

EGM Draft 21-23 April 2008

Guidelines on Addressing Land Issues after Natural Disasters

Daniel Fitzpatrick

1.0	ABOUT THESE GUIDELINES	4
	BACKGROUND	5
	AIMS AND OBJECTIVES	5
	TARGET AUDIENCE	5
	WHEN TO USE THESE GUIDELINES	5
	HOW TO USE THESE GUIDELINES.....	6
	THE SCOPE OF THESE GUIDELINES.....	7
2.0	LAND AND HUMANITARIAN DISASTER RESPONSES	8
	HUMAN RIGHTS AND NATURAL DISASTERS	8
	<i>Sovereign States</i>	8
	<i>The UN Disaster Response Framework</i>	8
	<i>Land and the Humanitarian Cluster System</i>	9
	THE RELATIONSHIP BETWEEN LAND AND URGENT HUMANITARIAN ACTION.....	9
	<i>Land and Emergency Relief</i>	9
	<i>Land and Preparation for Early Recovery</i>	10
	<i>Land Responses and the Role of Humanitarian Actors</i>	10
	WHY DISASTER GUIDELINES ARE NECESSARY: DISTINGUISHING CONFLICT AND DISASTER.....	11
3.0	UNDERSTANDING LAND AND NATURAL DISASTERS	13
	HUMAN ACTIVITY AND NATURAL DISASTERS.....	13
	TYPES OF NATURAL DISASTERS	13
	UNDERSTANDING THE DYNAMICS	14
	<i>Land Governance Systems</i>	14
	<i>Natural Disasters and Land Governance Systems</i>	16
	NAVIGATING THE INSTITUTIONAL CONTEXT	18
	<i>The relationship among government departments and different levels of government</i>	19
	<i>The relationship between the government and the international humanitarian community</i>	20
	<i>The relationship among UN agencies, NGOs and other agencies, and multilateral or bilateral institutions</i>	21
4.0	KEY INSTITUTIONAL LAND ISSUES AFTER A NATURAL DISASTER	22
	SUMMARY OF KEY INSTITUTIONAL ISSUES.....	22
	LAND ASSESSMENTS	23
	<i>The Significance of Land Assessments</i>	23
	<i>Potential Policy Responses</i>	23
	<i>Loss and Damage Assessments</i>	24
	<i>Needs Assessment</i>	25
	<i>Land Governance Assessments</i>	27
	LAND RESPONSE COORDINATION.....	29
	<i>The Nature and Significance of the Issue</i>	29
	<i>Coordinating Land Responses: Typical Challenges</i>	30
	<i>Response Options</i>	31
	<i>Factors to be considered in Selecting and Implementing Responses</i>	32
	STRATEGIC PLANNING FOR LAND ISSUES	36
	<i>The Significance of the Issue</i>	36
	<i>Potential Policy Responses</i>	36
	<i>Strategic planning for land issues: typical challenges</i>	37
	<i>Factors to take into account in choosing and adapting policy responses</i>	37
	MONITORING AND EVALUATION OF LAND PROGRAMS.....	40
	<i>The Significance of the Issue</i>	40
	<i>Potential Responses</i>	40

5.0	KEY LAND PROGRAMMING ISSUES AFTER A NATURAL DISASTER	42
	SUMMARY OF ISSUES	42
	LAND TENURE SECURITY	44
	<i>The Significance of the Issue</i>	44
	<i>Tenure Security Responses: Key Risks and Constraints</i>	45
	<i>Potential Responses to Tenure Insecurity</i>	46
	<i>Factors in Choosing Interim Tenure Security Response</i>	48
	<i>Intermediate Steps towards Long Term Tenure Security</i>	49
	<i>Tenure Security and Informal or Extralegal Landholders</i>	51
	RESTORING AND IMPROVING LAND ADMINISTRATION SYSTEMS	52
	<i>The Significance of the Issue</i>	52
	<i>Potential Responses to Restore and Improve Land Administration</i>	53
	LEGAL IDENTITY AND INHERITANCE	57
	<i>The Significance of the Issue</i>	57
	<i>Potential Responses</i>	60
	LAND USE PLANNING AND DISASTER RISK REDUCTION	64
	<i>The Significance of the Issue</i>	64
	<i>Land Use Planning: Key Constraints</i>	65
	<i>Potential Responses</i>	66
	<i>Coordinating with Reconstruction Plans</i>	70
	<i>Urban Land Use Planning</i>	71
	<i>Rural Land Use Planning</i>	71
	TENANTS AND INFORMAL OR ILLEGAL OCCUPIERS	73
	<i>The Significance of the Issue</i>	74
	<i>Potential Responses</i>	76
	<i>Potential Responses for Informal or illegal occupiers</i>	79
	ACQUISITION OF LAND FOR RESETTLEMENT AND INFRASTRUCTURE.....	81
	<i>The Significance of the Issue</i>	81
	<i>Land Acquisition: Key Constraints</i>	82
	<i>Potential Responses</i>	84
	<i>Acquisition of land for infrastructure</i>	90
V.	OPERATIONS TIMELINE.....	91
	5.1 OPERATIONS TIMELINE.....	92
	WHO DOES WHAT: KEY ACTORS AND ACTIVITIES	94
	ANNEXURE 1: INTERNATIONAL INSTRUMENTS RELATING TO LAND	
	ANNEXURE 2: FRAMEWORK QUESTIONS FOR ASSESSING A LAND GOVERNANCE SYSTEM.....	95
	ANNEXURE 2: FRAMEWORK QUESTIONS FOR ASSESSING A LAND GOVERNANCE	
	SYSTEM	96
	1. <i>Land Policy</i>	96
	2. <i>Land Institutions</i>	96
	3. <i>Land Administration</i>	97
	4. <i>Land Planning</i>	97
	5. <i>Land Law</i>	98
	ANNEXURE 3: MONITORING AND EVALUATION OF LAND RESPONSES AFTER A	
	NATURAL DISASTER	100

I. About These Guidelines

Land is a fundamental resource for recovery after disaster. Land provides a site for shelter, a resource for livelihoods and a place to access services and infrastructure. Secure rights to land are essential to prevent land grabbing, and allow reintegration of displaced persons.

Land is a cross-cutting issue in the relief, recovery and development phases of post-crisis programming. Key disaster evaluations have concluded that a failure to address land issues, particularly in early strategic planning and coordination, inhibits the transition from emergency relief through early recovery to sustainable development.

Natural disasters are not a necessary result of environmental or climatic hazards. A natural hazard becomes disastrous when human systems fail to cope with its social, economic and physical impacts. The root causes of a disaster are not natural hazards, but underlying vulnerability and lack of resilience in human systems.

Land governance systems help to create human vulnerability to natural hazards. Effective disaster responses must address the land governance context that turns hazards into disasters, and inhibits early recovery from a disaster.

Early recovery describes the transitional phase that bridges emergency relief and sustainable development. Early recovery (1) begins in the emergency relief phase, (2) builds on humanitarian programming, and (3) takes advantage of opportunities for sustainable development.

BOX 1 LAND ISSUES AND EARLY RECOVERY AFTER NATURAL DISASTERS

Addressing land issues is important to early recovery after a natural disaster.

Social protection. The most vulnerable groups after a disaster will be homeless persons who are also landless.

Eligibility for housing assistance. Land is necessary for a house. Victims without access to land after a disaster will not receive housing assistance.

Decommissioning temporary shelters and living centres. Temporary shelters and living centres cannot be decommissioned until all disaster victims have access to land for housing.

Access to land. Access to land is necessary for restoration of livelihoods.

Tenure security. Secure rights to land are necessary to stabilise communities, and encourage sustainable recovery and development.

Women, children and the disabled. After a disaster, women, children and the disabled face disproportionate risks of losing access to their pre-disaster land.

Disaster risk reduction. Land use planning is essential to engage in disaster risk reduction.

Background

In 2005, the Humanitarian Response Review identified land and property issues in 2005 as one of the major gaps in the humanitarian response system. The Inter-Agency Standing Committee (IASC)-endorsed Humanitarian Cluster system is currently working to improve preparedness and contingency planning for a more predictable and transparent and accountable humanitarian response system. The present initiative on preparing land guidelines after natural disasters is one of several initiatives in this regard.

In 2007, the Early Recovery Cluster, led by UNDP, decided to prepare clear and simple guidelines to support national and international efforts to address land issues after natural disasters. In response, UN-HABITAT and FAO are collaborating to prepare these guidelines and their associated toolkit for addressing land issues following natural disasters.

Aims and Objectives

The aims and objectives of the guidelines and toolkit are to:

- support the Humanitarian Cluster system in relation to post-disaster land programming;
- establish an analytical framework to guide understanding of post-disaster land issues and actors;
- describe key land issues and appropriate responses after a disaster;
- provide a concise operations timeline that lists key steps in addressing land issues after a natural disaster; and
- identify potentially useful post-disaster land tools to be adapted according to specific country contexts.

Target Audience

The primary audience is UN agencies, governance and non-governmental humanitarian actors operating at the country level. Other potential users of the guidelines and toolkit include non-experts who are interested in land as a cross-cutting issue in humanitarian and early recovery programming.

When to Use these Guidelines

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

The guidelines and toolkit cover land issues across the key phases of humanitarian and early recovery activity. While they are relevant to the emergency relief phase of a natural disaster, their focus is on effective transitions from humanitarian relief to sustainable development. This transition process is the key to early recovery after a natural disaster.

The guidelines and toolkit are designed for use after a rapid onset natural disaster. The guidelines and toolkit are not designed for direct use in cases of slow onset natural disasters, such as drought or desertification. Slow onset natural disasters involve different forms of humanitarian programming, and require different sets of land guidelines.

BOX 2 RAPID-ONSET NATURAL DISASTERS

UNDP (2004) defines a natural disaster as “a serious disruption triggered by a natural hazard causing human, material, economic or environmental losses, which exceed the ability of those affected to cope”. A rapid onset natural disaster involves a natural hazard that occurs suddenly and/or in a relatively unpredictable fashion. Rapid onset natural disasters include events that are geological (avalanches, landslides, earthquakes), hydrological (floods, tsunamis) or climatic (snow storms, cyclones).

How to Use these Guidelines

Readers searching for a concise summary of **who does what when** may turn directly to Parts VI and VII. Part V provides an **operations timeline** that lists key steps in addressing land issues after a natural disaster. Part VI include a summary of steps by **key actors**.

Part II provides a brief discussion of land and humanitarian action. Part III introduces an **analytical framework** for understanding the dynamics of land issues after natural disasters.

Parts IV and V describes **key land issues** and potential responses after natural disasters. Part IV discuss **institutional land issues**. Part V discusses **substantive land issues**.

The guidelines are accompanied by a toolkit for addressing land issues after natural disasters.

BOX 3 A TOOLKIT FOR ADDRESSING LAND ISSUES AFTER NATURAL DISASTERS

The guidelines are accompanied by a toolkit for addressing land issues after natural disasters. A tool is a practical method to achieve a defined objective in a particular context. Land tools can come in a variety of formats. They can include:

- guidelines or manuals;
- training and capacity-building materials;
- good practices or policies;
- administrative procedures;
- legal and regulatory instruments;
- methodologies; and
- software for information management.

For further information on land tools see the Global Land Tools Network, available at www.gltm.net.

The Scope of these Guidelines

These guidelines are directed at addressing **land issues** after natural disasters. Land issues encompass:

- Rights and access to land.
- Land use planning.
- Land administration and governance.
- Land acquisition.

These guidelines do not directly consider housing or personal possessions.

II. Land and Humanitarian Disaster Responses

Human Rights and Natural Disasters

The UN places human rights at the heart of humanitarian assistance and early recovery operations. This rights-based approach is reflected in the 2006 IASC Guidelines on Human Rights and Natural Disasters ("the IASC Guidelines"). In brief, the IASC Guidelines include the following rights relating to land.

- Rights not to be discriminated against on the basis of property.
- Rights to adequate housing (which include security of tenure).
- Rights of return and restitution for displaced persons.

These guidelines are based on all these human rights relating to land. They complement, but are not limited to, the protection of housing, land and property rights in the UN Guiding Principles on Internal Displacement.

A list of international instruments relevant to land issues after natural disasters is set out in Annexure 1.

Sovereign States

Each state has the primary responsibility to take care of victims of natural disasters in its territory. Affected states will have the primary role in organising, coordinating and implementing humanitarian assistance within their territory. Affected states have legal authority over land in their territory.

The UN Disaster Response Framework

The UN **generates** and **reinforces** state processes for disaster recovery. It also acts as a coordinating agency for the international humanitarian community.

- Through the Office for the Coordination of Humanitarian Affairs (OCHA), the UN coordinates international humanitarian responses to disasters, and supports resource mobilisation through flash appeals and the Consolidated Appeals Process (CAP).
- Through the Inter-Agency Standing Committee (IASC), the UN promotes partnerships between UN and non-UN agencies. These partnerships include the Humanitarian Cluster system.

Land and the Humanitarian Cluster System

To be added after EGM discussions.

The Relationship between Land and Urgent Humanitarian Action

Humanitarian action aims to save lives and alleviate suffering at times of crisis or disaster. The Good Humanitarian Donorship Initiative (2003) has identified **impartiality**, **neutrality** and **independence** as key guiding principles for humanitarian action. Some humanitarian actors are concerned that involvement in land issues will (1) compromise their impartiality, neutrality and independence, and (2) delay or complicate their life-saving efforts.

Land and Emergency Relief

Humanitarian actors are often confronted by land issues as they undertake emergency shelter and protection activity. Land issues are important in the emergency relief phase of humanitarian action.

- Land is necessary for emergency shelter and protection of displaced persons. The selection of sites for emergency shelter can lead to long-term conflict or tenure insecurity.
- Land is necessary for restoration of livelihoods. Humanitarian actors need sufficient land expertise to find suitable land for sustainable livelihoods.
- Land grabbing and rapid rural-urban migration after a disaster is a key risk to effective protection and emergency shelter activity. Land grabbing by governments and elites can even be a cause of displacement after a disaster.
- The protection of human rights under international humanitarian law includes non-discriminatory access to land, and restoration of right to land for displaced persons.
- Humanitarian interventions require land for their own operations. The selection of sites for humanitarian agencies can lead to disputes or conflict. The price or rent paid for land may also contribute to inflation in the land market, and increase the barriers to return and reintegration of displaced persons.
- Eligibility for on-site emergency shelter measures may be affected by land tenure status issues, including the right of renters, squatters, widows and orphans.
- Return and reintegration is a key objective of humanitarian activity. In the long run, return and reintegration will fail if underlying problems of competition for scarce land, and poor systems of land governance, are not resolved.

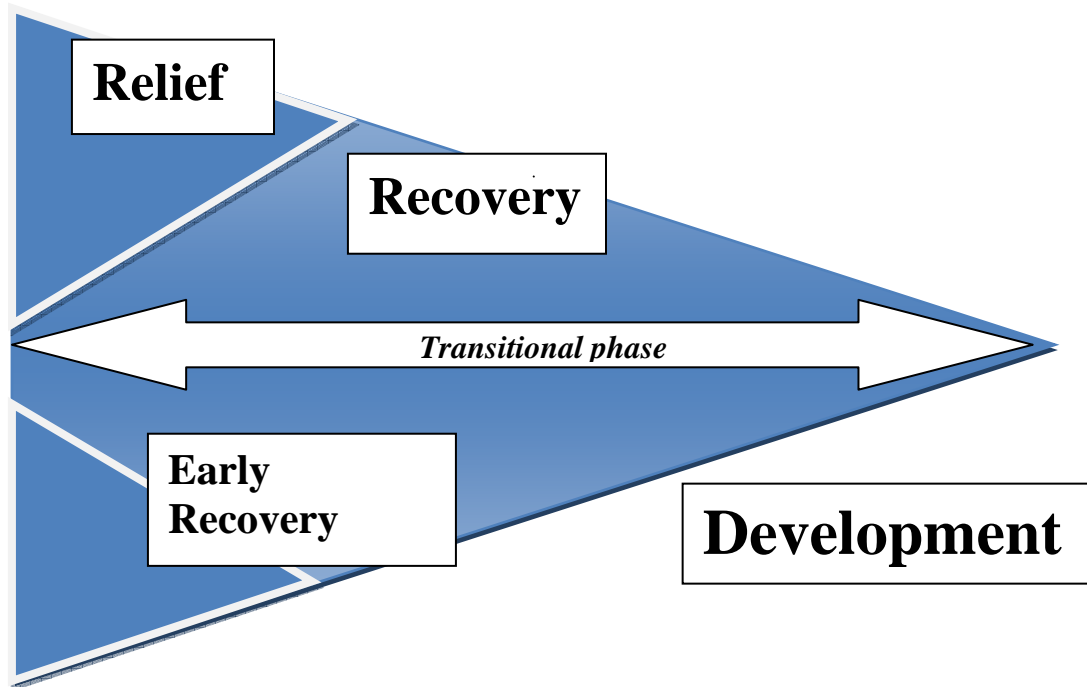
Land and Preparation for Early Recovery

Land responses are also important during emergency relief operations in order to **prepare for early recovery**. To prepare for early recovery, the emergency relief phase should include 4 basic steps relating to land.

- Assessment.
- Strategic Planning.
- Resource Mobilisation.
- Coordination

These steps are detailed in Part IV and summarised in Part VI. They are **minimum requirements** to prepare for effective land programming in the early recovery phase of a natural disaster.

Table: Early Recovery - From Emergency Relief to Sustainable Development



Land Responses and the Role of Humanitarian Actors

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

Humanitarian agencies should develop **internal land expertise and awareness** to help address the land issues that directly affect their own protection and emergency shelter programs. Other land issues that are each during emergency relief and recovery **need not necessarily be addressed by humanitarian actors**. Humanitarian actors do not need to risk compromising their independence, and good relations with national governments, through direct involvement in land programming.

Early recovery and development agencies with specific expertise in land issues - including UN-Habitat, FAO and the World Bank – are best-suited to begin preliminary land responses after a natural disaster. Early recovery and development agencies with specific expertise in land issues should be included in the emergency relief phase of post-disaster programming. Their initial tasks will be to (1) advise humanitarian actors on specific land problems, and (2) work with governments to integrate land issues into preparations for early recovery.

As a minimum, humanitarian actors in the **emergency relief** phase should:

- respect international standards relating to land in the course of emergency relief efforts;
- incorporate land experts, from their agency or from development agencies, into emergency relief and budget programming; and
- include land issues in preliminary coordination, assessments, planning and resource mobilisation after a disaster.

Why Disaster Guidelines are Necessary: Distinguishing Conflict and Disaster

A number of agencies, including UN-HABITAT, FAO, USAID and ODI have prepared operational guidelines and analytical frameworks to address land issues after armed conflicts. The UN Guiding Principles on Internal Displacement encompass cases of natural disaster and armed conflict. While there are many similarities between land issues after conflict and disaster, there are important differences that underscore the need for a separate set of guidelines on land and natural disasters.

Government Capacity and National Politics

- While natural disasters can occur in a war-torn context, disasters that occur in the absence of war tend to be associated with less politicised and conflict-ridden circumstances. As a result, there may be more government capacity and greater political space to resolve longer term land issues.

The Significance of Rapid Onset

- The shock to the land system tends to be shorter, but potentially sharper, in the case of sudden onset natural disasters than in the context of armed conflict.

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- Rapid onset disasters can result in significant loss of land, due to landslides, flooding or other hazards that render land unsafe for habitation, livelihoods or other uses. Addressing the land needs of landowners who have lost land as a result of a disaster is often a distinctive imperative of post-disaster land programming
- The sudden onset of a disaster, and its relatively localised impact, may reduce the risk that abandoned land or housing will be occupied by persons other than the pre-displacement owner (i.e. the "secondary occupier" problem).

Landowner Return to Unoccupied Land

- A relative absence of secondary occupiers should facilitate return and re-occupation of land by pre-disaster landowners, because landowners can return without the need to evict secondary occupiers. This should reduce (but not eliminate) the need for specialist judicial institutions to adjudicate claims for property restitution (e.g. a land claims commission). At the same time, specialist institutions and responses may still be required to protect victims, including women and others with weaker forms of tenure, from the risk of land grabbing by neighbours, government bodies or social elites.
- A relative absence of secondary occupiers means that residual caseloads of displaced persons unable to return are more likely to be those who are not land owners (including renters, squatters and the landless). In other words, because landowners can return without the need to evict secondary occupiers, those who are unable to return are more likely to be groups who lacked access to land, or sufficient security of tenure prior to the disaster

The Need to Engage in Future Disaster Risk Reduction

- The greater risk to land restitution for displaced victims is not secondary occupation but the need to engage in future disaster risk reduction. The need to minimise the risk of future disasters may require spatial planning mechanisms that restrict reconstruction in inappropriate or unsafe locations.
- The need to minimise the risk of future disasters may lead to relocation of infrastructure and government facilities.
- The need to engage in disaster risk reduction demands a relatively high degree of capacity and coordination among land planning institutions. It also places stress on the institutions involved in relocation and resettlement, including those charged with ensuring consultation and participation by affected groups.

III. Understanding Land and Natural Disasters

Human Activity and Natural Disasters

Natural hazards such as floods, earthquakes or hurricanes do not necessarily produce disastrous effects. A natural hazard becomes disastrous when human systems fail to cope with its social, economic and physical impacts. The root causes of a disaster are not natural hazards, but underlying vulnerability and lack of resilience in human systems.

BOX 4. CAUSES OF DISASTER VULNERABILITY

The UK House of Commons Selects Committee on International Development (2006) has identified a number of causes of disaster vulnerability. These causes can be classified according to a geographic scale.

Global: climate change, population movements, and demographic change.

National and Regional: poor governance, civil war, land tenure structures, economic policies, epidemic disease and urbanisation.

Local: unsustainable land use, chronic hunger, poorly constructed buildings and poor urban planning.

Population growth, in particular, has forced large numbers of people to settle in areas at risk from cyclones, floods, eruptions or earthquakes. Global climate heightens the vulnerability of these settlements to natural hazard risks.

Types of Natural Disasters

Table 1 below sets out types and examples of rapid onset natural disasters.

Table 1: Types of Natural Disasters

Type of Disaster	Examples of Disaster
Geological	Avalanches Earthquakes Landslides and Mudflows Volcanic eruptions
Hydrological	Floods Tsunamis

Climatic	Snow storms Hail storms Cyclonic storms Heat waves
Fire	Wildfires
Space	Meteors

The nature of land issues will depend on the type and scale of the natural disaster. The relationship between land and disaster types is elaborated through the discussion of key land issues in Part III.

Understanding the Dynamics

There is no standard solution to land issues after natural disasters. The following analytical framework is designed to assist users of these guidelines to shape context-specific responses to particular post-disaster land issues. Readers interested in a concise summary of who does what when should proceed directly to Part VI.

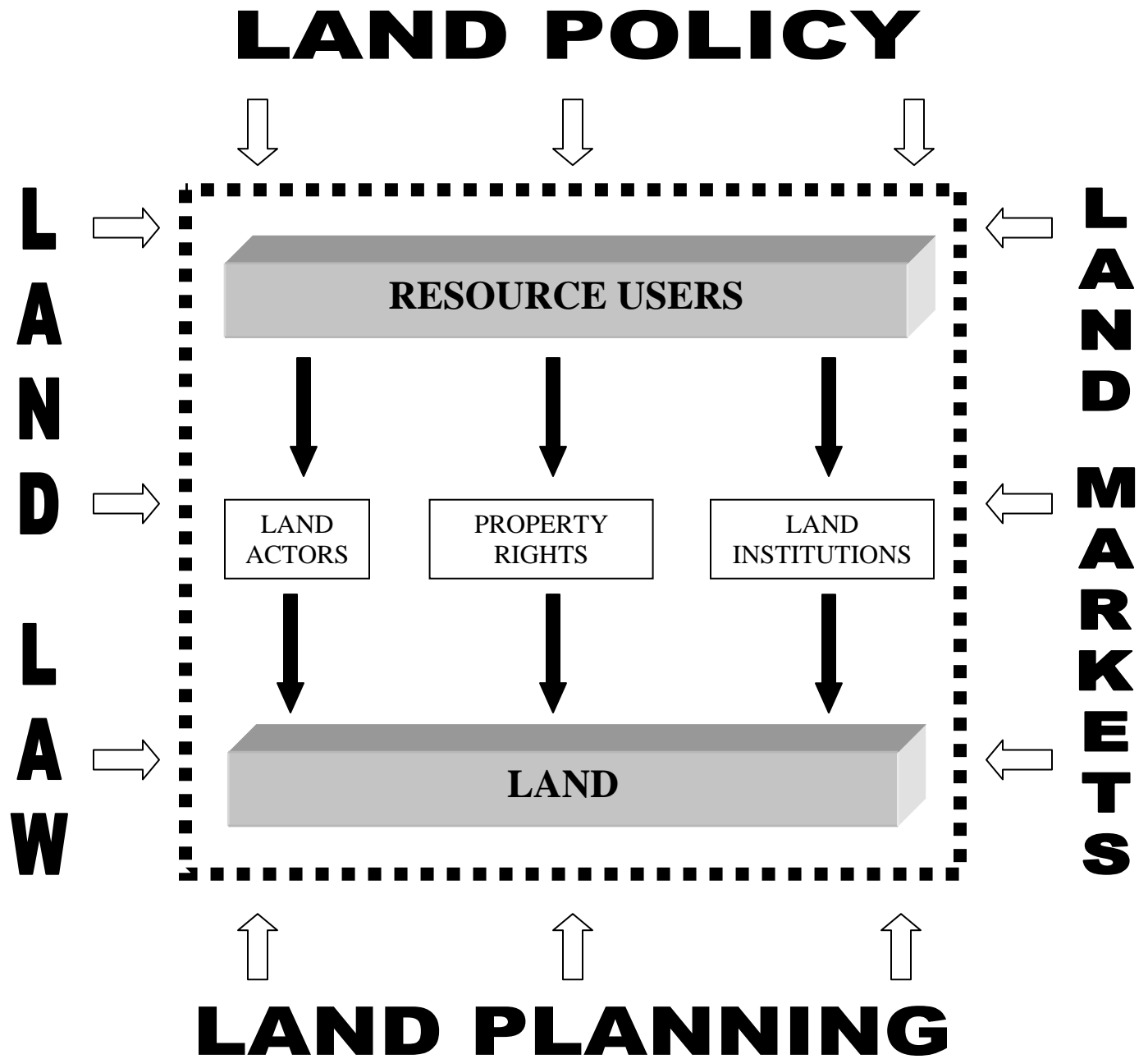
Land Governance Systems

All countries have systems to govern land. These systems define conditions of land access, management and tenure. They consist of institutions, rules and processes. Commonly, the formal mechanisms of land governance have a hierarchical structure in which land policy is formulated through the political process, codified in land laws and regulations, and implemented through a set of land administration institutions. Formal land administration institutions will include planning and cadastral agencies, the Courts and the police.

Formal institutions represent only part of a system for governing land. Land governance includes (1) the process by which decisions are made about access to and use of land, (2) the manner in which those decisions are implemented, and (3) the way that conflicting interests in land are reconciled. This broad approach to analysing land issues highlights the importance of processes, power relations and a range of actors, including non-state actors (add UNDP and FAO references).

Diagram of land governance.

Diagram 1: A Land Governance System



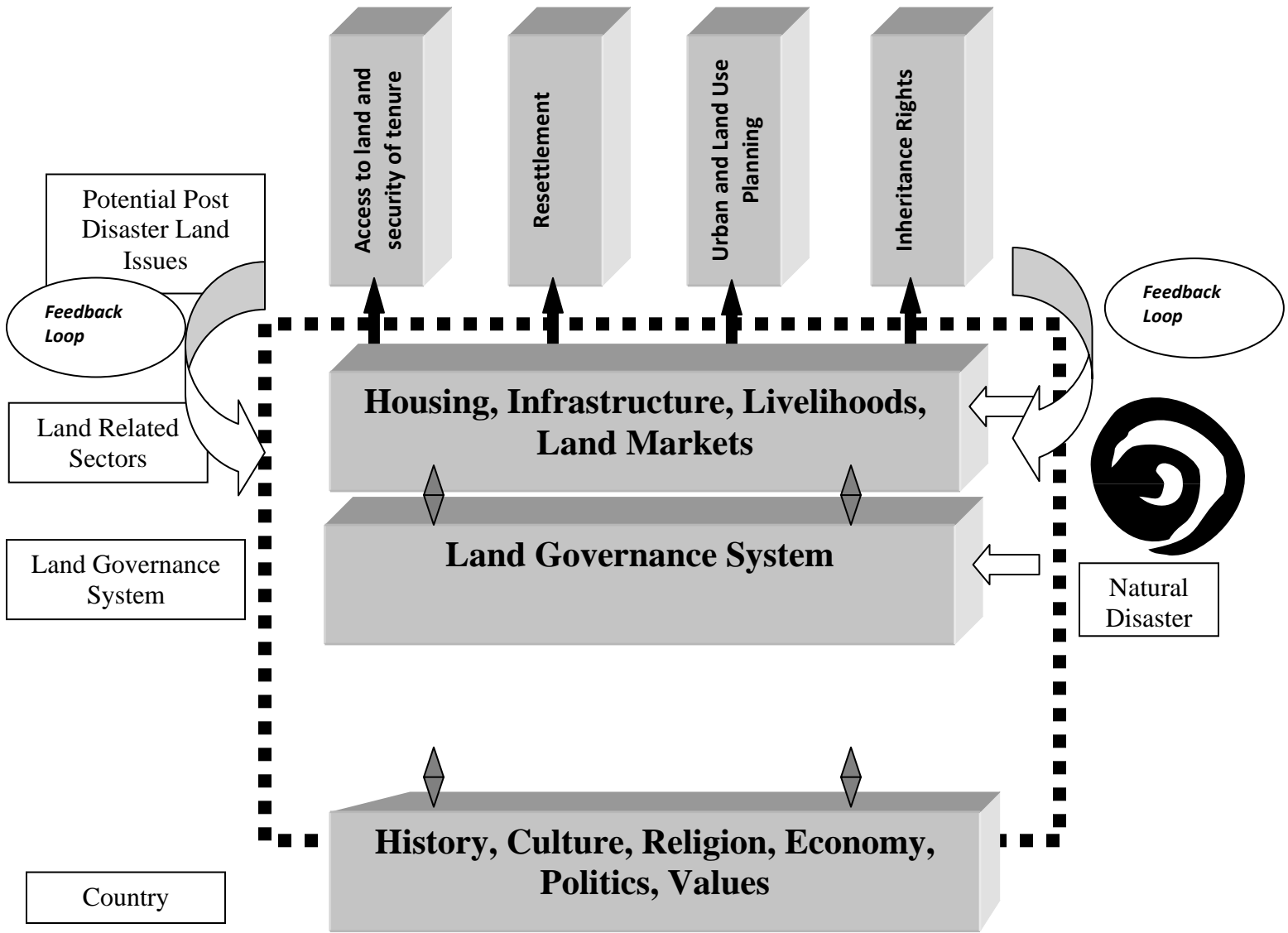
Natural Disasters and Land Governance Systems

A land governance system can enter a state of flux after a natural disaster. The natural event **impacts on vulnerability** in the land governance to help produce disastrous effects. This vulnerability is shaped by the country context, which includes a broad range of historical, political, economic and social factors. Vulnerability may be assessed through analysis of the institutions - formal, traditional and informal - that make up a land governance system. Some institutions will be more vulnerable (or resilient): hence there will be differences in institutional performance after a disaster.

Land is a cross-cutting issue in the shelter, infrastructure, livelihoods and governance sectors. The impact of a disaster on a land governance system feeds through land-related sectors to produce a range of substantive land issues. These substantive land issues usually revolve around (1) secure access and right to land, (2) land use and settlement planning, and (3) acquisition of land for resettlement and infrastructure.

Diagram 2 provides a schematic of the impact of a natural disaster on a land governance system.

Diagram 2: The impact of a natural disaster on a land governance system.



**Note: Key issues will vary from country to country*

The processes depicted in Diagram 2 are dynamic and often self-reinforcing. Feedback loops can emerge that increase the impacts on different classes of disaster victims. These feedback loops can include adoption of unsustainable land use practices, and inadequate coordination among reconstruction actors.

BOX 5: UNDERSTANDING LAND ISSUES AFTER NATURAL DISASTERS: KEY COMPONENTS OF ANALYSIS

Analysing the effects of a natural disaster on a land governance system requires a close understanding of the following:

- The system of land governance prior to the disaster, its component parts and methods of interaction, and the way in which it created disaster vulnerability (or resilience) for human users of the system.
- The effects of the disaster on the land governance system, both in terms of quantitative damage impacts and qualitative changes to actors and incentives.
- New forms of interaction among component parts and human users of the land governance system, particularly as a response to new structures, opportunities and incentives.
- The country context for the land governance system, both before and after the disaster, including in particular its political, social, and economic elements.

This type of analytical approach focuses on systemic change and dynamism. It tends to shift attention from one-off problem identification, and responses based on standard technical solutions. It underlines the need for (1) sufficient flexibility in programs to adapt to new demands and circumstances, and (2) continuous information-gathering and assessment, to allow responses to new demands and circumstances.

Navigating the Institutional Context

The potential for competition and inadequate coordination among reconstruction actors is important to understanding land issues and potential responses across a range of different contexts. After a disaster, some land governance institutions will be degraded or lacking in credibility. Others will compete for influence and entitlements. The underlying nature of land issues will change over time, not only in response to new policies and programmes, but also as a result of new interactions among component parts of the land system.

Focusing on institutions and their interaction over time involves three key subjects of enquiry.

- The relationship among government departments and different levels of government.

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- The relationship between the government and the international humanitarian community.
- The relationship among UN agencies, NGOs and other multilateral or bilateral agencies.

The relationship among government departments and different levels of government

Most country contexts are characterised by a separation of land administration and planning functions across a range of government departments and levels of government. This separation of functions can be accompanied by inadequate coordination and a degree of institutional competition. Relations among government departments and levels of government will have a major impact on land responses after a disaster.

Centre-Periphery Politics. Where a disaster occurs in an outlying area, there is likely to be:

- inconsistency between policies and plans at different levels of government;
- inconsistency between the central government and realities on the ground; and
- delays in the transfer of funding from the central government to provincial and local governments.

These effects will be exacerbated when citizens and officials in the disaster zone are antagonistic to the central government.

The Role of the Lands Department. There is often competition between the Lands Department and emergency response or reconstruction authorities. A Lands Department may not coordinate with emergency response and reconstruction authority because recovery planners may not appreciate the importance of land law and administration to sustainable recovery. The Department may also have excessively long delivery times due to its legal, technical and operational standards.

Where a Lands Department does coordinate with reconstruction planners, the underlying quality of the land administration system will determine whether land rights are restored or allocated in a sustainable manner. Two indicators in particular will predict the effects of participation in early recovery by a Lands Department.

- The quality and coverage of land data.
- The quality of the legal system relating to land.

Land Use Plans. There may be competition in the land planning process among government planners, government officials trying to implement the plan, and affected communities and their representatives. This competition will be affected by the

underlying quality of the land planning system. Most countries have a hierarchy of land-related plans from national to local level. These plans are called land use plans, spatial plans or guide plans. Key indicators of land use planning quality include:

- The extent to which plans are old, out of date and/or inconsistent with the *de facto* situation on the ground.
- The extent to which big picture plans (at small scale) can be implemented on the ground (at large scale).
- The extent to which the plan is linked to the land registration system the zones/land use areas of the plan are implemented as each parcel is registered or sub-divided.

Local government and special purpose reconstruction vehicles. It is common for a higher level of government to step in where (1) local government has little capacity after the disaster, and (2) where the disaster is of some magnitude. This intervention may involve a special purpose vehicle such as a Reconstruction Authority. Establishing a Reconstruction Authority requires an exit strategy to return authority and functions to the local government.

The relationship between the government and the international humanitarian community

Relations between international actors and national governments will shape the way in which land issues are addressed after a natural disaster. Land issues are always politicised, and often sensitive in a national or local context. Some governments will be **willing** to coordinate land responses with international actors. Other governments will be **reluctant** to respond to deep-seated land issues, or recognize that land issues are part of relief and recovery efforts. Other government may be the **cause of displacement** through inappropriate land and settlement planning, or may **discriminate** on the base of land against one category or class of disaster victims.

Relations between government and international actors will take different forms at different times. In the emergency relief phase, governments may suffer from degraded capacity, cumbersome procurement procedures and the slow transfer of officials to the affected region. In this phase, governments may rely heavily on international actors and seek to play a coordinating role only. In the early recovery phase, the government may seek to minimise the role of the humanitarian community, and begin to implement recovery and reconstruction itself. Tensions can arise at this time the government adopts different approaches and techniques to those used by international actors.

Part III include strategies for international actors to adopt where governments are unwilling to address land issues after a disaster.

The relationship among UN agencies, NGOs and other agencies, and multilateral or bilateral institutions

Many post natural disaster situations are linked to a large inflow of international funds and expertise. This leads to coordination problems and a degree of competition among organisations.

- Different organisations expend considerable time and energy negotiating among themselves to secure funds, deal with procurement issues, and share qualified human resources.
- Governments often have difficulties in identifying which international organisations have the funds, human resources and ability to deliver. This identification problem is at its greatest soon after a disaster.
- Some organisations may engage in land issues at the outset, but be pulled back by headquarters because of fears of political risk and legal liability.
- Early alliances among international actors made breakdown and re-form as early recovery unfolds and government counterparts alter over time.
- Disagreements may arise over appropriate phasing of emergency relief and early recovery activity. These disagreements can merge with questions relating to credibility and personality conflicts, as well as media reporting.
- Overlapping agreements to work in the same area or sector from different government officials.
- Large international organisations operating in alliance may set some of the agenda in terms of human settlement policy, and in doing so they have a major impact on the history of the area.

IV. Key Institutional Land Issues after a Natural Disaster

Summary of Key Institutional Issues

Key Issue	Brief description of responses	Typical Challenges	Relevant section of guidelines
Land issue assessments	Incorporate land issues into rapid (and ongoing) needs, damage and hazard assessments.	Lack of technical land expertise in the emergency relief phase. Tendency to treat housing or social protection as proxies for land issues.	
Land Response Coordination	Coordinate land responses (1) across different land sectors, and (2) with other aspects of early recovery programming	Humanitarian concern to avoid entanglement in politicised land issues. Lack of formal mechanism for coordinating land responses across different land sectors. Institutional competition and government agency reluctance to coordinate.	
Strategic planning for land issues	Incorporate land issues and broad program responses into the Master Plan(s) for recovery. Establish mechanisms to update and adapt land response planning over time.	Governed reluctance to deal with deep-seated land issues. Tensions between agency of planning and need for consultation and participation. Inflexibility of program design and adaptation.	
Monitoring and Evaluation	Establish monitoring and evaluation mechanisms for all land programs.	Institutional and governmental desires to avoid scrutiny of land programming.	

Land Assessments

The Significance of Land Assessments

Assessments are necessary to identify issues, make decisions and monitor responses. Assessments for early recovery are essential for strategic planning and program development.

There are a number of existing tools for post-disaster assessments.

- Needs Analysis Framework (IASC 2005);
- Post-Conflict Needs Assessment (UNDG 2004);
- Crop And Foods Apply Assessment Missions (FAO)
- Livelihood Assessment Toolkit And Livelihood Assessment And Response System (FAO)
- Manual for Estimating the Socio-Economic Effects Of Natural Disasters (UN-ECLAC 1991)
- Conflict-Induced IDPs: Assessment for Action (UN Protection and Early Recovery Clusters)
- Environmental Needs Assessment in Post-Crisis Situations – a Practical guide for Implementation (UNEP).

There are also a number of forthcoming assessment tools, including:

- Post-Disaster Needs Assessment (UNDP).
- Post-Conflict Needs Assessment Light (UNDP).
- Sustainable Relief and Recovery (UN-Habitat).

The *Conflict-Induced IDPs: Assessment for Action* tool has a useful section on the housing, land and property rights of displaced persons. The UN-Habitat *Sustainable Relief and Recovery* tool has a comprehensive set of indicators to evaluate land programming after disasters. Other assessment tools do not have dedicated sections on land as a cross-cutting issue in emergency relief and early recovery. These guidelines recommend that land issues be integrated into general post-disaster assessment tools (see further Part).

Potential Policy Responses

There are four potential types of assessments relating to land.

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- Loss and Damage.
- Needs and Vulnerability.
- Governance.
- Hazard

Monitoring and evaluation is considered as a separate issue in these guidelines. Hazard assessments are considered under *Land Use Planning and Disaster Risk Reduction (Part)*.

BOX 4. MINIMUM STANDARDS FOR LAND ASSESSMENTS

Land assessments should:

- utilise standard formats;
- integrate with general post-disaster assessment tools;
- coordinate with key stakeholders in relation to method, applicable standards, key objectives, available primary and secondary sources, and scope and depth of data collection;
- identify gaps in the protection of rights and access to land for displaced persons; and
- be led by the relevant government agency or department.

Assessment methodology can include:

- Quantitative data from land government institutions and household surveys.
- Qualitative data from focus groups, including meetings with stakeholders, community group meetings, walkabout observations and informal individual interviews.

Participatory methodology is required to include the views of those most at risk, including women, children, indigenous groups, the disabled, the landless and holders of secondary rights to land. These groups should be interviewed and assessed separately, using local institutions that are best able to access and collect useful information.

Loss and Damage Assessments

Land should be included in preliminary loss and damage assessments after a disaster. Most preliminary loss and damage assessments are conducted within weeks of a disaster. They tend to rely on existing data sources rather than dedicated surveys or interviews. The data sources can include information from line Ministry assessments, relief and recovery agencies of the ground, satellite imagery and aerial photography, and pre-disaster survey data. The UN Satellite Mapping Agency (UNOSAT) can also assist in identifying physical damage to land through satellite imagery.

The assessment should not unduly impinge on emergency relief efforts. The scope of enquiry in relation to land should be brief. The questions include:-

- How much land has been affected by the disaster? What is the nature of physical damage to affected land? How many land parcels have been damaged by the disaster?
- What types of land documents have been lost or damaged (if any)? What are the prospects for recovery of damaged documents?
- What damage has been done to the infrastructure of land administration? What is the damage to land administration buildings and equipment? How many staff have died or been injured?

The preliminary loss and damage assessment should not attempt to classify victims according to tenure types, or produce age and gender-disaggregated data relating to land ownership. The preliminary loss and damage assessment will likely need adjustment over time as more data is collected. While preliminary loss and damage assessments may comment on needs relating to land, and the underlying quality of the land governance system, it is desirable that these issues be considered in detail in separate assessments.

Needs Assessment

Needs assessments relating to land should be integrated with the needs analysis framework undertaken by Humanitarian Coordinators and IASC Country Teams (UNDP). The land needs assessment overview report should be no more than 25 pages, with a summary of no more than two pages. It should be coordinated with OCHA, and integrated into the Common Humanitarian Action Plan (CHAP).

Needs assessments are a key mechanism for obtaining baseline data to allow monitoring and evaluation of land programs. Needs assessments relating to land should be undertaken separately if possible. Alternatively, they can be incorporated into other assessments, including shelter, livelihoods and the like, so long as the result are consolidated into the Common Humanitarian Action Plan.

Needs assessments relating to land should be concerned with the causes of needs as well as the quantification and identification of needs. Assessments should also consider linkages between land and other humanitarian sectors, including shelter, and livelihoods, governance. These linkages are important to incorporate land assessments into strategic planning.

It is essential that as much information as possible relating to needs is collected as soon as possible. There is a brief window of opportunity for reliable data. Land is closely connected to entitlements. Unreliable information made develop as disaster victims seek to access entitlements.

The questions covered by a need assessment relating to land include:-

Displacement and Tenure Status. How many landowners have been displaced? How many people who would not landowners have been displaced? How many displaced victims were renters? How many lived in informal or illegal settlements prior to the disaster?

Land and Shelter. Who owns the land on which reconstruction or resettlement is planned? What are the main types of documentation proving rights to land? To what extent have this document is being lost or damaged? What are the existing processes for restoring or repairing documentary evidence of rights to land? What are the existing processes for issuing new documents relating to land? Will these processes be sufficient to provide adequate tenure documentation in advance of houses reconstruction? Are there are alternative community-based mechanisms for allocating, restoring or repairing documentary evidence of rights to land?

Land and Livelihoods. What are the main users of land for livelihoods in the disaster-affected area? What coping strategies have been adopted in relation to land use after the disaster? Have these coping strategies led to changes in land use practices? To what extent do livelihoods rely on access to common property areas? Do women and children disproportionately rely on access to common property areas? Are there restrictions on access to common property areas after the disaster? Have they been changes in the way that common property areas are used after the disaster?

Acquisition of Land. How many disaster victims need new land for housing? How much land is required for new or repaired forms of infrastructure? What are the existing mechanisms for land acquisition by the government? What are the mechanisms for consultation and participation with affected persons? What are the compensation mechanisms? Does the government land acquisition procedure comply with international standards? Where are the gaps: the critical areas for support, for example in relation to valuation services or facilitation mechanisms relation to consultation and participation?

Land law. How does land law protect existing rights to property? Does the law include mechanisms to manage informality or local customs relating to land? What laws governed specific issues raised by the disaster, including:

- Proof of personal identity and ownership of land.
- The procedural mechanisms and substantive rights of inheritance.
- The resolution of disputes over rights and boundaries to land.
- Rights to land that was lost, submerged, destroyed or otherwise rendered uninhabitable.
- Land use planning and the reduction of future risks.
- Land acquisition for resettlement and infrastructure.

Land and Disaster Risk Reduction. According to agreed categories of hazard risk, what areas of land are vulnerable to future disasters? How many people lived in the areas before the disaster? How many people currently live in these areas? To what extent do

disaster vulnerable areas include extra legal or informal human settlements? To what extent were extra legal or informal settlements included in hazard risk reduction planning?

Land and Access to Justice. To what extent has the disaster caused, or is likely to cause, disputes relating to land? How many disputes? What type of disputes? What are the existing formal institutions for dispute-resolution relating to land? What are the traditional or informal institutions? To what extent do different dispute-resolution systems coordinate, or interact in an incompatible fashion? What are the respective sources of funding and capacity for different dispute-resolution systems? To what extent law is involved in dispute-resolution relating to land? The legal age mechanisms to assist vulnerable claimants? To what extent is mediation incorporated into dispute-resolution both at the local and the judicial levels?

Land and Gender. How many displaced landowners are women? How many widows and female-headed households are there in the respective categories of displaced and non-displaced victims of the disaster? **More gender questions to be added!**

Land Governance Assessments

During the emergency relief period, analysis of the land governance system itself is necessary to produce baseline data, plan for early recovery and prepare programs for implementation during early recovery. Land governance assessment can be incorporated into needs assessments.

Key disaster evaluations have concluded that weaknesses in post-disaster land programming often reflected weaknesses in the pre-disaster land governance system itself. A preliminary analysis of the land governance system would therefore predict and anticipate potential problems in early recovery land program.

In brief, land governance systems before a disaster may include protection gaps relating to:

- Holders of rights to land that are not recorded or registered in the land register;
- Renters, secondary rights-holders and other groups without ownership of land;
- Extralegal, informal and traditional forms of settlements or tenure, particularly those residing in disaster-prone areas; and
- Widows, female-headed households and orphans.

As a minimum, rapid assessment of a land governance system should include the following questions.

- What institutions governed land prior to the disaster?

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- To what extent did these institutions operate in an inconsistent fashion prior to the disaster?
- To what extent did they fail to meet demands for tenure security, equitable access to land and efficiency in the land market?
- To what extent did land institutions protect human rights relating to housing, land and property?
- What role does each land institution play in responding to the disaster?
- Which national institution is responsible for strategic planning and coordination?
- Which international agency, if any, should take the lead role in formulating responses to land issues after the disaster?

BOX 5. IDENTIFYING KEY RECOVERY ACTORS THROUGH LAND GOVERNANCE SYSTEM ASSESSMENTS

Post-disaster assessments should identify institutions that protect vulnerable groups against the risks of dispossession. Where there is a tradition of strong non-governmental and civil society representation, such organisations can play a leadership role in terms of advocacy and providing immediate relief. The case-studies suggest that these local institutions can adapt quickly to the new institutional environment, and can often access transnational funding for their protection services. International actors that engage in direct programming to address discriminatory forms of land governance may become entangled in long-running socio-political contests over resource control and ownership. Assisting NGOs and other civil society organisations to engage in similar activities can help to protect international actors against allegations of partisanship and anti-government activity, while also taking advantage of the local knowledge and capacities of domestic institutions. At the same time, case studies such as Pakistan and Indonesia suggest that the United Nations can play a critical role in assisting policy formulation, and serving as a relatively neutral sounding board for decision-making on often highly political issues.

Annexure 2 contains a detailed framework for assessing a land governance system after a natural disasters.

Land Response Coordination

The Nature and Significance of the Issue

Land responses should be integrated with other aspects of early recovery activity. Land affects services, livelihoods, shelter, governance, security and the rule of law. It is also essential to the reintegration of displaced populations.

Addressing land issues is a cross-sectoral process. There is likely to be a separation of registration, taxation, mapping, planning and adjudicators functions among a number of national government agencies. There is also likely to be a division of land governance functions across national, provincial, district and local levels of government.

It follows that coordination in relation to land issues has two aspects.

- Internal coordination across different sectors of land programming.
- Coordination of land programs with other early recovery activity.

Coordination is one of the more critical elements for success after disaster. It involves coordination across, and within, a range of actors including affected peoples, government, UN agencies, humanitarian organisations, national NGOs, international NGOs, international financial institutions, and multilateral/bilateral donors.

The range of institutions involved has led to increased awareness of the need for:

- Lead agencies and the groups to promote coordination among all groups involved in post-disaster assistance;
- greater integration of emergency responses by humanitarian actors and longer term strategies for sustainable development; and
- more capacity-building for national and international actors in post-disaster relief, recovery and development.

Early recovery should be owned and led by national actors. To the extent possible, government structures and line ministries should lead coordination for early recovery. While governments should take the lead, international actors should be aware of the risks of coordinating with government structures and line ministries in a sectoral manner.

Sectoral land program coordination involves co-operation between national and international actors on specific land issues, without an overarching coordination forum and strategy for land responses as a whole.

Sectoral land program coordination is a key risk because government agencies and line ministries relating to land often fail to coordinate effectively with each other.

**BOX 0.1 SECTORAL LAND PROGRAMMING IN TSUNAMI-AFFECTED ACEH,
INDONESIA**

In tsunami-affected Aceh, Indonesia, restoration of land rights was primarily handled by the national land agency, working in conjunction with the World Bank. Spatial planning was addressed by national and district planning authorities, the reconstruction authority and district/city governments, working in conjunction with the Asian Development Bank (ADB) and UN-HABITAT. Inheritance issues were managed by the Syariah Court, with assistance from UNDP. Access to land and housing for renters and squatters was (belatedly) addressed by the reconstruction authority, working in conjunction with UNDP, the UN Recovery Coordinator, Oxfam and UN-HABITAT. ADB also assisted in the reconstruction of rental housing. Acquisition of land for resettlement and infrastructure was handled by district/city governments and the reconstruction authority, with assistance from UNDP. There was no single stakeholder forum that allowed oversight and coordination of all these land programs.

The sectoral nature of coordination between national and international actors in Aceh created constraints on early recovery. In particular, there were obstacles to integrating:

- community-based restoration of land rights with the formal system of land administration;
- Restoration of land rights with village planning to build a better;
- house reconstruction with buffer zones and restricted development areas established by spatial plans; and
- reconstruction of rental housing with general housing and shelter policies.

Coordinating Land Responses: Typical Challenges

Coordination is difficult during emergency relief for a range of reasons.

- Rapid action is needed to save lives.
- Organisational mandates may not be clear at the outset.
- Communication systems and road networks are damaged or inadequate.
- Most organisations are confronted with calls for coordination while trying to scale up their human resources, officers, accommodation, transport and communications infrastructure.
- Some humanitarian organisations may not be sufficiently aware of the importance of land issues too early recovery.

- There are different visions within the humanitarian community in relation to ideology, scale and focus. These different visions affect organisational perspectives on coordination, as well as the level at which coordination should occur.
- There may be rapid changes of staff and leadership, particularly as operations move from emergency relief to early recovery.
- A degree of credibility is required to lead coordination efforts. Leaders may have to build credibility in order to coordinate land responses, lobby government and other organisations, forming alliances with other organisations, and raising funds for the necessary activities.
- Even when formal coordination mechanisms exist, UN agencies and Head of Missions often have different philosophies, priorities, styles of implementation and ways of addressing security issues.
- Humanitarian concern to avoid entanglement in politicised land issues.
- Lack of formal mechanism for coordinating land responses across different land sectors.
- Institutional competition and government agency reluctance to coordinate.

Response Options

The Timeline of Coordination

In the emergency relief phase, coordination is likely to be fragmented and based on ad hoc coordination and personal communication among government and humanitarian actors. As there is little time to build trust and credibility, relationships prior to the disaster tend to be critical success factors for early coordination endeavours.

A Land Working Group

A land issues working group, or land stakeholders form, should be established soon after a disaster. This working group may be led initially by an international actor, but eventually should be chaired by a government agency. It should have international funding and a small secretariat.

BOX : COORDINATING LAND RESPONSES IN PAKISTAN

Land issues raised were addressed by a sub-committee on land (within the Social Protection Cluster Group), chaired initially by Oxfam, then by UN-Habitat (a change which reflected in part the move from emergency relief to early recovery). Some \$750,000 was allocated for assistance to the landless, based upon an estimated 10,000 households affected (derived from local land revenue survey data, although the eventual figure was less, perhaps 6000-8000).

The landless were identified as one of the five vulnerable groups under the Social

Protection strategy, and the social protection argument was used to overcome objections that land matters was a state rather than federal responsibility, and thus allow ERRA intervention. Government asked UN-HABITAT's support to develop the new rural landless policy, reflecting its field presence, its operational credibility through its work on housing and social protection, and its active policy advocacy. Some high-level lobbying and support from ERRA was necessary to bring the programme onto existence, and a steering committee on landlessness was created within the Social Protection Cluster, with representation from ERRA departments (Planning, Housing, Social Protection, Environment), Governments of AJK and NWFP, Land Authority, INGO/NGO involved in land issues and UN Agencies involved in land related issues, allowing instant policy amendments following legal advice. The Sub-committee was also a forum through which policy decisions could be disseminated to all key stakeholders (meetings were attended by about 15 representatives, but minutes were circulated to some 250 stake-holders).

The success of the rural landless programme was due to high-level support (particularly the Chairman of ERRA, but also at the Provincial/State and District levels), Government confidence in UN-HABITAT's ability to deliver the programme, shared experience of implementing the rural housing reconstruction training. ERRA and Government made the key policy decisions on beneficiary definition and compensation amounts, while UN-HABITAT elaborated the policy through the landlessness sub-committee, in close collaboration with local governments. The programme drew upon policy-based advocacy instead of simple rights-based advocacy. There was effective collaboration between the main actors, and detailed teamwork at the local level, especially in the role of LVUs in ensuring tight administrative procedures and record-keeping.

Factors to be considered in Selecting and Implementing Responses

The following discussion points from Clarissa will be summarised after the EGM discussion.

3. Take into account the competition between UN agencies, NGOs and other agencies, and suggesting ways to coordinate

While the international humanitarian community has learnt a lot from the Asian tsunami of 2004 and has worked to improve structure and coordination, there still remains the problem of competition between international organizations, which leads to a lack of stability, especially at the beginning of the recovery, at the point where the humanitarian community addresses post disaster operations. Many post natural disaster situations are linked to a large inflow of international funds and experts from governments, NGOs and United Nations institutions. This leads to both coordination problems (see below), as well as competition between organizations for the funds and the expertise related to that country or region and/or type of disaster. The kind of things that happen could include:-

- Donors, by choosing certain agencies or NGOs, decide who the leaders will be in that country, region or sector. Donors do not always choose organizations with the most competence.
- Bigger organizations are often more successful by comparison to small specialized organizations, even though the big organization has less appropriate skills relative to the disaster.
- An enormous amount of energy is spent by the different organizations negotiating amongst themselves to secure funds, dealing with procurement issues, and sharing the qualified human resources.
- Confusion at government level about who they should be talking to, and an inability for them to identify among the different organizations which organizations have the funds, the human resources and the ability to deliver. This lack of government capacity is especially problematic in the beginning stages and improves over time.
- Some larger organizations may engage at the outset, but be pulled back by their head quarters from engaging the shelter/land sector, aside from planning, because of perceived risk to the organization in terms of future liabilities to the organization.
- Clarification of who should lead and who has the required skills, over time. Also the competition between organizations moves to include alliance formation as comparative advantage is identified and the funding flows stabilize. Early alliances between organizations outside government may break down and be re-formed in a new configuration as the situation unfolds and the government counterparts alter over time. A stable situation often only emerges later in the recovery stage.
- A struggle between the personnel supporting emergency activities and those supporting reconstruction in regard to when the one phase has ended and the next phase has started (e.g. camps or houses, camps or community development). The phasing is likely to be incremental and in fits and starts with reversions to emergency/recovery activities even when reconstruction is starting to pick up steam. Issues of credibility and the role of big players and personalities and the media can alter perceptions on this issue at different times.
- Agreements reached with one community by one organization being under-mined by other organizations that get similar agreements from other officials with higher up or lower down in the governance structure, for the same work to be done.
- Big international organizations in alliance may the ability to set some of the agenda in the human settlement area, and alter the unfolding history of the area, positively, negatively, usefully or not.

At the outset coordination is very fragmented and a lot of time has to be spent by officials from the various organizations, including government departments discussing with each other, comparing notes, raising issues and trying to get activities started. The role of personal relationships between individuals is absolutely critical at this time in building teams within organizations, as well as between organizations. As there is little time to build trust and credibility, relationships prior to the disaster are critical success factors for organizations.

It is likely that some form of coordination will start between organizations outside of government at an informal level first before it moves to a formal level. At this stage it will not be clear who has the capacity and/or status and/or desire to lead in the sector. It is unlikely that there will be a specific land sector and it is likely to be part of another sector such as Shelter.

It is likely that the coordination will go through phases. Some form of humanitarian coordination of information about deaths etc is likely to be set up early. However this will not deal with human settlement issues. It is likely that informal coordination of some sort, especially involving the big organizations, will exist before a formal coordination forum. It is also possible that one of the emergency actors in the disaster will set up the formal coordination forum and that this will only have a limited use as organizations struggle to move into reconstruction. It is likely that organizations with human settlement knowledge will be asked to lead but often they do not have the requisite human resources at the outset. It is likely that the coordination forum will be co-chaired by government and an international organization. It is likely that at some point the forum will wither rather than be formally stopped either because the international chair is no longer operating in the country and/or government is no longer interested in coordinating. It is likely that if the coordination forum withers before the end of the reconstruction that those big organizations still present will continue to meet informally and will revert to relying on personal relationships and links to both gather information and to get outputs.

Coordination of the Shelter sector humanitarian organizations requires:-

- A government strong enough to engage with the coordination process co-chairing with an international organization who undertakes all the secretarial work.
- An organization willing to take on the chairing and information sharing responsibility, in an already busy environment.
- Funding and human resource capacity, both in regard to the political and strategic management, as well as the technical aspects of human settlement and land.
- Recognized credibility of the organization and/or individual that takes the chair.
- A recognition that this coordination does not follow the typical Harmonization, Coordination and Alignment (Paris Declaration) process, but instead has few bilaterals, many NGOs (both big and small) with a range of very different ideologies, as well as many different UN organizations both big and small, specialist, and non specialist, with global and or country mandates.
- The largest role in this coordination concerns facilitation of information sharing among organizations. Harmonization and alignment are not central stage activities.
- Given the crisis nature of the environment, it is likely that the group will fluctuate over time, with NGOs coming and then leaving once they had successfully embarked on their chosen activity or had left.

In regard to human settlement, a key aspect of coordination that seems difficult to attain is one where different organizations in the Shelter sector focused on different aspects, such as housing or water or roads, coordinate with each other at community level for

service delivery. Where this happens it is generally a one off and based on personal relationships rather than the result of a coordinated effort among such organizations. This has major implications for sustainability as well as the exit strategy and handing over to central government.

Against this background, organizations should keep their focus and continuously decide on their priorities. In a post disaster situation it is likely that land will not be addressed purely because other issues such as housing will take priority. It is likely that the land issue will only be seen to be important later in the recovery and reconstruction phase, yet it needs to be risk managed from the outset through conscious decisions by up stream reconstruction managers. Some of the key risk management approaches for land are outlined below (see 4).

Strategic Planning for Land Issues

The Significance of the Issue

Strategic planning is important in relation to land issues because it:

- crystallises coordination efforts;
- sequences activities in circumstances of low capacity and numerous competing priorities;
- avoids the so-called "tyranny of rush ", where humanitarian emergencies are addressed through rapid and visible means that the cost of more sustainable and durable solutions that address the cause of the crisis;
- builds government capacity through coordination with international actors, and possible deployment of experts to work in government industries; and
- establishes priorities for action; and
- establishes benchmarks and indicators for monitoring and evaluation of early recovery program's; and
- act as a vehicle for advocacy and securing support from donors and national authorities; and
- stimulate awareness and policy development to build back better.

Potential Policy Responses

Strategic planning in relation to land should set out what to do and how to do it. The objective should be as successful early recovery transition from relief to sustainable development. Strategic planning should be led by national and local governments, and coordinated with the IASC Country Team and Early Recovery adviser. Where government capacity is degraded, local and government agencies should as a minimum participate in the strategic planning process. Strategic planning should combine with the World Bank and other international financial institutions.

The Early Recovery Cluster recommends 2 planning documents:

- An early recovery framework.
- An early recovery action plan.

The early recovery framework is a short summary document that provides the basis for the IASC Country team program response. In relation to land it should include the following.

- Analytical summary of findings from the needs assessment process.

- Analytical summary of findings from the land governance system assessment, with a focus on its influence on early recovery responses.
- Identification of key actors and overall land responses to date.
- Identification of key gaps relating to potential land responses in terms of funding, resources and logistical support.
- An outline of the sequencing of priorities and demarcation of responsibilities relating to land responses.
- Proposed and existing coordinating mechanisms for early recovery land responses.
- Summary of long-term objectives of land responses in transition from relief to development.

This brief summary document should be incorporated into the early recovery framework. It should be peer reviewed by key stakeholders.

The Early Recovery Action Plan should incorporate responses to identified land issues. It is essential that the land components be sufficiently standardised as to allow them to be integrated with other sectoral plans in the Action Plan. The plan relating to land should include clear objectives and strategic results. Responses to these objectives should be costed, phased and prioritised, with identification of the unit responsible for implementation and provision of targets for and monitoring indicators.

The types of objectives that could be included in the land component of an early recovery action plan include:

- Incorporate land issues and broad program responses into the Master Plan(s) for recovery.
- Establish mechanisms to update and adapt land response planning over time.

Strategic planning for land issues: typical challenges

To be added after EGM discussion.

Factors to take into account in choosing and adapting policy responses

The following points from Clarissa will be summarised after the EGM

Plan for an increased role overtime for government.

Create an exit strategy where land functions have been taken over by the reconstruction authority, either from the lands Department or local governments.

strategic review should indicate, among other things:-

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- Key blockages to activities and the options and time needed to address them.
- At what points to engage with the land sector systemically and not just in terms of a project.
- At what points to engage with the policy making process in regard to land (a range of micro rather than national land policy decisions will probably be needed –e.g. planning versus titling where people had their houses previously).
- Where there are significant blocks of land which allow quick delivery or where delivery could be blocked for one or other reason (multiple claims, forest cadastre area, flood zone etc).

Prioritisation of Issues.

This has to be done within a strategic context against the background of information gathered and assessing the opportunities and risks. It is likely that these priorities could alter over time, also as the opportunities and risks in the land sector change over time. These could include things like:-

- Land policy issues such as:- participatory planning versus top down master planning; land rights issues such as tenure security for all or rights of renters; land and gender issues such as women's rights to land and inheritance; governance issues, such as the decentralization of land functions. All of these could have both a specific relevance to the disaster impact zone as well as at the national level.
- Land administration issues such as mapping, the land administration system, land registration, law, planning, valuation, institutional strengthening and training and capacity building in the land sector. Again, all of these could have both a specific relevance to the disaster impact zone as well as at the national level.
- Coordination of the stakeholders in the Shelter sector in which land is likely to be nested in post disaster. This could include information gathering across the sector, overall monitoring, calling and chairing regular meetings for stakeholders to attend and discuss the issues and ways of addressing the issues. It could also include supplying normative guidance and technical assistance in the human settlement area, the depth of this depending on the qualifications of staff.
- Land governance issues such as:- general and land rights advocacy, information and media campaigns, working closely with local and international NGOs, community development work, the use, development and advocacy of participatory land tools, training of NGOs and local government people in technical/legal land issues, lobbying high levels of government within a Human Rights framework, creating multi-stakeholder forums including communities, advocating gender issues.
- Choosing to engage at project level with implementation and delivery to communities, and/or at policy level and/or altering the land administration system either through projects or systemically and/or sector coordination and/or land governance.

Often land administration is done through a technical/legal approach. It is suggested that given the nature of the post disaster environment that this would not be

appropriate. Instead whatever approach is adopted should include land governance approaches as well to ensure sustainability.

Also, it is suggested that as addressing the land administration system is complex, resource heavy and takes a long time to get outputs, that this aspect be even more carefully assessed for risk than the other activities. This aspect has to be addressed, but the timing of activities needs to be very carefully assessed.

Where the pre existing land administration system was weak and there is a lack of legal clarity land administration activities should be identified that allow incremental improvement over time, without creating additional large scale problems in the system. Prior to moving to the next implementation stage it is likely that there will have to be a *third stage* of institutional strengthening in the land sector, especially in regard to land administration and legal rights. Training and capacity building programmes need to be put in place, which cover both government and non government (including professional) institutions. Special capacity building of the local government is need to ensure that they can take over once the projects have been completed.

The third stage should also include an overall evaluation of the work and the creation of an exit strategy for the international organizations, as well as any Special Purpose Vehicles which have been created by government. Government or a Special Purpose Vehicle should take responsibility for the overall coordination for the fourth stage.

The *fourth stage* will imply that government has sufficient capacity to address the issues at scale, both in regard to the land administration, planning, servicing and legal issues, such as inheritance. This stage would include:- legally demarcating the boundaries and upgrading the land rights using evidence created post disaster; undertaking planning and servicing using the basic planning done during the disaster. This stage is likely to involve compensation payments for land and therefore valuation. This stage can be undertaken on a project by project basis but it would be better if it was systemic in terms of costs, coordination issues, as well as the quality of the products delivered. If the earlier stages were not done in a sustainable way, this phase will require many more activities in the legal sphere, the recovery and management of the land information, re-working the planning and writing special procedures to standardize things. If this has happened exit should be delayed.

The *fifth stage* would be the implementation of the exit strategy created earlier to ensure that local government could take responsibility for all these communities and would require an exit strategy and full hand over.

Monitoring and Evaluation of Land Programs

Monitoring involves assessment of a program during implementation. Evaluation involves assessment of impact or results achieved after implementation. Indicators are agreed measures of performance. An indicator measures whether or not a program output or result has been achieved.

The Significance of the Issue

Monitoring and evaluation is essential for effective planning, decision-making and adaptation of land programs. It is also useful for communication with donors and stakeholders. The results of monitoring and evaluation will improve the program and issue, and also future programming. It can also influence broader planning decisions and mobilisation initiatives.

Essentially monitoring and evaluation will tell you whether a program is on the right track. The Early Recovery cluster recommends monitoring of both result and activities. Results monitoring refers to the monitoring of early recovery objectives and priorities. Strategic planning should set specific targets for early recovery programming. Results monitoring possesses through indicators agreed whether or not these targets have been met. It is recommended that results monitoring be undertaken on a quarterly basis.

Other forms of monitoring include reporting and activity monitoring. Monitoring activities involves ongoing reporting program reporting. It includes checks on the use of resources and services, situation reports, and site visits. Activity monitoring can be done by the respective agencies. The early Recovery cluster recommends that results monitoring be undertaken by the lead agency for early recovery.

Evaluation is important to develop lessons learnt, identify good practice and inform implementation of the Humanitarian cluster approach. Evaluation involves lessons learnt exercises and after-action Reviews. It should include baseline comparisons of target groups, including is possible a control group. Real-time evaluation is a reform of monitoring that occurs during the project cycle itself.

Potential Responses

The Early Recovery cluster recommends that the Early Recovery advisor establish a comprehensive monitoring and evaluation system. This system should define:

- what to monitor and evaluate (activities and outcomes)
- when to monitor and evaluate (timing and frequency),
- how to monitor and evaluate (tools and indicators),
- who will will monitor and evaluate, and

- how to use the monitoring and evaluation results.

Activity and outcome targets and indicators should be defined in the strategic planning framework.

Planning for monitoring and evaluation should also include human, operational and budgetary resources required.

Methodology can be quantitative and qualitative. Participatory methods.

Annexure 3 sets out a basic monitoring and evaluation structure for early recovery land responses after natural disasters.

V. Key Land Programming Issues after a Natural Disaster

Summary of Issues

Key Issue	Brief description of responses	Typical challenges	Relevant section of guidelines
Tenure security	Support rapid mechanisms to provide security and certainty of tenure for reconstruction	Breakout return and reconstruction before land rights are identified. Claims to empty land by neighbours and local communities. Tensions caused by reconstruction delays. Tension between government and the people.	
Land administration	Integrate tenure security mechanisms with longer term measures to support underlying land administration systems.	Failure to integrate tenure documents into land administration. Over-reliance on technical solutions. Lack of political will and institutional support. Donor reluctance to support land administration programs.	
Legal identity and inheritance	Support rapid mechanisms to restore legal identity records and determine inheritance rights to land, with special measures to protect the entitlements of women and children.	To be added after EGM discussion.	
Land use and spatial planning	Incorporate land use and planning issues into risk and vulnerability assessments prior to reconstruction of housing. Support micro and macro land use plans to mitigate future disaster risks, while minimising the potential for resettlement of affected persons. Support land use planning for	Potential delays to return and house reconstruction. Delays caused by landholder identification. Relocation will have adverse social, political and livelihoods effects. Insufficient local government capacity and difficulties with harmonising hierarchical plans.	

	disaster risk reduction through integrated land and geographical information systems.	Over-ambition in the Master Plan for Reconstruction.	
Tenants, and informal or illegal land occupiers	Support access to land for victims who are not landowners, including tenants, informal occupiers and illegal occupiers. Support upgrading of insecure, informal or illegal tenures through the reconstruction process.	To be added after EGM discussion.	
Land acquisition	Advocate timely land acquisition for infrastructure and resettlement, while including sufficient safeguards for site suitability and community participation and consultation.	Lack of lead time for planning and consultation. Political sensitivities for international actors. Displaced victims may not want to move to resettlement locations. Landowners may resist efforts at compulsory acquisition. Tensions with host or doesn't communities.	

Land Tenure Security

These guidelines use the expression "tenure" to denote all forms of property relationships with land. Land tenure encompasses legal, traditional and extralegal claims to land.

The Significance of the Issue

Tenure security is important for early recovery after a disaster.

- *House reconstruction.* Housing providers need to know that they are building in the right place for the right people. A failure to identify land rights, and obtain consent from landowners, will lead to long-term disputes and insecurity in residential areas.
- *Eligibility for assistance.* Eligibility for housing assistance is often conditioned on the ability to provide clear title to land. Donors and housing providers may avoid working in areas where there is no clear legal title. Housing programmes may be directed at owner-occupiers only. Yet those who are most vulnerable to disasters are people those who are not landowners, or who lack clear documentary evidence of rights to land.
- *Decommissioning temporary settlements and living centres.* Disaster victims who are excluded from housing programmes, on the basis of their tenure status, will disproportionately populate temporary settlements and living centres. Temporary settlements and living centres cannot be decommissioned until their inhabitants obtain access to land and housing. Temporary settlements that become permanent may be blighted by poor access to services and infrastructure, insecure forms of land tenure, and long-term dependence on welfare and humanitarian relief.
- *Livelihoods.* Disaster victims require security of rights and access to land to invest time, labour and capital into productive uses of land. Tenure security is necessary to plant crops, repair buildings and establish small businesses. Tenure security is important for access to common property resources, including forest and maritime areas. Over time, tenure security may also be useful to access credit from financial institutions.
- *Services.* Recognized rights to land are often necessary to access services and infrastructure on human settlements. Without tenure security, extralegal settlements that form after disasters may be ill-served by urban management and infrastructure systems.
- *Disaster risk reduction.* Disaster victims may be unwilling to leave hazard-prone areas, or will return quickly after a disaster, when they perceive that their rights to

land are insecure. Disaster risk reduction is also difficult when landholders cannot be identified for planning purposes, or are excluded from consultations over settlement planning.

- *Sustainable development.* Secure forms of land tenure are essential for economic development, sustainable environmental practices and resilient human settlements. Secure land rights encourage investment, provide incentives for sustainable resource use, and resolve resource conflicts through authoritative allocation of rights and responsibilities.

Tenure security is important for displaced populations, non-displaced disaster victims and host communities.

Insert Box: The Pinheiro Principles - Tenure Security and the Right of Return

Tenure insecurity after a disaster can have a number of causes, including:-

- poor quality land records and incomplete coverage of land data prior to the disaster;
- lost or damaged land records (including personal identity records);
- multiple forms of tenure, and inadequate legal frameworks for their recognition;
- land grabbing by elites or powerful groups;
- inheritance disputes among family or community members, particularly in relation to claims by women and children; and
- government measures to restrict reconstruction in areas designated as unsafe.

Tenure insecurity will likely not be a significant issue after a natural disaster where there is:

- good quality and coverage of land data in relation to rights and parcels;
- relatively little damage to land records;
- a responsive and accessible land administration system;
- responsive and accessible laws and legal institutions process claims to land and inheritance in a relatively conflict-free fashion.

If landholders have documentary evidence of clear rights to land, accepted by the authorities, then tenure security is unlikely to be a significant issue for early recovery purposes.

Tenure Security Responses: Key Risks and Constraints

- *Breakout return and reconstruction.* Individuals and families want to return to their land as quickly as possible. They do not want to lose rights that are dependent on visible occupation. They may not wait, or want to wait, for tenure confirmation measures to precede house reconstruction.

- *Ad hoc claims to empty land.* Communities, neighbours or individuals may claim the land of people who have died, or moved away for some time (e.g. to camps). This claimed land could be used on behalf of the community, for the purpose of planning (e.g. roads), or to put members of crowded households on to available land. This ad hoc land claiming can cause tension between individuals, and with the state and its law enforcement institutions.
- *Tensions caused by reconstruction delays.* Tensions may arise between donors and victims, or even between donors and government authorities, when too much time is spent on tenure confirmation efforts before reconstruction commences. Organisations that adopt a ‘process’ philosophy rather than technical roll-out reconstruction can be targeted and blamed for non-delivery of results.
- *Tension between government and the people.* Tension between the government and the people can develop if the government takes unpopular actions (e.g. clearing debris of the disaster site in such a way as to secure boundary markers).
- National staff in international organizations with personal links to the powerful, influential and/or vested interests in the country can lead to problems.

Potential Responses to Tenure Insecurity

Timing and Sequencing

Where tenure insecurity is an issue, rapid responses are necessary for the process of return and reconstruction. Rapid responses are important to minimise land disputes and land grabbing, and provide sufficient legal and social certainty for reconstruction, shelter and livelihood programs.

Tenure security responses should be consistent with underlying principles of sustainable return. They should be:

- consistent with law and legal procedures;
- documented in a standardised format; and
- integrated over time with formal systems of land administration.

Tenure security responses are affected by tensions between short-term urgency and long-term sustainability. They must be rapid so as not to delay return and reconstruction. They must also be capable of upgrading over time into secure legal rights to land.

Systematic land registration and titling is unlikely to be a rapid mechanism to promote or restore tenure security prior to reconstruction. Weak land administration and inheritance mechanisms will be overloaded by attempts at rapid roll-out of a systematic titling program. Moving directly from little or no land documentation to comprehensive legal documentation is unlikely to be an option for early recovery purposes.

Rapid Responses to Tenure Insecurity

Relevant land administration authorities need to publicly confirm that land rights will be respected soon after a disaster, and initiate some early responses to prevent land grabbing (e.g. temporarily suspend land sales, have local leaders monitor land possession, avoid loss of boundary related terrain features during debris clearing)

Relevant authorities need to publicly confirm that different tenure types - including unregistered or customary tenures - provide a sufficient land rights basis for house reconstruction. If they are reluctant to do so, international actors may support advocacy efforts by civil society and NGOs to highlight the land and housing needs of unregistered, customary and informal landholders.

Systematic restoration of lost or damaged land title documents can be appropriate where land records are extensive, and land administration is efficient. In other cases, **interim steps** will be required to provide tenure security for reconstruction. These interim steps may take two basic forms.

Community-generated tenure documentation. Community-generated documents include:

- signed statements of ownership verified by neighbours and/or community leaders;
- placement of land parcel boundary markers by survivors;
- maps of land parcels and public areas agreed through community mechanisms;
- signed statements of inheritance verified by family members; and
- signed statements of guardianship of orphans verified by community members.

This type of approach involves identification of housing sites and beneficiary lists within a broad spatial plan. It can be led by NGOs or community leaders, and facilitated by rapid appraisal and community participation tools.

Box: Community-Generated Tenure Documentation in Tsunami-Affected Indonesia

The Land Registration Manual for Post-Tsunami Areas provides an innovative “bottom-up” approach to systematic land rights documentation after a natural disaster. Under the community-driven adjudication (CDA) provisions of the manual, each landowner signs a statement of ownership that is endorsed by her neighbours and the village chief. These statement of ownership are endorsed in a community meeting, which will also agree to a community map showing land parcels and boundaries. Where the landowner is deceased, the manual provides a form for family agreement and identification of heirs. This form is witnessed by the village head and village priest. The village head and priest will also endorse forms in the manual that identify guardians for under-age landowners. In both cases (i.e. inheritance and guardianship), a mobile Syariah Court provides legal confirmation of the decision by the village head and village priest.

Government records of ownership or occupancy. The government or disaster victims may retain some evidence of ownership or occupancy even though cadastral records and the land titles or transactions register are incomplete, lost or damaged. This evidence may include utility bills, electoral rolls, land tax payments or personal identity cards.

Supporting mechanisms for interim tenure documentation efforts include:-

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- pre-disaster satellite imagery or aerial photography to confirm land parcels and boundaries; and
- provisional certificates of ownership or occupancy issued by the Land Department or local governments;
- verification against existing government records and integrated databases of beneficiary assistance; and
- public notices of documented claims to land with specified periods for lodgement of complaints.

Interim tenure security measures would be conditional as to rights and boundaries. They would not be conclusive proof of rights all boundaries to land. At the stage of house reconstruction, boundary disputes arising from interim measures are unlikely because boundary marks are usually present, and the house itself can be built towards the middle of the land parcel.

Tenure Security and Customary Tenure

A strong system of customary authority may substitute for rapid tenure documentation in areas slated for reconstruction or resettlement. Donors and house providers may proceed with reconstruction without tenure documentation provided that relevant assessments conclude that (1) customary systems of authority are sufficiently authoritative to allow reliance on undocumented identification of rights and parcels; and (2) customary systems of land tenure are sufficiently recognized in law.

Where there are legal mechanisms in place, donors or housing providers should consider applying for documented legal recognition of land ownership by a customary group.

Factors in Choosing Interim Tenure Security Response

Community-Based Mechanisms

Community-based mechanisms are important tools for early recovery generally. Community-generated tenure documents are particularly useful for reconstruction purposes where:-

- community groups are relatively close-knit, and not too traumatised or dispersed to engage in cooperative decision-making; and
- local government and land administration institutions are unable or unwilling to issue interim tenure documents in a timely fashion.

Community-generated tenure documents have a number of limitations.

- The identification of land boundaries through community-based methods needs to be supported by facilitators with appropriate skills and the outcome has be shown

in the terrain with appropriate boundary markers. If not, there are risks that the outcome is not accurate enough, and might be affected by opportunistic behavior.

- Community-generated land documents may be subject to undue delays where they need to be cross-checked against pre-disaster land records. Careful consideration should be given to the state of records where cross-checking is necessary. Poor quality records will delay the verification process.
- Community-driven documentation must be fully supported in law to ensure government agency acceptance of their validity. Community-driven determinations should use standard documentation and methods to ensure quality results, and the ability to scale up those results into formal systems of land administration.
- NGOs and political parties may use the post disaster period to mobilize against the state or the party in power. Many community-based approaches use methods such as mobilization, sensitization, training to empower the communities. These methods could be seen by government to be decreasing their hold over the same communities.

Insert limitations on government records of ownership or occupancy.

Intermediate Steps towards Long Term Tenure Security

Rapid mechanisms to secure land tenure will need to be upgraded, and integrated over time with formal systems of land administration. Donors should not exit a country without ensuring that their beneficiaries either (1) have documented legal rights to their land, or (2) have completed as many procedural requirements for formal land documentation as possible.

The upgrading process can involve the following steps.

Standardised documentation. Standardisation is necessary to translate information from interim tenure documents into digital databases. It also facilitates verification and quality control, and use of tenure documents by other donors and reconstruction actors. Template documents should be issued by the government, with assistance where necessary from reconstruction actors. International actors should advocate the use of standard documents.

Surveying of boundaries. Community members may agree on land boundaries and insert boundary markers. Ideally, this boundary markers should be inserted in such a way as to prevent changes prior to formal survey. Where qualified surveyors are not available, NGOs and community members may be trained for basic surveying purposes. These basic purposes include basic parcel layouts and identification of sites for water and sanitation, public facilities and the like.

There will be situations where there are not enough qualified surveyors to meet basic boundary mapping requirements. But there are minimum requirements if unqualified surveys are used.

- Spatial information collected in the field must be uploaded on to databases with a high degree of accuracy.
- Parcel maps produced by NGOs and others must be in a form that allows easy referencing from a map to boundary markers on the ground.

Qualified surveyors are required to (1) translate cadastral information into formal systems of land administration, and (2) meet national standards for accuracy of boundary identification. Ideally, house providers should appoint qualified international surveyors where there are insufficient national surveyors to map settlement parcels and boundaries.

Law Reform. Law reform may be required to support steps toward tenure security for all disaster victims. In particular:

- Post-disaster tenure documentation should be confirmed as valid legal evidence of rights to land.
- Post-disaster tenure documentation should be confirmed as sufficient evidence for house reconstruction to commence.
- Other forms of documentation relating to occupation or traditional control may need to be recognized as valid legal evidence of rights to land.

Legal measures may also be required to clarify:

- inconsistency between post-disaster tenure documentation and pre-disaster records (assuming that verification processes have not identified this inconsistency); and
- exemptions from personal liability for government officials who issue or confirm, in good faith and without notice of private claims, tenure and parcel documentation that is inconsistent with pre-disaster records.

Collection of supporting evidence. Donors and houses providers should assist their beneficiaries to collect supporting evidence for applications to record or register formal legal rights to their land. The evidence involved can include:

- sworn witness or community leaders statements;
- marriage and birth certificates;
- house numbers and addresses;
- land tax payments;
- utility bills;
- confirmations of inheritance;
- sale or mortgage documents,
- parcel maps; and

- genealogical records.

Donors and house providers should also provide, or confirm in writing:

- the legal classification of the land;
- the location of the land; contact information for requests to register title; and
- the forms required for applications to register title.

Ideally, donors and house providers should lodge applications to register rights to land on behalf of their beneficiaries. Mass lodgment will provide economies of scale, and may facilitate more timely responses from land administration institutions.

Recognition of customary tenure. Where initial tenure security for reconstruction is provided by customary mechanisms only, intermediate steps may involve recognition or documentation of customary group claims to land. Where there are existing procedures, donors and house providers should assist customary groups to obtain documentary evidence of their rights to land. Where there is no clear legal recognition of customary land tenure, donors and house providers should support advocacy and preliminary social mapping efforts to obtain formal recognition of customary claims to land.

Resolution of disputes. Interim tenure documentation should not be issued where there is a dispute over rights to land. Mechanisms to generate interim tenure documents should include procedures to refer disputes to mediation and adjudication. Intermediate steps towards tenure security for all require attempts to resolve land disputes, at least in so far as they affect reconstruction or prevent return of displaced persons.

Tenure Security and Informal or Extralegal Landholders

Tenure security measures after a disaster should apply to all disaster victims, including informal or extralegal landholders. Interim documentation for house reconstruction purposes are a useful preliminary step in upgrading the tenurial rights of informal or extralegal landholders. Further guidance on upgrading the rights of informal or extralegal landholders provided in Part.

Restoring and Improving Land Administration Systems

Land administration includes:

- land rights registration or recording;
- land use planning;
- state land management;
- land valuation and taxation;
- land information management; and
- land parcel mapping and identification.

These land administration functions are often spread across a number of government agencies and levels of government. They are supported by a legal framework, and guided by land policies formed at a political level.

The Significance of the Issue

Outside of strong customary systems, tenure security cannot be achieved without **corresponding capacity** in land administration institutions. Where land administration was weak before a disaster, or is degraded as a result of disaster, capacity-building and technical assistance programmes will be necessary to develop institutional support for early recovery land responses.

Land responses after a disaster can be **leveraged** to allow sustained improvements in land administration systems. Even capable land agencies with good quality and coverage of land data can be improved through disaster programming, particularly in terms of meeting the risk of future disasters.

Land administration is a key risk to early recovery after a disaster. Land administration institutions may lack:

- the capacity to manage large amounts of land tenure and planning documents arising from reconstruction; and
- the political will to support policy innovations and interim measures introduced during reconstruction.

Obstructive, corrupt or inefficient land administration institutions can be key obstacles to early recovery because:

- measures to ensure tenure security prior to reconstruction may be too slow, leading to breakout reconstruction without confirmation of underlying rights to land;
- beneficiaries of housing assistance may be left without formal rights to land, and long-term security against evictions, after reconstruction actors depart;

- landholders without documented evidence of rights to land may not be able to access credits for investment purposes; and
- re-shaped landholding and settlement patterns after disaster may create long-term disputes where land administration institutions do not accept the legal validity of new settlements and new resettlement layouts.

Potential Responses to Restore and Improve Land Administration

Land administration institutions may need to perform the following functions after a disaster.

- Issuing interim tenure documents.
- Surveying land parcels and boundaries.
- Upgrading post-disaster tender documents into formal legal rights.
- Integrating the allocation of new land into post-disaster spatial planning.
- Release of state land for temporary settlements or relocation purposes.
- Valuing and compensating rights to land that acquired by the government.

Land administration institutions may also be called upon to assist in the upgrading of rights held by traditional, informal or extralegal landholders.

Where land administration was weak before a disaster, or is degraded as a result of disaster, capacity-building and technical assistance programmes will be needed to support these post-disaster land administration functions. These programs should be carefully designed and sequenced in order not to overload the absorbing capacity of the institutions concerned.

Capacity-Building and Technical Assistance

The **first stage** of capacity-building and technical assistance should be directed at supporting urgent early recovery land responses. They include:

- Appointing and training new staff to replace staff who have died, or have relocated as a result of the disaster.
- Recovering damaged paper records through freeze drying techniques.
- Supporting rollout of interim tenure security measures through deployment/secondment/appointment of staff and associated training programs.
- Preparing/restoring basic infrastructure damaged in the disaster, including buildings, furniture, archival areas and - where appropriate - computer software.
- Providing computer software and hardware to back up records to protect against future disasters.
- Initiating procurement procedures for surveying equipment as necessary, including GPS base stations and rover units.

- Initiate as required regulatory reform relating to (1) legal evidence to establish rights to land for the purposes of houses reconstruction, and (2) reduction or removal of fees associated with the issue of post-disaster tenure documentation.

These measures should be (1) managed by a programme implementation unit, (2) accompanied by complaints-handling processes, and (3) include monitoring and evaluation techniques. An international technical adviser should accompany capacity-building and technical assistance programs for land administration, particularly so as to ensure adequate communication with international reconstruction actors.

The **second stage** of capacity-building and technical assistance for land administration should be directed at ensuring **the long-term sustainability** of early recovery land responses. They should address the following key sustainability risks relating to early recovery land responses.

Failure to integrate tenure documents into land administration. If there has been a large rollout of new land rights documentation after a disaster, integration of those documents into formal land administration may prove unsustainable because of:

- a lack of institutional capacity in the Land Department; and
- a lack of incentives for landholders to update the land register with new transactions, consolidations, sub-divisions and transfers affecting their land.

The failure to update a land register is known as a derivative registration problem. It arises when (1) land registration services are too expensive, or (2) landholders have access to parallel local systems that substitute for formal land registers.

Over-reliance on technical solutions. Land administration assistance programmes can over-emphasise technical solutions involving sophisticated software and operating systems. Technical solutions may be unsustainable once international technical advisers depart (1) because of a lack of money to replace parts and fix problems, or (2) because trained staff leave and there are no ongoing training programs to ensure replacements.

Lack of political will and institutional support. Reforms to land administration may lack support from key stakeholders, including the Lands Department itself. This lack of institutional support may arise because:

- the reconstruction response torque key land administration functions away from the Lands Department;
- innovations in land documentation after the disaster threatened the role and revenue sources of the Lands Department; and
- reforms to land administration are driven by a donor-funded programme implementation unit rather than leaders within the Lands Department itself.

Donor reluctance to support land administration programs. Some bilateral donors are now reluctant to support technical assistance programmes for land administration because

of their expense, political risks and long lead times for identifiable results. Donors particular suspicious of assistance to land administration institutions that are known for corrupt activities.

Potential responses to these sustainability risks include:-

Tightly targeted programs. Assistance programmes can focus on the priority early recovery needs of land administration, including surveying land parcels, issuing or confirming land tenure documentation, and upgrading post-disaster documents into existing databases.

Stakeholders support. Assistance programmes should include incentives to ensure support from the Lands Department for reforms and innovations. These incentives can include the potential for increased (legitimate) revenue-collection.

Long programming horizons. Assistance programmes should have long programming horizons. They should be integrated into the general development assistance plans for a country. They should avoid over-ambition, long-term budgetary constraints and overly technical solutions.

Responsiveness to public needs. Assistance programmes should focus on ensuring responsiveness to public needs. This responsiveness should be measured by reference to the efficiency of services, perceptions of corruption, transparency of procedures and mechanisms for accountability.

Decentralisation of land administration. Assistance measures should be accompanied by decentralisation or deconcentration of land administration, so that parallel land systems at the local level can be integrated into formal land administration. This objective should also be incorporated into the country development assistance plan.

The kit responses to sustainability risks should also include leveraging post-disaster programming into sustained improvements in land administration. For example:

- Public awareness of the vulnerability of land records to disaster may lead the government to prioritise scanning paper records into digital formats.
- The destruction of office equipment may allow purchase of up-to-date software and information technology.
- The use of satellite imagery, digital techniques and parcel identification indices during reconstruction can be leveraged into development of a geo-coded cadastral plan linked to individual parcel details.

Law Reform Responses

Some of the key sustainability risk can be managed through better law. Better law includes:

- recognition of functioning customary systems, including group-based rights on the rights of indigenous peoples to land;
- mechanisms to protect residential rental rights even though those rights are not registered;
- recognition of possessory rights, including possibly the concept of adverse possession against a landowner; and
- recognition of secondary rights arising from membership of a household unit.

Legal Identity and Inheritance

Legal identity involves recognition by a state that a person exists for the purposes of legal rights, obligations and capacity. Legal identity relies strongly on personal records, including birth registrations and national identity cards.

Inheritance involves the transfer of a deceased person's property, after payment of debts, to designated heirs. In many land systems, women rely disproportionately on inheritance to gain access and right to land.

The Significance of the Issue

Legal identity is closely connected to human rights and social protection after a natural disaster. Legal identity is often necessary to access a range of basic services, including health, education and utilities. Legal identity is also necessary to register legal rights to land.

Disaster victims without legal identity, or the ability to prove legal identity, can be excluded from humanitarian and early recovery programs. Alternatively, they may be forced to pay bribes to government officials, in order to obtain assistance, or to purchase forged identity documents on a black market.

Legal identity is often related to tenure status. People with insecure forms of tenure, including agricultural tenants and informal or legal occupiers, are less likely to have birth records and other legal identity documents. People who have moved to informal urban settlements may also lose their legal identity status, because they have breached restrictions on relocation without official permission.

Legal identity records are often lost or damaged in natural disasters. They may not even be held by more vulnerable members of the population. Restoring and providing legal identity records is a **priority social protection step** after a disaster.

Legal identity is important to early recovery land responses after a disaster.

Decommissioning temporary shelters and living centres. Temporary shelters and living centres cannot be decommissioned until all their inhabitants possess the legal capacity to access land and housing.

Eligibility for housing assistance. Eligibility for housing assistance requires the legal capacity to obtain recognized rights to land, either in original or resettlement locations.

Secure rights to land. Registering or recording rights to land usually requires proof of legal capacity to hold rights to land.

Widows and orphans. Widows and orphans require proof of legal identity if they are to access **independent rights** to land. In certain cultural contexts, women may have less experience in dealing with public institutions, but are forced to do so after a disaster to establish their identity and eligibility for land and housing assistance programs.

Legal identity is related to inheritance. Heirs that are entitled to inherit land usually require proof of legal identity to obtain registered title to their new land.

Inheritance of rights to land is an important early recovery issue after disasters that have significant mortality rates.

Social protection. Poorer families are more likely to avoid the costs of legal requirements for distribution of land through inheritance. Over a number of generations, heirs may occupy and even subdivide land without updating legal records relating to that land. As a result, they lack legal evidence of rights to land when a disaster strikes.

BOX : INHERITANCE OF RIGHTS TO LAND AFTER HURRICANE KATRINA

Successions and inheritances also proved to be problematic after Katrina, particularly for poorer families who had avoided the costs and complexities of the legal requirements for handling the estates of deceased family members, leaving the present occupants of properties without legally valid documentation of their rights.

The point is that there was not much need to sort out inheritances legally with all the costs involved in that process.

Out of these original peri-urban household plots, two or three generations of successions of heirs emerged, many without updating title. There were few if any pressures on the heirs from anyone contesting title, and they had little interest in using the properties commercially, either to sell or to mortgage to acquire loans from banks. Owners may have borrowed money from private lenders, however, who did not demand clear legal title as a guarantee.

Most people do not know of the legal requirements for carrying out a legal succession. Some believe that the eldest automatically inherit. Others do not know that any adopted children or legitimate children from various marriages have rights of inheritance.

Eligibility for land or housing assistance. Access to housing assistance not only requires rights to land, it can require formal status as a household unit. Adult children who live on land owned by their deceased parents may not constitute a separate "household" for legal purposes if they have not (1) processed their inheritance claims to land, and/or (2) subdivided their part of the land.

In cases of multiple co-owning heirs, delays can occur if housing assistance programs require written consent from all co-owners of the property, and some co-owners refuse to cooperate or cannot be located.

House reconstruction. Disasters with significant mortality rates require early recovery mechanisms to identify heirs for the purposes of houses reconstruction. If land-owning heirs are not identified quickly, then significant numbers of disaster victims will be excluded from housing programs because they cannot prove legal title to inherited land.

Inheritance may also delay house reconstruction where inheritance laws insufficiently clear, particularly in relation to the complex cases that will arise after a major disaster.

Women and children. Women and children carry disproportionate risks of losing rights or accessed to land, particularly where they claim their entitlements through a deceased or missing male relative. Orphans face risks of dispossession where rights to their land are recorded in the name of their guardians.

Women may face claims - either from neighbours, local leaders or relatives of her husband - that:

- the land was not marital property, but was owned independently by her husband (and therefore inherited by the husband's family); and/or
- she can only claim rights to and through a husband (and that she must remarry).

These risks are exacerbated by displacement, as returning widows may be denied the opportunity to re-possess their land.

BOX : WOMEN'S RIGHTS AND ACCESS TO LAND AFTER NATURAL DISASTERS

Comparative experience suggests that women suffer disproportionately from displacement and disaster. Of particular importance is the link between pre-displacement disadvantage, and women's access to land after displacement. Pre-displacement disadvantage arises from the following circumstances.

- Custom, religion and local patriarchal structures often restrict women's rights to land notwithstanding protection of those rights in law.
- Patriarchal political structures are linked to ownership and control of land. Restricting women's rights to land denies a political voice to women and perpetuates discriminatory systems of authority.
- Laws, traditions and programs that allocate land rights to household heads often leave a woman's access to land dependent on her link to a husband or a male relative.
- Laws to protect women's rights to land may be undermined by a lack of access to legal institutions or legal information.

- Gender-sensitive laws may have little effect when national legal systems allow customary or religious law to prevail in matters of inheritance and divorce.
- Access to land in a market economy requires money that women may lack because of unequal division of household resources, and disproportionate time on unpaid childcare and household chores.
- Women are disproportionately poor around the world, and poverty is a key obstacle to accessing land. The link between land access and poverty creates a vicious cycle. Access to land is necessary to overcome poverty, but money is needed to access land.

Displacement and disaster exacerbate these systemic biases against women's access to land. Displacement removes women from:

- kinship structures that provide basic forms of social insurance against poverty and violence; and
- location-specific income, including access to common property resources.

After displacement, women who return home are at risk from male relatives or neighbours who take advantage of social turmoil and government weakness to deny their claims to land. In some cases, women who return home will lose their land altogether because prevailing social or legal norms mediate their entitlement to land through a deceased or missing husband or relative. This is particularly the case for women who are widows, or who stand to inherit land from deceased relatives.

Key international standards relating to women's rights to land require states to:

- accord to women equality with men before the law;
- take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including in relation to property;
- provide legal security of tenure and equal access to land or people including women and those living in poverty;
- undertake legal and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property; and
- ensure the equal rights of men and women to housing, land and property restitution after displacement.

Potential Responses

Potential responses to legal identity issues after a disaster include:

- Advocacy and support for relevant government agencies to restore and extend personal identity records to disaster victims.
- Monitoring of proof of identity restoration efforts by civil society organisations.
- Advocacy for appropriate safeguards relating to privacy and abuse of government power.
- Support for campaigns to raise awareness among disaster victims in relation to legal identity restoration and extension efforts.
- Support for mobile identity documentation units where victims are dispersed, or local government agencies are unwilling or unable to restore and extend identity records in a timely manner.

BOX : MOBILE DOCUMENTATION UNITS IN PAKISTAN

Establishing eligibility required good records of both individual identity and land records.

NADRA was established in 2000 to undertake the collection of demographic and geographic data for Pakistan and its citizens, and has established itself as a leader in the industry. In 1998 it was designated to issue Computerized National Identity Cards CNICs to citizens over 18 (56 million issued by 2006). It also introduced a Child Registration Certificate. In partnership with ERRA and the World Bank, NADRA developed a specialized software and database to assist in identifying and verifying individuals who could claim funds as victims. Local registration centres in most towns, and mobile units to help with registration. NADRA first such agency to use both facial recognition and finger-printing, integrated with passport as refugee. NADRA registered 2.5 Afghan refugees in 16 weeks. NADRA completed, scanned and entered 1.2 million forms to identify beneficiaries for housing and livelihood grants. Mobile units to complete checks. Most men were already CNIC holders, but women often had to speed registration (and bank accounts) in order to obtain livelihood grant (CNIC compulsory for livelihood grant but not for housing grant, a World Bank requirement). Applications verified by the claimant with the army and regional bodies at village or district level.

NRC in early 2006 started a legal assistance project, concerned with replacement birth certificates and creating bank accounts. Important role in identifying the extremely vulnerable (eg orphan-only households)

Potential responses to address land and inheritance issues after a disaster include:

- Programs aimed at improving access to justice (e.g. provide support for local legal aid and advocacy organizations)
- Advocacy and information campaigns directed at women and children's inheritance entitlements.

- Early collection of age and sex-disaggregated data, particularly so as to identify the numbers of widows and orphans affected.
- Anticipation and management of local resistance to inheritance of land rights by women through (1) information and rights of awareness programmes, and (2) act to justice mechanisms that allow women to take claims beyond the family and community levels.
- Support for information programs, law reform and land rights recording mechanisms, that make clear distinctions between independent and marital land.
- Support for customary or family-based mechanisms for identifying heirs.
- Integration of customary or family inheritance agreements with mechanisms to restore tenure security, with provision for disputes to be referred to appropriate dispute-resolution institutions.
- Advocacy and capacity-building support for inheritance disputes to be managed at the lowest administrative level possible (where they cannot be resolved at the family level).
- Advocacy and capacity-building support for Courts to verify and legalise customary or family agreements, and to resolve disputes referred by family members or local government officials.
- Advocacy and capacity-building support for mediation of inheritance disputes, both at the community level and in the Courts. Mediation is an essential dispute-resolution technique in cases of land disputes generally.
- Capacity-building for Courts with jurisdiction over inheritance.
- Relaxation of legal requirements for all co-owners to consent to sale or rebuilding.
- Relaxation of legal requirements for processing inheritance claims.

BOX : RELAXING INHERITANCE REQUIREMENTS IN LOUISIANA

The Road Home program initially required that the possessors of properties who requested disaster related assistance had to have legal title or a Judgment of Possession for inherited property to qualify for that assistance. But that requirement proved to exclude many people from assistance who could qualify only if lengthy and costly procedures were completed.

The Road Home eventually agreed to change that requirement for intestate successions for petitioners who were rebuilding and accepted an affidavit signed and sworn by all heirs as to their status as heirs. These arrangements have only been accepted for R.H. petitioners. The affidavits prepared for the R.H. which are not subject to a judicial review, generally would not be accepted by Louisiana Title companies, as legal proof of ownership. For this reason, if the possessors of properties wish to sell the damaged properties to the R.H., they must follow the standard legal procedures for clarifying successions.

The acceptance of affidavits by the Road Home program instead of judgments of possessions to qualify for program assistance does not serve to allow people who

would not inherit the property under Louisiana law to get Road Home grants. It just allows the rightful heirs to show ownership and qualify for assistance without the time and expense of filing a succession. The changes do not help those who would not qualify for legally executed successions, but have been in possession of the property for many years and are considered as owners by others in the community or by other members of their families.

R.H. also has agreed for judges to approve an administrator acting for all heirs in order to access R.H. funds. This change in the R.H. procedures is the authorization of an heir of a deceased person to be named as an administrator and empowered to sign the R.H. covenants for the other co-heirs. This procedure is important because many people have co-heirs who cannot be tracked down. This is a common problem when successions have not been done for several generations.

The Road Home also now allows for the surviving spouse to sign the Road Home covenants without the participation of the "naked owners" (children) including minors and disabled heirs. Under Louisiana law, a spouse of a deceased person who dies intestate has only a usufruct right to the deceased person's share of the marital property, with children automatically inheriting ownership in equal parts. This change by the Road Home project also has support in Louisiana law, which says that a holder of a usufruct rights (right to use a property) can act alone to take care of the property. It took some time for Road Home administrators to accept that this was in fact the law in Louisiana.

People who have lived in the property for a long time but who are not legal heirs are out of luck. This situation often occurs with "common law wives" (who are not recognized in Louisiana) as well as illegitimate children.

Land Use Planning and Disaster Risk Reduction

Land use planning promotes the use of land to serve social, economic and environmental interests. Land use planning encompasses:

- **zoning** areas for types of use (residential, commercial etc);
- **site layouts** and development restrictions for settlements;
- **infrastructure** and **services** delivery;
- **urban growth** mechanisms, including setting aside land for new developments;
- **environmental protection** through impact assessments and management; and
- **disaster risk reduction** through hazard mapping and hazard risk responses.

These guidelines focus on land use planning aspects of disaster risk reduction. They are not concerned with other aspects of disaster risk reduction, including all encodes, structural assessments and the like.

Land use planning is often described in terms of town planning, urban planning and spatial planning. These guidelines used the expression "land use planning" to describe planning at the micro and macro levels.

Micro-planning is a participatory method that facilitates better living environments at the community level. Macro-planning is a government-led process that stipulates the use of land and public spaces. Macro-planning often takes a hierarchical form with plans developed at the national, regional and district levels.

The Significance of the Issue

Land use planning is essential to build back better and safer after a natural disaster. The process of displacement, return and reconstruction offers an opportunity to improve the quality and resilience of human settlements.

- Constructing new settlements, or rebuilding established settlements, offers a fresh chance to provide better access to infrastructure, services, livelihoods, employment and clean water and sanitation.
- Displacement offers a chance to divert disaster victims to safer settlement areas. The diversion must be based on informed consent and participation by victims.
- In many low-laying areas, global climate change will increase the risks and costs of recurring disasters if returns and reconstruction occurs without mitigation through land and settlement planning.

- Digital maps prepared during reconstruction, including for risk and damage assessments, can be used to build integrated land information management systems (LIMS). LIMS an important tool in identifying "hot spots", and channelling resources into priority areas.

Land Use Planning: Key Constraints

Potential delays to return and house reconstruction. Land use planning should be based on community consultation and agreement, in particular so as to ensure the sustainability of plans. Ideally, land use and settlement planning should take place prior to house reconstruction. But participatory planning can take considerable time and effort. Unless reconstruction actors are prepared to roll out participatory land use planning programmes quickly, then the need to plan land use and settlements - particularly in hazardous areas - can delay house reconstruction and places considerable pressure on the reconstruction effort.

Delays caused by landholder identification. Land use planning can be delayed by the need to confirm land rights and boundaries before planning can commence. Planning laws usually require consultation with affected landholders. Landholders must also agree to boundary adjustments and compensation measures. In legal terms, land use planning may not be possible until landholders are identified, and boundaries to land confirmed.

Relocation will have adverse social, political and livelihoods effects. Large-scale prohibition of return and reconstruction in hazardous areas can provoke a high degree of social and political controversy. Moreover, victims with location-dependent livelihoods, and limited opportunities for-land employment, will face disproportionate income risks if they rely catered from their pre-disaster lands. These income risks encompass victims rely on secondary sources of livelihoods, including access to common property resources.

Insufficient local government capacity and difficulties with harmonising hierarchical plans. Most countries have a hierarchy of land-related plans from national to regional to district levels. In many developing countries, these plans are old, out-of-date and inconsistent with the *de facto* situation on the ground. They may not include disaster risk reduction components. They require implementation by district or municipal governments, but this level of government often suffers the most from insufficient capacity, and difficulties in obtaining popular consent for guidelines produced at a higher level.

After a disaster, local government capacity will have particular importance if the reconstruction authority takes over local government functions relating to planning, it does not include capacity-building for local government in its exit strategy.

Over-ambition in the Master Plan for Reconstruction. It is common for reconstruction master plans to include significant land use planning elements, particularly for urban areas. These plans are prepared rapidly, usually with external consultant assistance, as

part of strategic planning for early recovery. They can be over-ambitious in their attempts at mitigating risk of future disasters, particularly in environments that are not conducive to resettlement camps. They also rapidly lose currency as the process of return and reconstruction changes realities on the ground.

Box: "Plandemonium" in New Orleans

Potential Responses

Hazard Mapping

An important first step after a disaster is to incorporate hazard assessments into land use planning for the reconstruction of housing and infrastructure. This assessment should be tailored to the type of disaster that poses the greatest risk of recurrence. Particular issues include soil and geological stability, and low-lying long ability to floods, cyclonic surges or tsunamis.

Hazard mapping should identify priority districts for mitigation activity. It should be integrated into (1) strategic planning for reconstruction, and (2) national, provincial and district development plans. It is important that hazard mapping be adopted by line ministries in terms of their own prioritised activities, including the allocation of funds for education, health, housing, public works, agriculture and water and sanitation.

BOX : HAZARD MAPPING IN PAKISTAN

In post-earthquake negotiations, the World Bank's loan agreement with the Government of Pakistan included a condition that an assessment be conducted of the extent of hazardous land in both rural and urban areas. This hazard risk mapping would identify areas susceptible to future earthquakes, landslides and rock-falls, mud-flows, and erosion subsidence. It would lead to localised re-siting of structures, or special treatment of foundations. But there was no formal definition of the categories and classifications of hazards, and disagreement over how the definition should be formulated. Full hazard risk mapping would require specialist consultant teams of seismologists and geotechnical engineers, working over large land areas under difficult conditions. In the event, relatively little hazard risk mapping was undertaken, particularly in rural areas, and many people are still living on clearly hazardous land. In some places the whole area could be at risk of landslips. Overall, the lack of reliable and robust information concerning hazardous land remains a significant barrier to managing reconstruction. Valuable geotechnical assessments have been undertaken in particular areas, for instance Muzaffarabad, and in one remote rural area by consultants to the AKDF (classifying four risk categories for housing), but resources and capacity for an immense task, with major implications for future reconstruction strategy, are limited.

Techniques and Tools of Hazard Mapping

Remote sensing. Remote sensing is a process of deriving information about land and water from a distance, usually from a satellite or through aerial imaging techniques. Remote sensing can be used to monitor the **progress** of some types of natural disasters, particularly dynamic processes such as floods, fires and lava flows. When correlated with Geographical Information Systems (GIS) data, remote sensing can lead to situation reports, ongoing estimates of expansion of disaster impacts, and predictions of actual disaster impacts. **After** a disaster, remote sensing plus GIS data can be used to calculate actual disaster losses, and to predict the impact of future disasters.

Provide link or box on UNOSET services here.

Geological Information System (GIS). Geological Information Systems are a mechanism for geographic data management. They encompass data relating to water, transport, land cover, demographics and socio-economic indicators. GIS data can combine with remote sensing to predict, monitor and calculate disaster impacts. Soil and agro-ecological data have particular value for identifying flood-prone areas. GIS data of less value in less than two earthquakes, where hazard mapping requires on-the-ground geotechnical surveys by experts teams.

Weather warning systems. Weather warning systems can include disaster alerts, weather hazard impact assessments, drought predictions and assessments of the progress of wet seasons or cyclone seasons.

All these technological measures require support from trained personnel, and mechanisms to ensure that their results flow through to line ministries and reconstruction actors.

Community Planning

Community planning is a micro-planning process that utilises participatory techniques. It is directed at small-scale residential settlements (villages, neighbourhoods etc). It involves community decisions relating to siting of areas for private use (housing, agriculture, commercial), and public purposes (schools, green spaces, health and religious facilities, green spaces). It can also involved community development planning.

In terms of disaster risk reduction, community planning can involve road-widening and creation of access and exit routes. These mitigation activities may require relatively small boundary adjustments. Community-based disaster risk reduction may also involved re-siting of land parcels in other locations in the neighbourhood or community territory. This process may involve land swaps, gifts, purchases or agreed allocations. In

both cases - boundary adjustments and re-siting of parcels - eight key constraint can be legal requirements and potential obligations to pay compensation.

BOX : COMMUNITY PLANNING AFTER THE FLOODS IN MOZAMBIQUE

In Mozambique, the Fidel Castro community hosts the 6,000 flood victims of the Xai-Xai 2000 village. Until recently, the Fidel Castro community did not have access to a developed *machongo*. The wetlands close to the village were covered with reeds. This area has now been cleared from natural vegetation, a drainage system was put into place, and the area was parcelled into small plots. This investment was costed by an outsider. The condition for the development was that the number of parcels made available for production was to be divided among members of the host community and the resettlement village. This win-win situation is the result of a holistic vision on development and resettlement planning, which was fully integrated in the government programme.

Community planning should be integrated with general development planning. This process involves the allocation of sites and facilities for specified commercial developments. Once community development plans are incorporated into the district development plan, they can be eligible for disbursement of public funds from provincial and national budgets. They can also be packaged and marketed to private finance providers.

Coordinating Community Plans

Community plans are often not coordinated with other community plans. This can cause problems in terms of connecting trans-community infrastructure, including roads, sewage and water supply. One community plan may site infrastructure in such a way as to prevent connections with a neighbouring community. These alignment problems will be mitigated if there is an existing district plan, displaying lines of infrastructure and connections, which can be a reference point for development of community plans. If there is no district plan, or the plan is out-of-date or inadequate, then community planning should proceed as a priority issue to allow reconstruction of settlements. Once house reconstruction commences, these community plans would need to be aligned in infrastructure terms through a district plan.

District Plans

Effective district planning involves:

- local government planning capacity, including in relation to disaster risk reduction measures;

- civil society links between local government and affected communities through neighbourhood associations, community development committees and the like; and
- consistency with higher level plans, including regional, national and recovery master plans.

District planning is an important bridge between reconstruction planning and sustainable development. A failure to support district planning can be a key bottleneck in early recovery land program. District plans should be integrated with general development planning.

Master Plan for Reconstruction

It is common to have a master plan for reconstruction after a natural disaster. This reconstruction plan will include land use planning elements. It is likely to override planning instruments that applied before the disaster key land use planning issues in reconstruction plans include:

- the right of return and property restitution or compensation for displaced persons; and
- exit strategies and long-term consistency with national and regional plans.

Master Plans and the Rights of Return

The UN Guidelines on Internal Displacement require competent authorities to assist internally displaced persons to recover, to the extent possible, the property that they left behind or were dispossessed of upon their displacement. When recovery of such property is not possible, competent authorities must provide or assist displaced persons to obtain appropriate compensation or another form of just preparation.

Reconstruction actors need to balance the obligation to assist displaced persons to recover land with disaster risk reduction measures to prevent return to as it is locations. Return to hazardous locations can create cycles of vulnerability to recurrent disasters. The risk and cost of water-related recurrent disasters, in particular, will increase as global climate change increases the vulnerability of low-lying settlements.

International human rights law provides clear guidelines on relocation of disaster victims from hazardous locations. Relocation must be voluntary, participatory, without discrimination and accompanied by just compensation. Victims who are relocated must receive secure rights to their new land. Host communities that provide land for resettlement should also receive secure rights to land.

Facilitating Reconstruction in Safe Locations

Key steps involved in diverting reconstruction from hazardous locations include:-

- formation of consultation and participation mechanisms with affected groups;
- appointment and training of the facilitators to liaise with affected groups;
- establishment of agreed classifications of hazard risk to facilitate voluntary decisions on relocation;
- provision of secure rights to land in new locations, both for displaced persons and host communities; and
- review of existing legal frameworks to assess compliance with international human rights standards.

International actors should also advocate and support legal mechanisms to (1) guide the process of victim consultation and consent, (2) value rights to land, (3) allow appeal mechanisms in relation to relocation, valuation and compensation positions, and (4) allow release of land in new resettlement locations

Box: Return and the Urban Footprint of New Orleans

Proposals to shrink the urban footprint of New Orleans, in order to reduce the risk of future cyclonic disasters, included the following suggestions.

- Prohibiting return to low underlying areas.
- Prioritising assistance for house reconstruction in safe areas.
- Providing options for landowners to sell damaged houses to the reconstruction authority.
- Establishing a moratorium on building permit in unsafe areas.
- Requiring residents to prove neighbourhood viability by reference to the extent of voluntary return and reconstruction.
- Allocating sites for intensive investment in order to stabilise neighbourhoods.

Key lessons from New Orleans include:-

- In most land systems, large-scale prohibitions on reconstruction in hazardous locations will fail as a result of social and political reactions.
- Granting owners of damaged housing in hazardous areas the option of sale to a reconstruction authority may be a useful tool to reduce the risk of future disasters.
- Land use planning in hazardous areas, including decisions not to rebuild, must be bottom-up and participatory in nature.
- Identifying sites for intensive investment, in order to stabilise neighbourhoods, is important to allow informed decisions on return and reconstruction in hazardous locations.

Coordinating with Reconstruction Plans

In the medium to long term, there is a need for intermediate levels of planning between the reconstruction plan and local community planning. These intermediate plans can be

used as a mechanism to update the master plan, in particular by incorporating more information as to hazard risk management. Intermediate plans should also incorporate digitalised geographic information that has produced through the reconstruction process.

Urban Land Use Planning

Urban planning as a number of important differences in comparison to rural planning. Cities have:

higher levels of population density, and greater interdependence in relation to basic services;
greater regulation in the form of town plans, building codes and construction standards;
greater vulnerability to natural disasters;
greater diversity of stakeholders and actors;
more complex land and property issues;
higher turnovers of residential tenants; and
greater proportions of business and commercial property.

Rural Land Use Planning

Rural land use planning can encompass the following distinct issues in comparison to urban planning.

- Identification of local management institutions and community lands.
- Improvements to agricultural production systems.
- A greater range of types of tenure, including more forms of overlapping rights to agricultural lands.

Box: rural land use planning in Mozambique

The Land and Water Department (DTA) of the IIAM is the institution that has put participatory land use planning on the map in Mozambique. Since 1993 it has implemented pilot experiences in Gaza, Manica and Zambézia, and on this basis produced a manual that is still used as a guideline (Nyamuno *et al*, 1995). During the period 1994-1995, as part of the Pre-Programme, a land use plan for the district of Xai-Xai was prepared and discussed with involvement of provincial and district authorities and services, the communities and their leaders, and the private sector (Nyamuno *et al*, 1995a). Key elements for its elaboration were in depth knowledge of the field reality (the permanent presence of a team for 2 years), continuous interaction with and pro-active role of the communities and local leaders, appropriate technical mechanisms to assess land use and management options, dialogue and negotiation. Specific tools used for the plan's elaboration are:

- In-depth Rural Appraisal with emphasis on agrarian systems
- Soil survey and land evaluation including farmers generated land suitability evaluation
- Land management zoning

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

- Social surveying with identification of community territories and their leaders
- Grass roots level consultation and dialogue
- Appreciation of indigenous knowledge and community long term development views
- Community negotiation of technical proposals

The major immediate objectives of the land use plan were:

At the time of the 2000 floods, the provincial and district administrations, as well as all the relief organisations and institutions did not consider this plan as a tool for eventually tailoring recovery and rehabilitation interventions. The Xai-Xai land use plan was never adopted by law as a development tool.

Tenants and Informal or Illegal Occupiers

Tenants obtain possession of land from a landlord in exchange for the payment of rent. The duration of the lease will be limited, after which the land reverts to the landowner. Different forms of tenancy include:-

Residential. Residential tenants are more likely to exist in urban environments. They can occupy multi-family apartment blocks, detached housing and even single rooms in a house.

Agricultural lease. The tenant works agricultural land for a fixed period and pays rent from the produce.

Sharecropping. The tenant works agricultural land and pays rent to the landlord through an agreed division of the produce.

Government lease. The tenant obtains a lease over state land from the government.

Tenants may have leases over land or housing. In some systems, tenants may own a house and lease the land, or lease the house and own the land. Tenants such as agricultural workers may lease a house, but have no rights to land at all.

Illegal land occupiers have possession of private or state land without the consent of the landowner, in circumstances where that consent is required by law. **Informal land occupiers** occupy land without holding recognized legal rights to that land.

Informal occupation is common where the legal definition and demarcation of state land is unclear. Informal occupation can encompass customary systems that receive insufficient recognition from state law. Informal and illegal land occupation is also common where there is considerable rural-urban migration without corresponding increases in the (formal) availability of urban or peri-urban land.

Informal or illegal occupiers often have some claim or documentary evidence relating to land, including:-

Rights of first allotment. The occupier will have priority rights to the land should the state decide to allocate it to a private user.

Permission to cultivate. The occupier has some type of permission letter, often from local government officials, to cultivate state land.

Letters of land tax payment. Some governments collect land tax on the basis of occupation alone, and will issue letters or receipts of tax payments to informal or illegal occupiers.

Government mortgages. In some systems, occupiers of state land can even obtain loans from the government that are secured by a form of mortgage over the land.

Allocation of house numbers and addresses. Residents of urban informal settlements, in particular, often treat house numbers and addresses as *de facto* recognition by the government of their claims to land.

Informal land markets tend to develop around these documentary claims to land.

The Significance of the Issue

Tenants and informal or illegal occupiers are highly vulnerable to the impacts of a disaster.

Relative poverty. Tenants and informal or illegal occupiers are more likely to be affected by poverty before the disaster, and more likely to suffer disproportionate livelihoods and income losses after a disaster.

Lost access to land. Displaced tenants and informal or illegal occupiers are more likely to lose access to their original land after a disaster, either because (1) they cannot afford the rent, (2) they are prevented from returning, or (3) their houses will not be rebuilt.

Housing eligibility. Tenants and informal or illegal occupiers may not have access to housing where reconstruction focuses on owner-occupier programs only, and reconstruction actors require proof of clear title to land.

Informal settlements and hazardous land. Tenants and informal or illegal occupiers are more likely to live on hazardous land, including low-lying areas and unstable hillsides, because land values and rents in these areas will be relatively low.

Temporary shelters and living centres. Temporary living centres cannot be decommissioned unless housing, or access to housing, is provided to homeless tenants and informal or illegal occupiers. Unless they are decommissioned, temporary living centres can become long-term settlements characterised by poor living conditions, unregulated development and inadequate access to infrastructure and services.

Consultation and participation. Tenants and informal or illegal occupiers may not be sufficiently identifiable from pre-disaster records to allow informed decisions, and sufficient participation and consultation, in relation to their land and housing options.

Disaster risk reduction. Extralegal or informal settlements may not be included in risk reduction infrastructure or disaster risk assessments.

Access to land, and secure rights to land, for tenants and informal or illegal occupiers is necessary to:

- ensure sustainable recovery for all victims of a disaster, and protection of vulnerable groups after a disaster;
- decommission temporary shelters and living centres in order to prevent long-term dependency, and lost access to livelihoods and employment;
- promote resilience to future disasters by including informal or illegal settlements in urban planning and disaster risk reduction activity;
- provide a bridge to sustainable development by allowing tenants and informal or illegal occupiers improved access to opportunities for credit and home ownership.

Providing access to land for tenants and informal or illegal occupiers can raise sensitive social and political issues. A concentration of tenants and informal or illegal occupiers in residual caseloads of persons unable to return to their pre-disaster lands will highlight the social and legal conditions that restrict access to land and its ownership in the affected country. As a result, there may be a degree of governmental caution or paralysis because addressing the land needs of tenants and informal or illegal occupiers may open a Pandora's Box of claims outside the disaster zone. It may also disrupt long-standing land-based power structures that have substantial influence with the government.

BOX : PRIVATE AND PUBLIC ADVOCACY FOR TENANTS AND INFORMAL OR ILLEGAL OCCUPIERS IN TSUNAMI-AFFECTED INDONESIA

In June 2006, Indonesia's Aceh and Nias Reconstruction Authority (BRR) issued a regulation that made distinctions between landowners, renters and illegal occupiers. Pre-tsunami landowners who had lost land would receive free land and a basic 36m² house. Pre-tsunami renters and illegal occupiers who could not return home would be given a cash payment: 25 million rupiah (approximately US\$3000) for renters and 10 million rupiah (approximately US\$1250) for informal or illegal occupiers. This cash could be used for housing purposes only. In most cases, it was not sufficient to enable outright purchase of land, and it was intended to be used as a rental instalment or as a down-payment for land or housing on credit. Without land of their own, renters and illegal occupiers would not receive a house from the government.¹

The BRR policy of cash payments to renters and illegal occupiers ran into substantial delays and difficulties because the banks refused to act as a conduit for payments. Over time, it became clear that temporary living centres ("the barracks") could not be decommissioned without land and housing solutions for homeless renters and informal or illegal occupiers. Without a decommissioning process, there were fears that the barracks would become sources of social unrest and welfare dependency. At the same time, there was considerable pressure on BRR to revise its policies because of concerns that renters and illegal occupiers would be disproportionately worse off than landowners as a result of the tsunami. With advice and support from UNDP, the UN Recovery Coordinator made a private number of representations to BRR on behalf of renters and illegal occupiers. In early 2007, Oxfam provided a memorandum on renters and illegal occupiers to Bill Clinton, the UN Special Envoy for Tsunami Recovery. President Clinton duly raised the issue with the head of BRR. In February

¹ Throughout 2006 it remained unclear whether NGOs and donors could provide free housing to renters and informal or illegal occupiers, or whether they also were restricted to providing cash assistance only.

2007, BRR announced major amendments to Regulation 21/2006. These amendments substantially replaced the program of cash assistance with a policy of free land and housing for renters and informal or illegal occupiers.

Potential Responses

International Standards.

Certain international standards guide humanitarian and early recovery actors in developing land programs for renters and informal or illegal occupiers after a disaster.

- The International Covenant on Civil and Political Rights prohibits discrimination against tenants and informal or illegal occupiers on the basis of their property status.
- The UN Guiding Principles on Internal Displacement confirm that all displaced persons - including tenants and informal or illegal occupiers - have a basic right of return to their place of origin. They also have a right to assistance in recovering property left behind after displacement.
- The Pinheiro Principles require states to ensure that the rights of tenants... and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

These international standards can be used to shape and assess the following potential programming responses.

Market Solutions

Land and housing markets will provide durable shelter solutions for some tenants and informal or illegal occupiers. Tenants and informal or illegal occupiers with access to income and livelihoods may be able to afford rents in the broader rental market. Residential rents will fall as reconstruction brings more housing onto the market. Disasters with high mortality rates, or patterns of out-migration, may experience reduced demand for rental housing in comparison with the pre-disaster situation.

While the market may provide long-term solutions for some tenants and informal or illegal occupiers, poor tenants and informal or illegal occupiers may not be able to access land and housing because of (1) the income and livelihoods impacts of the disaster, and

(2) rapid inflation in the land and housing market. Rapid inflation in areas adjoining a disaster zone is a common phenomenon after a natural disaster. It arises from:

- widespread destruction of housing stock;
- population displacement; and
- an influx of humanitarian and reconstruction workers.

Reconstruction of Rental Housing: Direct Grants to Renters

Direct grants may be made to tenants that are tied to reconstruction of their rental housing. These grants will require consent for repair or reconstruction from the landowner.

BOX : DIRECT HOUSE RECONSTRUCTION GRANTS TO TENANTS IN PAKISTAN

ERRA then allowed payment of housing grant if tenants signed a Memorandum of Understanding (MoU) directly with it. The MoU contained materially the same terms as the NOC policy: namely, the tenants should spend the entire amount on housing reconstruction, while landlords were prohibiting from any eviction for three years. The MoU did not, however, remove landlord-tenant frictions, as some tenants refused to sign the MoU (preferring to rebuild with their own resources), while others still faced eviction and displacement. PPAF estimated from a survey of eligibility for second tranche housing grant that about 30,000 tenants would be eligible for cash grants if they were willing to sign MoUs with ERRA. Some tenants, under threat of eviction, accepted the first tranche of Rs. 75,000, only to relocate elsewhere, perhaps from their rural land to urban areas. This contradicted ERRA's official position, that it was restoring, not interfering with, the pre-earthquake land tenure arrangements. The MoU was intended to have no bearing on the legal relationship between the landlord and tenant, and the revenue court or officers could intervene, for instance to require the landlord to compensate for the house standing on earthquake day, even if replaced by a new house erected with housing grant assistance; or directing that half of the housing grant could be compensation payable to the tenant upon ejection. Such measures were aimed to deter ejection suits by landlords: the first option restores the pre-earthquake legal relationship between the parties, the second attempts an equitable distribution of government benefits between landlords and tenants. The mechanism of the MOU was challenged by landlords but was upheld in the Provincial High Court as in keeping with tenant acts.

Reconstruction of Rental Housing: Small-scale Landlord Assistance

Direct grants or subsidised loans may be made to landlords for reconstruction of rental housing. These grants can be accompanied by conditions that (1) the landlord agrees to restore the lease agreements with a period of greatest for payment of grants, or (2) the landlord agrees to make the housing affordable to low-income tenants.

BOX : THE SMALL RENTAL PROPERTY REPAIR PROGRAM IN LOUISIANA

Louisiana's *Small Rental Property Repair* Program offers zero-percent interest and potentially forgivable loans to landlords who own small rental properties of ten or fewer units, if they agree to make their units affordable to low- to moderate-income tenants. The amount of the potential loan increases from \$25,000 to \$100,000 per unit depending on the degree of affordability from market rate rents that the landlord is willing to accept (*i.e.*, affordable to renters with 50%, 65% or 80% of the area's medium income (AMI)). The loan will be completely forgiven if the landlord keeps the rent caps in place for a full ten years or longer for a non-profit Louisiana hopes to rebuild 18,000 units over the course of the next several years through this program.

Crucially, though, the loan proceeds awarded under this program will not be given to participating landlords at the outset to finance construction of the new or renovated units. Instead, they will only be disbursed after the landlords have completed construction, the structures have been inspected for compliance with new building codes and to make sure the units contain all the features that the landlords have promised, and finally when qualified low and moderate income tenants have been found to rent the units. In other words, the loans will not be "construction" loans at all, but "permanent" loans, or to be more precise, "lock-in take-out" loans, backed by a firm commitment from the Louisiana Recovery Authority (LRA) to lend, but which actually only reimburse landlords who finance construction with their own funds or which replace construction loans obtained by landlords in the private market.

Unfortunately, though, the results of the Small Rental Property Repair Program so far indicate that it may prove to be a costly and disappointing failure. The program's policy of structuring its loans as "permanent" or "take out" loans to be awarded only after an applicant completes construction of a planned unit, passes numerous inspections and locates a qualified tenant has crippled the program's effectiveness. By the end of 2007, not a single unit of affordable rental housing had been built with program funds, approximately two-thirds of those who received "conditional award" letters had dropped out of the program both state-wide and in New Orleans, and less than 300 landlords had been issued commitment letters across the entire state.

The primary explanation for the program's poor performance seems to be that the small "mom and pop" landlords the program was designed to aid simply lack the income, credit histories, other assets, and financial sophistication necessary to obtain loans to finance the construction of the units they envisioned.

Reconstruction of Rental Housing: Multifamily Apartments

Direct grants or subsidised loans may be made to private developers for construction of multi-family housing to serve lower income and special needs populations, including persons who were renters prior to the disaster.

BOX : MULTI-FAMILY RENTAL APARTMENTS IN LOUISIANA

The multifamily (large) rental program, administered by the Louisiana Housing Finance Agency (LHFA) received a special \$170 million allocation of Low Income

Housing Tax Credits (LIHTC)² in the years 2006-2008 to spur housing redevelopment through incentives provided to private developers. The LIHTC funds have been coupled with approximately \$594 million of Community Development Block Grant (CDBG) dollars in a “piggyback” arrangement to help engage private developers and builders to produce multi-family housing to serve lower income and special needs populations.³

The aims include:

- creating 18,000 to 33,000 housing units
- allocating credits and CDBG piggyback funds proportionally to restore rental housing loss in the most heavily damaged parishes

Overall, the allocations for 2006-2008 LIHTC projects will create 14,957⁴ apartments and homes—replacing one-fifth of the rental housing damaged or destroyed by Hurricanes Katrina and Rita.

There has been significant opposition in a number of parishes, mostly in the New Orleans metro region, to multifamily tax credit developments—as well as to the idea of affordable housing in general.

Resettlement of tenants and squatters on land acquired by the government.

Acquisition of land for resettlement purposes, including resettlement of tenants and informal or illegal occupiers, is discussed in Part.

Potential Responses for Informal or illegal occupiers

There are a range of potential programming responses to provide access to land and housing for informal or illegal occupiers after a battle disaster. They include:-

Relax tenure restrictions on eligibility for housing. A pro-poor approach to housing assistance can entail relaxing tenure-based restrictions on eligibility for assistance. In this event, care is required to avoid (1) the potential for demolition and eviction by the government, and (2) the potential for house reconstruction to take place in hazardous areas and poor quality settlements.

Incremental or intermediate steps towards legal title. Some governments may be reluctant to provide registered legal title to persons who occupied land in an informal or illegal manner prior to a disaster. There are intermediate alternatives to registered legal

² From here referred to as GO Zone Tax Credits. The GO Zone includes 37 parishes that sustained damages from Hurricanes Katrina and Rita in 2005.

³ The piggyback funds were administered by the Office of Community Development in conjunction with the LHFA.

⁴ These numbers include allocations from two rounds of funding in 2006, including reprocessed projects (projects funded prior to the storm that returned traditional tax credits in exchange for GO Zone credits) and projects funded in the 2007-2008 funding round.

title that can provide informal or illegal occupiers with an increased degree of tenure security. For example, the occupiers could be issued with certificates of occupation or comfort, which recognize that the claimant has the right to a space within a settlement even though this right is not precisely defined. These types of documents can also constitute incremental steps towards registered legal title.

Insert tenure land diagram?

Land Swaps. Land swaps can be arranged where private developers receive land from the government in exchange for developing housing for informal or illegal land occupiers.

BOX : LAND SWAPS IN HURRICANES-AFFECTED GRENADA

After Hurricane Mitch, the Grenadian government brokered deals in which a private developer purchased Crown Lands, and agreed to provide alternate housing to informal or illegal occupiers in a new location. Under such an arrangement informal or illegal occupiers are provided with a home and secure land tenure. One such land swap has been undertaken in which the owner of the Port Louis coastal development in St. George's funded the relocation of a group of informal or illegal occupiers to La Sagesse, to the east of St. George's. The Port Louis development will include a five-star resort and marina.

Audit of state land. Up to government agencies to prove that it is state land.

Acquisition of Land for Resettlement And Infrastructure

Land will be required for resettlement and infrastructure development after most natural disasters. The categories of persons who potentially require land for resettlement include:-

- Victims whose land is submerged, contaminated or otherwise uninhabited as a result of the disaster.
- Tenants and informal or illegal land occupiers who are unable to return to their original locations because they cannot afford the rent, or their house will not be rebuilt.
- Victims who are prohibited from return to their original locations on the grounds that their land is unsafe for reconstruction.
- Victims who cannot turn to their original locations because of laws on abandonment, or because they cannot evict occupiers who have taken possession of their land.

These guidelines did not consider the general process of resettlement. The ADB (1995), OECD (1992) and World Bank (2004) have produced useful tools on development-induced resettlement that may be adapted to disaster contexts.

The Significance of the Issue

Resettlement should be a last resort after natural disasters. Resettlement often has adverse effects on livelihoods and community cohesion. Reconstruction should be allowed to proceed in areas vulnerable to future disasters if mitigation measures short of resettlement will suffice to reduce disaster vulnerability to an acceptable level.

Where no other option is available, acquisition of land for resettlement is important to early recovery after a disaster.

Social protection. The most vulnerable groups after a disaster will be homeless persons who are also landless. Landless groups who are affected by poverty, or who have lost livelihoods and income streams, are less likely to access land through their own financial resources.

Eligibility for housing assistance. Land is necessary for a house. Victims without some type of access to land after a disaster will be excluded from housing assistance programs.

Decommissioning temporary shelters and living centres. Temporary shelters and living centres cannot be decommissioned until all disaster victims have access to land for housing.

Tenure security. Access to land is required to obtain secure rights to land. Secure rights to land are necessary to encourage sustainable recovery and development.

Women, children and the disabled. After a disaster, women, children and the disabled face disproportionate risks of losing access to their pre-disaster land. Should this eventuate, allocation of land for resettlement will be necessary to provide housing and livelihoods for these vulnerable groups.

Disaster risk reduction. Certain types of hazardous land may not be suitable for house reconstruction after a disaster. In this event, land must be available for resettlement in order to house victims who are not able to return to hazardous land.

Acquisition of land for infrastructure is important for early recovery after a disaster.

Relocating facilities. Infrastructure such as roads, bridges and communications equipment is likely to be damaged after a natural disaster. In order to build resilience and reduce the risk of future disasters, it may be appropriate to relocate infrastructure to safe locations. In most cases, relocation of infrastructure will require land acquisition by the government.

Building new facilities. New forms of infrastructure may be required after a natural disaster. This new infrastructure will be necessary to build back better. It will involve better services provided in a safe manner. New infrastructure can also require land acquisition by the government.

Land Acquisition: Key Constraints

Lack of lead time for planning and consultation. Resettlement often cannot be avoided in a disaster context. Unlike development-induced resettlement, resettlement after disaster is characterised by relatively short lead times for planning and consultation as a result of:

- the potential for protests, adverse publicity and land invasions should there be delays in providing housing solutions.
- pressures to decommission temporary living centres and provide rapid housing results; and
- inherent difficulties in identifying, registering and verifying eligible beneficiaries.

The government may also need to acquire land for resettlement, before it can consult with beneficiaries as to the location of that land, because the process of land acquisition itself takes considerable time to organise and implement.

Political sensitivities for international actors. The ADB (1995), OECD (1992) and World Bank (2004) guidelines are aimed at cases of development-induced resettlement, where planning and consultation can take place prior to displacement.⁵ They establish consultation and participation rights for persons requiring resettlement. They require that resettled groups agree to the location of the new settlement. While the leading resettlement standards acknowledge the potential need for adaptation in disaster cases, the challenges of timing and consultation after disasters - and the political sensitivity of resettlement programs - may cause reluctance on the part of some international agencies to assist programmes to acquire land for resettlement.

Displaced victims may not want to move to resettlement locations. It is common for some displaced persons to refuse to move to resettlement locations selected by the government. Usually, these the displaced persons are concerned about loss of livelihoods and access to food, proximity to strangers and tensions with host all adjacent communities.

Landowners may resist efforts at compulsory acquisition. Compulsory land acquisition can be slow and productive of disputes even in stable environments. The capacity to identify landholders, value land, deliver compensation and provide mechanisms for legal redress important to a well-functioning land acquisition system. After a disaster, landholders may be difficult to identify because of displacement, land values will often have increased substantially in locations adjoining disaster areas, and the system to deliver compulsory land acquisition may be either damaged or lacking in capacity. As a result, it is common for land acquisition to substantially delay post-disaster resettlement measures.

Acquisition of land for resettlement can also create the potential for tension and conflict with (1) host communities whose land is acquired, or (2) adjacent communities who may use or claim the land for livelihoods purposes. The types of tensions that can arise include:-

Differences in treatment and access to benefits. As victims of the disaster, a resettled community may receive better housing, infrastructure and livelihoods support than a host or adjacent community that was not directly affected by the disaster.

Misunderstanding over the nature of rights obtained to resettle land. A host or adjacent community may believe that the resettled community will obtain rights of use to the land only. The resettled community may believe that it will obtain ownership of the land. This misunderstanding can give rise to conflict when the resettled community seeks to formalise its rights to the new land.

⁵ See, for example, World Bank (2004) Involuntary Resettlement Source Book, World Bank; ADB (1995) Involuntary Resettlement, Asian Development Bank; OECD (1992) Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, OECD.

Conflict between local systems of authority. A resettled community will have its own localised system of authority. In customary systems, this authority often involves spiritual and ancestral connections to land. Problems can arise between a resettled community and a host or adjacent community in relation to authority over land allocation, dispute-resolution and indication of spiritual or ancestral connections.

BOX: THE COCORICO COMMUNITY IN MOZAMBIQUE

The community of Cocorico occupy an island in the Zambezi River network, near to the district centre of Mopeia. They have been displaced three times in the last 10 years; in 2001 and 2007 they were forced to evacuate to Chupanga, on the Sofala province side of the river and this year, during the floods of 2008, they have found themselves in Mopeia, on the Zambézia side. Although they feel more at home on the Zambézia side, they remain strongly connected to the Cocorico area, and are loath to stay in the resettlement areas of Mopeia, despite the urgings of the administration. This is not only because they now find themselves a 4.5 hour walk away from their *baixa* fields, but also because the community and the *regulo* now find themselves living completely within the area of jurisdiction of a different paramount chief. This is a unique situation in the area; most other displaced communities, although they may move to higher ground, remain within the traditional boundaries of their community and within the jurisdiction of their chief.

This situation is causing a degree of uncertainty within the community. *Regulo* Cocorico and his elders recognise that the flooding is becoming more frequent and although they will not consider abandoning the *baixa* fields, they are for the first time beginning to consider the option of remaining permanently settled in the Mopeia area. They would then ‘commute’ during the agricultural seasons. Their primary concern, however, is the integrity of the traditional community unit and their ability to maintain their own cultural practises whilst they are living within the jurisdiction of a different *regulo*. The issue remains to be discussed by the traditional chiefs of the area but the Cocorico elders are, at the least, expecting to be forbidden to invoke their ‘spirits’ whilst in the resettlement area, meaning that they would also have to return to Cocorico should the need arise. Issues in relation to land allocation and dispute resolution also have to be discussed between the chiefs. In a separate interview with a highly-respected chief in the area (*Regulo* Nhacatunda) the comparison was made between this situation and that of two male lions disputing territory. *Regulo* Nhacatunda stated that the situation was almost without precedent and that he was unsure as to how it would be resolved. Although it has become common for 2nd and 3rd tier chiefs to relocate and change their allegiance to a paramount chief (this has happened with several *sapandas* and *fumos* of community groups who have been relocated from Tete province to the Zambézia side of the river), it has rarely involved the re-location of a *regulo*.

Potential Responses

General Principles. Acquisition of land for resettlement should be voluntary, participatory, transparent and accompanied by payment of market prices. Where the

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

voluntary acquisition is not possible, compulsory acquisition should be (1) conducted according to law, (2) limited to defined public purposes, (3) accompanied by payment of just compensation, and (4) open to judicial appeal and civil society oversight.

Beneficiary-driven land acquisition is the best mechanism to ensure suitable land for landless groups. Beneficiary-driven land acquisition can apply to voluntary and compulsory acquisitions. Beneficiaries are best-placed to determine whether new land for resettlement is suitable for employment and livelihoods. Without access to implement and livelihoods, even well-constructed resettlement sites will be marred by long-term poverty.

BOX : RESETTLEMENT WITHOUT EMPLOYMENT IN HONDURAS

In Ciudad España the housing and services available to the inhabitants is a vast improvement over what they had previously, but this is completely undermined by the lack of employment in the vicinity. One of the residents described it as follows:

Today we live in Ciudad España and here we have many things we did not have before beginning with the houses, the health center, a home for the elderly, a child care center and two more are on the way. Yes, we have many good things and it is nice here. The bad thing is that there is no work and people are poor. It is not that people don't want to work. There is no work. If there was work it would be better. The Red Cross is helping. They built the market and are willing and doing all what is possible, they are aware of the difficulties, mainly the unemployment. But then we stop and consider, if there is no work, how are people going to buy at the market? ⁶

Reducing vulnerability and building resilience in poorer communities requires that we address the problem of employment given its central role to family livelihoods.

Basic Options for Land Acquisition for Resettlement

There are 4 basic options to obtain land for resettlement after a disaster.

- Grant of land by friends, relatives or a local community.
- Purchase or lease of land on the private land market.
- Land pooling.
- Compulsory acquisition of land by the government.

Grant of land by friends, relatives or a local community.

⁶ Smith Wilshire, D., H. Hernandez and S. Salazar (2004). *Voices of Victims and their Families Five Years after Hurricane Mitch*. Alfa Omega Publishers, Panama: 85

Grant of land by friends or relatives is an effective mechanism to ensure beneficiary participation and choice of suitable resettlement sites. Allocation of communal land also minimises many of the livelihoods and sustainability risks associated with government land acquisitions. Allocation of communal land for resettlement requires legal recognition of community authority over communal land. National laws relating to rights to all land should be clarified soon after a disaster, to determine whether rural communities may relocate to safer locations within communal territories without the need for government land acquisition.

BOX : RESETTLEMENT ON COMMUNAL LAND IN MOZAMBIQUE

After the floods in Mozambique, most people were resettled on community lands in rural areas. This is a laudable policy, as it may offer at least a minimum of conditions to engage in economic activities to support local livelihoods. Local communities have established rights over these lands through long term occupation according to local rules and customs. These community land rights are recognised by the Land Law, and can be made visible by the community land delimitation processes. Local land management institutions, as well as a significant part of the community members, often have a clear idea of the position and extent of the community boundaries. The land policy and law embrace negotiations and community consultations as mechanisms for outsiders to obtain access to community land. The community, represented by a local land management body, agrees or disagrees with the request for access to land and the use of this land under certain conditions. The latter may refer to the duration of the right to use the land, but also to the benefits that this temporary transfer entails for the community. Resettlement locations on community land are identified by the local government authorities or district administrations, with the involvement of the local community representatives.

Purchase or lease of land on the private land market.

Direct or lease of land on the private land market can be an effective mechanism to ensure beneficiary participation and selection of resettlement sites. For landless groups affected by poverty, private purchases or leases are often only an option if financial assistance is made available.

Direct purchases by international agencies, for allocation to beneficiaries, can be difficult where (1) local laws prohibit foreign land ownership, (2) large block purchases require subdivision through slow and complex dealings with the Land Department, and (3) the chain of ownership title rests on poorly documented land records systems.

The transfer of money by international agencies, to allow beneficiaries to purchase land for themselves, may also be difficult where agency rules prohibit transfer of funds for land purchases. As a result, financial assistance programs to allow the landless to purchase or lease land tend to be channelled through the government.

BOX : THE RURAL LANDLESS POLICY IN EARTHQUAKE-AFFECTED PAKISTAN

On 30 March 2007 Pakistan's Earthquake Reconstruction Authority, after some lobbying by international actors, approved the Rural Landless Policy. This policy provides rural landless families with Rs 75,000 (approximately US \$1200) payable for a new plot (of a minimum size of 5 marla) at the time of purchase, under the owner-driven policy. The financial assistance was intended to buy land; with the balance, if any, available for building of the house. If the price of the land exceeds the financial assistance, the balance will be borne by the beneficiary, who is responsible for finding and negotiating the land purchase (usually within their village, from relatives or community members).

The rural landless policy finalization took considerable time, however, once agreed, implementation has advanced fairly quickly and proved successful. Strict definition of landless beneficiaries facilitates implementation. The programme was approved in March 2007, with funding support from DFID and ADB, and was rolled out from July 2007, using housing programme staff and infrastructure to gain access to those in the camps. To include landless in camps and any other rural landless (outside the urban areas). Land verification units (LVU) were created, using retired land revenue officials, and interviewed all applicants. By December 2007 some 8000 had been interviewed, 4,500 had applied, 400 cases cleared and 150 grievances lodged. Once the record of rights had been checked with the local revenue staff and patwari, a physical spot check of the landless claim was checked, and they were accepted and issued with a certificate of entitlement.

The so-called 'one-window operation' represented the final stage of the rural landless programme for the applicants, completing all administrative procedures for land transactions in a single event. The one-window operation had previously been used for the disbursement of agricultural loans. A maximum of 12 administrative processes were completed in one event, requiring attendance of bank staff, LVU and patwaris. The certificate of entitlement was followed by payment of the grant money into a bank account, then a cheque issued for transfer to the seller of the land, with instantaneous title deed transfer. During the operation the UN-Habitat LIMS staff are connected to the central database, downloading the necessary data from the server, capture a live image direct onto web-camera (identities of buyer and seller), data of the operation is saved, and the Financial Assistance Report printed. Not seen as a priority programme for the state/provincial governments, and Habitat had to overcome many obstacles. The one-window operation was a public and publicized event, so that disbursement of the grant was carried out in an efficient, transparent and safe manner, ensuring that the landless family got their new land. About a hundred operations have taken place or are planned.

Financial assistance to allow the landless to purchase land may be constrained by its inherent expense. Budgetary restrictions may limit its operations to rural areas where land is relatively inexpensive.

It is important that any financial assistance provided be enough to allow purchase of land. Any assistance that leaves beneficiaries with substantial debt, in order to afford land, will

EGM Draft 21-23 April 2008.

For discussion only: please do not cite or distribute.

be open to criticisms that it discriminates against a vulnerable group of post-disaster victims. This will particularly be the case where landowners receive free housing, and the landless receive land and housing on credit only.

Assistance programs to allow land purchases by the landless should also consider a voucher system rather than a direct transfer of cash only. Cash payments can easily be appropriated by corrupt intermediaries. Cash can also be dissipated by beneficiaries for purposes other than land purchases. A voucher system, where the voucher is redeemed only at the time of purchase, would protect against these risks.

Key step. Advocate development of a Landless Policy to enable direct purchase of land by landless groups, without the risk of substantial indebtedness, through the use of a voucher system.

Land Pooling

From Rob Home's paper (for discussion):

The technique of land readjustment or land pooling, which can be attractive when public funds for compulsory purchase and infrastructure provision are limited (as in Pakistan after the earthquake). Originating in Germany, it was adopted in Japan and other countries of the Far East with some success especially during the period of reconstruction after the Second World War. LR facilitates development in three ways: pooling land titles and re-parcelling land for better planning; financial mechanisms to recover the infrastructure costs; and distribution of the financial benefits of development between land-owners and the development agency. It can thus secure serviced urban development with little direct public funding, and avoiding the costs of land expropriation. Land for public purposes and physical infrastructure are paid for from the shared profits of the development, and land-owners participate in the profits, while land speculation is reduced by discouraging 'hold-outs' (land-owners withholding their land to get a higher price). It is best suited to countries with social traditions of a strong state role in land management (which would apply in Pakistan), and in situations where land ownership has become fragmented, and where previous land patterns have been disrupted by disruptive events such as natural disasters.

Compulsory acquisition of land by the government.

Compulsory acquisition of land by the government is likely to occur where there are large numbers of landless, particularly in urban environments. As noted, compulsory acquisition:

- will be affected by short lead times both for participation and consultation, and to calculate the number of beneficiaries; and
- has considerable potential to cause delays and conflict in resettlement programs for landless disaster victims.

The following steps may assist a compulsory land acquisition program.

Needs Assessments. A systematic survey is required soon after a disaster to identify landless groups that require new land for resettlement. This broad census survey should be followed by detailed socio-economic surveys of sample groups to identify livelihoods needs, and the needs of vulnerable groups such as women and children. Census data covers all persons requiring resettlement, and includes basic information about demographics, livelihoods, social needs and vulnerable groups. The socio-economic survey should focus on a representative sample only, and develop detailed information relating to:

- Pre-displacement land tenure and transfer systems.
- Patterns of social interaction in affected communities, including social networks and social support systems.
- Public infrastructure and social services.
- Social and cultural characteristics of affected communities, including a description of formal and informal institutions.
- Potential resettlement impacts in host communities.

Verification. Verification of eligible beneficiaries can be a key source of difficulties and delays in land acquisition for resettlement. Identification of persons requiring land for resettlement must be accompanied by robust verification measures. In appropriate cases, identification and verification of victims who have lost land should be built into general programs for land rights confirmation. Integrated databases have proved to be effective tools for verification and prevention of fraudulent claims (see Box Pakistan).

Audit of state land. Wherever possible, an audit of state land should be undertaken soon after a disaster. This audit should identify boundaries, and the agencies that hold different areas of state land. Allocation (or acquisition) of state land may be a better option for resettlement where it avoids negotiation with private landholders.

Institutional incentives. Institutional incentives need to be directed towards acquisition of the best land at the best price. In many cases, this will require that the agency acquiring land is providing funding for that acquisition. Self-funded land acquisitions impose a degree of financial discipline that may be missing where funding comes from another arm or level of government.

Consultation and participation. Institutional arrangements should be established with landless groups as soon as possible after a disaster, in order to meet requirements for consultation and participation in the selection of sites for acquisition. These arrangements should work closely with appropriate NGOs and civil society groups.

Site assessment. Sites slated for acquisition by the government should be assessed in terms of:

- The suitability of the site for the primary occupation(s) of persons resettled, and all the secondary sources of livelihood support identified in the BRR census survey.
- The proximity of the site to primary and secondary sources of employment and livelihood support.
- The extent of access or potential access to roads, schools, markets, hospitals or health clinics, retail outlets, public transport and other social services.
- The extent of access or potential access to electricity, clean water, sewerage and drainage, telephone services and other forms of infrastructure.
- The extent of access or potential access to social support services for vulnerable persons or groups identified in the BRR census survey.

This suitability assessment should be distributed to all stakeholders, including the prospective beneficiaries themselves.

Compensation. Compensation measures after disaster can be made difficult by identification and valuation problems. After a disaster, the physical destruction of land, combined with potential lack or loss of records, may make valuation enquiries complex, time-consuming and potentially productive of fraud. One possibility is to simply allocate the same amounts of land and housing to all eligible landless victims.

Tenure security. Tenure security on resettlement sites is discussed in Part above.

Acquisition of land for infrastructure.

To be completed after EGM discussion. Issues include:

1. Needs to assess legal and institutional framework against international standards.
2. Appropriate role of international actors should legal and institutional frameworks not comply with international standards.

VI. Operations Timeline

This section will be substantially revised after EGM discussions

It is essential that land issues are incorporated into every stage of emergency response and early recovery. The commencement period for necessary activities are summarized in Diagram 1 below, and set out in more detail in the sections that follow.

Diagram 1: Phases of Operation



5.1 Operations Timeline

The following timeline indicates commencement points for land use, planning and tenure activities. Many of these activities should be undertaken on an ongoing basis through the early recovery period until durable solutions are reached.

Emergency Response: The First Few Weeks

Key steps in the first few weeks after a disaster include:-

- Appoint international and national technical land specialists.
- Include land issues in rapid needs and damage assessments.
- Reassure victims of disaster that their housing, land and property rights will be respected.
- Assess land use, planning and tenure institutions.
- Identify key land policy actors in government and civil society, and form a specialized working group on land issues.

Early Recovery: The First 3 months

Key steps in the first 3 months after a disaster include:

Strategic Planning and Program Development:

- Incorporate land issues and responses into strategic planning;
- Allocate responsibility for program development and implementation.
- Establish consultation mechanisms in relation to planned land programs

Tenure Security and Documentation

- Restore personal identity records.
- Adopt interim tenure security measures.
- Support rapid determination of inheritance entitlements.

Land Use Planning

- Engage technical experts to map hazardous areas.
- Commence micro-planning with communities as to settlement reconstruction, including hazard-reduction criteria for relocation of housing.

Renters and Illegal or Informal Land Occupiers

- Undertake census survey of renters, and informal or illegal land occupiers.

- Seek stakeholder agreement on renter and squatter entitlements to land and housing;
- Determine policy frameworks and incentives for reconstruction of rental housing;

Widows and Orphans

- Assess housing, land and property protection gaps facing widows and orphans;
- Support local civil society organizations providing advocacy and monitoring services in relation to women and children's housing, land and property rights.;
- Design and obtain funding for programs to facilitate access to housing, land and property for women and children.

Early Recovery: Between 3 and 12 months

Key steps within three and 12 months of a disaster include:-

- Implement interim tenure security prior to commencement of house reconstruction.
- Support rapid inheritance determinations based on family agreements, in parallel with house reconstruction.
- Revise land use and spatial planning instruments to facilitate safe reconstruction.
- Design and obtain funding for programs to make land and housing available to renters, and informal or illegal occupiers.
- Identify suitable land for infrastructure and resettlement.
- Advocate and support improved regulatory frameworks for land acquisition.
- Commence access to justice programs focused on housing, land and property rights.
- Establish monitoring, grievance and information-gathering systems relating to housing, land and property rights.
- Commence upgrading of tenure security in illegal, informal and customary settlements.

Towards Sustainable Development: The Second Year

Key steps in the second year include:-

- Integrate interim tenure security measures into formal land law and administration.
- Ensure that all housing assistance beneficiaries receive secure forms of land tenure.
- Integrate micro-planning for settlements with macro land use and spatial planning.
- Complete land acquisition for infrastructure and resettlement.

VII. Who Does What: Key Actors and Activities

To be added after EGM discussion.

Annexure 1: International Instruments relating to Land

Annexure 2: Framework Questions for Assessing a Land Governance System

1. Land Policy

Sustainable relief and recovery requires land policies that not only respond to specific post-disaster land issues, but also to any pre-disaster land problems that obstruct recovery and long-term disaster mitigation. But the formulation of land policy after disasters may be affected by (1) a lack of coordination, or a degree of competition among different agencies, and (2) the technical and political challenges of responding to deep-seated issues such as landlessness or extralegal settlements. The following questions offer a guide to analysing land policy in the context of natural disaster.

How was land policy made in the pre- and post-disaster contexts? To what extent was land policy uncoordinated or incoherent, both before and after the disaster? How did the process of land policy formulation change after the disaster? Who set the agenda and how? What were the respective roles and forms of interaction among political institutions, reconstruction agencies, the line Ministry or agency responsible for land, national, provincial and district levels of government, the military and outsiders including international advisers or agencies? To what extent did land policy after the disaster response to the housing, land and property needs of vulnerable groups such as women and children, the landless, holders of secondary rights to land, and persons formerly residing in extralegal or informal settlements?

2. Land Institutions

Land institutions include national planning and cadastral agencies, the Courts, human rights institutions, local authorities, traditional leaders and civil society groups (including NGOs). The way in which land issues are addressed after a disaster will turn on the capacity and performance of these institutions, both separately and as component parts of the land governance system. Experience suggests that land institutions will interact in new (and evolving) ways after a disaster. They will also interact with new institutions such as international agencies and dedicated reconstruction authorities. The following questions offer a guide to analysing land institutions in the context of natural disaster.

What institutions governed land prior to the disaster? To what extent did these institutions operate in an inconsistent fashion prior to the disaster? To what extent did they fail to meet demands for tenure security, equitable access to land and efficiency in the land market? To what extent did land institutions protect human rights relating to housing, land and property? What role did each land institution play in responding to the disaster? Which institution was responsible for strategic planning and coordination? Which international agency, if any, took the lead role in formulating responses to land issues after the disaster? How effective was institutional coordination after the disaster?

3. Land Administration

The formal mechanisms of land administration involve such activities as allocating land and building permits, registering and transferring rights, resolving disputes and managing information. All natural disasters place pressure on land administration functions relate in two building permits, temporary shelters, land invasions, dispute-resolution, inheritance adjudications, the replacement and extension of land documentation, and programmes to support the landless and holders of secondary rights to land. At the same time, the process of recovering from disaster provides an opportunity to improve land administration, particularly in relation to gender equality and extralegal or informal settlements. The following questions offer a guide to analysing land administration in the context of natural disaster.

Before the disaster, to what extent was formal land administration overloaded, out of date or serving only a small (often middle-class) portion of the population? What was the nature and extent of documentary records relating to land before the disaster? To what extent was land administration put into crisis by the disaster, through loss of records, death of staff and damage to infrastructure? Was the process of recovery marked by land grabbing and ad hoc land occupation? To what extent did disputes arise over land rights and boundaries?

Was there a residual caseloads of displaced persons who were unable to return to their pre-disaster locations? To what extent did the residual caseloads of displaced persons include the landless, holders of secondary rights to land and extralegal or informal "squatters"? Why were these groups unable to return and use their land in a similar manner to those possessing formal ownership rights?

In what ways did uncertainty of land rights lead to disputes and delays in reconstruction, or to reconstruction in inappropriate locations? After the disaster, was there an attempt to restore land records or extend land documentation into previously undocumented areas? Was there an attempt to undertake formal demarcation of land boundaries, either because they had been obscured or because they had not been the subject of survey? Was there authoritative determination of the entitlements of heirs? Did powerful individuals take advantage of land rights uncertainty to deny entitlements and access to land for vulnerable groups, including widows and orphans? What methods and programmes, if any, were adopted in response to restore or strengthen land administration?

4. Land Planning

Land use planning can take the form of micro-planning at the community level, and micro-planning by government institutions. After a disaster, land use planning is essential in terms of "building back better", and reducing the risk of future disasters. It can also create risks of politicised forms of land grabbing, breakout construction by victims and housing providers to refuse to comply with land use plans, and adverse resettlement effects for those who cannot return due to land use restrictions. The

following questions offer a guide to analysing land use planning in the context of natural disaster.

What was the nature of land planning prior to the disaster? To what extent was there a disjunction between legal plans and the reality of land use activity? To what extent were land use plans out of date, or insufficiently supported by technical capacity or popular support? What mechanisms for community consultation were built into land use planning? Did land use plans include specific protections against natural disasters? Before the disaster, were there any international assistance programmes to promote resilience against disasters through better land planning?

How were plans made in the post-disaster context, if at all? What changes took place in the process of land planning after the disaster? How were specific planning decisions made in the post-disaster context? Was there reconstruction in unsafe or inappropriate areas? Did failure to engage in risk reduction quickly lead to delays and uncertainty in reconstruction? Were risk reduction prohibitions on reconstruction, such as green belts and buffer zones, used as a means to appropriate valuable land without due process or adequate compensation? Did land acquisition by the government lead to longer term conflict with former landowners and adjacent communities? Were sites selected for resettlement unsuitable for housing or livelihoods, or vulnerable to future disasters? Did sites selected for housing leave widows and female-headed households at risk from male neighbours?

5. Land Law

Land law provides the regulatory structure to implement land policies after a disaster. It also establishes land-related entitlements for vulnerable groups. After a disaster, applicable land laws need to be assessed against international standards of non-discrimination and access to justice. The following questions offer a guide to analysing land law in a disaster context.

How does land law protect existing rights to property? Does the law include mechanisms to manage informality or local customs relating to land? What laws governed specific issues raised by the disaster, including:

- Proof of personal identity and ownership of land.
- The procedural mechanisms and substantive rights of inheritance.
- The resolution of disputes over rights and boundaries to land.
- Rights to land that was lost, submerged, destroyed or otherwise rendered uninhabitable.
- Land use planning and the reduction of future risks.
- Land acquisition for resettlement and infrastructure.

After the disaster, what laws were created to respond to emerging land issues? Did these laws protect vulnerable groups, including widows, orphans, secondary rights-holders and

the landless? What methods and programmes, if any, were adopted to assist regulatory development after the disaster?

Annexure 3: Monitoring and Evaluation of Land Responses after a Natural Disaster

Program Objective	Activities/Outputs	Indicators
Security of land rights and tenure for affected persons	<p>Project the housing, land and property rights of displaced persons.</p> <p>Clarify/adjudicate rights to land prior to house reconstruction.</p> <p>Restore or issue land rights documentation to support house reconstruction.</p> <p>Where necessary, establish boundary markers on the basis of pre-disaster data and/or neighbour and community agreements.</p> <p>Where necessary, survey land parcels and boundaries for inclusion in cadastral records.</p> <p>Develop a comprehensive legal framework to facilitate secure rights and access to land, and restitution of pre-disaster rights to land.</p> <p>Integrate community-based tenure documentation into formal land titling records</p>	<p>Ensure that transport is available to all displaced persons to monitor their vacant housing, land and property.</p> <p>Have government officials issued public statements reassuring displaced and non-displaced victims that their house, land and property rights will be respected?</p> <p>Number and type of land rights documents restored or issued over 6 month, 1 year on 2 year periods.</p> <p>Number of reported disputes over rights to residential land.</p> <p>Number of reported complaints over inappropriate sighting of new housing (eg across boundaries or on public land).</p> <p>Number of land parcels marked and/or surveyed over 6 month, 1 year on 2 year periods.</p> <p>Number and quality of laws/regulations issued or revised.</p> <p>Number and type of groups reporting landlessness or insecure land rights.</p> <p>Number of displaced persons who have returned to break up and for locations, or resettled on new land with adequate legal recognition of the right to land.</p> <p>Number of affected persons receiving new land title documents after the disaster.</p>
Restore legal identity records and determine inheritance rights to land, with special measures to protect the entitlements of women and children.	<p>Restoration and extension of personal identity records through relevant government agencies.</p> <p>Establish and support programs aimed at improving access to justice, including legal aid.</p> <p>Support advocacy and information campaigns directed at women and children.</p> <p>Integrate family-based inheritance agreements with mechanisms to restore</p>	<p>Number and type of legal identity documents issued over a 6 month, 1 year and 2 year period.</p> <p>Number of reported complaints relating to delays or exclusion in the process of restoring legal identity records.</p> <p>Number of heirs identified through family agreements, disaggregated on</p>

Program Objective	Activities/Outputs	Indicators
	<p>tenure security prior to reconstruction. Support mobile or decentralised Court services to verify and legalise family-based agreements, and resolve disputes. Monitor proof of identity restoration efforts by civil society organisations. Support mobile identity documentation units where victims are dispersed, or local government agencies are unwilling or unable to restore and extend identity records in a timely manner;</p>	<p>an age and gender basis.</p> <p>Focus group assessments of obstacles to widows and children inheriting rights to land .</p> <p>Number of inheritance conflicts bought before the Courts.</p> <p>Number and type of rights to land held by heirs registered or recorded over 6 month, 1 year on 2 year periods.</p> <p>Number of widows and orphans recording or registering rights to land over 6 month, 1 year on 2 year periods.</p>
Land use and spatial planning	<p>Incorporate land use and planning issues into risk and vulnerability assessments prior to reconstruction of housing.</p> <p>Support mapping hazardous areas using satellite and aerial photography technology.</p> <p>Ground-truth satellite results through participatory mechanisms and expert assessments.</p> <p>Establish participatory mechanisms to undertake micro-planning of settlements at the community level.</p> <p>Advocate regulatory mechanisms to support micro-planning, including adjustment of land boundaries with landowner consent in accordance with law.</p> <p>Integrate micro-planning for settlements into macro land use and spatial plans.</p> <p>Support land-use restrictions (e.g in relation to forestry) that reduce vulnerability without disproportionately harming livelihoods</p> <p>Advocate public participation in land use and spatial planning.</p> <p>Advocate minimisation of resettlement induced by land use and spatial planning.</p> <p>Divert new developments from hazard prone areas.</p>	<p>Number of houses reconstructed in hazard prone areas reduced.</p> <p>Focus group and beneficiary assessments of community participation in development of land use plans to mitigate future disaster risk</p> <p>Extent of integration of micro and macro land use plans.</p> <p>Extent of land use and special planning created based on hazard risk assessments. Extent of compliance with new land use and spatial plants.</p> <p>Number of settlements with their local plan revised to include evacuation and access routes.</p> <p>Number and nature of complaints from community members over land use and spatial planning.</p> <p>Extent of consistency of settlement planning with good environmental management practices, including measures to control run-off and erosion, maintain drains and prevent flooding, manage waste and waste water, and encourage non-vehicle transportation.</p> <p>Extent of capacity of settlement planning to encourage economic, social, cultural and religious inclusion, rather than segregation.</p> <p>Extent of enforcement of land use and</p>

Program Objective	Activities/Outputs	Indicators
		<p>spatial planning through evictions, rather than systems of incentives and voluntary relocation.</p> <p>Number of new settlements experiencing difficulties accessing basic services and infrastructure.</p>
<p>Tenants, and informal or illegal land occupiers</p>	<p>Undertake socio-economic survey of renters, and illegal or informal land occupiers (building on initial needs assessment census survey).</p> <p>Advocate equality of access to land and housing for renters, and illegal or informal land occupiers.</p> <p>Appoint technical experts experienced in ensuring land and housing access for renters, and illegal or informal land occupiers.</p> <p>Seek stakeholder agreement on the best mechanism to provide land and housing access to renters, and illegal or informal land occupiers.</p> <p>Support monitoring programmes relating to land and housing access for renters, and illegal or informal land occupiers.</p>	<p>Identify gaps in government programming, and conduct land policy advocacy, information awareness and research programmes.</p> <p>Number of renters and squatters with access to land and housing over 6 month, 1 year on 2 year periods.</p> <p>Focus group and beneficiary assessments concerning obstacles to accessing land and housing for renters and squatters.</p> <p>Focus group and beneficiary assessments relating to provision of services and land rights documentation to renters and squatters.</p>
<p>Built institutional capacity and frameworks for public participation and good governance in land administration and planning</p>	<p>Support legal reform of the land administration framework so as to recognizes formal and informal rights as well as provides sustainable spatial planning.</p>	<p>Extent of coordination of policies and institutional responsibilities with stakeholders and between ministries to facilitate speedy and conflict sensitive procedure for land administration and spatial planning.</p> <p>Extent of efficiency of process. Number of days required to process an application. Level of service and extent of streamlining of processes.</p> <p>Extent of development of administrative and decision-making procedures, and extent of view of such procedures as transparent and equitable.</p> <p>Number of government personnel sufficiently competent to carry out the</p>

Program Objective	Activities/Outputs	Indicators
		<p>necessary tasks.</p> <p>Extent of accountability mechanisms provided for in the process.</p> <p>Extent of competency of government personnel to practice necessary tasks such as survey, mapping, zoning, and public consultation.</p> <p>Distance (number of kilometres or hours) traveled to the institution's service offices.</p> <p>Identify the common form/arrangement of land ownership and whether it has changed.</p> <p>Number of links developed with formal institutions</p> <p>Number of people sufficiently competent to provide advisory services.</p> <p>Extent to which the skills of key actors to lobby and negotiate for their rights are strengthened.</p>
<p>Prevent the formation of slums and support upgrading of insecure, informal or illegal tenures through the reconstruction process.</p>	<p>Include a land tenure specialist in all settlement reconstruction projects.</p> <p>Liaise with government officials to identify obstacles to tenure upgrading proposals.</p> <p>Incorporate tenure upgrading conditions into settlement reconstruction or repair proposals.</p> <p>Support all housing assistance beneficiaries to prepare the documentation necessary for legal security of tenure.</p> <p>Advocate tenure security for all as a goal of recovery and reconstruction.</p>	<p>Number of informal settlement locations, and number of informal settlers as result of an influx of affected all displaced populations over a 6 month, 1 year and 2 year period.</p> <p>Number of occupants of informal settlements granted land rights and tenure documentation.</p> <p>Amount of land identified, acquired and serviced full urban growth.</p>
<p>Land acquisition</p>	<p>Undertake an audit of public lands in and adjacent to the disaster zone.</p> <p>Identify suitable public land for infrastructure and resettlement.</p> <p>Provide a number of suitable sites for infrastructure and resettlement projects, to keep the price of land acquisition at manageable levels.</p>	<p>Amount of land and sites identified for infrastructure and resettlement efforts.</p>

Program Objective	Activities/Outputs	Indicators
	<p>Support consultation and participation mechanisms, with assistance from civil society organisations.</p> <p>Support incentives to minimise corruption and ensure suitable site selection by land acquisition agencies.</p> <p>Appoint a technical expert to prepare a manual on acquisition of private land for infrastructure or resettlement.</p> <p>Advocate community-based resettlement options through the provision of local or communal land.</p> <p>Ensure that land acquisition complies with international resettlement standards, including as to due process and adequate compensation.</p>	<p>Number of consultative and participatory processes held with civil society assistance.</p> <p>Extent of capacities of land acquisition agencies enhanced.</p> <p>Number and quality of community-based resettlements.</p> <p>Extent of compliance of land resettlement with international resettlement standards.</p>

