

“BUILDING INEQUALITY”

THE FAILURE OF THE NEPALI GOVERNMENT TO PROTECT THE MARGINALISED IN POST-EARTHQUAKE RECONSTRUCTION EFFORTS

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Cover photo: Camp for displaced earthquake survivors in Suspa-Kshemawati VDC, Dolakha District. November 2016. © Amnesty International

Map: © Colin Foo

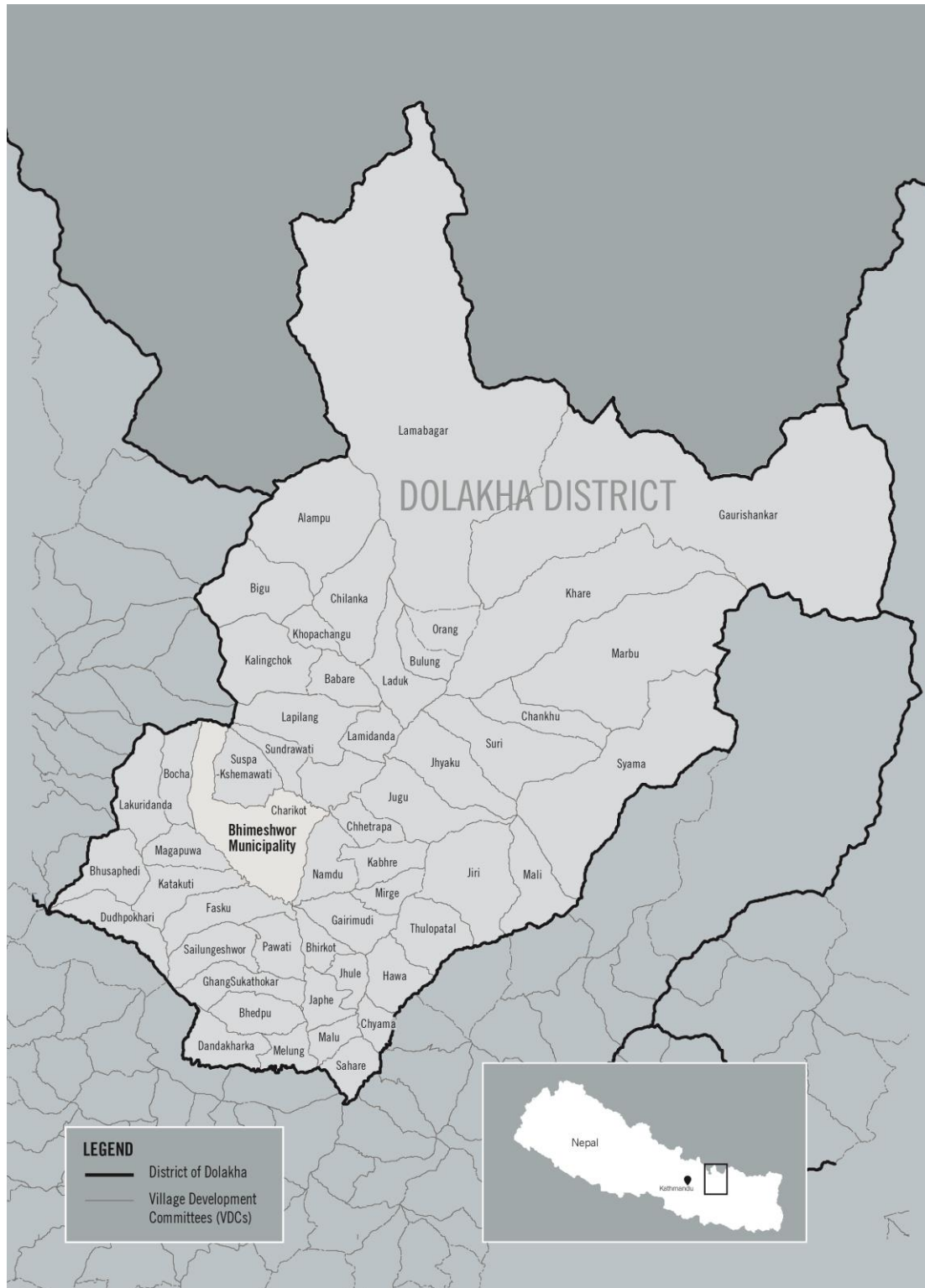
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MAP



GLOSSARY

ACRONYM	DESCRIPTION
BLB	Branchless Banking
CBS	Central Bureau of Statistics
CDO	Chief District Officer
CEO	Chief Executive Officer
CESCR	Committee on Economic, Social and Cultural Rights
CGA	Cash Grant Agreement
DAO	District Administration Officer
DDC	District Development Committee
DDRC	District Disaster Relief Committee
DFID	UK Department for International Development
DLPIU	District Level Project Implementation Unit
DUDBC	Department of Urban Development and Building Reconstruction
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IP	Indigenous Peoples
JICA	Japan International Cooperation Agency
LDO	Local Development Officer
MOFALD	Ministry of Federal Affairs and Local Development
MOUD	Ministry of Urban Development
NIBL	Nepal Investment Bank Limited
NPC	Nepal Planning Commission
NPR	Nepali Rupees
NRA	National Reconstruction Authority
PDNA	Post Disaster Needs Assessment
PDNF	Post Disaster Needs Framework
PM	Prime Minister
RBB	Rastriya Banijya Bank
RHRP	Nepal Rural Housing Reconstruction Programme
VDC	Village Development Committees
WHO	World Health Organization

EXECUTIVE SUMMARY

“I have no proof of [owning] one piece of straw here... because I didn’t get verification from landowners, that is why I did not get the 50,000 [to rebuild my house]. Now my big problem is that I will die in hardship”

90-year-old Padam Bahadur Bishwakarma, Dolakha district

Padam Bahadur Bishwakarma’s words illustrate how the Nepali authorities have failed the most disadvantaged in their post-earthquake reconstruction efforts, breaching both international human rights law and its own Constitution.

The Government of Nepal adopted an “owner-driven” housing reconstruction programme, based on a World Bank project to quickly address the destruction caused by the 2015 earthquakes, which requires proof of land ownership as a condition for owners of private houses to qualify for a rebuilding grant scheme. This approach did not take into account Nepal’s history of feudal land tenure systems and local informal tenure relationships. As a consequence, tens of thousands of people were left out of reconstruction, many of whom are from disadvantaged groups that did not have land ownership certificates.

Up to 25% of Nepal’s population is estimated to be landless or near-landless. Women, Indigenous communities, Dalits and other caste-based and ethnic minorities are disproportionately affected. Padam Bahadur Bishwakarma, who is from the disadvantaged Dalit community, has been living on his landowners’ land for around 40-45 years. His house was destroyed in the earthquake but his landlord refused to sign verification papers to recognize his residence on the land so that he could obtain the government grant.

Amnesty International acknowledges that the government faces a massive task of rebuilding and welcomes the stated intention of to “Build Back Better,” a priority of the Sendai Framework for Disaster Risk Reduction (SFDRR) adopted in March 2015 to make the country more resilient to disasters in the future. The 2015 Government of Nepal’s Post Disaster Needs Assessment (PDNA) estimated that housing and human settlements accounted for US\$ 3.27 billion or almost half of the total reconstruction needs of US\$ 7 billion. The earthquakes caused severe damage in 14 and partially affected 17 out of a total of 75 districts. According to the PDNA, nearly 500,000 houses were destroyed and more than 250,000 houses were partially damaged throughout the country in the April and May 2015¹ earthquakes in Nepal. Almost 9,000 people were killed, and more than 22,000 injured.

So far, the government has established the National Reconstruction Authority (NRA) to oversee reconstruction and put in place numerous laws and policies to facilitate the reconstruction and with international donor assistance, is also implementing a Rural Housing Reconstruction Programme (RHRP). In Dolakha, Amnesty International found that progress was being made in identifying beneficiaries and distributing the first of three tranches of Nepali rupees (NPR) 300,000 (US\$ 3,000) grant. However, many marginalised, including Bishwakarma, were left out. Realizing the inadequacies of the model, the Government has taken limited steps such as land registration initiatives for the landless (including those living on *guthi* land – land and property donated by the government, or state or individuals for social and religious benefit). It remains to be seen whether recent government policy changes will be able to remedy the situation for the most disadvantaged.

In the meantime, these groups (often from traditionally marginalised communities) have lived through two monsoons and two winters in corrugated iron sheds, with serious implications for their health. Landless 36-year-old Maiti Thami, from one of the most marginalised indigenous groups in Nepal, lost her house in the

¹ While technically the second earthquake was an aftershock, we have retained the term “earthquake”.

earthquake and is living in a temporary shelter made of corrugated sheets. She stated that coughs and fevers in her family increased during the monsoon months as “rain comes inside the corrugated sheets, and cold comes from the [mud] floor as it gets wet... the cold from the corrugated sheets with the rain and wind come in one place”. Local hospitals confirmed a rise in health problems such as respiratory diseases as well as snake bites as a result of people sleeping in temporary shelters.

Furthermore, the government has failed to address the needs of the most marginalised among those families who were able to qualify under the grant scheme. The requirement to prove ownership of land as well as to prove you live in separate households (in situations in which multiple households live under one roof) has delayed aid to the poor and vulnerable. Obstacles in the nominee system which would allow a person to sign a “representative”/nominee form for others to go to the bank and collect the money in their stead has disproportionately impacted the elderly, disabled, sick and women with migrant husbands abroad who have been unable to start rebuilding. As a result, they have found themselves at the end of the reconstruction queue.

This is contrary to international standards which require the government to prioritize housing reconstruction or provide alternate housing for them, as enshrined in Article 25 of the Universal Declaration of Human Rights, and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. The right to appropriate housing, and the state’s responsibility to provide housing to the economically weak and vulnerable, including the landless, is also clearly laid out under Part 3 and 4 of Nepal’s Constitution, promulgated within five months of the earthquakes.

As Nepal is highly earthquake prone, the government has insisted on “Building Back Better.” However, while the government has established housing subsidies, it has not ensured that the housing financial assistance offered adequately meets housing needs. In Dolakha the price of labour has almost doubled since the earthquake. For example skilled labour before the earthquake was between NPR 500-600 (US\$ 5-6) per day and now costs around NPR 1,000 (US\$ 10) per day and can cost as much as NPR1500 (US\$ 15). The price of sand has tripled and there is shortage. Those living in geographically remote areas, such as northern Dolakha with limited access to roads, are further challenged with high costs of transportation of construction materials.

The government has also made certain assumptions of the availability of loans, the costs and accessibility of local resources, the proportion of material from old houses that can be reused in rebuilding the new house and the availability and costs of labour in villages which are problematic. All of these are obstacles for especially the marginalised in building earthquake resistant housing.

Importantly, while the government has recognised that many households are disadvantaged and would not be able to reconstruct their house if additional financial support is not provided, the government itself is not providing “supplementary top-up assistance” but is relying on NGOs funded by donors to specifically target the marginalised with extra funds.

Most of Nepal’s banks which channel the financial support from the government to people, are failing to meet recognised human rights norms for businesses to avoid causing or contributing to adverse human rights impacts through their own activities. They are also failing to address such impacts when they occur. By not adhering to initial promises to establish widespread branch-less banking points to distribute cash grant instalments, the Government and most banks did not sufficiently consider the consequences for example, for those living in remote, high altitude villages, people with disabilities and female headed households. In Dolakha, many of the most disadvantaged villagers from remote places such as Alampu and Bigu told Amnesty International of the challenges they faced securing the actual money to start constructing a new home. Bimu Thami, a 60-year-old single woman from Alampu whom Amnesty International met during her estimated 7 – 8 hour walk up and down steep hills to collect her grant money, complained of how her knees hurt, yet she had no other option to get her money; “I can neither get up and walk, or sit down and stay...[I] feel like turning back.” A teacher in Bigu said “the government is too hard hearted...[it] should have distributed (the grants) from here.”

Many people complained that there was a lack of information and consultation throughout the reconstruction process. The Nepal government has failed in its duty to ensure that people have access to reliable and clear information they need for the reconstruction efforts. For example, the lists of those found eligible for reconstruction grants were only available in English in the villages and local level announcements of grant distribution days relied primarily on word of mouth. The government also failed to consult people and even

its own local level officials on key aspects such as models of housing, banking services and availability of building materials.

As the government continues and expands the housing reconstruction programme beyond the 14 most affected districts, it must ensure that its actions are in line with Nepal's obligations under its Constitution and international human rights law. This means among other things, guaranteeing that at the policy and implementation levels, the current barriers and obstacles to access to the right to adequate housing for all are removed, that all people have a minimum degree of security of tenure and especially that measures are put into place to ensure that the most marginalised and disadvantaged group are prioritized in the government's housing reconstruction efforts especially during the transition to new local structures and federal arrangements. Amnesty International also calls on donors to ensure all engagement in the housing reconstruction efforts prioritises the most disadvantaged, is non-discriminatory and promotes gender equality.

KEY RECOMMENDATIONS:

FOR GOVERNMENT

- Ensure the right to adequate housing to all earthquake-affected persons giving due priority to the most disadvantaged groups including landless persons;
- Ensure that equal recognition is given to all forms of tenure and all those whose houses have been destroyed receive grants;
- Provide adequate additional top-up grants for the marginalised communities including those living in remote villages, to cover transportation subsidies for construction materials;
- Branchless banking and special cash grant camps for marginalised populations should be conducted at the local levels;
- Facilitate access to low interest and interest free loans and immediately address the loan payback guarantee concerns of banks;
- Use Nepali in official notices and local languages where possible in community radios to announce dates and times of banking and other reconstruction-related services and use SMS notices as a back-up wherever possible;
- Ensure continued institutional and other support for housing reconstruction efforts during the transition to new local structures

FOR BANKS

- Ensure that the initial agreement between NRA and the Nepal Bankers Association, Development Bankers Association Nepal and Nepal Financial Institution Association is fully implemented and that branch-less banking points are established in local governance bodies.

FOR DONORS

- Donors and agencies should ensure that all international assistance and cooperation to the Nepali government is directed and distributed in a non-discriminatory manner, prioritizes the most disadvantaged and promotes gender equality.

METHODOLOGY

According to the Government of Nepal Post Disaster Needs Assessment (PDNA) of 2015 nearly 500,000 houses were destroyed and more than 250,000 houses were partially damaged throughout the country in the April and May 2015² earthquakes in Nepal.³ Since the 2015 earthquakes, Amnesty International has been monitoring relief and reconstruction progress through the lens of the government's obligations under international human rights law and standards, focusing on the district of Dolakha as a specific case-study.⁴

Dolakha is a hill district that is among the 14 districts⁵ most impacted by the 2015 earthquake. The 12 May earthquake notably caused large scale devastation in Dolakha with almost 90% of houses destroyed.⁶ It is also the district from which the government launched its earthquake reconstruction programme for private houses. From 4 to 8 March 2016, Amnesty International conducted a scoping mission in Dolakha, and from 10 to 27 November Amnesty International conducted research in Bhimeshwar municipality, including district headquarters Charikot, and nine Village Development Committees (VDCs, the main local administrative unit at the time of research⁷). The latter were selected based on geography, levels of displacement, government resettlement plans, and ethnic, caste and religious composition. The nine VDCs were: Namdu, Bhirkot, Japhe, Suspa-Kshemawati, Sunkhani, Kabhre, Khopachangu, Alampu and Bigu. The town of Singati – which ranges over Lamidanda and Laduk VDCs – was also included.

Amnesty International delegates interviewed 38 government officials at the national and district level from ministries and departments linked to housing and earthquake reconstruction work, including the National Reconstruction Authority (NRA), the Department of Urban Development and Building Reconstruction (DUDBC)⁸; and district staff of the District Level Project Implementation Unit (DLPIU) and from the District Development Committee (DDC) headquarters in Charikot. Bank officials in Dolakha were also interviewed. 14 representatives from donor agencies and 13 from NGOs in Kathmandu and Dolakha district working on reconstruction and housing were interviewed. In total three focus groups were conducted and 188 people were individually interviewed, 124 of whom were villagers, all of whom had lost their homes. A short three-day follow-up mission in Charikot was conducted from 25 to 27 January 2017 and a one day video filming mission was undertaken on 21 March 2017. Additionally, Amnesty International analysed relevant laws and regulations; documents from the NRA and other authorities in Kathmandu, the DLPIU and the DDC in Charikot.⁹ The government of Nepal and banks were contacted to seek clarification over policy issues.

This report does not address issues of displacement due to landslides, cracks, housing retrofitting issues and forced evictions of those who have lost their homes in affected districts. While we do not want to claim that all findings from Dolakha are representative of the situation in all 14 district severely affected by the earthquake, research¹⁰ and media reports¹¹ indicate that people are suffering similar problems across other affected districts.

² While technically the second earthquake was an aftershock, we have retained the term "earthquake".

³ National Planning Commission, 'Nepal Earthquake: Post Disaster Needs Assessment, Volume A', 2015, p. 3, available at <http://reliefweb.int/report/nepal/nepal-earthquake-2015-post-disaster-needs-assessment-vol-key-findings> (hereinafter: PDNA Volume A).

⁴ Amnesty International, *Nepal: Earthquake recovery must safeguard human rights* (Index: ASA 31/1753/2015).

⁵ The 14 most affected districts are: Gorkha, Dolakha, Kavrepalanchowk, Dhading, Nuwakot, Rasuwa, Sindupalchowk, Ramechhap, Okhaldunga, Makwanpur, Sindhuli and the 3 districts of the Kathmandu valley – Lalitpur, Kathmandu and Bhaktapur.

⁶ UN Office for Coordination of Humanitarian Affairs. District profile: Dolakha 19 August 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/District%20profile%20Dolakha%2019%20August%202015.pdf>

⁷ Since mid-March 2017, new local body units have been formed in accordance to the 2015 Constitution. See Kathmandu Post, '744 new local units come into effect', 15 March 2017, available at www.kathmandupost.com/news/2017-03-15/744-new-local-units-come-into-effect.html

⁸ Since 2002, the Department of Urban Development and Building Construction (hereinafter: DUDBC), under the Ministry of Urban Development (MOUD), has been the main government agency responsible for building construction, housing and urban development sector in Nepal. Despite its nomenclature, it is involved in building for the rural areas as well. The long-term vision of the department includes "affordable housing" along with "Safe, economical and environmentally friendly building construction" and "Sustainable urban development" with objective of the Housing Division to "[p]romote safe and affordable housing through development of planned settlements." See DUDBC, 'Business Plan 2014', 2014, available at www.dudbc.gov.np/uploads/default/files/34279a1ebdfc362b5841af2495b1c8a5.pdf

⁹ Government documents are dated according to the Vikram Samvat (v.s.) lunar 12 month calendar with the year starting from mid-April. It is currently the year 2073v.s but as of 14 April 2017, it will be 2074v.s.

¹⁰ See for example IRM et al., 'Aid and recovery in post-earthquake Nepal: Eighteen months on early findings from Independent impacts and recovery monitoring round three', December 2016, available at www.asiafoundation.org/wp-content/uploads/2016/12/Briefing-note-Aid-and-Recovery-in-Post-Earthquake-Nepal-IRM3.pdf

¹¹ See for example Nahari Sapkota, 'NRA deadline leaves landless quake victims worried', 9 March 2017, available at www.myrpublica.com/news/16140/

1. LEGAL FRAMEWORKS

1.1 INTERNATIONAL LEGAL FRAMEWORK

The right to adequate housing is enshrined in Article 25 of the Universal Declaration of Human Rights (1948) and is guaranteed in several international human rights treaties to which Nepal is a party. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹² reads:

“The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

Other relevant human rights include the right to non-discrimination set out in Article 2 (2) of the CESCR, Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹³ which prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing and Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁴ which obliges States Parties to eliminate discrimination against women in rural areas in order to ensure that such women enjoy adequate living conditions, particularly in relation to housing. The Convention on the Rights of the Child (CRC)¹⁵ obliges State Parties to provide, in cases of need, material assistance and support programmes to families and children, particularly with regard to housing (Article 27(3)).

In 1991, the United Nations Committee on Economic, Social and Cultural Rights (hereafter, the Committee) established to oversee implementation of the ICESCR by states parties including Nepal, adopted General Comment 4 on the Right to Adequate Housing, which provides the most authoritative legal interpretation of housing rights under international law to date. In General Comment 4, the Committee made it clear that the “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity.”¹⁶

The Committee pointed out the importance of the concept of adequacy in relation to the right to housing, since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee identified seven aspects that form integral components of the right to housing in any particular context: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.¹⁷

It further stated that priority consideration should be given to such disadvantaged groups as the elderly, children, the physically disabled, and the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and those people living in disaster-prone areas. Additionally, it provided that housing law and policy should take fully into account the special housing

¹² Ratified on 14 May 1991. See www.tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN

¹³ Ratified on 30 January 1971. See www.tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN

¹⁴ Signed on 5 February 1991, and ratified on 22 April 1991. See

www.tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN

¹⁵ Signed on 26 January 1990, and ratified on 14 September 1990. See

www.tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN

¹⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 4: The right to adequate housing (Article 11(1) of the Covenant)’, para. 7, 13 December 1991, available at www.refworld.org/docid/47a7079a1.html (hereinafter: CESCR, ‘General Comment No. 4’).

¹⁷ CESCR, ‘General Comment No. 4’, para. 8.

needs of such groups, including policies to increase access to land by landless or impoverished segments of society.¹⁸

The nature and scope of state obligations under the ICESCR are defined in Article 2 (1): “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”¹⁹

State parties’ obligation to realize the right to adequate housing are of three types: the obligations to respect, to protect and to fulfil. The obligation to respect requires States, and therefore all public organs and agents, to refrain from interfering directly or indirectly with the enjoyment of the right to adequate housing. The obligation to protect requires States to prevent third parties such as individuals, private entities and other non-State actors, from interfering with the enjoyment of the right to adequate housing. The obligation to fulfil requires States to adopt progressive legislative, administrative, budgetary, promotion and other measure to fully realize the right to adequate housing.

States parties have the duty to prioritize their “minimum core obligations”, to ensure minimum essential levels of each of the rights for all. The Committee has clarified that “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”²⁰

The UN Special Rapporteur on adequate housing, an independent expert mandated to report, advise and provide technical assistance to governments on the right to adequate housing, stated in her 2011 report focused on the right to adequate housing in post-disaster settings that disaster relief and recovery has predominantly taken a narrow view of the right to adequate housing – the need to provide shelter, housing or other aspects of protection – without fully integrating the various elements of the right to adequate housing.²¹ Key challenges to the right to housing approach includes the need for recovery efforts to recognize discrimination as much as vulnerability as a key factor bearing upon disaster impact and response, the overemphasis on individual property ownership and difficulty in recognizing and addressing multiplicity of tenure forms and the need for participation and access to information by affected groups. Specifically in terms of non-discrimination and vulnerability, the Special Rapporteur recommended to identify pre-disaster inequalities and vulnerabilities in post-disaster needs assessments to devise recovery plans and programmes to specifically address inequalities identified and to take special measures to redress discrimination and ensure the realization of the right to adequate housing for the most disadvantage groups through tenure initiatives for those with insecure tenure status and/or prioritization of housing reconstruction and provision of alternate housing – such as social or public housing – for the most vulnerable.²²

1.2 NATIONAL LEGAL FRAMEWORK: NEPAL’S 2015 CONSTITUTION

The Constitution of Nepal of 20 September 2015 guarantees the right to housing under Part 3 (Fundamental Rights and Duties). Article 37 provides that: “(1) Every citizen shall have the right to an appropriate²³

¹⁸ CESCR, ‘General Comment No. 4’, para. 8(e).

¹⁹ This typology has now been recognized by treaty monitoring bodies. See for example CESCR General Comments, available at www.tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

²⁰ ESCR, ‘General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, para. 1 of the Covenant)’, para. 10, 14 December 1990, available at www.refworld.org/docid/4538838e10.html

²¹ Rolnik, Raquel, ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’, 5 August 2011, available at [www. http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-42.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-42.pdf) (hereinafter: Report of the Special Rapporteur on adequate housing, 2011).

²² Report of the Special Rapporteur on adequate housing, 2011, section VIII, recommendations, para. 64.A.4.

²³ According to Binda Panday, chairperson of the Fundamental Rights & Directive Principle Committee of the first Constituent Assembly of Nepal (2008-2013), at the time the right to housing provision was drafted, the focus of the debates in the committee centred on whether to include the right to housing. Once the committee decided to include the right to housing, little attention was given to wording, although debates on “what is adequate” and “appropriate” did occur as did discussions on the quality and quantity of housing changing over time. Amnesty International telephone interview with Binda Panday, 5 March 2017.

housing and that (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with law.”²⁴

The Constitution also underlines state responsibility in providing housing to the economically weak and vulnerable. Under the Rights of Dalit, Article 40(6) states that “The State shall, in accordance with law, arrange settlement for the Dalit who do not have housing” and under the “Right to Social Justice”, Article 42(2) states: “The indigent citizens and citizens of the communities on the verge of extinction shall have the right to get special opportunities and benefits in education, health, housing, employment, food and social security for their protection, upliftment, empowerment and development.”²⁵ In Article 42(5), special housing rights are also stipulated for: “The families of the martyrs who have sacrificed their life, persons who were forced to disappear, and those who became disabled and injured in all people’s movements, armed conflicts and revolutions that have been carried out for progressive democratic changes in Nepal, democracy fighters, conflict victims and displaced ones, persons with disabilities, the injured and victims shall have the right to get a prioritized opportunity, with justice and due respect, in education, health, employment, housing and social security, in accordance with law.”

In Part 4 on Policies of the State, under “social justice and inclusion”, Article 51 j(6) states: “to identify the freed bonded labour[er]s, Kamlari, Harawa, Charawa, tillers, landless, squatters and rehabilitate them by providing housing, housing plot for residence and cultivable land or employment for their livelihoods.”

In terms of wider housing policies, the National Shelter Policy of 2012 stated vision is to “provide safe, adequate and affordable housing to all” and includes a mission to “develop the concept of housing by including the families remaining below the poverty line and residing in unplanned and unsafe settlements.”²⁶ The “context” part of the policy recognizes the need for a special policy for, among others, landless and families rendered homeless because of natural disasters, but includes only specific temporary relief and shelter provisions for the latter.

²⁴ The Constitution of Nepal, ‘Part 3 Fundamental Rights and Duties’, Article 37(1), 20 September 2015, available at www.constitutionnet.org/sites/default/files/nepal_constitution_-_official_translaiton_eng_mljpa.pdf

²⁵ The term “communities on the verge of extinction” is not defined anywhere in the constitution.

²⁶ Urban Development Ministry, ‘National Housing Policy 2012’ (in Nepali). The DUDBC has a “Peoples’ Housing Programme” which began in 2009 targeting poor Dalit and Muslim families in three districts (Siraha, Kapilvastu and Saptari) in the Tarai, the southern part of the country. See DUDBC ‘Business Plan 2014’, available at www.dudbc.gov.np/uploads/default/files/34279a1ebdfc362b5841af2495b1c8a5.pdf. The programme has since expanded to other districts and just over 7,000 houses have been built since the programme began. See Gopi Krishna Dhungana, ‘Petitions from house after house for peoples’ housing’ (in Nepali), 15 April 2017, available at www.annapurnapost.com/news/68185

2. COUNTRY CONTEXT



A house destroyed in the 2015 earthquakes in Dolakha district, Nepal. © Amnesty International

Historically, Nepal has been an exclusionary state based on structural discrimination dominated by high-caste, hill-origin, male elites, despite a very heterogeneous population – the 2011 Census lists 125 different caste and ethnic groups. Political, social and economic power are interlinked with the Hindu caste system and there is a deeply entrenched social hierarchy. Women, indigenous groups, Dalits (“lower caste”) and Madhesis (people of the southern plains bordering India) have suffered longstanding marginalization, which continues to date. Structural inequalities and discrimination have led to an intersection of factors that increase marginalisation: gender, caste, ethnicity, religion, age, disability, language and/or geographical remoteness.²⁷ Many of the 14 districts defined as crisis-hit by the earthquakes are home to indigenous groups. For example, the epicentre of the first earthquake in April was Gorkha, homeland to the Magar ethnic group. The districts of Rasuwa, Nuwakot and Sindhupalchowk are the traditional homelands of Tamangs, while Dolakha is the traditional homeland of Thamis, one of the most disadvantaged indigenous groups in Nepal.²⁸ According to the 2011 census, the national literacy rate is 67% while the literacy rate in the district of Dolakha is 63.4%.²⁹

In Nepal, landlessness is a deeply entrenched and widespread problem, rooted in a long history of feudal governance, political complacency and nepotism. Land ownership is a key indicator of identity, power, wealth and political access.³⁰ Up to 25% of Nepal’s population is estimated to be landless or near-landless.³¹

²⁷ See for example DFID and World Bank, ‘Unequal citizens: Gender, caste and ethnic exclusion in Nepal’, 2006, available at <http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1168615404141/NepalGSEASummaryReport-part1.pdf> and Bennett, Lynn, Dilli Ram Dahal and Pav Govindasamy, ‘Caste, Ethnic and Regional Identity in Nepal: Further Analysis of the 2006 Nepal Demographic and Health Survey’, 2008, available at www.dhsprogramme.com/pubs/pdf/FA58/FA58.pdf

²⁸ Om P. Gurung, ‘Thami of Nepal’, 2014, Central Department of Sociology/Anthropology Tribhuvan University, Kathmandu.

²⁹ See CBS, ‘Population Monograph of Nepal’, 2014, available at www.cbs.gov.np/image/data/Population/Population%20Monograph%20of%20Nepal%202014/Population%20Monograph%20V02.pdf p.D and p.36.

³⁰ See for example Jagannath Adhikari, ‘Land reform in Nepal: Problems and prospects’, August 2008, p. 25, available at www.actionaid.org/sites/files/actionaid/land_reform_complete_-_done.pdf (hereinafter: Jagannath Adhikari, ‘Land Reform in Nepal’).

³¹ IRIN, ‘Nepal: Land Tenure Reforms “Urgently Needed”’, 8 December 2010, available at www.irinnews.org/Report.aspx?ReportId=91313

the bottom 47% of agricultural households control only 15% of agricultural land, the top 5% control more than 37%.³²

Local elections were last held in 1999 and local bodies were dissolved in 2002. There has been no subsequent local elections held since because of the internal conflict that occurred between 1996 and 2006, the takeover of the then king and an extended transition period in which the writing of a new constitution and the peace process were prioritized. In the absence of local elected officials, it has been the VDC Secretaries who have run local government, with the CEO of municipalities and the Local Development Officer (LDO) of the District Development Committee. The absence of VDC Secretaries from their post and/or the need for one VDC Secretary to cover numerous VDCs,³³ have impacted the ability of citizens to access local government, particularly in the earthquake-affected districts.³⁴

2.1 THE 2015 EARTHQUAKES AND HOUSING

Amnesty International acknowledges that the government faces a massive task of rebuilding and welcomes the stated intention of “Building Back Better”. The 2015 Government of Nepal’s Post Disaster Needs Assessment (PDNA) estimated that housing and human settlements accounted for US\$ 3.27 billion or almost half of the total reconstruction needs of US\$ 7 billion. The earthquakes caused severe damage in 14, and partially affected 17, out of a total of 75 districts. According to the PDNA, nearly 500,000 houses were destroyed and more than 250,000 houses were partially damaged throughout the country in the April and May 2015 earthquakes in Nepal. The government prioritized rebuilding in the 14 most affected districts first before beginning work in the other districts. As of 16 March 2017, in the 14 most affected districts, a total of 700,361 houses were completely destroyed.³⁵

The government of Nepal has established numerous laws and policies to enable the rebuilding of houses. These include: *Act made to provide for Reconstruction of the Earthquake Affected Structures 2015*;³⁶ *Policy on Reconstruction and Rehabilitation 2016*;³⁷ *Guidelines related to land registration of earthquake affected persons 2016*;³⁸ *Grant disbursement procedures for private houses destroyed by the earthquakes 2016*;³⁹ and *The Five Year Post-Disaster Recovery Framework 2016-2020*.⁴⁰

Foreign aid and donor initiatives constitute an important part of reconstruction efforts in general, and the rebuilding of houses in particular. At the 25 June 2015 International Conference on Nepal’s Reconstruction (ICNR), development partners pledged US\$ 4.1 billion. To date, however, only half of the pledged money has been received by Nepal.⁴¹

The World Bank administers the Nepal Rural Housing Reconstruction Programme (RHRP) Multi-Donor Trust Fund of over US\$ 500 million to support housing grants for earthquake-affected households.⁴² The programme is based on a World Bank earthquake housing reconstruction project and is partially funded by its International Development Association crisis response window budget of US\$ 200 million. The focus of

³² United Nations Development Programme, ‘Nepal Human Development Report: Empowerment and Poverty Reduction 2004’, p. 43, available at www.hdr.undp.org/sites/default/files/nepal_2004_en.pdf

³³ According to a 2016 report published by the Ministry of Federal Affairs and Local Development (MOFALD), between 2015-2016, 10% of VDC Secretary posts were not filled; 11% of VDC Secretaries were responsible for more than one VDC; and 21% of VDCs had VDC Secretaries in office for less than six months in the year. See MOFALD, ‘Local governance and community development programme – II: Annual progress report 2072/73’, November 2016, pp. 31-31, available at www.lgcdc.gov.np/sites/default/files/resource_docs/LGCDP%20II_APR_2-15_16_Final.pdf

³⁴ Rastriya Samachar Samiti, ‘VDC secretaries asked to stay at workstations’, 27 November 2016, available at www.thehimalayantimes.com/nepal/vdc-secretaries-asked-stay-workstations

³⁵ Data obtained by Amnesty International from the NRA on 16 March 2017. Data from the other districts remain incomplete.

³⁶ Act made to provide for Reconstruction of the Earthquake Affected Structures 2015, available at www.hrrpnepal.org/download/VPgXyEiEgIKdwoAXnTM_2017_02_22.pdf/resources

³⁷ NRA ‘Policy on Reconstruction and Rehabilitation’, 2016, available at www.nra.gov.np/uploads/docs/qSlwpWgTpd160406102215.pdf (in Nepali) (hereinafter: Policy on Reconstruction).

³⁸ NRA, ‘Guidelines related to land registration of earthquake affected persons 2072vs’, available at www.nra.gov.np/uploads/docs/2cb8PcxhZ1160607090216.pdf (in Nepali) (hereinafter: Guidelines related to land registration).

³⁹ Grant disbursement procedures for private houses destroyed by the earthquakes, 2073 (2016) (unofficial translation), available at http://www.hrrpnepal.org/download/fpUv1LsuNMWqwcEXDzrg_2017_02_22.pdf/resources (hereinafter: Grant disbursement procedures 2016 [2073]).

⁴⁰ NRA, ‘Post Disaster Needs Framework 2016-2020’, May 2016, available at www.reliefweb.int/sites/reliefweb.int/files/resources/PDRF%20Report_FINAL10May.pdf (hereinafter: PDF).

⁴¹ Om Astha Rai, ‘Broken Promises’, 31 March 2017, available at www.nepalitimes.com/article/nation/broken-promises-reconstruction,3627

⁴² The fund is funded by the United States Agency for International Development (USAID), the Swiss Agency for Development and Cooperation (SDC), the Government of Canada and the United Kingdom’s Department for International Development. Nepal earthquake Multi-Donor Trust Fund, available at www.nepalhousingreconstruction.org/who-we-are

the programme is on funding the building of earthquake-resistant houses for 55,000 households in the 14 districts most affected by the earthquake with eligibility determined based on a survey by the Central Bureau of Statistics (CBS).⁴³ “The project will also inform operational modalities for the development of the government’s overall housing reconstruction programme”⁴⁴ for the rest of the country. According to the PDNA, “[t]he entire housing reconstruction process is likely to take up to five years.”⁴⁵

The reconstruction project includes a survey to identify beneficiary households; the development of systems for the payment of grants in multiple tranches; opening of bank accounts for “financial inclusion, transparency and accountability” and mechanisms for grievances.⁴⁶ Core to the support provided by the reconstruction project are cash grants to eligible beneficiaries – Nepali rupees (NPR) 300,000 (US\$ 3,000)⁴⁷ for completely damaged houses and NPR 100,000 (US\$ 1,000) for partially damaged to undertake retrofitting. Eligibility for the grants is based on results of an assessment undertaken by engineers deployed by the CBS⁴⁸ and the signing of a legally binding Participation Agreement – referred to by participants as the Cash Grant Agreement (CGA) – between the respective VDC or municipality, and the grant beneficiary. The grant payment in three tranches is tied to stages of construction with inspection and certification specified in the World Bank project appraisal,⁴⁹ with the exact amount of each tranche to be decided by the government.⁵⁰

As noted before, NRA data as of 16 March 2017 revealed that in the 14 most affected districts, a total of 700,361 houses were totally destroyed.⁵¹ However, according to data from the Ministry of Federal Affairs and Local Development (MoFALD), as of 5 March 2017, there were a total of 626,695 household beneficiaries in the 14 severely affected districts, out of which 553,111 households had signed CGAs and 532,260 households have received their first instalment.⁵² While the NRA data mentioned above reveals that 56,293 houses were destroyed in Dolakha,⁵³ the number of household beneficiaries recorded by the MoFALD totals 51,940, of which 48,113 have signed CGAs, and 47,079 have received their first instalment.⁵⁴ There is a discrepancy between the number of houses destroyed and the number of beneficiaries.

The Government has also made loans available, providing housing designs are in accordance with the building code and are earthquake resistant, with provisions for subsidized loans and “collective guarantee” loans via micro-credit institutions or apply for subsidized loans.⁵⁵

The government announced in mid-December 2016 that house owners can use one of 17 models approved by the government or their own EQ resistant models.⁵⁶ The models provided by the government include information about the quantity of materials as well as skilled and unskilled labour required for the

⁴³ Nepal Rural Housing Reconstruction Programme, available www.documents.worldbank.org/curated/en/135481468187745015/pdf/102944-WP-P155969-Box394845B-NRHRP-ProgramOverview-OperationsManualSummary-01-2016-PUBLIC.pdf (hereinafter: Nepal Rural Housing)

⁴⁴ World Bank, ‘International Development Association project appraisal document on a proposed credit from the IDA crisis response window in the amount of SDR 143.9 million (US\$ 200 million equivalent) to Nepal for an earthquake housing reconstruction project’, June 18 2015, available at www.documents.worldbank.org/curated/en/226301467986298576/pdf/PAD1494-PAD-P155969-IDA-R2015-0185-1-Box391477B-OUO-9.pdf (hereinafter: World Bank Project Appraisal Document, 2015).

⁴⁵ National Planning Commission, ‘Nepal Earthquake: Post Disaster Needs Assessment, Volume B’, 2015, p. 12, available at www.un.org.np/sites/default/files/PDNa-volume-B.pdf (hereinafter: PDNA Volume B).

⁴⁶ World Bank Project Appraisal Document, 2015.

⁴⁷ All US\$ figures are rounded up for ease.

⁴⁸ The CBS assessments have a graded system of 1-5 for level of damage to houses, with grades 3-5 as fully damaged.

In early February 2017, the NRA announced that it would provide the total housing reconstruction grant of NPR 300,000 (US\$ 3,000) to earthquake victims with houses partially damaged but willing to undertake full reconstruction rather than just repairs. Sangeet Sangroula, ‘Full reconstruction grants for partially damaged houses’, 6 February 2017, available at www.myrepublica.com/news/14406

⁴⁹ The government has stated that it will also give the full grant in one go to houses already built according to government stipulated earthquake resistant standards. Kantipur, ‘One time payment of grant to completed houses built according to standards’ (in Nepali), 18 February 2017, available at <http://kantipur.ekantipur.com/printedition/news/2017-02-18/20170218081828.html>

⁵⁰ World Bank Project Appraisal Document, 2015, p.24.

⁵¹ Data obtained by Amnesty International from the NRA on 16 March 2016.

⁵² See Government of Nepal, MoFALD, ‘Cash agreements for private house reconstruction’ (in Nepali), 5 March 2017, available at www.mofald.gov.np/en/node/1814

⁵³ Data obtained by Amnesty International from the NRA on 16 March 2016.

⁵⁴ See Government of Nepal, MoFALD, ‘Cash agreements for private house reconstruction’ (in Nepali), 5 March 2017, available at www.mofald.gov.np/en/node/1814

⁵⁵ See ‘Refinancing Procedures for the reconstruction of private houses destroyed by the earthquakes, 2016’ available at http://www.hrrpnepal.org/download/fpUv1LsuNMWqwcEXDzrg_2017_02_22.pdf/resources

⁵⁶ Kathmandu Post, ‘Earthquake-resistant house designs proposed’, 25 December 2015, available at www.kathmandupost.ekantipur.com/news/2015-12-25/17-earthquake-resistant-house-designs-proposed.html

construction of the design.⁵⁷ In March 2017, the DUDBC published 17 new models.⁵⁸ The government stresses that the models are only suggestive although the fact that no additional approvals beyond that of engineers are needed to trigger tranches if these government-approved models are used, provides incentives for beneficiaries to do so. Owners can submit their own designs, which must follow the national building code to the VDC or municipality office to obtain approval.⁵⁹



Poster showing government earthquake resistant housing models, February 2016. © Amnesty International

The Programme Overview and Operations Manual Summary of the RHRP states that the grievance mechanism includes “a specific protocol for handling grievances including the minimum timeframe within which different types of grievances should be addressed.”⁶⁰ The first “*Directives related to grievance hearing 2016*”⁶¹ allowed beneficiaries or non-beneficiaries to file grievances at various levels from the VDC, municipality, to DDC, the sub-regional office of the NRA⁶² and the NRA. However, VDC secretaries heading the grievance committees at the local level were likely to refer grievances to the district level as a result of the lack of clarity on the types of grievances to be handled at each

level.⁶³ The DDC had later provided directives on how to deal with spelling, citizenship number and address errors which facilitated processes.⁶⁴

People interviewed were well aware that they could file grievances and of those interviewed who had been excluded from the list of beneficiaries, all had filed grievances. However, none of those who had filed knew when the responses would arrive, and VDC secretaries interviewed stated that they also had no idea when the grievances would be addressed. Bir Kumar Tamang from Bigu had filed a grievance as his name was not on the beneficiaries list. He said “I don’t know when it will come [the result], the secretary [VDC secretary] says nothing.”⁶⁵

Most VDC secretaries interviewed in November 2016 estimated that grievances had been submitted approximately two months earlier around September. The grievances received from the 14 districts – including Dolakha – were only partially resolved by mid-January 2017.⁶⁶ While MoFALD data revealed that as of 19 March 2016, 205,335 grievances had been registered from the 14 most affected districts, 21,712 from Dolakha,⁶⁷ according to the Dolakha DLPIU statistics, 90 entries were data mistakes and the district grievances total was actually 21,622. Of the 21,622 grievances, 16,807 were addressed but nothing has been heard concerning grievances from four VDCs.⁶⁸

⁵⁷ See MOUD produced list of designs for the reconstruction of earthquake-resistant homes, available at www.nra.gov.np/uploads/docs/Bnbuey5SBe160622014403.pdf

⁵⁸ DUDBC, Design Catalogue for Design of Earthquake resistant houses vol II, March 2017, available at <http://www.dudbc.gov.np/files/download/549abfe0da986e4>

⁵⁹ Grant disbursement procedures 2016 (2073).

⁶⁰ Nepal Rural Housing.

⁶¹ Grievance Management Guidelines 2073vs (English version), available at www.hrrpnepal.org/download/hYoiRyjs7vwTG61zeDu8_2017_02_22.pdf/resources

⁶² The grievance guidelines were amended on 31 January 2017 and reflected the downgrading of the sub-regional NRA office to secretariat of the district coordination committee of the NRA.

⁶³ Amnesty International interview with Narayan Prasad Dhakal, VDC Secretary, Kabhre, 17 November 2016.

⁶⁴ Amnesty International interview with Rishi Dahal, Bigu VDC Secretary, Charikot, 25 November 2016.

⁶⁵ Amnesty International interview with Bir Kumar Tamang, Bigu, Singati, 14 November 2016.

⁶⁶ Amnesty International interview with Shivaram Gelal, NRA, Kathmandu, 23 January 2017.

⁶⁷ See HRRP ‘Weekly bulletin 27 March 2017’, Updated enrolment data from Ministry of Federal Affairs and Local Development, available at www.hrrpnepal.org/download/nvel7Y1ZHcaFyC5l8rp6_2017_04_15.pdf/resources

⁶⁸ Amnesty International telephone interview with Tika Joshi, DLPIU, Charikot, 18 April 2017.

3. POLICY FRAMEWORK

“[H]ousing law and policy should take fully into account the special housing needs of [disadvantaged] groups” and “increasing access to land by landless or impoverished segments of society should constitute a central policy goal”.

Committee on Social, Cultural and Economic Rights⁶⁹

3.1 COMPLICATED LAND TENURE

At the core of the “owner-driven reconstruction of private houses” in the Nepal Rural Housing Reconstruction Programme (RHRP) is private property ownership.⁷⁰ The World Bank project appraisal for funding states that the “project incorporates lessons learned from extensive global experience of the Bank in post-disaster housing reconstruction, in particular Pakistan’s Earthquake Emergency Recovery Credit”.⁷¹ World Bank staff confirmed that the “the basics are almost the same.”⁷² Key features include “universal coverage” for rich or poor who have lost their homes and “standardization,” meaning a “uniform package for everybody because if the number of houses affected was small then you could go on a case to case basis,” but for large numbers of houses “it has to be standardized” – the latter being an explicit learning from Pakistan.⁷³ The World Bank project appraisal for funding from the IDA crisis response window is dated 18 June 2015,⁷⁴ eight days after the research period was completed for the PDNA⁷⁵ and seven days before the 25 June 2015 ICNR. While it is clear that the template was utilized to address the situation as a matter of urgency, as noted by the Special Rapporteur on the Right to Adequate Housing it is important to stress that:

“In the midst of crises, the need for speedy decisions and practical livelihood support-oriented action may run counter to the need for caution and for intensive consultation with those directly affected. In spite of these challenges, it is very important to ensure that time and opportunity are made for gathering of information, analysis and assessment of policy choices; and for intensive consultation with, and the involvement of, those affected.”⁷⁶

Furthermore, the template emphasis on owner-driven and hence private property is inconsistent with the June 2015 World Bank Project Information and Integrated Safeguards Data Sheet for the Earthquake housing reconstruction project which states that “[d]ata from the Nepal Living Standards Survey 2010/11 and Agriculture Census 2011/12, indicates that in all of Nepal, 22.9% of households do not own any agricultural land; 10.4% do not live in their own house; and 3% do not have any land holding. It is likely that the data for the 14 severely affected districts would be comparable.”⁷⁷ The owner-driven emphasis of the World Bank project contradicts their own assessment of previous post-disaster housing reconstruction

⁶⁹ CESCR, ‘General Comment No. 4’, para. 8(e).

⁷⁰ Nepal Rural Housing.

⁷¹ World Bank Project Appraisal Document, 2015, p. 10.

⁷² Amnesty International interview with Kamran Akbar, World Bank, Kathmandu, 9 March 2017.

⁷³ Amnesty International interview with Kamran Akbar, World Bank, Kathmandu, 9 March 2017.

⁷⁴ World Bank Project Appraisal Document, 2015.

⁷⁵ PDNA Volume A.

⁷⁶ Raquel Rolnik, ‘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’, 20 December 2010, paras 37-38, available at www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-42.pdf

⁷⁷ World Bank Combined Project Information Documents/Integrated Safeguards Data Sheet (PIS/ISPS), 16 June 2015, p. 6, available at www.documents.worldbank.org/curated/en/664961468189535056/pdf/97507-PSDS-PUBLIC-Box391480B-P155969-PIDISDS-Appraisal-June-16-approved.pdf

programmes and of lessons learned, including the understanding that “ideally such a programme should be empowering in nature, but at the very least it should ensure that it is not leaving vulnerable groups even more disadvantaged.”⁷⁸

The Post Disaster Needs Assessment (PDNA) acknowledges interlinkages between landlessness and disadvantaged populations, women own only 19.17% of housing and land, which puts them at the risk of being excluded from housing reconstruction programmes that are based on the ODR [owner driven reconstruction] approach. Indigenous communities, Dalits and other caste-based and ethnic minorities also form a large social grouping with limited ownership of land and housing and may therefore face difficulties in accessing and benefiting from housing reconstruction programmes.⁷⁹

It also states that “Measures to support and promote attainment of ownership and tenure rights are crucial to ensure that post-disaster recovery programmes do not reinforce the inequalities faced by women and vulnerable social groups.”⁸⁰



A Dalit woman and her grandchild stand by the ruins of their home in Dolakha district, Nepal. March 2016. © Amnesty International.

The PDNA further underlines different tenure systems stating that “[d]ifferent tenure systems (among them, statutory, customary, religious and informal, urban and rural) co-exist in Nepal”, with three categories of official land tenures (state-owned land, private land and guthi land which is owned by trusts and community groups) and “several religious and traditional types of tenure that are not recorded in the land register; informal and squatter settlements, as well as dual ownership with tenancy.”⁸¹ Land specialist Dr. Jagannath Adhikari has argued that the legacy of these feudal land tenancy arrangements is inequality in land ownership and insecurity in land tenure with land dependent but land-less and “marginally landed” remaining poor and marginalised.⁸² Further, although people are now increasingly concerned with legal ownership rights, there is a history of informal “*chalan*” (use) as well as formal forms of access to land based on the multiple forms of land usage. Adhikari argues “in practice, *chalan* has also been defining the management and use of the resources, including land, forest and the like. In some cases, these two also overlap giving a situation called legal-plurality.”⁸³

⁷⁸ World Bank Project Appraisal Document, 2015, p. 10.

⁷⁹ PDNA Volume A.

⁸⁰ PDNA Volume A, p. 63.

⁸¹ PDNA Volume B, p. 7.

⁸² Jagannath Adhikari, ‘Land reform in Nepal’.

⁸³ Jagannath Adhikari, ‘Access to Land – Nepali Context’. Paper presented in a seminar organized by CIRDAP (Center for Integrated Rural Development for Asia and Pacific), Dhaka, Bangladesh, on 6 July 2008.

Unlike in Pakistan, which has precise land mapping and ownership due to its colonial legacy,⁸⁴ according to land expert Suresh Dhakal, in Nepal there is “no clear inventory of different tenure types that was practiced in the past and are being practiced in different parts of the country. Some are of [sic] very specific in nature and much localized.”⁸⁵ A 2011 study of 16 VDCs of 16 districts across all development and geo-ecological regions led by Dhakal revealed that only one-third of the households covered in the study had full ownership of the land on which their house was built.⁸⁶

In a commendable move to incorporate as many of the earthquake-affected households in the reconstruction efforts, the government issued the *Guidelines related to land registration of earthquake affected persons 2016*;⁸⁷ to enable people who had not registered their land to do so and obtain the necessary documentation. Published in the Nepal Gazette (the official public record) on 30 May 2016, it listed six types of lands that could be registered: *Raikar*, *Birta*, *Swasbasi*, *Benissa*, *guthi* and special arrangements for registration of state and forest areas. These various forms of land tenures mainly reflect pre-1950 feudal land arrangements that remain in assorted forms despite attempts at land reform including the Land Act 1964 which had some impact in the distribution of land and in regulation of tenancy rights.⁸⁸

Despite this social reality, the central premise of private land ownership of the earthquake reconstruction model is reflected in the first 2016 guidelines for the distribution of grants for private housing which was in effect until the end of December 2016. In the guidelines, “beneficiaries” are defined in the following manner:⁸⁹

- Those identified by the CBS and approved house owner by the steering committee according to eligibility criteria
- Someone who does not own another house in the same place or elsewhere
- Those who have a copy of citizenship papers; a copy of property ownership papers and CBS paper.

The issue of citizenship did not appear as a challenge. Previous reports⁹⁰ had noted the lack of citizenship papers for women may pose issues in the housing reconstruction programme.⁹¹ However, during visits to Dolakha district, Amnesty International delegates did not encounter the lack of citizenship papers as an issue. Two NRA officials stated that copies of citizenship papers at the District Development Committees and local level testimonies were utilized to replace lost citizenship papers.⁹²

However, because the private ownership model does not reflect the socio-economic reality of land tenure in Nepal, the government has had to resort to ad-hoc government measures to address the needs of the most disadvantaged groups seeking to rebuild their homes. Asked about squatters and landless, Dr. Bhishma Bhusal, head of the foreign section of the NRA stated that when the housing policy was made “it appeared to have been visualized as someone living on his land, but admitted that “in reality grant of housing is not like handing down family property.” He acknowledged that the NRA laws did not mention the landless at all and then “later it was realized and it became complicated.”⁹³

⁸⁴ Amnesty International interview with Kamran Akbar, World Bank, Kathmandu, 9 March 2017.

⁸⁵ Amnesty International email correspondence with Suresh Dhakal, 25 February 2017.

⁸⁶ Community Self Reliance Centre, ‘Land Tenure and Agrarian Reforms in Nepal’, January 2011, p. 22, available at www.csrcnepal.org/uploads/publication/_2dpV2BZ0lsM4luC-cB_L2A00gEbYm-U.pdf

⁸⁷ Guidelines related to land registration of earthquake affected persons 2072vs, available at www.nra.gov.np/uploads/docs/2cb8PcxhZ1160607090216.pdf (in Nepali).

⁸⁸ State landlordism is reflected in Raikar land from which Birta – land grant rewards for loyalty – and guthi - grants to religious institutions - exist). The state also sold land to individuals and this led to the emergence of the private land ownership system. Individual citizens can privately own the state land as Raikar land. Birta totalled 36% of the total land until 1959 when it was abolished. See Jagannath Adhikari, ‘Land reform in Nepal’. According to land expert Suresh Dhakal, Swabasi is registration of land/house used by oneself while Benissa is land lacking legal/formal documents to prove the ownership/tenure. Amnesty International email correspondence with Suresh Dhakal, 25 February 2017.

⁸⁹ Grant disbursement procedures for private houses destroyed by the earthquakes, 2016 (2072) (in Nepali), available at www.nra.gov.np/uploads/docs/EunALRqKz4160520062602.pdf

⁹⁰ See for example Care, ‘Housing, land and property issues in Nepal and their consequences for the post-earthquake reconstruction process’, 2016, available at http://insights.careinternational.org.uk/media/k2/attachments/CARE_Housing-land-property-issues-in-Nepal_Feb-2016.pdf

⁹¹ IRIN, ‘Identity crisis frustrating Nepal’s quake survivors’, 21 May 2015, available at www.irinnews.org/feature/2015/05/21/

⁹² Amnesty International interview with Dr. Bhishma Bhusal, head of the foreign section of the NRA, and Prakash Thapa, head of the housing division of the NRA, Kathmandu, 19 March 2017.

⁹³ Amnesty Interview with Dr. Bhishma Bhusal, head of the foreign section of the NRA, Kathmandu, 24 January 2017.

The “Guidelines related to land registration of earthquake affected persons 2016”⁹⁴ was an important initiative, although delayed and limited.⁹⁵ They only came into effect in May 2016, more than one year after the earthquake and the government put out a 30-day notice on 29 August 2016 for land registration. However illustrative of the challenges in national-district communications, the official notice from the Ministry of Land Reform and Management of the original 30-day notice sent to all 31 affected districts arrived in Dolakha *after* the 30 day expiration date.⁹⁶ In November 2016, in a public hearing in Dolakha, Kamal Ghimire, the head of land and measurement department of the NRA stated that no applications had been received from Dolakha and the deadline had been extended by another 60 days on request by government officials.⁹⁷

3.2 POLICY RELATING TO DISADVANTAGED

The ESCR Committee has stated that for State parties to guarantee the rights under the Covenant to everyone without discrimination of any kind, they must eliminate discrimination both formally and substantively and to do so “requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations”.⁹⁸

Despite acknowledging issues, the government has minimized its responsibility towards those most in need. Both the 2015 PDNA Volume A⁹⁹ (key findings) and Volume B¹⁰⁰ (detailed sector reports) and the 2016 Post Disaster Needs Framework (PDNF) 2016-2020,¹⁰¹ prepared under the leadership of the NRA to provide a common framework for government and national and international partners for implementing recovery and reconstruction, contain analyses of the impact of the earthquake on disadvantaged populations and describe “orientations necessary towards the vulnerable”. For example, PDNA Volume A states “About 26% of the damaged houses belong to female-headed households, 41% to Dalits and indigenous communities, and 23% belong to senior citizens. The elderly and people living with disabilities (PLWDs) may not have the means or the manpower to support home reconstruction.”¹⁰² The same volume of the PDNA stated that “Preliminary assessment of incidence and impact suggest that the earthquakes have disproportionately affected the poorer, rural locations relative to the urban and less poor areas.”¹⁰³ Further, according to the NRA’s draft “Sector Plans and Financial Projections Working Documents” of May 2016:

The Government of Nepal recognises that many households are extremely vulnerable and would not be able to reconstruct their house if additional financial support is not provided. Households headed by single women, or elderly, or with members who are living with disabilities may face difficulties to contribute money or labour towards construction of their houses. . . The National Reconstruction Authority (NRA) recognises the need for supplementary top-up assistance and is in the process of determining eligibility for top-up assistance on the basis of damage and eligibility survey results. While the government will provide the NPR 200,000 subsidy,¹⁰⁴ it is expected that supplementary assistance of NPR 50,000 will be provided by partner organisations.¹⁰⁵

⁹⁴ Guidelines related to land registration of earthquake affected persons 2016, available at www.nra.gov.np/uploads/docs/2cb8PcxhZ1160607090216.pdf (in Nepali).

⁹⁵ The guidelines have been critiqued by the NGO Community Self Reliance Centre – a leading NGO on land and agrarian rights – for reliance on paperwork and the record book of the government land tax office – field book – instead of on-site investigation NGO Community Self Reliance Centre, ‘Reconstruction and Land’, n.d, available at www.csrcnepal.org/uploads/publication/hTWbljjE6Ubc9j7ndsf8SPJ2UleWd05l.pdf (in Nepali).

⁹⁶ Amnesty International interview with Rajendra Nepali, CSRC, Charikot. Amnesty International has a copy of the official notice as received in the Dolakha land tax office.

⁹⁷ Kamal Ghimire, NRA, at the “Public Hearing and interaction programme related to the reconstruction work after the earthquake” organized by the NRA in Charikot, 15 November 2016.

⁹⁸ UN Committee on Economic, Social and Cultural Rights, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2/7/2009, CESCR General Comment 20, para 8(a)(b).

⁹⁹ PDNA Volume A.

¹⁰⁰ PDNA Volume B.

¹⁰¹ PDNF.

¹⁰² PDNA Volume A, p.62.

¹⁰³ PDNA Volume A, p. xvi.

¹⁰⁴ The reference to NPR 200,000 (US\$ 2,000) reflects the initial grant amount valid at the time of the writing of the document.

¹⁰⁵ NRA, ‘Sector Plans and Financial Projections - Working Documents’, May 2016, p. 89, available at www.nra.gov.np/uploads/docs/ASTGGdnejZ160823113341.pdf. As of 20 September 2016, 123 national and international NGOs had signed

Two donor representatives present in a meeting between donors and the Ministry of Finance independently confirmed that the Ministry had refused to give “top-up” grants for the vulnerable population in the planning of the project.¹⁰⁶ While the marginalised population was supported later by the Pakistani government,¹⁰⁷ an NRA official confirmed that government funds would not be utilized for the “top-up” grants, and that NGOs¹⁰⁸ would be mobilized for that purpose.¹⁰⁹ As revealed in the above mentioned draft “Sector Plans and Financial Projections Working Documents”, and further highlighted by the NRA official Bhusal, the government suggested that the payment of such assistance should be transferred to partner organizations funded by donors.¹¹⁰ While the government must take steps “individually and through international assistance and cooperation” (Article 2(1) of the ICESCR) to uphold the right to adequate housing, this does not relieve themselves of their responsibility to realize the right to adequate housing and to prioritize the most marginalised and disadvantaged groups, in its housing reconstruction programme.

The government has taken a general model for its housing reconstruction plans and while it has acknowledged the extra challenges and difficulties faced by the most disadvantaged groups in trying to access their right to housing, it has failed to put in place sufficient measures to address their specific needs. According to the then NRA spokesperson Ram Thapaliya, the reconstruction plan is based on a “blanket” approach because the “government looks at equity” and needs to look at “overall justice.”¹¹¹

3.3 IMPACT OF THE PRIVATE LAND OWNERSHIP POLICY

According to the 2011 census, 85% of households reside in their own house, 13% in rented places, 0.6 % institutional and 1.3% in, what is classified as, other.¹¹² However, a 2011 study on landless, exclusion and deprivation in Nepal stated that while local authorities asserted that most people now have land certificates, interviews with landless suggest “that this figure may be overstated as almost two-thirds of the people interviewed as part of this study did not have a land certificate for the land on which they lived, and over one-third had no land certificate at all despite having lived on the land for generations in some cases.”¹¹³

Amnesty International’s research in Dolakha has found that the ownership driven reconstruction framework did not take into account prevailing feudal relationships, affecting most badly those living in poverty, including landless, squatters and sharecroppers.¹¹⁴ For example, 1,313 households from Bhedpu VDC had not signed the CGA because one of the requirements is to provide a land certificate, but the land on which the village is situated is owned by the Dolakha Bhimeshwor Temple *Guthi*.¹¹⁵ Seventy households in Singati face the same issue with the land owned by a *guthi*, an issue made more complicated by the fact that the family-based *guthi* is now in the midst of a law suit. For example, Devendra Khatiwada, one of the residents, stated that he had bought the house on *guthi* land. “I have no landownership papers for the land we are now on... I have the papers from the man who sold the house saying he gave it but not permanent papers.”¹¹⁶

agreements with the government. See NRA, Until 20 September 2016 list of tri-partite agreements signed NGOs approved proposed plans (in Nepali), 20 September 2016, available at www.nra.gov.np/download/details/159

¹⁰⁶ Amnesty International telephone interview with participant in finance ministry and donor meeting, name withheld, 25 January 2017; and Amnesty International telephone interview with donor representative, name withheld, 2 February 2017.

¹⁰⁷ Amnesty International interview with Kamran Akbar, World Bank, Kathmandu, 9 March 2017.

¹⁰⁸ The NGO guidelines state that partners not contributing directly to the RHRP must still follow the guidelines for the distribution of grants for private housing. According to the guidelines, they “shall be encouraged” to fund resettlement and resettlement location and “[v]ery disadvantaged family, family of widow and single woman with only underage offspring, family with only members of senior citizens above 75 years, personal housing for single person with disabilities” (7.2.d.2) and “Transportation management necessary for private housing reconstruction in prescribed remote areas” (7.2.d.3.). An additional NPR 50,000 [US\$ 500] allocated for the building of houses for people in these categories (7.3)). See Guidelines related to the management of NGOs 2072vs (herein: Guidelines for Management of NGOs), available at http://www.hrrpnepal.org/download/CnRh6BYxL81J3c4wlsG0_2017_02_22.pdf/resources

¹⁰⁹ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 19 March 2017.

¹¹⁰ For example, Caritas International is funding Lumanti, with the additional funds for the disadvantaged. Amnesty International interview with Milan Mukia, Country Representative Cordaid, Kathmandu, 24 January 2017.

¹¹¹ Amnesty International interview with Ram Thapaliya, NRA, Kathmandu, 15 April 2016.

¹¹² CBS, ‘National Population and Housing Census 2011(National Report) volume 1’, November 2012, p. 4 and p. 115, available at <https://unstats.un.org/unsd/demographic/sources/census/wphc/Nepal/Nepal-Census-2011-Vol1.pdf>

¹¹³ Elisabeth Wickeri, “Land is life, land is power”: Landlessness, exclusion, and deprivation in Nepal’, 2011, p. 972, available at www.ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2295&context=ilj

¹¹⁴ See discussion on tenure systems in Nepal in Chapter 3 above.

¹¹⁵ *Guthis* are broadly defined as land and property donated by the government, or state or individuals for social and religious benefit. There are different types of *guthis* but they function as a system of keeping property to finance religious and charitable institutions. See Jagannath Adhikari, ‘Land Reform in Nepal’.

¹¹⁶ Amnesty International interview with Devendra Khatiwada, Singati, 14 November 2016.

According to data provided by the Ministry of Land Reform and Management, 22,249 hectares of land in the 14 earthquake-affected districts belong to *guthi*, with people living on the land ineligible for reconstruction aid¹¹⁷ without which many would not be able to rebuild. An official at the NRA told Amnesty International in late January 2017 that the CBS survey had registered 533,000 households in the 11 most affected districts,¹¹⁸ out of which 2,500 had stated that they were living on government land and around 17,000 had stated that they did not have land ownership certificates, including those living on *guthi* land.¹¹⁹

On 29 December 2016, the cabinet approved the revised *Grant disbursement procedures for private houses destroyed by the earthquakes 2016*, increasing reconstruction grants from NPR 200,000 (US\$ 2,000) to NPR 300,000 (US\$ 3,000) and addressing issues of those without land ownership papers.¹²⁰ These include people living on settlements without papers but “recommended by local authorities” “after investigation.” With the exception of houses built on public, forest or government land, houses built on *Birta*, *Guthi*, *Swabasi*, *Benissa*, *Gau block*, *Kodale*, *Aankada*, *Bitauri* and *Ukhada*¹²¹ tenures, can also access cash grants if they provide official receipts, or in the absence of the latter, a document of proof of residency by at least two neighbouring landowners. However, any subsequent CGA would not be considered as a certificate of land ownership. While a step forward, it remains to be seen whether this will in fact make it possible for those without land ownership certificates to receive a grant. Amnesty International interviews in Dolakha revealed challenges to the implementation of these initiatives, including the refusal of landowners to sign relevant papers to allow landless to rebuild houses.¹²² For example, 90-year-old Padam Bahadur Bishwakarma, has been living on his landowners land for around 40-45 years. His house was destroyed in the earthquake and he has tried to get verification of his residence on the land signed by the landowner. According to Bishwakarma, who is Dalit, “when I first went to the landowner he said I am sick, wait 2-4 days....and when I went later, what he said was ‘you have sent your son with citizenship papers to get verification – after we do verification, later that land will become yours, later this will become a hassle, this won’t happen.’” Bishwakarma said “I have no proof of (owning) one piece of straw here” and “because I didn’t get verification from landowners, that is why I did not get the 50,000”... Now my big problem is at a time when I will die, I will die in hardship.”¹²³

In another case, a deaf landless couple – Rita (pseudonym) and her husband – lost their house in the earthquake. The landowner who lived in Kathmandu and had no house on the land, had claimed the grant and was planning to build his own house for himself on this land. According to a neighbor, the engineers had asked for the name of the owner of the land, thereby excluding Rita and her husband.¹²⁴

Amnesty International interviews also revealed obstacles for those living on *guthi* land. Hasna Khadki stated that her house built on *guthi* land had been destroyed by the earthquake and while the *guthi* kept saying it will give permission for them to rebuild, it has yet to do so. While she had receipts for the payments given to the *guthi* – annual payments of a goat and approximately 12 kilos (4 patthis) of maize – she said “will the *guthi* let us [rebuild our house] or not....that is our fear.”¹²⁵ Tara Shrestha who also lives on *guthi* land and makes payments of a goat and vegetables twice a year to the *guthi* faces similar problems. She stated that while it appeared that they owned a large piece of land, “but in [our] own name, [we] don’t have a place to bury a needle.” She said, “If I had landownership papers things would be different... “We would be able to stay mentally at ease....When it is not in one’s own name, will they remove us today, or tomorrow, [we] don’t know what will happen.”¹²⁶

¹¹⁷ Kathmandu Post, ‘Guthi land dwellers could miss out on aid’, 18 June 2016, available at www.kathmandupost.ekantipur.com/news/2016-06-18/guthi-land-dwellers-could-miss-out-on-aid.html

¹¹⁸ Excluding the three districts of the Kathmandu valley – Kathmandu, Lalitpur and Bhaktapur.

¹¹⁹ Amnesty International interview with Kamal Ghimire, Kathmandu, 23 January 2017.

¹²⁰ Grant disbursement procedures 2016 (2073)

¹²¹ *Gaublock* are parcels of land which are not individually registered but users rights are granted to a group of families. They can be inherited, but not legally sold or bought, but are common in practice. Usually, small areas occupied by many families during the survey period, were assigned as *Gaublock*, if no individual household had private ownership of the land. *Kodale* or *Hale* (also called Pakhe, Pate, in some cases) is land that is not properly measured or surveyed. *Anakada/Ukhada/Bitauri* are terms generally used together, with *Ukhada* used in three districts of the Tarai. The chief characteristics of *Ukhada* system was that landownership rights were vested in the *Jimindar*, who collected rents for the registered landholders in cash. The difference between these cash collection and the tax payable to the state constituted the *Jamindar*’s profit. *Ukhada* was abolished in 1964. Amnesty International email correspondence with Suresh Dhakal, 25 February 2017. See also Community Self Reliance Centre, ‘Land Tenure and Agrarian Reforms in Nepal’, January 2011, p. 22, available at www.csrnepal.org/uploads/publication/_2dpV2BZ0lsM4luC-cB_L2A00gEbYm-U.pdf

¹²² Amnesty International group interview, Bhimeshwor Municipality, 16 November 2016.

¹²³ Amnesty International interview with Padam Bahadur Bishwakarma, Bhimeshwor Municipality, 21 March 2017.

¹²⁴ Amnesty International interview with Laxmi (pseudonym), Bhimeshwor Municipality, 21 March 2017.

¹²⁵ Amnesty International interview with Hasna Khadki, Bhimeshwor Municipality, 21 March 2017.

¹²⁶ Amnesty International interview with Tara Shrestha, Bhimeshwor Municipality, 21 March 2017.

Further, as NRA official Kamal Ghimire underlined, the above initiative did not resolve the situation of people living on government land – nor of those who are landless.¹²⁷ While government officials in Dolakha at various levels stated that landlessness was not an issue in the district,¹²⁸ Amnesty International delegates met several landless people who were excluded from rebuilding their home. This includes Purna Man Thami who, like his father, is landless. The earthquake had destroyed the house that his father had built, and that he grew up in, on land owned by a government school. Working as a labourer and suffering from asthma (he claims because of the cold in the temporary shelter) with a wife and a four-year old son, he had built a temporary shelter in Bhimeshwar municipality. As someone without land and who formerly had his house on government land, he is ineligible for funds to rebuild his house even under the revised December 2016 Procedures.¹²⁹ He stated that “we are landless – if the government would give us land, even if not give money, give us somewhere to live, we would give thanks. We don’t have land papers, without land papers, what to do.”¹³⁰

As a further attempt to resolve the impact of the private ownership model for landless people, in February 2017, there was a NRA proposal to provide NPR 100,000 (US\$ 1,000) to those occupying forest land and public spaces, although as of early April 2017 it is yet to be finalized.¹³¹ In early April 2017, the media reported that the NRA decided to form a committee to find ways to provide housing aid to those who do not have land ownership certificates or any proof of owning a house” – 77,781 families have been identified by the NRA.¹³²

According to the Committee, “States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”¹³³ By developing a reconstruction programme focused on the private ownership model, the Nepali government has failed to take into account the local context, in particular to recognize the existence of a multiplicity of forms of tenure in the country. In doing so the government has failed to ensure that all people have a minimum degree of security of tenure and as a result, instead of prioritizing the needs of the most marginalised, the latter are facing various obstacles to receiving much needed aid to rebuild their houses, relegated to the end of the line in receiving grants or are being left out.

¹²⁷ Amnesty International interview with Kamal Ghimire, Kathmandu, 23 January 2017.

¹²⁸ Amnesty International interview with Naresh Khadkha, assistant VDC Secretary, Suspa-Kshemawati, 13 November 2016; Amnesty International interview with Santosh Khadkha, Sailungeshwar VDC Secretary, Charikot, 16 November 2016; and Amnesty International interview with Arjun Prasad Chaulagain, Land Revenue Office, Charikot, 15 November 2016.

¹²⁹ Media reports in another districts have highlighted cases of the landless unable to access reconstruction grants. For example, over 2000 landless residents in Lalitpur district have been reported as remaining in temporary shelters because they lack land papers. Kantipur, ‘Excluded from grants because of lack of landownership papers’ (in Nepali), 26 March 2017, available at www.kantipur.com/news/2017-03-26/20170326083043.html

¹³⁰ Amnesty Interview with Purna Man Thami, Bhimeshwar, 10 November 2016.

¹³¹ Manish Gautam, ‘NRA proposes land grant for quake-hit squatters’, 27 February 2017, available at www.kathmandupost.com/news/2017-02-27/nra-proposes-land-grant-for-quake-hit-squatters.html

¹³² Kathmandu Post, ‘NRA to provide aid to quake-hit lacking landownership docs’, 6 April 2017, available at www.kathmandupost.com/printedition/news/2017-04-06/nra-to-provide-aid-to-quake-hit-lacking-land-ownership-docs.html

¹³³ CESCR, ‘General Comment No. 4’, para. 11.

4. COUNTING HOUSEHOLDS AND SPACE



*An earthquake resistant home being constructed in Bigu VDC, Dolakha district, November 2016.
© Amnesty International*

4.1 ISSUES WITH THE CENSUS

As explained above, eligibility for the grants given by the government is based on results of the assessment undertaken by the Central Bureau of Statistics (CBS), and requires proof of citizenship and land ownership. Before the CBS survey, two other post-earthquake assessments had been undertaken.¹³⁴ The first was an initial assessment of damage and relief needs conducted by VDCs with the help of local teachers and leaders a few days after the earthquake. It was followed within a month by a District Disaster Relief Committee (DDRC) led assessment which resulted in people being issued with an “earthquake victim identity card”, known colloquially as the “red card” - the basis for the distribution of relief.¹³⁵ The latter came under severe criticism following reports of political party pressure to increase names and numbers greatly exceeding estimates from the last national census of 2011, resulting in what was reported to be a large number of “fake

¹³⁴ Asia Foundation et al., ‘Nepal Government Distribution of Earthquake Reconstruction Cash Grants for Private Houses: IRM-Thematic Study’, November 2016, p. 4, available at www.asiafoundation.org/wp-content/uploads/2016/12/Nepal-Govt-Distribution-of-Earthquake-Reconstruction-Cash-Grants-for-Private-Houses.pdf (hereinafter: Asia Foundation et al., ‘IRM-Thematic Study’, 2016).

¹³⁵ Asia Foundation et al., ‘IRM-Thematic Study’, 2016, p. 4.

victims.”¹³⁶ The CBS survey was commissioned in late 2015,¹³⁷ and started on 2 January 2016 with engineers using tablets in the 11 most affected districts.¹³⁸

The results revealed a large disparity between the figures of the CBS data relative to that of the earlier two assessments. In Dolakha, according to the CBS survey, 51,762 households were eligible for the reconstruction grants, compared to 80,711 households who qualified for winter payments with their earthquake victim identity card and 62,951 who had received the first emergency shelter payments.¹³⁹ Within Dolakha district there have been major complaints by local government officials, citizens and local leaders given the large difference in numbers.¹⁴⁰ Local authorities complained that large sections of wards had been excluded.¹⁴¹ A Dolakha DDRC meeting on 28 April 2016 chaired by the then Chief District Officer (CDO) Puskar Raj Shahi and attended by the LDO Bishnu Prasad Sharma and top political leaders of the district, concluded that given the “extremely large” number of “real” earthquake victims not included, the CBS statistics were “not trustworthy”.¹⁴²

At the local level, various reasons were given for the disparities in numbers. Most commonly cited by various interlocutors¹⁴³ were technical issues and lost data given the engineers needed internet connectivity to enter data into their tablets.¹⁴⁴ Others pointed to human errors of engineers including the attitude and bias of individual engineers. For example, Bhawani Upreti suspected her name was left off by the engineer as she had refused to pay a bribe.¹⁴⁵ In Sunkhani, a widow who jointly owned land with her deceased father-in-law’s unmarried sister,¹⁴⁶ but who lived in two separate houses that were destroyed by the earthquake, was included in the beneficiary list whereas her aunt-in-law was not. While, as per CBS procedures, they initially both had photos taken of themselves in front of their damaged houses, the engineers had then taken a photo of both of them standing in front of one of the damaged houses, thereby recording only one of the women as a beneficiary.¹⁴⁷ The third issue related to problems with the definition and counting of households discussed below.

4.2 CULTURAL ADEQUACY AND HABITABILITY

“[A]dequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.¹⁴⁸ [T]he way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.”¹⁴⁹

In Nepal there is a practice of establishing separate kitchens within the same house after sons marry or for other reasons, thereby establishing a “separate” household. The 2011 census forms recognized the social basis of having one house with many families. The CBS survey also used such codes for a household

¹³⁶ CBS, ‘National Population and Housing Census 2011(National Report) volume 1’, November 2012, available at www.unstats.un.org/unsd/demographic/sources/census/wphc/Nepal/Nepal-Census-2011-Vol1.pdf

¹³⁷ Kathmandu Post, ‘CBS to hold census in tremor-hit areas’, 2 January 2016, available at <http://kathmandupost.ekantipur.com/news/2016-01-02/cbs-to-hold-census-in-tremor-hit-areas.html>

¹³⁸ Although the issue of “fake victims” and discrepancies in data was highlighted as the reason for a new survey, a World Bank official stated that the CBS survey had been planned from the start. Amnesty International interview with Avani Mani Dixit, Kathmandu, 9 March 2017.

¹³⁹ Asia Foundation et al., ‘IRM-Thematic Study’, 2016, p. 6.

¹⁴⁰ Reconstruction work was stopped in six VDCs due to the dispute in numbers. See Rajendra Manandhar, ‘14000 quake displaced in Dolakha lodge complaints’, 14 June 2016, available at www.kathmandupost.ekantipur.com/news/2016-06-14/14000-quake-displaced-in-dolakha-lodge-complaints.html

¹⁴¹ Amnesty International interview with Sailungeshwar VDC Secretary Santosh Khadkha, Charikot, 16 November 2016 and Suspa-Kshemawati assistant VDC secretary Naresh Khadkha, 13 November 2016.

¹⁴² Copy of the minutes of the meeting obtained by Amnesty International.

¹⁴³ Amnesty International interview with Naresh Khadkha, Suspa-Kshemawati, 13 November 2016; and Laxman Khadkha, Charikot, 11 November 2016.

¹⁴⁴ At the national level, there were difference in opinions on the issue of lost data during the CBS survey. On April 2016, Deputy Director General of CBS Dr Rudra Silwal in a talk programme at acknowledged data had been lost. However, in January 2017, CBS Director General Dhundiraj Lamichhane doubted that households had been left out in the CBS generated data. Amnesty International interview with Dhundiraj Lamichhane, Kathmandu, 24 January 2016.

¹⁴⁵ Amnesty International interview with Bhawani Upreti, Namdu, 12 November 2016.

¹⁴⁶ Both their names are on the land ownership paper.

¹⁴⁷ Amnesty International interview with Kali Sarki, Sunkhani, 14 November 2016.

¹⁴⁸ CESCR, ‘General Comment No. 4’, para. 8(d).

¹⁴⁹ CESCR, ‘General Comment No. 4’, para. 8(g).

(coded 1) and kitchen-separated families (coded with the numbers 2, 3 and 4, depending on the number of those with separate kitchens). A sociologist disputed the arguments that political party interventions and “fake victims” had pushed up the initial numbers vis-a-vis the CBS led survey. He argued that “when the category that the state creates or uses is seriously flawed and is incongruent with the lived social realities of the citizens of the country, the consequences can be tragic for many victims of the 2015 earthquakes.”¹⁵⁰ Importantly, in the section under housing in Volume B of the PDNA, there is a clear recognition of the need to take into account the different number of households per house. “The total number of houses to be reconstructed has been calculated on the basis of [the] number of households made homeless. Considering the average number of households per house for each district, the total requirement came to 609,938 houses. This number may change after the much needed household assessment of damages.”¹⁵¹

Potentially a result of mixed authorship in the writing of the PDNA, in other places, the rebuilding of the houses appears directly linked to single ownership, i.e. only the house owner and not householders would be eligible. “The government acknowledges that the house owner will exercise her/his choice of building type and house size at the time of reconstruction.”¹⁵² This is how the reconstruction policy was initially implemented in the main. The *Standards for selecting beneficiaries for grants for earthquake reconstruction of damaged houses* published on 24 April 2016, however, state that those families who have officially registered as separate houses at the district land tax office and those who have not registered but confirmed by local authorities after investigation as having separated before 25 April 2015 will be counted as beneficiaries.¹⁵³

While separate kitchens have been counted as households in some places, it is clear that this is not the case everywhere. Apart from the overall emphasis on landownership papers by surveyors, for those not officially registered as separate households, Amnesty International delegates were often told that confirmation of separate households depended on issues of power and access to authority. For example, in Namdu, one Dalit family stated that their name had been left out of the beneficiary list but “everyone” in the family of the village social mobilizer who accompanied the CBS engineer had been listed.¹⁵⁴ Alluding to power dynamics within the village, the VDC Secretary for Sailungeshwor stated that some who measured their sheds had their names on the list. He said: “We have already given them their money because once their name is on the list we’re not in the situation to say you are not beneficiaries.”¹⁵⁵ According to a Dolakha DLPIU official, multiple household claims from the district (numbering 7951) will be verified by VDCs.¹⁵⁶

The narrowing definitions in parts of the PDNA and the manner in which CBS surveyors recorded households has ramifications often for the poorest households. As the VDC Secretary of Japhe and Bhirkot VDCs Prem Prakash Khatri explained, because of poverty, families established separate kitchens under the same roof as they cannot afford to have a separate house and even though a father and two sons were living separately, “only one name came [in the beneficiary list].”¹⁵⁷ People in 20 VDCs towards the north of Dolakha, who tend to be very poor and mainly from Thami and Dalit communities, establish separate households in the same manner. According to local journalist Laxman Khadkha, these populations “have become the biggest victims because ... of the one house one family policy.”¹⁵⁸

The issue of the number of households under one roof for the most disadvantaged populations becomes more important when considering house sizes and purpose. In terms of house sizes, the PDNA (Volume B) states that “[t]he need for housing recovery is based on a uniform assumed need per household (not based on pre-existing houses) of a 450 square feet core house built to seismic-resilient standards.”¹⁵⁹ This square feet calculation for rebuilding houses for the earthquake affected stated in the PDNA is 25% lower than the 2011 census-based calculations of the mud mortar-based, low strength masonry average of 600 square feet. According to UN-Habitat officials present at the planning meetings, the reduction occurred as a result of government insistence on the need to “provide for the most needy,”¹⁶⁰ which appears to mean reducing the square feet to the minimum and not average. Given that the average household contains four or five persons

¹⁵⁰ Lokranjan Parajuli, ‘Flawed category’, 26 May 2016, available at www.kathmandupost.ekantipur.com/news/2016-05-26/flawed-category.html

¹⁵¹ PDNA Volume B, p. 6.

¹⁵² PDNA Volume B, p. 19.

¹⁵³ See NRA, ‘Standards for selecting beneficiaries for grants for earthquake reconstruction of damaged houses’ (in Nepali), 24 April 2016, available at www.nra.gov.np/uploads/docs/JWjMeRJNg9160424102503.pdf

¹⁵⁴ Amnesty International interview with Nawaraj BK, Namdu, 12 November 2016.

¹⁵⁵ Amnesty International interview with Santosh Khadkha, Sailungeshwor VDC Secretary, Charikot, 16 November 2016.

¹⁵⁶ Amnesty International telephone interview with Tika Joshi, DLPIU, Charikot, 18 April 2017

¹⁵⁷ Amnesty International interview with Prem Prakash Khatri, Charikot, 25 November 2016.

¹⁵⁸ Amnesty International interview with Laxman Khadkha, Charikot, 11 November 2016.

¹⁵⁹ PDNA Volume B, p. 19.

¹⁶⁰ Amnesty International interview with P.S. Joshi, Programme Manager UN Habitat, Kathmandu, 9 November 2016.

on average in Nepal, the government has failed to consider habitability and the provision of adequate space.¹⁶¹

This is especially so when considering that houses in rural Nepal function much more than just as living spaces. For example, Mukunda Siwakoti who was building his house in Suspa-Kshemawati, stated that of the first set of 17 model houses suggested by the government, only the mud and stone one was relevant for him given the costs of cement and other building materials. However, of the government stipulation that mud and stone houses only be of one storey, he stated “our life can’t be supported in one floor....we can’t carry on lives in 2 rooms in the village, it is not like in the city[baazar],” pointing out the need for a place not only for the family to live but also to store grain, grass, wood and put livestock like goats and cows.¹⁶²

Although the Deputy Director General of the Housing Division, DUDBC¹⁶³ stated consultations on models were done, this could not be corroborated.¹⁶⁴ The square feet cost calculations made in the PDNA appear to ignore the socio-economic dimensions of life in predominantly rural Nepal – precisely the target of the RHRP. The government’s reconstruction plans have failed to meet the conditions of habitability and the provision of adequate space and cultural adequacy taking into account the expression of cultural identity and diversity in rural Nepal.

4.3 DELAYS AND THE IMPACT ON SHELTER AND HEALTH

“Rain comes inside the corrugated sheets, and cold comes from the [mud] floor as it gets wet...the cold from the corrugated sheets with the rain and wind come in one place.” Maiti Thami, Dolakha district¹⁶⁵

There have been considerable delays by the government in meeting short-term and longer-term shelter and housing needs, which has detrimentally affected especially the health of the young, elderly and the already ill.

During the first month after the earthquake the government, with the support of donors, was quick to organise the PDNA and international conference. It did however take a long time to attend to the institutional framework, policies and procedures required to address the long-term housing needs of people.¹⁶⁶ The NRA was established in December 2015, eight months after the earthquake due to political party debates on who should head the institution, which resulted in delays in the passing of policies for recovery and reconstruction.¹⁶⁷ The distribution of grants was further delayed as the CBS survey of earthquake victims to identify the households started only in January 2016.

After the initial distribution of tarpaulins, interim initiatives by the government of Nepal¹⁶⁸ included a 16 May 2015 cabinet decision to provide NPR 15,000 (US\$ 150) to all earthquake affected families to buy their own zinc sheets for temporary shelters as they were unable to distribute zinc sheets to people quick enough before the onset of the monsoon.¹⁶⁹ With the impossibility of building permanent housing before the winter given the absence of the NRA and the requisite guidelines,¹⁷⁰ the government decided it would provide a NPR 10,000 (US\$ 100) cash grant by mid-December to earthquake affected families to purchase warm

¹⁶¹ CBS, ‘Nepal Living Standards Survey 2010/2011 - Highlights’, 2012, p. 14, available at www.cbs.gov.np/nada/index.php/catalog/37

¹⁶² Amnesty International interview with Mukunda Siwakoti, Suspa-Kshemawati, 13 November 2016.

¹⁶³ Amnesty International interview with Rabi Shah, Kathmandu, 10 November 2016.

¹⁶⁴ Amnesty International interview with Ganeshwor Khadkha, Suspa-Kshemawati, 13 November 2016.

¹⁶⁵ Amnesty International interview with Maiti Thami, Bhimeshwar Municipality, 10 November 2016.

¹⁶⁶ Although obstructions at the Nepal and India border in the south of the country disrupted supplies and goods into the country from September 2015 to early February 2016, this would not have impacted the making of housing reconstruction policies and procedures.

¹⁶⁷ The Ministry of Urban Development had drafted the Post-earthquake Recovery and Reconstruction Policy 2015 which had been approved by the Nepal Planning Commission but needed the NRA for it to receive legitimacy. See Gaurav Thapa, ‘Quake-hit to mark Dasain in huts’, 16 October 2015, available at www.kathmandupost.ekantipur.com/news/2015-10-16/quake-hit-to-mark-dashain-in-huts.html

¹⁶⁸ Amnesty International, *Nepal: Earthquake recovery must safeguard human rights* (Index: ASA 31/1753/2015).

¹⁶⁹ Kathmandu Post, ‘Govt to provide 15k instead of zinc sheets’, 16 May 2015, available at www.kathmandupost.ekantipur.com/news/2015-05-16/govt-to-provide-15k-instead-of-zinc-sheets.html

¹⁷⁰ Kathmandu Post, ‘Displaced brace for harsh winter’, 31 October 2015, available at www.kathmandupost.ekantipur.com/printedition/news/2015-10-31/displaced-brace-for-harsh-winter.html

clothes.¹⁷¹ In the last week of December 2015, the MoFALD had directed the local bodies of 24 districts to distribute winter relief packages to people who had lost their houses within a week.¹⁷²

The delay impacted the work of donors supporting the housing reconstruction effort from within and outside of the RHRP. All donors directly funding or funding via local NGOs have to adhere to the same operational modalities,¹⁷³ including providing funds through banks and in the approved tranches.¹⁷⁴ Citing the need to “bring uniformity”, “avoid duplication” and ensure that the new homes were seismic resistant, in February 2016 the NRA issued a press statement stating that NGOs should halt the distribution of aid money and the rebuilding of houses until the procedural guidelines on non-governmental sectors involved in the reconstruction process was published.¹⁷⁵

The delay in the reconstruction of permanent homes impacted on the health of earthquake victims.¹⁷⁶ Numerous media reports highlighted the rise of cases of asthma, fever, pneumonia and coughs with especially women, children and the elderly suffering.¹⁷⁷ Early December 2015, reports stated that half of the patients who arrived at Gaurishankar hospital in Bhimeshwar Municipality suffered from cold-related diseases.¹⁷⁸ At the Himalayan Care Hands Community Hospital in Kabhre VDC, Dolakha visited by the Amnesty International team, medical staff reported that there was an increase in snake bites as people sheltered outside.¹⁷⁹

According to the auxiliary nurse midwife Krishna Kumari Thami of the health post in Alampu VDC in northern Dolakha, there was a rise in the number of cases of acute respiratory infections (ARI) after the earthquake relative to previous winters. According to Thami, this was due to the fact that people were sleeping in temporary shelters, at first under just tarpaulin and then under zinc sheets without added insulation and without a floor. She described how a five-week-old baby, Gomati Thami, had been brought to the health post in January 2016 with pneumonia. She had told the mother to take the baby to hospital immediately, but the mother did not do so and the baby died two days later. The nurse stated “After [the baby died] we became very worried. One [was because] lots of cases of ARI had come and then, oh no, what if other children became like this and so immediately we informed the District Health Office and they immediately did a [health] camps and sent doctors and medicines.”¹⁸⁰

Although, the Dolakha District Health records show a decrease in the incidence of ARI per 1,000 children under five years in the past three years, over the same time period, there is an increase in proportion of severe pneumonia among registered new ARI cases from 0.1 to 0.2 and 0.5 respectively.¹⁸¹

As of September 2016, 70% of people in the most severely hit districts were still in temporary shelters.¹⁸² When asked about the government’s winterization support for the 2016-2017 winter period, Undersecretary Hari Acharya Shankar from the Home Ministry stated that there was no support from the ministry as Nepal was in “recovery period” and that the government had already given in 2015 and “the government can’t give all the time.”¹⁸³

¹⁷¹ Ministry of Finance, ‘White Paper on the Current Economic Situation and Immediate way Forward’ 24 November 2015, available at www.mof.gov.np/uploads/document/file/White_papaer_final_20151125100100.pdf

¹⁷² Himalayan Times, ‘Local bodies told to distribute winter relief to quake victims within a week’, 30 December 2015, available at www.thehimalayantimes.com/kathmandu/govt-diktat-on-distribution-of-winter-relief-to-quake-victims/

¹⁷³ This includes JICA, DFID, the EU and ADB among the large bi-laterals and multi-laterals. As of 17 June 2016, 24 international and international non-governmental organizations were also involved in the housing reconstruction. See ‘Descriptions of NGOs till 17 June 2016 with agreements to rebuild houses’ (in Nepali), available at www.nra.gov.np/uploads/docs/cesCSCGY4n160920073907.pdf

¹⁷⁴ Guidelines for management of NGOs 2072vs.

¹⁷⁵ Sahina Shrestha, ‘No relief’, 11 March 2016, available at www.nepalitimes.com/article/nation/no-relief-for-earthquake-victims,2926

¹⁷⁶ Multiple sources report considerable delays in the distribution of winter relief packages. See for example Raj Kumar Parajuli, ‘Quake victims get winter relief as summer begins’, 13 March 2016, available at www.thehimalayantimes.com/nepal/quake-victims-get-winter-relief-summer-begins/. A November 2016 report states that local government offices distributed winter relief to all 50 VDCs and municipalities in Dolakha only in February and March 2016 when much of the winter cold had past. Asia Foundation et al., ‘IRM-Thematic Study’, 2016, p.5.

¹⁷⁷ See for example Rishiram Poudyal, ‘Quake hit children suffering from cold related ailments’, 26 December 2015, available at www.kathmandupost.ekantipur.com/news/2015-12-26/quake-hit-children-suffering-from-cold-related-ailments.html

¹⁷⁸ Rajendra Manandhar, ‘Quake-displaced face hardships due to cold’, 4 December 2015, available at

www.kathmandupost.ekantipur.com/news/2015-12-04/quake-displaced-face-hardships-due-to-cold.html

¹⁷⁹ Amnesty Interview with Laxman Malbul, senior medical assistant, Himalayan Care Hands Community Hospital, Kabhre, 17 November 2016.

¹⁸⁰ Amnesty Interview with Krishna Kumari Thami, Alampu, 20 November 2016.

¹⁸¹ Health and Population Ministry, Department of Health Services, District Health Office, Annual Report 2015-2016, p. 41.

¹⁸² Asia Foundation et al., ‘IRM-Thematic Study’, 2016.

¹⁸³ Amnesty International telephone interview with Undersecretary Hari Acharya Shankar, Home Ministry, Kathmandu, 13 January 2017.

In Khopachangu, 60-year-old Ganga Bahadur Shrestha described the manner in which in his temporary shelter, dew would freeze at night with the cold, turn furry when it melted and then white when it froze again with spots of white covering his floor. He stated “My hands and feet are starting to swell, since, it is really cold. When I wake up in the morning, my whole body freezes.I have been getting cold and have been coughing a lot. It is hard for me to get up because my body is starting to get heavy. He added: “Before, it was not like this. I had a stone house. However, even if I sleep on the bed [now], it [the frozen dew] keeps rising [from the floor] and it is becoming a problem.”¹⁸⁴

The delay in the reconstruction of permanent homes and the consequent long-stay in temporary shelters without adequate protection against the extreme climatic conditions of the monsoon and winter seasons, has clearly negatively impacted the health of earthquake victims. According to the World Health Organization (WHO), “[o]ver and above their basic purpose of providing shelter against the elements and a focus for family life, human dwellings should afford protection against the hazards to health arising from the physical and social environments.”¹⁸⁵ Principle six of WHO’s *Health Principles of Housing*, emphasizes the need to protect populations at special risk, including women, children, the chronically ill, the aged and the disabled, from the inadequacies in housing.¹⁸⁶

4.4 THE NOMINEE SYSTEM

Of central importance for the access to grants for marginalised populations who do qualify is the nominee system which allows a person to sign a “representative”/nominee form for others to collect the money from the bank for them. Both the *Grant Disbursement Procedures for Private Houses Destroyed by the Earthquakes 2016* editions have the same two categories for persons who can utilize the nominee system.¹⁸⁷ The first is “Those whose name is in the beneficiaries list, is at home and is also the owner of the land but cannot be present” and the second is “Those whose name is in the beneficiaries list but lives abroad currently and his/her spouse has come for the agreement.”¹⁸⁸

Amnesty International found numerous problems in the implementation of the nominee system with adverse impacts on the most marginalised in Dolakha. For example, in November 2016 the VDC Secretary for Bhirkot and Japhe¹⁸⁹ and the VDC Secretary for Alampu¹⁹⁰ stated that banks were not accepting their nominee recommendations. In another case, a VDC Secretary had instructed the relevant bank to stop accepting nominees except in the case of death.¹⁹¹ The Bigu VDC Secretary stated that the NRA had stopped the nominee process,¹⁹² while the Suspa-Kshemawati VDC Secretary said that the DDC had been responsible for the stoppage.¹⁹³ Indicating problems in the nominee process, a 26 October 2016 progress report by the District Level Implement Unit in the DDC in Charikot revealed that bank transfers were not made for those who had their names published in the beneficiaries list but who were abroad and had agreements done in the name of close relatives.¹⁹⁴ At the national level, a NRA official pointed to banking regulations as a problem,¹⁹⁵ while the Bankers Association made clear that while they could not give access to accounts to people other than account holders, there were no issues if the nominee was approved by the DDC and the account was opened in the nominee’s name.¹⁹⁶ According to the Housing Recovery and Reconstruction Platform Nepal, the issue is linked to the opening of bank accounts in the name of the head

¹⁸⁴ Amnesty International interview with Ganga Bahadur Shrestha, Khopachangu, 19 November 2016.

¹⁸⁵ World Health Organization, ‘Health Principles of Housing’, 1989, p.v., available at apps.who.int/iris/handle/10665/39847

¹⁸⁶ World Health Organization, ‘Health Principles of Housing’, 1989, p. 20, available at apps.who.int/iris/handle/10665/39847

¹⁸⁷ A comparison of both Grant Disbursement Procedures for Private Houses Destroyed by the Earthquakes editions reveal a tightening of requirements of those who can be nominated – no longer beyond the immediate family - and additional paperwork – the recommendation of the local government and a binding agreement with the same. See Grant disbursement procedures for private houses destroyed by the earthquakes, 2016 (2072) (in Nepali), available at www.nra.gov.np/uploads/docs/EunALRqKz4160520062602.pdf and Grant disbursement procedures 2016 (2073).

¹⁸⁸ Grant disbursement procedures 2016 (2073).

¹⁸⁹ Amnesty International interview with Prem Prakash Khatri, VDC Secretary for Bhirkot and Japhe, Charikot, 25 November 2016.

¹⁹⁰ Amnesty International interview with Ramu Poudel, VDC Secretary from Alampu, Charikot, 15 November 2016.

¹⁹¹ Amnesty International interview with Padam Shrestha, Araniko Development Bank, Singati, 14 November 2016.

¹⁹² Amnesty International interview with, Rishi Dahal, VDC Secretary for Bigu, Charikot, 25 November 2016.

¹⁹³ Amnesty International interview with Saroj Kumar Shrestha, VDC Chair of Suspa-Kshemawati, Charikot, 25 November 2016.

¹⁹⁴ Data obtained by Amnesty International from DLPIU, Charikot.

¹⁹⁵ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 30 November 2016.

¹⁹⁶ Amnesty International telephone interview with Anil Sharma, Nepal Bankers Association, Kathmandu, 9 February 2017.

of the household instead of nominated representatives.¹⁹⁷ Dr Bhusal of the NRA stated the resolution of the banking obstacles is “ongoing.”¹⁹⁸

The problems with the nominee system disproportionately impacted on the elderly, people with disabilities and women with migrant husbands abroad who were unable to start rebuilding. Two examples really illustrate this point. Chabilal Siwakoti told Amnesty International delegates in November 2016 that because of his own persistent health issues and the need to look after his visually impaired mother, he has been unable to go to Charikot to receive the first tranche even though he had signed the agreement two-three months earlier. Living in poverty, he stated he had asked others to inquire and was told that the person whose house was destroyed must go to the bank.¹⁹⁹ Two sister-in-laws from Alampu had walked to Charikot to receive their money on behalf of their husbands working abroad having signed a nominee form. The Amnesty International team met them en route as they were hurriedly returning home. They had started off at 4am in the morning, reached the town of Singati by 7-8 a.m. but had not received their money at the cash distribution centre. They were told by men in charge that “the signature of the person whose name is on the land ownership papers is needed”.²⁰⁰ Complaining that their legs hurt and that they had wasted a day, they were hurrying back as “the children will also cry and the goats and livestock will die of hunger.”²⁰¹ These women’s cases were not the exception. According to Urmila Karki, the Laduk VDC Secretary, many single women were affected, “those poor women went to get their money at the bank at the given time ...some even up to four times.”²⁰²

In another case, Amnesty International delegates met Junu Kumari Magar Khadkha, a school teacher in Bigu, she was very concerned for her mother who had gone the previous day to Charikot to receive the first instalment.²⁰³ With a serious heart condition and usually restricted to moving around the house, her mother had been forced to go to the bank due to an error in the beneficiary list which listed her name as the house owner instead of her youngest daughter with whom she lived. Taken down on a goods-carrying truck the day before, Khadkha stated that her mother had vomited on her way down and while she had reached the bank accompanied by her sister, the mother had not eaten since her departure and was wondering aloud if she would be able to make it back home. Khadkha, weighing the options on how to bring her home, noted that apart from the 2-3 hour journey to Sorungkhola by bus or jeep, the option appeared to be to have her mother carried in a *doko* (basket) by a person in the traditional manner for the six hour uphill walk back. She explained the expense would be considerable due to the fact that two to three porters were required because of the load and the fact that one couldn’t rest while carrying people. Last year, she had offered NPR 1,500 (US\$ 15) per person to carry her father up but had been told that even if she offered to pay NPR 2,000 (US\$ 20), she would be hard pressed to find anyone. She stated that if her mother did survive this trip home, she would try and get the recommendation of political parties for someone else to go in her stead to collect the next instalment. In Alampu, recovering in bed from her previous day’s exertion of going to Singati to receive the first grant instalment, 78-year-old Dabali Sherpa talked of the need to go herself to get the other instalments: “What can I do? Even if I die on my way there, I have to go.”²⁰⁴

4.5 AFFORDABILITY

“[P]ersonal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised... States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.”²⁰⁵

As previously mentioned, the government announced in mid-December 2016 that house owners can use either one of the 17 government-approved models or their own EQ resistant models.²⁰⁶ The models include

¹⁹⁷ Inter-agency Common Feedback Project ‘Nepal Earthquake 2015, Community Perception Survey’, February 2017, available at www.reliefweb.int/sites/reliefweb.int/files/resources/Reconstruction1-February-10-2017-18-00-36.pdf

¹⁹⁸ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 19 March 2017.

¹⁹⁹ Amnesty International interview with Chabilal Siwakoti, Sunkhani, 14 November 2016.

²⁰⁰ Amnesty International interview with Dhan Maya Thami, Khopachangu, 19 November 2016.

²⁰¹ Amnesty International interview with Suk Maya Thami, Khopachangu, 19 November 2016.

²⁰² Amnesty International interview with Urmila Karki, Charikot, 26 January 2017.

²⁰³ Amnesty International interview with Junu Kumari Magar Khadkha, Bigu, 22 November 2017.

²⁰⁴ Amnesty International interview with Dabali Sherpa, Alampu, 20 November 2016.

²⁰⁵ CESCR, ‘General Comment No. 4’, para. 8(c).

²⁰⁶ Kathmandu Post, ‘Earthquake-resistant house designs proposed’, 25 December 2015, available at www.kathmandupost.ekantipur.com/news/2015-12-25/17-earthquake-resistant-house-designs-proposed.html

quantity of materials as well as skilled and unskilled labour required for the construction of the design.²⁰⁷ According to an engineer in Dolakha, there are very few takers for the recommended models in the district.²⁰⁸ A donor calculated that the cheapest model according to the labour and materials cited as necessary in the design amounted to NPR 2 to 2.5 million (US\$ 20,000-25,000).²⁰⁹ The increase in the total amount of the grant from NPR 200,000 (US\$ 2,000) to NPR 300,000 (US\$ 3,000) in December 2016 was tied to building either a toilet, a bio-gas plant or installed solar power,²¹⁰ which makes the building more expensive.

Amnesty International acknowledges that the Government has always made it clear that the grants were not meant to cover the total cost of reconstruction. According to the Deputy Director General of the DUDBC Ramchandra Dangal, “there is no relationship between three lakhs (NPR 300,000 [US\$ 3,000]) and model” and the grant money was given as “[the] government said [to the people] ‘you are in hardship, so we will help.’”²¹¹ However, there are assumptions that the government has made which on closer scrutiny pose substantial obstacles for already-disadvantaged groups to benefit from the CGA and to receive at least the basic essential level of the right to adequate housing as set out in GC4 quoted above.

For example, the reconstruction housing is based on the assumption that villagers will be able to get loans from banks as outlined in the *Grant disbursement procedures for private houses destroyed by the earthquakes 2016*²¹². However, accessibility of such loans for villagers who are unable to provide a guarantee for repayment is questionable. According to local journalist Laxman Khadkha, “the government has said it will give loans at 2%, [but] not one single village person has access to that”.²¹³ Journalist Chiranjibi Maskey stated that he had been trying to get a loan for repairs to his house and the process would include having some collateral, paying to have that collateral evaluated, paying the municipality the 1.1 % service charge, all of which will cost a couple of thousands rupees. “To take a bank loan, to fulfil procedures, the vulnerable will not be able to do it, it [the loan] is only for those who have money.”²¹⁴ Further, without central bank guarantees of loan repayment, private banks have resisted issuing group guarantee and soft loans.²¹⁵ According to an NRA official, the banks will require collateral and the possibilities of banks giving loans according to group guarantees are “bleak.”²¹⁶

The *Policy on Reconstruction and Rehabilitation 2016* prioritises the use of sustainable local skills, materials and resources.²¹⁷ This was reiterated by the NRA spokesperson who stressed that local materials of stone, mud and wood would enable villagers to make homes with the government grant.²¹⁸ Costs are a key factor in making things extra difficult for those already at a disadvantaged position. Central to this are rising labour costs. Before the earthquake skilled labour costs were between NPR 500-600 (US\$ 5-6) per day with unskilled labour costs around NPR 400-500 (US\$ 4-5). After the earthquake, skilled labour costs around NPR 1,000 (US\$ 10) per day and can cost as much as NPR 1500 (US\$ 15) and unskilled labour at NPR 900 (US\$ 9) or NPR 1,000 (US\$ 10).²¹⁹

²⁰⁷ See MOUD-produced list of designs for the reconstruction of earthquake-resistant homes, available at www.nra.gov.np/uploads/docs/WbTPRQc9hE160624113851.pdf

²⁰⁸ Amnesty International interview with Lavalesh Karna, engineer, DUDBC, Charikot, 15 November 2016.

²⁰⁹ Amnesty International interview with Milan Mukia, Country Representative Cordaid, Kathmandu, 24 January 2017.

²¹⁰ Grant disbursement procedures 2016 (2073).

²¹¹ Amnesty International interview with Ramchandra Dangal, Kathmandu, 16 March 2017.

²¹² Grant disbursement procedures 2016 (2073).

²¹³ Amnesty International interview with Laxman Khadkha, Charikot, 11 November 2016.

²¹⁴ Amnesty International interview with Chiranjibi Maskey, Charikot, 16 November 2016.

²¹⁵ See Sagar Ghimire, ‘Few takers for subsidized quake loans to rebuild homes’, 29 June 2016, available at www.myrepublica.com/news/1070/; and Asia Foundation et al., ‘IRM-Thematic Study’, 2016, p. 32.

²¹⁶ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 19 March 2017.

²¹⁷ Policy on Reconstruction 7.1.d.

²¹⁸ Amnesty International interview with Ram Thapaliya, Kathmandu, 15 April 2016.

²¹⁹ Further, traditionally the house owner has to provide two meals and one snack to the labourers Amnesty Interview with Krishna Bahadur Khadkha, Bhimeshwor Hardware Order and Suppliers, Charikot, 11 November 2016. In the upper part of Alampu, Jit Lal Thami added that out of tradition local alcohol would also be provided along with the meals and snacks, adding to costs. Amnesty International interview with Jit Lal Thami, Alampu, 21 November 2016.



Rebuilding a house in Khabre VDC, Dolakha District, November 2016. © Amnesty International

According to the *Training Facilitation and Management Guidelines*,²²⁰ a cascaded training programme is an integral part of the reconstruction effort, with national level “master trainers” instructing and teaching mobile teams to then work with VDCs and municipalities to train those directly involved in the reconstruction. However, as of late January 2017 a shortage of masons was reported with only 5,000 new masons trained during 2016 and at least 200,000 trained masons required in the 14 districts.²²¹ Apart from the trained masons who have reportedly left to work abroad,²²² those masons who are trained were said to have become contractors²²³ – hiring others to work with them – and consequently their labour costs increased.²²⁴ The *Policy on Reconstruction and Rehabilitation 2016* encourages the use of the traditional system of labour exchanges, “*parma*”, to rebuild houses, prioritising those families and houses of the “socially backward.”²²⁵ However, interviews revealed that *parma* was used in the villages and could be of utility, but the nature of earthquake reconstruction of private houses renders it problematic. More specifically, as everyone is rebuilding, labour is hard to find²²⁶ and because the building of houses requires 10 to 20 people, villagers would spend most of their time labouring on other people’s houses with no breaks in between to earn a living.²²⁷ Participants in one focus group discussion all agreed that *parma* was “not possible, pointing out that under the *parma* system, if one was unable to go, one had to send someone else.”²²⁸ Others said actually *parma* was equivalent to hiring someone, which was preferable²²⁹ because then one had “no tension” and could just go somewhere to earn that money and pay off debts.²³⁰ Interviewees also pointed out that because people would each demand that their houses be built first, and if one was not able to pay back *parma* when requested, including when one got sick, this would lead to additional social tensions.²³¹

In terms of general costs, a construction materials store owner explained that “everything depends on transportation”.²³² For example, a brick produced in Bhaktapur (in the Kathmandu valley) cost Rs17, and

²²⁰ Training Facilitation and Management Guidelines - (English Version), available at http://www.hrrpnepal.org/download/JwUtWhEfxrPNZ63XlZCY_2017_02_22.pdf/resources

²²¹ Sangeet Sangroula, ‘Failure to train masons on time slows reconstruction’, 30 Jan 2017, available at www.myrepublica.com/news/13982

²²² Sangeet Sangroula, ‘Failure to train masons on time slows reconstruction’, 30 Jan 2017, available at www.myrepublica.com/news/13982

²²³ Amnesty International interview with Prem Kumar KC, Singati, 18 November 2016.

²²⁴ Amnesty International interview with Kale Sherpa in Singati, 18 November 2016.

²²⁵ Policy on Reconstruction, annex 1, 1.4.

²²⁶ Amnesty International interview with Kancha Sherpa, Bigu, 21 November 2016.

²²⁷ Amnesty International interview with Jit Lal Thami, Alampu, 21 November 2016.

²²⁸ Amnesty International focus group discussion with Lal Bahadur Khatri, Indra Prasad Dahal, Lekh Bahadur Dahal and Dil Kumar Dahal, Khabre, 26 November 2016.

²²⁹ Amnesty International interview with Pasang Sherpa, Bigu, 22 November 2016.

²³⁰ Amnesty International interview with Jit Lal Thami, Alampu, 21 November 2016.

²³¹ Amnesty International focus group discussion with Lal Bahadur Khatri, Indra Prasad Dahal, Lekh Bahadur Dahal and Dil Kumar Dahal, Khabre, 26 November 2016 and with Jit Lal Thami, Alampu, 21 November 2016.

²³² Amnesty Interview with Krishna Bahadur Khadka, Bhimeshwor Hardware Order and Suppliers, Charikot, 11 November 2016.

costs Rs 20 to Rs21 by the time it reaches Charikot.²³³ The same bricks cost Rs 33 at the Tashi Chime Gatsal Gumba (Monastery) in Bigu, Dolakha.²³⁴ Further costs will increase depending on the state of the road – good roads meant larger trucks and heavier loads²³⁵ with ensuing economies of scale. Especially relevant for the northern VDCs of the district, the smaller the road, the more expensive it becomes to transport construction materials.²³⁶

There are other assumptions about costs in reconstruction that are problematic. The NRA spokesperson had stated that 60% of the debris from the old house is salvageable.²³⁷ According to the PDNA sector report, “The materials salvaged from collapsed houses are likely to result in recycling of 80% stone, 30% wood and 25% brick in reconstruction. This will help speed up reconstruction by reducing financial and transport burdens.”²³⁸ However, a government engineer in Kabhre VDC stated that out of the 75 houses he has seen, approximately 50% of the wood and only 20% of the stones can be reused. This is because stones break when houses collapse and the earthquake-resistant models require the use of large stones compared to the smaller ones used in older houses.²³⁹ Another engineer employed by an NGO estimated that half the stones²⁴⁰ and 10-15% of the wood can be re-used but he recommended using only new wood.²⁴¹ Re-usable material has also been used in the making of temporary shelters, decreasing the amount available for the reconstruction effort.²⁴²

The assumption of wide availability of locally available resources stressed by the government is also of concerns. In a focus group discussion in one VDC with men in the process of building a house, they stated that access to wood was their number one problem as the community forest user groups (CFUG) “control” the use of wood according to their own internal guidelines,²⁴³ giving only 20 cubic feet for each house/family, which they stated is hardly sufficient to make doors and windows.²⁴⁴ CFUG members in Namdu confirmed that the maximum wood one can get per household is 20 cubic feet. However, given the scale of reconstruction required in Dolakha district, distribution to all affected households “...is not possible. The jungle will be destroyed.”²⁴⁵

Although CFUG members pay a small royalty to get the wood, there are considerable costs involved if one is unable to cut down the tree and carry/transport it to the road, to the mill and finally to the construction site itself. According to one CFUG member, single women, the elderly and people with disabilities will have to pay others as “[p]eople will do it if they get money, otherwise they won't.”²⁴⁶ There are additional costs transporting the wood in a truck from the road to the mill, then the cost of sawing the wood in the mill and then transporting it to the place of construction. Furthermore, *salla* (pine) and *uthis* (Nepali alder) (two types of wood) widely available in the district were said to be unsuitable for use in houses without treatment for termites²⁴⁷ and to prevent the wood from rotting after a couple of years. This adds further to the overall costs. The use of stones is also more difficult than originally envisaged by the government. Engineers and those who had started to build houses stressed the fact that apart from needing to buy stones, old and new stones now needed to be of a certain size and shape, which translated into increased costs as these stones need to be cut by professional cutters.²⁴⁸ In terms of mud, apart from the fact that mud cannot be reused, it comes in various qualities with good quality red mud mostly available in the hills. Given that is not available everywhere,²⁴⁹ digging up and transporting the red mud requires one's own labour or the paid labour of others. For example, in Alampu, a man in his forties stated that he could potentially do six trips of one doko (basket) full (40 kilos in one doko at a time) from a nearby hill with good quality mud, a 20 minute walk

²³³ Amnesty Interview with Krishna Bahadur Khadkha, Bhimeshwor Hardware Order and Suppliers, Charikot, 11 November 2016.

²³⁴ Amnesty Interview with Gese Lopsang Gyalsang Lama, Bigu, 22 November 2016.

²³⁵ Amnesty Interview with Krishna Bahadur Khadkha, Bhimeshwor Hardware Order and Suppliers, Charikot, 11 November 2016.

²³⁶ Amnesty International interview with Prem Kumar KC, Gauri Shankar Trading Concern, Singati, 18 November 2016.

²³⁷ Amnesty International interview with Ram Thapaliya, Kathmandu, 15 April 2016.

²³⁸ PDNA Volume B, p. 15.

²³⁹ Amnesty International interview with Pawan Khanal, Sub-engineer, Kabhre, 17 November 2016.

²⁴⁰ This estimate was also given by a state engineer. Amnesty International interview with Lavalesh Karna, engineer, DUDBC, Charikot, 27 January 2016.

²⁴¹ Amnesty International interview with Santosh Kulal, engineer for Save the Children, Kabhre, 17 November 2016.

²⁴² Amnesty International saw wood and stones being utilized in many temporary shelters of people.

²⁴³ In government provisions for increasing wood supply for earthquake affected, local and neighbouring CFUGs are prioritized as the first supply source. Directives for the harvesting, supply and management of wood 2016 (Unofficial Translation), available at http://www.hrrpnepal.org/download/fGJcZAoDaWubsOH4FXjR_2017_02_22.pdf/resources

²⁴⁴ Amnesty International focus group discussion with Lal Bahadur Khatri, Indra Prasad Dahal, Lekh Bahadur Dahal and Dil Kumar Dahal, Khabre, 26 November 2016.

²⁴⁵ Amnesty International interview with Chandra Bahadur Bhandari and Sambhu Bhujel, Namdu, 17 November, 2016.

²⁴⁶ Amnesty International interview with Saran Ghimire, Namdu, 17 November, 2016.

²⁴⁷ Amnesty International interview with Pramod Kumar Sah, Civil engineer, DUDBC, Charikot, 27 January 2016.

²⁴⁸ Amnesty International interview with Mukunda Siwakoti, Suspa-Kshemawati, 13 November 2016; Pawan Khanal, Sub-engineer, Kabhre, 17 November 2016; and Jit Lal Thami, Alampu, 21 November 2016.

²⁴⁹ Amnesty Interview with Krishna Bahadur Khadkha, Bhimeshwor Hardware Order and Suppliers, Charikot, 11 November 2016.

away, in one day. The place with the better mud was further away, enabling only 1 trip a day given distance needed to travel and time required to dig out the mud, place in the doko and carry back.²⁵⁰

In terms of other construction material, in October 2016, the NRA had announced plans to establish “construction material banks,” in order to ensure the supply of construction materials at reasonable rates.²⁵¹ In late January 2017, the Dolakha NRA head of office stated that initial plans for a construction material bank had been considered for cement and iron rods but had been later shelved after talks with the Dolakha chapter of the Federation of Nepalese Chamber of Commerce and Industries (FNCCI) who had stated that there were sufficient supplies.²⁵²

Amnesty International tracked basic construction material prices in a construction goods store in Charikot from mid-April 2015 to mid-January 2017. This revealed that while the price of cement and bricks had remained fairly constant (the price of cement had actually decreased since around mid-August 2016), the price of sand and crushed stones had increased since around mid-November 2016. Sand had tripled from NPR 500 (US\$ 5) to NPR 1,500 (US\$ 15) per cubic meter and small stones had doubled from NPR 1,000 (US\$ 10) to NPR 2,000 (US\$ 20) per cubic meter.²⁵³ There was reportedly a shortage of sand in Dolakha²⁵⁴ resulting in delays in reconstruction.²⁵⁵

Importantly, the government has not provided special measures for people in remote villages, aside from those that NGOs are expected to fulfil namely “transportation management necessary for private housing reconstruction in prescribed remote areas” (7.2.d.3.) mentioned in the NGO guidelines.²⁵⁶ Debates on what constituted sufficient amounts to construct earthquake resistant houses have taken place from the outset of the reconstruction phase,²⁵⁷ linked to rising prices of construction materials²⁵⁸ and the connected fears of shortages given high demand.²⁵⁹ Damini Sherpa, a resident of Alampu, spoke of “earthquake victim season” as demands for construction supplies by those seeking to rebuild their homes leads to increasing prices.²⁶⁰ The NPR 300,000 (US\$ 3,000) amount is seen as insufficient, especially for those living in remote areas. According to the VDC Secretary of Alampu, “this [money] is not enough for urban areas; in remote places this will definitely not be enough.”²⁶¹

The nature of the three tranche payments was seen by many people to be particularly problematic. The first tranche of NPR 50,000 (US\$ 500) is supposed to cover the building up to the plinth level. However, several interviewees pointed out that the clearing of the rubble from the damaged houses cost a considerable amount of money. Kali Sarki stated that she had spent NPR 25,000 (US\$ 250) just to clear the rubble from her destroyed house and make the land flat.²⁶² Without building up to the specified level, she would be unable to receive the second tranche. Similarly, according to a donor, the owner of a severely cracked three storey mud house in Rasuwa continued to live in it at risk, claiming that it would cost him NPR 300,000 (US\$ 3,000) to just demolish his house.²⁶³ In Pakistan, the first tranche had been calculated according to building costs up to the first required level.²⁶⁴ In Nepal, the NPR 50,000 (US\$ 500) was calculated as sufficient in combination with reusable material from the old house.²⁶⁵ As noted before, these calculations

²⁵⁰ Amnesty International interview with Jit Lal Thami, Alampu, 21 November 2016.

²⁵¹ Gyan P. Neupane, “Construction materials banks’ to open in quake-hit areas”, 18 October 2016, available at www.myrepublica.com/news/7475

²⁵² Amnesty International interview with Sagar Acharya, Charikot, 26 January 2016.

²⁵³ Amnesty International mapping of costs according to Krishna Bahadur Khadkha at Bhimeshwor Hardware Order and Suppliers, Charikot, 11 November 2016.

²⁵⁴ Amnesty International interview with Pramod Kumar Sah, Civil engineer, DUDBC, Charikot, 27 January 2017. Official tracking of the supply and demand for construction material by the DUDBC in Charikot also shows that demand outstripped supply of all basic construction goods, with shortages in especially sand and small stones.

²⁵⁵ Subas Yonjon, ‘Structures remain unfinished as construction material unavailable’ (in Nepali), 18 January 2017, available at www.annapurnapost.com/epaper/detail/241#&gid=1&pid=8

²⁵⁶ Guidelines for management of NGOs.

²⁵⁷ The government’s decision to increase the reconstruction grants and loans after Maoist leader Pushpa Kamal Dahal became Prime Minister has to be located in the context of these debates. In early May 2015, while the Nepali Congress and Communist Party of Nepal (Unified-Marxist-Leninist) proposed NPR 300,000 (US\$ 3,000) for each destroyed house, the Maoist party has proposed at least NPR 500,000 (US\$ 5,000). See Bhadra Sharma, ‘Three parties differ on details’, 8 May 2015, available at www.kathmandupost.ekantipur.com/news/2015-05-08/three-parties-differ-on-details.html

²⁵⁸ Sujata Awale, ‘Price of construction material could witness significant hike next fiscal’, 20 June 2015, available at www.thehimalayantimes.com/business/price-of-construction-material-could-witness-significant-hike-next-fiscal

²⁵⁹ Rupak D. Sharma, ‘Country may face shortage of construction materials’, 14 October 2016, available at www.kathmandupost.ekantipur.com/news/2016-10-14/country-may-face-shortage-of-construction-materials.html

²⁶⁰ Amnesty International interview with Damini Sherpa, Alampu, 20 November 2016.

²⁶¹ Amnesty International interview with Ramu Poudel, VDC Secretary from Alampu, Charikot, 15 November 2016.

²⁶² Amnesty International interview with Kali Sarki, Sunkhani, 14 November 2016.

²⁶³ Amnesty International interview with Milan Mukia, Country Representative, Cordaid, Kathmandu, 24 January 2017.

²⁶⁴ Amnesty International interview with Kamran Akbar, Kathmandu, 9 March 2017.

²⁶⁵ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 19 March 2017.

are flawed. According to the February 2017 Reconstruction Community Perception Survey, 31% of respondents stated that the first tranche is insufficient to begin work.²⁶⁶ The low number of people seeking the second tranche of payments (less than 1%)²⁶⁷ may reflect the obstacles faced by people to clear debris and build up to the requisite level with the initial tranche amount.

In Bhirkot, VDC Secretary Prem Prakash Khatri mentioned that the main challenge of building a house is poverty. He explained that he needed to build an earthquake resistant model, but that with ten people living his house, NPR 300,000 (US\$ 3,000) would not be sufficient.²⁶⁸ People interviewed were critical of the claim that the grant money given by the government was intended not to build the whole house but “help” in that endeavour. According to a donor, for earthquake victims with no money and limited access to livelihood “on what basis should [they] take this help as help?”²⁶⁹

While the government has established housing subsidies, it has not ensured that the housing finance adequately reflects housing needs and that the personal or household financial costs associated with housing does not threaten or compromise the satisfaction of other basic needs, contrary to international law requirements.

4.6 PERSONAL DEBT

In the VDCs visited by Amnesty International delegates, people are struggling to run their lives and rebuild in the aftermath of the earthquake in the midst of limited livelihood options. Many of those who had lost their homes told Amnesty International that they had already taken loans to survive. Some stated that they had taken loans from local cooperatives. The manager of the Jana Sachetan Cooperative in Kabhre confirmed that there had been about a 10% rise in “non-productive” lending after the earthquake, given that people had lost their grains as well as houses and needed to survive.²⁷⁰

The majority of interviewees stated that they had borrowed from local money lenders and cooperatives at varying rates of interest. Thami men in a focus group discussion in a displaced settlement at Panipokhari Suspa-Kshemawati revealed that they had taken out loans with local money lenders which was at its lowest rate 36%.²⁷¹ Hari Shrestha had taken a NPR 50,000 (US\$ 500) loan to make a temporary shelter at 25 % interest rate and had sold a pair of buffalos to make ends meet. He stated that he “would not have sold [them] if there had been no earthquake, because we would not have had this hardship.”²⁷² Pasang Sherpa stated that he had taken more loans after the earthquake, around NPR 200,000 (US\$ 2,000) in total at 30 and 36% to build his temporary shelter and survive.²⁷³ Nimi Tashi Sherpa in Bigu had started rebuilding without first signing an agreement as “It wasn’t certain when the government’s money will come, if one will get or not, when it will be given.” Sherpa had already taken a NPR 300,000 (US\$ 3,000) loan from relatives to build his house and planned to take another NPR 300,000 loan (US\$ 3,000).²⁷⁴

Interviews revealed that the necessity of resorting to informal borrowing especially heightened the vulnerability of single women. A single Dalit woman who had taken loans from within the village and the local cooperative (which offered lower interest rates) stated that the local loans were more convenient even if the interest rates were higher as they were instantly available and not on set days of the week. Indicating movement towards a debt trap, she said, “I bring loans from the village and to pay that village loan sometimes I take from the cooperative” as the cooperative has a cheaper interest rate (at 15%) compared to the village rate of 20%. She cannot read and living with an aunt-in-law who was also single, she had no real idea how she would pay back the loans, and refused to sell off her two goats despite pressure to do so.²⁷⁵

²⁶⁶ Inter-agency Common Feedback Project, ‘Nepal Earthquake 2015, Community Perception Survey’, February 2017, available at www.reliefweb.int/sites/reliefweb.int/files/resources/Reconstruction1-February-10-2017-18-00-36.pdf

²⁶⁷ Gyan P Neupane, ‘Reconstruction delayed further as few quake victims turn up for 2nd tranche’, 20 March 2017, available at www.myrepublica.com/news/16770/

²⁶⁸ Amnesty International interview with Prem Prakash Khatri, VDC Secretary Bhirkot and Japhe, Charikot, 25 November 2016.

²⁶⁹ Amnesty International interview with Milan Mukia, Country Representative, Cordaid, Kathmandu, 24 January 2017.

²⁷⁰ Amnesty International interview with Krishna Kumar Shrestha, Jana Sachetan Cooperative, Kabhre, 17 November 2016.

²⁷¹ Amnesty International focus group discussion with displaced community in Suspa-Kshemawati, 13 November 2016.

²⁷² Amnesty International interview with Hari Shrestha, Khopachangu, 19 November 2016.

²⁷³ Amnesty International interview with Pasang Sherpa, Bigu, 22 November 2016.

²⁷⁴ Amnesty International interview with Nima Tashi Sherpa, Bigu, 22 November 2016.

²⁷⁵ Amnesty International interview with Kali Sarki, Sunkhani, 14 November 2016.

A single woman with two young children from the displaced settlement in Suspa-Kshemawati disclosed that she had outstanding loans with interest of 3% from a nearby shop – loans taken “for the children, to eat and wear [clothes].” Getting work depended on the season and employer’s demand. When she could get work in the fields, in the off-season she would work for NPR 100 (US\$ 1) per day, and NPR 200 (US\$ 2) during the season time. In answer to how she will pay the loan, she stated “how to pay, I don’t know,” pointing out that “others have husbands, they earn and bring.” Compared to before the earthquake she stated life became harder “I have no money and need to feed and clothe my children”.²⁷⁶

While a rise on indebtedness appeared widespread post-earthquake,²⁷⁷ it was quite clear that those living in poverty and with limited access to formal financial institutions were turning to informal lenders who charged higher interests, thereby increasing their vulnerability. Interviews indicate that cooperatives in more geographically remote locations also charge higher rates: one man had taken a loan from a cooperative in Singati at a 16% interest rate²⁷⁸ while the displaced in Suspa-Kshemawati were paying 28% to their cooperative.²⁷⁹ One result of the increasing indebtedness may be an increase in migration in the future. Maina Thami’s²⁸⁰ husband had gone to India to earn money to pay off debts after building their house while Hari Shrestha who had never been abroad had applied for a passport and was ready to go and earn money to pay off his debts. He stated “I need to pay back the loans I took here, I can’t earn staying here, without earning [I] have to go.”²⁸¹ Pasang Sherpa stated “after making this house, and [taking] the loan [to build the house]...we are forced to go abroad.”²⁸²

Deputy Director General of DUDBC Ramchandra Dangal reiterated to Amnesty International that the grant is meant “to help,” and added the rationale that “[b]efore, these houses were made by people not by the government.”²⁸³ However, this occludes the fact that in the aftermath of the 1934 earthquake in Nepal, the government gave grants and loans to people to rebuild houses or buy construction material at specific discounts, depending on their socio-economic status. The latter information was specifically sought by the government in their post-earthquake census, and was used to target levels of support, including those required by single women.²⁸⁴

²⁷⁶ Amnesty International interview with Shanti Maya Thami, Suspa-Kshemawati, 13 November 2016.

²⁷⁷ See The Asia Foundation, ‘Aid and Recovery in Post-Earthquake Nepal Synthesis Report – Phase 2 (February and March 2016)’, July 2016, available at http://asiafoundation.org/wp-content/uploads/2016/09/IIRMPPhase2_SynthesisReport.pdf

²⁷⁸ Amnesty International interview with Devendra Khatiwada, Singati, 14 November 2016.

²⁷⁹ Amnesty International focus group discussion with displaced community in Suspa-Kshemawati, 13 November 2016.

²⁸⁰ Amnesty International interview with Maina Thami, Alampu, 20 November 2016.

²⁸¹ Amnesty International interview with Hari Shrestha, Khopachangu, 19 November 2016.

²⁸² Amnesty International interview with Pasang Sherpa, Bigu, 22 November 2016.

²⁸³ Amnesty International interview with Ramchandra Dangal, Kathmandu, 16 March 2017.

²⁸⁴ See Martin Chautari, ‘Research Brief: Relief distribution, reconstruction and management after the 1990 vs earthquake’ (in Nepali), May-June 2016, available at www.martinchautari.org.np/files/ResearchBriefNo_17NEPALI.pdf

5. GRANT DISTRIBUTION AND BANKS

According to the *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, the responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.²⁸⁵ In the earthquake reconstruction, most banks manifestly fail to meet this standard.

The grant assistance programme began in Singati, Dolakha on a pilot basis. The first CGAs were signed on 14 March 2016 and on 11 April 2016, the first cash payments were made in Singati, Dolakha via two banks which had signed separate agreements with the government, the Rastriya Banijiya Bank (RBB) and Nepal Investment Bank Limited (NIBL)

The distribution of grants was slow partly due to the need for each beneficiary to sign agreements but also because of reliance on government banks to distribute funds in addition to their regular activities.²⁸⁶ Further, according to interviews with the management at the Sakchaym Access to Finance Programme funded by UKAid, which assisted in the pilot distribution of funds in Singati, there were prolonged negotiations that started in late 2015 between the government and private banks over the necessity of utilizing private banks and the payment for services rendered in grant distribution.²⁸⁷

On 27 May 2016, the NRA and the Nepal Bankers Association, Development Bankers Association Nepal and Nepal Financial Institution Association signed an agreement²⁸⁸ and on 30 May 2016, the NRA signed another agreement with 29 individual banks and financial institutions to distribute cash grants to earthquake beneficiaries.²⁸⁹ The latter agreement included clustering banks and financial institutions operating in each district.

Crucially, the Nepali government subsequently backtracked from its early commitments to make the process as accessible as possible to earthquake affected people, detrimentally affecting the most disadvantaged groups. More specifically, in initial discussions with the Nepal Planning Commission (NPC) on 24 December 2015 involving the NPC vice-chair Yuba Raj Khatriwada, ministries, donors and banks,²⁹⁰ banks stated the possibility of increasing the number of branchless banking (BLB) centres²⁹¹ from 200 to more than 600 to make banks accessible to citizens if they received necessary support. Minutes of the same meeting reveal that both the banks and the government representatives agreed that all the costs of security services requested by the banks would be provided by the government, and the “mobility costs” of banks, that is the costs of the provision of BLB, would be factored into bank fees.²⁹²

Point 12 of the agreement between the NRA and the Nepal Bankers Association, Development Bankers Association Nepal and Nepal Financial Institution Association states that BLB or other arrangements can be undertaken on the basis of local demands and necessity and on the recommendation of the district

²⁸⁵ U.N. Guiding Principles on Business and Human Rights, 2011, p. 17, available at www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²⁸⁶ Krishna Acharya, ‘Didn’t get money’ even after 2 months of the agreement (in Nepali), 30 May 2016, available at www.kantipur.ekantipur.com/printedition/news/2016-05-30/20160530090601.html

²⁸⁷ Amnesty International interview with Baljit Vohra, Sakchayam, 26 January 2017.

²⁸⁸ See ‘Agreement letter between NRA and bankers association’ (in Nepali), available at www.nra.gov.np/uploads/docs/vKpnAvQ3kU160527051608.pdf (hereinafter: Agreement between NRA and bankers)

²⁸⁹ To reiterate, the banks involved in the grant distribution in Singati in April 2016 had signed separate agreements with the government earlier.

²⁹⁰ Present in the meeting were the Ministry of Federal Affairs and Local Development Ministry, the Finance Ministry, World Bank, Sakchayam, the Banijiya Bank and commercial banks. Minutes obtained by Amnesty International.

²⁹¹ Branchless banking (BLB) is defined as a distribution channel strategy used for delivering financial services without relying on physical bank branches. See Sakchayam, ‘Access to Finance’ at www.sakchayam.com.np/

²⁹² Minutes obtained by Amnesty International.

coordination subcommittee. Such initiatives have to be undertaken by the NRA with the agreement of the Ministry of Finance and the Nepal Rastra Bank (Central Bank of Nepal).²⁹³ The initial Payment Service Agreement of 13 March 2016 between RBB and the Dolakha District Development Committee for the pilot distribution of cash grants²⁹⁴ reflected this: “Service Provider shall setup mobile distribution and signup camps for beneficiaries that cannot travel to branchless banking locations prescribed to the beneficiaries.”²⁹⁵ As late as July 2016, Ram Prasad Thapaliya, spokesperson for the NRA was quoted as stating that: “We have already started the work and are in talks with banks and financial institutions on ways to reach out to the remote areas through branchless services to distribute rebuilding aid to the affected households.”²⁹⁶

According to Anil Sharma, Director of the Nepal Bankers’ Association, the costing calculations for branchless banking and mobile cash camps (temporary cash distribution points beyond BLB points), including security, were submitted in January 2016.²⁹⁷ However, a donor stated that because of indecision within the NRA, the government emphasized the distribution through existing banking channels in the short-term with alternative options and their related costs to be discussed later.²⁹⁸ Acknowledging that the NRA had received the costs breakdown from the Bankers Association for various grant distribution modalities beyond existing banking branches and services, Dr. Bhusal stated, “In straightforward terms, no one wanted to take that decision because of the huge amount [involved].”²⁹⁹

The district-level government has a responsibility in providing accessible financial services as noted in the coordinating role of the DDC in the agreement between the NRA and the Nepal Bankers Association, Development Bankers Association Nepal and Nepal Financial Institution Association. According to Dr. Bhusal, the clustering of banks in the district was decided by local authorities - the DDC - and locally operating banks.³⁰⁰ In Dolakha district,³⁰¹ after the initial clustering had led to three to four banks covering one VDC, discussions among banks led to a reorganization so that only one bank distributed grants in any given VDC. The DDC simply informed the NRA of these changes.³⁰² Additionally, in terms of banking access for citizens, according to Dr. Bhusal when the NRA had initially asked DDCs of 11 districts in consultation with the banks to give a list of where branchless banking could be undertaken, only three districts responded that they could do it, adding that the banks appeared not to be open to such arrangements.³⁰³

The local administration in Dolakha further did not enforce existing agreements that would have made banking transactions more accessible to villagers. The initial Payment Service Agreement of 13 March 2016 between RBB and the DDC signed before the April 2016 pilot distribution of cash grants specified that branchless banking would be established in Singati. Under “Period of Performance”, the agreement states that “The Services shall commence from 3/13/2016, and shall continue until evoked for cancellation by either party to this agreement.”³⁰⁴

Citing the monsoon and security issues, after having done the initial distributions from the town of Singati, RBB requested and received authorization from the LDO to distribute all other grants payments from their branch in the district headquarters, Charikot.³⁰⁵ When pressed about the exact nature of security threats, Umesh Timilsina the bank manager stated that there were “noises, rumours during the night,” and that the District Administration Office (DAO) had warned them to be alert.³⁰⁶ However, Caritas International, an INGO which has taken the responsibility of funding the reconstruction of houses in Worang and Bulung VDCs, and is utilizing Laxmi microfinance bank in Singati, stated that they found no risk according to their risk-assessment.³⁰⁷ The RBB did not respond to Amnesty International’s request for clarification on the revision of agreements with the DDC.

²⁹³ Agreement between NRA and bankers.

²⁹⁴ This was a day before the grant assistance programme began with the first cash grant agreements signed in Singati.

²⁹⁵ Agreement obtained by Amnesty International.

²⁹⁶ Kathmandu Post, ‘Banks to disburse aid to cluster settlements’, 8 July 2016, available at www.kathmandupost.ekantipur.com/printedition/news/2016-07-08/banks-to-disburse-aid-to-cluster-settlements.html

²⁹⁷ Amnesty International interview with Anil Sharma, Nepal Bankers’ Association, Kathmandu, 24 January 2017.

²⁹⁸ Amnesty International interview with international donor, name withheld, Kathmandu, 26 January 2017.

²⁹⁹ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 24 January 2017.

³⁰⁰ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 30 November 2016.

³⁰¹ A total of 16 banks are involved in grant distribution in Dolakha. Document obtained by Amnesty International from DLPIU, Charikot, 11 November 2016.

³⁰² Amnesty International interview with Pushkar Karki, Manager, Infrastructure Development Bank, Charikot, 15 November 2016.

³⁰³ Amnesty International interview with Dr. Bhishma Bhusal, NRA, Kathmandu, 24 January 2017.

³⁰⁴ Agreement obtained by Amnesty International.

³⁰⁵ Amnesty Interview with Umesh Timilsina, Manager, Rastriya Banijiya Bank, Charikot, 16 November 2016.

³⁰⁶ Amnesty Interview with Umesh Timilsina, Manager, Rastriya Banijiya Bank, Charikot, 16 November 2016.

³⁰⁷ Amnesty Interview with Manindra Malla, Programme Manager, Caritas Nepal, Kathmandu, 23 January 2017. The ability of Caritas to distribute from Singati was often given as an example by villagers in the northern district as to how it was possible for the grant distribution to be brought closer.



Earthquake survivors queuing to collect their cash grants at a cash distribution centre in Singati town, Dolakha District, November 2016. © Amnesty International

The allocation of banks to VDCs in Dolakha district was an issue, especially for inhabitants of the northern VDCs. The NIBL was given three VDCs in the north of the district – Alampu, Chilanka and Laduk – even though it has no presence in Dolakha district. While it provided BLB service from Singati, its nearest branch for residents of these VDCs is in Manthali in neighbouring Ramechhap district. The consequences of this was made explicit in a group discussion in Singati during the grant distribution for the VDCs of Alampu and Chilanka. Amnesty International delegates approached people while they were queuing to collect their grants in Singati. Standing in a line of approximately 20 people at the gate of the grant distribution area, three people stated that this was their third or fourth attempt to collect their grant money.³⁰⁸ One of those in line said, “other banks do it fast – this one – ... we have to come three to four times.”³⁰⁹ In their view, the problem was that the nearest branch was in Manthali which prolonged the resolution of discrepancies in CGAs and banking arrangements, given the need for paperwork to be revised and approved by the VDC Secretary, resubmitted to the bank in Manthali, and approval and cash to follow only after. However, responding to Amnesty International enquiries, NIBL stated that:

“The unavailability of a Branch did not necessarily contribute to the delay of the transfer of money as the corrections were to be done by VDC/DDC. The corrected information would then be provided to the Bank by DDC.”³¹⁰

The VDC Secretary of Alampu, Ramu Paudel, pointed out that the second and third tranche would be larger than the first one and payments would not happen in such BLB points simultaneously to whole VDCs given the different pace of housing reconstruction.³¹¹ This would result in individuals having to travel to physical

³⁰⁸ Amnesty International group interview with Purba Sherpa, Tarun Khadkha and Kale Sherpa from Chilangka, Singati, 18 November 2016.

³⁰⁹ Amnesty International interview with Purba Sherpa, Singati, 18 November 2016.

³¹⁰ Nepal Investment Bank letter dated 14 March 2017.

³¹¹ There are also issues of security that were raised by villagers with the first tranche which would apply more so given the larger other tranches amounts.

branches to receive their money.³¹² The Nepal Investment Bank confirmed that as of 14 March 2017, “No plans have been circulated for the second and third distribution from NRA/DDC through BLB including from Charikot.”³¹³

“Whose ever [house] is built, they will have to go far to get their money. Among those, there are many who are elderly. Many are also people with physical disabilities. How can they go to a bank far away? To get the facilities given by the bank will cost the people more.”³¹⁴ VDC Secretary of Alampu, Ramu Paudel, November 2016

Amnesty International found that the access to bank accounts was a challenge for residents living in remote areas in the northern part of the country, especially the elderly, people with disabilities and single women. Early newspaper coverage in March 2016 had noted the difficulties faced by people in opening bank accounts in Singati via the branchless service provided by NIBL and RBB, including additional travel, accommodation and food costs.³¹⁵ In March 2016 Amnesty International met a Thami woman who had walked for a day with her baby to sign up for an account as her husband was abroad as a migrant labourer.³¹⁶ The difficulties posed by the fact that most beneficiaries assigned to private banks had to travel to urban areas was aggravated in the early cash grant distribution days in September 2016, by the cap of a hundred beneficiaries to be served daily in order for the banks to also conduct their other regular banking business.³¹⁷

Amnesty International documented many cases of long hours travelled, and costs incurred – monetary, time and health – borne by recipients of the CGAs coming from northern VDCs of the district. The town of Singati is the main market node for the northern VDCs and was the site of what BLB services were given by a few banks. From the northern VDCs of Alampu, Bigu and Khopachangu, which Amnesty International visited, travel to Singati involved a 5-7 hour (depending on your location within the VDC) steep walk to the base of the hills, a place called Sorungkhola, followed by a half hour bus or jeep for those able to pay. For those living in poverty, walking the whole way is the only option. Because of the rough nature of the terrain, only goods trucks travelled the whole distance and served as an additional option for those in need and able to pay. Travel to Charikot from Singati involved an additional three-hour bus ride and fare.

During the November 2016 cash grant distribution for the VDCs of Chilanka and Alampu, 44-year-old Bharune Thami walked six hours to Singati from Alampu to get his money and had to spend NPR 300 (US\$ 3) for a meal and a room for the night as he could not make it back home that day.³¹⁸ Bimu Thami, a 60-year-old single woman from Alampu, whom Amnesty International met en route to Singati to collect her grant money, spoke of how she had left her home at 5am and estimated that she would get there by 2pm. She complained of how her knees hurt, but yet she had no other option to get her money, stating “I can neither get up and walk, or sit down and stay...[I] feel like turning back.”³¹⁹ Mangal Bir Thami was walking alone on his way to Singati from Alampu when the Amnesty International team met him. Paralyzed on the right side of his body for 26 years, he was unsure how far he would get that day and no idea where he would sleep en route. “Bijok” (pitiful situation) was his response to how he would get to Singati.³²⁰ A school teacher in Bigu relayed how the day before, a group of elderly and people with disabilities had gone to Charikot to get their money, leaving at 4 a.m. in the morning. They had missed the initial three days that the bank assigned to them and had travelled together. Wondering where they would stay and eat, the teacher complained that “the government is too hard hearted...[it] should have distributed (the grants) from here.” According to her, the government had “disrespectfully neglected” Bigu residents.³²¹ To be noted is that the DDC had granted permission to RBB – the bank servicing Bigu - to backtrack from its initial agreement to distribute funds from Singati and instead distribute funds from its branch in Charikot. This added a three-hour bus ride and fare for residents of Bigu and additional room and board costs either in Singati, Charikot or Sorungkhola, the village at the base of the hill before the ascent back to Alampu and Bigu.

³¹² Amnesty International interview with Ramu Paudel, Charikot, 15 November 2016.

³¹³ Nepal Investment Bank letter dated 14 March 2017.

³¹⁴ Amnesty International interview with Ramu Paudel, Charikot, 15 November 2016.

³¹⁵ Rajendra Manandhar, ‘78 Singati families receive letters for housing grant’, 15 March 2016, available at www.kathmandupost.ekantipur.com/news/2016-03-15/78-singati-families-receive-letters-for-housing-grant.html

³¹⁶ Amnesty International interview in Singati, 5 March 2016.

³¹⁷ Asia Foundation et al., ‘IRM-Thematic Study’, 2016, p. 20.

³¹⁸ Amnesty International interview, Charikot, 18 November 2016.

³¹⁹ Amnesty International interview with Bimu Thami, on the way to Alampu, 19 November 2016.

³²⁰ Amnesty International interview with Mangal Bir Thami, on the way to Alampu, 19 November 2016.

³²¹ Amnesty International interview with Ambika Khadkha, Bigu, 22 November 2016.

6. LACK OF CONSULTATION AND INFORMATION

A housing strategy “should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies... with the obligations under article 11 of the Covenant”³²²

Contrary to the above international standard, the Nepal government has failed in its duty to ensure that people have access to information they need for the reconstruction efforts. They have also failed to consult them meaningfully on key aspects such as models of housing, banking services and availability of building materials. There was a lack of consultations from the beginning of the planning for reconstruction. Prime Minister (PM) Sushil Koirala announced the NPR 200,000 (US\$ 2,000) grant money for rebuilding houses on 9 May 2015 from parliament, 14 days after the first earthquake and three days before the second.³²³ The consultations undertaken at this time were limited to the main political parties³²⁴ and no consultations took place before PM Pushpa Kamal Dahal increased the amount by NPR 100,000 (US\$ 1,000) in December 2016.

When asked if any consultations with people had taken place before the project began, a World Bank Disaster Risk Management Specialist stated that consultations were taken with government counterparts “but if you talk about whether we consulted the actual house owners or not, I don’t know the answer but I don’t think it was even appropriate to go at that time... a month after the earthquake and talk[ing] to the beneficiaries whether they wanted this, whether they thought that this project made sense or not because monsoon was approaching ... it was an emergency phase.”³²⁵ Asked if such consultations took place in the aftermath of the Pakistan earthquake where the World Bank Disaster Risk Management Specialist had worked, he responded “when you are doing a project in an emergency, you cannot, you don’t have time for these kinds of things.”³²⁶

Even if consultations may have been difficult with earthquake-affected people, there was also a lack of consultation, information and coordination between the differing levels of government. Central here is the hierarchical nature of the governing structure of Nepal³²⁷ with the higher levels instructing the lower.³²⁸ In the words of VDC Secretary of Kabhre, Narayan Prasad Dahal, “We don’t have [a] culture of asking how to do things at the lower level, we do what the centre tells us to do. What the centre saw, it wrote [down], and when it came down from the centre to here, problems arose.”³²⁹

³²² CESCR, ‘General Comment No. 4’, para. 12.

³²³ See Binod Ghimire, ‘Property rebuilding within two years, PM pledges in Parliament’, 9 May 2015, available at www.kathmandupost.ekantipur.com/news/2015-05-09/property-rebuilding-within-two-years-pm-pledges-in-parliament.html

³²⁴ Bhadra Sharma, ‘Three parties differ on details’, 8 May 2015, available at www.kathmandupost.ekantipur.com/news/2015-05-08/three-parties-differ-on-details.html

³²⁵ Amnesty International interview with Avani Mani Dixit, Kathmandu, 9 March 2017.

³²⁶ Amnesty International interview with Kamran Akbar, Kathmandu, 9 March 2017.

³²⁷ Hierarchy formed the key problem in coordination between NRA in Kathmandu and the other government offices necessary for it to fulfil its coordinating mandate; the promotion of a relatively junior civil servant as CEO meant senior level administrators were less likely to attend meetings, the NRA was unable to attract senior staff while lower staff were concerned about promotion prospects with a new boss. See Bhadra Sharma, ‘Uphill task for NRA to put team together’, 23 March 2016, available at www.kathmandupost.ekantipur.com/news/2016-03-23/uphill-task-for-nra-to-put-together-team.html

³²⁸ Amnesty International interview with Naresh Khadkha, assistant VDC Secretary, Suspa-Kshemawati, 13 November 2016.

³²⁹ Amnesty International interview with Narayan Prasad Dahal, VDC Secretary of Kabhre, Kabhre, 17 November 2016.

These failures were especially evident in relation to the banks and the distribution of funds. One VDC Secretary stated that they had not been given any orientation before starting the CGA process in Singati.³³⁰ The Bigu VDC Secretary stated that he had no idea how the banks were selected and there was no coordination with him.³³¹ The Alampu VDC Secretary noted that if he been consulted on the bank distribution among VDCs, he would not have recommended any banks other than those present in the district.³³² Further illustrating the lack of coordination, he stated the bank had told him to tell people from Alampu to go to Singati to open their accounts during the monsoon season – at a time when the paths and roads are very dangerous, and there are higher chances of landslides.

In terms of providing information to beneficiaries, there appears to have been little attempt to make information more accessible to people in all stages of the CGA process. One example noted above is the lack of information on the status of submitted grievances. Posters, public service announcements (PSAs) on radios and TV and various NGOs dissemination methods informed people of the general need to build earthquake resistant houses, sign CGAs, utilize grants for building purposes only etc.³³³ However, the specific, practical details at the village level for different stages of grant distribution and housing reconstruction were left to existing mechanisms with little attempt to make information more accessible or reliable for all.

For example, when asked about the process by which villagers would receive the relevant information about whether their names were on the beneficiary list, and when to go to the banks to collect their grant, VDC Secretaries stated the same processes – publication at the VDC office and then mainly through the ward citizens forum in each ward who via their meetings disseminate the necessary information through social mobilizers, local NGOs, political party representatives, intellectuals etc.³³⁴

Earthquake survivors interviewed by Amnesty International confirmed that information distribution ranged from the local leader of the ward notifying you on the road, or hearing it from neighbours and/or verifying the information at the VDC office. However, the chains of communication appeared tenuous and by sheer good fortune at times. Unable to read, living in poverty and a single woman, Kali Sarki described the process by which she heard the rumour (*halla*) that she had been included in the list of beneficiaries. She said that someone told her name was “on the wall of the VDC office”, and the *halla* about the day her ward had to go to the bank to receive the first tranche, etc. Her case reveals the inadequate process of sharing information. While it worked for Sarki, it was clear that there were gaps in information and that reliance on *halla* was not always timely or reliable.

For example, Damini Sherpa from Alampu stated that there had been rumours about the distribution of money from Singati a few months earlier and while she herself had not gone, some had made the trip.³³⁵ That the more excluded groups may have missed information was conceded by a VDC Secretary - “Now those who are rich in villages haven’t been that missed (by the surveys), those in the village who are poor could have been missed.”³³⁶ Yambahadur GC from Chilankha had heard from a villager he passed on the way back from tending to his livestock only the evening before that money was being distributed and had woken up at 6 a.m. and walked for four hours to Singati. When asked if anyone in the ward had told him he said no and that he lived on the edge of the village where people rarely come.³³⁷ Highlighting the need to make information accessible to all those affected by the earthquake,³³⁸ landless and deaf Rita (pseudonym) was unaware that the government was giving money to rebuild houses.³³⁹

³³⁰ Amnesty International interview with VDC Secretary, name withheld, Charikot, 26 January 2017.

³³¹ Amnesty International interview with Rishi Dahal, VDC Secretary for Bigu, Charikot, 25 November 2016.

³³² Amnesty International interview with Ramu Paudel, VDC Secretary, Charikot, 15 November 2016.

³³³ That these mechanisms can be improved especially in remote areas was made clear by a man in Bigu who stated that one needed to fill the grievance form in order to get the grant money for reconstruction. Amnesty International interview with Pasang Sherpa, Bigu, 22 November 2016.

³³⁴ Amnesty International interview with Santosh Khadkha, VDC Secretary of Sailungeshwor, Charikot, 16 November 2016; and Prem Prakash Khatri, VDC Secretary for Bhirkot and Japhe, Charikot, 25 November 2016.

³³⁵ Amnesty International interview with Damini Sherpa, Alampu, 20 November 2016.

³³⁶ Amnesty International interview with Santosh Khadkha, VDC Secretary of Sailungeshwor, Charikot, 16 November 2016.

³³⁷ Amnesty International interview with Yambahadur GC, Singati, 18 November 2016.

³³⁸ In the district of Dhading, Chepangs, one of the most marginalised indigenous groups, were reportedly unaware of any government announcements including the registration deadline for those unable to sign CGA because of the lack of land ownership papers Nagendra Adhikari, ‘Those without landownership papers did not get grants’ (in Nepali) Kantipur 9 February 2016, available at <http://kantipur.ekantipur.com/printedition/news/2017-02-09/20170209075839.html>

³³⁹ Amnesty International interview with Rita (pseudonym), Bhimeshwor Municipality, 21 March 2017.

While informal information channels may have worked in the past, the need to ensure that all affected persons and groups have access to information requires more thorough and reliable systems of communication.

Access to information issues were also raised in terms of language. Importantly, the beneficiary list sent to the VDCs was in English. When asked why, neither VDC secretaries, nor those seeking to rebuild their houses knew why this was the case. While it was noted that the more educated would convey the list names to those unable to read in English, the list clearly posed difficulties for those seeking to directly read the list. A Thami woman from Alampu whose mother tongue is not Nepali, stated “Now those who know English will maybe say it in English, we don’t even know Nepali that well.”³⁴⁰

There were reports in mid-January 2016 that the first volume of designs of the 17 government approved models were only available in English in one of the most affected districts, Sindhupalchowk.³⁴¹ When Amnesty International delegates visited Dolakha in November 2016, all of the designs posted on walls, available on the roadside and in the hands of beneficiaries seen by the team were available in Nepali. However, it was clear that technical details and material and labour requirements would only be understood by those able to read. A Dalit woman who could not read responded to the question of how she would go about building her home with the Rs50,000, by pointing to the mud mortar and stone design she had been given by the VDC, and, laughing, said “we’ll just look at the picture.”³⁴²

The absence at the local level of VDC secretaries and engineers compounded the lack of information on reconstruction. Since the Maoist conflict, many VDC secretaries, including in Dolakha district, have not been staying in the villages. Instead, most of the VDC secretaries stay in two designated buildings in Charikot. They have also periodically gone on strike, refusing to take responsibilities for other VDCs that did not have secretaries and demanding additional allowance to carry out post-earthquake recovery and rehabilitation work. Engineers were initially deployed by the government before the signing of grants leading to their under-utilization at first in Dolakha. Criticisms later emerged about their non-availability as they too had organized strikes to demand better wages and working conditions, and also due to the fact that VDC secretaries who are supposed to monitor their work were also absent in the villages. This has left villagers who have initiated construction with little recourse to assistance. When Mukunda Siwakoti called to ask an engineer to come give advice, he was told that they were on strike and to build “as best he could”; he was unsure of whether the construction fitted the standards and whether he would be able to get the first tranche.³⁴³

Problems with access to information in respect of banking were also evident when Amnesty International visited Singati and observed a bank account opening BLB in March 2016 and a grant distribution BLB in November 2016. There were no officials directing or giving out information to people. In terms of accessibility, the use of thumbprints to open and validate accounts was a noteworthy step as were the automated machines with Nepali voices that informed customers of their bank withdrawal and balance amounts. However, in March 2016, upon the completion of all paperwork and fingerprinting, villagers were provided with a receipt and oral instructions to call the number on the receipt in 10-12 days to collect the cheque book. The receipt was in English, including the numerals. A young Thami woman asked upon seeing the receipt “how can I read this?”³⁴⁴ This was an ongoing problem those who could not read English.

Further planned resources for people to access information have been limited. The resource centre established as a pilot in Singati was stated to be temporarily closed in November 2016 and till 18 April 2017 remain closed.³⁴⁵ The original plans to devolve the reconstruction mechanism closer to people via the establishment of regional offices also was withdrawn. Originally established in early May 2016, since 16 September 2016, the sub-regional NRA office has been downgraded to a district office due to a lack of human and other resources.³⁴⁶

³⁴⁰ Amnesty International interview with Suk Maya Thami, Khopachangu, 19 November 2016.

³⁴¹ See Lekhanath Panday, ‘Victims clueless about resilient homes’, 15 January 2016, available at www.thehimalayantimes.com/nepal/victims-clueless-about-resilient-homes/

³⁴² Amnesty International interview with Damini Sarki, Sunkhani, 14 November 2016.

³⁴³ Amnesty International interview with Mukunda Siwakoti, Suspa-Kshemawati, 13 November 2016.

³⁴⁴ Amnesty International interview, name withheld, Singati, 5 March 2016.

³⁴⁵ Amnesty International telephone interview with reporter Kedar Siwakoti, 18 April 2017.

³⁴⁶ Amnesty International interview with Ram Thapiliya, NRA spokesperson, Kathmandu, 30 November 2016.

7. CONCLUSION AND RECOMMENDATIONS

The Government of Nepal is facing tremendous challenges in a post-disaster context already riven with the difficulties of a protracted post-conflict political transition. It has established numerous laws and policies to facilitate the reconstruction efforts and in particular the rebuilding of houses, identified as one of the single largest need by the PDNA. With international donor assistance, the government is implementing the RHRP, central to which is the owner-driven reconstruction of private houses. After initial delays, progress has been made in identifying beneficiaries and distributing the first of three tranches of NPR 300,000 (US\$ 2,920) grant.

However, the prioritization of the private ownership model has failed to recognize the existence of a multiplicity of forms of tenure in the country. This has led to late and limited initiatives for those who do not own land – such as land registration initiatives and provisions for those living on *guthi* land – and resulted in implementation obstacles in the recognition of multiple households living under one roof. Excluded from government grants to rebuild houses, this has left those already marginalised in an even more disadvantaged position.

Further, numerous obstacles exist for those who have been included as beneficiaries. Issues with the nominee system, affordability and access to banking facilities as well as access to information have all posed challenges particularly for those living in remote areas, the elderly, single women, people with disabilities and those suffering from illnesses.

As the government continues and expands the housing reconstruction programme beyond the 14 most affected districts, it must ensure that its actions are in line with Nepal's obligations under its Constitution and international human rights law. This means among other things, guaranteeing that at the policy and implementation levels, the current barriers and obstacles to access to the right to adequate housing for all are removed, that all people have a minimum degree of security of tenure and especially that measures are put into place to ensure that the most marginalised and disadvantaged groups are prioritized in the government's housing reconstruction efforts, especially during the transition to new local structures and federal arrangements.

AMNESTY INTERNATIONAL RECOMMENDS:

FOR GOVERNMENT

1. Ensure the right to adequate housing to all earthquake-affected persons giving due priority to the most disadvantaged groups including landless persons;
2. Ensure that equal recognition is given to all forms of tenure and all those whose houses have been destroyed receive grants;
3. Effectively implement policies to ensure landless people and multiple households under one roof who had their homes destroyed receive cash grants based via investigation by government official and through testimonies of neighbours and people in their communities;
4. Effectively implement policies to ensure the registration of all land claims under different tenure systems;
5. Prioritize clarification and immediate implementation of effective functioning of the nominee system;
6. Provide adequate additional top-up grants especially for marginalised groups for transportation of construction materials;
7. Redesign the grant distribution system via consultations to ensure only banks within the local areas are selected;

8. Branchless banking and special cash grant camps for marginalised populations should be conducted at the local levels via consultations;
9. Facilitate access to low interest and interest free loans and immediately address the loan payback guarantee concerns of banks;
10. Use Nepali in official notices and local languages where possible in community radios to announce dates and times of banking and all other reconstruction-related services and use SMS notices as a back-up wherever possible;
11. Prioritize the resolution of grievances;
12. Ensure availability of local government officials and adequate number of engineers at the local levels;
13. Construction material banks should be initiated and stocked immediately with priority access to resources given to the marginalised groups;
14. Provisions should be made to provide additional shelter requirements for earthquake affected for the coming monsoon and winter;
15. Increase capacity and empower local governments to implement reconstruction actions
16. Ensure continued institutional and other support for housing reconstruction efforts during the transition to new local structures;
17. Ensure participation/consultation and transparency in all components of the reconstruction throughout the recovery period.

FOR BANKS

1. Ensure that the initial agreement between the NRA and the Nepal Bankers Association, Development Bankers Association Nepal and Nepal Financial Institution Association is fully implemented and that BLB points are established at the local level.

FOR DONORS

1. Ensure that all international assistance and cooperation to the Nepali government is directed and distributed in a non-discriminatory manner, prioritizes the most disadvantaged and promotes gender equality;
2. Donor and other governments and international agencies that are providing financial or technical assistance to the Nepali government should put in place safeguards to ensure that their funding or the initiatives that they are supporting do not lead to human rights violations.

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“BUILDING INEQUALITY”

THE FAILURE OF THE NEPALI GOVERNMENT TO PROTECT THE MARGINALISED IN POST-EARTHQUAKE RECONSTRUCTION

On 25 April 2015, a massive earthquake hit Nepal, followed by another on 12 May. Two years on, hundreds of thousands of earthquake survivors are still living in temporary shelters made primarily of tarpaulin and zinc sheets.

The reconstruction model adopted by the Government of Nepal emphasises an “owner-driven” approach, which requires proof of land ownership as a condition to qualify for a rebuilding grant scheme. Up to 25% of Nepal’s population is estimated to be landless or near-landless. Consequently, tens of thousands of people were left out of reconstruction. The worst affected were those already vulnerable and marginalised, including the landless, women, Dalits and other caste-based and ethnic minorities.

This report examines the housing reconstruction programme through the lens of the government’s obligations under international human rights law and standards. It examines the shortcomings of the reconstruction policy framework, the problems surrounding counting households and space; the failings of the grant distribution system; and the lack of consultation and information.

Amnesty International urges the government of Nepal – as it continues and expands the housing reconstruction programme – to ensure that its actions are in line with Nepal’s obligations under international human rights law and its Constitution, and to give due priority to the most disadvantaged groups including landless persons.