



DISPLACEMENT SOLUTIONS

**Regulatory Obstacles to Rapid and Equitable Emergency and
Interim Shelter Solutions after Natural Disasters**

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Author's Note

This report was prepared by Scott Leckie, Director of Displacement Solutions, upon commission from the International Federation of Red Cross and Red Crescent Societies (IFRC). The views and recommendations expressed here are his own and are not necessarily those of the IFRC or its member National Societies.

I. Introduction and Background

1. The role of the international community in providing emergency and temporary shelter relief to those forced from their homes due to disaster is vital to securing the shelter needs of disaster affected persons, families and communities. What is less widely known, however, are the manifold housing, land and property (HLP) rights and other issues that frequently arise within the immediate and longer-term aftermaths of disaster, and which are often instrumental in determining the extent to which post-disaster shelter and related recovery succeeds and is able to be carried out rapidly and equitably. Indeed, these regulatory obstacles can seriously undermine the efforts of the humanitarian community to provide shelter to those in need.¹ Each of these issues can also be determinative of the extent to which the *rights* of those affected by disaster are respected, protected and, ultimately, fulfilled and enforced.

2. Examining the regulatory obstacles to the effective provision of shelter by the humanitarian community needs to be carried out against the backdrop of the increasingly clear and expanding international normative framework on HLP rights. Building on the recognition of HLP rights issues within the wider body of international human rights and humanitarian law, the past two decades, and the past five years, in particular, have been witness to very important advances in the recognition by the global humanitarian movement of the centrality of HLP rights within the context of post-disaster responses. Indicatively, the *IASC Operational Guidelines on Human Rights and Natural Disasters* clearly assert that “human rights underpin all humanitarian action” and that “Humanitarian organizations shall not promote, actively participate in, or in any other manner contribute to, or endorse policies or activities, which do or can lead to human rights violations by States. They shall strive to enable the affected people to exercise their own rights”.² They stress that “Persons affected by natural disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against”.

¹ A recent report issued by UN Habitat for instance, specifically addressing land issues following disaster contains a number of important findings, including: Poor land governance and insecure tenure increase vulnerability to a disaster; Sustainable recovery requires early assessment of the institutions that provide access to land and protect rights to land; Security of tenure is essential for sustainable relief and recovery, particularly in circumstances of informality and/or lost land records; Managing residual caseloads: housing the landless is essential to decommissioning temporary living centres; Mitigation measures may create adverse resettlement effects; Resettlement programming will be challenged by a lack of lead time for planning and consultation; and Women and children face disproportionate obstacles to restoration of housing, land and property rights. Source: UN Habitat, *Land and Natural Disasters: Guidance for Practitioners*, UN Habitat, Global Land Tool Network, FAO, IASC Cluster Working Group on Early Recovery, 2010.

² The Guidelines add that “Competent authorities should be requested to protect, to the maximum extent possible, against looting, destruction, and arbitrary or illegal appropriation, occupation or use of property or possessions left behind by persons or communities displaced by the natural disaster”.

Box 1: What are HLP Rights?

Housing, land and property rights - HLP rights - are the collected bundle of existing rights found within international human rights and humanitarian law, other legal domains and the broad global normative framework of standards on these matters that have a direct bearing upon the residential conditions in which people live and the rights they possess as dwellers. They are applicable in times of peace and development, as well as within the context of conflict, disaster and climate change. HLP rights are the legal basis of rights held by individual right-holders and, conversely, create the legal obligations held by Governments and third parties to respect, protect and fulfil these rights. While HLP rights overlap with one another to a significant degree, each of the three sets of rights has distinct elements: Housing rights are essentially those rights which govern the residential attributes of life for everyone who is not fully protected by either land rights or property rights. These include the rights of slum dwellers, tenants, homeless persons and others who are unable to access the full spectrum of housing rights as recognised under international human rights law and other legal regimes and frameworks, which include rights to security of tenure, affordable, safe and accessible housing, access to basic services such as water, drainage and electricity, equal treatment of men and women, and special rights for particularly disadvantaged groups such as the elderly, children and disabled persons. Land rights are directly relevant to landless persons, families and communities and those living under customary, traditional or extralegal forms of land administration. Property rights are those rights that are recognised, often through the conferral of property titles or occupancy rights, as enforceable personal or communal property rights in the form of ownership and control. Property rights can and should be extended to tenants and others with legal rights to reside in a certain place, including adverse possession rights. No single set of HLP rights is more or less important, and all of the rights concerned need to be treated as an integral whole, fully inter-dependent with and mutually reinforcing with the other HLP norms. Viewing post-disaster relief and recovery through the lens of HLP rights ensures that a consistent and clearly established rights-based approach is taken in determining proper policy and programmes to assist disaster-affected people and their communities.

3. Such sentiments, which are now commonplace throughout the relevant normative framework guiding humanitarian responses to disaster, directly link to housing, land and property rights. HLP rights are found throughout the body of international human rights law and within all domestic legal systems (See Box 1). These rights are of fundamental importance to the full enjoyment of human rights, and are particular importance for persons and communities affected by disasters. These include: the right to equal treatment and non-discrimination, the right to adequate housing, including security of tenure, the right to be protected against arbitrary or unlawful displacement, the right to HLP restitution, including the right to return to their places of habitual residence and rights to recover housing, land and property left behind due to displacement by a disaster, the right to life and livelihoods, including food, clothing, and an adequate standard of living, the right to equality between men and women, the right to privacy and respect for the home, the right to peaceful enjoyment of possessions, the right to adequate housing, the right to freedom of movement, the right to voluntary return in security and dignity and adequate consultation and participation by affected persons. Each of these rights have been expansively defined and elaborated upon through case law and jurisprudence. As a result, the HLP rights normative framework now forms a cornerstone of the work of the humanitarian community involved in post-disaster sheltering activities.

4. A 2010 report by the UN Special Rapporteur on the Right to Adequate Housing, Ms. Raquel Rolnick, is indicative of the increasing relationship between human rights and humanitarian responses to natural disasters. In her report on housing rights concerns within post-conflict and post-disaster settings, Rolnick notes that: “58. Violations of the right to adequate housing can both contribute to and result from armed conflicts and natural disasters. The poorer and marginalized members of society are disproportionately affected. Addressing existing vulnerabilities can play an important role in both preventing and mitigating the impacts of disasters and conflicts. States should therefore: Urgently step up their efforts to respect, protect and fulfil the right to adequate housing, in all its dimensions, in both urban and rural contexts; Develop and implement land tenure reform policies and programmes that make suitably located, secure, safe and affordable housing accessible to all; and Recognize and protect a variety of land tenure forms, instead of a predominant or exclusive focus on freehold ownership. 59. In the wake of a specific disaster or conflict, the right to adequate housing should be integrated as a key component of planning, preparation and implementation of any ensuing humanitarian, reconstruction and development responses.”³

5. Concurrent with the growing appreciation of the HLP rights dimensions of post-disaster responses, has come a deeper appreciation of the centrality of HLP issues within the context of humanitarian response. The 2005-2006 *Humanitarian Response Review*, for instance, identified land issues as a gap in humanitarian responses, while the 2007 Early Recovery Cluster called for guidelines and a toolkit on addressing land issues after natural disasters which resulted in the *Local Emergency Needs for Shelter and Settlement (LENSS) Toolkit* prepared by the Emergency Shelter Cluster in 2009.⁴ UN Habitat’s *Land and Natural Disasters: Guidance for Practitioners* (2010) provided additional assistance to those working on HLP issues during humanitarian post-disaster responses. *The Sphere Handbook – Humanitarian Charter and Minimum Standards in Humanitarian Response* (2011) explicitly

³ See UN doc: A/HRC/16/42 – 20 December 2010. She additionally adds “63. Dedicated funding mechanisms or channels should be established to provide resources to initiatives aimed at respecting, protecting and fulfilling the right to adequate housing from the very outset of humanitarian operations. In addition, structured capacity-building networks should be created at field level, accompanied by focused operational support. A documented body of evidence on past violations (and their causes) should be produced, made available and developed into guidelines for action. 64. The effective consultation and direct participation of affected communities in the design and implementation of post-conflict and post-disaster responses, particularly on matters of housing and land, should be ensured. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-42.pdf>

⁴ The Toolkit developed the following questions to ask in preparing a land and shelter needs assessment: *Ownership* – Who claims to own the land? Government, private individuals, the community? What is the legal basis/evidence for this claim? Is the claim contested by another party? *Hazards and Risks* – Has there been a risk assessment of the land selected for transitional shelter? Is it suitable for shelter and livelihoods? Is it sufficiently free from natural hazards? How high is the risk of land and resource conflict with local communities? *Legal Mechanisms* – Does the constitution or national law include protection against eviction? Do existing land recovery or compensation mechanisms apply to an emergency like this? *The Land Tenure System* – Is land tenure in the locality formal, customary, informal or mixed? Does the system provide sufficient security of tenure for affected landholders? Do people in the host community area consider that the land tenure system provides sufficient security of tenure? *Household Tenures* – Are affected persons landowners, renters or occupiers with landowner consent? What type of land rights does the host community have? Are there any secondary rights holders, eg. tenants, pastoralists, persons with specific use rights? *Land Records* – Do land records exist for the locality affected by the disaster? Do these records provide sufficient security of tenure for house reconstruction? Do alternative forms of evidence of land rights exist? Do these enjoy widespread local legitimacy? Do prevailing land dispute resolution mechanisms include steps to restore or provide tenure documentation for house reconstruction? *Women and Orphans* – Is there a land use planning process for the locality? Is it community-based, participatory and/or consistent with actual settlement practices? *Land Use Planning* – Is there a land use planning process for the locality? Is it community-based, participatory and/or consistent with actual settlement practices?

links human rights to humanitarian response by stating “Everyone has the right to adequate housing. This right is recognised in key international legal instruments (see References and further reading: International legal instruments). This includes the right to live in security, peace and dignity, with security of tenure, as well as protection from forced eviction and the right to restitution. These instruments define adequate housing as ensuring: sufficient space and protection from cold, damp, heat, rain, wind or other threats to health, including structural hazards and disease vectors; the availability of services, facilities, materials and infrastructure; affordability, habitability, accessibility, location and cultural appropriateness; sustainable access to natural and common resources; safe drinking water; energy for cooking, heating and lighting; sanitation and washing facilities; means of food storage; refuse disposal; site drainage; and emergency services; the appropriate placement of settlements and housing to provide safe access to healthcare services, schools, childcare centres and other social facilities and to livelihood opportunities that building materials and policies relating to housing construction appropriately enable the expression of cultural identity and diversity of housing.”⁵ Bearing in mind these and other developments, the IFRC’s Strategy 2020⁶ and the growing engagement by the IFRC as Global Shelter Cluster Convenor for Natural Disasters, the IFRC’s Shelter and Settlements Department is currently developing an HLP Rights Checklist with the author.

6. In the aftermath of many natural disasters, HLP rights and related regulatory issues have been identified as some of the primary obstacles to the rapid and equitable provision of shelter solutions to persons and communities whose homes, lands and properties have been damaged or destroyed. These regulatory obstacles can manifest in numerous ways; they may be legal in nature, be based on prevailing government policy, emerge as unintended outcomes of the post-disaster period or may be intentional. Notwithstanding their origin, they can have a marked impact on the effectiveness of shelter programming by the humanitarian agencies. They can determine the extent to which the HLP rights of affected persons and communities are fully in place. Shelter officials have reported, for instance, that there is often a dilemma about how and where to house persons who lacked documented legal title to the homes in which they lived prior to a disaster. Tenants and those residing in informal settlements sometimes receive lesser and slower assistance than property-owners. Property owners are sometimes hesitant to allow even temporary use of their properties for settlement, when this might interfere with more profitable uses of the land. States sometimes lack clear procedures or are hesitant to invoke their powers of compulsory purchase/ eminent domain to acquire land for settlement. Dispute resolution procedures related to land ownership or control are often not well suited to crisis settings.

⁵ *The Sphere Handbook – Humanitarian Charter and Minimum Standards in Humanitarian Response* (2011), p. 243.

⁶ “Strategy 2020 is guiding the actions of the IFRC throughout this decade. It defines three strategic aims and three enabling actions for the IFRC and its member National Societies in order to achieve a common vision: to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by National Societies, with a view to preventing and alleviating human suffering, and thereby contributing to the maintenance and promotion of human dignity and peace in the world. The strategic aims of the IFRC’s Strategy 2020 are: 1. Save lives, protect livelihoods, and strengthen recovery from disasters and crises 2. Enable healthy and safe living 3. Promote social inclusion and a culture of non-violence and peace. The enabling actions to deliver our Strategic Aims are: 1. Build strong National Red Cross and Red Crescent Societies; 2. Pursue humanitarian diplomacy to prevent and reduce vulnerability in a globalized world; and 3. Function effectively as the International Federation.”

7. As both the frequency and scale of disasters intensify, shelter programming at all levels has faced a growing range of HLP issues that can present significant policy challenges to the international community, and which if unaddressed, can obstruct, delay or otherwise affect the success of shelter activities. This has led those working within shelter sector agencies to pose questions such as: How should the humanitarian community address claims for HLP restitution rights by victims of disaster even while the national authorities may wish to involuntarily resettle those who have lost their homes?; How should humanitarians define and protect the human rights of disaster-affected populations?; How can international agencies best address the HLP rights of landless or homeless populations within the context of shelter programming?; How can the humanitarian sector act to bolster security of tenure protections for disaster-affected populations?; How can the international community best confront land grabbing and illegitimate land sales?; What can be done for persons who lack formal documentation or recognized title to homes that have been damaged or destroyed?; How can the humanitarian sector quickly obtain or assign the (temporary) use of land for housing persons displaced by disasters?; How can the humanitarian sector avoid sustained homelessness pending the resolution of disputes over land ownership and inheritance?; and How does the humanitarian sector ensure equitable shelter assistance, including as between recognized property owners and non-owners (e.g. renters and squatters) and male and female-headed households?⁷

8. In an effort to address these and related queries, this report explores some of the common regulatory obstacles affecting the HLP sectors that may impact upon the enjoyment of the HLP rights of disaster-affected families and communities and how - if left without suitable policy interventions - they can impede the successful implementation of international shelter programmes. It outlines key HLP issues including access to land, land administration and land use planning. It examines the specific HLP rights to which those affected by disaster are entitled under these various legal regimes and how these rights can inform post-disaster policies and strategies by those involved in the shelter sector.

9. Among other sources used in the preparation of this report, targeted telephone surveys were conducted with a range of shelter practitioners working with the IFRC and the Emergency Shelter Cluster. The survey sought to gain clarity based on first-hand experiences of practitioners in the field with regard to regulatory issues and best practices in the short-term shelter context. The following questions were presented:

- What problems have you encountered with regard to providing short-term or interim shelter after disaster to: (a) people who lack (or who have lost) documentation of property title, (b) renters, (c) squatters? What issues do governments face in helping these various categories of persons?
- Are there are other groups or categories of people for whom shelter solutions tend to be especially difficult to provide, either by humanitarian/development organizations or by governments?

⁷ These and other HLP issues can be problematic across the recovery period, however, this project will concentrate on their impact and potential solutions (even if only temporary) related to emergency and transitional shelter. This forms one of the primary focus areas of work of the Red Cross and Red Crescent in the shelter sector as they also often represent periods of acute need for disaster-affected persons.

- What other legal, regulatory or procedural issues have you encountered in providing short-term or interim shelter solutions in the post-disaster context?
- Have you encountered examples where the temporary use of land for housing displaced persons has been assigned particularly quickly and effectively? If so, how has this been done?
- Have you encountered instances in which property ownership/use disputes that might otherwise have delayed shelter solutions have been particularly well addressed? If so, how has this been done?
- What other good examples have you encountered of measures taken either by governments or humanitarian/development organizations of solving the kinds of legal, regulatory or procedural issues you have mentioned?
- What advice would you have for (a) governments and (b) humanitarian/development organizations to better address regulatory, legal or procedural issues related to post-disaster shelter?⁸

II. Common Regulatory Obstacles within the Housing, Land and Property Sectors to Rapid and Equitable Emergency and Interim Shelter Solutions after Natural Disasters

10. The core actions involved in shelter programming following a disaster can be clear, straight-forward and transparent, guided by prevailing norms, best practice and decades of field experience. Among other things, this typically involves shelter needs assessments, land identification, the provision of building materials, construction of tent camps and transitional housing and related forms of assistance. When clear and reliable HLP records are available, where no major HLP disputes are present and where all groups affected by the disaster are treated equally, shelter activities can generally be carried out without unreasonable delays, inequity or considerable controversy. Similarly, the continuum of emergency shelter transforming into temporary shelter, and temporary shelter giving way to transitional shelter, and ultimately ending in the provision of or access to permanent housing by all disaster-affected persons often follows a similar trajectory when systemic HLP regulatory obstacles do not affect the process in a major way.

Box 2 – Regulatory Obstacles to Shelter Efforts in post-Earthquake Haiti

Shortly after the 2010 Earthquake in Haiti, UN Emergency Relief Coordinator John Holmes confirmed that shelter was the main humanitarian issue in Haiti.⁹ These sentiments have been

⁸ The report draws on field-level experiences working with HLP issues in Haiti (Earthquake - 2009), Bangladesh (Cyclone Aila – 2009), Myanmar (Cyclone Nargis – 2008), Peru (Earthquake – 2008), Pakistan (Earthquake – 2005), New Orleans (Hurricane Katrina – 2005), Sri Lanka (Tsunami – 2004), Aceh (Tsunami – 2004), India (Gujarat Earthquake – 2001) and Japan (Kobe Earthquake – 1995).

⁹ “There wasn’t a proper land registry system (before the earthquake) and this complicates the issue of the government taking land and allocating it for resettlement,” [Holmes] told AlertNet in an interview this week, adding that legal documents relating to land title were destroyed in the disaster. Another factor was the scarcity of suitable land for resettlement in Port-au-Prince and the government’s hesitation to build large numbers of “transitional shelters”, made of wooden frames and galvanised iron roofs and designed to last a couple of years. “They say ‘well these will probably turn into permanent settlements – is that actually what we want?’” Holmes said. “I think there’s not a shortage of materials or of capacity to build these shelters, it’s a question of (the government) saying right this is where we’re going to build, this is how many people we’re going to put there,

widely echoed by numerous IFRC and other humanitarian workers involved in shelter provision in Haiti, including many of those interviewed for this report. One respondent made the following remarks on the difficulties they faced:

“Shelter is one of the most difficult parts of the humanitarian effort since the earliest days. Time, procurement, logistics, the lack of a resettlement policy, no national capacity to absorb affected families and the lack of protection instruments for IDPs, are all key problems we have faced. There is no access for land for permanent houses. There was also no effort made to stabilize the urban population and the presence of camps there attracted people from the countryside who saw a huge opportunity to take advantage of health, education and so forth. In terms of shelter activities, many agencies are still delayed. Agencies can’t sustain the construction pace because of lack of land ownership documentation. In addition, local authorities are refusing to confirm the rights of owners or renters. As a result, most agencies arrived with supplies and developed their own documents. Shelter cluster planning at the beginning was for 120,000. But finding these people was a challenge at first until people were drawn in by the promises associated with relief. Rent went nuts. There is no regulation at a camp, nobody would ask what you were doing. You can just go and put up as many tarps as you want. Many people claiming they had lost paper are taking advantage of agencies desperate to deliver. Getting materials through customs was difficult at the beginning. There is a need to hire fixers and even then it takes ages to get things through. Using local suppliers may not work because they are in cahoots with customs”.

11. When HLP regulatory challenges issues do arise, however, the process of shelter assistance can face a series of obstacles that can greatly affect both the success of the assistance provided, and potentially the rights of the recipients of assistance. Understanding the most common ways by which these regulatory impediments emerge can assist the international shelter community in developing improved and consistent approaches to these often difficult situations. The following overview provides a broad sketch of what the key issues are, how they look in practice and what measures are typically taken to address them. Many of these issues are not new, and two of the key conclusions made in the seminal UNDRO *Shelter After Disaster* report of 1982 remain as valid today as when they were first made in 1982.¹⁰ What is new, however, is the rapidly growing realization by the humanitarian community that shelter responses may be improved greatly when these obstacles are successfully addressed and overcome. While there are many such hurdles, this report will briefly outline twelve of the more common regulatory hurdles to effective, rapid and equitable shelter responses.

now let’s do it.” See: Katie Nyugen, Land issues slow progress on Haiti shelter, 19 May 2010, Available from: <http://reliefweb.int/node/355017>.

¹⁰ “Many assisting groups are apprehensive of the problems related to land acquisition. Their programmes offer housing preferably to families who have title to land. However, few low-income families are landowners. Thus, programmes such as these only help those who are better off to begin with, and who would in any case be eligible for financial assistance. In the aftermath of a disaster this built in discrimination against the majority of survivors (who as we have seen, are mostly poor and landless) can be the source of social and political tensions....The most significant finding of this study is that the emergency shelter problem in developing countries is fundamentally different than that in industrialized societies, for in the third world the question of emergency shelter cannot be disassociated from the prevailing housing problem as a whole.” UNDRO, 1982, *Shelter After Disaster*, 48 and 55 respectively.

Differential Treatment Based on Tenure Status

12. Although the experience of tenants and those residing within the extralegal sector in any given disaster context is invariably similar (if not precisely the same) as that suffered by housing, land or property owners (particularly in wealthier countries where many of those affected have insurance protection for housing, land and property losses), non-owners frequently face differential treatment within the HLP sector during emergency recovery and reconstruction efforts. Most of those interviewed for this report indicated that renters throughout the world face a structural bias in accessing shelter assistance in the aftermath of disasters. Following the 2007 Pisco Earthquake in Peru, for instance, 78% of the population had title and received grants for reconstruction, while tenants generally did not.¹¹ The same distinctions were made after the 1995 Kobe Earthquake in Japan where owners were invariably entitled to return to their pre-quake homes, while tenants were often forced to find new housing as their former neighbourhoods were transformed into new and more expensive areas.¹² After Hurricane Katrina in New Orleans, compared to the considerable sums provided to owner-occupiers to rebuild, relatively small amounts of financial assistance were provided to rebuild rental units.¹³

Box 3 – Differential Treatment in Post-Tsunami Aceh

Following the Asian tsunami in Aceh, the public body responsible for the reconstruction process made a formal distinction between owners, tenants and informal occupiers, with landowners who lost land entitled to free land and a basic house. Tenants and informal dwellers, conversely, were provided with cash compensation that could only be used for housing purposes; the amount provided was generally inadequate to buy new land. Houses were not provided to this latter group.

13. It is not only tenants and extralegal sector dwellers that face differential treatment in the provision of shelter assistance based on their tenure status. Female-headed households may often face difficulties making a case for ownership because of discriminatory inheritance laws.¹⁴ People with disabilities may face overt difficulties due to inadequate laws and policies on making new housing accessible to them. Non-citizens may encounter difficulties, as well. According to one interviewee, in Haiti a broad range of social groups similarly face differential treatment in terms of accessing shelter assistance and, more generally, in terms of HLP rights. In addition to tenants as a whole, specific groups such as single male households, migrants, families headed by minors, same-sex families, the elderly, young widows, families of non-conventional size or configuration, blind persons, people rejected by their community (non-citizens, seasonal migrants, prostitutes, etc) and others are at a high risk.

¹¹ See: Displacement Solutions, *Housing, Land and Property (HLP) Rights in Post-Disaster Settings: Proposals for IFRC Shelter Policy and Response*, Displacement Solutions and IFRC, 2008.

¹² See: HIC, *Still Waiting - Housing Rights Violations in a Land of Plenty: The Kobe Earthquake and Beyond*, 1995, http://sheltercentre.org/sites/default/files/HIC_HousingRightsViolationsInALandOfPlenty.pdf.

¹³ See, for instance, Greater New Orleans Fair Housing Action Centre, *Housing Choice in Crisis: An Audit Report on Discrimination against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market*, 2009, <http://www.gnofairhousing.org/wp-content/uploads/2011/09/HousingChoiceInCrisis2009.pdf>

¹⁴ See: COHRE, *In Search of Equality: A Survey of Law and Practice related to Women's Inheritance Rights in the Middle East and North Africa (MENA) Region*, 2007.

14. Dwellers residing within informal, customary or extralegal settlements - those without explicit ownership or other formalised/legal rights to reside at a given location under statutory law - often bear the brunt of natural disasters and resultant displacement and damage to property. And despite the size of this population sector and the clearly disproportionate impact that natural disasters have upon them, as noted above, post-disaster HLP policy tends on the whole to provide clearly preferential treatment to formal property owners, often to the detriment of the rights of those within the informal or customary sectors. Insecure tenure can make people reluctant to flee from their homes and lands when disaster strikes for fear of losing access to the land or housing concerned once the disaster has subsided. At the same time, insecure tenure may make people reluctant to return to their homes because of perceived threats or the inability to access the land again. In Pakistan following the 2005 Earthquake, for instance, many people were reluctant to leave their land to reside in winter-proof tents preferring instead to remain in place despite the hardships they faced.

15. With such settlements often facing exclusion from disaster preparedness activities, they may be even less equipped to deal with the consequences of disaster than more formal, often wealthier, settlements within the same area. Because of what is often a shelter policy bias in favour of owner-occupiers with proven title and property rights, many of those within informal, customary or extralegal settlements can face exclusionary practices preventing them from accessing or even applying for humanitarian relief, shelter assistance or programmes designed to provide new land plots or new housing.

Box 4 – Tenant Struggles in Post-Tsunami Sri Lanka – One View

“There is always the issue of unfair treatment of renters and homeowners. In Sri Lanka there was no policy from the government to address housing dilemmas for renters or squatters. In some cases, renters moved into temporary housing (which was originally provided for homeowners) once those homeowners left to be relocated to more permanent housing. It was also difficult for groups of elderly people, but not because of the legal framework, they just had many more needs than other groups within the affected population. Teachers and civil servants who were previously living in government accommodation (e.g. living on campus at the school where they taught) were also faced with a significant dilemma because: (a) they had nowhere to go whilst these government facilities were being rebuilt; and (b) when schools or government buildings were rebuilt, they were often not provided with accommodation like they used to receive. In particular, where the teacher or civil servant was male and had died, their wives were left particularly vulnerable because they had no right to live in these premises, nor was it offered to them.”

16. These and countless other examples indicate a still strong pro-property rights bias by States and the international community in terms of post-disaster HLP programming, which needs to be structurally reconsidered. Basing shelter assistance on an approach that does not distinguish people on the basis of their tenure status would assist in ensuring more equitable treatment to all tenure groups, in particular those that currently find difficulties in accessing prompt shelter and other HLP assistance. When such a bias by local and national governments is detected by the international shelter community, a plethora of international standards can be eluded to as a basis for pursuing more equitable approaches.

Box 5 – Tenant Struggles in Post-Tsunami Sri Lanka – Another View

“Landowners may or may not get stuff rebuilt, but tenants are often excluded and didn’t usually have documentation. Or worse, they were not seen to have a shelter-interest before so why should they be compensated or supported now? Those affected tended to be from the most vulnerable groups and probably needed assistance more than landlords. Sometimes if the beneficiary was a tenant, the original landlord was unwilling to re-host them. The legal framework isn’t particularly helpful or well written when it comes to renters. Laws tend to protect owners. A lease is an obligation to pay rent, not a right to an abode. It is difficult to keep people from becoming alienated. Work tends to focus on going very quickly; there were always beneficiaries, even if you don’t get to renters. Markets develop and social/cultural patterns take over and fill in the cracks between what agencies provide but not necessarily up to humanitarian standards.”

Lost or Damaged HLP Records

17. Another regulatory challenge that may confound post-disaster shelter programming revolves around the determination of HLP rights and thus proving who has which rights to which housing, land or property and on which legal or evidentiary basis to make such determinations. Following disasters, land records, cadastres, titles and other property records can be lost, both when individuals lose these HLP records and when public buildings holding these same public records are damaged or destroyed. Land markers and other forms of land demarcation of housing and land are also frequently lost and need to be reconstituted following disaster which can be costly and time consuming. Where these records constitute the primary means of allocating HLP rights, in particular restitution rights linked to return, finding these records, accessing and assessing them, and then developing clear and rapid ways of determining their reliability (with necessary safeguards against fraud and forgery) can greatly assist in eventual shelter initiatives. To work effectively and fairly, shelter providers generally require some form of HLP evidence to ensure that reconstruction takes place in the right place and that it benefits the right owner or rights-holder.

18. Following the tsunami in Aceh it was difficult for many of those displaced by the disaster to secure the legal recognition of their HLP rights required to rebuild their homes. Most people did not have legal documentation proving their HLP rights which made it difficult for aid agencies to establish where to assist in addressing shelter needs. For instance, the Reconstruction of Aceh Land and Administration System (RALAS) developed after the tsunami made no provision for recording or restoring the land rights of renters and squatters, a group that formed a considerable portion of the 500,000 who lost their homes.¹⁵ After the massive flooding in Pakistan in 2010, which affected a staggering 20 million people, many of the land boundary markers were washed away making land identification exceedingly difficult in many cases. The tenure diversity of those affected served to complicate matters further (See Box 6). In order to grapple with these circumstances, suggestions were made to call for a moratorium on land sales and on compulsory land acquisition (except for public interest) and to adopt new legislation to better resolve HLP disputes emerging due to the flooding.¹⁶

¹⁵ See: *Down to Earth* No. 68, February 2006, <http://dte.gn.apc.org/68rec.htm>.

¹⁶ See: Protection Cluster: Land and Property Rights Working Group Pakistan, Concept Note and Recommendations – Housing, Land and Property Rights Issues Arising from the Floods, 2010.

19. When HLP records are either unavailable or where they did not exist prior to the disaster, as would be the case in areas dominated by informal, extralegal or customary settlements, other measures may need to be instituted to provide a fair and equitable means of protecting HLP rights. In cases where personal identification is lost, damaged or destroyed, this too can place affected persons in a comparative shelter disadvantage. It will be vital for humanitarian agencies engaged in shelter activities to build relevant HLP documentation procedures directly into emergency, transitional and reconstruction process so that those originally without tenure can be protected with tenure in the post-disaster environment. Providing shelter, housing or land to disaster-affected populations without the requisite security of tenure protections will simply replace a less than ideal, reduced-rights pre-disaster environment, with the same types of tenure insecurity, which can lead eventually to instability and conflict.

Box 6 – Pakistan’s Floods and the Tenure Diversity of Those Affected

The diversity of person affected by the Pakistan floods included people who were owners of land that has fully or partially been taken away by river action (alluvision and diluvion). Some of these owners may become ‘Landless’; people who still have land but it has become uninhabitable i.e. virtually landless; people who had built houses on State land allotted to them but the land has been taken away by floods; people who had built houses on State land under illegal occupation and land has been washed away; people who had land that was in process and now the land has been washed away or become uninhabitable; slum dwellers in urban areas who had houses built on encroached land with some legal rights or without any legal right; tenants, who are registered in land records, and who had been provided houses, by land owners on their titled land, without any legal entitlement; tenants, who are not registered in the land records, who had been provided houses, with no legal entitlements, by land owners on the titled land; the artisans in rural areas e.g. carpenter, potter, barber, blacksmith, tailor, etc, who were provided houses by the land owners on their lands but without any legal entitlements, in return for some services or under some custom; various classes of people who lived in river belts that are traditionally inundated in summer and are now still under water; people who inhabited lands which have now become waterlogged; Afghan refugees or internally displaced persons who had their houses built on state or private land, without entitlement; and bonded labourers and their future in case of return. (Source: Protection Cluster: Land and Property Rights Working Group Pakistan, Concept Note and Recommendations – Housing, Land and Property Rights Issues Arising from the Floods, 2010)

Limited Insurance Protection in Most Disaster Affected Countries

20. While higher income groups in most developed countries tend to be protected against many disaster-induced losses by various forms of insurance, such coverage is rare in developing countries where the HLP effects of disaster are generally far more extensive.¹⁷ Households adequately protected by insurance policies after a disaster thus receive cash payments and other forms of indemnity to cover many HLP losses, with the net effect of reducing the burden placed on national and international shelter providers. Where such protection is not widely available, however, government and humanitarian shelter sector providers will be required to fill the shelter void. According to one study, in comparatively wealthy Mexico only 2.6% of the total households in the country are insured against possible

¹⁷ See: <http://siteresources.worldbank.org/INTDISMGMT/Resources/housing.pdf>

disaster damage or destruction.¹⁸ Elsewhere where incomes are lower and poverty more widespread, household insurance coverage is even less. Developing more accessible and affordable forms of disaster insurance for lower- and middle-income groups in developing countries, if carried out on a large-scale, could have a significant impact in securing private interventions to repair damaged and destroyed homes, thus relieving the burden placed on the international humanitarian community.

Regressive Planning Measures

21. Regressive planning measures can also hamper and often delay shelter response efforts by the international community. For instance, in a range of post-disaster countries building and habitation exclusion zones were established. In Aceh, a coastal exclusion zone slowed shelter responses because of the lack of clarity the new zone created. Aid agencies were reluctant to support shelter efforts that possibly fell within the exclusionary zone fearing that their shelter would eventually be demolished. Allegations of arbitrariness and differential treatment were made when it became apparent that hotels could rebuild within exclusion zones established in Sri Lanka following the tsunami, but that shelters could not be built within the zone. Exclusion zones often result in people being permanently displaced from their former homes and thus away from their livelihoods.¹⁹

Box 7 - The Sri Lankan 100 Meter Buffer Zone

On 3 February 2005, less than six weeks following the Asian tsunami, a Presidential Secretariat's *Notice on Reconstruction for Housing, Businesses & Fishing Industry Affected by the Tsunami* in Sri Lanka asserted that no new construction would be permitted within 100 metres of the mean sea level. It made further bold promises that the Government will identify lands closest to the affected village and build a house for every affected house owner who lived within the 100 metre buffer zone.²⁰ The Government indicated that they would provide these houses free of charge. Privately owned land within the 100 metre zone would remain the property of the original owners, and the Government states that it would not 'in any way claim ownership to such property'. The area within the zone, therefore, was to constitute an exclusionary zone where people displaced by the tsunami *would not be allowed* to rebuild their damaged or destroyed homes or to return to reside upon the land on which they lived at the time of the disaster, notwithstanding whatever legal rights they may have to do so, potentially affecting tens of thousands of tsunami survivors. This decision had many detractors from the start because of the marked impact it would have upon the possibilities of return by those displaced by the tsunami. Indeed, the World Bank and others recognised as much within its extensive post-tsunami *Needs Assessment* report where it asserted in reference to the buffer zone that: "Left pending, this issue poses the single most critical threat

¹⁸ Id, para. 1.26.

¹⁹ See, Scott Leckie, 'The Great Land Theft' in *Forced Migration Review*, pp. 15-16, July 2005.

²⁰ More than one month earlier, the UDA issued Public Notice 31 December 2004 which asserted that "Ministry of Urban Development & Water Supply has decided to guide development activities in the areas affected due to the recent Tsunami along the Coastal Zone of the country in compliance with the Urban Development Authority Planning and Building Requirements formulated as per the UDA Law No. 41 of 1978. This Zone falls within the limits of 1 km from Mean High Water Line of the sea landwards already declared as an Urban Development Area by the Gazette (Extraordinary) No. 223/16 dated 17th December 1982. Accordingly, any Government Agency or any person is required to obtain prior approval of the UDA for any development activity undertaken within the said Special Control Zone. Note that the powers delegated to Local Authorities by UDA in approving development activities within those areas have been temporarily suspended until further notice".

to the entire recovery and reconstruction process”.²¹ Although the buffer zone was eventually returned to its pre-tsunami dimensions (between 35 and 50 m), and restitution of coastal lands to former residents occurred, evidence suggests that the establishment of the buffer zone was intended principally to free up prime ocean front locations for national and international investors in tourism activities. Consideration of the livelihood needs of the families who had been there previously appears to have been shallow and taken on as an afterthought, even by donors. According to one humanitarian official interviewed in 2008, “The decision to establish a buffer zone of no reconstruction was ill-conceived, and when it was finally repealed/scaled back it caused many projects to become redundant, as the investments already made in planning and constructing facilities were no longer needed, and were left wasting.”

22. Following Hurricane Katrina in New Orleans in 2005, public officials attempted to undertake a range of planning and zoning measures during the reconstruction process that had the effect of significantly changing land use and land and housing ownership patterns. This took place in various ways. With rents rising at staggering rates poorer tenants were forced from their homes and certain areas of the city; Gentrification measures were encouraged in formerly low-income neighbourhoods; Building restrictions were imposed on certain flood-prone areas with the net effect of flood victims being prevented from returning home; and perhaps most notoriously plans were developed to convert many of the low-income neighbourhoods in the city into parks through eminent domain measures. New building codes governing how high homes must be elevated above ground in flood zones delayed rebuilding.²²

Inequitable Inheritance and Succession Laws

23. Inequitable inheritance and succession laws in many countries may have the net effect of reducing women's access to housing, land and property, arbitrary conferral of the rights accorded to widows, sexual and other forms of harassment, the inability to have property titles registered in a woman's name and a range of additional HLP abuses. These problems require clear and principled responses by those involved in shelter programming. Establishing training programmes for women and girls in disaster prone areas would assist women and girls to acquire skills for collective protection in disaster situations.

Box 8 - Women's HLP Rights in Sri Lanka

A 2006 survey of 200 households in two resettled villages in Hambantota and Batticaloa Districts²³ and various reports from other parts of the country found that women's land rights were not always taken seriously. In addition to the large number of sexual assaults and rapes occurring in the immediate aftermath of the tsunami, longer-term unfairness and vulnerability appear to be among the consequences for female-headed households, or households in which the woman held the deed to land and/or house. Among the 200 women participating in the survey, 75 per cent said they owned their property for over 10 years and one-third for between 21 and 50 years. 44 per cent said that they had received land by the government –

²¹ ADB, JBIC and World Bank (January 2005) *Sri Lanka 2005 Post-Tsunami Recovery Program – Preliminary Damage and Needs Assessment*.

²² More generally on the human rights problems following Hurricane Katrina, see: George E. Edwards, International Human Rights Law Violations before, during, and after Hurricane Katrina: An International Law Framework for Analysis, *1 T. Marshall L. Rev.* 353 (2005-2006).

²³ COHRE, 2006, *Post Tsunami: Women and their Right to Own Property*. See: www.cohre.org/srilanka.

and an unspecified number from private institutions and individuals. Of these groups, 85 per cent “said that the new property was given in their husbands names even though the property was in the wives’ names prior to the tsunami.” Joint ownership appears not to have been an option when registering the titles. “In 86% of the cases, the husband had signed the form given by the government to receive land or property, whereas in only 3 per cent of the situations the woman had signed such a form.” The explanation for this appears to be that the form required the ‘head of household’ to sign the document legalizing the grant of title or property, and that officials handling these transactions automatically inferred that the man was head of household. This presumption let the asset be granted on the basis of the wife’s land or property slip from the woman’s hands into the hands of the husband. This would not necessarily be a problem but for the fact that many of the women feared that their husbands would sell the property/land because of an alcohol addiction, or be rendered helpless if the husband divorced her and remarried, etc.

Insufficient Land Allocation Policies

24. Many governments do not maintain land allocation policies that are appropriate to the difficult shelter circumstances that arise in post-disaster settings. According to one respondent, “In Haiti the lack of government policy and stable regulatory system slowed down shelter responses. There was no system for coordinating the damage assessment which eventually assessed more than 400,000 buildings. As a result, we had to create a body, by attaching ourselves to MTPTC (public works) and created policies regarding technical damage assessment. We joined as technical specialists and trained engineers and got government approval to move things along. Because of lack of regulatory policies, however, it took far longer than necessary”. Forward-looking land allocation and land use planning can assist in ensuring that the land required to shelter people in post-disaster contexts can be made immediately available following the disaster and in such locations and in a size that is adequate for the needs concerned. Clear legal and policy frameworks on these issues prior to the occurrence of disaster can greatly facilitate eventual shelter programming by the international community.

25. In countries, including Pakistan, Indonesia and Haiti, governments promoted a particular housing design to be followed by shelter responders, often backed by a single architect allied to the government concerned, but which may be wholly inappropriate to the prevailing conditions. These efforts are often strongly opposed by the shelter community. In Haiti, a transitional shelter design was confirmed as acceptable by the central government, but the fact that there was no clear line ministry or focal point meant that accountability for shelter decisions was too highly weighted towards the decisions of shelter actors/NGOs/cluster and did not adequately capture the perspective of the host community. In response to this, the shelter cluster engaged with mayor’s offices (*mairies/communes*) in the capital. This was generally successful in mobilizing local support, in communicating policies and in organization for facilitating return to original homes, but one challenge arose in Port-au-Prince centre. The mayor objected to agencies’ use of concrete pads in transitional shelters, believing they were as permanent as any other structure in the commune and thought they were disrespectful to the rights of landowners. She threatened to refuse her political support to any agency that insisted on constructing transitional shelters using concrete pads. In other instances, in part due to the threat of eviction and relocation, shelter providers have been forced to use shelter designs that are truly temporary in nature, and ideally portable and easy to re-assemble.

26. In other situations, unsafe or unviable land is allocated by governments for the provision of temporary or transitional shelters, leading in some instances to NGOs and other humanitarian organizations having to reject the land in question. At another level, the lack of appropriate national building codes and regulations may hinder the repair of damaged homes and properties. Because international shelter workers may be unfamiliar with local building standards, delays in implementing shelter programming can occur. Difficulties in accessing construction bonds by banks in some countries has been that local contractors do not have the funds necessary to carry out shelter projects without demanding excessive down payments for their efforts. In Myanmar following cyclone Nargis, the post-disaster response was characterized as failing to include land issues within the post-disaster assessment, which reduced effectiveness during the early recovery phase. The needs assessment did not include specific qualitative questions on land tenure, land loss or submergence in either the needs assessment or in the loss and damage surveys. Consequently, numbers of landless families, their location and other vital information was not available to the humanitarian sector.²⁴

Box 9 – Land Allocation Challenges in Haiti

According to one shelter worker: “Land is really the problem in Haiti. The mayors have little or no credibility to allocate land and this has been the basis for frustrations. Transitional shelter needs land. There is often a lack of authority to do so. When Aristide was PM, he sold State land that wasn’t the State’s to sell, with the result that people claim to own land but the ownership claims are overlapping. Land is limited, too. We tried to find land, but mayors wanted nothing to do with it. Mayors had no link to landowners. We were blocked, as the mayors asked the beneficiaries to help solve their own problem. They then claimed that they needed money, and we gave them 225 USD per family if they can find land. This amounted effectively to a down-payment or rent. Within 36 hours, 33% had found land. We tried to cluster them, and needed to do this in blocks – in clusters of five families. Now we have about 85% solved thanks to good links with landowners. There is now no requirement to involve the mayor, but we do involve committees from local community.

Insufficient Land for Emergency, Transitional Shelter and Permanent Housing

27. In many post-disaster settings, land for building emergency, transitional and permanent new housing is often at a premium. Following certain types of disasters, most notably severe flooding and tsunamis, considerable amounts of land can be physically lost thus making return an impossibility and the need to acquire new land an imperative.²⁵ Because virtually all – if not all – land belongs to someone, be it the State, private persons or larger communities, and often subject to many overlapping claims, acquiring land for shelter purposes is often a difficult task. Because wealthier and well-connected social groups often have access to the most valuable and/or most productive lands, vulnerable and marginalized groups frequently are able only to access land of the least value and least productive potential. When land that was occupied by vulnerable groups at the time of the disaster has disappeared, been degraded or confiscated by more powerful groups, and where local or national governments have neither the will nor capacity to acquire new land resources (due, sometimes to an

²⁴ Daniel Fitzpatrick (2008), Access to Land for Shelter and Livelihoods in Post-Nargis Myanmar; Post-Nargis Joint Assessment (July 2008), Tripartite Core Group (Government of Myanmar, ASEAN, UN, and the Humanitarian and Development Community, 102).

²⁵ See, for instance, the presentation contained in: http://www.preventionweb.net/files/globalplatform/entry_presentation~ts012.landmgmtnarayanedan.pdf.

unwillingness to use compulsory purchase powers to acquire land), shelter responders often need to seek new land directly from the community. Shelter practice has frequently shown that those residing longest in emergency camps in tents or barracks are very often those whose land was either destroyed, or because of their status as tenants or extralegal dwellers at the time of the disaster.

Un(der)-Regulated or Unlawful Land Acquisition

28. Un(der)-regulated or unlawful land acquisition following disasters is commonplace when legal and political vacuums emerge that are unwilling or unable to intervene sufficiently to prevent such questionable gains. When either formalized or incidental land grabbing initially succeeds, but is subsequently exposed and attempts are made to reverse the process, this can greatly complicate post-disaster shelter programming. This is particularly true when the land concerned is sold to third parties. Attempted land grabs do not always succeed, of course, and measures taken by local Governments and the international community can play an indispensable role in thwarting these nefarious undertakings. In Aceh, in an effort to determine HLP rights over land plots, authorities were forced to rely on locally re-produced land records and attestations by community leaders in order to identify the rightful landowners. Land grabs were attempted when some leaders registered land that belonged to others (in many cases, widows), in their own names, in the names of friends, relatives or powerful community members, or in the names of the true owner's relatives. To prevent such attempts from being formalised, the IFRC and others agencies eventually required four sworn affidavits from neighbours before rebuilding could take place and rights conferred. By contrast, in Haiti, the government appropriated flood-prone land fairly quickly (given the circumstances) with a view to redistributing it. Initially this was viewed favorably until it became apparent that much of the vacant land concerned was prone to flooding.

Insufficient HLP Policy Coordination

29. In Aceh, the absence of a consolidated forum of HLP stakeholders limited the effectiveness of the shelter sector in addressing the massive HLP challenges facing the affected communities. "In particular, there were obstacles to integrating community-based programs for restoration of land rights with the formal system of land administration, legal restoration of land rights with village planning mechanisms that altered some land boundaries, house reconstruction programs with spatial and land use plans for restricted development areas (which covered significant numbers of areas where houses had been rebuilt), and reconstruction of rental housing with general housing and shelter policies (particularly in light of the fact that early shelter policies did not provide sufficient incentives or mechanisms for construction of rental housing)".²⁶ In other settings government processes concerning HLP issues may be convoluted and riddled with legislative and policy gaps and inconsistencies. Clarity as to which systems and government departments have HLP authority is vital.

²⁶ Daniel Fitzpatrick and Jaap Zevenbergen, Addressing Land Issues after Natural Disasters: A Case-Study of Tsunami-Affected Aceh, Indonesia (Quoted from UN Habitat, *Land and Natural Disasters: Guidance for Practitioners*, 2010).

Inadequate and Unenforced Building Codes and Regulations

30. Building codes are the minimal standards to which buildings and homes are meant to be constructed to protect the occupants and the structures themselves in the event of a disaster and, of course, to ensure that they are structurally sound. Robust building codes and regulations may be costly, but are invariably more cost-effective in the long run. Conversely, inadequate and/or unenforced building codes and regulations can have a marked impact on the scale of structural damage and loss of life resulting from natural disasters.²⁷ Well conceived, appropriate and strictly enforced building codes and regulations have been shown repeatedly to have saved lives and homes to often startling degrees. The differing degrees of damage suffered in Haiti following the 2010 Earthquake and that suffered in Chile in the same year are in large measure due to the different types of building codes and regulations in place in each country, as well as the vigour with which they were enforced.²⁸ Other studies indicate that long-term savings of 3-16 times the initial investment in complying with well-conceived building codes when disaster does strike.²⁹ Measures to improve building standards in Haiti have been developed by the OAS,³⁰ while pending legislation in the US called the Safe Building Codes Incentives Act, if passed, will enable states to access increased relief funds if they adopt strict new building codes.³¹

Involuntary Resettlement and Forced Evictions

30. Despite extensive protections within international law against involuntary resettlement and forced evictions that are contrary to human rights principles, these practices remain commonplace within post-disaster contexts.³² Such evictions can be carried out by either private landowners, officials of the State concerned or carried out by one group of disaster-affected persons against another similar group of affected persons. In post-Earthquake Haiti, for instance, many private landowners sought to evict displaced people from land they had settled on. In Aceh, Sri Lanka, India and elsewhere the creation of exclusion zones also had the net effect (or aim) of forcibly evicting dwellers from these areas. Aside from private landowners who wish to evict displaced persons from their residential properties, in many

²⁷ See the following for an overview of the relevance of building codes and natural disasters in the United States: Disasters by Design: A Reassessment of Natural Hazards in the United States <http://www.nap.edu/catalog/5782.html>.

²⁸ See, for instance, <http://www.infrastructurist.com/2010/03/01/the-power-of-building-codes-chile-death-toll-less-than-1-that-of-haiti/>, as well as: <http://www.smartplanet.com/blog/cities/japan-8217s-strong-building-codes-keep-millions-safe/267>

²⁹ See: 'Building Code Resources', http://www.ibhs.org/content/data/file/ibhs_building_code_kit.pdf.

³⁰ 'Haiti Building Standards Development Project - <http://www.oas.org/dsd/Nat-Dis-Proj/HBSD/Background.htm>.

³¹ George Altman, 'Tougher building codes equate to more relief funds under bill before Congress'. Available at: http://blog.gulflive.com/mississippi-press-news/2011/06/tougher_building_codes_equate.html.

³² *The Operational Guidelines on Human Rights and Natural Disasters* assert: C.2.10 Should evictions become unavoidable in the course of measures mentioned above in A.1.3 and C.2.3, the following guarantees should be put in place: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice prior to the scheduled date of eviction; (c) the timely provision of information on the eviction and future use of the land; (d) the presence of government officials during an eviction; (e) the proper identification of all persons carrying out the eviction; (f) the prohibition of evictions during bad weather or at night; (g) provision of legal remedies; and (h) provision of legal aid, where needed, to seek redress from the courts; C.2.11 Evictions—in particular those ordered in the context of evacuations and of secondary occupants of property and possessions left behind by persons displaced by the natural disaster—should not render individuals homeless or vulnerable to the violation of other human rights. Appropriate measures should be taken to ensure that adequate alternative housing, resettlement and/or access to productive land is made available to those unable to provide for themselves.

post-disaster settings private sector entrepreneurs attempt to evict lower-income groups in order to redevelop the land for commercial purposes.³³

III. Selected Best Practices in Addressing HLP Regulatory Challenges

31. The previous section briefly outlined eleven of the numerous regulatory obstacles within the housing, land and property sectors that can hinder the speed and effectiveness of shelter measures taken in the aftermath of natural disasters. These rules and the practices that emerge from or despite them can seriously complicate the efforts by the shelter community to achieve their aims of equitable shelter provision to those affected. In many post-disaster settings, the shelter sector has developed and supported measures that are designed to overcome these regulatory obstacles and thus facilitate their shelter efforts. Some of the best practices in this regard are outlined below.

Improve and Expand Land Acquisition and Land Set-Aside Programmes

32. Land is a prerequisite for shelter programming in post-disaster countries.³⁴ Despite this obvious fact, however, the identification, acquisition and eventually allocation of land following disaster is often fraught with controversy and dispute, particularly because the size of available land and the quality of land both tend to decline over time.³⁵

Box 10 – “Make Land Available Before Disaster Strikes”

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

33. Following Cyclone Aila in Bangladesh in 2009, tens of thousands of people were permanently displaced as massive tracts of land became permanently submerged. A local NGO working with some of those displaced in southwest Bangladesh, the Association for Climate Refugees (ACR) together with their international partners Displacement Solutions (DS), have been seeking to acquire land for those displaced by Aila as well as others the ACR believes to be ‘climate refugees’. Based on comprehensive surveys carried out in more than 200 municipalities, the ACR estimates that some 6.5 million people have been displaced by environmental and climate factors beyond their control in recent years.³⁶ ACR and DS are

³³ See, UN Habitat, *Land and Natural Disasters: Guidance for Practitioners*, UN Habitat, Global Land Tool Network, FAO, IASC Cluster Working Group on Early Recovery, 2010, pp. 59-69.

³⁴ See, for instance: Abhas K. Ja et al, *Safer Homes: Stronger Communities – A Handbook for Reconstructing After Natural Disasters*, World Bank, 2010.

³⁵ See, among others, FAO, *Land Tenure and Natural Disasters: Addressing Land Tenure in Countries Prone to Natural Disasters*, FAO, 2010.

³⁶ Scott Leckie, Ezekiel Simperingham and Jordan Bakker ‘Bangladesh’s Climate Displacement Nightmare’, in *The Ecologist* (April 2011).

working to procure 250,000 acres of land (roughly 100,000 ha) from both public and private sources to provide viable HLP solutions to the entire displaced population. Since February 2011, the Bangladesh HLP Initiative of ACR and DS have secured more than 5000 acres.

Box 11 - Land Acquisition in Haiti

One shelter worker states: “There were 300 shelters to build in Tabarre, but these shelters needed to be built in camp-settings, in groups, thus requiring larger land plots. We could not find enough people with rights in a set area, and proof of ownership was a huge barrier, as was dispersion. These issues were repeatedly raised with the relevant mayor who was asked for permission to build on city land. Finally, the commune offered four different options of land owned by the commune for use over a period of up three years. There were spontaneous settlements on the land, but it was government owned. Two sites seemed viable, so we went to THW (German NGO) and got the land prepared (leveling, drainage, etc) and we built on two of them. This is now halfway complete.” According to another view from the field in Haiti “In Tabarre host community there were 90 landless people living on the side of road. They were from the community, but didn’t own land. They were living in the worst, most vulnerable position. We talked to the mayor’s office and asked for land. We then organized them into groups of 10-15 households. We found land sites and confirmed that there was a landowner willing and able to rent the land with a deed. The fixed rent was paid by an NGO for a period of three years. 70 of the 90 landless people have thus far found shelter and land solutions. We signed MOUs with all the players; landowner, renters, and the mayor.”

34. Understanding local processes for acquiring land (preferably before disaster strikes) and having early contact with the local government concerned can assist in expediting land procurement for use in shelter activities. Those working within the shelter sector need to know how these processes can be undertaken quickly in the emergency phase of an operation, bearing in mind the environmental consequences regarding the use of land need, as well as the quality of land where people are to be housed.

Box 12 – Land Donations for Climate Displaced Communities in Bangladesh

The Bangladesh HLP Initiative currently underway by the Association for Climate Refugees and Displacement Solutions has procured more than 5000 acres of land since February 2011 for the eventual resettlement of climate displaced communities in Bangladesh. The land is located in various locations throughout the country and is seen by the ACR and DS as the key to resolving the massive and growing displacement problem in the country. The first land plot was donated in January 2011, when ACR acquired a small land plot of 1.65 acres in Kamarkhola Union in Khulna district, donated by a local landowner sympathetic to ACR’s aims. That single land plot represents the first such acquisition of land for climate affected communities, and will be transformed into a community land trust aptly named “Community Land Trust for Climate Displacement Solutions in Bangladesh”. This symbolic gesture, which will provide land solutions for some twenty families, will surely not resolve climate displacement in the country, but will hopefully inspire other landowners to donate larger pieces of unused land to assist in finding solutions to the dismal displaced population of Bangladesh. A significant portion of the land thus far donated has come from private individuals and local organizations, all of it thus far at no cost. To cite several examples: 110 acres were donated by Seba Foundation in Jamalpur, 67 acres were provided by PROVA in Rajbari, 300 acres were granted by Khulna Samity in Khulna, Satkhira and Bagerhat districts

300, the large NGO YPSA in Chittagong and Cox's Bazar districts has provided 125 acres, while the by Samata Nari Kalyan Sangstha in Rajshahi has provided 110 acres.

Treat Owners, Tenants and Informal Dwellers Equally by Emphasising Security of Tenure Instead of Tenure Status

35. The pro-owner bias found in many post-disaster contexts may have become more nuanced in recent years, but clear disparities in the treatment of owners, tenants and informal dwellers remain all too common. As noted earlier, in Aceh, for instance, while pre-tsunami owners generally had rights to return to their land and tenants were given several housing solutions to choose from, squatters received cash compensation valued at one-quarter of the price of a small family dwelling. Though applying policy distinctions between these various tenure groups may be justifiable to a degree, it will be important for shelter sector officials to ensure that principles of equality and non-discrimination are equitably applied in terms of shelter provision. The international community should support rapid and ongoing measures for tenure security and tenure reform within disaster-affected countries which aim to provide tenure security on a wholly equitable basis. In so doing, HLP practices and sheltering activities can truly serve all disaster-affected communities and households equally, thus providing solid foundations for broadening overall HLP efforts. Moreover, an equitable approach such as this can assist in ensuring that pre-disaster, damage-prone housing is rebuilt to withstand future disasters thus reducing long-term disaster vulnerabilities among lower-income groups. Special policy measures should also be developed to focus on the often unique HLP needs of particular social groups, including the women and children, elderly persons and persons with disabilities. Specific measures to assist tenants, landless persons and those living within the informal sector can include restoring lease agreements for displaced tenants, supporting the repair or reconstruction of rental housing, strengthening the tenure rights of informal landholders, relaxing tenure restrictions for housing eligibility, adopting pro-poor planning and building standards, supporting incremental or intermediate steps towards formal land ownership, facilitating land swaps, developing land inventories or audits of state land and issuing direct cash grants to tenants.

Box 13 - Transforming Insecure Tenure in Peru

The earthquake in Peru affected approximately 722,000 persons in the south of the country.³⁷ The impact of the earthquake and the subsequent reconstruction effort brought to the surface a number of issues concerning land tenure. The earthquake highlighted the necessity to regularize a regime of land tenure that in many cases had not been updated for years. The reconstruction effort required local and international actors to clarify the tenure of the land and of the properties existing on it. In this sense, the earthquake represented an opportunity to establish a system of good land administration and governance as well as to implement housing policies for those that until the disaster were tenants or didn't own the land on which they lived. In rural areas, it was estimated that only one-third of the population had a valid property certificate. Another one-third is estimated to have had a title that could be validated, i.e. by registering it in the land books, and the final one-third were those occupying land without title. One study identified 17 different irregular tenure situations which preceded the earthquake and that required legalisation and technical assistance.³⁸ The same study

³⁷ Ministerio de Vivienda, Construcción y Saniamiento, *Política y plan del sector vivienda para la recuperación temprana y reconstrucción del sismo del 15 de agosto 2007*, Lima April 2008, p. 7.

³⁸ UN-Habitat/DESCO, Equipo de Tenencia del Suelo, *La tenencia del suelo en la zona afectada por el terremoto del 15 agosto 2007*, Lima, January 2008.

identified ten illegal situations that arose following the earthquake, such as when families that split up after the earthquake and create more households than the initial ones, thus requiring more housing units, or families that do occupy private land or families that start rebuilding their houses without any technical advice thus recreating the precarious housing conditions that existed before the earthquake.³⁹ The earthquake in this case represented an opportunity to solve the issue and provide titles to the land.

Verify/Confer Tenure Rights to Dwellers Within Informal, Customary or Extralegal Settlements

36. Extending forms of HLP documentation into areas that were not regulated in this manner prior to the disaster concerned can, of course, be both controversial and resource-intensive. In some cases, verifying and/or conferring security of tenure rights may generate competing claims on the same land parcel, for instance within existing customary land administration systems, sometimes pitting the two systems against one another and creating more, rather than less, HLP disputes. It is for this and related reasons that UN Habitat has asserted that “Humanitarians should avoid *ad hoc* attempts to resolve land disputes as the risk of inadvertently aggravating them is too great”.⁴⁰ At the same time, however, having clarity as to the HLP rights of dwellers that live largely outside of the statutory HLP legal regime (which in many countries would constitute the overwhelming majority of the population), will be vital in the provision of shelter assistance. Safeguards need to be developed to ensure that any positive measures designed to provide residential security to disaster-affected populations are sustainable and widely supported within the society concerned.⁴¹ Experience shows clearly that this can be done in creative and meaningful ways (See Box 14).

Box 14 - Verifying Land Titles in Post-Earthquake Peru

Following the Pisco Earthquake in Peru, one of the main challenges facing IFRC related to clarifying the existence of property titles for the land potential beneficiaries could occupy. To do this, the IFRC, the American Red Cross and the German Red Cross developed procedures to select reconstruction beneficiaries. Those procedures rely on vulnerability criteria (i.e. elderly persons, disabled persons, children and others) as well as criteria related to the tenure of the land and properties built on it. With the purpose of assessing titles to the properties, the IFRC, through the Peruvian Red Cross, requires the provision of any of the following documents: Certificate of property; Minutes/copy of purchase contract; or the Certificate of inscription in the land registry. Those who cannot provide such documents enter a second phase of reconstruction, and can be assisted by a legal aid service to gather the necessary documents. The approach taken by the American Red Cross is more thorough, and involves the carrying out of a proper census of the area, collecting information about beneficiary families as well as requesting proof of possession in any form. The documents the American Red Cross requires are similar: Certificate of property; Minutes of purchase contract; Declaration by the father that he intends to leave the land to his children; and the Certificate of possession. The documents do not necessarily need to bear a date prior to the earthquake. *Ad hoc* contracts or donations to transfer properties between members of the same family are accepted. Also the certificate of possession (*certificado de posesión*) is the simple verification

³⁹ Id.

⁴⁰ UN Habitat, *Land and Disasters*, p. 57.

⁴¹ The IASC *Operational Guidelines* note that “Specific arrangements should be made to enable and facilitate recognition of claims to land title and ownership based on prolonged possession, in the absence of formal land titles, especially for indigenous peoples”.

by the authorities that the person is in possession of a certain property. The German Red Cross relies essentially on the Peruvian Red Cross and on the local authorities for the selection of beneficiaries. Beneficiaries are identified by the Peruvian Red Cross in agreement with the municipalities or emergency committees. The German Red Cross simply asks for a guarantee to be provided by the municipalities in this regard, but they do not assess the validity of the documents. So far, however, no problems were reported. These activities until now have not given rise to land-related conflicts or disputes, but nevertheless the IFRC finds itself in the position of having to verify the titles to the property they will be reconstructing. While the IFRC does not have in itself a legal capacity to carry out similar checks, it achieves the same goal through specific partnerships with local institutions and/or NGOs.

37. Security of tenure can be rapidly confirmed through a variety of documents, some of which can be generated at the community level. These would include signed statements of ownership verified by neighbours and/or community leaders; placement of property or boundary markers by survivors in consultation with neighbours; informal maps of land parcels, and the location of terrain features, such as trees, burial location, ritual locations and public areas agreed through community mechanisms; signed statements of inheritance verified by family members or signed statements of guardianship of orphans verified by community members.⁴²

38. While systematic land tenure and titling programmes should not be regarded as an immediate post-disaster priority, various measures can be undertaken to bolster tenure protections. These include actions such as encouraging local political leaders to issue official statements in favour of tenure protections (and against arbitrary forced evictions), supporting community action and community generated documents conferring tenure and the release of official HLP records confirming tenure rights. Measures designed to assist in the provision of secure tenure can include developing standardized documents, clarifying boundary demarcation, developing a list of acceptable supporting evidence of tenure rights, encouraging law reform on security of tenure matters, recognising customary tenure rights and developing dispute resolution procedures designed to resolve disputes and confer tenure on everyone.⁴³

Box 14 - India (Gujarat Earthquake - 2001)

One shelter worker in India described the issues of conferring/verifying tenure rights in the following way: “We haven’t found good solutions. Landless people are often the most victimised. People who didn’t have a house are much harder to provide for than those who had a land title. We focus on people who are already more privileged than squatters and

⁴² See generally on this issue: Geoffrey Payne & Associates, *Innovative Approaches to Secure Tenure for the Urban Poor*, DFID, 2001.

⁴³ These are points also recognized by the UN Special Rapporteur on the Right to Adequate Housing where she noted that: “62. A rapid assessment and analysis of pre-existing tenure and property rights systems should be conducted in the immediate aftermath of a disaster or conflict. The aims of this assessment should be: (1) to guide on urgent steps to be taken to protect the right to adequate housing and tenure security of all, but particularly the poorer and marginalized members of society; (2) to identify areas of opportunity where, with the presence and support of bilateral and multilateral international agencies, opportunities could arise for improvement and innovation (for example securing of previously unavailable housing-related rights and entitlements for women); (3) to identify and warn against risk areas where poorly informed actions would result in further housing rights violations. This rapid assessment should be an essential step towards the formulation of a more detailed and comprehensive land management, allocation and registration strategy for sustainable rehabilitation and reconstruction.”

renters, etc. We need to look at it more closely. Where can they go, how can they reconstruct? In Gujarat, it was clear that when the reconstruction was done, there were still families who had nothing. In discussions with local community, eventually land was made available. We worked with women's organizations who were strong in the community, and this was presented as a way to prevent future conflict. The land was public-communal pasture area not owned by an individual. It took a long time and people were victimised for quite a long time. Usually if things go too slowly, resources are spent down and only then do you see the lacunae. We need a longer-view to notice those left out. We need to ensure that everyone gets their rights."

Measures to Provide New Personal Identification and HLP Documentation

39. In the aftermath of a disaster, the loss or destruction of personal identification and HLP documentation can greatly increase HLP vulnerabilities within the populations affected. In Haiti, shelter officials faced the issue of how to establish any kind of legal document that could support construction of shelters in places where people lived previously but had no legal ownership documents. In response, the Cluster created a document requiring the signatures of three people, including the local administration, the beneficiary/family, and the legal owner of the land concerned. The document was effectively a lease agreement for the three-year life expectancy of transitional shelters. This process became the generally applied solution for documenting ownership of land in the affected areas. In Sri Lanka after the tsunami, funding and assistance was provided by NGOs with the legal processes relating to ownership disputes and renewing lost documentation, which often was made up of secondary types of documentation (where available) in order to prove that land/houses were being occupied e.g. electricity bills. This is often the only option in circumstances where all primary documentation has been lost e.g. ownership certificates. While this did not necessarily prove their rights to the land/property in question, it demonstrated that they had been living there for certain (often extended) periods of time.

Box 15 - The IFRC Approach in Galle, Sri Lanka

One IFRC official noted that: "In Galle, we had a situation in which hardly anyone could produce a document showing clearly that they had ownership to land or housing. Most documentation was washed away as were most of the physical traits that would have marked the boundaries between different communities. What we did was to work with two communities to divide a reconstruction site among them, and to verify among themselves who the former residents were. Then, if there were no documents we asked a local group to request that the district Secretariat issue a request to the government to issue a new deed/permit for the family. The community participated fully in dividing the site, designing its layout, learning how to work with the contractors, etc."

Improve Building Material Procurement Procedures

40. Accessing appropriate, affordable and sustainable building materials following a disaster can prove challenging to those working within the shelter sector. The lack of availability of such materials is commonplace following large-scale disasters such as the 2004 Asian tsunami where local materials were quickly depleted. Using pre-fabricated and/or imported materials is often far more expensive and inappropriate for local conditions, and as a result there is growing awareness that shelter constructed of local building materials is often the most effective way of ensuring the rapid and equitable provision of shelter. Following the

Gujarat earthquake, one of the main challenges facing the shelter sector was how best to promote the use of local materials. The local government favoured modern technological shelter solutions, but some within the shelter sector began promoting the use of rammed earth and stabilized, compressed earth blocks. Demonstration houses were constructed with the assistance of local specialists in Indian architecture which demonstrated that local building materials were more appropriate to the context, history and conditions. The local government eventually approved this approach, developing a local coop and drafting local guidelines for how to use these. Similar processes were also carried out after the Bam earthquake in Iran and the 2004 tsunami.

Work to Improve Building Codes and Regulations

41. As noted above, appropriate and robustly implemented building codes and regulations can have a marked impact in reducing loss of life and damage to homes and properties following disasters. In countries where building codes and regulations are under-developed, the use of the International Building Code may provide a solid basis for longer-term efforts to strengthen these regulations. Another analysis suggests a practical framework to improve building codes and regulations that includes: Developing a code along with local built-environment professionals, masons/builders and civil society groups who wish to be involved in reconstruction. Without local guidance and buy-in, the codes will only be foreign, not likely to be followed; Simplifying regulations--ideally in a pictorial and more accessible format--for self-built homes and smaller structures to ensure these codes are relevant to the poor; Establishing a motivational means of ensuring the codes get used. This includes increasing code awareness and re-training local masons and builders--and even self-builders--to ensure building practices improve.⁴⁴

Prioritise the HLP Rights of Homeless and Landless Communities

41. Structural homelessness and landlessness in areas affected by disaster can present humanitarian agencies with considerable challenges and complicate shelter response measures.⁴⁵ Despite the obvious fact that pre-disaster landless and homeless families constitute some of the most vulnerable groups affected by disaster, frequently these families are excluded or at best marginalised within the relief and recovery processes. This group can include informal occupants or squatters on public or private land who are unable to return to their homes such as those living within a coastal buffer zone in post-tsunami Sri Lanka, pre-disaster tenants who were not allowed to return to their former homes and lands, women-headed households unable to purchase property at all or on equal terms to men and others. Of increasing relevance, due to the changing nature and added ferocity of many disasters, in particular storms, floods and tsunamis, people can also become landless and homeless due to the physical disappearance of their land. In post-tsunami Aceh, some four years after the disaster, more than 15,000 land parcels remained under water and 7000ha of land had been irretrievably damaged. Most families who lost land in this manner have been or will be resettled on public land.

⁴⁴ See: <http://www.forbes.com/2010/01/26/haiti-earthquake-infrastructure-opinions-contributors-sanjay-amin.html>.

⁴⁵ See, for instance, Roy Gilbert, Doing More for Those Made Homeless by Natural Disasters, WORKING PAPER SERIES NO. 1, The World Bank, Washington DC May 2001.

42. Following the 2005 Pakistan Earthquake, the failure of the authorities to provide housing assistance to the landless was identified as a major reason for long-term displacement and the prolonged existence of temporary shelter settlements. Many of the rural landless were unable to return to the areas where they lived prior to the earthquake, until the eventual adoption of a Rural Landless Policy which provided rural landless families with cash grants of some US\$ 1200- to assist them in purchasing new land. In Sri Lanka following the 2004 tsunami, many landless renters in places such as Galle failed to appear on official beneficiary lists, thus effectively excluding them from assistance. According to IFRC officials in Sri Lanka, in 2008 there remained perhaps as many as 20,000 households (100,000 persons) which have had not received direct assistance to repair or rebuild houses damaged by the Tsunami. Similarly in Nepal, the structural landlessness facing many of those displaced by the repeated floods that tend to affect the country every year reduce the effectiveness of disaster reduction and preparedness measures. Moreover, this can also greatly limit the types of shelter programming that can be provided by the international community if government authorities are reluctant to provide HLP solutions to disaster-affected landless and homeless families.

43. A range of policy options are available to Governments and humanitarian agencies to provide these HLP opportunities to landless and homeless populations. These can include the provision of free or subsidised land plots or housing resources by Government (or philanthropic private landowners or religious institutions), legal expropriation measures explicitly for the purpose of providing land to the landless, credit systems such as the Pakistan example noted above, the issuance bonds or vouchers, the establishment of resettlement sites, employment-generation schemes, the provision of housing with a lengthy rent-free grace period and many other options. Generating the political will to implement and finance such schemes will invariably remain a challenge within many societies, but addressing these issues through an HLP rights perspective may soften initial reluctance to secure longer-term HLP solutions for these and other particularly vulnerable groups.

Support Progressive Planning Measures

44. Active measures to oppose both public and private land grabs, both large-scale and small, those legitimised by legislation and those carried out with threats of force and violence, need to be more prominent on the post-disaster policy radar screens of the international shelter community. Land grabs are often not as brazen or blatant as many would suspect, and particular attention needs to be paid to the often insidious nature of many such efforts which use disaster as a pretext for achieving policy aims that would have otherwise been impossible. Being aware of possible land grabbing attempts and other arbitrary methods or regressive planning measures that may be employed to remove people from their homes and lands will assist in enhancing shelter programming. Developing clear policy positions on the question of land acquisition following disaster will assist to prevent involvement by the international community in sheltering activities that can easily be undermined because of regressive planning and related measures. The shelter sector should develop monitoring tools to rapidly identify land grab attempts, as well as developing methods to assist local and national governments to prevent these practices. In some countries, it has been suggested that moratoriums on land sales following a disaster could serve to greatly reduce the land grabbing so commonly seen during the emergency and recovery phases. Reducing or eliminating land grabbing and regressive planning measures that ultimately result in land grabbing will greatly reduce secondary displacement and relocation of those disaster-affected communities living on the land concerned.

Display Flexibility on Restitution and Resettlement

45. One of the primary HLP challenges facing areas of disaster where people have been displaced concerns the cross-cutting question of whether shelter agencies should support the rights of disaster-affected populations to return to their homes and lands through the process of restitution, be resettled to new land or compensated for their losses and encouraged to find new HLP options on their own. Should international agencies support, in principle, the perspective that everyone displaced by a disaster should have the automatic right to return to and re-inhabit the housing, land or property from which they were displaced? Or should humanitarian agencies take a more flexible (some would say pragmatic) approach and seek HLP solutions for the displaced but not necessarily in their place of origin?

46. International standards such as the *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons* (2005) and the *IASC Operational Guidelines on Human Rights and Natural Disasters* (2011) are clear in recognising the primacy of return/restitution rights for those who wish to exercise them. While the *Pinheiro Principles* speak of the right of restitution as the "preferred remedy for displacement" (Principle 2)⁴⁶, the IASC Guidelines stress that the "return of persons or communities displaced by the natural disaster to their property and possessions should be facilitated as soon as possible" (Sec. C.2.3). Likewise, the *Sphere Minimum Standards in Shelter, Settlement and Non-Food Items* note that "the opportunity to return to their own land and dwellings is a major goal for most disaster-affected people. The damaged dwelling and any surrounding land are major household assets for many disaster-affected households." The UN Special Rapporteur on the Right to Adequate Housing, noted in her 2010 report on housing and natural disasters: "The right of all people displaced as a result of conflict or disaster (refugees or IDPs) to voluntarily return to their land and homes or any other location within their country should be recognized and all possible steps should be taken to assist them to exercise that right. In cases where the displaced have settled and begun to build new lives and communities, their preference to remain should also be respected and supported. Further, in cases where secondary occupants are in possession of the land and houses of people displaced, sustained efforts should be made to achieve a negotiated agreement that satisfies all parties, prior to any legal action being taken. (Para 65)."

47. Clearly, thus, according to relevant standards when conditions so permit, there is a presumption of restitution and an emerging right to return to one's original home for displaced persons following both disaster and conflict.⁴⁷ Often, when security and related prerequisites are in place, displaced persons return to their homes without hindrance and begin the rebuilding and reconstruction process. This generally occurs without the involvement of courts or claims processes, which are much more a feature of post-conflict settings rather than those following disaster. Implementing these rights in practice, however, often proves difficult, and a measure of flexibility is required which approaches this broader

⁴⁶ The full text of Principle 2 reads: 2.1. All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal. 2.2. States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

⁴⁷ See, for instance, the collection of over 240 laws and standards recognising these rights in: Scott Leckie (ed), 2007, *Housing, Land and Property Restitution Rights for Refugees and Displaced Persons: Laws, Cases and Materials*, Cambridge University Press.

question from the perspective of the best interests of those affected, based on their freely expressed wishes. In many instances return can be blocked by a wide range of measures and circumstances including HLP disputes over a land plot or dwelling, real or attempted land grabs, the secondary occupation of homes and lands and various other common post-disaster situations. As a means of overcoming these difficulties, in post-tsunami Thailand HLP restitution rights for communities living on land informally were secured through a resolution of many HLP disputes by a Special Land Sub-Commission (See Box 16), but in many such circumstances the technically extra-legal or informal tenure status held by disaster victims can greatly affect their rights in post-disaster settings. In other cases, such as during the response to the Gujarat Earthquake, victims of the disaster were given the choice of on-site reconstruction of their homes or the prospect of resettlement.

Box 16 - Securing Restitution Rights in Post-Tsunami Thailand

In Thailand following the 2004 Tsunami, land disputes emerged almost immediately after the disaster as developers and others wishing to cash in on the post-disaster blank slate development possibilities for the Thai coastline sought out the best land and claimed it for themselves, despite having no legal rights to do so. To grapple with this and related land dispute challenges, the Thai authorities established what was to become a remarkably successful Special Land Sub-Commission, which was entrusted with resolving any land disputes brought to its attention. Having the Sub-Commission simply in place meant that no building (eg. establishment of so-called 'facts on the ground') could take place by any party until a decision on the land dispute had been formally considered and resolved. Virtually all of the major land disputes were eventually resolved through mediation and negotiation, thus avoiding lengthy, costly and often unfair judicial processes, and the vast majority of such disputes resulted in local communities achieving security of tenure, often through community leasehold rights arrangements, and rights to remain on the land previously under dispute. Of the 412 coastal communities affected by the tsunami, there were 56 major land disputes that could not be solved by the parties themselves. Of these 56 disputes, 53 were eventually resolved with the assistance of the Land Sub-Commission and others, and resulted in the communities remaining on the land concerned. All 53 of these disputes involved disputes with various governmental departments.

48. The international shelter community should support the principle that restitution should be the first presumed HLP remedy sought in the aftermath of natural disasters, subject to the wishes of the affected population and presuming that the land concerned remains intact and viable. This will not mean that communities and households affected by disaster should be coerced to return to dangerous or marginal neighbourhoods, but it will mean that people affected by disaster cannot be arbitrarily prevented from returning to their homes if this is their voluntary and well-informed wish. Restitution alone, of course, can never be a sufficient post-disaster HLP policy. Rather, this principle should form the core or broader policy prescriptions which begin with the premise (widely backed by international standards) that people should be entitled to return to their original homes and communities as soon as it is safe to do so. Only when this is not materially possible, where dwellers consciously and freely choose for relocation, resettlement and/or compensation options and where the recovery process was otherwise fair and transparent, should other HLP solutions be considered. The shelter community should advocate resettlement as a last resort response to requirements for disaster risk mitigation, and only after all other reasonable alternatives have been fully considered. If families need to be moved to a temporary site, adequate shelter should be established before they arrive at the new site, and every effort should be made to

minimize the distance between the resettlement zone and former homes. If possible, moving the family again until a resettlement site acceptable to the family is found should be avoided.

Embrace Community-Led Approaches to HLP Response and Expanding Beneficiary Participation in HLP Processes and Decision-Making

49. Disaster-affected communities need to be consulted and more actively involved within the shelter process. Expanding beneficiary involvement in shelter programming will substantially improve the quality of shelter outputs generated by the shelter community and local governments, as well as ensuring that community views on the full spectrum of HLP issues are woven into the policy-making process. Often such participation can be restricted by local and national authorities in countries affected by disaster, thus making international agency inputs in support of such involvement even more vital. Measures need to be taken by both government bodies and relief agencies to consult with local populations, and to treat them not as passive victims but as active rights-holders with a direct stake in the outcome of shelter and related programming. It is now widely known in this respect that many people affected by disaster do not necessarily want to live in houses provided by humanitarian agencies; a problem that can be overcome to a large degree when communities are involved in the design process from the start so that the houses provided match their needs and wishes. It is not uncommon for situations to arise where houses are built by aid agencies in places where no beneficiaries are prepared to go. This wasteful use of resources is based on bad planning, and slows down reconstruction efforts, and at worst, signifies the beginning of a HLP rights problem that will fester as long as no one takes responsibility for installing and maintaining the infrastructure and housing stock.

50. The strong need for beneficiary participation was shared by many shelter officials in the countries covered in this study. One IFRC official noted, for instance, “We are building good houses, at least much better than what most people had before. But are they in the right place? Is there going to be water, sanitation, electricity, roads etc installed soon enough to prevent the rapid deterioration of the housing that is in place?” Another added: “We really need to do some surveys of the families that have moved into these new houses. Even if they [the houses] are better than anything the relocated families had in the past, are they happier in the new houses; does it suit them; do they have enough income to keep them up?”⁴⁸

51. One analysis of successful community-driven post-disaster programming notes eighteen best practices that could be used as indicators of successful shelter and HLP programming, and in which participation was central. These include: 1. Extension of water supply and sanitation; 2. Affordable housing, services and community facilities; 3. Access to land, secure tenure and finance; 4. Community-based planning and participation in decision-making and resource allocation; 5. Safe and healthy building materials and technologies; 6. Job creation and eradication of poverty; 7. Improved waste collection, recycling and reuse; 8. Protection and conservation of natural resources; 9. More efficient energy use and production; 10. More effective and efficient administrative, management and information systems; 11. Gender

⁴⁸ These sentiments are echoed in the UN Special Rapporteur on the Right to Adequate Housing’s 2010 report where she stated in para 36 that: “36. The long-term success of post-disaster and post-conflict responses to a great extent depends on a properly informed understanding of the local context. It also requires high levels of consultation with and direct involvement of the people directly affected in the process of relief and reconstruction within that context. With respect to the right to adequate housing and displacement, this specifically includes those people with less formalized land use and occupation rights.” (Source: UN doc A/HRC/16/42 – 20 December 2010).

equality and equity in decision-making, resource-allocation and programme design and implementation; 12. Improved disaster preparedness, mitigation and reconstruction; 13. Social integration and reduction of exclusion; 14. Promotion of accountability and transparency; 15. Promotion of social equality and equity; 16. Improvement of interagency coordination; 17. Partnership; and 18. Transferability.⁴⁹

Box 17 - Resolving HLP Disputes in Post-Tsunami Thailand

Housing, land and property disputes often generated by the secondary occupation of homes and lands are commonplace following disasters. HLP disputes can occur between many different parties such as two poor families struggling over access to a single piece of land. More ominously, disputes between poor communities and private sector interests that are seeking to control the disputed land for development purposes can seriously undermine broader post-disaster recovery efforts, and cause forced and arbitrary evictions. Resolving such disputes is invariably a prerequisite for successful shelter and HLP programming, as unresolved disputes have a tendency of prolonging displacement, slowing the pace of housing reconstruction and creating tension and conflict within the communities concerned. In Thailand, of the 418 village communities affected by the tsunami, some 89 had insecure tenure status, with 32 of these facing severe land disputes in the immediate aftermath of the disaster. Of those that successfully resolved these disputes, strategies included: reoccupying old land, mapping old settlements, researching land history, surveying communities, preparing redevelopment plans.⁵⁰ In resolving these disputes, the Land Sub-Commission had a number of criteria which were used to determine the validity of the claims, including: date of occupation; safety and environmental conditions; maintaining traditions; and quality of life.

52. NGOs that were active following the 2004 Asian tsunami have noted a range of lessons that support the view that community-led approaches to post-disaster shelter activities will be vital to the success of the programmers concerned. In their publication *Community Driven Tsunami Rehabilitation*, the Asian Coalition for Housing Rights identified several lessons learned in this respect. These include: People need to be central in handling both the short-term relief and the long-term rebuilding; People need to do this rebuilding of their lives and settlements together with the strength of communities and the strength of their togetherness – not alone, as individuals; People need to go back to their ruined villages as soon as possible and use their physical occupation of that land to strengthen their negotiations to secure their rights and remain on that land; and with the right kind of support, a disaster like the tsunami can create new opportunities for rebuilding communities, with greater strength than before the disaster. These views are increasingly shared by the UN and other agencies.⁵¹

⁴⁹ UNDP, UN Habitat and Centre for Architecture and Human Rights (2008) *Support for Rehabilitation of Traditional Communities Affected by the Tsunami*, Bangkok.

⁵⁰ ACHR, *Tsunami Update*, June 2006, Bangkok.

⁵¹ For instance, UN Habitat has developed a series of recovery strategy principles which include: respect the primacy of the needs of the families; responsibility for recovery rests with the families and communities; support of the authorities is essential for people to take recovery into their own hands; devolve decision-making to the point of action; recognise people's organizations; ensure security, protection, right to a "place to live"; generate a process that would allow every family in need to build a basic secure home; cultivate a spirit of peace-building and community cohesiveness; and design the recovery investment to remain with the community as far as possible (Source: UN Habitat, *Post-Disaster Projects in Asia*).

IV. Recommendations and Conclusions

You have to think creatively. Start with textbook and then explode it and think way outside box. Beneficiaries must be involved in their own problem-solving. You have to set an example, build confidence, be patient and flexible. It's not tarps, it's more about money and problem-solving. You must link to livelihoods. New sites are no good for anyone with no prospects.

—Shelter official in Haiti

53. Shelter programming following natural disasters provides an opportunity to assist Governments to rapidly and equitably address the shelter needs of their populations. In many instances, however, the effectiveness and reach of shelter assistance is hindered by a variety of regulatory obstacles within the housing, land and property sectors. Overcoming these obstacles by reference to best practices, the expanding international normative framework protecting the HLP rights of those affected by disaster, as well as, the sheer ingenuity and creativity so often found at the field-level within the shelter sector can greatly improve both the performance of the shelter community in their aims, and the HLP performance of governments in affected countries, which in turn augment the degree to which they act in accordance with the freely accepted legal obligations they have agreed to uphold through respecting, protecting and fulfilling the HLP rights of all persons affected by disaster.

54. The diversity and complexity of these differing HLP realities indicates that institutional knowledge by those working within the shelter sector needs to be sufficiently developed to be able to deal constructively and effectively with any number of possible legal or systemic HLP circumstances, in particular any regulatory obstacles that may emerge to hinder the speed and effect of shelter provision. This brief overview of some of the most common regulatory challenges facing disaster victims and humanitarian agencies alike reveals that the international community will need to be increasingly aware of these issues in its post-disaster work as the scale and frequency of natural disasters and climate change grow. It is clear that HLP issues arise to some degree in virtually all post-disaster settings and that in most situations they will have a significant bearing upon the degree to which IFRC's sheltering activities achieve their avowed purpose. HLP issues and how they are addressed can, in turn, affect the enjoyment of HLP *rights* by those directly impacted by disaster. The growing complexity of disasters and the enhanced understanding of HLP issues by the international humanitarian community are both strong indicators of the need for IFRC to gradually engage within the HLP sector in countries where sheltering activities are underway.

55. Learning from past post-disaster shelter programming and developing ever-refined policy responses to the main challenges that emerge in this regard, will increase the impact of IFRC, expand the positive effects of shelter interventions and provide a firmer basis for ordinary citizens in disaster-affected countries to improve their housing, land and property circumstances over the short- and longer-term. Building a consolidated IFRC policy on HLP issues at both the international and national levels will take time and a concerted effort to develop the most effective policy responses in an increasing complex global disaster environment. Above all else, a perspective is required which expands the *Do No Harm* Principle into the HLP sector. In the specific context of HLP rights and disaster, the *Do No Harm* principle means that humanitarian actors will only support local or national HLP laws and policies that are consistent with and which augment internationally protected HLP rights. It means that international agencies should build perspectives into their overall activities to ensure the broad promotion and protection of HLP rights, and that humanitarian institutions

will consciously ensure that they are complicit in any approaches to HLP issues pursued by national and local governments which are contrary to international rules and regulations. In effect, such an approach would prioritise rights over expediency, strive to remove the property bias that still dominates shelter efforts and develop new internal and external mechanisms to continually strengthen HLP rights issues within the context of shelter programming.

56. In conclusion, this report offers the following three recommendations:

1. Governments should be encouraged to acknowledge the need to find speedy and equitable solutions to HLP rights and regulatory barriers to shelter after a disaster;
2. Collaborative work should be carried out between National Societies and Governments to better prepare their systems and planning for post-disaster shelter to overcome regulatory obstacles within the HLP sector; and
3. National Societies and the IFRC (as Shelter Cluster co-convenor) should receive the mandate to continue working on the issues raised in this report in support of the work already undertaken by States.

Useful Reading

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

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

George E. Edwards, International Human Rights Law Violations before, during, and after Hurricane Katrina: An International Law Framework for Analysis, *1 T. Marshall L. Rev.* 353 (2005-2006).

Greater New Orleans Fair Housing Action Centre, *Housing Choice in Crisis: An Audit Report on Discrimination against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market*, 2009, <http://www.gnofairhousing.org/pdfs/HousingChoiceInCrisis2009.pdf>.

Helpage International, *Older people in disasters and humanitarian crises: Guidelines for best practice*,

HIC, *Still Waiting - Housing Rights Violations in a Land of Plenty: The Kobe Earthquake and Beyond*, 1995, http://sheltercentre.org/sites/default/files/HIC_HousingRightsViolationsInALandOfPlenty.pdf.

IASC *Operational Guidelines on Human Rights and Natural Disasters*, Brooking Institute, 2006

Protection Cluster: Land and Property Rights Working Group Pakistan, Concept Note and Recommendations – Housing, Land and Property Rights Issues Arising from the Floods, 2010. Sphere Handbook – *Humanitarian Charter and Minimum Standards in Disaster Response*, 2011

UN Habitat, *Land and Natural Disasters: Guidance for Practitioners*, UN Habitat, Global Land Tool Network, FAO, IASC Cluster Working Group on Early Recovery, 2010

UN Principles (‘Pinheiro Principles’) on Housing and Property Restitution for Refugees and Displaced Persons, 2005

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