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**31st International Conference of the Red Cross and Red Crescent**
**28th November – 1st December 2011**

**'Addressing regulatory barriers to meeting the emergency and transitional shelter needs of people affected by disasters'**

**Expert Group Meeting July 20th 2011 at IFRC, Geneva**

Why have we convened this expert meeting?

RCRC believe that addressing regulatory barriers is critical to all humanitarian responders in disaster contexts. Shelter professionals declare that regulatory issues are among the biggest barriers they face in delivering safe and equitable shelter during the emergency and interim phase of a disaster.

The 31st International Conference of the Red Cross and Red Crescent brings together the IFRC, ICRC, National Societies and all 194 member states to the Geneva Conventions and is second-only to the United Nations General Assembly. This will be an opportunity to move forward on issues of importance and to create initiatives in this unique environment, and to gain attention on this topic. It will also be an opportunity to get National Societies and States actively involved.

We need to develop a common understanding of what the regulatory barriers are, and what creative and innovative solutions have been developed to address them. Many of these barriers have complex origins and require long-term solutions, however as a first step, short-term solutions must also be found.

Administrative procedures are often the biggest barrier within regulatory frameworks. Different factors affecting shelter include the environment, social, economic, cultural factors, institutional issues, and attitudes to or compliance with existing regulatory frameworks.

The meeting began with introductions to the subject by Graham Saunders (Head of Shelter and Settlements at IFRC), David Fisher (IDRL programme coordinator), Geoffrey Payne (Land Tenure consultant) and Rhodri Williams (Human Rights lawyer) who co-facilitated the meeting.

Working Session 1 and 2 were divided into four separate subjects for further discussion within small groups: **Shelter** (type of construction, materials, standards, habitability, cultural appropriateness etc), **Land** (planning, service provision and approval procedures), **Information** (consultation, and planning durable solutions) and **Displacement** (compensation and use of former assets). Meeting participants were invited to choose a topic and remain within this group for both sessions, to ensure consistency of discussion.

Working Session 3 was an open discussion between all participants on their recommendations on key issues and required actions.

**Working Session 1: Regulatory Barriers**

**Shelter**
Discussion centred on defining what the regulatory environment for shelter would be and what the groups of issues would be that are defined and governed by those regulations.
The regulatory environment was initially defined as falling within three types of regulation:
- *Rules* - Where local officials are often dictating a preference for a material or particular approach to shelter provision. These are not necessarily backed by legislation, but their requests need to be considered.
- *Norms* - Cultural aspects are often embedded within social structures of beneficiary communities, these too need careful consideration in shelter programming and provision.
- *Laws* - Are regulations that exist in a nation, and require adherence, even if they are rarely enforced.

These rules, norms and laws are then utilised to govern regulatory groups such as materials, (in terms of availability, quality, environmental impact, logistics and tender processes), shelter typology (including cultural acceptability, costs, vernacular construction methods), standards (building codes, fire codes, SPHERE Project, ISO standards and insurance standards),  labour (whether unskilled , semi-skilled or professional) and stakeholders (communities, landowners, local officials, military, syndicates and international assistance).

**Land**
Problems were identified as relating to two issues, namely the domestic system of land registration and the international/governmental interface.
The domestic system – Are people with no legal right to live where they were living prior to the disaster eligible for assistance? Many countries have little or no title registration or otherwise lapsed systems. One way to address these issues is to create a means to identify and address the gaps within the already-existing system.
This needs to be done without creating parallel systems using community participation as a tool. There needs to be recognition of the differences between urban and rural contexts. Urban situations have a heightened complexity in their government systems and housing arrangements.

Problems at the international/governmental interface are often that humanitarian agencies are ill-informed about local legal systems that were in existence pre- disaster. As a result there can be a lack of engagement with local authorities by International actors, with too many voices telling government what to do. This can result in a greater tendency for creating or reinforcing parallel systems that are more inclined to become permanent.

**Information**
Three key issues were identified:
- *Accountability* – what are the structures of decision-making processes at all levels. How will it be mapped by government and NGOs? How do you achieve fast – tracking of procedures and planning?
- *Developing the consultation process* – How is community consultation managed?

- *Checklists* - A suggestion for improved communication/information levels is to establish checklists to ensure that people are aware of their rights, obligations and responsibilities, deemed important for stakeholders at all levels.

## Displacement

What are the factors affecting the reversibility or irreversibility of displacement? Do people have a choice? *Reversible scenarios* - can be psychological, simply having a choice. *Irreversible* - can be made up of political, physical, legal, economic or ecological considerations that affect return to original location of habitation.

What are the provisions within national law of the disaster affected country?
- Compensation – How? Who decides and are the communities involved? Bureaucracy associated with compensation can be enormous and requires effective communication to the affected population.
- Local arrangements for temporary housing, what are the frameworks for provision? These issues will require a level of preparedness.
- Where does the state stop and insurance start?
- Voluntary displacement or involuntary, options include; formal compensation, informal resettlement, moving to cities (representative of uncontrolled population movement).

## Working Session 2: Emerging Creative Solutions in Addressing Regulatory Barriers
## Shelter

A number of solutions were identified for recommendation to states/donors, including working together with states to undertake a regulatory audit to understand the regulatory environment existent prior to a disaster. Encourage the development of contingency planning through the practice of simulation exercises, and develop disaster management protocols through the outcomes of those exercises.

The group also acknowledged 'must haves' for states to be able to respond effectively in disaster scenarios. These included building codes with the requisite enforcement (requiring expansion of capacity at a local level); labour whether semi-skilled or professional must have an understanding of how buildings fail. Markets are necessary for the availability of materials with a method of measuring quality necessary for building and reconstruction work. Vernacular construction methods, could be a useful method for introducing incremental building strategies that mimic the way in which many people rebuild their homes worldwide.

## Land

Advice on land issues recommended that governments make a number of activities a priority before a disaster. These include: the designation of specific buildings as potential to provide temporary shelter, create procedures for the requisition of land for temporary use, initiate an 'ombudsman' scheme to adjudicate land use disputes, develop cadastral systems if none are in existence prior to disaster, and enable the acceptance of humanitarian registration approaches post disaster (participatory approach for tripartite agreements with beneficiaries).

The international community needs to develop a universally agreed participatory land mapping tool, to enable shelter agencies to 'assign' temporary shelter use rights where

cadastral systems are inadequate. They need to augment existing land management systems and not replace them, using participatory community approaches to determining land use entitlement. Create country profiles prior to disaster including details of laws and systems in use and how implemented.  The international community needs to develop strategic leadership and aim to refocus attention on those with informal as well as formal rights to land.

## Information

In order to achieve enhanced accountability agencies need to use a pre-defined structure of decision-makers represented by an organogram, including details of who is responsible for what level of communication.  Up-scaling surge capacity for response based on a series of identifiable triggers, drawing on resources from regional, provincial, national and international   capacities. Identify gaps required in resourcing for specialist inputs and for specific periods.

Maintain a process of engagement with the community through using informal/formal leadership processes aiming to identify and manage their needs, priorities and rights. In capturing these needs at national and provincial levels, identify how and where external support is required with regular review and adaptation of strategies at an appropriate level.

## Displacement

Key persons who do not benefit from compensation include evictees and the landless. The international community need to develop clear selection criteria for compensation that incorporate those who ordinarily receive no entitlement, such as squatters and renters. There needs to be clear communication to individuals and groups of their rights with respect to compensation, and fast-track decision making on land requisition processes. There need to be realistic solutions given the existence of states with serious economic circumstances.

Best practice examples include: Turkey (equal eligibility in emergency T shelter access), Haiti (tripartite agreements on T shelter ownership), and Chile (fast-tracking recognition of tenure).

## Working Session 3: Recommendations on Key Issues and Required Actions

Participants were invited to comment with repect to the following framework suggested by the facilitators Geoffrey Payne and Rhodri Williams:

1. Regulatory approaches in states of emergency (exceptions to fast-tracking of ordinary standards, regulations and procedures):
    a. Assessment/regulatory audits – to be undertaken prior to a disaster
    b. Building codes and land use regulations – coordination with local and national government was stated as vital, and should, where possible, endeavour to create codes that allow incremental building in line with more common house building practices worldwide.
    c. Requisition of land - coordination with local and national government stated as vital and encouraged to pursue participatory practices where domestic systems of titling are inadequate with, importantly, international certification of the process.

       d. Adopting informality - coordination with local and national government stated as vital including recognition of all forms of tenure and consideration for assets lost in a disaster.

       e. Harnessing community initiatives

2. Beyond emergencies – how to lock in gains?
3. Regulatory obstacles and solutions to:

       a. Land for shelter and livelihoods

       b. Reconstruction assistance

       c. Compensation and/or alternative land and housing

4. Regulatory obstacles to equal access/non-discrimination

**Conclusions**

Regulatory barriers to providing both emergency and transitional shelter needs are likely to be greatest in contexts where the existing regulatory framework applicable to land management, planning and building is inappropriate to the realities which they are intended to address. The largest single regulatory constraint to improving access to legal housing (in recent research) was found to be overly complex and time-consuming administrative procedures[1].

*What can be done for persons who lack formal documentation or recognized title to homes that have been damaged or destroyed?*

Why should property owners be any more entitled to compensation than any other group? Available resources, by all actors, should be allocated to meeting the needs of *all* affected people to basic temporary shelter and preparing plans for medium term reconstruction. If owners lack funds to rebuild, they could share the costs of rebuilding with any tenants or other households in return for shared ownership or a reduction in rent according to the value of their contribution in cash or kind. Residents of officially unauthorised settlements should be permitted to return to their previous locations as soon as practical. They should be considered eligible for some form of tenure security ranging from temporary occupation rights to other options which can be upgraded incrementally over time.

*How can we quickly obtain or assign the (temporary) use of land for housing persons displaced by disasters?*

The priority will be to identify locations and subdivide land for temporary shelter units, such as tents. Located on public land, such as parks, recreation areas, or social facilities, such as schools or religious centres, or land on the periphery of existing settlements. This will minimise pressure on previously occupied land which may be under private ownership. However, it may be necessary to requisition private land on a temporary basis using emergency powers.

*How can we avoid sustained homelessness pending the resolution of disputes over land ownership and inheritance?*

Undertake community-based enumeration and agreement by survivors. No permanent rebuilding permitted until either proof of ownership has been presented and officially approved or public agreement has been made and ratified in the presence of professional

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[1] For example, Payne, G. and Majale, M. (2004) 'The Urban Housing Manual: Making regulatory frameworks work for the poor' Earthscan.

observers. Harness community shelter initiatives in such a way as to guide self-help by disaster-affected communities without either co-opting or discouraging it.

Although the tacit or explicit recognition of customary and informal rights is likely to raise difficult political issues, there was a clear sense in the meeting that doing so was necessary in order to achieve equitable outcomes, particularly in terms of reconstruction assistance.
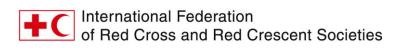
*How do we ensure equitable shelter assistance, including as between recognized property owners and non-owners (eg renters and squatters) and male and female-headed households?*
Owners will need to demonstrate evidence of their claims either through documentary evidence or the endorsement of neighbours. Permissions can then be granted for them to rebuild as and when they are able.

Ways in which such a recommendation could be formulated in order to safeguard the policy of equitable assistance to disaster-affected persons in a manner involving the least drastic immediate policy intervention could be through the concept of 'Tenure Security'. This ensures that everyone should enjoy basic legal protection against harassment and arbitrary evictions in their homes, whether they own them, lease them, or occupy them on the basis of customary or informal rights.

**Recommendations:**
- Utilise simplified standards for land use and construction which facilitate incremental development.
- Develop flexible regulations which permit mixed land use, together with simplified administrative procedures which focus on the public realm and norms for protecting the public interest, can provide the foundation for a more sustainable regulatory framework to which all sections of the population can conform.
- Development actors endorse the concept of tenure security; noting that clear legal relations encourage productive investment in, use of and access to property even where they do not involve ownership.
- Guidelines on humanitarian assistance imply that displaced persons should enjoy security of tenure in emergency and transitional shelter units.
- It would provide a basis for treating them in a manner more equivalent with property owners in both reconstruction and resettlement situations.
- As with the extension of security of tenure, encouraging participation of displaced persons in matters directly affecting them and governance approaches based on subsidiarity are also broadly seen as best practices in ordinary settings and there is little obvious basis for discouraging them during disaster settings.

# International Federation of Red Cross and Red Crescent Societies

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