



# Regulatory barriers to providing emergency and transitional shelter after disasters

## Country case study: Nepal

Summary report

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2. Enable healthy and safe living.
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## About this report

This summary report is excerpted from the full report “Regulatory barriers to providing emergency and transitional shelter after disasters, Country Case Study: Nepal”. It includes the executive summary, section summaries, the conclusions and suggested ways forward. It also includes a list of persons and organisations consulted as part of this research. Please refer to the full report (available at [www.ifrc.org/dl](http://www.ifrc.org/dl)) for analysis of the issues covered here as well as for the referenced annexes, which include lists of legal and other sources utilized for this report.

## About the Disaster Law Programme

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

Email: [disaster.law@ifrc.org](mailto:disaster.law@ifrc.org)

Website: [www.ifrc.org/dl](http://www.ifrc.org/dl)

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

Photo by: Dipendra Shakya/local journalist.

P.O. Box 372  
CH-1211 Geneva 19  
Switzerland  
Telephone: +41 22 730 4222  
Telefax: +41 22 733 0395

E-mail: [secretariat@ifrc.org](mailto:secretariat@ifrc.org)  
Web site: <http://www.ifrc.org>



## Contents

Executive summary	4
.....	
Part A	
Background and project objectives	9
.....	
Background	10
.....	
Project objectives	11
.....	
Part B	
Analysis of regulatory barriers	12
.....	
1. Disaster response framework and links to emergency and transitional shelter	13
.....	
2. Access to shelter assistance	15
.....	
2.1 Identification of disaster-affected people	15
2.2 Property owners	16
2.3 Tenants	18
2.4 Other groups	20
.....	
3. Land for emergency and transitional shelter	21
.....	
4. Shelter construction	23
.....	
4.1 General construction standards	23
4.2 Building damage assessments and construction safety	25
4.3 Shelter materials	26
.....	
Part C	
Overall conclusions and suggested ways forward	28
.....	
Annex A	
List of persons and organisations consulted	38
.....	

# Executive summary

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## About this study

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

The findings of the report are divided into four parts:

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

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## Overall conclusions and suggested ways forward

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

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





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## Gaps and barriers for shelter assistance

### Overall framework for disaster management and emergency shelter

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

### Access to shelter assistance

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

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

### Land for emergency and transitional shelter

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

### Shelter construction

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

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

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## Positive developments and solutions

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

- Systematic development of disaster preparedness plans at district level and the development of a new Disaster Management Act (pending adoption).
- Plans to increase the availability of suitable land for emergency and transitional shelter through the “Open spaces” initiative in Kathmandu city, which has protected 83 sites from development for use as temporary camps or other humanitarian purposes. The spaces include a mix of large and medium sites on government owned land, which have been legally protected by publication in the national Gazette and are managed by an inter-ministerial committee.
- Additional programmes to address ‘risk sensitive land use planning’ so as to better manage urban planning. This will be supported by new policies and the proposed development of resettlement guidelines and a recovery plan, which include further efforts to expand the number of open spaces in the wider Kathmandu valley and to implement the “one tole<sup>1</sup>, one open space” concept.
- Initiatives to strengthen the implementation of the National Building Code, including: digitization and automation of building code approvals; integration of the National Building Code into municipality by-laws; initiatives to improve building code compliance through advocacy and training.
- Plans to adopt the emergency shelter models and standards into national policy and the development of detailed recovery guidelines.
- Existence of Legal Status Agreements with international humanitarian organisations and adoption of the Model Customs Agreement to provide expedited procedures and tax waivers for the import of materials for emergency response materials following a disaster.

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## Suggested ways forward

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

Among these suggestions are:

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

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<sup>1</sup> A tole is a small neighbourhood or block.



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

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

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## Overcoming implementation challenges

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

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

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

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

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### **Next steps**

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

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



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

# Part A

## Background and project objectives

## Background

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

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

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

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

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<sup>3</sup> Resolution 7, Strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery, adopted by the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November – 1 December 2011.

## Project objectives

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

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

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

# Part B

## Analysis of regulatory barriers

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

The section is divided into four parts:

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

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

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

### Summary findings

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

**There has been no recent experience of providing transitional shelter, with typical shelter responses in Nepal shifting directly from emergency shelter to permanent solutions.** Emergency shelter support usually takes the form of a small cash payment by local authorities and the provision of a non-food item (NFI) set, which includes plastic sheeting/tarpaulin and rope, distributed by NRCS or sometimes by a local NGO to each affected family. In a few cases of widespread displacement, people have been accommodated in temporary camps. In other situations, displaced families have received



significant financial compensation, technical support for repairs and reconstruction of homes or have been allocated new land and housing. However, as noted above, a major earthquake in an urban area would require a different approach.

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

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

### Suggested ways forward

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

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

**Clarify the application of the IDP policy and procedures to natural disaster situations.** If this policy is applicable, it would be important to clarify its relationship and application with regard to the more widely recognised disaster management framework contained in the Natural Calamities (Relief) Act and National Disaster Response Framework (and the Disaster Management Act once adopted). Should it be determined that this policy is not applicable, it would be useful to include many of its relevant provisions in any new policy documents relating to shelter assistance following natural disasters.

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

- o Guiding principles for the provision of emergency and transitional shelter, based on humanitarian principles and international standards and guidelines.
- o Thresholds/criteria for different shelter responses.
- o Institutional responsibilities for emergency, transitional and recovery shelter.
- o Funding mechanisms and (if possible) annual budget allocations.
- o Adequate procedures to ensure equitable and needs-based access to shelter assistance.
- o Further technical guidance and specifications for shelter models and materials.
- o Special contingency plans and procedures for addressing shelter needs following a large scale earthquake, which takes into account the likely impact on government/humanitarian capacities and integrates learning from other similar events in other countries.

## 2. Access to shelter assistance

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

### 2.1 Identification of disaster-affected people

#### Summary findings

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

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

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

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

### Suggested ways forward

**Clarify and document the identification requirements and related procedures for receiving small scale disaster assistance** to ensure greater transparency and contain adequate safeguards against bias and exploitation in the identification process. This could also be strengthened through a complaints/ombudsman system in the event that disputes arise.

**Consider utilising the identification/registration process of the IDP Policy and Procedures,** particularly for large scale disasters where longer term assistance may be required, and adapting/simplifying this process for emergency situations. This should include provisions for supporting people to access personal documentation quickly and setting clear and reasonable time frames for determining eligibility.

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## 2.2 Property owners

### Summary findings

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

**There are few laws or provisions in place concerning specific assistance to property owners following natural disaster situations.** Those that do exist are restricted to particular situations (such as compensation for apartment owners, or those situated in a national park or buffer zone) and have rarely, perhaps if ever, been applied in practice.

Nevertheless there have been cases where property owners have received special assistance, requiring some evidence of ownership such as Ownership Certificates.

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

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

**Weaknesses in cadastral mapping and markers have also posed difficulties for proving property boundaries, particularly in village or urban areas where detailed mapping is largely absent.** Inconsistencies and inaccuracies in land surveying and markers, particularly in villages and urban areas, combined with the fragile state of maps and other documentary information makes some property boundaries difficult to verify and may lead to boundary disputes between property owners or deliberate manipulation, creating potential delays in the provision of shelter assistance. Fortunately, there is work underway to digitize land records and update cadastral mapping, including GPS coordinates, which will provide a much greater degree of clarity and continuity of land records, for both ownership and boundary determination.

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

## Suggested ways forward

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

- The development of clear guidelines, criteria and procedures for providing targeted shelter assistance to property owners whose homes/land has been damaged or destroyed by disaster.
- Fast track/priority procedures for providing copies of ownership documentation which has been lost or destroyed.
- Fair, transparent and timely procedures for identifying property owners in the absence of official documentation (e.g. customary/traditional owners, marginalised groups who have not registered their land and others who may have difficulty asserting their property rights).
- A local dispute resolution mechanism/ombudsman, supported by fair and transparent rules of procedure, with the option to access the court system and legal aid as/when required as provided by the National IDP Policy and Procedures.
- Provisions reinforcing the protection of private property from unlawful seizure/land grabbing and for the rapid return of any such land, such as those provided by the Constitution and Comprehensive Peace Agreement of 2006 (which are currently limited to conflict situations).
- Greater legal protection for families of missing persons to enable them to access assistance in the absence of the legal property owner, through the extension of the current work on “certificates of absence” to disaster situations.

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

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## 2.3 Tenants

### Summary findings

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

**Rural tenants are especially vulnerable to exclusion from shelter assistance.** Rural tenants tend to be disadvantaged by lower income, caste and social status and are particularly vulnerable to exclusion from shelter assistance following natural disasters. Deliberate concealment as ‘workers on annual contracts’ rather than registered



tenants, place them at high risk of eviction, land grabs and denial of occupancy by landowners, seeking to avoid potential land claims under laws intended to benefit tenants through land redistribution. Poor implementation of the requirement to register all tenancies (currently up to 90 per cent of tenancies are unregistered) results in a lack of official documentation as evidence of residence or tenancy to receive shelter assistance, and then creates dependence on community identification, police reports and certification by VDCs for eligibility, which can be effective but also has the potential to exclude or further disadvantage already vulnerable groups through lack of fair transparent processes.

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

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

### Suggested ways forward

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

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

## 2.4 Other groups

### Summary findings

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

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

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

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

## Suggested ways forward

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

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

## 3. Land for emergency and transitional shelter

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

### Summary findings

**Legislation exists to allow for the allocation of land for emergency and transitional shelter following a disaster, but is hampered by implementation challenges and bureaucratic procedures.** Existing legislation enables land acquisition for use following disasters, adequate compensation payments and empowers authorities from national to local level to ensure that rural and urban planning allows sufficient open spaces, which could be allocated for use as emergency shelter locations or camps. The challenge however is in the implementation. With the exception of the Kathmandu “open spaces” initiative, there has been little or no effective land use planning for disasters and limited space is available in urban areas to accommodate mass displacement following an earthquake. The Land Acquisition Act, despite including fast track procedures to expedite acquisition in special circumstances such as natural disasters, involves cumbersome processes through several ministries which take 3-4 months to complete under the best of circumstances, and in some cases a year or more. Moreover, the government has been seemingly reluctant to use acquisition powers in disaster situations, particularly when involving private land, preferring instead to use government

owned marginal or barren land. Government authorities have occasionally initiated private negotiations with land owners to voluntarily allow the temporary use of land after disaster, and there have been cases of government land being transferred to the control of humanitarian organisations, however there are no specific regulations for this. International organisations, INGOs and foreigners are not permitted to purchase land in Nepal unless a special decision of Cabinet is made to override existing law.

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

**Environmental protection legislation does not necessarily prevent the use of land for temporary shelter after disaster, even in protected areas, however it lacks detailed provisions to ensure proper management.** Adequate authority exists to make exemptions to environmental protection legislation when necessary to accommodate temporary shelter after disaster, however there have been cases where its selective application has been used to prevent the use of national forests and parks for temporary settlement, even in situations where no suitable alternatives existed. Such legislation would be strengthened by the development of specific criteria and procedures in such cases, to not only facilitate rapid response but to ensure that risk management and environmental considerations are also taken into account.

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

## Suggested ways forward

**Existing legislation concerning the availability, acquisition and use of land could be further strengthened through the development of more detailed provisions specifically tailored to emergency and transitional shelter needs after disasters.** This could be integrated into the respective instruments on land use, urban planning, acquisition and environmental protection, and/or could be developed as part of any standalone guidelines or policies on disaster management, emergency and transitional shelter, resettlement and recovery.

### Provisions should address issues such as:

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

## 4. Shelter construction

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

### 4.1 General construction standards

#### Summary findings

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



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

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

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

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

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

### Suggested ways forward

**In addition to the current work to improve compliance with the Building Code and the adoption of national standards for shelter models and recovery guidelines, as described above, further policy development and planning on emergency and transitional shelter should consider the following elements:**

- o A detailed contingency plan for the provision of emergency and transitional shelter in the event of a major earthquake in Kathmandu Valley. This should include reference to the various regulations and standards applicable to different shelter responses and strategies for ensuring accountability, monitoring and compliance, which should form part of wider earthquake contingency planning processes.
- o Further strengthening of accountability mechanisms that could be applied later in the early recovery process, such as a licensing and application approval process and requirements for partnerships with local organisations, and the establishment of consumers' committees and public participation.

**Further collaborative efforts can also be undertaken in order to scale up public advocacy around the need for building code compliance**, capitalising on the current strategies of the Nepal Risk Reduction Consortium and the work of existing programmes.

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## 4.2 Building damage assessments and construction safety

### Summary findings

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

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

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

### Suggested ways forward

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

- o Developing a mobilisation mechanism for the rapid deployment of teams for damage assessment.
- o Expanding the pool of professionals trained in damage assessment, within Kathmandu and also at district level to accelerate the speed of deployment.

- o Additional planning for the process of conducting damage assessments following a major earthquake in Kathmandu Valley or other urban centres.

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

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## 4.3 Shelter materials

### Summary findings

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

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

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

### Suggested ways forward

**Further policy development and planning on emergency and transitional shelter should include the following:**

- o The pre-positioning of a minimum stock of shelter materials both within and beyond Kathmandu Valley for use in both small and large scale disasters as needed.

- o The expansion of efforts to develop and promote new techniques for using renewable local materials for disaster resistant shelters which could improve the speed, cost effectiveness and safety of post-disaster shelters, provided they are acceptable to local communities.
- o Strengthening the monitoring and enforcement of quality standards for construction and emergency shelter materials, while allowing the flexibility to develop plans to meet urgent, lifesaving shelter needs in the event that adequate materials are not immediately available, in particular after a large scale earthquake.

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

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

## **Part C**

# Overall conclusions and suggested ways forward

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

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

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

## Gaps and barriers for shelter assistance

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



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## **Overall framework for disaster management and emergency shelter**

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

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

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

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## **Access to shelter assistance**

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

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

- o selective use of customary laws to prevent women from accessing property inheritance, thereby creating potential exclusion from accessing shelter assistance, or for preventing Dalits from entering certain places of worship (which may be required for shelter after a disaster);
- o requirements to wait for the issue of death certificates to enable families to access assistance linked to property ownership in the event a property owner is missing following a disaster or other event;
- o selective/poor application of land reform measures which increase the vulnerability of rural tenants to eviction, land grabbing and concealment/denial of tenancy.

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### Land for emergency and transitional shelter

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

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### Shelter construction

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

## Positive developments and solutions

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

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

## Suggested ways forward

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

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

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

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

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

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

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

**Consider the following elements are part of further policy development and planning on emergency and transitional shelter:**

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

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

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

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

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

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

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

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

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

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



## Overcoming implementation challenges

In addition to the gaps and suggestion solutions outlined above, it is apparent that a major challenge in Nepal is not necessarily the development of appropriate laws, policies and regulations but rather their effective implementation and a need for improved enforcement and compliance. An absence of effective implementation is seen particularly in the case of legislation and policies which have the potential to disrupt the longstanding social and political structures in the country. Those of most relevance to this study concern equality and non-discrimination, land and property ownership and overall control of resources by certain socio-economic, caste and political groups. Another issue not directly addressed in this study, but widely acknowledged to exist in Nepal at many levels, is that of corruption. Corruption also has the potential to undermine the effective implementation of laws and regulations, particularly in situations that involve 'high stakes' sectors such as property development, land or large compensation payments after disaster, as well as in smaller instances, such as the payment of additional "fees" for official administrative processes which can also be used to perpetuate discrimination.<sup>4</sup>

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

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

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<sup>4</sup> See for example, "Anti-corruption Profile - Nepal", TrustLaw (undated) at [www.trust.org/trustlaw/country-profiles/good-governance.dot?id=6ab81711-3750-49ab-ae70-c4481611e7be](http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=6ab81711-3750-49ab-ae70-c4481611e7be) accessed on 9 April 2013; Wily L et al, "Land Reform in Nepal: Where Is It Coming From and Where Is It Going?", Scoping Study on Land Reform for DFID Nepal (2008) and "Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal", DFID and World Bank (2010).

- Raising awareness of the general public, especially in areas which have a high vulnerability/frequency of disaster, to ensure a greater degree of accountability to the public.
- Including an annual “testing” and review process, to maintain awareness of the instrument in question and ensure its integration into other relevant trainings, workshops and simulation events.
- Ensuring that specific monitoring is carried out following a disaster operation to assess implementation and recommend any further measures which could further enhance its effectiveness.

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

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

# Annex A

List of persons and  
organisations consulted



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## Government of Nepal

### Ministry of Home Affairs

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

### Ministry of Federal Affairs and Local Development

- Mr Gopi Khanal, *Joint Secretary*

### Department of Urban Development and Building Construction

- Mr Shambhu KC, *Deputy Director General*

### Land Revenue Office, Kathmandu

- Mr Gopal Giri, *Chief Land Revenue Officer*

### Kathmandu Municipality

- Mr Narendra Shrestha
- Mr Indra Suwal

### District Administration Office, Sunsari

- Mr Laxman Kumar Thapa, *Chief District Officer*

### Land Revenue Office, Sunsari

- Mr Prem Dahal, *Section Officer*

### Local Development Office, Siraha

- Mr Bijay Raj Subedi, *Local Development Officer*

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## International Red Cross/Red Crescent Movement

### Nepal Red Cross Headquarters

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

### Nepal Red Cross District Chapter, Sunsari

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

### **Nepal Red Cross District Chapter, Siraha**

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

### **IFRC Country Office, Nepal**

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

### **ICRC Country Office, Nepal**

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

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## **United Nations/ International Organisations**

### **UNHABITAT Nepal**

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

### **UNOCHA Nepal**

- Mr Ram Leutel, *Disaster Response Specialist*

### **UNDP Nepal**

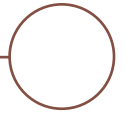
- Ms Jenty Kirsch-Wood, *Head, Disaster Risk Management Unit*

### **IOM Nepal**

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

### **Nepal Risk Reduction Consortium Secretariat**

- Ms Moira Reddick, *Secretariat Coordinator*



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## Development agencies

### Asian Development Bank, Nepal Resident Mission

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

### DFID Nepal

- Mr Sam Rose, *Humanitarian Resilience Advisor*

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## Non-Government Organisations

### ActionAID

- Mr Suresh Thapa, *Human Security Coordinator*

### Lumanti

- Ms Lumanti Joshi, *Technical Coordinator*

### NSET

- Mr Surya Narayan Shrestha, *Deputy Executive Director*

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## Group consultations

**Emergency Shelter Cluster Meeting (30 May 2013)**

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

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





# The Fundamental Principles of the International Red Cross and Red Crescent Movement

**Humanity** / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

**Impartiality** / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

**Neutrality** / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence** / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary service** / It is a voluntary relief movement not prompted in any manner by desire for gain.

**Unity** / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

**Universality** / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



International Federation  
of Red Cross and Red Crescent Societies  
[www.ifrc.org](http://www.ifrc.org) **Saving lives, changing minds.**