentation. The Ownership of Joint Housing Act provides some protection for tenants by specifying the need for written contracts containing a minimum of information which could be used as supporting documentation for claiming shelter assistance. However, the majority of rental agreements are rarely concluded in writing or registered with the appropriate authority. Without documentary evidence, renters may face challenges reclaiming advance payments or accessing assistance in the event their home is damaged or destroyed by a disaster.

¹⁴¹ Interviews with NRCS Headquarters, 27 May 2013 and UNHABITAT, 28 May 2013

¹⁴² Interview with UNHABITAT, 28 May 2013

Suggested ways forward

■ Further policy development and planning on emergency and transitional shelter should consider the following elements:

- Clarification of the rights and obligations of landlords and tenants when rental property is damaged/destroyed by a disaster
- Fair, transparent and timely procedures for identifying tenants in the absence of official documentation
- Measures to protect and/or provide special assistance to tenants following a disaster given their particular vulnerabilities (this may include, for example, protection from unjustified evictions, rental assistance and/or provision of temporary housing)
- A local dispute resolution mechanism/ombudsman, supported by fair and transparent rules of procedure, with the option to access the court system and legal aid as/when required

2.4 Other groups

2.4.1 Squatters

In Nepal, the law against squatting is relatively clear. The Local Administration Act provides that “no one shall construct houses (building) on governmental or public land without establishing one’s ownership.”¹⁴³ This is also reinforced by provisions of the Muluki Ain¹⁴⁴ and the Local Self-Governance Act.¹⁴⁵

Nevertheless, It has been estimated that nation-wide there could be up to 2 million households living in squatter settlements.¹⁴⁶ In the largest cities, the demand for affordable housing to buy or rent is unmatched by supply, which has driven up land and housing prices and rent at a staggering rate.¹⁴⁷ This has led to a growing number of squatter settlements and unauthorized occupancy of land, with up to 7 per cent of the total urban population living in squatter settlements nation-wide, including some 20,000 squatters in Kathmandu alone.¹⁴⁸ The number of squatters was thought to have increased dramatically during the 10-year conflict, as many IDPs left to seek safety and employment in larger cities. It has also been observed that the “vast majority of urban housing is in informal settlements on public or government land”¹⁴⁹ with many families living in the same locations for many generations.¹⁵⁰ However, their occupancy has remained unregistered and they are therefore denied any legitimate ownership rights. Further, “[t]he settlements are unplanned, crowded, and usually lack services.

While these settlements can be formalized, the process must be initiated by the government and is time-consuming and expensive, involving the formation of national

¹⁴³ Local Administration Act of 1971, art 9(6A)

¹⁴⁴ Muluki Ain 1962, chapter 11, numbers 1 and 4

¹⁴⁵ Local Self Governance Act of 1999, art 96(2)(d)

¹⁴⁶ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp72-3

¹⁴⁷ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p9

¹⁴⁸ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p9

¹⁴⁹ “Country Profile: Property Rights and Resource Governance, Nepal”, USAID (updated 28 August 2012) at: <http://usaidlandtenure.net/nepal> accessed on 11 April 2013, p8

¹⁵⁰ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp72-3

and district commissions, cadastral surveying, land registration, and development of infrastructure”.¹⁵¹ Although the development of policies and programmes for allocating land and providing livelihoods to squatters and the landless is included in the Interim Constitution¹⁵² and several manifestations of the national development plans, as well as the Comprehensive Peace Agreement¹⁵³, it is acknowledged this has remained unimplemented. The National Shelter Policy 2012 also includes some positive developments towards the situation of squatters, including the development programmes to improve the condition of existing settlements, the distribution of identity cards and the allocation of small plots of land or low-cost housing to the most vulnerable families.¹⁵⁴ Government efforts to relocate squatter communities have at times been met with criticism from human rights and advocacy groups, as well as resistance from the nearby communities in the areas identified for resettlement.

In disaster situations, the consequences of a lack of land, or at least a lack of registered land, can have negative ramifications. Although proof of land ownership is not a compulsory requirement for receiving a Citizenship Certificate, it has nevertheless been reported that this is still demanded by officials and thus has prevented many landless people from obtaining their entitlements as citizens.¹⁵⁵ However, in recognition of their special vulnerability, squatters and landless families have sometimes been able to receive additional assistance after a disaster.

One such example is the Koshi floods of 2008, in which 235 families (over 1,400 people) were selected to receive plots of land and housing on a 198,000 square meter plot of government land selected by the DDRC. In the absence of formal identification or other documentation, they were identified from 5 different wards in 2 VDCs by their communities as being squatters or landless people, which was later confirmed by the CDO.¹⁵⁶ The project was a collaborative effort involving government, UN agencies, international and local NGOs and involved extensive consultation with affected people through various organizing committees. Each family was allocated a plot of 677.6 square meters and a model house was designed and constructed by the community with assistance from supporting organisations.¹⁵⁷

The project was completed several years later although with mixed results. Some families never actually took up residence in their house, preferring to return to their original location or squatter settlement to be closer to their place of work (some families owned shops or other businesses). Some beneficiaries were unhappy with the quality of the housing and had higher expectations of receiving a more substantial house in a more accessible area. Others felt the location also prevented them from being able to access more lucrative employment in other parts of the district or near the villages or urban centres. In 2013, the field visit undertaken for this report found many of the houses standing empty and the families remaining in the houses disappointed they had not yet received their ownership certificates. Indeed, there is a restriction placed on the rent or sale of the land and houses for 10 to 15 years, so those families who decided to

¹⁵¹ “Country Profile: Property Rights and Resource Governance, Nepal”, USAID (updated 28 August 2012) at: <http://usaaidlandtenure.net/nepal> accessed on 11 April 2013, p8

¹⁵² Interim Constitution of 2007, art 33(i)

¹⁵³ Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), 22 November 2006, art 3.10

¹⁵⁴ National Shelter Policy 2012, section 4.7

¹⁵⁵ “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal”, DFID and World Bank (2010), pp5 and 18; Adhikari, p2

¹⁵⁶ Interview with UNHABITAT, 28 May 2013

¹⁵⁷ Interview with Lumanti, 5 June 2013

live elsewhere will not be able to reap any benefit from their shelter assistance until that time elapses.¹⁵⁸ On the other hand, for many families the program has given them security of tenure and a valuable asset they can use to their advantage in the future.

2.4.2 Women

Nepalese society remains largely patriarchal, both culturally and legally, as is reflected in many provisions of the Muluki Ain, including provisions of inheritance described above. However, there have been numerous efforts in various legal and policy documents to recognize the equality of women and to proactively address discrimination.

The Interim Constitution, for example, emphasizes that “No one shall be discriminated in any form merely for being a woman.”¹⁵⁹ The Local Self Governance Act also gives VDCs the authority to include projects that directly benefit women as part of their Village Development Plans.¹⁶⁰ The current National Shelter Policy hopes to encourage “the financial institutions, saving and credit cooperatives to carry out special programmes in order to enhance the participation of women in the construction of housing”.¹⁶¹ The IDP Policy and Procedures specifically recognize and address the protection and special needs of women in a number of provisions, described further below.

There do remain gaps, however, in the equality between men and women in terms of education, literacy, income and property ownership.¹⁶² The recent census shows that the proportion of female-headed households has increased significantly over the past decade, from 14.87 per cent in 2001 to 25.73 per cent in 2011. So too have the registrations of land and houses in the names of women, which has risen from a national average of 14 per cent in 2001 to 19 per cent in 2011. In urban areas, registrations for women have shown an even sharper rise, now at 26.77 per cent.¹⁶³ This has largely been attributed to a policy shift of the government, to waive or reduce the fees for property registrations for women, disabled persons and disadvantaged groups,¹⁶⁴ acknowledging that property ownership for women is important for redressing some of the power imbalances and discrimination within families, placing limits on the total control of assets by men, and enables access to credit, thereby increasing women’s overall sense of security.¹⁶⁵ However it is unclear as to whether these registrations have resulted in women gaining in any real control over their assets, as they have also been used as a convenient way for families to further conceal the size of land holdings. Various studies and consultations have revealed that the long standing deterrents to women’s ownership persist, including the risk of divorce, the risk of losing the family property if the woman remarries and the difficulties in dealing with government offices and the court system.¹⁶⁶

¹⁵⁸ Interviews with UNDP, 30 May 2013; UNHABITAT, 28 May 2013; and Lumanti, 5 June 2013

¹⁵⁹ Interim Constitution of 2007, art 20(1)

¹⁶⁰ Local Self Governance Act of 1999, art 43(3)

¹⁶¹ National Housing Policy 2012, art 4.12.3

¹⁶² “National Population and Housing Census 2011 (National Report)”, Government of Nepal, Central Bureau of Statistics, Kathmandu, November 2012

¹⁶³ “National Population and Housing Census 2011 (National Report)”, Government of Nepal, Central Bureau of Statistics, Kathmandu, November 2012, p2-3

¹⁶⁴ Interim Plan Period Programme for Land Management, Landless and Freed Kamaiyas, 2007/08- 2009/10

¹⁶⁵ Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), p55

¹⁶⁶ In Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), pp38-9 and 55, and; “Nepal Country Report: Global Assessment of Risk”, UNISDR Global Assessment Report on Poverty and Disaster Risk (2009), p31

Women face particular difficulties in accessing inheritance. Whereas the Interim Constitution provides that “[n]o one shall be discriminated in any form merely for being a woman”¹⁶⁷ and that “[s]on and daughter shall have equal rights to their ancestral property”¹⁶⁸, the Muluki Ain presents a more complex system of inheritance rights. While providing that ancestral property is inherited first by the husband, wife, children or grandchildren before other relatives are considered¹⁶⁹, the Muluki Ain also provides that only daughters who are unmarried and over the age of 35 are eligible to inherit.¹⁷⁰ Moreover once married, a daughter who has received an inheritance has her assets redistributed among the other heirs, and unlike her brothers’ children, her children will never inherit directly from her side of the family.¹⁷¹ Wives who have been “kept outside without making it public” (referring to mistresses and unrecognised second wives) and their children are also excluded from inheritance.¹⁷²

The IDP Procedures also acknowledge the vulnerability of widows who may be forced out of their homes by the family of their deceased or missing husbands, and provide that “such women should be provided with legal and any other assistance necessary to acquire and protect their property rights”.¹⁷³ While this measure is intended for “War Widows” in conflict situations, it would be equally beneficial in disaster situations. The initiative to provide “certificates of absence” in the event of missing persons, as described previously, would also help to improve protection for women in this situation.

Women have also been identified as especially vulnerable in situations of displacement, with the IDP Procedures specifying in particular those at risk of physical, psychological or sexual abuse and those traumatised by violence or displacement, as well as women-headed households, the elderly, widows and women who are pregnant, lactating or with small children.¹⁷⁴ In disaster situations, the disempowerment of women may further increase, as men tend to represent the family’s interests when it comes to receiving disaster assistance. For example, following the Koshi Floods, beneficiary cards were issued by family, not by individual, resulting in processes being dominated by male family members.¹⁷⁵ Consequently a number of organisations made specific efforts to identify and support female-headed households and to ensure that women were participating in consultation processes. In particular, the shelter assistance provided to the landless described above, included female-headed households within the target group and a key component of the project was to ensure that the land and houses were registered in the joint names of husbands and wives.¹⁷⁶

In this regard, the IDP Policy and Procedures highlight the need to ensure not only protection but also special attention to health needs, education and training facilities and

¹⁶⁷ Interim Constitution of 2007, art 20(1)

¹⁶⁸ Interim Constitution of 2007, art 20(4)

¹⁶⁹ Muluki Ain 1962, chapter 16(2)

¹⁷⁰ Muluki Ain 1962, chapter 16(2) and “Country Profile: Property Rights and Resource Governance, Nepal”, USAID (updated 28 August 2012) at: <http://usaidlandtenure.net/nepal> accessed on 11 April 2013, p9

¹⁷¹ Muluki Ain 1962, chapter 16(2) and “Country Profile: Property Rights and Resource Governance, Nepal”, USAID (updated 28 August 2012) at: <http://usaidlandtenure.net/nepal> accessed on 11 April 2013, p9

¹⁷² Muluki Ain 1962, chapter 13(8)

¹⁷³ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 15.4

¹⁷⁴ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, arts 7.12 and 14.2; National Policy on Internally Displaced Persons of 2007, arts 8.1.7 and 8.2.4

¹⁷⁵ Interview with NRCS District Chapter Sunsari, 2 June 2013

¹⁷⁶ “Building Dreams Together: Integrated Shelter Assistance for Landless Households Affected by the Koshi Flood”, Lumanti, Support Group for Shelter, Kathmandu (2011)

to ensure that women are involved in decisions about the distribution of relief and the management of their relocation.¹⁷⁷ Additionally, importance is given to enabling women and girls to have access to documentation in their own right and not just depend on male family members.¹⁷⁸

2.4.3 Marginalized ethnic groups/castes

Ethnic and caste-based discrimination was officially abolished in 1963 and as part of the transition to democracy. As enshrined in the Constitution of 1990 and more recently in the Interim Constitution of 2007, all citizens are equal before the law and “[n]o person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form.”¹⁷⁹ Indeed, many schemes have been initiated in the past to enable greater access to land and property ownership, as described above, as well as provide access to housing specifically for Dalits and other specific marginalized ethnic communities through the People’s Housing Programme, which has also been reinforced to some extent by the current National Shelter Policy.¹⁸⁰

Nevertheless, it has been well-documented that discrimination continues to exist both in practice and in legislation.¹⁸¹ In the post-disaster emergency shelter context, discrimination against lower castes and marginalized ethnic groups is manifest in a number of ways.

The high proportion of landlessness among Dalits and some groups of Janajatis means they are less likely to have access to Citizenship Certificates due to the inability to produce proof of land ownership, as described above. It has also been reported that some Dalits or Janajatis face additional discrimination by government officials if they are considered to be “of Indian origin” based on their language and appearance and are thereby denied certificates, regardless of the number of generations their families have resided in Nepal.

In some parts of the country, the practice of “untouchability” remains very strong in the community, whereby those of higher castes will not physically touch or share food, water or accommodation with Dalits. This may pose difficulties in camp situations in which there is little or no choice but to share such facilities, to the point where some groups may be unwilling or unable to access assistance.¹⁸²

Issues of language and literacy may pose additional barriers to some groups being able to participate in community consultations or accessing information about shelter assistance or obtaining the necessary documentation from the authorities.

Assistance for certain groups may also be determined by the political situation at the time of the disaster. As noted previously, decisions by the government on the extent

¹⁷⁷ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 7.12

¹⁷⁸ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 16.2.7

¹⁷⁹ Interim Constitution of 2007, arts 13(1) and 14(1)-(2)

¹⁸⁰ National Housing Policy 2012, preface

¹⁸¹ See, for example, “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal”, DFID and World Bank (2010), p43, which includes a list of examples of discriminatory laws

¹⁸² However, this is not always to the disadvantage of Dalits – in one case reported during the Koshi flood operation, a woman of high caste refused to join the queues of people registering to receive assistance, demanding that separate procedures be applied to her. Her requests were repeatedly refused and eventually she had no choice but to line up on equal terms with everyone else. Interview with NRCS District Chapter Sunsari, 2 June 2013

of assistance available can be influenced by the agitation of political parties or ethnic groups in the area concerned, taking the opportunity of greater media attention to protest or make further demands unless their needs are met.¹⁸³

2.4.4 Other vulnerable groups

Although not explored in great detail in this study, there are a number of other groups within Nepalese society who face challenges accessing adequate shelter assistance after a disaster.

The IDP Policy and Procedures recognize other vulnerable groups, including those that may be more vulnerable to abuse, violence and exploitation or extortion and illegal “taxation”:

- Children in need of special protection including those who are unaccompanied, separated or orphaned, child-headed households, children not attending school or living on the streets, those with disabilities, those who have been traumatised, abused or forced into early marriage, among others.
- Elderly people, particularly those without means of support, are chronically ill or have been traumatised.
- People who are chronically ill or have mental or physical disabilities.¹⁸⁴

In this regard, the IDP Policy requires special programmes targeted towards and protecting these vulnerable groups.¹⁸⁵ The IDP Procedures further require that those facing special risks be made aware of their entitlements and receive the necessary assistance to attain them.¹⁸⁶ Similarly, the NRCS Disaster Response Operation Manual also includes reference to vulnerable groups and people with disabilities, and Handicap International has launched an inclusion project for disabled people involved in emergency situations in Nepal to raise awareness of the issue and to support local organisations to better address their needs.¹⁸⁷

A recent study conducted in Nepal on the impact of disasters on Lesbian, Gay, Bisexual, Transsexual/Transgender and Intersex people (LGBTI) identified a number of issues relating to *metis*, male-bodied feminine-presenting people, also known as *natuwas*, meaning ‘dancers’. Following the Koshi Floods of 2008, a number of *natuwas* living near the border with India reported discriminatory practices or hardship in the administration of disaster relief including:

- Relocation away from their normal communities in which they had felt relatively safe, into communities where they were unknown and subject to harassment, having to go into hiding
- Families receiving less assistance from community leaders for having such a child in the family

¹⁸³ Interview with ActionAID, 31 May 2013 and Kellet J, “A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008”, IFRC (2009), p57

¹⁸⁴ National Policy on Internally Displaced Persons of 2007, art 8.17 and Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 14.2

¹⁸⁵ National Policy on Internally Displaced Persons of 2007, arts 7.10 and 9.13

¹⁸⁶ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 14.3

¹⁸⁷ “Disaster Response Operations Manual”, NRCS (2010) and “Inclusion of people with disabilities in emergency response”, Handicap International, June 2008 at: <http://www.handicap-international.org.uk>

- Facing harassment or neglect at checkpoints and registration in relief camps when their physical appearance or identification does not match the gender indicated in their documents

In 2007 the Supreme Court ruled that ‘third gender’ citizenship certificates be issued for people not identifying as male or female, which is reported to have been implemented as of January 2013, with the category of ‘other’ appearing on official documents, including Citizenship Certificates and passports.¹⁸⁸

2.4.5 Foreigners

Foreign nationals are not permitted to own property in Nepal, at least as individuals, so are unlikely to be recipients of shelter assistance targeted towards property owners. However there have been some policy discussions about opening up the purchase of apartments to foreigners.¹⁸⁹ An exception to foreign ownership is possible for Indian Nationals under the Treaty of Peace and Friendship between the government of India and the government of Nepal, which provides that the “Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.”¹⁹⁰

Given the sizable expatriate and tourist population in Nepal, it is worth noting that in the event of a major disaster such as a flood or earthquake displacing tourists and expatriates, they may initially require emergency shelter in camps or evacuation areas, but are far less likely to remain long enough for the loss of identity documents to pose a major impediment. Their assistance would be managed largely through their respective Embassies, insurance companies and/or employers (in ways similar to that seen in tourist areas following the 2004 Indian Ocean tsunami). While passports, travel and insurance documents may be lost, official records of visas issued to foreigners are kept by MoHA’s Immigration Department, and national Embassies would be expected to facilitate the verification of identities. The NDRF also provides that the bodies of deceased tourists, diplomats and foreigners will be handed over by the Ministry of Foreign Affairs (MoFA) within 24 hours of a disaster.¹⁹¹

A major exception to this is the situation of Indian migrants who make up a significant percentage of the population in the Terai border areas and urban centres of Nepal and are not recorded in the same way. Indian nationals do not require a passport or visa to enter the country, and may enter using a number of different personal documents, provided they include a photograph, such as driving license or voter identity card.¹⁹²

Many Indian nationals were significantly affected by the Koshi floods of 2008, both in Nepal and across the border into India, losing homes and livelihoods. When it became apparent that international assistance was arriving in Nepal, a number decided to

¹⁸⁸ Knight K and Welton-Mitchell C, “Gender Identity and Disaster Response in Nepal”, Forced Migration Review (Number 42, April 2013), pp57-58, available at: <http://www.fmreview.org/sogi/FMR42listing.pdf> and “Nepal Recognises Transgender Passports”, News24, 11 June 2013 at: www.news24.com/Travel/International/Nepal-recognises-transgender-passports-20130611 accessed on 18 July 2013

¹⁸⁹ See, for example, Department of Immigration at: <http://www.immi.gov.np/component/content/article/36-info-indian-travelling-nepal> accessed on 14 June 2013

¹⁹⁰ Treaty of Peace and Friendship between the Government of India and the Government of Nepal. Signed at Kathmandu, on 31 July 1950, art 7

¹⁹¹ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation)

¹⁹² Nepal Ministry of Home Affairs Department of Immigration, at: <http://www.immi.gov.np/component/content/article/36-info-indian-travelling-nepal> accessed on 14 June 2013

cross the border and seek assistance there. Initially there were concerns about such people receiving double assistance, but eventually a decision was made by MoHA, at the request of various assisting relief agencies, to provide assistance on an equal basis to Indian nationals. Hence, those arriving in the various temporary camps were able to register and receive beneficiary cards based on the presentation of Indian ration cards.¹⁹³

Summary

Squatters are often highly vulnerable to disasters due to unsafe settlement locations and conditions, which are further compounded by their lack of access to personal documentation or registered land ownership, thus they risk eviction or exclusion from assistance after disasters. The formalization of squatter settlements is possible upon the initiation of government, however it is considered time-consuming, bureaucratic and expensive. Some land allocations have been made in favour of squatters following a disaster situation, however they have not always been fully successful with locations selected far from their livelihoods and communities and restrictions placed on the use or sale of their new land and property.

Despite numerous legal and policy initiatives to enhance the status of women, there are still barriers preventing access to key documentation and property rights, which may exclude women from accessing and participating in shelter assistance following a natural disaster. These include inadequate inheritance rights, risk of divorce or exclusion when exercising property rights, limited control over assets as widows or wives of missing persons, disempowerment through assistance programmes which prioritise male heads of households and a lack of adequate protection against discrimination, violence and sexual abuse. There has been a positive increase in the number of women (and some other marginalized groups) registering property due to legislation reducing the registration fees, however several commentators have questioned the true effectiveness of this measure and maintain that the barriers to women's property ownership still exist.

Marginalized groups can suffer from inadequate legal protection and/or poor implementation of protective policies to enable access to appropriate shelter assistance. Marginalized ethnic groups and castes can be highly disadvantaged and excluded from assistance due to high rates of poverty, illiteracy and landlessness, resulting in a lack of documentation and legal recognition. This can also be compounded by discrimination and exclusion through social and religious customs. Natuwas (meaning "dancer" who is transsexual/transgender) are another special category of people who, because of their lack of identified gender, face discrimination and abuse following a disaster as well as difficulties accessing documentation and official processes. Other highly vulnerable groups include people with disabilities, children, the elderly and Indian migrants who are especially vulnerable to exclusion or discrimination in shelter assistance, due to difficulties obtaining proper documentation, legal exclusions or underlying social and cultural barriers which prevent them from full participation in disaster relief programmes.

Considerable efforts have been made, through policy and practice, to address the needs of vulnerable groups before and after disaster situations. Further efforts could be made, however, to overcome existing inequalities. Relief providers have been

¹⁹³ Interview with NRCS District Chapter Sunsari, 2 June 2013 and Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p56

identifying and positively targeting especially vulnerable groups such as squatters/landless, women, people with disabilities and other marginalized groups to ensure they are able to access shelter assistance on an equal basis. The IDP Policy and Procedures contain extensive provisions for the protection of many of the highly vulnerable groups mentioned above, providing not only recognition of protection needs but also special assistance in obtaining documentation and access to administrative and legal support. There have also been recent policies to address underlying causes of vulnerability through land use planning and affordable housing. Nevertheless, there is a need to ensure such initiatives are applied in disaster situations to the extent possible, as part of the formal disaster response mechanism.

Suggested ways forward

■ **Further policy development and planning on emergency and transitional shelter should consider the following elements:**

- Development of clear principles/guidelines for the provision of shelter assistance which address the key factors leading to exclusion/discrimination of vulnerable groups
- Measures for the recognition and protection of vulnerable groups, such as assistance for obtaining documentation and access to administrative and legal support, as included in the IDP Policy
- Fair, transparent and timely procedures for identifying the shelter needs of vulnerable groups in the absence of official documentation
- Adequate consultation with affected communities, which is inclusive of vulnerable groups, to identify the most appropriate shelter solutions
- A local dispute resolution mechanism/ombudsman, supported by fair and transparent rules of procedure, with the option to access the court system and legal aid as/when required

3. Land for emergency and transitional shelter

This section addresses regulatory issues concerning land for the provision of emergency and transitional shelter assistance, for both use as temporary camps or the allocation of individual plots for transitional and eventually permanent shelter. It includes the identification and acquisition of available land, the requirements for determining location and suitability for use, environmental considerations and the use of public and private property such as schools and places of worship.

3.1 Open spaces

A major challenge currently faced in Kathmandu and increasingly in other urban centres is a lack of open spaces that could be used for the establishment of temporary camps and the provision of other humanitarian assistance following the impact of a major earthquake. Despite its comparatively small urban population, Nepal has one of the most rapid urbanization rates in South Asia¹⁹⁴ with the urban population nearly doubling every 10 years since the 1970s¹⁹⁵ – a trend that accelerated during the 10-year conflict and continues due to economic and political instability.¹⁹⁶ Urban planning has been largely absent and in some areas of Kathmandu city, the population density has reached over 1,000 persons per hectare.¹⁹⁷ Buildings are often tightly packed with streets too narrow to allow the proper flow of pedestrian and vehicle traffic, even preventing the entry of emergency vehicles. Public infrastructure and transport networks are overstretched and there are frequent shortages of water and electricity, as well as poor sanitation and garbage collection facilities.¹⁹⁸

The newly established MoUD has assumed overall responsibility for urban planning through its DUDBC, however there are a number of other authorities that play a key role in urban planning, and it is not entirely clear from the documentation as to where their responsibilities begin, end or overlap:

- Town Development Committees have the authority to formulate town plans, which specifically include the allocation of open spaces and the planning/building of any type of settlement or structure.¹⁹⁹

¹⁹⁴ See Muzzini, El and Aparicio G, “Urban Growth and Spatial Transition in Nepal” (March 2012) available at: <http://elibrary.worldbank.org/content/book/9780821396599>

¹⁹⁵ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p45

¹⁹⁶ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p9

¹⁹⁷ “Risk Sensitive Land Use Plan, Kathmandu Metropolitan City, Nepal”, German Federal Foreign Affairs Office and Earthquake Megacities Initiative, Mainstreaming Disaster Risk Reduction in Megacities: A Pilot Application in Metro Manila and Kathmandu (2010), p13

¹⁹⁸ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp9 and 53, and “Risk Sensitive Land Use Plan, Kathmandu Metropolitan City, Nepal”, German Federal Foreign Affairs Office and Earthquake Megacities Initiative, Mainstreaming Disaster Risk Reduction in Megacities: A Pilot Application in Metro Manila and Kathmandu (2010), pp13 and 44

¹⁹⁹ See Town Development Act of 1988, arts 3A-2, 3, 4.1 and 9.1

- The Kathmandu Valley Development Authority (KVDA) has wide ranging powers to determine land used for physical development and to provide essential services and infrastructure, as well as restrict the establishment of settlements “in the public interest”.²⁰⁰
- Municipalities have the authority to establish “green zones” and areas designated for residential or other purposes and to control unplanned settlements.²⁰¹

In theory, any of the above authorities could assign certain portions of land - ‘open spaces’ - for use following a natural disaster as part of the urban planning process. But as described above, this has not been the case, which is of particular concern in the context of the mega-earthquake scenario.

MoHA and the International Organisation for Migration (IOM) as co-lead of the Camp Coordination and Camp Management cluster undertook a study commencing in 2009 to identify potential open spaces that could be used for humanitarian purposes in Kathmandu.²⁰² Following site inspections and consultations, a total of 83 sites were identified, all of which fall into the category of government, public or Guthi land.²⁰³ Eventually, in April 2013, the sites were officially published in the government of Nepal Gazette detailing their locations and setting out the legal and administrative procedures for their management.

Under this initiative, new buildings and other significant changes are prohibited on these sites without express approval. For this purpose, the Council of Ministers will establish a committee comprising the secretaries of 6 ministries, headed by MoHA, to make decisions on any development proposals concerning the sites, and MoHA has the responsibility for maintaining information and communications about the sites.²⁰⁴ The specific uses of the spaces are yet to be assigned, however it is expected there will be 4 to 5 large sites dedicated to temporary camps, in addition to smaller distribution centres.²⁰⁵

Other similar initiatives are also underway, including the identification of additional smaller sites throughout the Valley led by the National Society for Earthquake Technology – Nepal (NSET) and discussions about initiating a “one tole, one open space” project²⁰⁶ to support local community preparedness measures.²⁰⁷ In fact, in some of the traditional Newar housing areas of Kathmandu, Lalitpur and Bhaktapur, open spaces for communal use within a small block of houses are already part of the design and are considered important for evacuation and temporary shelter areas, given it is expected that many people will prefer to live in or near their original dwelling if possible.²⁰⁸

²⁰⁰ See Kathmandu Valley Development Authority Act of 1988, arts 5.1.2-5.1.4, 8.1.4 and 8.2

²⁰¹ Local Self Governance Act of 1999, arts 29(b)(1), (2) and (4) and 9(2)(d)

²⁰² “Kathmandu Valley Open Spaces”, IOM/Government of Nepal/USAID/Draft Release v.1, 15 May 2013, p6

²⁰³ Interview with Ministry of Home Affairs, 28 May 2013

²⁰⁴ Interviews with Ministry of Home Affairs, 28 May 2013 and IOM, 31 May 2013, and; “Kathmandu Valley Open Spaces”, IOM/Government of Nepal/USAID/Draft Release v.1, 15 May 2013, p6

²⁰⁵ Interview with IOM, 31 May 2013

²⁰⁶ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), section 8

²⁰⁷ Interviews with Ministry of Home Affairs, 28 May 2013; IOM, 31 May 2013; NSET, 5 June 2013, and; National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), art 8

²⁰⁸ “Shelter Response Strategy and Plan for Earthquake Disasters for the Kathmandu Valley, Nepal (Draft Report)”, prepared as part of the project “Risk Mapping for Shelter Response” program of the Global Emergency Shelter Cluster, NSET (2010)

Another initiative focuses on Risk Sensitive Land Use Planning led by Kathmandu Metropolitan City, Earthquakes and Megacities Initiative (EMI), NSET and UNDP. The purpose of this initiative is “(a) to develop a rational land use plan for Kathmandu Metropolitan City that fully integrates risk reduction parameters into its spatial and physical development strategies and their related tools, bylaws and procedures, and (b) to mobilize political commitment and cooperation for DRR at the local and regional levels.”²⁰⁹ A 10-year Risk Sensitive Land Use Plan for Kathmandu City, considered a working document, was approved in 2011 which “integrates risk assessment into conventional land use planning, encompasses physical, socio-economical, environmental and cultural planning in Kathmandu Metropolitan City and stresses sustainable development”.²¹⁰

3.2 Land acquisition

Given the scale of displacement following a major earthquake, it is unlikely that sufficient spaces for temporary shelter could be identified and gazetted in advance. As has been seen in other disasters, including in rural areas where lack of available land is also problematic, it will be necessary for the government to acquire land in the immediate aftermath of a disaster.

The Interim Constitution allows the government to requisition, acquire or create an encumbrance of the property of any person provided it is in the public interest.²¹¹ Similarly, the Natural Calamity (Relief) Act specifically allows orders to be given for the “requisition of movable or immovable property of any individual or institution on temporary basis for a prescribed period, if such property is required to be used for the purpose of Relief Work”.²¹² VDCs, Municipalities and Wards also have the power to undertake “necessary works in respect of controlling natural calamities”²¹³ and with regard to acquisition they must follow the requirements of the prevailing law.²¹⁴

There is also a specific Land Acquisition Act which grants the government “special powers to acquire land in special circumstance” which includes to save lives and in event of floods and natural disasters. It was noted by the Asian Development Bank (ADB), when assisting with the updating of acquisition laws, that resettlement is excluded from the current acquisition process.²¹⁵ The usual procedures of notice, occupation and ownership are modified in favour of fast track notification/acquisition. In these circumstances, no complaints may be made regarding the acquisition, except on the issue of compensation.²¹⁶

Regarding compensation, all of the abovementioned legislation requires that compensation be given. The Constitution refers to compensation “as prescribed by law”,

²⁰⁹ “Risk Sensitive Land Use Plan, Kathmandu Metropolitan City, Nepal”, German Federal Foreign Affairs Office and Earthquake Megacities Initiative, Mainstreaming Disaster Risk Reduction in Megacities: A Pilot Application in Metro Manila and Kathmandu (2010), p vii

²¹⁰ See “Risk Sensitive Land Use Plan, Kathmandu Metropolitan City, Nepal”, German Federal Foreign Affairs Office and Earthquake Megacities Initiative, Mainstreaming Disaster Risk Reduction in Megacities: A Pilot Application in Metro Manila and Kathmandu (2010), p vii and UNDP at: <http://www.cdrmp.org.np/2012/03/12/News/Nepali-Planners-Getting-ready-for-Risk-Sensitive-Land-Use-Planning-17.html>

²¹¹ Interim Constitution of 2007, art 19(2)

²¹² Natural Calamity (Relief) Act of 1982, art 4(e)

²¹³ Local Self Governance Act of 1999, arts 28(K)(4), 96(j)(7) and 189(p)(2)

²¹⁴ Local Self Governance Act of 1999, art 258

²¹⁵ Interview with ADB, 6 June 2013

²¹⁶ Land Acquisition Act of 1977, art 25 (1)-(3) and (6)

but specifically excludes compensation for “property acquired by illegal means”²¹⁷ (it is unclear whether this latter provision could exclude, for example, those without land registrations or valid Ownership Certificates). The Natural Calamity (Relief) Act also provides for compensation for loss of crops in the event that cultivated land is acquired.²¹⁸

When property is acquired under the “special circumstances” of a disaster under the Land Acquisition Act, the amount of compensation is decided by a committee and provided in-kind or in cash at reasonable market value. Complaints about compensation can be filed within 15 days to MoHA.²¹⁹ This Act also extends compensation beyond the owner of the land and also provides 50 per cent of the compensation to tenants in the case of tenancy holdings. Additionally, if the tenant has constructed a house with the consent of the landowner, they will receive the entire compensation for that house.²²⁰

While the process for government acquisition of private land is clearly prescribed in existing legislation, including fast track provisions for disaster situations, experience from recent disasters suggests this is used as an option of last resort, due to the lack of available funds to pay the required compensation. In situations where the use of private land has been necessary, the local authorities negotiated directly with land owners for the temporary use of land at no cost, given the urgency of the situation.²²¹

The preferred solution is to utilize land already under government ownership, however this process is cumbersome and can result in lengthy delays, particularly if the land will be permanently transferred to families for resettlement. Currently, the DDRC must confirm the numbers and status of those affected and make a recommendation to MoHA and MoLRM for their resettlement. The LRO is then required to conduct a survey within the same district to identify available government land. A proposal is then prepared by MoHA and MoUD, which is reviewed by MoLRM and then submitted to Cabinet.²²²

In a best case scenario, the process could be completed within 3 to 4 months, but is often delayed while the budgetary implications are resolved with the Ministry of Finance (MoF). In at least one such case, a proposal to resettle 9 families displaced by the Seti River flooding in May 2012 is still pending more than a year on.²²³

Efforts have been underway to find a lasting solution to this issue. MoHA described a proposal that at the time of writing this report was still under consideration to streamline the approval process after disasters:

- DDRC will make a recommendation on suitable land to MoHA
- This will be reviewed and sent to MoUD as lead of the Supplies, Shelter and Rehabilitation Sub-Committee which will then submit a plan to CDRC
- CDRC will submit the plan to Cabinet with approval from MoF
- A project team from DUDBC will be responsible for implementing the resettlement process

²¹⁷ Interim Constitution of 2007, art 19 (3)

²¹⁸ Natural Calamity (Relief) Act of 1982, art 11

²¹⁹ Land Acquisition Act of 1977, art 25(4)-(5) and (7)

²²⁰ Land Acquisition Act of 1977, art 20

²²¹ Interview with NRCS District Chapter Sunsari, 2 June 2013

²²² Interview with Ministry of Home Affairs, 28 May 2013

²²³ Interview with Ministry of Home Affairs, 28 May 2013

Additionally, it has been proposed that a certain amount of the annual budget be blocked as a Rehabilitation Fund, to be operated by DUDBC, however this is yet to be approved.²²⁴

It was confirmed by several sources that international organisations, INGOs and foreigners are not permitted to purchase land in Nepal and therefore will not be able to procure land for the purpose of establishing humanitarian sites, camps or plots of individual resettlement, unless a special decision of Cabinet is made.²²⁵ However, there have been cases reported of the government transferring land to the control (if not actual ownership) of international organisations such as ICRC, which was done in the case of camps for Tibetan refugees. Additionally, NRCS recalled several cases where the government had transferred ownership of land to them for the management of temporary camps.²²⁶

3.3 Location and suitability of land

There are no laws or policies that provide detailed standards or requirements for land for emergency shelters, camps or resettlement, rather they contain general provisions about assessing the risk of disasters. The National Shelter Policy 2012 requires planning for temporary shelter to “give special attention” to risk assessments and risk sensitive land use planning to minimize the further impact of disasters.²²⁷

In regard to urban areas, the NSDRM notes with concern the rapid growth of urban settlements in areas which are sloping and prone to landslides and floods and acknowledges a lack of planning by-laws to enforce proper hazard analysis prior to construction.²²⁸

The National Planning Commission is also intending to make ‘natural disaster appraisal studies’ a compulsory component of all physical infrastructure projects, but this remains yet to be implemented. Similarly, environmental impact requirements including analysis of soil stability and drainage/watershed are not being adequately applied and assessments have been found to focus largely on the impact of the project on the environment, rather than the other way around.²²⁹ Multi-hazard mapping has also been sporadic rather than systematic.²³⁰

The IDP Procedures also include reference to protection, requiring that “[i]n planning and providing temporary shelter and more permanent accommodation for IDPs, attention must be given to the special protection needs of the most vulnerable groups” including the allocation of a “child-friendly space” for children, young people and mothers.²³¹

²²⁴ Above, interview with Ministry of Home Affairs, 28 May 2013

²²⁵ Interviews with Land Revenue Office Sunsari, 2 June 2013 and Ministry of Home Affairs, 28 May 2013

²²⁶ Interview with NRCS Headquarters, 27 May 2013

²²⁷ National Shelter Policy 2012, art 4.6.3

²²⁸ National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p51

²²⁹ Benson C et al, “Economic and Financial Decision Making in Disaster Risk Reduction”, UNDP and Government of Nepal (2009), p63

²³⁰ Benson C et al, “Economic and Financial Decision Making in Disaster Risk Reduction”, UNDP and Government of Nepal (2009), p76

²³¹ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 23

In practice, the land identified for resettlement after disasters is frequently located in marginal or barren land areas of lesser value, away from services, infrastructure and livelihoods, and may also be too small to meet requirements. This can lead to the further isolation and disadvantage for those displaced, sometimes resulting in the land remaining unoccupied by the new inhabitants. During this study several examples were given of the allocated land being considered unsuitable for camps or beneficiary resettlement:

- Koshi Floods 2008: A site had been identified to accommodate up to 1,000 emergency shelters – a space which fell well below the requirements indicated in the Sphere minimum standards. Through a lengthy process of negotiation by members of the ESC, an agreement was eventually reached to accommodate only 250 shelters, a number still exceeding the Sphere standards, but more acceptable than the original proposal.²³² It was also reported that a number of families only visited the camps during the day, and at night returned to their own houses or stayed with friends or neighbours rather than in the congested camps.²³³
- Koshi Floods 2008: The land identified to resettle 235 landless families was considered to be flood-prone and subject to water logging, close to a forest area and therefore prone to elephant attacks. It was also located too far from the families' original communities and livelihoods and lacked access to electricity supply. Consequently around 130 houses remain unoccupied and the owners are unable to sell the property for 10 to 15 years..²³⁴
- Banke District Flooding 2007: 25,000 families were displaced by flooding, and in the case of 144 families, the land was considered too unsafe for return. They were resettled into an area near a national forest, but many wanted to return to work on their land. As a result many new houses were only occupied for some months of the year. Additionally the new village was situated within close proximity of Indian military barracks across the border. While this provided good opportunities to develop livelihoods through shop keeping and animal husbandry, some of the women in the village reported they did not feel safe outside or alone at night – a particular concern given that many homes did not have latrines, making it necessary to use nearby forest areas.²³⁵
- Floods in the Terai in 1993: It was reported that people were relocated to sites where land was available but where there were limited livelihood opportunities. Consequently, the families are still struggling some 20 years later.²³⁶

Additionally, beneficiary expectations may sometimes exceed the options available. In one example, following landslides in Bajura District, those people who were displaced and landless rejected the alternative land found within their same district, demanding land in the more fertile, and far more valuable, Terai area to enable them to secure better livelihoods. However MoHA noted that current policy is to identify land firstly

²³² Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p58

²³³ Interview with NRCS District Chapter Sunsari, 2 June 2013, and Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p57

²³⁴ Interviews with UNHABITAT, 28 May 2013; UNDP, 30 May 2013; Lumanti, 5 June 2013; Sunsari community affected by Koshi floods in 2008, 2 June 2013 with Koshi Community, and; Osinga D, "Nepal Shelter Documentation: Housing in the Terai, Technical Report", IFRC Shelter Research Unit (2011), p14

²³⁵ Monitoring visit conducted by IFRC and NRCS Headquarters in 2011

²³⁶ Interview with NSET, 5 June 2013

within the same VDC, then the same district and if suitable land is still not available, then in immediate surrounding districts, but no further.²³⁷ There are also challenges of finding land with sufficient space to allow communities to be kept together.²³⁸

It has been recognized that ensuring proper consultation with communities and people affected could also help to ensure that suitable land is selected, particularly with respect to access to safety, services and livelihoods.²³⁹ Such consultation is also acknowledged as a fundamental reflection of the right to freedom of movement.²⁴⁰ The Good Governance Act for example, requires “necessary consultation with stakeholder and civil society, if necessary, before the implementation of any matter of public concern”, including “due attention to the suggestions received from the consultation with stakeholders” during implementation.²⁴¹ Following the end of the recent 10-year conflict, it was also agreed that “[b]oth sides shall respect and protect the citizens’ right to free mobility and the freedom to choose within legal norms the location of one’s residence and express the commitment to respect the right of the people displaced by the conflict and their families to return back to their homes or to settle in any other location of their choice.”²⁴²

The IDP Policy and Procedures also reinforce the importance of consultation, stating that IDPs “shall participate in the planning, design and implementation of relevant strategies, programmes and activities” and making specific reference to the inclusion of women, children, the elderly and minorities.²⁴³ Moreover, in making decisions about the location of return or resettlement, “IDPs should be able to make such decisions voluntarily, without pressure and with complete, objective, up-to-date and accurate information on physical, material and legal safety issues in their area of origin”.²⁴⁴

Where possible, it would be useful to explore alternative means of supporting temporary shelter solutions more readily adaptable to the specific needs of individual families. This might include for example the provision of rent assistance or host family support rather than land²⁴⁵ (discussed further below).

3.4 Use of private and public buildings, schools and places of worship

In addition to the general powers of the government to implement “necessary measures” to secure public safety or to respond to a disaster, as discussed above, the Immovable Property Requisition Act also describes the terms under which land, buildings and other immovable property may be repurposed by the government for “any public purpose”.²⁴⁶ A notice must be written to the owner, giving a 35 day notice period for any complaint, which may also impose restrictions on the sale or significant

²³⁷ Interview with Ministry of Home Affairs, 28 May 2013

²³⁸ Interview with District Administration Office Sunsari, 2 June 2013

²³⁹ Interviews with NRCS Headquarters, 27 May 2013; ActionAID, 31 May 2013, and; UNDP, 30 May 2013

²⁴⁰ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 7.6

²⁴¹ Good Governance Act of 2008, art 20 (1), (3)

²⁴² Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), 22 November 2006, art 7.3.3

²⁴³ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 7.2

²⁴⁴ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 7.9

²⁴⁵ Interview with UNDP, 30 May 2013

²⁴⁶ Immovable Property Requisition Act of 1956, art 3(1)

modification of the property without approval within that time.²⁴⁷ If the requisition is deemed reasonable and needed in the circumstances, an order will be issued and the property must be transferred or handed over within 15 days, or “necessary force” may be used to seize the property.²⁴⁸

Once requisitioned, the government may make “reasonable” modifications at its own cost and may release the property back to the owner at any time, as far as possible in the same condition.²⁴⁹ Compensation for the requisition may be fixed in an agreement, or determined by an arbiter appointed by the government.²⁵⁰

Under the Act, the government may not requisition property which is used as the residence of the owner or their family members, or places “used for religious worship or school, hospital, public library, inn or orphanage or any public place” which are also being used as a residence by their manager. In the case of tenants who have been occupying the property for more than two months, the government shall “as far as possible, manage another such residence which it deems appropriate for such tenant”.²⁵¹

It is common for schools to be used as places of immediate refuge following a disaster, but sometimes also to accommodate displaced persons in the longer term. One such example was during the Koshi floods, where government schools and a disused prison were used to accommodate families for up to 9 months. In consultation with the Ministry of Education, MoHA issued a circular announcing the use of the schools for that purpose, but in the absence of a formal agreement, it was unclear as to how long the schools may be used. After a period of about 2 and a half months, concerns were raised about the disruption of classes prompting the government to seek alternative land for accommodating the families and adding to the pressure to relocate families to land which was unsuitable as camp sites.²⁵²

Places of worship such as temples and mosques have also been available for providing temporary accommodation to people displaced by disasters. However some legislation protects “traditional custom”, even to the point of imprisonment for up to one year, which has sometimes been used as a basis for excluding Dalits from entry.²⁵³

3.5 Environmental considerations for the selection of land

The National Parks and Wildlife Conservation Act specifies that no person shall “construct or possess house, hut, shelter, or any other structures of any material” or “occupy, clear, reclaim or cultivate” within a national park or reserve without obtaining written permission from the authorized official.²⁵⁴ Similarly the Forest Act prohibits the construction of houses and huts within its boundaries, and prescribes a penalty of up to NPR10,000 or imprisonment for up to one year (or both) and the house will be confiscated.²⁵⁵

²⁴⁷ Immovable Property Requisition Act of 1956, art 3(1)

²⁴⁸ Immovable Property Requisition Act of 1956, art 4(1)-(2)

²⁴⁹ Immovable Property Requisition Act of 1956, arts 5 and 6

²⁵⁰ Immovable Property Requisition Act of 1956, art 8(a)-(b)

²⁵¹ Immovable Property Requisition Act of 1956, art 3(2)(a)-(b)

²⁵² Interviews with ActionAid, 31 May 2013; NRCS District Chapter Sunsari, 2 June 2013, and; Kellet J, “A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008”, IFRC (2009), p55

²⁵³ Ancient Monument Protection Act of 1956, section 10; Muluki Ain 1962, and; No. 10 of Chapter on Miscellaneous Provisions in “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal”, DFID and World Bank (2010), p43

²⁵⁴ National Parks and Wildlife Conservation Act of 1973, art 5

²⁵⁵ Forest Act of 1993, arts 49(a) and 50(1)(a)

Under the Local Self Governance Act, wards, VDCs, Municipalities and DDCs have responsibilities for environmental protection including afforestation, biological diversity, preventing floods/soil erosion and controlling river pollution.²⁵⁶ The KVDA also has the authority to prohibit the use of natural resources “in such a manner as to leave an adverse impact” and to “prescribe conditions in respect to construction and other activities to be undertaken in forests, rivers and streams, ghats and aquatic areas for the conservation of nature and the environment in the plan area, and act accordingly.”²⁵⁷

There are other provisions which could have a bearing on using particular areas for temporary camps and settlements after disasters on the grounds of environmental protection. The Environmental Protection Act requires that any organisation (government, semi-government, non-government, institution)²⁵⁸ wishing to carry out a development project or other initiative that changes the use of land²⁵⁹, must complete an Initial Environmental Examination and may later be requested to conduct an Environmental Impact Study which will be sent to the Ministry of Population and Environment and opened for public consultation.²⁶⁰

Conversely, as described above, wide-ranging powers allow the government to act in the interests of public safety in times of emergency, which could potentially extend to the use of natural resources if required for emergency shelter. The Forest Act also specifically permits the use of government managed forests, community forests, lease hold forests or religious forests for the implementation of a plan of national priority if no alternatives exist and if there will be no substantial environmental impact.²⁶¹

It is not clear whether these provisions have ever been specifically invoked in a disaster situation so as to assist or impede the use of land for emergency or transitional shelter. There have been several reports of national forests being used for the temporary accommodation of disaster-affected families²⁶², however there have also been reports to the contrary. One such case arose in Narwarparsi District in 2002 when a number of families were displaced by floods. They found that the most convenient place to temporarily relocate without encroaching on private lands was by the roadside where they could more easily access shelter assistance from humanitarian organisations. However the following day, officials from the District Forest Office arrived and ordered their removal. The reasons given were partly on the grounds that the roadside was unsafe for children, but also to avoid encroachment into nearby national forest areas. No other suitable land was found and the families had to disperse and rely on the support from nearby host communities.²⁶³

In this case, the actions of the officials may have resulted from an absence of appropriate regulations for disaster situations. Indeed it would appear that decisions on forest use in disaster situations is at the discretion of the individual officials involved, rather than a specific policy decision.

Environmental protection is also a consideration when identifying the materials which could be used for temporary/transitional shelter construction. This issue is addressed in a further section below.

²⁵⁶ Local Self Governance Act of 1999, arts 28(h)(1)-(3), 25(e), 93(e), 96(c)(1) and (3), 96(2)(j), and 189(g)(1)-(2)

²⁵⁷ Kathmandu Valley Development Authority Act of 1988, art 6.1.4-5

²⁵⁸ Environmental Protection Act of 1997, art 2(e)

²⁵⁹ Environmental Protection Act of 1997, art 2(d)

²⁶⁰ Environmental Protection Act of 1997, arts 5 and 6(2), (3)

²⁶¹ Forest Act of 1993, art 68

²⁶² Interview with NRCS Headquarters, 27 May 2013

²⁶³ Interview with UNOCHA, 30 May 2013

Summary

Legislation exists to allow for the allocation of land for emergency and transitional shelter following a disaster, but is hampered by implementation challenges and bureaucratic procedures. Existing legislation enables land acquisition for use following a disaster, adequate compensation payments and empowers authorities from national to local level to ensure that rural and urban planning allows sufficient open spaces, which could be allocated for use as emergency shelter locations or camps. The challenge however is in the implementation. With the exception of the Kathmandu “open spaces” initiative, there has been little or no effective land use planning for disasters and limited space is available in urban areas to accommodate mass displacement following an earthquake. The Land Acquisition Act, despite including fast track procedures to expedite acquisition in special circumstances such as natural disasters, involves cumbersome processes through several ministries which take 3 to 4 months to complete under the best of circumstances, and in some cases a year or more. Moreover, the government has been seemingly reluctant to use acquisition powers in disaster situations, particularly when involving private land, preferring instead to use government owned marginal or barren land. Government authorities have occasionally initiated private negotiations with land owners to voluntarily allow the temporary use of land after a disaster, and there have been cases of government land being transferred to the control of humanitarian organisations, however there are no specific regulations for this. International organisations, INGOs and foreigners are not permitted to purchase land in Nepal unless a special decision of Cabinet is made to override existing law.

Existing laws and policies do not establish minimum standards for allocating adequate space for temporary camps or emergency and transitional shelters, resulting in cases of unsuitable land selection and disruption to communities. Although some provisions do exist for disaster risk assessments prior to settlement, they have not always been applied or enforced, thus sites selected for camps or resettlement after disasters have often been located in marginal areas with limited access to villages, livelihood opportunities, electricity or hazard protection and have not met Sphere minimum standards. Lack of adequate consultation with affected communities has led to camps and settlement locations being underutilised or abandoned. In the absence of clear guidelines, the long-term use of host families, schools and places of worship to accommodate people displaced by disasters have caused disruption to communities and have not been adequately supported. Some legislation has also been used to prohibit Dalits from entering places of worship, which may be required for refuge after a disaster. Exceptions to the lack of minimum standards are the IDP Policy and Procedures, which do include provisions for temporary shelter planning to meet special protection needs and reinforce the need for consultations with IDPs at all stages of the planning and implementation of programmes. They also make specific mention of the need to include women, children, the elderly and minorities, as well as the right to make decisions on return or resettlement based on the provision of full and accurate information. However as addressed previously, their application in disaster situations is unclear.

Environmental protection legislation does not necessarily prevent the use of land for temporary shelter after disasters, even in protected areas, however it lacks detailed provisions to ensure proper management. Adequate authority exists to make exemptions to environmental protection legislation when necessary to accommodate temporary shelter after a disaster, however there have been cases where its selective

application has been used to prevent the use of national forests and parks for temporary settlement, even in situations where no suitable alternatives existed. Such legislation would be strengthened by the development of specific criteria and procedures in such cases, to not only facilitate rapid response but to ensure that risk management and environmental considerations are also taken into account.

A number of new regulations and policies are currently under development which will fill some of the current regulatory gaps concerning land allocation and space for mass displacement. Of particular note is the “open spaces” initiative in Kathmandu city which has protected 83 sites from development for use as temporary camps or other humanitarian purposes. The spaces include a mix of large and medium sites on government-owned land, which have been legally protected by publication in the national Gazette and are managed by an inter-ministerial committee. Programmes to address ‘risk sensitive land use planning’ to better manage urban planning, which will be supported by new policies, and the development of resettlement guidelines and a recovery plan are also in progress. This includes further efforts to expand the number of spaces in the wider Kathmandu valley and to implement the “one tole, one open space” concept. A new proposal is under development to further streamline the acquisition process which would clarify ministerial responsibilities to enable faster resettlement after disasters.

Suggested ways forward

- **Existing legislation concerning the availability, acquisition and use of land could be further strengthened through the development of more detailed provisions specifically tailored to emergency and transitional shelter needs after disasters.** This could be integrated into the respective instruments on land use, urban planning, acquisition and environmental protection, and/or could be developed as part of any standalone guidelines or policies on disaster management, emergency and transitional shelter, resettlement and recovery.
- **Provisions should address issues such as:**
 - Further expediting acquisition procedures to enable rapid relocation of those displaced by disaster (either temporarily or in the longer term as required)
 - Assessment processes and minimum standards for determining land to be allocated for shelter after disasters, which takes into account environmental and hazard concerns, access to livelihoods and essential services as well as the safety and protection of vulnerable groups (the IDP Policy and Procedures offer useful provisions in this regard)
 - Adequate consultation with affected communities, and the wider host communities, to ensure locations are relevant to their needs
 - Guidance on the utilisation and support of host families, schools, places of worship and other community facilities on a time-bound basis, to ensure minimal disruption to the wider community

4. Shelter construction

In this section, the relevant laws, policies and practices are considered in relation to the types of emergency and transitional shelter and the materials used. Topics include the standards and models applicable to different types of structures, damage assessment and construction safety, availability and qualifications of shelter personnel and the availability and quality of shelter materials.

4.1 General construction standards

The National Shelter Policy 2012 identifies 5 types of housing in Nepal:

- **Permanent Housing:** Permanent residential structure owned by the user
- **Common housing:** A multi-storey permanent residential structure under common or joint ownership of users
- **Mixed Housing:** Multi-storey permanent structure for residential and non-residential activities
- **Rental Housing:** Permanent residential structure requiring payment for use, which is not under the ownership of the user
- **Temporary Housing:** Housing available to families displaced by natural calamities or conflict as immediate relief, prior to permanent resettlement, including huts or camps used for a limited time.²⁶⁴

The 2011 Census revealed that the largest percentage of houses in the country are made of mud-bonded bricks or stone, have a foundation of mud-bonded bricks, with roofs divided fairly evenly in between galvanized sheeting, tile/slate, reinforced cement concrete (RCC) and thatching/straw.

The detailed data of the national average is shown below:

Foundations	Mud-bonded bricks	44.21%
	Wooden pillar	24.9%
	Cement bonded bricks	17.57%
	RCC pillar	9.94%
	Other	2.33%
Outer walls	Mud-bonded bricks or stone	41.38%
	Cement-bonded bricks or stone	28.74%
	Bamboo wall	22.48%
	Wood/planks	5.31%
Roof	Galvanized sheet	28.26%
	Tile/slate	26.68%
	RCC	22.48%
		19.03%

²⁶⁴ National Shelter Policy 2012, section 3.1.2

Urban areas have experienced a predominance of ‘owner-builder’ housing which does not involve professional designers or engineers. Typically these structures are up to 3 storeys high, framed with reinforced concrete, burnt brick or hollow concrete outer walls, brick infill walls, column beams and reinforced concrete flooring and roofs.²⁶⁵

Research has shown that “the per cent of building construction that could be considered to be earthquake resistant is negligible, whereas the overwhelming majority of buildings and structures indicate a high to very high vulnerability”.²⁶⁶ The old centres of many cities also contain houses using more traditional materials which have become dilapidated and further compromised by poor repair work. Moreover, those in slum or squatter communities are often living in makeshift shelters using poor quality or eroded materials which offer little protection from the elements.²⁶⁷ These factors, combined with the widespread use of inferior quality building materials, have widely been acknowledged to pose a major risk to life in the event of an earthquake²⁶⁸ – as well as to increase the likely scale of displacement.

Significant efforts have been made to improve housing and construction standards through the introduction of the Building Act 1998 and a detailed National Building Code 1994²⁶⁹ addressing the basic structures and materials most commonly used across the country as well as ‘state of the art’ modern buildings. The Building Code, currently under revision, is considered to be a good basis for addressing the major structural risks in the country and “a milestone in professionalizing the building and construction sector”.²⁷⁰ In some cases it purports to exceed international standards for seismic resilience.²⁷¹

The Building Act defines a building as “any physical structure made for residential, industrial, trade, office, convention centre, cold storage, warehouse purposes or other uses, and this term also includes any part of such a structure”.²⁷² However, as a reflection of the realities of building construction in Nepal, both the Building Act and the Building Code take a pragmatic approach to the requirements and enforceability of different types of buildings. These are summarized as follows:

Type/Building Code standard	Building description	Details
Category A International ‘state of the art’	Modern building to be built, based on the international ‘state-of-the-art’, also in pursuance of the building codes to be followed in developed countries.	<ul style="list-style-type: none"> Sophisticated, mandatory standards for highly-skilled professionals. Onus shall be on the designer to prove that the Nepal Code requirements have been met and/or exceeded.

²⁶⁵ National Building Code 1994, NBC 201, sections 0.2 and 1.1.2

²⁶⁶ “Risk Sensitive Land Use Plan, Kathmandu Metropolitan City, Nepal”, German Federal Foreign Affairs Office and Earthquake Megacities Initiative, Mainstreaming Disaster Risk Reduction in Megacities: A Pilot Application in Metro Manila and Kathmandu (2010), p44

²⁶⁷ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p40

²⁶⁸ National Building Code 1994, NBC 201, section 0.2, and National Building Code 1994, section 0.1

²⁶⁹ Building Act of 1998 and National Building Code 1994

²⁷⁰ Interviews with DUDBC, 6 June 2013, and “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p79

²⁷¹ National Building Code 1994, NBC 000: Requirements for State of the Art Design: An Introduction, section 1.1.1

²⁷² Building Act of 1998, art 2(a)

Category B Professionally engineered structures	Buildings with plinth area of more than 1,000 square feet, with more than 3 floors including the ground floor or with structural span of more than 4.5 meters.	<ul style="list-style-type: none"> • Standard minimum requirements for all professionally-qualified engineers in Nepal. • Covers all usual structures such as hospitals, meeting halls, factories, warehouses, multi-storey buildings and residential buildings. • Materials, analysis and design, construction safety and site considerations are all covered.
Category C Mandatory Rules of Thumb	Buildings with plinth area of up to 1,000 square feet, with up to 3 floors including the ground floor or with structural span of up to 4.5 meters.	<ul style="list-style-type: none"> • Recognises it is not practical in Nepal at present to insist that all small buildings be designed for strength by a professional adviser. • Simplified rules to enable permit application approval by local authorities. • Includes limits on spans and heights, minimum reinforcing and member sizes, positioning of earthquake-resisting elements and other such rules.
Category D Guidelines for Remote Rural Buildings	Small houses, sheds made of baked or unbaked brick, stone, clay, bamboo, grass etc.	<ul style="list-style-type: none"> • Diagrams and descriptions aimed at the technical advisers to owner/builders in villages. • Aim to improve local practices to build seismic resistance. • Guidelines are intended to be mandatory for structures built in areas controlled by a building permit-issuing local authority.

The MoUD, through DUDBC, has overall responsibility for the development and implementation of planning and building standards in the country, including for emergency shelter. Other responsibilities, such as ensuring building code compliance through by-laws and building construction approval, are shared with other bodies, such as the Kathmandu Valley Town Development Committee, Municipalities and VDCs, the latter of which falls under the purview of the Ministry of Federal Affairs and Local Development.²⁷³

In general, any person, body or body of government must construct buildings in accordance with the standards of the building code and must make an application, including the map and design of the building to the Municipality for approval. The Municipalities (or VDCs where approval authority has been established) have the responsibility to approve all building applications and issue permits, with monitoring to be undertaken by Municipalities and Town Development Committees.²⁷⁴

The approval process is said to take about one month following the lodging of an application, including a 15-day consultation period to receive any objections from the neighbours. A temporary permit is granted for the completion of the first level and if that is deemed to be in accordance with the building code, a permit is issued for the remaining storeys. Application fees depend on the overall square meter space of the building, ranging from NPR10 per square meter for buildings of up to 3,000 square

²⁷³ Local Self Governance Act of 1977, arts 96(b)(6), 149-164 and 28(f)(2), and Building Act 1998, arts 11(1) and 13(1). See also "Nepal: Urban Housing Sector Profile", UNHABITAT (2010), pp22-23

²⁷⁴ Building Act of 1998, arts 11(1) and 13(1)

meters, to NPR20 per square meter for building over 5,000 square meters, with apartments charged at NPR25 per square meter. These fees are a key source of revenue for sustaining the unit.²⁷⁵ In practice however, resource limitations have necessitated approvals only being required for buildings over 3 storeys high. This is discussed further below.

The Building Act also requires that buildings “shall be built under the supervision of a designer or his/her representative, engineer or architect whose rank is at least the same as that of the designer, engineer or architect who has certified the map and design of that building.”²⁷⁶ Under the Nepal Engineering Council Act of 1998, all engineers working in Nepal are required to be registered with the Nepal Engineering Council.²⁷⁷ Registration requires the lodging of an application with copies of degrees and academic qualifications from recognized academic institutes published in the Nepal Gazette.²⁷⁸

Buildings which have not received approval or which are found not to be in compliance with the building code may have their construction stopped, be fully or partially demolished or the person undertaking the construction will be fined up to NPR50,000.²⁷⁹

For development and construction programmes of NGOs, the Local Self Governance Act requires a feasibility study, the identification of priority projects (for example, those which engage local labour or promote social objectives), coordination with local authorities and technical reviews or quarterly evaluations as conditions for approval by VDCs, DDCs and Municipalities,²⁸⁰ however these procedures have not been tailored to emergency situations.

For the construction of apartment buildings, the Ownership of Joint Housing Act requires developers to conform to the “design, structural design, plan approved by the competent authority and criteria and standards approved and prescribed by that authority”, and any resulting damage from a lack of compliance can result in a fine ranging from NPR100,000 to 500,000 or reasonable compensation to owners in the case of demolition.²⁸¹

For public construction works, including reconstruction and maintenance, the Construction Business Act also requires a license and application process “Foreign construction entrepreneurs” can receive a temporary license to undertake a specific construction project valued at over NPR60 million, if they have been selected through a competitive process, in a joint venture with a local company.²⁸²

²⁷⁵ Interview with Kathmandu Municipality, 28 May 2013

²⁷⁶ Building Act of 1998, art 10

²⁷⁷ Nepal Engineering Council Act of 1999, art 12(3)

²⁷⁸ Nepal Engineering Council Act of 1999, art 21

²⁷⁹ Building Act of 1998, art 14(1)-(2)

²⁸⁰ Local Self Governance Act of 1999, arts 45-52, 113-121 and 200-213

²⁸¹ Ownership of Joint Housing Act of 1997, art 28(2)

²⁸² Construction Business Act of 1999, arts 2 and 6(1)-(3)

4.1.1 Application of construction standards to emergency and transitional shelter

The NBC does not make specific reference to emergency and transitional shelter, however as stated above, every building must comply with the relevant category and must receive approval.

Emergency shelters (including those described in the Shelter Cluster Contingency Plan below) are likely to fall under category “D”, thus the applicable standards are found in “NBC 203: Guidelines of Earthquake Resistant Building Construction: Low Strength Masonry”. This document applies to small buildings with a low strength masonry load bearing wall constructed with non-erodible walling units such as stones, burnt clay bricks, solid blocks, stabilised soil blocks or mud mortar as a binder.²⁸³ Of particular relevance is a specific annex covering the use of bamboo for construction, including techniques for harvesting, preservation, fire retardant and storage.²⁸⁴ Buildings under category D are subject to less rigorous approval processes, not requiring the submission of maps and designs for approval²⁸⁵, and only requiring approval in areas where there is a building permit authority and process in existence²⁸⁶ – likely to be in more populated or urban areas of the country.

In cases where more substantial buildings may require repair or re/construction, the Mandatory Rules of Thumb (MRT) are likely to be the applicable standard (for category “C” buildings). These rules cater for the most common types of owner-builder houses, often made of brick and/or reinforced concrete with regular column beams and concrete slab foundation, of up to 3 storeys. The MRT has a particular focus on the importance of load bearing walls for earthquake resistance and also covers topics such as site selection, structure, layout, construction materials, design and reinforcement. Mid-level technicians such as overseers and draftspersons are the intended users, who may not otherwise be qualified to assess structural integrity, but would be able to follow the requirements to meet the minimum standards required for approval.²⁸⁷

Following a disaster, it is likely that most repairs or construction conducted within the emergency phase will focus on buildings of 3 storeys or less (which are the most common) and therefore currently do not require approval from the Municipality or VDC (as explained further below). However the expectation is that the MRT should be applied as prescribed, under the supervision of qualified personnel.

In the case of large-scale shelter or reconstruction projects after a disaster, there is the potential for the provisions of the Local Self Governance Act, Ownership of Joint Housing Act and Business Construction Act to apply (as described above) requiring additional processes to receive approval prior to implementation, irrespective of the building size. These are unlikely to be directly applied to humanitarian organisations in the immediate aftermath of a disaster, although it is possible that some of the provisions could be applied later in the recovery process, such as a licensing and application

²⁸³ National Building Code 1994, NBC 203: Guidelines of Earthquake Resistant Building Construction: Low Strength Masonry, section 0.6

²⁸⁴ National Building Code 1994, NBC 203: Guidelines of Earthquake Resistant Building Construction: Low Strength Masonry, Annex 1

²⁸⁵ Building Act of 1998, art 11(1)

²⁸⁶ National Building Code 1994, NBC 203: Guidelines of Earthquake Resistant Building Construction: Low Strength Masonry, section 0.4

²⁸⁷ National Building Code 1994, NBC 201: Mandatory Rules of Thumb – Reinforced Concrete Buildings with Masonry and NBC 202: Mandatory Rules of Thumb – Load Bearing Masonry

approval process and requirements for partnership with local organisations, the establishment of consumers' committees and public participation.²⁸⁸

4.1.2 Construction standard compliance

The overwhelming challenge is the lack of adherence to and enforcement of building construction standards in Nepal, often cited as one of the major risk factors in the country and widely recognized by numerous studies and policy documents.²⁸⁹ At the institutional level, the NBC is yet to be specifically integrated into many municipality by-laws across the country²⁹⁰ and building code compliance is currently not a requirement for loan and mortgage processes.²⁹¹

Compliance has also been said to be “hindered by lack of adequate resources in terms of trained human resources and proper institutional/organisational structure in the municipalities”²⁹² Indeed, a lack of suitably qualified and trained personnel in Nepal in general is major issue preventing the effective implementation of building standards.²⁹³ It has been noted that a large proportion of the skilled workforce, particularly planners, architects, masons, carpenters and plumbers, have left Nepal to work abroad in other parts of Asia and the Middle East. While there are said to be sufficient numbers of engineers educated in Nepal, relatively few were progressing to the post-graduate level. This has, in part, resulted in gaps in both the government and the private sector alike.²⁹⁴

Government authorities responsible for reviewing, approving and monitoring building construction suffer from a lack of financial and human resources to effectively fulfil their mandates. The Kathmandu Municipality advised that, with a staff of 25 people, no capacity exists to approve all buildings in the capital, so for practical purposes approval is only required for buildings exceeding 3 storeys (which number around 3,000 to 4,000 applications per year) and there is no capacity to monitor the Building Code compliance of existing buildings at all.²⁹⁵

Even for smaller buildings, where the responsibility rests with the designer or builder to ensure the MRT or guidelines are met, these are considered to be largely unimplemented.²⁹⁶ The majority of owner-builders try to save costs by using so-called ‘petty contractors’ and the informal workforce for the actual construction, many of whom are labourers from India, and only use the services of professional engineers or architects for the official certification of designs, which then may or may not be followed.²⁹⁷

This situation is indicative of a widespread lack of political will and public interest in making building safety a priority concern and consequently has been the subject of several international development projects and initiatives including:

²⁸⁸ See, for example, Construction Business Act of 1999, arts 2,3, 4 and 6

²⁸⁹ See, for example, National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p51

²⁹⁰ See “Shelter Response Strategy and Plan for Earthquake Disasters for the Kathmandu Valley, Nepal (Draft Report)”, Prepared as part of the project “Risk Mapping for Shelter Response” program of the Global Emergency Shelter Cluster, NSET (2010), p30

²⁹¹ Interview with UNDP, 30 May 2013

²⁹² See, for example, “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), and National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p51

²⁹³ National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p51

²⁹⁴ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp78-80

²⁹⁵ Interview with Kathmandu Municipality, 28 May 2013

²⁹⁶ Interview with Kathmandu Municipality, 28 May 2013, and National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p51

²⁹⁷ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp78-80

- A programme by UNDP to integrate the NBC into municipality by-laws and the automation of building permit approvals to improve compliance and reduce the burden on the already-overstretched resources of government.²⁹⁸
- Multi-partner efforts for the retrofitting of public schools and hospitals in Kathmandu as part of the NRRC Flagship 1.²⁹⁹
- A USAID/OFDA funded project, implemented by NSET, to encourage building code compliance through advocacy, capacity building of municipality officials and other personnel and the development of further recommendations to improve compliance.³⁰⁰
- Inclusion of training for local masons to support the repair and reconstruction of earthquake-resistant housing as part of the government's Recovery Plan for the Taplejung earthquake.³⁰¹ (This programme was deemed a success, with trained local masons also able to improve their livelihoods as a result of their additional knowledge and training.³⁰²)
- Another possible solution suggested during this study was the outsourcing of assessments and monitoring to a third party such as the Institute of Engineering and other colleges, to provide trained personnel for Municipal authorities to fulfil these functions.³⁰³

Concern remains however about the possibility of a major disaster, in particular an earthquake in Kathmandu, which will render even the limited existing approval and monitoring systems completely ineffective for a significant time. Thus a post-disaster plan for ensuring building code compliance for emergency, transitional and permanent shelters is urgently required, including to maximise opportunities to improve future resilience.

4.1.3 Specific standards for emergency shelter construction

Currently there are no officially mandated models or standards for emergency or transitional shelter for Nepal. The National Shelter Policy 2012 calls for an increase in production of “temporary housing, such as huts, camps etc...or mud-built houses”, to be used in the immediate aftermath of disasters.³⁰⁴ The Policy includes a plan to “formulate emergency temporary housing plan (contingency plan) and appropriate standards in order to provide immediate relief to the families displaced by the reasons of natural calamities or conflict”.³⁰⁵ In doing so, the Policy also requires temporary housing “to the extent possible” to use technology which is also capable of storage for emergency use.³⁰⁶

²⁹⁸ See UNDP at: <http://www.cdrrmp.org.np/nepal-national-building-code-and-risk-sensitive-land-use-planning-13.html>

²⁹⁹ See <http://un.org.np/nrrc/flagship1>

³⁰⁰ See USAID/NSET, ‘Building Code Implementation Program Municipalities of Nepal (BCTPN): A program to support earthquake safer building construction in Nepal’, October 2012–September 2015

³⁰¹ See, for example, interviews with UNDP, 30 May 2013, and UNHABITAT, 28 May 2013

³⁰² Interview with UNDP, 30 May 2013

³⁰³ Interview with Kathmandu Municipality, 28 May 2013

³⁰⁴ National Shelter Policy 2012, art 4.6

³⁰⁵ National Shelter Policy 2012, art 4.6.1

³⁰⁶ National Shelter Policy 2012, art 4.6.2

Currently, the most comprehensive development of emergency and transitional shelter models is found in the ESC Contingency Plan and the Draft NRCS Emergency Shelter Guidelines, neither of which have been officially adopted by the government of Nepal, although representatives of DUDBC have had significant input and it is intended that the Shelter Contingency Plan will become the official government standard.³⁰⁷

The ESC Contingency Plan includes 2 emergency shelter models: a semi-circular/parabolic type and a triangular type, suitable for hot climates; and a twin type, suitable for condensed urban settings. The specifications are based on Sphere standard, which are also extracted and form part of the Contingency Plan, in addition to a list of specifications for Shelter Tool Kit items, to be used for the construction of the shelter models. The Draft NRCS Emergency Shelter Guidelines include the same models with a greater level of detail on the rationale for emergency shelter models and construction methodology, based largely on the IFRC Shelter Kit Guidelines.³⁰⁸

The ESC Contingency Plan was first applied during the Koshi Floods of 2008, however a review of the ESC during that operation found that it “was hardly used at all” and “largely irrelevant” due to its lack of detail. Moreover, it did not prove to be an effective tool for setting the standards for shelter models, with inconsistency of shelters cited as one of the major concerns of the early stage of the operation. Shelters were found to range from tarpaulin hung over a simple frame, to various tent models, and semi-permanent housing complete with kitchens.³⁰⁹

Since that time, the Contingency Plan has been through several revision workshops chaired by DUDBC involving key shelter partners and government, which have progressively added details on models and standards, which were subsequently disseminated during to Shelter Cluster meetings. All agencies were asked to adhere to the standards when procuring shelter materials and a mapping was undertaken to identify the quantities of standardized materials already in stock; however recent experience has proved these efforts to be inadequate.

Following the Taplejung earthquake in 2011, a monitoring visit of IFRC and NRCS found that the emergency shelters, largely comprising bamboo structures with tarpaulin roofs and sides, varied in quality and were generally inadequate to meet the needs of families given the imminent winter. This was the subject of extensive discussions by Shelter Cluster partners to find possible solutions, including the procurement and construction of more durable transitional shelters.³¹⁰ However, in the absence of a request for international assistance from the government, a lack of resources and logistical challenges, as well as the imminent launch of a Recovery Plan, it was decided this plan was not feasible (further details are included in Annex A).

Other examples from disaster situations include families being provided with unsuitable housing, such as concrete buildings which were too costly to maintain, or shelter without adequate provisions for livestock which was regarded as a lack of cultural sensitivity.³¹¹

³⁰⁷ Interview with DUDBC, 6 June 2013

³⁰⁸ “Shelter Kit Guidelines”, IFRC (2010)

³⁰⁹ Kellet J, “A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008”, IFRC (2009), pp49 and 52 and Interview with NRCS District Chapter Sunsari, 2 June 2013

³¹⁰ See, for example, Meeting Minutes, Emergency Shelter and Non-Food Item Cluster, IASC Nepal, 21 October 2011, 5 December 2011 and 13 January 2012

³¹¹ Interview with NSET, 5 June 2013

Although it could be argued that the above situations were the result of a particular set of practical issues faced at the time, in the case of the Taplejung earthquake, it is possible that a law or policy establishing clear standards, criteria and timeframes for the provision of emergency and transitional shelter and the reconstruction/repair of permanent shelter could have produced a better outcome. It may have prompted a more rapid decision-making process on the part of the government to release and/or appeal for funds for the response and recovery phases of the disaster, thus reducing the amount of time families had to spend in poorly insulated shelters. Further clarity and enforcement of the NBC with regard to emergency and transitional shelters and/or the insistence of mandatory adherence to the models included in the Shelter Cluster Contingency Plan, may also have improved the quality of shelters provided.

Fortunately, in addition to plans for the integration of emergency and transitional shelter models into national policies, there are also plans to develop detailed recovery guidelines, which may also help to accelerate response processes and ensure that humanitarian standards and quality of shelters can be maintained.³¹² However it is uncertain the extent to which these could be applied in a major earthquake scenario, for which additional planning processes may be required.

Summary

The National Building Code provides useful and detailed standards on a range of building types which are applicable for emergency and transitional shelter as well as for repair and reconstruction, though it does not include specific guidelines for disaster situations. The NBC, the primary instrument for setting construction standards, is considered to offer adequate guidance for seismic resistance for all types of structures found in Nepal including smaller structures relevant to emergency and transitional shelter. However, the Code falls short of specifying models for emergency and transitional shelters. These have been developed by the humanitarian community in the context of the ESC, with input from government – and while planned, they have not yet been adopted as national standards.

The application of general construction standards and regulations to the provision of emergency and transitional shelter remains unclear, particularly in the aftermath of a major earthquake. This applies in particular to the following:

- Requirements of the Building Act for all construction to be supervised by duly authorised designers, architects and engineers (the latter of which must be registered with the Nepal Engineering Council) particularly given the lack of sufficiently-qualified personnel and the lack of clarity on recognition of foreign engineers
- Requirements of the Local Self Governance Act requiring feasibility studies, coordination and technical reviews for NGO construction projects
- Requirements for approval for construction of apartment buildings (for example as part of post-disaster repairs) under the Ownership of Joint Housing Act
- Requirements for the licensing of foreign entrepreneurs for large construction projects under the Construction Business Act

³¹² Interview with DUDBC, 6 June 2013, and UNHABITAT, 28 May 2013

However some regulations may be useful to apply in the early recovery process, such as a licensing and the approval process and requirements for partnership with local organisations, the establishment of consumers' committees and public participation, provided these are adequately tailored to meet the practical constraints of disaster situations.

Effective compliance with the Building Code can be improved by increased investment, stronger political will and enhanced public interest, together with detailed planning for shelter following a major earthquake. Additional government resources are required for undertaking building approval processes, creating a reliance on self-monitoring by designers and engineers for buildings under 3 storeys high (which includes a large majority of owner-built houses in urban areas) as well as the types of structures used for emergency and transitional shelter. Given the prevalence of poor construction under normal circumstances, it is likely that compliance in post-disaster settings will be further reduced. There has already been evidence in recent disasters of emergency shelter standards falling short of the specific standards provided in the Shelter Contingency Plan. Moreover, there are no plans for the monitoring and enforcement of construction standards following a major earthquake.

Current innovative plans for improving compliance with building codes and adoption of new national standards and procedures will help to enhance the speed and quality of shelter assistance. These include the digitization and automation of building code approvals; the integration of the NBC into municipality by-laws; initiatives to improve building code compliance through advocacy and training; adopting the emergency shelter models and standards into national policy; and the development of detailed recovery guidelines.

Suggested ways forward

- **In addition to the current work to improve compliance with the Building Code and the adoption of national standards for shelter models and recovery guidelines, described above, further policy development and planning on emergency and transitional shelter should consider the following elements:**
 - A detailed contingency plan for the provision of emergency and transitional shelter in the event of a major earthquake in Kathmandu Valley. This should include reference to the various regulations and standards applicable to different shelter responses and strategies for ensuring accountability, monitoring and compliance, which should form part of wider earthquake contingency planning processes.
 - Further strengthening of accountability mechanisms that could be applied later in the early recovery process, such as a licensing and application approval process and requirements for partnership with local organisations, the establishment of consumers' committees and public participation.
- **Further collaborative efforts can also be undertaken in order to scale up public advocacy around the need for building code compliance,** capitalising on the current strategies of the NRRC and the work of existing programmes.

4.2 Building damage assessments and construction safety

4.2.1 Post-disaster damage assessments

Following an earthquake, there is a need for specific standards and methodologies for assessing the extent of damage to buildings and determining their safety and need for repair or demolition. In this regard, the organisation NSET has developed a “Seismic Vulnerability Evaluation Guideline for Private and Public Buildings” which was submitted to the (then) Ministry of Physical Planning and Works in November 2009 for eventual adoption as the official national standard. The Guideline provides a much needed technical framework for the conduct of assessments after an earthquake in a format which can be used by any relevant professional in the immediate aftermath.

Part 2 of the Guideline covers Post-Disaster Damage Assessment, with sections addressing the damage assessment process, rapid evaluation and detailed evaluation. The rapid assessment process is based on an initial visual assessment which can be conducted by any engineer, architect or similarly experienced person, primarily to assess buildings as safe or unsafe for entry and/or occupancy based on a number of criteria. A later more detailed assessment is intended to be conducted by structural engineers, with the main purpose of assessing compensation, and to inform reconstruction planning, repair and retrofitting.³¹³

A major challenge however is the lack of trained personnel to conduct such assessments. Currently, NRCS is tasked with conducting initial rapid assessments at the local level, for which local staff and volunteers are trained using a simple, nationally-agreed template. This includes a cursory assessment of the number of houses and buildings which are partially damaged or destroyed, however it has been recognized that within Nepal “no capacity exists for building damage assessment and building triage, which is vital after a disastrous event.”³¹⁴

This was witnessed following the Taplejung Earthquake in 2011. Although DUDBC had the responsibility and mandate of the government to conduct a detailed damage assessment, teams were not mobilized until 3 to 4 months after the earthquake. In fact, NSET were the first to mobilise teams of engineers to conduct detailed assessments based on the Post-Disaster Assessment Guidelines, although even this was delayed due to the timing coinciding with a significant national holiday period, making it difficult to recruit sufficient people, as well as the logistical challenges of reaching some of the affected areas. Until those assessments were completed the official government figures indicated that approximately 8,000 houses were severely damaged, whereas the detailed assessments by NSET and later confirmed by DUDBC, revealed around 20,000 houses fell within the category of severely damaged.³¹⁵ Conversely, following a fire in Saptari District in 2013, it was reported that although some 50 families had been registered for assistance, a DUDBC assessment determined that only 19 families had suffered permanent damage or destruction to their homes.³¹⁶ These examples demonstrate a clear need to develop systematic deployment procedures for damage assessments for activation as soon as possible after a disaster.

³¹³ “Seismic Vulnerability Evaluation Guideline for Private and Public Buildings, Part II: Post Disaster Damage Assessment”, NSET (2009), p11

³¹⁴ National Strategy for Disaster Risk Management, Government of Nepal, March 2008, p51

³¹⁵ Interview with NSET, 5 June 2013

³¹⁶ Interview with ActionAID, 31 May 2013

In the case of a major earthquake, the scale of the damage and the likely depletion of capacities for conducting damage assessments will have a significant impact on the ability to confirm accurate assessment results in a timely manner, hence a separate process may be required for managing and triangulating data for this scenario, to allow rapid decision-making in the interests of public safety and to enable estimates for response planning purposes, followed by more detailed assessments at a later time based on agreed priorities.

4.2.2 Safety standards

The NBC sets safety standards for construction workers and provides the minimum standards to be incorporated into all construction contracts.³¹⁷ The standards include provisions relating to:

- Material handling
- First aid facility and health
- Fire fighting
- Site preparation
- Earthworks in excavation
- Construction of foundations, walls and roofs
- Electrical works
- Temporary works (ladders, scaffolding)
- Demolition of structures
- Use of explosives
- Labour welfare

The responsibility for compliance verification rests with the engineer or their representative in situations where a formal construction contract has been concluded, but in the case of owner-builders the provisions are considered “advisory” only.³¹⁸ In the immediate aftermath of a disaster situation, in particular a major earthquake, it is unlikely this standard would be monitored or enforced; however safety standards are clearly important for those undertaking or managing shelter construction work.

Summary

The Guideline on Post Disaster Damage Assessment serves as a vital guide for assessing the safety of buildings after an earthquake, although it is not yet adopted as the national standard and may require adaptation or additional planning for a major earthquake scenario. The recent experience from the Taplejung earthquake highlights the need for a larger pool of appropriately trained engineers, masons and other construction personnel to conduct seismic damage assessments, as well as rapid deployment procedures. A major earthquake may require additional planning to take into consideration the scale of damage and capacity limitations.

³¹⁷ National Building Code 1994, NBC 114: Construction safety, section 1

³¹⁸ National Building Code 1994, NBC 114: Construction safety, section 1

An increase in qualified personnel within the construction sector in Nepal is needed to reduce gaps and delays in shelter assistance after a disaster. The large migration flow of qualified engineers and other related professionals out of Nepal places a strain, including for conducting detailed damage assessments after earthquakes and other disasters, for the approval of building designs and monitoring compliance with building codes.

The Building Code includes a number of detailed construction safety standards, which are to be included in all construction contracts, however it is unclear if or how this would be applied and enforced in disaster situations.

Suggested ways forward

- **Ensure the Guideline on Post Disaster Damage Assessment is further strengthened through its integration into national government standards and disaster response planning, with particular consideration given to:**
 - Developing a mobilization mechanism for the rapid deployment of teams for damage assessment
 - Expanding the pool of professionals trained in damage assessment, within Kathmandu and also at district level to accelerate the speed of deployment
 - Additional planning for the process of conducting damage assessments following a major earthquake in Kathmandu Valley or other urban centres
- **Consider the integration of minimum construction safety standards** into policies and guidelines on emergency, transitional and recovery shelter construction.

4.3 Shelter materials

4.3.1 Standards for construction materials

Specific standards for materials to be used for construction purposes are detailed in the Emergency Shelter Cluster Contingency Plan and the NBC. In the case of the former, the materials included are those for the recommended shelter models and the contents of the NFI Kits and Shelter Kits, including tarpaulins, bamboo, rope, nails, wire and building tools.³¹⁹ These standards are based on those contained in the Emergency Relief Items Catalogue of the ICRC/IFRC.

The NBC includes more detailed specifications on a wider range of materials based on the standards applied by the Nepal Bureau for Standard and Metrology (NBSM), which are largely based on Indian Standards and adapted to the Nepal context.³²⁰ There are also separate documents containing detailed standards for some types of materials³²¹, as well as “general indications” to ensure greater earthquake resistance.³²²

³¹⁹ “Contingency Plan for the Coordination of Emergency Shelter and Non-Food Items”, IASC/Humanitarian Country Team Nepal, Emergency Shelter and Non-Food Item Cluster 2011/12 (August 2009, updated 2011), Annex VA

³²⁰ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p77

³²¹ National Building Code 1994, NBC 109: Masonry Unreinforced; NBC 110: Plain and reinforced concrete; NBC111: Steel; NBC112: Timber; and NBC113: Aluminium

³²² National Building Code 1994, NBC 000: Requirements for State of the Art Design: An Introduction, section 1.4.1-3

The specifications also permit the use of new materials not included in the list, as well as recycled or used materials provided they meet or exceed the standards of quality, strength, effectiveness, fire resistance, durability, safety, maintenance and compatibility – the responsibility for obtaining proof resting with the building owner or their authorized representative.³²³

Procedures for the testing of materials are also included, and can also be verified by the NBSM.³²⁴ The Building Code also provides that materials must be stored and transported in a way “that no deterioration or loss or impairment of their structural and other inherent properties takes place.”³²⁵

While the standards themselves are regarded as adequate, the difficulties of applying and enforcing these national standards have been widely acknowledged, and there are legal and practical challenges impacting the quantity and quality of these different materials on the market.³²⁶ These are described further below.

4.3.2 Quality of materials

Most basic types of construction material are produced in Nepal, including cement, steel rod and corrugated galvanised iron, as well as small construction materials such as nails, hinges and fittings. Much of the raw material is however imported from India and China, the regulation of which is extremely challenging due to the largely informal character of the construction sector. Even in the formal construction sector, quality standards are not being met, for example, only 8 of the 54 registered cement factories and 12 out of 35 reinforced steel rod producers in Nepal have been assessed as meeting the National Standard mark.³²⁷ The overall quality of local bricks is also considered quite low and their manufacture has been restricted to rural areas because of environmental concerns.³²⁸

Consequently, finding acceptable quality on the local market can be a challenge and a number of Shelter Cluster members have reported difficulties in procuring materials on the local market which meet the specifications of the ESC and national standards. Indeed, following the Taplejung Earthquake in 2011, a monitoring visit of IFRC and NRCS one month later revealed that tarpaulins provided by some agencies did not meet adequate quality standards and were already showing signs of wear and tear. Some affected families were purchasing their own sub-standard tarpaulins on the local market in view of the cost and the absence of alternatives.³²⁹

Procurement rules can also pose challenges selecting the best quality materials. For public entities and some other organisations which are required to follow the Public Procurement Act (including NRCS), price considerations take precedence over quality, requiring the selection of the lowest bid that meets the minimum criteria³³⁰, without regard to other factors. International procurement may only be undertaken if it is a

³²³ National Building Code 1994, NBC 001: Materials Specifications, sections 4 and 5

³²⁴ National Building Code 1994, NBC 001: Materials Specifications, section 8, and “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), p77

³²⁵ National Building Code 1994, NBC 001: Materials Specifications, sections 6 and 7

³²⁶ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp80 and 90

³²⁷ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp81-82

³²⁸ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp80-81

³²⁹ IASC Nepal. Meeting Minutes, Emergency Shelter and Non-Food Item Cluster, IASC Nepal, 21 October 2011

³³⁰ Public Procurement Act of 2007, arts 25(5) and 27(1)

donor requirement or if the goods are not available within Nepal.³³¹ There have also been reports of collusion and price fixing by suppliers, in spite of clear provisions preventing anti-competitive behaviour of suppliers, including bid-rigging, which is specifically prohibited by existing legislation.³³²

4.3.3 Availability of materials and environmental protection

The recent construction boom and the improvement of the road network has enabled greater access to natural resources such as hard timber (particularly in the Terai region) and stone including limestone, sandstone, dolomite, granite, quartzite and marble (sourced from the hilly regions). However this has in turn led to increased logging and over-mining, creating environmental damage and scarcity of resources in some areas.³³³

Environmental protection legislation has been put in place to prohibit or better manage the use of natural resources, largely by declaring certain areas to be national forests and parks.³³⁴ The government has also placed restrictions on the private use or sale of materials such as river sand and stones or timber which have been swept down the river.³³⁵ Clearly these initiatives are crucial for environmental sustainability, but of course also have the effect of limiting the availability of such materials following a disaster and potentially increasing market prices. However, cases have been reported of the Forest Department providing wood for the reconstruction of damaged houses following a disaster.³³⁶

Increasing attention has also been given to the use of bamboo, which is regarded as a renewable and economically viable construction material. Some organisations such as Habitat for Humanity are encouraging its use for permanent housing construction and for durable roofing sheets.³³⁷ Bamboo is already a key component of emergency shelter models due to its relative availability, weight, safety and cost; however following disaster situations, it has been reported that the price of bamboo from local areas can increase dramatically.³³⁸

There has also been considerable discussion among government and humanitarian actors in Nepal to preposition emergency shelter materials at central and district level for use following disasters, in particular a major Kathmandu Valley earthquake.

³³¹ Public Procurement Act of 2007, art 15

³³² Competition Promotion and Market Protection Act of 2007, art 6

³³³ "Nepal: Urban Housing Sector Profile", UNHABITAT (2010), pp80-81

³³⁴ See, for example, Forest Act of 1993, art 49 which states that it is "prohibited to remove forest products, cut trees or plans, extract boulders, pebbles, sand or soil etc. in National Forests", and; the National Parks and Wildlife Conservation Act of 1973, art 5 which prohibits any person to "cut, clear, fell, remove or block trees, plants, bushes or any other forest resources, dig mines, stones or remove any mineral, stone, boulder, earth or any other similar material within a national park or reserve without obtaining a written permission from the authorized official."

³³⁵ See, for example, the Local Self Governance Act of 1999, art 218 which allows only District Development Committees to sell such products, provided they give 35-50 per cent of the proceeds to the relevant VDC or Municipality, and; the National Forest Act of 1993, art 46 which deems all timber "flowing or thrown on the banks, obstructed or submerged in streams" to be the property of the Government of Nepal, unless other claims can be substantiated

³³⁶ Interview with District Administration Office Sunsari, 2 June 2013

³³⁷ See "Enterprise In Eastern Nepal Produces Corrugated Bamboo Roofing Sheets Which Are More Durable Than Conventional Galvanized Iron Sheetting", Habitat for Humanity, 20 December 2010 at: http://www.habitat.org/asiapacific/news/2010/12_20_2010_Nepal_Runs_Bamboo_Factory_In_Jhapa.aspx and; Pokhrel UR, "Bamboo Engineered Housing Challenges and Opportunities for Bamboo Engineered (Prefabricated) Housing in Nepal" at: <http://abari.org/bamboohousing>

³³⁸ Interview with NRCS District Chapter Sunsari, 2 June 2013

Discussions have involved considerations of warehousing needs, identifying secure and accessible locations and determining reasonable quantities considering available resources and the lifespan of the different materials. While it may not be feasible to preposition all the required materials for a major earthquake, it should be possible to maintain a minimum stock – from both government and non-government sources – which is rotated for use in smaller scale disasters and replenished as needed.

4.3.4 Social acceptance of materials

Although bamboo housing has a long history in Nepal, it has often been associated with poverty and still carries a certain amount of stigma³³⁹, which has sometimes become an issue after disasters. It was reported that following the Koshi floods, some of the bamboo provided for housing frames had cracked³⁴⁰ and the extent of international assistance had raised the expectations of those selected to receive land and housing who wanted concrete houses rather than the bamboo-cladded housing they received.³⁴¹

UNHABITAT are also promoting Disaster Resistant Shelters using locally available materials such as earth and sand, mixed with 5 to 7 per cent of concrete as a stabilizer, with roof materials made from ferro-cement channels which are cast locally.³⁴² These were demonstrated during the recent Siraha fire, although the community seemed to prefer their traditional structures.³⁴³

4.3.5 Import of materials

Due to the limited availability and/or quality of local and manufactured materials in Nepal, a significant proportion of building materials are imported, mainly from India and China. This includes an estimated 80 per cent of all cement, as well as glass, aluminium, plaster of paris, fixtures and fittings.³⁴⁴

Following a major disaster in Nepal it is expected that a majority of the materials used for temporary and transitional shelter will need to be procured and imported from abroad. This is recognized in the Natural Calamity (Relief) Act, which requires the CDRC to manage and dispatch material received from both inside and outside the country, although no further details are given.³⁴⁵

The government of Nepal has also concluded an agreement with the UN on “measures to expedite the import, export and transit of relief consignments and relief personnel in the event of disasters and emergencies”, also known as the Model Customs Agreement. For the UN and other organisations working under its auspices, relief consignments, including tents, prefabricated houses and “other goods of prime necessity” may be imported tax-free without usual restrictions on quantities and value, and with fast track import procedures.³⁴⁶ Other international organisations, such as the IFRC and

³³⁹ Pokhrel UR, “Bamboo Engineered Housing Challenges and Opportunities for Bamboo Engineered (Prefabricated) Housing in Nepal” at: <http://abari.org/bamboohousing>

³⁴⁰ Interview with Lumanti, 5 June 2013

³⁴¹ Interview with UNHABITAT, 28 May 2013

³⁴² “Build Back Safer: Promoting Alternative Safe Building Technology for Multiple-Hazard Resilient Shelters in Nepal”, UNHABITAT, Nepal (2012)

³⁴³ Siraha community affected by fire in 2012, Aurahi VDC, 3 June 2013

³⁴⁴ “Nepal: Urban Housing Sector Profile”, UNHABITAT (2010), pp80 and 82

³⁴⁵ Natural Calamity (Relief) Act of 1982, art 6(d)

³⁴⁶ Model Agreement between the United Nations and the Government of Nepal concerning measures to expedite the import, export and transit of relief consignments and relief personnel in the event of disasters and emergencies, signed 31 May 2007

ICRC, have also concluded their own Legal Status Agreements with the government which permit tax and duty-free import of relief supplies.³⁴⁷

The NDRF also confirms the application of the Model Customs Agreement and additionally states that: the “the Government of Nepal shall facilitate and take appropriate action for the issuance of transit visas for IHC (International Humanitarian Communities) and port facilities for relief and rescue materials coming to Nepal via India with the Government of India during the disaster.”³⁴⁸

A recent study on the laws and policies in Nepal applicable to international disaster response found that “[i]n practice, administrative requirements are relaxed and the process for importing relief materials and goods relating to relief operations expedited. Almost all relief goods are tax-exempt and free from import restrictions on a case by case basis.”³⁴⁹ However, the report also recommended the further development of procedures to clarify the process, which has also been recognized in the draft Disaster Management Act, yet to be adopted.³⁵⁰ In this regard, the NDRF also includes plans to develop guidelines specifically for the facilitation and coordination of international assistance.³⁵¹

Summary

Adequate national standards are included in the National Building Code for ensuring the quality of construction materials, including specifications for emergency shelter materials and shelter kits in the Shelter Cluster Contingency Plan. Some challenges still remain, both practical and legal, which should be addressed in order to ensure these standards are applied in a disaster. These challenges include:

- Limited availability of some materials in Nepal, partly due to environmental protection regulations which prohibit the use of materials from protected areas
- Lack of compliance with national standards by local manufacturers, and inadequate enforcement mechanisms, making it difficult to procure adequate quality materials on the local market
- Priority given to cost rather quality under the Public Procurement Act and difficulties with the anti-competitive behaviour of suppliers
- Lack of compliance with emergency shelter material standards by Shelter Cluster partners
- Limitations on international procurement under the Public Procurement Act in cases where goods are available on the local market
- Some materials specified for emergency shelters, such as bamboo, are not accepted in some communities due to social stigma, with a clear preference for concrete buildings

³⁴⁷ See “International Disaster Response Law (IDRL) in Nepal: A Study on Strengthening Legal Preparedness for International Disaster Response”, IFRC and NRCS (2011), p36

³⁴⁸ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), art 4(5)

³⁴⁹ See “International Disaster Response Law (IDRL) in Nepal: A Study on Strengthening Legal Preparedness for International Disaster Response”, IFRC and NRCS (2011), p36

³⁵⁰ See “International Disaster Response Law (IDRL) in Nepal: A Study on Strengthening Legal Preparedness for International Disaster Response”, IFRC and NRCS (2011), p37

³⁵¹ National Disaster Response Framework, Government of Nepal, 2011 (unofficial translation), art 4(3)

Various instruments provide for expedited procedures and tax waivers for the import of materials for emergency response materials following a disaster, including the Model Customs Agreement. Additional attention could be directed towards improving the implementation of these instruments.

Suggested ways forward

- **Further policy development and planning on emergency and transitional shelter should include the following:**
 - The prepositioning of a minimum stock of shelter materials both within and beyond Kathmandu Valley for use in both small and large-scale disasters as needed
 - The expansion of efforts to develop and promote new techniques for using renewable local materials for disaster-resistant shelters which could improve the speed, cost-effectiveness and safety of post-disaster shelters, provided they are acceptable to local communities
 - Strengthening the monitoring and enforcement of quality standards for construction and emergency shelter materials, while allowing the flexibility to develop plans to meet urgent, lifesaving shelter needs in the event that adequate materials are not immediately available, in particular after a large-scale earthquake
- **Develop specific procedures on the fast track import of relief materials after a disaster, in accordance with existing instruments including the Model Customs Agreement, and extend the training of relevant personnel in these procedures.**

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Part C

Overall conclusions and
suggested ways forward

Recent experience of emergency shelter in Nepal has been mainly in relation to small and medium-scale disasters, such as floods, landslides, fires and earthquakes in predominantly rural areas. Nepal has yet to experience the impact of a mega-disaster such as the predicted powerful earthquake in dense urban areas like the Kathmandu Valley. The last major disaster occurred in 1936 at a time when the population and building density were considerably smaller than today. Consequently, shelter responses have often focused on the provision of basic shelter materials (tarpaulins, rope, tools and sometimes bamboo) and the allocation of small compensation payments. The largest response in recent years was following the Koshi floods in 2008, which resulted in the establishment of a number of temporary camps. No cases examined for this study included transitional shelter, as people who were displaced moved directly from emergency shelter to permanent housing, either in their original locations or in other identified relocation sites, and sometimes also received more substantial financial compensation.

In the event of a major earthquake, it is likely that a much greater variety of shelter responses will be required, ranging from the provision of basic shelter materials and the establishment of large-scale camps to cash programming, support to host families, and initial repairs to damaged structures as well as transitional shelter solutions. In the absence of detailed provisions, planning or experience of such a scenario in Nepal, it is difficult to determine with any certainty the legal and regulatory barriers that may arise in such a scenario.

Based on the research undertaken for this report, a number of good practices and innovative solutions to address regulatory barriers to emergency shelter undertaken by national authorities and international actors in Nepal have been identified and summarized in the preceding chapters. In addition, key gaps and barriers to shelter assistance based on existing laws, regulations, policies and experience have also been identified, with proposed solutions and ways forward to overcome these challenges. It is hoped that these suggestions will be considered by the relevant government and non-government actors, and steps taken to work together to address these gaps.

Gaps and barriers for shelter assistance

Overall, what can be seen from the findings of this report is that laws, policies and regulations are rarely applied to the provision of emergency shelter in Nepal. This may be due to an absence of relevant regulations, a lack of sufficient detail to enable their effective application, the fact that relevant situations have not yet arisen or that they have simply been overlooked. However, there have also been cases where relevant laws, policies and regulations were applied, but found to be inadequate or applied poorly or selectively. All of the above circumstances have the potential to hamper the provision of effective emergency shelter in different ways.

Overall framework for disaster management and emergency shelter

One of the main gaps in the present legal and regulatory framework is the lack of a comprehensive disaster management law and policies which clearly establish the

principles, standards, institutional responsibilities and funding mechanisms for disaster response and emergency shelter. Currently, these are dispersed throughout different instruments which can lead to confusion over responsibilities and decision-making, and to inconsistent and politically-motivated decisions about the levels of funding and types of shelter support for different disasters in the absence of any agreed criteria. There is also a significant gap in planning for a major earthquake in Kathmandu Valley, with the existing shelter contingency plan prepared largely by the humanitarian sector lacking sufficient detail.

Many of these issues have been addressed by the draft Disaster Management Act pending adoption and the work underway to update shelter contingency planning by the humanitarian sector. However further collaboration to support government planning is urgently needed to establish the standards, procedures and funding/resources required to conduct damage assessments and provide emergency and transitional shelter, as well as a range of other shelter responses such as the repair of housing, use of schools, places of worship and public buildings, cash and support to host families in the wake of a major earthquake. This report encourages the pursuit of increased engagement between government and the humanitarian sector to address these issues.

Another major policy instrument, the IDP Policy and Procedures, includes within its scope displacement due to natural disaster situations. This is indeed a useful and progressive tool, but has in fact never been used for this purpose, nor was it mentioned by those consulted as part of this study. As described below, the IDP Policy and Procedures contain many useful provisions which could be applied to disaster situations to alleviate some of the current barriers and challenges.

Access to shelter assistance

Access to emergency shelter is an issue in Nepal, largely due to a lack of access to documentation to establish identity, property ownership, tenancy and property boundaries. The legal and procedural requirements for obtaining such documentation, especially after a disaster, are such that they can effectively exclude individuals or certain groups from access. These include: requirements that persons may only obtain identity documents from their district of origin; selective enforcement of requirements which effectively discriminate against women, squatters, the landless or certain ethnic groups; poor implementation/enforcement of registration requirements for property ownership and tenancies; inadequate cadastral mapping to establish property borders; slow, bureaucratic processes; and the lack of adequate documentation management by government offices. However, in practice, there are sometimes alternative means for establishing this information without documentation, these are generally informal, undocumented and are dependent on the willingness of local authorities and the community to act impartially and have the potential to expose some people to further discrimination.

Other examples of ways in which current regulations have/could be applied to prevent access to shelter assistance include:

- selective use of customary laws to prevent women from accessing property inheritance, thereby creating potential exclusion from accessing shelter assistance, or for preventing Dalits from entering certain places of worship (which may be required for shelter after a disaster)

- requirements to wait for the issue of death certificates to enable families to access assistance linked to property ownership in the event a property owner is missing following a disaster or other event
- selective/poor application of land reform measures which increase the vulnerability of rural tenants to eviction, land grabbing and concealment/denial of tenancy

Land for emergency and transitional shelter

Existing legislation enables the use, protection and acquisition of land for meeting the needs of emergency and transitional shelter after a disaster, including fast track procedures to expedite acquisition in special circumstances such as natural disasters. However, these provisions have rarely been utilised effectively to meet the needs in disaster situations, which has resulted in long bureaucratic processes and delays and the allocation of land in marginal and unsuitable locations. This, coupled with an absence of clear standards or adherence to Sphere minimum standards, together with inadequate consultation with communities, has resulted in the location of camps or resettlement in areas with limited access to villages, livelihood opportunities, electricity or hazard protection. Clarity about when and how schools, places of worship, host families and areas protected for environmental reasons may be utilised and adequately managed for emergency shelter following a disaster could also be improved. This could be done through the development of appropriate guidelines or standards, for example.

Shelter construction

The main barrier concerning the construction of emergency and transitional shelter is not an absence of adequate regulation, but inadequate implementation of existing standards and requirements. This is particularly the case with regard to the NBC, which establishes clear and detailed specifications applicable to structures used for emergency and transitional shelter as well as for the repair and reconstruction of damaged structures, and also detailed standards and specifications for the quality of construction materials and construction safety. Improved allocation of resources, stronger political will and enhanced public interest could improve the application of relevant standards in practice, especially if complemented by a stronger capacity for monitoring and enforcement. The same could be said with regard to the implementation of the standards of the Shelter Cluster Contingency Plan. Little capacity exists for the conduct of damage assessments after an earthquake and there is a need to ensure that existing guidelines developed for this purpose are officially adopted and applied in practice. There are also limitations on the availability of suitable shelter materials and potential challenges associated with procurement and the entry of imported goods. Following a major earthquake it is expected that these issues will be further exacerbated, requiring significant and urgent efforts to develop emergency and transitional plans which will encourage compliance and also clarify the application of other standards and rules for the construction sector in the event of a disaster.

Positive developments and solutions

Through this study a number of positive developments, good examples and innovative solutions have been identified which have helped, or may help in the future, to improve the provision of emergency and transitional shelter after a disaster. The major initiatives are highlighted below:

- Systematic development of disaster preparedness plans at district level and the development of a new Disaster Management Act (pending adoption).
- Community-based solutions to determine identity, property ownership and property boundaries with involvement of local officials, without having to resolve disputes through the lengthy and costly court system.
- Efforts of relief providers to identify and positively target especially vulnerable groups such as squatters/the landless, women, people with disabilities and other marginalized groups to ensure they are able to access shelter assistance on an equal basis, supported by recent policies to address underlying causes of vulnerability through land use planning and affordable housing.
- Plans to increase the availability of suitable land for emergency and transitional shelter through the “open spaces” initiative in Kathmandu city which has protected 83 sites from development for use as temporary camps or other humanitarian purposes. The spaces include a mix of large and medium sites on government-owned land, which have been legally protected by publication in the national Gazette and are managed by an inter-ministerial committee.
- Additional programmes to address ‘risk sensitive land use planning’ to better manage urban planning, which will be supported by new policies and the proposed development of resettlement guidelines and a recovery plan, which include further efforts to expand the number of spaces in the wider Kathmandu Valley and to implement the “one tole, one open space” concept.
- A new proposal is under development to further streamline the acquisition process which would clarify ministerial responsibilities to enable faster resettlement after disasters.
- Initiatives to strengthen the implementation of the NBC, including: digitization and automation of building code approvals; integration of the NBC into municipality by-laws; initiatives to improve building code compliance through advocacy and training.
- Plans to adopt the emergency shelter models and standards into national policy and the development of detailed recovery guidelines.
- Existence of Legal Status Agreements with international humanitarian organisations and adoption of the Model Customs Agreement to provide expedited procedures and tax waivers for the import of materials for emergency response materials following a disaster.

Suggested ways forward

The positive initiatives and solutions that have been identified in this report serve as significant steps towards addressing the barriers and gaps. The following “suggested ways forward” highlight areas which would benefit from further consideration or integration into new/existing instruments concerning emergency and transitional shelter. The points outlined below are a synthesis of the various suggestions from the different sections of this study.

Ensure a comprehensive and harmonised policy approach for the provision of emergency and transition shelter in Nepal. This could be achieved either through improved integration of the key disaster response instruments such as policies and plans which follow the adoption of the new Disaster Management Act, but should also include further references/linkages to other relevant plans/policies/technical specifications for emergency and transitional shelter in other instruments and should address the key issues of clarification of institutional responsibilities, funding mechanisms and (if possible) annual budget allocations.

For more practical use, consider the development of an emergency and transitional shelter handbook or manual targeted towards practitioners in Nepal and capturing these elements in summary for operational use.

Development of a detailed, government-owned contingency plan for the provision of emergency and transitional shelter in the event of a major earthquake in Kathmandu Valley. This should take into account the likely impact on government/humanitarian capacities and integrate learning from other similar events in other countries. It could also include provisions concerning the prepositioning of shelter materials and the promotion of new techniques for using renewable local materials for disaster-resistant shelters which could improve the speed, cost-effectiveness and safety of post-disaster shelters, provided they are acceptable to local communities. It should also include reference to the various regulations and standards applicable to different shelter responses and strategies for ensuring accountability, monitoring and compliance, which should form part of wider earthquake contingency planning processes.

Clarify the application of the IDP Policy and Procedures to natural disaster situations and/or consider utilising or adapting its many useful provisions, including those concerning:

- Detailed procedures for the registration of displaced persons (particularly for large scale disasters).
- Facilitating access to documentation by “all reasonable efforts” to encourage registrations, facilitation for obtaining documents without the usual requirements in particular for vulnerable groups, accepting other forms of verification such as information from communities and local NGOs, and setting clear time limits for determining eligibility.
- Enabling greater access to the court system and legal aid for underprivileged and marginalized groups in order to resolve property disputes.

- Protection of many of the highly vulnerable groups, providing not only recognition of protection needs but also special assistance in obtaining documentation and access to administrative and legal support.

Further policy development and planning on emergency and transitional shelter should also consider the following elements:

- Guiding principles for the provision of emergency and transitional shelter, based on humanitarian principles and international standards and guidelines.
- Thresholds/criteria for different shelter responses and for targeting assistance to different categories of persons affected, such as property owners, urban and rural tenants and especially vulnerable groups.
- Further elaboration and promotion of standards and specifications for shelter models and materials.
- Clarify and document the community-based solutions for identification, property ownership and property boundaries in the absence of adequate documentation to ensure greater transparency and adequate safeguards against bias and exploitation in the identification process. This could also be strengthened through a complaints/ombudsman system in the event that disputes arise.
- Provisions reinforcing the protection of private property from unlawful seizure/land grabbing and for the rapid return of any such land, such as those provided by the Constitution and Comprehensive Peace Agreement of 2006 (which are currently limited to conflict situations).
- Further strengthening of accountability mechanisms that could be applied in the early recovery process, such as a licensing and application approval process and requirements for partnership with local organisations, the establishment of consumers' committees and public participation.
- Strengthening the monitoring and enforcement of quality standards for construction and emergency shelter materials, but allow the flexibility to develop plans to meet urgent, lifesaving shelter needs in the event that adequate materials are not immediately available, in particular after a large-scale earthquake.

Extend the current work on “certificates of absence” to disaster situations to allow for greater legal protection for families of missing persons to enable them to access assistance in the absence of the legal property owner.

Strengthen the capacities of Local Arbitration Boards and the committees/commissions for resolving land disputes and registration issues, as envisaged in the Local Self Governance Act and the Land Revenue Act. This may also help relieve congestion within the court system, reduce the time and cost of resolving land disputes and improve access to justice systems for underprivileged and marginalized groups who may not otherwise have access to the court system.

Develop detailed provisions concerning the availability, acquisition and use of land specifically tailored to emergency and transitional shelter needs after disasters. This could be integrated into the respective instruments on land use, urban planning, acquisition and environmental protection, and/or could be developed as part of any standalone guidelines or policies on disaster management, emergency and transitional shelter, resettlement and recovery. Such provisions should address issues including:

- Further expediting acquisition procedures to enable rapid relocation of those displaced by disasters (either temporarily or in the longer term as required, whilst respecting adequate notice and compensation provisions).
- Assessment processes and minimum standards for determining land to be allocated for shelter after disasters, which takes into account environmental and hazard concerns, access to livelihoods and essential services as well as the safety and protection of vulnerable groups (the IDP Policy and Procedures offer useful provisions in this regard).
- Adequate consultation with affected communities, and the wider host communities, to ensure locations are relevant to their needs.
- Guidance on the utilisation and support of host families, schools, places of worship and other community facilities on a time-bound basis, to ensure minimal disruption to the wider community.

Ensure the Guideline on Post Disaster Damage Assessment is further strengthened through its integration into national government standards and disaster response planning, with particular consideration given to:

- Developing a mobilization mechanism for the rapid deployment of teams for damage assessment.
- Expanding the pool of professionals trained in damage assessment, within Kathmandu and also at district level to accelerate the speed of deployment.
- Additional planning for the process of conducting damage assessments following a major earthquake in Kathmandu Valley or other urban centres.

Consider the integration of minimum construction safety standards into policies and guidelines on emergency, transitional and recovery shelter construction.

Further collaborative efforts are also needed to scale up public advocacy around the need for building code compliance capitalising on the current strategies of the NRRC and the work of existing programmes.

Develop specific procedures on the fast track import of relief materials after a disaster, in accordance with existing instruments including the Model Customs Agreement, and extend the training of relevant personnel in these procedures.

Overcoming implementation challenges

In addition to the gaps and suggestion solutions outlined above, it is apparent that a major challenge in Nepal is not necessarily the development of appropriate laws, policies and regulations but rather their effective implementation and a need for improved enforcement and compliance. An absence of effective implementation is seen particularly in the case of legislation and policies which have the potential to disrupt the longstanding social and political structures in the country. Those of most relevance to this study concern equality and non-discrimination, land and property ownership and overall control of resources by certain socio-economic, caste and political groups. Another issue not directly addressed in this study, but widely acknowledged to exist in Nepal at many levels, is that of corruption. Corruption also has the potential to undermine the effective implementation of laws and regulations, particularly in situations that involve ‘high stakes’ sectors such as property development, land or large compensation payments after disasters, as well as in smaller instances, such as the payment of additional “fees” for official administrative processes which can also be used to perpetuate discrimination.³⁵²

There is no simple solution to overcome these issues and they may continue to influence the development and implementation of any new laws, policies and regulations concerning emergency and transitional shelter. Nevertheless, there are some steps which could be taken to help ensure they have the best chance of success. These include:

- Ensuring that any new initiatives are agreed as a priority, in the wider context of disaster management and preparedness planning.
- Ensuring that government discussions and consultations are inclusive of a wide range of ministries and departments and take place at various levels, not just limited to selected individuals within the main “focal” ministry/department.
- Making efforts to consult with a wide range of NGOs, community groups and the wider public in order to raise awareness of the key issues behind the development of a new instrument and ensure the content is informed by the feedback received.
- Ensuring the financial implications of any new instrument is fully explored, discussed and agreed to by the relevant government ministries, in particular MoF.
- Following up the development of any new instrument with awareness and training of a wide range of government and non-government partners at national and regional level.
- Raising awareness of the general public, especially in areas which have a high vulnerability/frequency of disasters, to ensure a greater degree of accountability to the public.

³⁵² See for example, “Anti-corruption Profile - Nepal”, TrustLaw (undated) at: www.trust.org/trustlaw/country-profiles/good-governance.dot?id=6ab81711-3750-49ab-ae70-c4481611e7be accessed on 9 April 2013; Wily L et al, “Land Reform in Nepal: Where Is It Coming From and Where Is It Going?”, Scoping Study on Land Reform for DFID Nepal (2008), and; “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal”, DFID and World Bank (2010).

- Including an annual “testing” and review process, to maintain awareness of the instrument in question and ensure its integration into other relevant trainings, workshops and simulation events.
- Ensuring that specific monitoring is carried out following a disaster operation to assess implementation and recommend any further measures which could further enhance its effectiveness.

Undertaking the above processes will necessarily require significant time, resources and cooperation among the relevant actors. Given the urgency of needing fast and effective emergency and transitional shelter responses, consideration should also be given to encouraging greater awareness and use of existing instruments, for example through the development of a manual which captures existing rules and practices of use to shelter practitioners (as suggested above). The IFRC and NRCS are willing to explore these areas with the government and national authorities in Nepal, in order to identify and support the best way forward in overcoming legal and regulatory barriers to emergency shelter in Nepal.

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Annex A

Examples of emergency and transitional shelter responses

Frequent small to medium-scale disasters

Small to medium-scale fires, flooding and landslides are an annual occurrence across the country during different seasons, affecting households in multiple but localized areas. The most common response, practiced throughout the country, is for affected families to apply to the CDO and/or DDRC to receive a small sum of NPR5,000 which is allocated from the Central to the District Disaster Relief Fund in the event of a damaged or destroyed house.³⁵³ Small additional funds may be contributed by members of the community or other local authorities. It would then be the responsibility of the owner to re-build or repair the damage on their own volition and/or to find temporary accommodation in neighbouring houses or with other family members.

Such events may also trigger a rapid assessment by the local NRCS district or sub-district chapter staff or volunteers, with affected families receiving an NFI kit containing, among other items, tarpaulins, ropes and blankets deemed suitable for a family of 6. These kits would be sourced from district level warehouses, or the nearest regional NRCS warehouse. Additional supplementary materials, such as tarpaulins and plastic sheeting, may also be provided by other organisations or the local community, distributed by NRCS as part of the “one-door policy” included in many district disaster response plans.³⁵⁴

Siraha fire, May 2012 (medium-scale)

On 15 May 2012, an accidental fire broke out in Aurahi VDC in Siraha district in the eastern Terai region, affecting some 2,063 people from 461 families³⁵⁵ and destroying or damaging some 1,075 structures within the village.³⁵⁶ Initially, the response was typical of any small to medium-scale disaster described above – the families received NPR5,000 from the Relief Fund of the DDRC, the DDC also contributed an additional NPR1,000 per family and NRCS provided an NFI kit (without kitchen sets) from the NRCS district chapter. The following day, the Prime Minister made a visit to the area and announced the additional provision of NPR25,000 to each affected family and urged humanitarian organisations and individuals to also provide support.³⁵⁷

Support came in many forms ranging from cash contributions, shelter and hygiene kits, tarpaulins, bamboo and mosquito nets, to the provision of psychosocial support, child-friendly spaces and women’s bathing areas in the village and surrounding areas. The DDRC opened a special bank account with the NIC Bank in Siraha where cash contributions could be pooled and a community committee established to make proposals on the use of the funds.³⁵⁸

³⁵³ Interview with District Administration Office, Sunsari, 2 June 2013

³⁵⁴ Above from various interviews conducted during this study

³⁵⁵ District Disaster Relief Committee official numbers were initially 347 families

³⁵⁶ “Nepal: Fire Incident in Siraha District”, UNOCHA Situation Report No. 2, 18 May 2012

³⁵⁷ Interview with NRCS District Chapter Siraha, 3 June 2013; “Nepal: Fire Incident in Siraha District”, UNOCHA Situation Report No. 2, 18 May 2012, and; “Update on Emergency of Fire Response, Siraha”, NRCS District Chapter Siraha (undated, hard copy only)

³⁵⁸ “Update on Emergency of Fire Response, Siraha”, NRCS District Chapter Siraha (undated, hard copy only)



With regard to shelter, initially many families were living in the immediate surrounding area or on their original house sites in self-made temporary shelters of tarpaulin and bamboo, which proved very uncomfortable in the hot conditions.³⁵⁹ The plan for reconstruction was to adopt a 3-phase approach lead by UNHABITAT with support from UNDP, whereby communities would receive 3 tranches of funding to build their own homes with additional labour and technical support. UNHABITAT was promoting the use of disaster-resistant shelter materials such as Compressed Stabilised Earth Blocks and ferro-cement roofing and provided demonstrations of their construction³⁶⁰, although many of the houses have since been built using the traditional bamboo with mud cladding and thatched roofs.³⁶¹

Taplejung earthquake, September 2011 (medium to large-scale)

On 18 September 2011, an earthquake measuring 6.8 on the Richter scale struck the Himalayan region on the border with India in the north eastern corner of the country. Within Nepal an estimated 19,813 families were affected across 18 districts, leaving some 7,882 families completely displaced. Many of those worst-affected and closest to the epicentre were located in remote, mountainous and largely inaccessible parts of the country, taking NRCS teams many weeks to conduct rapid assessments and complete the registration of beneficiaries in those areas.³⁶²

There was no appeal for international assistance by the government of Nepal, so the regular small cash grants were provided from the relief funds of DDRCs and NRCS who immediately commenced distributions of NFIs and additional tarpaulins and blankets from their own stocks (which were replenished through a contribution from the IFRC's Disaster Relief Emergency Fund and from ICRC) and the in-country stocks of other agencies. Again, this process took many weeks to complete, with supplies having to reach affected areas from across the country and then be carried in small loads by porter or mule to the most remote areas. It was noted that many of the displaced families had sought refuge in the houses of relatives, local community members or in public buildings, but many were also living in makeshift shelters or partially damaged buildings and were highly vulnerable to the cold, with the onset of the winter months.³⁶³

The situation was discussed at length by the Shelter Cluster and early recovery network partners and, given the difficulties of cost and time of transport and the absence of any request or international appeal from the government to generate sufficient funding, it was agreed that transitional shelters would not be feasible, so a decision was made to distribute additional blankets and tarpaulins as a stop-gap measure until the Recovery Plan, which was already in development by the government, was put in place.

However, it was to be several months before teams of engineers were mobilized, first by NSET and then by DUDBC, to undertake a detailed damage assessment of the buildings.³⁶⁴ Consequently, the Recovery Plan was not finalised for many months, due in

³⁵⁹ Interviews with UNHABITAT, 28 May 2013; NRCS District Chapter Siraha, 3 June 2013; and UNDP, 30 May 2013

³⁶⁰ "Build Back Safer: Promoting Alternative Safe Building Technology for Multiple-Hazard Resilient Shelters in Nepal", UNHABITAT, Nepal (2012); Interview with UNDP, 30 May 2013; and NRCS District Chapter Siraha, 3 June 2013

³⁶¹ Interview with NRCS District Chapter Siraha, 3 June 2013 and Siraha community affected by fire in 2012, Aurahi VDC, 3 June 2013

³⁶² "DREF Operation Update: Nepal Earthquake", IFRC DREF Update No. 3, 29 December 2011

³⁶³ "DREF Operation Update: Nepal Earthquake", IFRC DREF Update No. 3, 29 December 2011

³⁶⁴ Interview with NSET, 5 June 2013

part to delays in proper damage assessments and also delays in the budget approval process. In December, the government announced its Recovery Plan which included the provision of grants of NPR100,000 each to 7,000 families to re-build their houses and NPR50,000 each for 10,000 families with damaged houses, as well as provisions for the reconstruction or repair of schools, health centres and other buildings. The plans also included 'software' components such as the training of local masons to support earthquake-resistant reconstruction and disaster risk reduction awareness activities.³⁶⁵

The Recovery Plan did not receive full approval from MoF, leading to requests for the international community to provide support. By this late stage, donors were no longer able to access emergency funds and were largely unable to support the plan. Some activities were externally supported, such as the training of masons by UNDP, or were integrated into some of the on-going development activities in some of the affected areas. However, to this date many families had still not received any support beyond the initial distribution of NFIs.³⁶⁶

Koshi floods, August 2008 (large-scale)

In August 2008, the eastern Terai district of Sunsari which borders the Indian state of Bihar experienced massive flooding when the Koshi River broke its embankments and effectively changed course, leaving some 54,000 to 72,000 people displaced, of which 11,000 were estimated to be Indian nationals. Initially, the population fled to higher ground in Sunsari and neighbouring Saptari district and then quickly relocated to hastily-arranged camps in and around schools and community buildings or were hosted by other families.³⁶⁷ The conditions in the camps were cramped and the provision of alternative emergency shelter became a priority with organisations distributing shelter materials and tents of varying quality within the first few weeks following the disaster. The government of Nepal had not officially requested international assistance, however it allowed the launching of international appeals by the UN system and IFRC and the activation of the cluster system including the ESC.

Soon after the initial response, discussions began for finding additional land to accommodate displaced families, partly driven by the need to re-establish the use of schools where many displaced people were sheltering. This process took some months because available land was difficult to find and required extensive government processes to confirm such availability, and was also delayed by disagreements over the suitability of land location and its capacity to accommodate the required numbers of families.³⁶⁸ The ESC members agreed on the emergency shelter and non-food relief items to be distributed which comprised: bamboo frames, heavy-duty plastic sheets, light plastic sheets, blankets, cooking stoves, kitchen sets, lights, mosquito nets, raised beds, sleeping mats, solid fuel, toolkits and winter clothes.³⁶⁹ After much discussion and faced with great reluctance on the part of government and others, additional food was also provided to host families in return areas.³⁷⁰

³⁶⁵ "DREF Operation Update: Nepal Earthquake", IFRC DREF Update No. 3, 29 December 2011

³⁶⁶ Much of this information is from the author's own experience as Emergency Shelter Cluster lead at the time of the operation. Also interview with NSET, 5 June 2013, and interview with UNDP, 30 May 2013

³⁶⁷ Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p14

³⁶⁸ Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p58

³⁶⁹ Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p50

³⁷⁰ Kellet J, "A Review of the Emergency Shelter Cluster Koshi Floods Response, Nepal from August 2008", IFRC (2009), p56



By May 2009, some 9 months later and after the waters had subsided, it was reported that the majority of families had returned to their original areas. However, large areas remained completely covered by sand and the families in those areas had limited shelter, water and sanitation facilities. A Cash-for-Food programme was implemented from April to May to assist families still remaining in camps or in the most affected areas who were unable to procure sufficient food, whereby 5,139 families received an amount of NPR1,000 per family member, up to a maximum of NPR5,075 for families of over 5 people. The government was also implementing a Return Package comprising grants of NPR200,000, NPR150,000 or NPR50,000 to buy new land, depending on whether their land and house was situated in a 'red', 'yellow' or 'green' zone, graded according to the level of impact of the disaster, for which some 7,343 families applied.³⁷¹

A bigger recovery package of approximately NPR 1,608 million was also earmarked by the government for compensation for damaged buildings and land, as well as to permanently resettle a number of landless families. This was significantly delayed however, due to issues concerning the budget.³⁷²

Of the estimated 1,422 affected families who were identified as landless, 235 families were selected for an Integrated Shelter Assistance programme involving the Government of Nepal, UNHABITAT, UNDP, Habitat for Humanity, Lumanti, and the Asian Coalition for Housing Rights and the Squatters Federation. This programme involved the allocation of land and construction of houses, which was completed during 2010.³⁷³

Kathmandu “mega-earthquake” possible response scenario (large to ‘mega’-scale)

The “mega-earthquake” scenario differs from other disasters, not only because of the large numbers of people, building and infrastructure likely to be affected but also because of its impact on government and humanitarian capacities in the capital Kathmandu, which will disable or delay normal decision making processes and severely hamper response efforts and coordination for at least the initial weeks.

In the wake of widespread devastation and impassable rivers and roads in the capital, it is expected that many people will remain in or around their damaged homes or be hosted by nearby families or neighbours, but a large number will be completely displaced and dependent on emergency shelter in open spaces or in the remaining public buildings. Once roads and transport systems become functional, people may also seek to return to their home cities or villages across different parts of the country to avoid the congested conditions of the capital, provided there are sufficient supplies and services to support them.³⁷⁴

³⁷¹ Above in “Nepal: OCHA Koshi Flood Response Update”, UNOCHA, 13 May 2009, and interview with Land Revenue Office Siraha, 3 June 2013

³⁷² “Nepal: OCHA Koshi Flood Response Update”, UNOCHA, 13 May 2009

³⁷³ “Building Dreams Together: Integrated Shelter Assistance for Landless Households Affected by the Koshi Flood”, Lumanti, Support Group for Shelter, Kathmandu (2011)

³⁷⁴ Interviews with UNDP, 30 May 2013; IOM, 31 May 2013; UNOCHA, 30 May 2013, and; “Shelter Response Strategy and Plan for Earthquake Disasters for the Kathmandu Valley, Nepal (Draft Report)”, prepared as part of the project “Risk Mapping for Shelter Response” program of the Global Emergency Shelter Cluster, NSET (2010), p33

The following data has been used for recent contingency planning processes:

Displaced	1 million	Fuel supplies	100% shortage. Use of debris and housing material.
Deaths	100,000	Food supplies	75% shortage
Injured	300,000	Water supplies	Major supply damaged, sufficient alternatives for 2-3 days, no movement of water tankers
Buildings	60% collapsed, approx. 200,000	Medical supplies	90% shortage
Bridges	30 out of 45 impassable	Hospitals	Major damage, limited capacity
Airports	Dysfunctional for several weeks except for light aircraft and helicopters	Solid waste management	100% collapsed
Transport	Major road blockages within and outside of the Valley, movement severely restricted due to debris	Communications	Some radio stations will be relatively functional Mobiles down for a few days but restored quickly with a new antenna and repeater towers
Electricity	Limited back up supplies available for up to 2 weeks	Public services	Limited police and fire services, government and institutional response capacities limited

Emergency and transitional shelter needs are likely to involve:

- Building damage assessments (rapid and detailed assessments)
- Rapid construction of emergency shelters in open spaces using locally available supplies of bamboo, timber, plastic sheeting and tarpaulin, in addition to the use of rubble and general debris until international supplies are received
- Distribution of basic shelter materials for those living in or near to damaged homes and/or host families
- Shelter materials, cash and technical assistance to support repairs or reconstruction of damaged houses
- Identification of additional open space, perhaps outside centrally congested areas, to establish longer term transitional shelters, which may later become permanent settlements³⁷⁵

³⁷⁵ See “Shelter Response Strategy and Plan for Earthquake Disasters for the Kathmandu Valley, Nepal (Draft Report)”, prepared as part of the project “Risk Mapping for Shelter Response” program of the Global Emergency Shelter Cluster, NSET (2010), pp34-36

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Annex B

Access to personal documentation

This annex describes the laws and procedures for acquiring the major types of documentation (Citizenship Certificates, birth certificates and passports) and highlights a number of challenges that may be faced in accessing such documentation.

Citizenship Certificates

Citizenship Certificates are important identification documents for Nepalese citizens as they enable access to many services and facilities in the country, including disaster relief. These Certificates come in the form of a small laminated card which includes a photo and basic personal details.

Entitlement to a Citizenship Certificate is determined by the Interim Constitution and the Nepal Citizenship Act. The Interim Constitution recognizes the citizenship of people who were already deemed citizens or had previously been eligible prior to its commencement. There are also a number of other categories for citizenship including: those domiciled in Nepal whose father or mother was a citizen at birth; children found in Nepal whose parents are unknown; and any person born before mid to April 1990 who has been residing permanently in Nepal. Foreign women married to a Nepali citizen may become naturalized. For female citizens married to a foreigner, their children may only be naturalized if they have been permanently residing in Nepal and have not acquired the citizenship of the father.³⁷⁶

A Citizenship Certificate may be obtained once a person reaches the age of 16³⁷⁷, with different documentation required depending on whether a person is a citizen by birth or by descent:

- By descent: Citizenship Certificates within 3 generations and a recommendation from the VDC or Municipality on the place of birth and family relationship.³⁷⁸
- By birth: Recommendation from the VDC or Municipality certifying the birth and permanent residency in Nepal and evidence of residency, which may include a Land Title Deed Ownership Certificate in the name of the applicant or their family, a Certificate of Land Tilling Right, or proof of the parent's house listing in the Voters List prepared by the Election Commission.³⁷⁹
- If no documentary evidence is available, applications can still be made following an 'on the spot' investigation by 3 acquaintances (who are confirmed citizens) from the same Ward, to show applicant was born in Nepal and permanently resides there.³⁸⁰

Despite their importance as an identifying document, it has been estimated that around 3.4 million people born and residing in Nepal do not have Citizenship Certificates³⁸¹ and it has been found that obtaining Certificates can be problematic for a number of reasons. Firstly, the process often requires the person to travel to their place of origin to verify their identity and lodge an application, which is particularly difficult and sometimes impossible for people living outside their original district who have been affected by a disaster or who have otherwise been displaced from their place of origin,

³⁷⁶ Above in Interim Constitution of 2007, art 8 and P12, Nepal Citizenship Act of 2007, arts 3-5

³⁷⁷ Nepal Citizenship Act of 2007, art 8(i)-(ii)

³⁷⁸ Nepal Citizenship Act of 2007, art 8(i)

³⁷⁹ Nepal Citizenship Act of 2007, art 8(ii)

³⁸⁰ Nepal Citizenship Act of 2007, art 8(iv)-(v)

³⁸¹ Dhanapati Upadhyaya Commission 1995 in "Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal", DFID and World Bank (2010), p5



such as by conflict or social tension.³⁸² Secondly, some groups within Nepalese society, particularly women, the landless, and other marginalized groups may not be willing to apply for certificates due to a lack of other supporting documentation, or for fear of facing stigma and discrimination by local authorities (this is discussed further below). Others simply may not apply as a result of a lack of literacy, lack of awareness or the resources to cover the costs of travel and processing fees.³⁸³

Birth Certificates

In Nepal it is mandatory to register personal events such as births, deaths, marriage, divorce and changes of residence with the Office of the Local Registrar within 35 days, or within 60 days if the event occurs abroad.³⁸⁴ Registration certificates, such as birth or death certificates, are free of cost, however late registrations incur an NPR8 fee³⁸⁵ and replacement certificates are charged a 'prescribed fee'.³⁸⁶ Those who fail to register a personal event can receive a fine of up to NPR50.³⁸⁷

Information about personal events is then logged in a Registration Book held by the Local Registrar Office and a compilation of details is published annually. The Registrar may also grant permission for any person to inspect the registration book, subject to payment of a 'prescribed fee'.³⁸⁸ Once issued, a birth certificate may be "submitted in any Office or Court and used in any personal transaction (activities)"³⁸⁹, hence is a useful personal identification document. Interestingly however, most other administrative procedures described herein prioritise Citizenship Certificates, rather than birth certificates, as valid forms of identity.

In practice, Nepal has a relatively low birth registration rate and is a priority country for the Universal Birth Registration Campaign.³⁹⁰ A study on birth registration conducted in 2011 found that the overall public awareness and understanding of the birth registration process is high, but many registrations are not undertaken until there is a need to do so for some other administrative process, such as school enrolment or obtaining a citizenship certificate. The report did not find any particular financial, social or time factor constraints, but did report the "delivery side" of birth registration was lacking, in particular that VDCs and DDCs have outdated record keeping systems and lack the time and resources to maintain an efficient process.³⁹¹ It has also been acknowledged that the registration process is usually undertaken by the male head of the household,

³⁸² Ferris E, Mooney E and Stark C, "From Responsibility to Response: Addressing National Approaches to Internal Displacement", The Brookings Institution, London School of Economics, Project on Internal Displacement (November 2011), p123

³⁸³ See Ferris E, Mooney E and Stark C, "From Responsibility to Response: Addressing National Approaches to Internal Displacement", The Brookings Institution, London School of Economics, Project on Internal Displacement (November 2011), p132; Adhikari, J, "Land Reform in Nepal: Problems and Prospects", ActionAID (2008), p2; and "Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal", DFID and World Bank (2010), p104

³⁸⁴ Birth, Death and Other Personal Events Registration Act of 1976, art 4(1), (2)

³⁸⁵ Birth, Death and Other Personal Events Registration Act of 1976, art 5(3)

³⁸⁶ Birth, Death and Other Personal Events Registration Act of 1976, arts 6 and 7

³⁸⁷ Birth, Death and Other Personal Events Registration Act of 1976, art 5(4)

³⁸⁸ Birth, Death and Other Personal Events Registration Act of 1976, arts 10-11

³⁸⁹ Birth, Death and Other Personal Events Registration Act of 1976, art 9

³⁹⁰ See Paez J, "Starting Point in Life: Towards Inclusive Birth Registration in Nepal", Thesis, Faculty of Geosciences, Department of Human Geography, International Development Studies, Utrecht University (2011), p16

³⁹¹ Paez J, "Starting Point in Life: Towards Inclusive Birth Registration in Nepal", Thesis, Faculty of Geosciences, Department of Human Geography, International Development Studies, Utrecht University (2011), p11

whereas some women, particularly those who are unmarried or divorced, have reported being discouraged or shamed by officials when they try to register and also face difficulties when they are required to use the father's address on the form.³⁹²

Passports

A growing number of Nepalese citizens are applying for passports to enable them to travel, study and work abroad, as required by the Passports Act.³⁹³ The process required to obtain a passport can be lengthy and requires the individual to travel back to the original district of their birth to lodge an application or at the passport office in Kathmandu. According to the Department of Passports, normal processing times are between 6 to 8 weeks, or 7 days for an urgent application, and the passport must be collected from wherever the application was lodged.³⁹⁴ It has been recognized that the process is especially difficult and costly for those living in remote areas, with plans in development to enable online applications and mobile units to reduce travel requirements.³⁹⁵

The IDP Procedures state that the MoFA will “take whatever measures are necessary” to facilitate the process for obtaining new or replacement passports for IDPs, regardless of how the passport was lost, without “unreasonable conditions, costs or delays” or requiring the return to the place of habitual residence³⁹⁶ which would considerably improve the process.

³⁹² Subedi A, “Birth Certificate Without Father's Identity Sill a Far Cry”, Republica, Kathmandu, 23 March 2013

³⁹³ Passports Act of 1967

³⁹⁴ Department of Passport at: <http://dopmofa.gov.np/introduction/21/#sthash.h9Y3wCiM.dpuf>

³⁹⁵ Department of Passport at: <http://www.dopmofa.gov.np/introduction/21/#sthash.jONeHvKT.dpuf>

³⁹⁶ Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007, art 16.2.3

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Annex C

List of persons and organisations consulted

Government of Nepal

Ministry of Home Affairs

- Mr Lakshmi Dhaka, *Joint Secretary*
- Mr Pradeep Koirala, *Under Secretary*

Ministry of Federal Affairs and Local Development

- Mr Gopi Khanal, *Joint Secretary*

Department of Urban Development and Building Construction

- Mr Shambhu KC, *Deputy Director General*

Land Revenue Office, Kathmandu

- Mr Gopal Giri, *Chief Land Revenue Officer*

Kathmandu Municipality

- Mr Narendra Shrestha
- Mr Indra Suwal

District Administration Office, Sunsari

- Mr Laxman Kumar Thapa, *Chief District Officer*

Land Revenue Office, Sunsari

- Mr Prem Dahal, *Section Officer*

Local Development Office, Siraha

- Mr Bijay Raj Subedi, *Local Development Officer*

International Red Cross/Red Crescent Movement

Nepal Red Cross Headquarters

- Mr Pitambar Aryal, *Director, Disaster Management Department*
- Mr Dharma Raj Pandey, *Deputy Director, Disaster Management Department*
- Mr Deepak Raj Bhatt, *Engineer, Disaster Management Department*
- Mr Ramesh Ghimire, *Technical Officer/Shelter Focal Point, Disaster Management Department*

Nepal Red Cross District Chapter, Sunsari

- Mr Tilak Rai, *Secretary, Adhoc Committee*

- Mr Kayastha, *Member, Adhoc Committee*
- Mr Kiran Karki, *Officer*
- Ms Sujata Shrestha, *Staff*

Nepal Red Cross District Chapter, Siraha

- Mr Rajdev Yadav, *President*
- Mr Rajdev Thakur, *Secretary*
- Mr Pramod Kumar Podar, *Treasurer*
- Mr Asok Kumar Yadav, *Senior Officer*

IFRC Country Office, Nepal

- Ms Ritva Lahti, *Country Representative*
- Mr Sanjeev Hada, *Shelter Adviser*
- Mr Khem Raj Nepal, *Programme Officer*

ICRC Country Office, Nepal

- Mr Jerome Fontana, *Deputy Head of Delegation*
- Mr Brian Veal, *Cooperation Delegate*

United Nations/ International Organisations

UNHABITAT Nepal

- Mr Padma Joshi, *Head of Office*
- Dr Santosh Shrestha, *Sustainable Housing Analyst*

UNOCHA Nepal

- Mr Ram Leutel, *Disaster Response Specialist*

UNDP Nepal

- Ms Jenty Kirsch-Wood, *Head, Disaster Risk Management Unit*

IOM Nepal

- Mr Murizio Busatti, *Chief of Mission*
- Mr Jitendra Bohara, *Project Officer*
- Mr Pralwal Sharma, *Program Unit*

Nepal Risk Reduction Consortium Secretariat

- Ms Moira Reddick, *Secretariat Coordinator*



Development agencies

Asian Development Bank, Nepal Resident Mission

- Mr Kenichi Yokoyama, *Country Director*
- Mr Deepak Bahadur Singh, *Senior Environment Officer*
- Ms Shreejana Rajbhandari, *Associate Programmes Analyst*

DFID Nepal

- Mr Sam Rose, *Humanitarian Resilience Advisor*

Non-Government Organisations

ActionAID

- Mr Suresh Thapa, *Human Security Coordinator*

Lumanti

- Ms Lumanti Joshi, *Technical Coordinator*

NSET

- Mr Surya Narayan Shrestha, *Deputy Executive Director*

Group consultations

Emergency Shelter Cluster Meeting (30 May 2013)

Sunsari community affected by Koshi floods in 2008 (2 June 2013)

Siraha community affected by fire in 2012 (3 June 2013)

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Annex D

Bibliography



1. Annotated list of legislation

(by section)

Section 1: Disaster Response Framework and links to emergency and transitional shelter

- **Interim Constitution of 2007:** Emergency Powers provisions allowing necessary measures and orders to be taken by the government to secure public safety in the event of grave crises.
- **Natural Calamity (Relief) Act of 1982:** Establishes the main institutional and legal framework for disaster response including committees from national to district level, funding mechanisms and broad areas for response.
- **National IDP Policy and Procedures of 2007:** Establish institutional mechanisms and detailed policies for the management of people displaced by various situations including natural disasters.
- **National Strategy for Disaster Risk Management (NSDRM) 2008:** Includes response and preparedness measures, including emergency shelter, addresses a number of underlying risk factors such as seismic resilience and urban planning, and officially recognizes the UN Cluster System.
- **National Disaster Response Framework (NDRF) 2011:** Consolidates existing law and practice for disaster response, identifying key responsibilities, communication channels and coordination mechanisms, including the Cluster approach and the National Emergency Operations Centre, in the event of major disasters, as well as preparedness activities, some of which related specifically to emergency shelter.
- **Local Self Governance Act of 1999:** Assigns responsibilities for Municipalities and VDCs to “undertake necessary works” in the event of a disaster.
- **Regional and District Disaster Preparedness and Response Plans:** Detailed mapping and response plans developed at district level to identify key activities and responsibilities of different agencies.
- **National Policy and Procedures on Internally Displaced Persons of 2007:** Comprehensive procedures for the facilitation of security, assistance, return and resettlement of IDPs including those displaced by natural disasters. Contains the most detailed procedures, principles and standards of all national response documents.
- **IASC Cluster Contingency Plans and “Chapeau” document:** Sector-based contingency planning for the humanitarian community on the event of major flood and earthquake disasters describing coordination and responsibilities for response activities, as well as preparedness measures.
- **Nepal Risk Reduction Consortium Flagship Area Action Plans:** Identify key risk reduction measures in 5 priority areas, including response preparedness and risk reduction measures relevant to emergency and transitional shelter.

Section 2: Access to shelter assistance

2.1 Identification of disaster-affected people

- **District Disaster Preparedness and Response Plans and NRCS Disaster Operation Manual:** Set out the basic procedures for disaster response at district level including beneficiary registration.
- **National IDP Policy and Procedures of 2007:** Establish a clear process for registration and issue of identity card and lists the documentation required, also contains provisions to facilitate the issue of documentation without having to return to the place of origin.
- **Interim Constitution of 2007:** Establishes entitlements to citizenship.
- **Nepal Citizenship Act of 2007:** Provides further detail on citizenship and the process for obtaining a Citizenship Certificate.
- **Birth, Death and Other Personal Events Registration Act of 1976:** Requirements and procedures for birth registration and certificates.
- **Passports Act of 1967:** Requires Nepalese citizens to obtain a passport in his/her own name before journeying abroad, unless the receiving country does not require a Nepalese passport for entry.

2.2 Property owners

- **Land Survey and Measurement Act of 1963:** Procedures for the survey and registration of land, the issue of Land Ownership Certificates and management of documentation.
- **Land Revenue Act of 1978:** Designates responsibility to Land Revenue Offices to investigate and resolve situations of land omitted from surveys or remaining unregistered.
- **Muluki Ain 1962:** Provisions on property documentation requiring descriptions of land and property in deeds of sale and inheritance entitlements based on traditional patriarchal systems.
- **Ownership of Joint Housing Act of 1997:** Entitles apartment owners to a proportionate allocation of the land in the event their building is damaged or destroyed, as well as obligations for insurance against “divine acts or incidents”.
- **National Parks and Wildlife Conservation Act of 1973:** Provides “reasonable compensation” for houses destroyed by floods or landslides within the buffer zone of a national park or reserve.
- **Comprehensive Peace Agreement 2006:** An example of assistance to property owners displaced by conflict, including the protection of property from unlawful seizure and/or its immediate return, and allowing the free return or resettlement of displaced people in any location.
- **Interim Constitution of 2007:** Requires relief and rehabilitation programmes for the displaced, including for damaged property (for those affected by conflict); affirms the equality of men and women in particular through inheritance.



- **National IDP Policy and Guidelines:** Enables access to legal aid for displaced persons with legal claims concerning their fundamental rights, provided the necessary conditions are met under the Legal Aid Act of 1977.
- **Local Self Governance Act of 1999:** Establishes responsibilities for VDCs and Municipalities to maintain inventories of population, houses and land; provides for the establishment of VDC or Municipality Arbitration Boards for the resolution of land and property disputes.

2.3 Tenants

- **Lands Act of 1964:** Requires the registration of rural tenancies and provides a cap of 50 per cent of yield payable by rural tenants to their landlords.
- **Guthi Corporation Act of 1976:** Allows tenancy rights on Guthi land to be bought and sold.
- **Contract Act of 2000:** Provides general provisions for contracts which are also applicable to rental agreements in the absence of specific legislation or policies.
- **Ownership of Joint Housing Act of 1997:** Requires rental agreements for apartments to be done in writing, including provisions for rent, terms of use, expenses/obligation and insurance.

2.4 Other groups

- **Local Administration Act of 1971:** Prohibits the construction of buildings on government or public land without establishing ownership with penalties of demolition and a fine of up to NPR5,000.
- **Local Self Governance Act of 1999:** Grants municipalities the authority to control unplanned settlements; gives authority to VDCs to include projects for the direct benefit of women.
- **Interim Constitution of 2007:** Provides for the development of policies and programmes for land allocation and livelihoods for squatters and the landless; prohibits discrimination against women.
- **Comprehensive Peace Agreement 2006:** Agrees to adopt a policy to provide land and other economic protection for landless squatters.
- **Muluki Ain 1963:** Prohibits encroachment and construction on land without ownership but allows the payment of “reasonable costs” for surrendering such buildings.
- **National Shelter Policy 2012:** Provides for the development of programmes to improve the conditions of squatter settlements, distribution of identify cards and provision of low cost housing; encourages the participation of women in housing construction.
- **National IDP Policy and Procedures of 2007:** Includes many provisions for the protection and assistance of vulnerable people displaced by disasters.
- **Interim Period Programme for Land Management, Landless and Freed Kamaiyas 2007/8-2009/10:** Reduces or waives the land registration fees for women and marginalized groups.

Section 3: Land for emergency and transitional shelter

- **Town Development Act of 1998:** Designates responsibilities to Town Development Committees for the planning and physical development of new and existing towns, including reconstruction, allocation of open spaces, building regulations and environmental protection.
- **Kathmandu Valley Development Authority Act of 1988:** Establishes the Kathmandu Valley Development Authority to undertake urban planning and ensure the availability of essential services and facilities to the public, to prohibit the use of natural resources to avoid an adverse impact and prescribe conditions for construction near rivers, forests, streams and other areas for nature conservation.
- **Local Self Governance Act of 1999:** Grants VDCs and Municipalities the authority to make land use maps and identify the use of space for different purposes; allows local bodies to undertake “necessary works” to control natural disasters and to make land acquisitions in accordance with “prevailing law”; gives local bodies the authority to implement environmental protection and controlling river pollution.
- **Interim Constitution of 2007:** Allows acquisition of land in the public interest.
- **Natural Calamity (Relief) Act of 1982:** Permits the requisition of immovable property for the conduct of relief work.
- **Land Acquisition Act of 1977:** Detailed provisions for the government acquisition of land in different circumstances, including for disaster situations where “special powers” are granted to make acquisitions with fast track procedures.
- **National Shelter Policy 2012:** Requires risk assessments and risk sensitive land use planning for temporary shelter.
- **National IDP Policy and Procedures of 2007:** Requires special protection for the most vulnerable groups in the planning of temporary shelter; requires the participation of IDP in planning and implementation of programmes in particular with the inclusion of vulnerable groups: reinforces voluntary decision-making for return or resettlement locations with full and accurate information about the suitability of those locations.
- **Good Governance Act of 2008:** Requires consultations with communities and stakeholders for the implementation of any matter of public concern.
- **Comprehensive Peace Agreement 2006:** Emphasizes the right of displaced people to free mobility and to choose return or resettlement locations.
- **Immovable Property Requisition Act of 1956:** Describes the terms and conditions under which the government may requisition immovable property for “any public purpose”, excluding residential premises.
- **National Parks and Wildlife Conservation Act of 1973:** Prohibits the construction of shelters within national parks or reserves without permission.
- **Forest Act of 1993:** Prohibits the construction of shelters within national forests, however the government may make exceptions on the grounds of national interests.
- **Environmental Protection Act of 1997:** Requires the completion of Initial Environmental Examinations and Environmental Impact Studies prior to development or other projects.



- **Ancient Monument Protection Act of 1956:** Protects “traditional custom” which has been used to exclude marginalized ethnic groups and castes from certain areas, including places of worship.

Section 4: Shelter construction

4.1 General construction standards

- **Building Act of 1998:** Requires the development and enforcement of a National Building Code and the regulation of building construction to minimize the loss of buildings from earthquake and other natural calamities. Also requires building designs and maps approval and construction supervision to be conducted by a duly qualified designer, engineer or architect.
- **National Building Code 1994:** Comprehensive provisions on the technical standards and specifications for different building types and materials in Nepal, specifically with a focus on seismic resistance. Also specifies standards for the safety of building and construction workers.
- **Ownership of Joint Housing Act of 1997:** Specific provisions relating to the construction of apartment buildings.
- **Local Self Governance Act of 1999:** Grants VDCs and Municipalities the responsibility to approve all building permit applications, with monitoring by Municipalities and Town Development Committees; allows government use or sale of materials such as river sand, stones or wood found in rivers or streams.
- **National Emergency Shelter Cluster Contingency Plan 2001:** Standards for model emergency shelters and materials.
- **Guideline for Post-Disaster Damage Assessment:** Standards and procedures for the rapid and detailed assessment of buildings after an earthquake.
- **National Shelter Policy 2012:** Includes plans to increase production of temporary shelters and the formulation of an emergency temporary housing plan, encouraging the use of technology to enable storage for emergency use.
- **Construction Business Act of 1999:** Establishes a licensing and application process for undertaking public construction works including provisions for “foreign construction entrepreneurs”.
- **Nepal Engineering Council Act of 1998:** Requires all engineers in Nepal to be registered with the Nepal Engineering Council, including the process for lodging applications.
- **Forest Act of 1993:** Prohibits the use of materials from national forests but allows government use or sale of timber found in rivers or streams.
- **National Parks and Wildlife Conservation Act of 1973:** Prohibits the use of materials from national parks without authorization.
- **Public Procurement Act of 2007:** Procurement rules applicable to public entities and other specified organisations.
- **Competition Promotion and Market Protection Act of 2007:** Provisions preventing anti-competitive behaviour of suppliers, including bid-rigging.

- **Model Customs Agreement 2007:** Provisions for the rapid, tax and duty free import of relief goods imported under the auspices of a UN disaster relief operation.

4.2 Building damage assessments and construction safety

- **National Building Code 1994:** Sets safety standards for construction workers and provides the minimum standards to be incorporated into all construction contracts.
- **Seismic Vulnerability Evaluation Guideline for Private and Public Buildings 2009:** Technical framework for the conduct of assessments after an earthquake, including damage assessment process, rapid evaluation and detailed evaluations.

4.3 Shelter materials

- **National Building Code 1994:** Comprehensive provisions on the technical standards and specifications for different materials in Nepal, specifically with a focus on seismic resistance.
- **Local Self Governance Act of 1999:** Permits the government use and sale of sand, stones, wood and other materials swept down river.
- **Forest Act of 1993:** Prohibits the removal of forest products, trees and other materials from national forests; permits government use or sale of timber on riverbanks or in streams, unless other claims can be substantiated.
- **National Parks and Wildlife Conservation Act of 1973:** Prohibits the removal of trees or other forest resources without written permission from the authorized official.
- **Public Procurement Act of 2007:** Establishes procurement regulations for public entities and other identified organisations, with priority given to the lowest bid.
- **Competition and Market Protection Act of 2007:** Prohibits anti-competitive behaviour including bid rigging.
- **UN/Government of Nepal Model Customs Agreement 2007:** Provides fast track, tax and duty-free entry of relief goods imported under the auspices of the UN.
- **National Disaster Response Framework 2011:** Provides for facilitation of transit visas and port facilities for relief goods arriving via India and the development of guidelines to facilitate international assistance.



2. Annotated list of legislation (alphabetical order)

- **Ancient Monument Protection Act of 1956:** Protects “traditional custom” which has been used to exclude marginalized ethnic groups and castes from certain areas, including places of worship.
- **Birth, Death and Other Personal Events Registration Act of 1976:** Requirements and procedures for birth registration and certificates.
- **Building Act of 1998:** Requires the development and enforcement of a National Building Code and the regulation of building construction to minimize the loss of buildings from earthquakes and other natural calamities; requires building designs and maps approval and construction supervision to be conducted by a duly qualified designer, engineer or architect.
- **Competition Promotion and Market Protection Act of 2007:** Provisions preventing anti-competitive behaviour of suppliers, including bid-rigging.
- **Comprehensive Peace Agreement 2006:** An example of assistance to property owners displaced by conflict, including the protection of property from unlawful seizure and/or its immediate return, and allowing the free return or resettlement of displaced people in any location; agrees to adopt a policy to provide land and other economic protection for landless squatters; emphasizes the right of displaced people to free mobility and to choose return or resettlement locations.
- **Construction Business Act of 1999:** Establishes a licensing and application process for undertaking public construction works including provisions for “foreign construction entrepreneurs”.
- **Contract Act of 2000:** Provides general provisions for contracts which are also applicable to rental agreements in the absence of specific legislation or policies.
- **Environmental Protection Act of 1997:** Requires the completion of Initial Environmental Examinations and Environmental Impact Studies prior to development or other projects.
- **Forest Act of 1993:** Prohibits the construction of shelters within national forests, however the government may make exceptions on the grounds of national interests; prohibits the use of materials from national forests but allows government use or sale of timber found in rivers or streams; prohibits the removal of forest products, trees and other materials from national forests; permits government use or sale of timber on riverbanks or in streams, unless other claims can be substantiated.
- **Good Governance Act of 2008:** Requires consultations with communities and stakeholders for the implementation of any matter of public concern.
- **Guthi Corporation Act of 1976:** Allows tenancy rights on Guthi land to be bought and sold.
- **Immovable Property Requisition Act of 1956:** Describes the terms and conditions under which the government may requisition immovable property for “any public purpose”, excluding residential premises.

- **Interim Constitution of 2007:** Emergency Powers provisions allowing necessary measures and orders to be taken by the government to secure public safety in the event of grave crises; establishes entitlements to citizenship; requires relief and rehabilitation programmes for the displaced, including for damaged property (for those affected by conflict); affirms the equality of men and women in particular through inheritance; provides for the development of policies and programmes for land allocation and livelihoods for squatters and the landless; prohibits discrimination against women; allows acquisition of land in the public interest.
- **Interim Period Programme for Land Management, Landless and Freed Kamaiyas 2007/8-2009/10:** Reduces or waives the land registration fees for women and marginalized groups.
- **Kathmandu Valley Development Authority Act of 1988:** Establishes the Kathmandu Valley Development Authority to undertake urban planning and ensure the availability of essential services and facilities to the public, to prohibit the use of natural resources to avoid an adverse impact and prescribe conditions for construction near rivers, forests, streams and other areas for nature conservation.
- **Land Acquisition Act of 1977:** Detailed provisions for the government acquisition of land in different circumstances, including for disaster situations where “special powers” are granted to make acquisitions with fast track procedures.
- **Land Revenue Act of 1978:** Designates responsibility to Land Revenue Offices to investigate and resolve situations of land omitted from surveys or remaining unregistered.
- **Land Survey and Measurement Act of 1963:** Procedures for the survey and registration of land, the issue of Land Ownership Certificates and management of documentation.
- **Lands Act of 1964:** Requires the registration of rural tenancies and provides a cap of 50 per cent of yield payable by rural tenants to their landlords.
- **Local Administration Act of 1971:** Prohibits the construction of buildings on government or public land without establishing ownership with penalties of demolition and a fine of up to NPR5,000.
- **Local Self Governance Act of 1999:** Assigns responsibilities for Municipalities and VDCs to “undertake necessary works” in the event of a disaster; establishes responsibilities for VDCs and Municipalities to maintain inventories of population, houses and land; provides for the establishment of VDC or Municipality Arbitration Boards for the resolution of land and property disputes; grants Municipalities the authority to control unplanned settlements; gives authority to VDCs to include projects for the direct benefit of women; grants VDCs and Municipalities the authority to make land use maps and identify the use of space for different purposes; allows local bodies to undertake “necessary works” to control natural disasters and to make land acquisitions in accordance with “prevailing law”; gives local bodies the authority to implement environmental protection and controlling river pollution; grants VDCs and Municipalities the responsibility to approve all building permit applications, with monitoring by Municipalities and Town Development Committees; allows government use or sale of materials such as river sand, stones or wood found in rivers or streams; permits the government use and sale of sand, stones, wood and other materials swept down river.



- **Model Customs Agreement 2007:** Provisions for the rapid, tax and duty free import of relief goods imported under the auspices of a UN disaster relief operation.
- **Muluki Ain 1962:** Provisions on property documentation requiring descriptions of land and property in deeds of sale and inheritance entitlements based on traditional patriarchal systems; prohibits encroachment and construction on land without ownership but allows the payment of “reasonable costs” for surrendering such buildings.
- **National Building Code 1994:** Comprehensive provisions on the technical standards and specifications for different building types and materials in Nepal, specifically with a focus on seismic resistance; comprehensive provisions on the technical standards and specifications for different materials in Nepal, specifically with a focus on seismic resistance; specifies standards for the safety of building construction workers.
- **National Disaster Response Framework (NDRF) 2011:** Consolidates existing law and practice for disaster response, identifying key responsibilities, communication channels and coordination mechanisms, including Cluster approach and the National Emergency Operations Centre, in the event of major disasters, as well as preparedness activities, some of which related specifically to emergency shelter; provides for facilitation of transit visas and port facilities for relief goods arriving via India and the development of guidelines to facilitate international assistance.
- **National Parks and Wildlife Conservation Act of 1973:** Provides “reasonable compensation” for houses destroyed by floods or landslides within the buffer zone of a national park or reserve.
- **National Policy and Procedures on Internally Displaced Persons of 2007:** Comprehensive procedures for the facilitation of security, assistance, return and resettlement of IDPs including those displaced by natural disasters. Contains the most detailed procedures, principles and standards of all national response documents; establish a clear process for registration and issue of identity card and lists the documentation required, also contains provisions to facilitate the issue of documentation without having to return to the place of origin; enable access to legal aid for displaced persons with legal claims concerning their fundamental rights, provided the necessary conditions are met under the Legal Aid Act of 1977; includes many provisions for the protection and assistance of vulnerable people displaced by disasters; requires special protection for the most vulnerable groups in the planning of temporary shelter; requires the participation of IDP in planning and implementation of programmes in particular with the inclusion of vulnerable groups; reinforces voluntary decision-making for return or resettlement locations with full and accurate information about the suitability of those locations.
- **National Shelter Policy 2012:** Provides for the development of programmes to improve the conditions of squatter settlements, distribution of identify cards and provision of low cost housing; encourages the participation of women in housing construction; requires risk assessments and risk sensitive land use planning for temporary shelter; includes plans to increase production of temporary shelters and the formulation of an emergency temporary housing plan, encouraging the use of technology to enable storage for emergency use.

- **National Strategy for Disaster Risk Management (NSDRM) 2008:** Includes response and preparedness measures, including emergency shelter, addresses a number of underlying risk factors such as seismic resilience and urban planning, and officially recognizes the UN Cluster System.
- **National Parks and Wildlife Conservation Act of 1973:** Prohibits the construction of shelters within national parks or reserves without permission; prohibits the use of materials from national parks without authorization; prohibits the removal of trees or other forest resources without written permission from the authorized official.
- **Natural Calamity (Relief) Act of 1982:** Establishes the main institutional and legal framework for disaster response including committees from national to district level, funding mechanisms and broad areas for response; permits the requisition of immovable property for the conduct of relief work.
- **Nepal Citizenship Act of 2007:** Provides further detail on citizenship and the process for obtaining a Citizenship Certificate.
- **Nepal Engineering Council Act of 1998:** Requires all engineers in Nepal to be registered with the Nepal Engineering Council, including the process for lodging applications.
- **Ownership of Joint Housing Act of 1997:** Entitles apartment owners to a proportionate allocation of the land in the event their building is damaged or destroyed, as well as obligations for insurance against “divine acts or incidents”; requires rental agreements for apartments to be done in writing, including provisions for rent, terms of use, expenses/obligation and insurance; specific provisions relating to the construction of apartment buildings.
- **Passports Act of 1967:** Requires Nepalese citizens to obtain a passport in his/her own name before journeying abroad, unless the receiving country does not require a Nepalese passport for entry.
- **Public Procurement Act of 2007:** Procurement rules applicable to public entities and other specified organisations; establishes procurement regulations for public entities and other identified organisations, with priority given to the lowest bid.
- **Regional and District Disaster Preparedness and Response Plans:** Detailed mapping and response plans developed at district level to identify key activities and responsibilities of different agencies; set out the basic procedures for disaster response at district level including beneficiary registration.
- **Town Development Act of 1998:** Designates responsibilities to Town Development Committees for the planning and physical development of new and existing towns, including reconstruction, allocation of open spaces, building regulations and environmental protection.
- **UN/Government of Nepal Model Customs Agreement 2007:** Provides fast track, tax and duty-free entry of relief goods imported under the auspices of the UN.



3. List of Legislation (chronological order)

Treaty of Peace and Friendship between the Government of India and the Government of Nepal. Signed at Kathmandu, on 31 July 1950

Ancient Monument Protection Act of 1956

Immovable Property Requisition Act, No. 5 of 1956

House and Land Tax Act, No. 31 of 1962

Muluki Ain (General Code), No. 67 of 1962

Land Survey and Measurement Act, No. 51 of 1963

Lands Act, No. 25 of 1964

Ukhada Act, No. 16 of 1964

Passports Act, No. 21 of 1967

Local Administration Act, No. 2 of 1971

Act Relating to Land of Jhora Area, No. 13 of 1971

National Parks and Wildlife Conservation Act of 1973

Birth, Death and Other Personal Events Registration Act, No. 44 of 1976

Guthi Corporation Act, No. 41 of 1976

Land Acquisition Act, No. 25 of 1977

Land Revenue Act, No. 25 of 1978

National Trust for Nature Conservation Act, No. 12 of 1982

Natural Calamity (Relief) Act, No. 20 of 1982

Kathmandu Valley Development Authority Act, No. 42 of 1988

Cooperatives Act, No. 8 of 1992

Forest Act, No. 49 of 1993

National Building Code, Government of Nepal, Ministry of Physical Planning and Works, 1994

Ownership of Joint Housing Act, No. 15 of 1997

Environment Protection Act, No. 24 of 1997

Environment Protection Rules of 1997

Building Act, No. 2 of 1998

Town Development Act, No. 22 of 1998

Nepal Engineering Council Act, No. 23 of 1999

Construction Business Act, No. 25 of 1999

Local Self Governance Act of 1999

Contract Act of 2000

Prevention of Corruption Act, No. 1 of 2002

Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), 22 November 2006

Private Financing in Build and Operation of Infrastructures Act, No. 30 of 2006

Interim Constitution of 2007

Nepal Citizenship Act, No. 25 of 2007

Interim Period Programme for Land Management, Landless and Freed Kamaiyas 2007/8-2009/10

Right to Information Act, No. 4 of 2007

Three Year Interim Plan 2007/8-2009/10, Government of Nepal, National Planning Commission (unofficial translation)

National Policies on Internally Displaced Persons of 2007

Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons of 2007

Public Procurement Act, No. 36 of 2007

Competition Promotion and Market Protection Act, No. 35 of 2007

Model Agreement between the United Nations and the Government of Nepal concerning measures to expedite the import, export and transit of relief consignments and relief personnel in the event of disasters and emergencies, signed 31 May 2007

Money Laundering Prevention Act, No. 34 of 2008

Good Governance (Management and Operation) Act, No. 36 of 2008

National Strategy for Disaster Risk Management (NSDRM), Government of Nepal, March 2008

National Disaster Response Framework (NDRF), Government of Nepal, 2011 (unofficial translation)

Local Disaster Risk Management Planning Guideline, 2012 (Nepali only)

National Shelter Policy, Government of Nepal, Ministry of Urban Development, 2012

Land Use Policy (draft version), 2012 (Nepalese version)

Regional and District Disaster Preparedness and Response Plans (various dates)



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Humanity / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service / It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



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