

# Nepal: Human Rights Impact of the Post-Earthquake Disaster Response

## A Preliminary Report



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## Introduction

The earthquake that struck Nepal on 25 April 2015 devastated large parts of the country. The earthquake and its many aftershocks killed and injured over nine thousand people, and left nearly two hundred thousand people without shelter and with limited or no access to basic necessities for livelihood, such as health care, education, adequate food, water and sanitation and fuel to facilitate free movement.<sup>1</sup>

Emergency relief efforts by the Government of Nepal, international humanitarian aid organizations, the United Nations and international donors were hampered by a series of obstacles that slowed or prevented assistance to those affected by the earthquake. Complaints quickly emerged of burdensome bureaucratic hurdles faced by aid agencies trying to get relief supplies into the country,<sup>2</sup> the slow pace and politicized nature of relief distribution and alleged sub-standard quality of goods being distributed.<sup>3</sup> These problems were aggravated by the Nepali Government's failure to implement a comprehensive long-term policy plan and to establish without undue delay an effective coordination mechanism for relief, resettlement, reconstruction and rehabilitation.

Human rights are an essential element of post-disaster humanitarian assistance. Governments and intergovernmental humanitarian aid agencies alike have an obligation under international law to ensure that human rights are fully integrated in the post-disaster humanitarian response at all phases – planning, implementation, short-term emergency relief and long-term reconstruction and rehabilitation. Non-governmental humanitarian agencies too have a responsibility to respect international human rights principles, under the SPHERE and other guidelines. This entails providing assistance to people sufficient to guarantee at the very least minimum essential levels of food, health, housing and education needs, which is essential to the enjoyment of their human rights.

Given past experience in both Nepal and post-disaster contexts elsewhere, the ICJ has been concerned about the potential for human rights violations in the post-earthquake humanitarian response, particularly with respect to gender- or caste-based discrimination as well as political corruption.

In the immediate aftermath of the earthquake, the Nepal Bar Association (NBA), with the approval of the Prime Minister's Office, conducted a preliminary monitoring exercise of the humanitarian response to the earthquake in April and May 2015, to assess the degree to which relevant human rights standards had been followed. In its May 2015 'Preliminary Report on Monitoring Findings',<sup>4</sup> the NBA outlined a number of human rights concerns regarding the post-earthquake response, including among others:

- Poor planning and coordination among State agencies and with other humanitarian actors;

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<sup>1</sup> The devastation has principally impacted 14 districts in Nepal: Gorkha, Sindhupalchowk, Dhading, Kavre, Dolakha, Nuwakot, Ramechhap, Sindhuli, Rasuwa, Kathmandu, Lalitpur, Bhaktapur, Makwanpur and Okhaldhunga. 12 of the districts were declared to be 'crisis hit' on 26 April 2015, whereas Makwanpur and Okhaldhunga were added to the list on 30 April 2015. See Gazette of Nepal, Chapter 65, [Extra Issues 1,2 and 3]. There have been more than 300 aftershocks measuring 4.0 or higher since the initial quake, including as recently as 30 November 2015. See "Nepal Earthquake 2015: Post Disaster Needs Assessment (Executive Summary)", available at [http://reliefweb.int/sites/reliefweb.int/files/resources/PDNA\\_Executive\\_Summary\\_new.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/PDNA_Executive_Summary_new.pdf); see also <http://www.seismonepal.gov.np/index.php?action=earthquakes&show=recent>. Most significant of these was the aftershock of magnitude 6.8 (according to the National Seismological Centre of the Government of Nepal), epicentered in Dolakha district, which occurred on 12 May 2015.

<sup>2</sup> "Nepal Officials slammed over Aid Response", available at <http://www.voanews.com/content/nepal-government-faces-criticism-for-quake-aid-response/2745909.html>.

<sup>3</sup> "WFP Rice for Gorkha rotten", The Kathmandu Post, June 19, 2015, available at <http://kathmandupost.ekantipur.com/printedition/news/2015-06-18/wfp-rice-for-gorkha-rotten.html>.

<sup>4</sup> NBA-Preliminary Monitoring Report on Relief and Rescue for Quake Victims 2015 (submitted on May 04, 2015), available at <http://www.nepalbar.org/>.

- Complaints of irregularity and discrimination in the distribution of relief packages;
- Lack of domestic policy on the coordination and implementation of foreign assistance; and
- Lack of immediate, medium-term or long-term strategy to provide relief, resettlement, rehabilitation and/or compensation.

Building on these findings of the NBA's report, the ICJ undertook this joint fact-finding study with the NBA to provide a better understanding of the human rights issues faced by the people affected by the earthquake.

Given the rapidity of events and the urgency of needs, the fact-finding study focused on a few of the most immediate human rights concerns, and on three emblematic districts: Gorkha, Dolakha and Okhaldunga.

This preliminary report does not set out to provide a 'needs assessment' of the ongoing needs of the affected populations. Nor does it intend to be a comprehensive assessment of the full range of aid-related human rights concerns in each of the affected districts. In light of the limited scope and duration of the study, and further restricted by the impact of fuel shortages as a result of the border blockade, this preliminary report focuses on the most urgent and pressing human rights issues that the Nepali Government and international humanitarian agencies can immediately address and identifies ongoing problems that require continued monitoring.

At the same time, the preliminary report raises a number of substantive rights concerns that were brought to the researchers' attention but which, given the limitations of the study, warrant a more detailed and thorough assessment before being able to draw definitive conclusions as to whether these issues reflected wide-scale or systematic breaches of human rights obligations in relation to economic, social and cultural rights. There were particular concerns raised about systemic human rights violations on the issues of caste-based and other discrimination.

For instance, during interviews with some victims and survivors from communities of people marginalized on the basis of caste, religion or race, the researchers were provided with anecdotal information and case studies suggesting issues of discrimination based on lack of political access or influence. Unfortunately, due to the border blockade and resultant fuel shortage in Kathmandu and throughout the country, the researchers were forced to cut short their planned follow-up field visits to both Dolakha and Gorkha districts, and were therefore not in a position to adequately document these alleged instances of caste-based discrimination and other issues. As the fuel shortage and political impasse worsened, the researchers received anecdotal information that the fuel shortage further curtailed the ability of relief agencies to deliver needed services to earthquake-affected areas. Given their own logistical challenges, the researchers could not satisfactorily assess the added burden on the rights of affected populations caused by this new crisis.

Likewise, the ICJ initially intended to present its analysis the adequacy of the response to the impairment of specific economic, social and cultural rights in the context of earthquake relief - notably the right to food, health, education and adequate housing. The realization of all rights, including economic, social and cultural rights, particularly in disaster contexts, is an issue of key concern for the ICJ. It must be a key consideration in the minds of policy makers and humanitarian actors who are planning and implementing relief policies. The above-mentioned limitations regarding time and methodology, however, similarly prevented the researchers from drawing definitive conclusions on compliance with these rights and duties. Therefore, this preliminary report contains only a limited discussion of these issues, and will serve as the basis of a more detailed and thorough field assessment focusing on these substantive rights.



At the time of the field research for this study, the Government of Nepal had yet to operationalize the National Reconstruction Authority (NRA), the proposed central statutory body mandated to coordinate and implement the Government's post-earthquake relief, reconstruction and rehabilitation plan. In December 2015, eight months after the April 25 earthquake, the Nepali Government finally passed the enabling legislation and appointed the members of this coordinating body.<sup>5</sup> The composition and structure of the NRA already raises significant concerns as to its genuine independence, impartiality and ability to operate free of political interference.<sup>6</sup>

Nepal begins 2016 facing (another) serious political crisis. As the attention of Nepali politicians and international actors shifts away from earthquake recovery, it is essential for the NRA to carry out its work promptly, efficiently, independently, impartially and with due regard for human rights principles. It is equally imperative that national and international civil society actors, with the support of the donor community, continue to closely monitor the work of the NRA, beginning with a review of its legal mandate and structure itself, and its commitment to safeguard the human rights of earthquake victims in fulfilling its mandate without discrimination and political interference.

This preliminary report, therefore, provides a non-exhaustive snapshot of the humanitarian response in the first six months following the earthquake, on the basis of international human rights law and standards. It aims to assist policy makers, particularly the newly-formed NRA, and humanitarian actors by identifying the most immediate human rights concerns and providing recommendations to ensure the protection of the rights of affected populations in the post-earthquake activities. A thorough fact-finding survey throughout all affected districts along with a detailed law and policy analysis will be required to assess more conclusively whether Nepali and international actors have adequately discharged their human rights obligations and adopted appropriate legal, policy and practical measures to that end.

## **Methodology**

This preliminary report is based on field research and information gathered by the ICJ and the NBA between August and October 2015.

Representatives from the ICJ and NBA visited three of the 14 "highly affected districts" - Dolakha, Gorkha and Okhaldhunga - to assess how earthquake-related relief and reconstruction activities were being conducted.<sup>7</sup> In addition to the field missions, the study relied on data collection and research by monitors based in each of the three districts (and coordinated by the ICJ).

Prior to commencing the field research, the ICJ and NBA conducted a three-day seminar in August 2015 for the NBA district-based monitors, as well as the Kathmandu-based NBA representatives, on applicable international law and standards and guidelines on human rights and human rights monitoring in the context of post-disaster humanitarian

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<sup>5</sup> On 20 December 2015, the Parliament passed and gazetted *The Act for the Reconstruction of the Structures Affected by the Earthquake 2015*.

<sup>6</sup> As discussed below, the NRA is administered by an Executive Committee headed by a CEO and other members appointed by the GON. In addition to the Executive Committee, which is comprised of political appointees, the law establishes a Steering Committee as the "supreme body", and another Advisory or Consultative Committee, both comprised of the Prime Minister, Opposition Leader, Deputy Prime Ministers, MPs selected by the PM, and other Cabinet Ministers and GON officials. The Executive Committee reports and requires approval of its decisions from the Steering and Advisory Committees - in effect, the GON.

<sup>7</sup> Gorkha and Dolakha districts were chosen because they were the epicenter districts of the 25 April earthquake and 12 May aftershock, respectively. Both districts suffered extensive damage, and were the focus of humanitarian assistance from the Nepali government as well as humanitarian actors. Okhaldhunga was chosen because it was declared an emergency district at a later stage, and received relatively little assistance in comparison to the epicenter districts.

assistance. This training was followed by field missions to each of the three districts between August and October 2015.

Given the limited scope and duration of the study, the field research focused on the most urgent human rights issues observed in the three emblematic districts surveyed, supplemented by a review of available reports by the Nepal Government, the National Human Rights Commission of Nepal (NHRC), the UN and non-governmental humanitarian aid agencies on the progress of post-earthquake recovery.

As noted, while the ICJ and NBA planned to visit all three districts twice – first as an initial assessment and second as a follow-up visit – it was not possible to conduct the follow-up visits to Gorkha and Dolakha districts due to fuel shortages. This further limited the ability to assess certain issues that required additional follow-up in the field.

In each of the districts, the researchers met with a number of stakeholders, including: the Chief District Officer, Women Development Officer, representatives from the DDRC, District Health Office, and District Education Office, and other relevant local government officials. The researchers visited government-run schools and hospitals, and also met with a range of national and international organizations as well as community-based organizations engaged in various stages of the aid effort in each of the districts. In each district, the researchers also met with displaced persons and other victims of the earthquake and its aftershocks. The researchers conducted interviews with more than one hundred and fifty community members and recipients of earthquake-related aid in all districts, through a combination of individual interviews and focus groups, to discuss their experiences with aid distribution.

The ICJ did not conduct a detailed analysis of the underlying national disaster management legal and policy framework established in Nepal before and after the earthquake. A comprehensive assessment of the human rights impact of the earthquake relief throughout the country, which this study does not purport to do due to the above stated constraints, would require such a detailed law and policy analysis including of the newly formed NRA and its composition and legal mandate. To facilitate such an analysis in the future, the ICJ has outlined the relevant national laws and policies in place prior to and enacted after the earthquake.

## **Background**

According to UN figures, more than 8,800 people were killed, more than 600,000 houses were destroyed, 290,000 houses were damaged, and approximately 188,900 people were temporarily displaced as a result of the 25 April earthquake.<sup>8</sup> The toll on Nepal's social services sector has also been immense: 80 per cent of the health facilities in the 14 most affected districts in Nepal were damaged as a result of the earthquake and its aftershocks.<sup>9</sup> Roughly 32,000 school classrooms were destroyed and 15,352 classrooms were damaged.<sup>10</sup> A governmental post-disaster needs assessment estimated that the total cost of the earthquake and its aftershocks was in the range of USD \$7 billion.<sup>11</sup>

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<sup>8</sup> "Nepal Six Months On: A Race Against Winter", UN Office of the Humanitarian Coordinator in Nepal, available at [http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal%20Six%20Months%20Earthquake%20Press%20Release\\_Final\\_0.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal%20Six%20Months%20Earthquake%20Press%20Release_Final_0.pdf).

<sup>9</sup> "Massive damage to Nepal's healthcare services has put millions of quake survivors at risk, UN warns", available at <http://www.un.org/apps/news/story.asp?NewsID=51250#.Vi0Ck84eXdk>.

<sup>10</sup> "Nepal Earthquake: Race against time to get children back to School", available at [http://www.unicef.org/media/media\\_82139.html](http://www.unicef.org/media/media_82139.html).

<sup>11</sup> See Nepal Earthquake 2015: Post-Disaster Needs Assessment, Vol. A – Key Findings, Nat'l Planning Commission, Govt. of Nepal (2015), available at [http://www.npc.gov.np/images/download/PDNA\\_Volume\\_A.pdf](http://www.npc.gov.np/images/download/PDNA_Volume_A.pdf).

After the earthquake, the Government of Nepal received an estimated USD \$500 million in assistance from various governments and non-governmental agencies to address the immediate emergency and humanitarian needs created by the disaster.<sup>12</sup> The Government launched search and rescue operations with the support of 4,521 search and rescue personnel and 141 canines from 34 different countries. Similarly, efforts were made to meet the serious need for long-term relief and rehabilitation. An UN-sponsored Flash Appeal for funding for earthquake relief raised \$269.1 million<sup>13</sup> and an additional \$232 million was raised outside of the appeal.<sup>14</sup> As per figures available up to June 2015, the Nepal Government had coordinated the distribution of 15,468 metric tonnes of rice, 900,829 tarpaulins/tents, 221,527 mattresses and 51,353 hygiene kits along with food items such as dry food, sugar, biscuits, etc., and non food items such as soap, solar lights, water purifying tablets, etc.<sup>15</sup> In addition, 1116 tonnes of relief materials had been airlifted to the remote mountainous areas. Eighty-six INGOs working in Nepal claimed to have spent a combined total of the equivalent of USD \$200 million on relief materials and temporary shelters.<sup>16</sup>

By late 2015, UN OCHA warned that much more aid was still needed. A September 2015 OCHA report, for example, stated that over 81,000 households still needed shelter support; 58,689 people remained in shelter sites, 85% of which are not equipped for the fast approaching winter; and, 530,000 people were acutely food insecure.<sup>17</sup>

Following the earthquake, the Government of Nepal proposed the establishment of a National Reconstruction Authority (NRA), which would be responsible for the central coordination, planning and financial management of the earthquake related reconstruction effort. The Government initially created the NRA through an Ordinance on 22 June 2015 and registered a replacement Bill on 1 August 2015. However, due to political impasse, the Bill lapsed and the NRA had yet to be operational by the end of 2015, creating a legal and policy vacuum for post-earthquake reconstruction in the meantime.<sup>18</sup> This vacuum, by extension, negatively impacted earthquake victims' rights, as local authorities largely refused to take any steps to provide further assistance without express instruction from the central government.

Finally, in December 2015, the Legislature-Parliament passed the Bill and formally established the NRA,<sup>19</sup> which is expected to begin its work in 2016. Nevertheless, the

<sup>12</sup> <https://fts.unocha.org/pageloader.aspx?page=emerg-emergencyDetails&emergID=16575>; "OCHA Humanitarian Bulletin: Nepal Earthquake", Issue 04, 1-30 September 2015, available at [http://reliefweb.int/sites/reliefweb.int/files/resources/NepalEarthquakeHumanitarianBulletinNo4%28Sept2015%29\\_Final.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/NepalEarthquakeHumanitarianBulletinNo4%28Sept2015%29_Final.pdf).

<sup>13</sup> <https://fts.unocha.org/pageloader.aspx?page=emerg-emergencyDetails&emergID=16575>.

<sup>14</sup> "OCHA Humanitarian Bulletin: Nepal Earthquake", Issue 04, 1-30 September 2015, available at [http://reliefweb.int/sites/reliefweb.int/files/resources/NepalEarthquakeHumanitarianBulletinNo4%28Sept2015%29\\_Final.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/NepalEarthquakeHumanitarianBulletinNo4%28Sept2015%29_Final.pdf).

<sup>15</sup> "Rescue & Relief: International Conference on Nepal's Reconstruction", available at [http://icnr2015.mof.gov.np/page/rescue\\_relief](http://icnr2015.mof.gov.np/page/rescue_relief).

<sup>16</sup> As per Sarah Blin, vice chair of Association of International NGOs in Nepal (AIN), available at <http://www.spotlightnepal.com/News/Article/AIN-Held-Interaction-Exhibition>.

<sup>17</sup> "OCHA Humanitarian Bulletin: Nepal Earthquake", Issue 04, 1-30 September 2015, available at [http://reliefweb.int/sites/reliefweb.int/files/resources/NepalEarthquakeHumanitarianBulletinNo4%28Sept2015%29\\_Final.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/NepalEarthquakeHumanitarianBulletinNo4%28Sept2015%29_Final.pdf).

<sup>18</sup> The delay in passage of the bill was due to political disputes among the main political parties over the composition of the body, including in particular which party nominee would be selected for the CEO position to head the NRA. The NRA would have exclusive discretionary authority in the management and disbursement of earthquake relief funds provided to the Nepal Government from the various bilateral donor countries.

<sup>19</sup> *The Act for the Reconstruction of the Structures Affected by the Earthquake 2015*. As per the Preamble, the NRA's principal purpose is to "reconstruct...the structures damaged by the devastating earthquake of April 25, 2015 and its aftershocks in a planned way and make them durable and resilient[.]" and to "rehabilitate and relocate the individuals and families displaced by the earthquake and promote national interests and social justice[.]" The NRA is to be operational for a period of five years with a possibility of extension of one more year. The NRA has a very wide scope of authority, and covers issues such as assessment of the damage caused by the earthquake, determination of the priority areas of reconstruction and the responsibilities for the works, programs and projects related to the earthquake. In addition, the NRA also is responsible for

undue delay in operationalizing this important mechanism during a critical period immediately after the earthquake has compounded the challenges of the post-earthquake recovery and makes it now all the more imperative that the NRA carry out its work promptly, effectively, independently, impartially and with due regard for Nepal's human rights obligations.

The composition and structure of the NRA as legally mandated and currently constituted already raises significant concerns as to its genuine independence, impartiality and ability to operate free of political interference. The statute creates an Executive Committee that is composed of political appointees. In addition to the Executive Committee, the statute establishes a Steering Committee and another Advisory or Consultative Committee, both of which are chaired by the Prime Minister himself and comprise political party leaders, Members of Parliament (MPs), Ministers of the Government of Nepal, each of the Deputy Prime Ministers, the Opposition Leader (who was the previous Prime Minister) and several other former Prime Ministers. According to available information, only two women sit on the 63-member Advisory Committee, and no women have been appointed to either of the other two committees thus far. The Steering Committee is designated by statute as the "supreme body" of the NRA, and must approve policies, plans and budgets, and instruct the Executive Committee in carrying out its decisions. The Advisory Committee provides consultative guidance on the formulation of reconstruction policy and plans. The Executive Committee is, in effect, merely an administrative committee tasked with carrying out the decisions of the two political committees.

This apparent politicization of the composition and structure of the NRA from its outset is of significant concern. Moreover, the opacity of the policy-making process envisaged by this mechanism further raises concerns that it will be a politically driven process; neither the implementing statute nor any initial statements or regulations promulgated by the NRA itself have clarified the exact modalities by which the decision-making process will be carried out, including whether civil society, individual stakeholders such as affected victims or humanitarian agencies will be consulted. It is therefore crucial that civil society as well as the donor community remain vigilant in monitoring and engaging with the NRA to ensure that it carries out its work in an independent and impartial manner and consistent with international human rights principles.

### **Compliance with Human Rights Law & Standards in Post-Earthquake Response**

Human rights are a crucial part of any post-disaster relief and recovery operation. Nepal has a general duty under its international human rights treaty obligations to ensure equal protection of the law and of human rights, without discrimination on the grounds of race, colour, gender, sexual orientation, gender identity, disability, religion, language, political or other opinion, national or ethnic origin, property, birth or other status.<sup>20</sup> This general obligation under international law is particularly important in the post-earthquake recovery process. All phases of this process – from immediate rescue and relief to long-term reconstruction – must be informed by and comply with applicable internationally recognized human rights standards. Human rights standards applicable in time of post-disaster recovery emanate from international human rights treaties to which Nepal is party, as well as specific declarative guidelines such as the Sphere Guidelines, the UN Guiding Principles on Internal Displacement and numerous other guidelines that have been promulgated to specifically address situations of disaster.

Nepal has an obligation to respect, protect and fulfill these rights. The obligation to respect entails the duty of State actors to desist from interference with the enjoyment of

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coordination between various agencies, determining the budget for reconstruction and formulating standards and policies as required.

<sup>20</sup> See, e.g., ICCPR, art. 2; ICESCR, art. 2; CEDAW, art. 1; CERD, art. 1; CRC, art. 2.

rights; the obligation to protect entails the duty to take effective measure to prevent such interference from non-State actors, such as private companies, armed groups and individuals; and the obligation to fulfill entails devoting the maximum available resources towards the progressive full realization of rights, while ensuring that minimum essential levels of the rights are ensured.

Discharge of these obligations must ensure that the response to any disaster is equitable and reaches everyone in accordance with their needs. It is also the foundation for sustainable and long-term reconstruction.<sup>21</sup>

This section outlines the immediate concerns that the ICJ and NBA team noted during the course of the field research, including: (1) difficulties in accessing humanitarian aid due to documentation requirements; (2) inadequate information around earthquake related policies and entitlements; and (3) inadequacies of accountability mechanisms. This section also documents certain anecdotal information the ICJ received that raise concerns of caste, ethnic or gender discrimination of already marginalized groups.

Furthermore, the degree to which the policy vacuum created by the absence of a long-term plan for reconstruction, rehabilitation and resettlement – as exemplified by the delay in constituting the NRA – has been an underlying thread exacerbating the human rights concerns highlighted in this preliminary report also must not be underestimated.

#### *Access to Documentation and Humanitarian Aid*

A recurring concern that emerged during the study was one of availability of documentation of personal identity and property ownership: several individuals who spoke with the ICJ reported facing serious obstacles to accessing earthquake assistance because they were unable to show the required documentation, including proof of Nepali citizenship and/or residence or land ownership in a particularly affected area.

Ensuring access to appropriate documentation is an important aspect of ensuring the right to access humanitarian aid. Access to documentation also reflects the fulfillment of the right to recognition before the law.

Accessibility encompasses both economic and physical accessibility;<sup>22</sup> both States and international organizations have an obligation to ensure that victims of natural disaster and specially vulnerable groups, including physically vulnerable individuals and indigenous populations whose access to ancestral land may be threatened, have priority consideration with respect to both physical and economic accessibility at a cost and through means that do not threaten their attainment of other basic necessities.<sup>23</sup> The UN Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster provide that “[o]rganizations providing humanitarian assistance to persons affected by natural disasters should grant access to life-saving goods and services even in the absence of relevant documents”. The Guidelines state further, “Loss of personal documentation should not be used: (a) to justify the denial of essential food and relief services; (b) to prevent individuals from travelling to safe areas or from returning to their homes; or (c) to impede their access to employment opportunities.”<sup>24</sup> The UN Guiding Principles on Internal Displacement contain similar standards as well.

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<sup>21</sup> See below in this preliminary report for a detailed discussion of the relevant international human rights law and standards applicable to the post-earthquake relief and reconstruction process in Nepal, with particular emphasis on the specific thematic areas examined in this study.

<sup>22</sup> General Comment 12, Committee on Economic, Social and Cultural Rights, Right to Adequate Food (Art. 11), UN Doc. E/C.12/1999/5 (1999), para. 13, available at <http://www1.umn.edu/humanrts/gencomm/escgencom12.htm>.

<sup>23</sup> See General Comment 12, Committee on Economic, Social and Cultural Rights, Right to Adequate Food (Art. 11), UN Doc. E/C.12/1999/5 (1999), para. 13.

<sup>24</sup> The principles were adopted by the InterAgency Standing Committee (IASC). See part D, <http://www.refworld.org/pdfid/49a2b8f72.pdf>.

Principle 20 says that authorities must give IDPs all documents “necessary for the enjoyment and exercise of their legal rights”.

Loss of documentation is often a significant problem in post-emergency contexts. Loss or destruction of documentation necessary to prove identity hinders the ability of people who have survived a natural disaster to access aid. In other situations, the relief effort institutes new documentation requirements that people are unable to meet, and hence access aid. Particularly in Nepal, difficulties in accessing citizenship-related documentation have been historic concerns, which have led to the marginalization of particular groups. The documentation requirements to be eligible for earthquake related relief further cement existing marginalization and infringe upon individuals’ right to access humanitarian relief.

These difficulties may arise from the fact that some persons have not had their birth properly registered. The UN Human Rights Council has called attention to the serious human rights consequences engendered by effectively denying recognition of a person before the law,<sup>25</sup> and has called on all States to remove obstacles to such registration.<sup>26</sup> The UN Office of the High Commissioner for Human Rights (OHCHR) has further elaborated on the significant negative impact of natural disasters on registration, noting that the disruption caused by disasters exacerbates legal, financial, physical and geographical barriers to registration, including the destruction of birth registrations.<sup>27</sup>

Ramesh Sunar, an elderly man, was living in his sister’s house in Dolakha district when the earthquake on 12 May 2015 occurred. He was not originally from Dolakha but had been living there for many years. The house he was living in was destroyed and he has since moved into a temporary shelter nearby. Immediately after the earthquake, the government of Nepal announced a policy of giving all affected families NPR 15,000 as immediate cash relief. When he tried to avail of the cash relief, Mr. Sunar was told he needed proof of Nepali citizenship to do so. Mr. Sunar did not have any documents to this effect, even prior to the earthquake. Government officials advised him to return to his district of origin, get a recommendation from the local government officials there, then apply for a citizenship certificate in Dolakha district and, only after that, apply for the earthquake-related cash relief and aid. Due to his age and difficulties in transport, Mr. Sunar had been unable to return to his district of origin and obtain the documents necessary to obtain earthquake relief.

Ramesh Singh currently lives in Dolakha district. He was born in Nepal but he went to India with his parents as a child. He returned to Nepal alone a few years later and has been living in Dolakha for twenty years, where he is married, has a daughter and runs a shop. He is married to a Nepali citizen from a different district, which is not deemed affected by the earthquake. He does not, however, have proof of Nepali citizenship.

He and his household suffered damage during the earthquake. However, they have been unable to obtain an Earthquake Victim Identity Card (EVIC), and consequently any relief, because he does not have proof of Nepali citizenship and his wife does not have official residency in Dolakha district. He raised his problem with the CDO, who sent him to the municipality. The municipality sent him back to the CDO. Local political parties are now discussing his case.

<sup>25</sup> This right is guaranteed under Article 16 of the ICCPR, and is non-derogable.

<sup>26</sup> UNHRC Res 22/7, Birth registration and the right of everyone to recognition everywhere as a person before the law, UN Doc. A/HRC/Res/22/7, 9 Apr 2013.

<sup>27</sup> Report of the Office of the United Nations High Commissioner for Human Rights, Birth registration and the right of everyone to recognition everywhere as a person before the law, UN Doc. A/HRC/27/22, 27 Jun 2014, paras. 71-72, available at <http://www.ohchr.org/Documents/Issues/Children/BirthRegistration/ReportBirthRegistration.pdf>.

### Earthquake Victim Identity Cards

Following the earthquake, an executive order was passed by the Central Natural Disaster Relief Committee (CNDRC) making access to any relief entitlements provided by the Nepal Government, or by humanitarian groups operating with sanction from the Government, dependent on the possession of an Earthquake Victim Identity Card (EVIC). The government planned to distribute EVICs to one member of each affected household. There was no specific procedure provided in the executive order regarding how an earthquake "victim" should be defined. The EVIC records the extent of damage suffered by each household as well as any relief they have been given.

Humanitarian agencies and individuals entitled to receive aid told the ICJ and NBA that both the eligibility criteria for the EVIC and the process of obtaining it were frequently determined by political considerations and raised significant barriers to accessing timely aid for persons without political influence. The researchers received complaints that local political party officials would ensure that their party members would get on the beneficiary lists, to the exclusion of others who do not have access or influence with the local political parties. Those who were left out would then have to file a complaint with the DAO (District Administrative Officer) or local secretary, and likely face significant delays in rectifying these omissions, if they were fairly addressed at all.

The absence of a central coordinating mechanism with a defined mandate has exacerbated these delays, as local officials have waited for guidance from the center before taking any action.

In most districts the VDC Secretary was responsible for the issuance and distribution of EVICs. In order to be eligible for an EVIC in a particular location, individuals told the ICJ and NBA that they had to show (i) citizenship certificates and (ii) proof of residence or land ownership in that particular location. Where individuals in remote villages did not have required documentation even prior to the earthquake, or had lost it during the earthquake, some districts issued cards through an informal independent verification process, usually by asking prominent members of the community whether the undocumented individuals were citizens and resident there.

According to the formal procedure, all individuals and households must register for an EVIC; having done so, they are enrolled in the list of people entitled to relief in a particular location. This list is distributed to all humanitarian agencies working in that area, and people can be denied relief if they are not on this list. Therefore, non-eligibility or difficulties in registering for the EVIC can mean being left off of the beneficiary list, and therefore not having access to a range of relief entitlements including those for which the EVIC is not usually necessary. Almost all the inter-governmental organizations and humanitarian agencies the ICJ and NBA spoke with confirmed that they relied on this list while distributing relief materials. However, in the districts visited, the researchers were informed of multiple problems regarding accessing EVICs, many of which served to further marginalize already marginalized and disadvantaged groups.

Some individuals told the researchers that not having citizenship certificates served as significant barriers to accessing the EVIC, particularly for those who did not have necessary citizenship documents even prior to the earthquake. The requirement to show proof of land ownership or residency in that district meant that individuals who migrated into a particular district from a different part of Nepal, people living in informal settlements, people who lived in rented accommodation, and people who did not own land, also faced problems in accessing EVICs and, therefore, humanitarian aid.

In a discussion with the students at a Higher Secondary School in Dolakha, students who had migrated to Dolakha district from other districts said they had not received relief materials. They had been unable to register for an EVIC and since they were known to

be from another district, their names had not been added to the list through the community verification process. The lack of adequate shelter continued to pose a problem, and was exacerbated by increased rents in the aftermath of the quake. Many were finding it hard to study for their national level exams in this context – where they did not have a quiet place to study, or a safe home to which to return.

In many cases, where documentation was lost or unavailable, the government relied on community verification to ensure that individuals were residents of the particular district and lived where they claimed. This system helped a number of people who did not have the necessary documentation. On the other hand, such an informal process of community verification risks the possibility that people who had been marginalized (for any of a number of social, cultural or political reasons) or do not have favor with powerful individuals may be kept off the list.

This case illustrates the problems with the community verification process: In Dolakha district, the ICJ and NBA researchers met with a group of people who, prior to the earthquake, had moved to Dolakha district from a nearby district and had been living in informal settlements on land owned by the government school. After the earthquake, the school reclaimed this land and they were evicted. They are now living on the side of one of the main roads.

These inhabitants did not have citizenship certificates or land titles in Dolakha. When they tried to register for the EVIC, they were denied. The community did not support their applications since they were from another district. Because they were not on the list, they have since been denied other relief as well.

One organization was willing to offer them non-cash assistance. However, local residents protested this, which led to an altercation that ended in local residents taking the group of non-residents to the local police station, where they were asked to sign an affidavit of “good behavior” before they were released.

Due to the documentation requirements, many individuals in this group are not eligible for relief in other districts either. The ICJ and NBA spoke to one of the families, consisting of a woman living with her older mother and two children. They were originally from a neighboring district, and her husband had died a few years ago. All documentation she possessed was in the name of her husband and his family. As she was no longer living with them, she could not use those documents to access relief.

Nepal Government relief policy has been silent on the manner in which the designated benefits would be allocated and how the beneficiary lists would be determined. As a result, full discretion has been left in the hands of local government authorities – the DDRC and the CDO. CDOs have in turn only disbursed relief to registered residents or land and property owners of their districts. Government officials told the ICJ that, while all affected citizens of Nepal were entitled to relief somewhere, they might not be entitled to relief in the district in which they were residing at the time of the earthquake, and would therefore have to return to whichever district in which they were officially resident. Survivors and victims who rented homes, operated shops or otherwise resided in affected districts and whose shops or homes were damaged, but were officially registered as residents in other non-affected districts, were thus excluded from receiving aid—an infringement of their entitlement to receive humanitarian relief and interference with their human rights.

The responsibility of a State to provide humanitarian assistance as an essential element of their obligation to fulfillment the right to food, shelter, water and other basic necessities embodied under international human rights law also envisions the right to freedom of movement and to reside anywhere one may choose. This right is protected under both the Nepal Constitution and Article 12 of the International Covenant on Civil



and Political Rights (ICCPR). Article 12 of the ICCPR provides: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."<sup>28</sup> Thus, providing relief solely on the basis of place of origin and in a seemingly arbitrary manner is inconsistent with the human rights obligations of Nepal. The Government's failure to provide adequate and timely guidance has compounded this problem for many victims.

Difficulties in accessing EVICs have been noted by the National Human Rights Commission (NHRC) in its study of earthquake-related relief as well. The NHRC stated that, as of early November, many quake victims have not yet received their EVICs and are compelled to live in temporary shelters, with many victims not having received even the immediate cash relief of NPR 15,000 promised by the Government.<sup>29</sup> The NHRC also noted that this situation, in addition to the fuel crisis, high inflation, cold weather, black marketing and scarcity of essential goods, has made life even more difficult for earthquake survivors.<sup>30</sup>

The ICJ raised the issue of difficulties accessing the EVIC with several governmental and inter-governmental organizations, as well as humanitarian agencies engaged in relief distribution. Many acknowledged that people being "left off the list" was a problem, but also stressed that a part of the problem was the lack of pre-existing data. A lack of an existing estimate of the number of people and households in any particular area meant that humanitarian agencies were forced to rely on the EVIC registration information.

The manner in which EVICs were issued has also had a substantial discriminatory impact against women. In most cases, the head of the household is assumed to be the male and most EVICs have been issued only to men. Thus all relief-related cash, as well as non-cash items, were usually given to the male head of household. Governmental representatives interviewed by the ICJ and the NBA acknowledged this discriminatory impact on women, particularly regarding women in polygamous marriages. Such marriages do occur in Nepal, but are not recognized by the State. Second wives were often unable to obtain relief for themselves and their children since their "household" was not registered for an EVIC.<sup>31</sup>

Essential humanitarian relief must be provided to everyone who needs it, even in the absence of documentation, without any kind of discrimination. The documentation requirement of EVICs, the politicized and gender-discriminatory nature of its distribution and consequent difficulties faced by individuals in accessing necessary relief all indicate that applicable international human rights law and standards have not been fully complied with.

### *Right to Adequate Housing & Resettlement*

The Government of Nepal has a duty, pursuant to its international legal obligations, to ensure adequate housing (as well as minimum essential levels of food, water, education and healthcare for disaster-affected victims, including displaced victims. It must also take immediate steps toward the development and implementation of a comprehensive policy plan for longer term resettlement that includes provision of livelihood assistance and other humanitarian assistance necessary to fulfill the rights of displaced while they remain in temporary shelters.<sup>32</sup> To the extent that Nepal's own capacity limits its ability

<sup>28</sup> See also General Comment 27, Human Rights Committee, setting out the content and scope of the right to choose one's residence.

<sup>29</sup> "Calling on the Government's Attention to make available immediate requirements for the earthquake victims", NHRC Press Note (in Nepali), available at [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/NHRC\\_Press\\_Release\\_On\\_Earthquake\\_Victims\\_Issue.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Press_Release_On_Earthquake_Victims_Issue.pdf).

<sup>30</sup> *Id.*

<sup>31</sup> ICJ interview with WDO.

<sup>32</sup> The right to adequate housing is contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees the right to an adequate standard of living, including the right

to fully implement this plan, international and national humanitarian aid agencies and donors must step in to assist with delivery of assistance and implementation of the long-term resettlement, reconstruction and rehabilitation plan.

Nepal's post-earthquake resettlement policy has thus far been dependent entirely on the district-level DDRC, since the central government delayed in setting up the NRA and devising and implementing a comprehensive longer term resettlement and reconstruction plan. It was apparent during the field visits that the DDRCs neither had a plan of their own in place nor seemed interested in the issue of eventual resettlement or provision of alternative livelihood support for displaced persons while they remained in temporary shelters and unable to return to their former places of residence. As many of the displaced that the ICJ and NBA interviewed were farmers, they were unable to resume their former employment activities while they remained in temporary shelter camps. The DDRC used the lack of the NRA and central-level policy as an excuse to not provide any further assistance for IDPs apart from the initial emergency distribution of CGI (zinc sheets).

It was also indicated to ICJ during the field missions to Okhaldunga that the DDRCs had not as yet paid some small private landowners who had entered lease agreements with the government for temporary use of their land as temporary shelters. The question of land reform and land management is a broader and more complex issue, but the ICJ is concerned that the DDRC also had no clear plan of what to do for the IDPs when the term of the lease agreement expired and the landowners sought back the use of their land. When asked, the CDO replied to the ICJ that "the people will figure out their own way and go back to their old land" or that NGOs will step in and provide assistance.

The Government of Nepal's lack of long-term planning in resettlement and in provision of long-term livelihood and other assistance for those displaced is an abrogation of its responsibility to provide humanitarian assistance. NGOs and the international community have a duty to step in and provide assistance for the government where the government's capacity legitimately restricts its ability to provide assistance, but are not meant to serve as substitutes for governmental planning and provision of assistance.

#### *Access to Information Regarding Earthquake-related Policies and Entitlements*

The right to access information is guaranteed in human rights treaties to which Nepal is party. For example, article 19 (2) of the ICCPR states that the freedom of expression includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers". In General Comment 34, the Human Rights Committee states:

*States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure*

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to adequate food, clothing and housing. Article 11 also explicitly recognizes the essential importance of international cooperation through free consent in states' duty to take appropriate steps towards the realization of this right. Article 2 of the ICESCR imposes a general and universal duty on each state to take steps, to the maximum of its available resources, to progressively achieving the full realization of all of the rights recognized by the Covenant, including the right to adequate housing, and to do so without discrimination of any kind. General Comment 4 of the Committee on Economic, Social and Cultural Rights, on the right to adequate housing, makes reference to the right to adequate housing in the context of natural disasters, stating that "such disadvantaged groups as the ... victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups." The Interagency Standing Committee's Operational Guidelines on the Protection of Persons in Situations of Natural Disasters also state that the right to shelter should be respected and protected, and that this should be understood as the right to have an accommodation allowing persons to live there in security, peace and dignity. Shelters provided to vulnerable groups like persons with disabilities or older persons must be "safe, appropriate and accessible". These Guidelines acknowledge that in certain situations it might be necessary to move people to "camps" or collective living shelters. However, these should be a last resort and, to the extent possible, affected persons must be allowed to access the full range of their rights in such shelters.

*easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information[.]*<sup>33</sup>

Access to information is also key to the full enjoyment of other human rights. The Committee on Economic, Social and Cultural Rights has stated that all rights must be accessible, acceptable, affordable and of good quality.<sup>34</sup> Information accessibility is a key aspect of this – if the affected population is not given information about its rights and entitlements, and in the case of relief, the manner of its distribution, people will not be able to access goods and services.

The Sphere Guidelines state further that “[p]roviding information to disaster-affected populations about their right to assistance and the means of accessing this assistance is essential. The provision of such information to vulnerable groups is particularly important as they may be less able to cope and recover than others when faced with the erosion or loss of their assets, and may need more support.”<sup>35</sup>

Almost all individuals who spoke with the ICJ and NBA felt that they did not have adequate information about the relief process. Some told the researchers that when they were first told about the EVIC they were not sure what it was for and only realized its importance later. This often happened when they received different levels of relief based on the type of EVIC, or when they saw people without EVICs being denied relief.

Others were not sure when relief would reach them. “We are waiting by the roadside for relief to arrive,” members of a *Tharu* [indigenous] community told the researchers. Another group of individuals interviewed said: “We were waiting by the roadside for up to a month [everyday] for the relief convoys.” In a *Magar* community in Gorkha district, people were not aware that medical care was freely available, due to which they had paid for the treatment of their earthquake related injuries.

In some cases, people had information about one part of the process but not another. For example, the Government has been distributing relief money for reconstructing houses in phases. The second installment of money is dependent on people using the first to construct part of the house. People who had received the first installment told the ICJ and NBA that they were not sure what they had to do to ensure they were eligible for the second. “We have no idea about the proper design for the new houses, so that we do not miss out on the rest of the relief money,” some said. Similarly, with regards to the loan assistance issued by the central bank, there is neither clear procedures nor any clarity regarding when the loans can be accessed. As a result, it has simply remained on paper, with the affected people having no idea of how to access such loans.

When asked where they received information about relief entitlements and processes, the most common answer was through word of mouth or friends. In some cases, those interviewed stated they received information through radio.

A *Magar* [indigenous] community living in Gorkha district told the ICJ and NBA that, for a long time, they were unsure what the EVIC was and to what it entitled them. They had heard about it from other members in the community. Many people felt it was a travel

<sup>33</sup> UN Human Rights Committee, General Comment No. 34 (Article 19), 21 July 2011, CCPR/C/GC/34.

<sup>34</sup> See, for example, UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html> [accessed 30 November 2015], para. 12, specifically 12 (b) for information accessibility in the context of the right to health. See also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html> [accessed 30 November 2015], para. 6.

<sup>35</sup> [http://www.ndma.gov.pk/Docs/Sphere%20Handbook\\_full.pdf](http://www.ndma.gov.pk/Docs/Sphere%20Handbook_full.pdf), at 9.

document that would make it easier to go abroad, while others believed it would allow them to get loans from the banks more easily.

The second installment of cash relief for building houses was contingent on the first installment being used to construct the first phase of the house. However, members of this community said they had not received any instructions on the proper way to rebuild, while simultaneously also being told that they would lose out on the promised amount for reconstruction in case of faulty designs. In addition, they wanted to be advised on the safe designs to avoid damage in possible future earthquakes. "No one has come here to give advice or suggestions on the type of homes that have to be built post the earthquake," one interviewee said. As a result, they were staying in makeshift temporary shelters. Their biggest concern was the lack of shelter for the coming winter.

Part of the reason for this lack of adequate information is the ineffectiveness of system in place for information dissemination at the local level. The various modes of communication used in the course of relief distribution included security forces spreading information through word of mouth, FM radio, mobile phones, local politicians and the VDC Secretary.

The DDRC and the government administration along with the humanitarian agencies relied on a distribution schedule that was communicated at the Ward level and also to the VDC Secretaries in advance. The VDC Secretaries were then responsible for disseminating this information to individuals. While all VDC Secretaries told the ICJ that they did this regularly and comprehensively, they relied heavily on social networks and word of mouth to get the information out. For example, one VDC Secretary said he sent an SMS to everyone regarding when relief would reach the district. However, several interviewees indicated they had not received proper information about how to obtain relief, and in some cases did not even know the names of their Ward/VDC Secretary.

Local government authorities work under significant constraints: VDC Secretaries are often over-worked and under-resourced. While each VDC is assigned one VDC Secretary, sometimes the same person may be responsible for acting as secretary to several VDCs. In addition, the large size of the VDCs and their geographical inaccessibility often means that information regarding relief assistance cannot reasonably reach every person. VDC officials and other local government authorities also operate in an environment in which they themselves are often left in the dark as to the policies issued from Kathmandu.

This is aggravated by the weakness and rapidly changing nature of the underlying policy framework. Often, new or changed policies are not communicated appropriately to local government officials from the central government. This has led to confusion regarding the policies and aid entitlements amongst local government, as well as amongst people entitled to this aid.

While the Government of Nepal had several disaster management policies in place prior to the earthquake, problems still exist today in part due to a lack of clarity and consequent confusion in these documents. For example, the Natural Calamities (Relief) Act, 1982 is not clear on the exact duties of the various district-based bodies with respect to distribution of aid. The use of new policies has often been confusing and their implementation has not been uniform since officials are not aware of them. In many ways, this is also a reflection on the lack of effective decentralization and decision-making powers in the Nepali administrative structure.

Other structural problems in Nepal's governance structure have also hampered the relief process. The case of the National Reconstruction Authority (NRA) is illustrative. The Government created the NRA through an ordinance on 22 June 2015 and registered a replacement Bill on 1 August 2015. This ordinance was brought just prior to the International Conference to ensure the confidence of donor agencies regarding the

Government's reconstruction plans. However, this replacement Bill lapsed, as it was not endorsed within sixty days of the issuance of the ordinance.<sup>36</sup> The lapse of this ordinance has created a legal vacuum for the NRA. In the absence of a functioning NRA, all of the Government of Nepal's reconstruction work was pushed into uncertainty. This has had a critical impact, as people are still waiting for government standards and directions for rebuilding their homes in the fear of losing out on assistance for rebuilding of their damaged homes.

A large number of people have thus been unable to access adequate information about what they are entitled to from the Government, when this will reach them, and what they can do from their end to make best use of this assistance. Nepal has been in breach of its obligation to ensure the right of access to information.

### *Accountability*

Accountability is a general principle of law, aimed at both preventing and correcting derelictions of duties by State authorities and holding them answerable for such derelictions.<sup>37</sup> It must be central to the relief and reconstruction process for all stakeholders involved. So must the correlative principles of **participation**, by which affected persons should be facilitated in engagement in the development and implementation of relief programs, and **transparency** by which the right to receive information about policies and processes and avenues for redressing grievances.

Accountability requires information, which means the regular monitoring and evaluation of programs. Affected individuals have a right to effective and accessible remedies and reparation, including judicial remedies, in cases of human rights violations.<sup>38</sup>

The Sphere Handbook states, "The performance of humanitarian agencies [should be] continually examined and communicated to stakeholders."<sup>39</sup> The Guidelines of the Inter Agency Standing Committee require that "[a]ffected persons should be entitled to and supported in claiming and exercising their rights and provided with effective remedies, including unimpeded access to the justice system, in case of violations."<sup>40</sup>

### Consultation and Participation

It is crucial to involve affected individuals in the design and implementation of relief policies and reconstruction efforts that impact them in order to ensure that all aid and reconstruction efforts are suitable for the needs of the people for whom they are intended, and are acceptable to them.

<sup>36</sup> Article 88(2)(c), Interim Constitution of Nepal, 2007.

<sup>37</sup> The OHCHR's 2013 publication on accountability, human rights and the post-2015 development agenda defines accountability in the human rights context as the relationship between the State, as "duty bearer", and individuals, as "rights holders", and sets out the three constituent elements of accountability in human rights and development: responsibility, answerability and enforceability. As the OHCHR report describes, accountability processes and mechanisms serve both a corrective and a preventive function, improving policymaking by identifying systemic failures that need to be overcome in order to make service delivery more effective and responsive. *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda*, UN Office of the High Commissioner for Human Rights, 2013, at 10, *et seq.*, available at <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>.

<sup>38</sup> See, e.g., ICCPR, art. 2.3; CAT, art. 13; CERD, art. 6; UDHR, art. 6.2; Principle I(2)(c), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted and proclaimed by General Assembly Resolution 60/147, 16 December 2005). See also Int'l Commission of Jurists, *The right to a remedy and to reparation for gross human rights violations – A Practitioners' Guide*, Practitioners' Guide Series No. 2 (2006).

<sup>39</sup> The Sphere Project, Humanitarian Charter and Minimum Standards for in Humanitarian Response 68 (2011).

<sup>40</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 12, Principle I.4 (2011).

Most of those who spoke with the ICJ and NBA indicated they had not been consulted, either informally or through a formal consultative process, about key relief and reconstruction programs, and had not participated in their design or implementation. There also appeared to be no mechanism or procedure in place on behalf of the Nepal Government to ensure this participation and consultation. As a result, certain assistance efforts did not adequately reflect the needs of the people to whom they were aimed at benefiting. For example, according to the Government policy, affected families were entitled to either 2 CGI sheets or NPR 15,000. The Government determined which option a family would receive without consulting the family itself. As a result, many families received the relief amount in cash but could not buy CGI sheets since they were unavailable in their district.

Similarly, while a range of health services were being provided in temporarily constructed buildings, women and girls told the researchers that these buildings did not adequately protect their privacy through private rooms or partitions. "Dignity kits" were distributed by many organizations as a part of the relief process. These kits contained some basic clothes and toiletries. However, in many cases, the clothes in the kit were not suitable to the cultural and environmental requirements of those to whom they were being distributed.

While many of these problems are understandable given the speed and scope of the relief effort, they could have been alleviated if the people in question had been meaningfully consulted during the relief and reconstruction process.

### Redress

While many individuals who spoke with the ICJ spoke of problems they had faced in accessing relief or in the quality of relief received, very few said they had sought redress about this to authorities. In some cases, this was due to an apparent lack of awareness of where and how to seek redress or belief that any resolution would be forthcoming, while in other cases it was due to an apparent belief among some beneficiaries that they had no right to seek redress for what they believed was a favor.

For example, in Dolakha district, several individuals complained to the researchers regarding the quality of rice distributed. Almost everyone interviewed told the ICJ and NBA that the rice received during a particular distribution cycle was inedible. Some reported they had fed it to the chickens, while others said they had made alcohol with it. However, various individuals told the researchers that they did not raise the issue with relevant authorities because they were not aware of or did not feel that they had any course of action available to them to seek redress.

Others who had filed complaints on different issues in the other two districts visited said they had not received a response to their complaints.

A part of the reason for failing to lodge complaints with relevant authorities had to do with the attitude among some towards humanitarian assistance: many still viewed it as a benefit or favor, and not as a right or entitlement. Several people told the ICJ and NBA that while "people in need should get [relief]" it was surprising to them that people thought about it as a right instead.

This sentiment seems to be perpetuated by government officials themselves in some instances. In one case, several people living in a transitional shelter told the ICJ and NBA that they were unhappy and wanted to leave. According to them, there were health issues for women and children within the resettlement camps and insects were a constant worry. They were also unhappy about the sanitation system in the shelter. Rather than providing long-term resettlement planning or other assistance for IDPs to address their complaints concerning health and sanitation, authorities apparently told

IDPs, when they raised the above complaints with the authorities, that they would lose access to whatever current relief they were receiving if they chose to live outside the shelter camps.

At the same time, there was at least one reported positive instance of authorities addressing mistakes or omissions and providing redress for groups or communities that had been initially left out of relief assistance. For example, in Dolakha, after initially omitting a *Thami* community on the outskirts of Bhimeswor Municipality in the distribution of relief, the local DDRC made sure to provide necessary aid to this community after information regarding this omission was conveyed through NGOs working in the field.

Many non-governmental organizations and inter-governmental agencies involved in earthquake relief told the ICJ and NBA that they had put in place makeshift accountability and administrative complaints mechanisms of their own, such as going to VDCs to talk to beneficiaries and draw up reports and giving complaint cards to beneficiaries with complaint-filing information, and informed people of these processes through FM radio spots. NGOs indicated that much of the feedback that they received were often from non-affected or non-target groups such as upper caste communities complaining that they did not receive sufficient relief, people who were not happy with the manner in which disputes over beneficiary lists were resolved or the quantity and quality of relief provided, or perceived inaccuracies in the vetting and verification of the beneficiary lists.

#### Commission for the Investigation of the Abuse of Authority

The Commission for the Investigation of the Abuse of Authority (CIAA) conducted its own monitoring into relief work when it received complaints about the manner in which aid was being distributed. The CIAA is a statutory accountability body with the power to investigate alleged abuses and issue its findings, but no enforcement power to provide or advocate for direct redress to individuals.

The findings of the CIAA enquiry into irregularities in earthquake relief distribution also raised accountability concerns in the process, including the following:

- Damage assessment teams did not reach many remote areas, and in some cases, these assessments were conducted inappropriately under pressure from local groups.
- More households received the EVIC than the number of households registered in the district (e.g. 72,989 households received the EVIC in Dolakha but only 45,688 households were registered).
- There were no plans or guidelines distributed for the construction of temporary learning centers, and no monitoring was done of this construction by the District Education Office.

The Government of Nepal has yet to take action to directly address these findings. Thus, while the findings of the CIAA enquiry are a step towards accountability, by themselves they will not go to providing redress to those who have been adversely affected, including by violation of rights.

The Nepal Government is obliged to ensure that its plans are developed and implemented in a participatory and inclusive manner, its policies are transparent, its programs are evaluated and monitored regularly, and affected persons are provided an avenue for feedback and complaints about services received. While certain humanitarian

agencies have implemented effective grievance mechanisms, to a large extent people were still unable to seek remedy and demand accountability from the Government.

### *Discrimination and Lack of Equal Protection*

The ICJ was concerned about and expressly sought to enquire during its field visits whether Dalits or other marginalized groups had faced discrimination in access to humanitarian assistance. Dalits in Nepal have suffered systematic caste-based discrimination (discrimination on the grounds of descent), as a result of which they have remained marginalized. It was foreseeable that, in such a context as the post-earthquake emergency, this marginalization would be further exacerbated in the allocation of available resources.

The State has an obligation to take special positive measures targeted at those who have been systematically subjected to discrimination and marginalization.<sup>41</sup> With specific reference to descent- or caste-based discrimination, the Committee on the Elimination of Racial Discrimination has called on States to take effective measures to address the economic and social rights of descent-based marginalized groups by adopting and implementing economic and social development programs on a non-discriminatory basis, taking effective measures to eradicate poverty and social marginalization of descent-based communities, and ensuring that assistance projects take into account the specific economic and social circumstances of descent-based communities.<sup>42</sup>

Humanitarian agencies with whom the ICJ and NBA spoke suggested that there was no discriminatory basis for the allocation of the VDCs and the provision of relief to victims. Aid agencies that spoke with the researchers noted further that, apart from the needs of the victims, only structural limitations such as budget, expertise and prior experience of particular agencies, geographic limitations and guidance from the DDRC factored in the selection of the VDCs and affected populations to which each agency provided support.<sup>43</sup> The ICJ and NBA were told that, in most cases, aid agencies actively sought out marginalized groups to provide assistance in the districts to which they were tasked.

On the other hand, anecdotal information suggests that such issues may have in fact persisted.<sup>44</sup> The ICJ and NBA conducted focus groups with Dalit women in Gorkha, for instance, and the issues that arose during this discussion implicated gender-based discrimination as much as caste. The ICJ and NBA researchers were not able to conduct a thorough inquiry to verify these issues due to their own logistical limitations. Therefore, further research would be necessary to definitively conclude whether and to what extent already marginalized groups faced additional discrimination.

As noted above, the burdensome process of obtaining EVICs and relief based on documentation requirements has had a significant discriminatory impact against women.

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<sup>41</sup> See, e.g., CERD, art. 2(2); Committee on the Elimination of Racial Discrimination, General Recommendation 29, Discrimination based on Descent, UN Doc. A/57/18, (2002), available at <https://www1.umn.edu/humanrts/cerd/genrec29.html>.

<sup>42</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 29, Discrimination based on Descent, UN Doc. A/57/18, (2002), para. 7 (gg)-(ii).

<sup>43</sup> Aid agencies were assigned to various earthquake affected VDCs (village development councils) by the DDRC as a means to apportion the provision of relief across all disaster affected districts. The aid agencies also had input in selecting which VDCs or districts they would work in: based on determination by their respective head office in Kathmandu, or if they were already working in a particular district, or if they were working in an adjacent or adjoining district to a disaster-affected district.

<sup>44</sup> For instance, an initial needs assessment carried out in the immediate post-earthquake emergency by a consortium of Nepali Dalit rights civil society organizations reported instances of affected Dalit communities facing caste-based discrimination in rescue and relief operations. See, e.g., "Waiting for 'Justice in Response'", Report of Initial Findings from Immediate Needs Assessment and Monitoring Responses towards Affected Dalit Communities in Nepal Earthquake 2015, Dalit Civil Society Massive Earthquake Victim Support and Coordination Committee, 2015, Asia Dalit Rights Forum, National Dalit Watch, and National Campaign on Dalit Human Rights, India, (2015).



By issuing necessary documentation only to male heads of households, women have often been denied equal access to relief for themselves and their children.

An essential element towards the full realization of basic human rights is the State's obligation to ensure equal access to humanitarian assistance without gender or any other kind of discrimination, and to remove any such obstacles in this regard. Women must therefore be issued documentation in their own names, which was not the case in the districts the ICJ and NBA visited.

In Gorkha district, there is a *Dalit* community that lives close to the municipal area and district headquarters. In a discussion about their experiences with aid relief, a group of women from this community said they had not received many of the relief items to which they were entitled. They were also not aware of the full range of their entitlements. For example, one of the women had a child living with a disability, and she had not been informed that she was entitled to free medical care for her son even after the earthquake.

They had tried to complain about this to officials at the District Headquarters, but had been asked why they were demanding assistance when they lived so close to the district headquarters, as the damage was more intense elsewhere.

Since many of them were not aware of whom their Ward Secretary (the official directly responsible for the relief effort in their area) was – as this person had never visited their locality – they were unable to push their complaints further.

## Summary of International Legal Framework

### *General Obligations*

Nepal is a party to many of the core human rights treaties and their optional protocols, and is therefore obliged to protect a range of civil, cultural, economic, political and social rights.<sup>45</sup> It is crucial to note that these generally applicable human rights standards remain applicable at all times, including in times of emergencies and natural disasters. For example, in the context of economic, social and cultural rights, there are no provision for derogation or limitation in the International Covenant on Economic, Social and Cultural Rights. As the Office of the High Commissioner for Human Rights has underlined, “[t]here is no express permission under human rights law for States to derogate from their obligations in relation to economic, social and cultural rights during emergencies, disasters or armed conflicts. In fact, in such circumstances, more attention is often required to protect economic, social and cultural rights, in particular those of the most marginalized groups of society.”<sup>46</sup>

In addition to the human rights treaties, the human rights standards most directly applicable to natural disaster situations, and relevant to guide the actions of states and

<sup>45</sup> The International Covenant on Civil and Political Rights (ICCPR), the first Optional Protocol to the ICCPR; the Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty; the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol to CEDAW; the Convention on the Rights of the Child (CRC); the Optional Protocol to the CRC on the involvement of children in armed conflict; the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; and the Convention on the Rights of Persons with Disabilities (CRPD); the Optional Protocol to the CRPD. Nepal has yet to become party to the International Convention on the Protection of All Persons from Enforced Disappearance (CED), the International Convention on the Protection of all Migrant Workers and Members of their Families; the Optional Protocol to the CAT, the Optional Protocol to the ICESCR, the third Optional Protocol to the CRC on a communication procedure.

<sup>46</sup> OHCHR Fact Sheet 33, Frequently Asked Questions about Economic, Social and Cultural Rights, page 25, available at <http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>.

non-state actors in such contexts, may be found in a range of declarative human rights standards and operational guidelines and principles.

The primary obligation to respect, protect and fulfill human rights lies with the State of Nepal, and, in this regard, “[a]ll branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.”<sup>47</sup> In this connection, the overall responsibility to ensure adequate relief and humanitarian assistance lies with the government of Nepal, and the General Assembly has stated, “Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory”.<sup>48</sup> Thus Nepal also bears the primary responsibility in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.<sup>49</sup> Where the magnitude of a natural disaster is such that the affected State alone is not capable of fulfilling its human rights obligations and humanitarian needs, States must seek international assistance and cooperation, and other States are under an obligation to provide such assistance. into the picture.<sup>50</sup>

In many cases – like Nepal’s earthquake response - intergovernmental and non-governmental organizations play a large role in the relief and disaster response process. Such organizations are also responsible to adhere to international human rights principles. The Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, for example, state that:<sup>51</sup>

*International humanitarian organizations and agencies and non-governmental organizations contributing to the humanitarian response [must] accept that human rights underpin humanitarian action. In situations of natural disasters they should therefore respect the human rights of persons affected by disasters at all times and advocate for their promotion and protection to the fullest extent. Such organizations should not promote, actively participate in, or in any other manner endorse policies or activities leading or likely to lead to human rights violations or abuses.*

#### *Obligation to Ensure ESCR and to Provide and Seek International Assistance*

Article 2 of the ICESCR imposes a general and universal duty on each State to take steps, to the maximum of its available resources, to progressively achieving the full realization of the rights recognized by the Covenant. This is to be done both individually and through “international assistance and co-operation, especially economic and technical”.<sup>52</sup> While the ICESCR contemplates that lesser developed countries may not be able to guarantee the full range of all economic, social and cultural rights – particularly in the aftermath of a natural disaster – States have an obligation to at least provide minimum, essential levels of each right.<sup>53</sup> Where necessary, States also have the

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<sup>47</sup> See Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 4, in the context of States’ obligations under the ICCPR, but reflecting a general principle of international human rights law.

<sup>48</sup> General Assembly Resolution 46/182, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations: Annex*, para. 4, GA A/RES/46/182 (19 Dec. 1991).

<sup>49</sup> General Assembly Resolution 46/182, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations: Annex*, Principle 4, para. 4, GA A/RES/46/182 (19 Dec. 1991).

<sup>50</sup> General Assembly Resolution 46/182, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations: Annex*, Principle 5, para. 4, GA A/RES/46/182 (19 Dec. 1991).

<sup>51</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 12-13, Principle II.2 (2011).

<sup>52</sup> The scope of the obligation is set out in detail in the Maastricht Principles on the Extraterritorial Obligation of States in the Area of Economic, Social and Cultural Rights, particularly articles 28-35. The Maastricht Principles and Commentary to the principles are available at <http://www.icj.org/protecting-human-rights-beyond-borders/> and Human Rights Quarterly 34 (2012) (1084-1169).

<sup>53</sup> See para 10, UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The

affirmative obligation to seek international cooperation and assistance to ensure this. Furthermore, other States and international agencies have an obligation to cooperate and assist under the ICESCR and the UN Charter itself.<sup>54</sup>

In fulfilling economic, social and cultural rights extraterritorially (through seeking and providing international cooperation), States must:

- a) prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups;
- b) prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights;
- c) observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of non-discrimination and equality, including gender equality, transparency, and accountability; and
- d) avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives.<sup>55</sup>

### *Equal Protection and Non-Discrimination*

There is a general obligation to ensure equal protection of the law and non-discrimination across all humanitarian aid efforts. This obligation comes from applicable international human rights law, and is a central tenet in human rights treaties.<sup>56</sup> The General Assembly has also stated that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.”<sup>57</sup> Some instruments are more specific. For examples, the Convention on the Rights of Persons with Disabilities (CRPD) specifically provides that States Parties must ensure the protection and safety of persons with disabilities in the occurrence of natural disasters.<sup>58</sup>

This principle is also echoed in other instruments pertaining to humanitarian assistance and relief. For instance, the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* developed by the International Federation of Red Cross and Red Crescent Societies state that “[a]id [should be] given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities [should be] calculated on the basis of need alone.”<sup>59</sup>

The Special Rapporteur on adequate housing has said “*When a disaster strikes, their pre-existing vulnerabilities are exacerbated, with women, children and marginalized*

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Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.htm>. Maastricht Principles on the Extraterritorial Obligation of States in the Area of Economic, Social and Cultural Rights (2012), arts. 31 and 32, available at <http://www.icj.org/protecting-human-rights-beyond-borders/>.

<sup>54</sup> See paragraphs 13 and 14, UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.htm>.

<sup>55</sup> Maastricht Principles on the Extraterritorial Obligation of States in the Area of Economic, Social and Cultural Rights (2012), art. 32, available at <http://www.icj.org/protecting-human-rights-beyond-borders/>.

<sup>56</sup> See ICCPR, arts. 2 and 26; ICESCR, art. 2; CEDAW, art. 15; CRC, art. 2; CERD, preamble and art. 5; CAT, art. 1; CRPD, art. 5.

<sup>57</sup> General Assembly Resolution 46/182, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations: Annex*, GA A/RES/46/182, Principle 2 (19 Dec 1991).

<sup>58</sup> Convention on the Rights of Persons with Disabilities, 999 U.N.T.S. 3 (3 May 2008).

<sup>59</sup> International Federation of Red Cross and Red Crescent Societies & International Committee of the Red Cross, *The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organization (NGOs) in Disaster Relief* 3, Principle 2 (1994).

*groups bearing the brunt of the impact*".<sup>60</sup> The impact of natural disasters is typically devastating for all persons affected. However, historically marginalized groups are particularly, and often more severely, affected by such disasters. Pre-existing vulnerabilities such as lower income, insecure employment status, lack of sufficient documentation, as well as gender, caste, and ethnicity, exacerbate the effect of any disaster, and the Nepal earthquake was no different.

Applicable guidelines recognize this differential impact of disasters on marginalized and disadvantaged groups. As per the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*, the relief provided should, to the extent possible, respond "to the special needs, if any, of women and particularly vulnerable groups".<sup>61</sup> It must be adequate for the needs of affected persons and consistent with internationally recognized standards of quality. Relief must be provided in a manner that is sensitive to cultural, social and religious customs and traditions.<sup>62</sup>

### *Gender Equality*

Non-discrimination on grounds of gender is a general principle of human rights law, and human rights instruments require the protection and promotion of gender equality, notably the CEDAW. In the context of post-disaster relief, this has several applications. For one thing, the disaster relief process should use a gender-sensitive perspective to assess and ensure equal access to distributed goods and services. The Guidelines of the Inter Agency Standing Committee state:

*The design of specific programs for humanitarian action should take into account and address gender-specific roles in the society concerned. Amongst others the following activities can be considered: including women in the relief distribution teams, in particular for distribution to women; setting up separate lines/channels and places of distribution where cultural traditions limit women's mobility in public spaces; and identification and monitoring of cases of discrimination against women or men in the distribution of and access to goods and services by their communities and families and raising such cases with community leaders and heads of family.*<sup>63</sup>

Any specific needs or requirements of women and girls must be considered, and meaningfully addressed – including when it comes to protection issues, health, shelter, etc. Women and girls may require additional protection in the disaster relief from security risks and human rights abuses, including rape and other gender-based violence, sexual exploitation, and trafficking.

### *Internally Displaced Persons*

Natural disasters often lead to people being internally displaced. The UN Guiding Principles on Internal Displacement identify the specific needs of internally displaced persons, and codify and restate the rights and guarantees under existing international human rights law applicable to their protection during displacement. The Guiding Principles note that "all authorities, groups and persons irrespective of their legal status" adhere to the legal principles that are codified therein.<sup>64</sup>

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<sup>60</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, at para. 7.

<sup>61</sup> Part I, 4(3)(a), IDRL, available at [http://www.ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://www.ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf).

<sup>62</sup> See Guideline 4(2) IDRL, available at [http://www.ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://www.ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf).

<sup>63</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 32, Principle B.1.4 (2011).

<sup>64</sup> Principle 2, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 11 Feb 1998.

Internally displaced persons have the right to request and to receive protection and humanitarian assistance from State authorities.<sup>65</sup> The Guiding Principles note that international law prohibits States from displacing people in a manner that violates the rights to life, dignity, liberty and security of those affected.<sup>66</sup> All internally displaced persons have the right to an adequate standard of living that includes safe access to essential food and potable water, basic shelter and housing, and essential medical services and sanitation.<sup>67</sup> The Principles also underscore the guarantee under international human rights law of the right to education as it applies to IDPs.<sup>68</sup>

*Access to Information, including Identity and Property/Land Ownership Documentation*

The right to access information is guaranteed under international law. For example, article 19 (2) of the ICCPR states that the freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers”, and article 19 of the UDHR contains similar language. In its General Comment 34, the Human Rights Committee stated that:

*States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information ...*<sup>69</sup>

Access to information is also key to the full enjoyment of other human rights. The Committee on Economic, Social and Cultural Rights has stated that all rights must be accessible, acceptable, affordable, and of good quality. Information accessibility is a key aspect of this – if affected persons are not given information about their rights and entitlements and, in the case of relief, the manner of its distribution, people will not be able to access services. The Sphere Guidelines state, “Providing information to disaster-affected populations about their right to assistance and the means of accessing this assistance is essential. The provision of such information to vulnerable groups is particularly important as they may be less able to cope and recover than others when faced with the erosion or loss of their assets, and may need more support.”<sup>70</sup>

Loss of personal identity or property/land ownership documentation is often a significant problem in post-emergency contexts. Loss or destruction of documentation necessary to prove identity hinders the ability of people who have survived a natural disaster access aid. In other situations, the relief effort institutes new documentation requirements that people are unable to meet, and hence access aid. Ensuring access to appropriate documentation is an important aspect of ensuring that people are able to access humanitarian aid. Access to such documentation is also a necessary precondition the right to recognition before the law, guaranteed under article 16 of the ICCPR.

The Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster state clearly that “[o]rganizations providing humanitarian assistance to persons affected by natural disasters should grant access to life-saving goods and services even in the absence of relevant documents”. The Guidelines also state “women and men should be treated equally when documents of any kind are issued. Women should be issued documentation in their own names.” The Guidelines state further, “Loss of personal documentation should not be used: (a) to justify the denial of essential food

<sup>65</sup> Principle 3(2), Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 Feb 1998.

<sup>66</sup> Principle 8, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 Feb 1998.

<sup>67</sup> See Principle 18, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 Feb 1998.

<sup>68</sup> Principle 23, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 Feb 1998.

<sup>69</sup> UN Human Rights Committee, General Comment No. 34 (Art. 19), 21 Jul 2011, UN Doc. CCPR/C/GC/34.

<sup>70</sup> [http://www.ndma.gov.pk/Docs/Sphere%20Handbook\\_full.pdf](http://www.ndma.gov.pk/Docs/Sphere%20Handbook_full.pdf), at 9.

and relief services; (b) to prevent individuals from travelling to safe areas or from returning to their homes; or (c) to impede their access to employment opportunities.”<sup>71</sup>

The UN Guiding Principles on Internal Displacement contain similar standards. Principle 20 states that authorities must give IDPs all documents “necessary for the enjoyment and exercise of their legal rights” and that women and men shall have equal rights to access such documents in their own names.

### *Right to Food, Water and Sanitation*

Article 11 of the ICESCR guarantees “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.” The ESCR Committee and the UN General Assembly have affirmed that the rights to water and sanitation are also encompassed in the scope of these guarantees.<sup>72</sup>

The scope of the obligation for right to is set out in the CESCR’s General Comment 12, and right to water in its General comment 15. As part of its obligation to provide for minimum essential levels, the CESCR has emphasized that “States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters”.<sup>73</sup> The General Comment also raises the issue of accessing food, saying: Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to access to food.<sup>74</sup>

The Sphere Guidelines provide more details on how the right to food operates in emergency contexts. The Sphere Project states, “The food items provided [should be] appropriate and acceptable to recipients so that they can be used efficiently and effectively at the household level,”<sup>75</sup> and that “[t]he method of targeted food distribution [should be] responsive, timely, transparent and safe, support dignity and [be] appropriate to local conditions.”<sup>76</sup>

### *Right to Education*

Article 13 of the CESCR guarantees the right to education and sets out its main elements, while General Comment 13 sets out the basic scope of the obligation, including that it must at all times be accessible.<sup>77</sup> The CESCR Committee has elaborated that educational institutions have to be available, accessible, acceptable and adaptable. Accessibility, the Committee states, includes three basic and overlapping principles: non-discrimination – education must be available to all, especially the most vulnerable groups, without discrimination; physical accessibility; and, economic accessibility.<sup>78</sup>

In his report in 2008, the Special Rapporteur on the right to education addressed the obligations of all actors regarding the right to education during natural disasters. The

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<sup>71</sup> See part D, <http://www.refworld.org/pdfid/49a2b8f72.pdf>.

<sup>72</sup> Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water, UN Doc. E/C.12/2002/11 (2002), para. 3, available at <http://www1.umn.edu/humanrts/gencomm/escgencom15.htm>; General Assembly Resolution 64/292, The human right to water and sanitation, UN Doc. A/Res/64/292, adopted 28 Jul 2010 (3 Aug 2010), para. 1, available at <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>.

<sup>73</sup> Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999).

<sup>74</sup> Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999).

<sup>75</sup> The Sphere Project, Humanitarian Charter and Minimum Standards for in Humanitarian Response at 184.

<sup>76</sup> The Sphere Project, Humanitarian Charter and Minimum Standards for in Humanitarian Response at 192.

<sup>77</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education, UN Doc. E/C.12/1999/10 (1999), para. 6, available at <http://www1.umn.edu/humanrts/gencomm/escgencom13.htm>.

<sup>78</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education, UN Doc. E/C.12/1999/10 (1999), para. 6.

Rapporteur affirmed the legal principle that emergencies should not entail suspension of domestic and international obligations to guarantee the rights of those affected and that, as parties to human rights treaties, States have an obligation to respect, protect and fulfill the right to education whether or not an emergency situation prevails.<sup>79</sup>

One of the Special Rapporteur's primary recommendations was that the right to education in emergencies "should be recognized by States, donors, multilateral agencies and organizations as an integral part of the humanitarian response to conflicts and natural disasters". Educational programs should be developed with the participation of children, parents and civil society, and must be "adaptable, non-discriminatory, gender-sensitive and of high quality".<sup>80</sup> The Special rapporteur also urged all actors involved in providing education-related services during emergencies to "Use the Inter-Agency Network for Education in Emergencies (INEE) Minimum Standards" as a basic standard.<sup>81</sup> The INEE minimum standards lay down the minimum level of educational quality and access in emergencies. The 19 INEE minimum standards include ensuring equal access to education, that learning environments are secure and safe, and that education facilities promote the safety and well-being of learners, teachers and other education personnel and are linked to health, nutrition, psychosocial and protection services.<sup>82</sup>

The Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters requires that "*The return of children and youth, whether displaced or not, to school or educational programmes in safe learning environments should be facilitated without discrimination as early and as quickly as possible after the disaster*" and that "*Special efforts should be made to ensure that girls and women, as well as members of marginalized groups who have been affected by the disaster, have full and equal access to education.*"<sup>83</sup>

#### *Right to Adequate Housing*

Article 11 of the ICESCR guarantees "the right of everyone to an adequate standard of living for himself and his family, including adequate...housing." The CESCR has set out the scope of this right in its general comments 4 and 7.

Article General Comment 4 of the Committee on Economic, Social and Cultural Rights addresses the right to adequate housing in the context of natural disasters saying "such disadvantaged groups as the ... victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups."<sup>84</sup>

Other guidelines also address elements of the right to housing as applied to emergency situations. The Interagency Standing Committee's Operational Guidelines on the Protection of Persons in Situations of Natural Disasters state unequivocally that the right to shelter should be respected and protected, and that this should be understood as the

<sup>79</sup> See paras. 10 and 37, Right to education in emergency situations, Report of the Special Rapporteur on the right to education, Vernor Muñoz, A/HRC/8/10, 20 May 2008, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/135/33/PDF/G0813533.pdf?OpenElement>.

<sup>80</sup> 146 (b), Right to education in emergency situations, Report of the Special Rapporteur on the right to education, Vernor Muñoz, A/HRC/8/10 20 May 2008, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/135/33/PDF/G0813533.pdf?OpenElement>.

<sup>81</sup> Para 147 (c) and 148 (a), Right to education in emergency situations, Report of the Special Rapporteur on the right to education, Vernor Muñoz, A/HRC/8/10 20 May 2008, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/135/33/PDF/G0813533.pdf?OpenElement>.

<sup>82</sup> [http://toolkit.ineesite.org/toolkit/INEEcms/uploads/1115/INEE\\_MS\\_Map.pdf](http://toolkit.ineesite.org/toolkit/INEEcms/uploads/1115/INEE_MS_Map.pdf).

<sup>83</sup> *Id.* at 37 princ. B.2.6(b).

<sup>84</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).



right to an accommodation allowing persons to live in security, peace and dignity.<sup>85</sup> Shelters provided to vulnerable groups like persons with disabilities or older persons must be “safe, appropriate and accessible”.<sup>86</sup> International guidelines acknowledge that in certain situations it might be necessary to move people to “camps” or collective living shelters. However, this should be a last resort<sup>87</sup> and, to the extent possible, affected persons must be allowed to access the full range of their rights in such shelters.

### *Right to Health*

Article 12 of the International Covenant on Economic, Social and Cultural Rights guarantees the right to the highest attainable standard of health. This includes the right to prevention, treatment and control of diseases. In its General Comment 14, the Committee on Economic, Social and Cultural Rights has clarified that this includes “includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations.”<sup>88</sup>

The Guidelines of the Inter Agency Standing Committee state that the right to health in disaster contexts should be understood “as the right to timely and appropriate, accessible, culturally acceptable and gender sensitive health care without discrimination as well as to the underlying determinants of health”.<sup>89</sup> The provision of certain health services must continue, including the minimum set of HIV prevention, treatment, care and support services,<sup>90</sup> and priority sexual and reproductive health services.<sup>91</sup>

### *Accountability and Right to Remedy and Reparation*

Accountability is a general principle of law, aimed at both preventing and correcting derelictions of duties by State authorities and holding them answerable for such derelictions.<sup>92</sup> It must be central to the relief and reconstruction process for all stakeholders involved. So must the correlative principles of **participation**, by which affected persons should be facilitated in engagement in the development and implementation of relief programs, and **transparency** by which the right to receive information about policies and processes and avenues for redressing grievances.

Accountability requires information, which means the regular monitoring and evaluation of programs. Individuals must be able to exercise the right to an effective and accessible remedy and reparation, including judicial remedy, in cases of human rights violations.<sup>93</sup>

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<sup>85</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 34 princ. B.2.3 (2011).

<sup>86</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 34 princ. B.2.3 (2011).

<sup>87</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 34 princ. B.2.3 (2011).

<sup>88</sup> Para 16, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health, E/C.12/2000/4.

<sup>89</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 35 princ. B.2.5 (2011).

<sup>90</sup> The Sphere Project, Humanitarian Charter and Minimum Standards for in Humanitarian Response, 328.

<sup>91</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 35 princ. B.2.5 (2011).

<sup>92</sup> The OHCHR’s 2013 publication on accountability, human rights and the post-2015 development agenda defines accountability in the human rights context as the relationship between the State, as “duty bearer”, and individuals, as “rights holders”, and sets out the three constituent elements of accountability in human rights and development: responsibility, answerability and enforceability. As the OHCHR report describes, accountability processes and mechanisms serve both a corrective and a preventive function, improving policymaking by identifying systemic failures that need to be overcome in order to make service delivery more effective and responsive. *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda*, UN Office of the High Commissioner for Human Rights, 2013, at 10, *et seq.*, available at <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>.

<sup>93</sup> See ICCPR, art. 2.3; CAT, art. 13; CERD, art. 6; UDHR, art. 6.2; General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of



The Sphere Handbook states, "The performance of humanitarian agencies [should be] continually examined and communicated to stakeholders."<sup>94</sup> The Guidelines of the Inter-Agency Standing Committee require that "[a]ffected persons should be entitled to and supported in claiming and exercising their rights and provided with effective remedies, including unimpeded access to the justice system, in case of violations."<sup>95</sup>

### **National Legal and Policy Framework**

The Interim Constitution of Nepal, 2006 which was applicable till September 2015 provided for a range of fundamental rights such as the right of every person to live with dignity, right to equality, right against discrimination, and right to information. In addition, it guaranteed the right of citizens to move and reside in any part of Nepal. These rights are continued in the recently promulgated Constitution of Nepal as well.<sup>96</sup> In addition, the Chapter on Directive Principles, Policies and Responsibilities of the State under the new Constitution also provides for the formulation and pursuance of a policy of designing a pre-warning system, disaster preparedness, rescue, relief works and rehabilitation in order to minimize the risks of natural disasters.<sup>97</sup>

#### *Laws and Policies for Disaster Response*

Prior to the earthquake, the Government of Nepal had promulgated a number of laws and policies to respond to and manage the aftermath of disasters. The Natural Calamities (Relief) Act, 1982 provides the primary legal framework and forms the basis of any governmental action following a natural disaster. It provides for the formation Disaster Relief Committees at the central, regional, district and local level. In addition, the Local Self Governance Act, 1999 envisages the involvement of local bodies to come up with their own programmes and plans regarding disaster management.

Other national policies relevant for disaster response and the distribution of aid and relief, that were in place prior to the earthquake, include:

- The Model Agreement for Emergency Customs Procedure 2007,<sup>98</sup> under which the GON is required to grant immediate visas for the international humanitarian community along with exemptions for custom duty for relief goods, and search and rescue equipment.
- The *Disaster Victim Resettlement Management Directives, 2071 (2014)*, which requires that resettlement must happen as close as possible to the original land, and that disaster victims should be involved as much as possible in the construction of the shelters so as to provide them with employment. The policy also specifies infrastructural requirements for resettlement structures, including a water source, sanitation requirements, and recreational areas.

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International Human Rights Law and Serious Violations of International Humanitarian Law, Principle I(2)(c) (adopted 16 Dec 2005); see also Int'l Commission of Jurists, *The right to a remedy and to reparation for gross human rights violations – A Practitioners' Guide*, Practitioners' Guide Series No. 2 (2006), available at <http://www.icj.org/the-right-to-a-remedy-and-to-reparation-for-gross-human-rights-violations/>.

<sup>94</sup> The Sphere Project, Humanitarian Charter and Minimum Standards for in Humanitarian Response 68 (2011).

<sup>95</sup> Interagency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters 12, Principle I.4 (2011).

<sup>96</sup> See the Chapter on Fundamental Rights, Constitution of Nepal 2015, available at [http://www.constitutionnet.org/files/nepal\\_constituton\\_2015\\_24\\_sep\\_2015.pdf](http://www.constitutionnet.org/files/nepal_constituton_2015_24_sep_2015.pdf).

<sup>97</sup> Article 51 (g) (9), Constitution of Nepal, 2015.

<sup>98</sup> Model Agreement between the United Nations and the Government of Nepal Concerning measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies, available at <http://drrportal.gov.np/uploads/document/165.pdf>.

- The *Guidelines for Disaster Victim Rescue and Relief, 2064 (2007)*, which provides for cash based relief during and after disasters,<sup>99</sup> and require the setting up of temporary shelters during disasters. They establish structures for information management through the creation of a National Focal Point website, and the collection and publication of annual data.

*The Act for the Reconstruction of the Structures Affected by the Earthquake 2015*, as published in the Nepal Gazette on 20 December 2015, established the National Reconstruction Authority (NRA). As per the Preamble, the NRA's principal purpose is to "reconstruct...the structures damaged by the devastating earthquake of April 25, 2015 and its aftershocks in a planned way and make them durable and resilient[.]" and to "rehabilitate and relocate the individuals and families displaced by the earthquake and promote national interests and social justice[.]"

The NRA is to be operational for a period of five years with a possibility of extension of one more year. The NRA has a very wide scope of authority, and covers issues such as assessment of the damage caused by the earthquake, determination of the priority areas of reconstruction and the responsibilities for the works, programs and projects related to the earthquake. In addition, the NRA also is responsible for coordination between various agencies, determining the budget for reconstruction and formulating standards and policies as required. While possessing substantial procedural powers to expedite the work process, the NRA is required to adhere to the principles of environmental balance, healthy competition, transparency and accountability.

The NRA enabling legislation also establishes an Advisory or Consultative Council headed by the Prime Minister. In addition to the Prime Minister, the Consultative Council also includes leaders of all thirty political parties represented in Parliament, Members of Parliament from the 14 earthquake affected districts, various Ministers of the GON, each of the Deputy Prime Ministers, the Opposition Leader (who was the previous Prime Minister) and several other former Prime Ministers. An Executive Committee headed by a CEO appointed by the GON, along with other members also appointed by the GON, is tasked with administering the NRA and implementing the reconstruction effort. The Executive Committee, however, reports directly to and must obtain all approvals from the Steering Committee. The Steering Committee is by statute the "supreme body" of the NRA and, as with the Consultative Council, is headed by the Prime Minister and is otherwise comprised of the Opposition Leader, MPs appointed by the PM and other Cabinet Ministers and GON officials. The Steering Committee has the authority to approve all policies, plans and budgets of the reconstruction work, and to instruct the Executive Committee which carries out the decisions and directions of the Advisory Council and Steering Committee.

The NRA shall administer a separate Reconstruction Fund through which all earthquake-related funds will be managed and disbursed, and the Government of Nepal shall be responsible for the administrative costs of the NRA. The NRA is also required to have a public hearing every six months and provide quarterly reports and an annual report, to be tabled in Parliament.

### *Government Agencies for Disaster Response*

The lead government ministry responsible for coordinating disaster response is the Ministry of Home Affairs (MoHA). The Natural Calamities (Relief) Act, 1982 set up several

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<sup>99</sup> These guidelines provide for the DDRC to provide NPR 40,000/- as cremation costs , up to NPR 5,000/- for immediate support to people whose homes have been damaged or whose food storage has been damaged by the disaster. Families who have to be moved to a safer place are entitled to receive up to NPR 20,000/- as financial help from the DDRC and up to a further NPR 15,000/- from the CNDRC, if they receive such requests with a recommendation from the concerned DDRC. In addition, the injured people are entitled to reimbursement for their treatment at government hospitals, and NPR 1,000/- as travel costs per person.

agencies responsible for disaster response at all levels of government, including the Central Natural Disaster Relief Committee (CNDRC), the Regional Natural Disaster Relief Committee (RDRC), District Natural Disaster Relief Committee (DDRC) and Local Natural Disaster Relief Committee (LDRC). The CNDRC has the authority to recommend to the GON to declare a state of emergency in the affected areas to enable the quick distribution of relief.<sup>100</sup>

At the district level, disaster management and response is conducted through the District Natural Disaster Relief Committee (DDRC), which is responsible for the overall response to the natural disaster, including the distribution of relief materials. Districts may also formulate their own District Disaster Management Plans. The functions of the DDRC include co-ordination of relief work, formulation of district level plans on relief work, monitoring and support of the relief work, providing information regarding relief work and carrying out directives received from the central and regional relief committees.<sup>101</sup>

There is no formal policy guidance as to who should be members of the CNDRC and DDRC. In practice, the Minister of Home Affairs chairs the Central Natural Disaster Relief Committee (CNDRC), and its members include other relevant government ministries and agencies.<sup>102</sup> Similarly, normal practice is that the DDRC is usually headed by the Chief District Officer (CDO) with the Local Development Officer (LDO). Committee members include representatives of the security forces, chiefs of the district based government offices, the Nepal Red Cross Society and members of the political parties.

The newly-formed NRA takes over the responsibility for coordination, management and implementation, including of funds, from these various agencies. The NRA formally started its work on 16 January 2016 by unveiling a three-month action plan, which is comprised of four phases. The first introductory phase of the action plan is supposed to assess the damages to houses and to identify the genuine victims. In addition, engineers and masons are to be provided training in constructing earthquake resilient structures, as per the new Building Codes. Finally, a detailed damage assessment report is to be prepared. The NRA intends to conduct this detailed damage assessment survey of the affected buildings and populations in all the affected districts by March 25. The real task of reconstruction and rehabilitation will therefore be set to begin after mid-April. The construction of sample residential buildings in at least five districts are to be commenced in the third phase, while the final phase seeks to complete the building and demographic survey in all districts and the beginning of individual residences in five VDCs and municipalities in each district.

### *Key Governmental Actions in the Aftermath of the Earthquake*

Immediately after the earthquake on 25 April, the CNDRC met and declared 14 districts to be "highly affected" - Gorkha, Sindhupalchowk, Dhading, Kavre, Dolakha, Nuwakot, Ramechhap, Sindhuli, Rasuwa, Kathmandu, Lalitpur, Bhaktapur, Makwanpur and Okhaldhunga.<sup>103</sup> It imposed an emergency in those districts for a period of one month. This was later extended for a period of one year for the three districts of the Kathmandu valley (Kathmandu, Lalitpur and Bhaktapur) to enable demolition of damaged structures and clearing of earthquake rubble.<sup>104</sup> The National Emergency Operational Center

<sup>100</sup> S.6, Natural Calamities (Relief) Act, 1982.

<sup>101</sup> S.9, Natural Calamities (Relief) Act, 1982.

<sup>102</sup> S.5, Natural Calamities (Relief) Act, 1982.

<sup>103</sup> 12 of the districts were declared to be 'crisis hit' on Baisakh 13, 2072 (April 26, 2015) whereas Makwanpur and Okhaldhunga were added to the list on Baisakh 17, 2072 (April 30, 2015); see Gazette of Nepal, Chapter 65, [Extra Issues 1,2 and 3].

<sup>104</sup> "Kathmandu Valley Districts Declared Disaster Area for a Year: Some Civil rights to be Curtailed", The Himalayan Times, June 14, 2015, available at <http://thehimalayantimes.com/kathmandu/kathmandu-valley-districts-declared-crisis-hit-zone-disater-area-for-a-year/>.

(NEOC) was operationalized and the different clusters were activated in conjunction with the different humanitarian agencies operating in Nepal.<sup>105</sup>

The government appealed to the international community for relief assistance and aid, and also put in place custom exemptions for relief goods and visa exemptions for humanitarian actors.<sup>106</sup> Over 100,000 security personnel from the Nepal Army, Nepal Police and the Armed Police Force were mobilized for the search and rescue operations in the earthquake-affected districts.<sup>107</sup>

The government also made financial provision for the earthquake response. It allotted 11% (USD 896 million) of the national budget to rebuild earthquake-affected infrastructure. On 25 June 2015, the government hosted the International Conference on Nepal's Reconstruction, which sought to secure adequate funding commitments for post earthquake reconstruction. The conference was attended by 300 delegates from 53 countries and multilateral agencies.<sup>108</sup> A total of 4.4 Billion USD was pledged during the conference, in the form of grants (2.2 billion USD) and soft loans (2.2 billion USD).<sup>109</sup>

In the immediate aftermath of the earthquake, the CNDRC met and put in place procedures for coordination and transparency in relief efforts. It was mandatory for organizations wishing to provide relief to register with each district DDRC. The DDRC had the mandate to coordinate the relief effort in its jurisdiction.

The CNDRC also issued executive orders to establish the nature of, and the manner in which, relief was to be distributed at the community level:

- To be eligible for any relief, all individuals had to have an Earthquake Victim Identity Card (EVIC). There was no specific procedure provided in the executive order regarding how an earthquake victim should be defined.
- All families deemed "affected" were entitled to either two bundles of CGI sheets or NPR 15,000 to construct shelters.

Following the earthquake, the government of Nepal also enacted additional policies to help cope with the situation. These new policies included:

- The *Integrated Action Plan for Post-Earthquakes Response and Recovery, 2072*,<sup>110</sup> formulated after the earthquake, which consists of a total of forty actions, including:
  - Constructing temporary emergency shelters for earthquake affected senior citizens, single women, diseased, pregnant and new mothers, disabled, etc.
  - Providing children who have lost their guardians/parents in the earthquake and those who are rendered homeless with shelter and free education.

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<sup>105</sup> "Ministry of Home Affairs: Situation Update as of May 11, 2015", available at <http://drrportal.gov.np/uploads/document/14.pdf>.

<sup>106</sup> "Ministry of Home Affairs: Situation Update as of May 11, 2015", available at <http://drrportal.gov.np/uploads/document/14.pdf>.

<sup>107</sup> "Ministry of Home Affairs: Situation Update as of May 11, 2015", available at <http://drrportal.gov.np/uploads/document/14.pdf>.

<sup>108</sup> "239 delegates from 53 countries, agencies taking part in Nepal donors' conference", The Himalayan Times, June 23, 2015, available at <http://thehimalayantimes.com/business/239-delegates-taking-part-in-donors-conference/>.

<sup>109</sup> "\$4.4. bn aid pledged during donor conference", The Kathmandu Post, June 25, 2015, available at <http://kathmandupost.ekantipur.com/news/2015-06-25/44-bn-aid-pledged-during-donor-conference.html>.

<sup>110</sup> *Integrated Action Plan for Post-Earthquakes Response and Recovery, 2072 [2015]*, available at <http://drrportal.gov.np/uploads/document/170.pdf>.

- Classifying the affected population and ensuring that all affected families receive medicine, tarpaulins, food and other necessary relief items.
- Providing home loans up to NPR 2.5 million within the Kathmandu valley and NPR 1.5 million outside the Kathmandu valley at a 2 percent concession rate.
- Making appropriate legal and structural changes for the response, recovery and reconstruction post earthquake.
- The *Mobilisation of the Support of National and International Non Governmental Organisations Directive, 2072 (2015)*, issued as part of the earthquake response and valid till mid December 2015, which requires nongovernmental organizations providing relief to follow international rules on humanitarian relief:
  - The Directive mentions that any assistance mobilized by donors should be done considering the international principles of humanitarian assistance.
  - The Directive also sets criteria by which relief work can be done, including:
    - Dissemination of information regarding assistance, including the type and location of assistance and the name of the donor, should be provided through FM radio and local media for the purpose of transparency and accountability;
    - The selection of local employees, wherever possible should follow the principles of non-discrimination, transparency and accountability; and,
    - There should be proper coordination with the relevant government organization, beneficiary group, local organization, community and local disaster relief committee.<sup>111</sup>

As discussed above, on 20 December 2015, the Parliament passed and gazetted *The Act for the Reconstruction of the Structures Affected by the Earthquake 2015*, which established the NRA. The newly-formed NRA takes over the responsibility for coordination, management and implementation of post-earthquake reconstruction policy planning and funding.

## Recommendations

*The Government of Nepal should:*

- Ensure that the National Reconstruction Authority (NRA) carries out its work impartially, independently and without political interference.
- Ensure that the NRA has all necessary resources to fulfill its mandate promptly and without any further delay, and with full commitment to safeguarding the human rights of earthquake-affected populations.
- Ensure that complaints of discrimination, abuse of authority or corruption in relation to RRRR are promptly investigated by an independent and impartial authority and persons found responsible are held accountable.

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<sup>111</sup> *Mobilisation of the Support of National and International Non Governmental Organisations Directive, 2072 (2015)*, available at <http://drrportal.gov.np/uploads/document/123.pdf> (Nepali).

- Set up an independent monitoring mechanism so that the NRA and other agencies are thoroughly monitored and publicly reported. The mechanism should carry out its work transparently and with the participation of all stakeholders.

*The Nepal Government and National Reconstruction Authority should:*

- Provide easily understood guidelines for government officials about the rights and standards applicable to the delivery of humanitarian assistance.
- Where necessary, amend or revise aid-related policies to ensure that they comply with relevant international standards governing humanitarian response.
- Ensure that government officials in different districts administer humanitarian assistance uniformly and consistently, in conformity with the principles of equal protection and non-discrimination.
- Ensure that relief and reconstruction assistance is accessible to everyone without discrimination based on race, colour, gender, sexual orientation, gender identity, disability, religion, language, political or other opinion, national or ethnic origin, property, birth or other status.
- Ensure that determination of beneficiaries and access to essential aid is based on need rather than such criteria as residence, citizenship or possession of specific documentation, such as the EVIC, that may disproportionately impact already disadvantaged or marginalized groups such as women, Dalits or minorities.
  - Where necessary, special measures should be taken to address the specific circumstances of marginalized and disadvantaged groups by, for instance, prioritizing accessibility of assistance based on economic, physical or geographic marginalization or disadvantage.
- Ensure full accessibility of EVICs by easing procedural requirements necessary to obtain them.
  - Affected persons should not be denied aid to which they are otherwise genuinely entitled solely because they are officially registered as resident in a district other than that which they actually reside and in which they were in fact affected.
  - The NRA should implement a coherent and transparent tracking database by which to ensure that genuinely affected persons are not denied assistance due to this technicality of residency, while also ensuring that persons that have already received assistance in one district do not receive the same aid in another district.
- Take active and effective measures to identify groups and individuals who have been thus far excluded from the EVIC registration process, and that ensure they are able to access both the EVIC and necessary aid.
- Take active and effective measures to ensure that existing data regarding the population of households is as accurate and recent as possible so as to ensure that people are not inadvertently left out of the relief process.
- Ensure that women heads of households are registered with EVICs in their own name without discrimination.

- Respect international human rights law and standards in resettling IDPs.
  - The provision of transitional shelters and temporary settlements needs to be designed as in accordance with national and international law and standards. The Government of Nepal should adequately address issues of protection, and there should be effective security management around temporary shelters.
- Ensure the meaningful and adequate participation of all affected persons in the design and implementation of policies that concern them, as well as in the reconstruction process.
- Put in place accountability mechanisms for earthquake related efforts, including regular monitoring and evaluation, transparent and clear policies, and accessible and effective redress mechanisms that ensure the right to effective remedy.
  - All individuals should have access to an effective remedy for any violations of their rights.
- Ensure proper dissemination of information regarding the government policies with regards to grants, loans and other beneficiary schemes, the qualification criteria for the same and the time frame of such distribution. This information should be easily accessible by the earthquake-affected population, in a language and format that they can understand. The information should be disseminated using local media resources including FM radio and local newspapers.
- Formulate an effective, transparent policy plan for long-term resettlement, reconstruction and rehabilitation, and establish accountable and transparent mechanisms to implement that plan.





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