

NEPAL

EARTHQUAKE RECOVERY MUST
SAFEGUARD HUMAN RIGHTS

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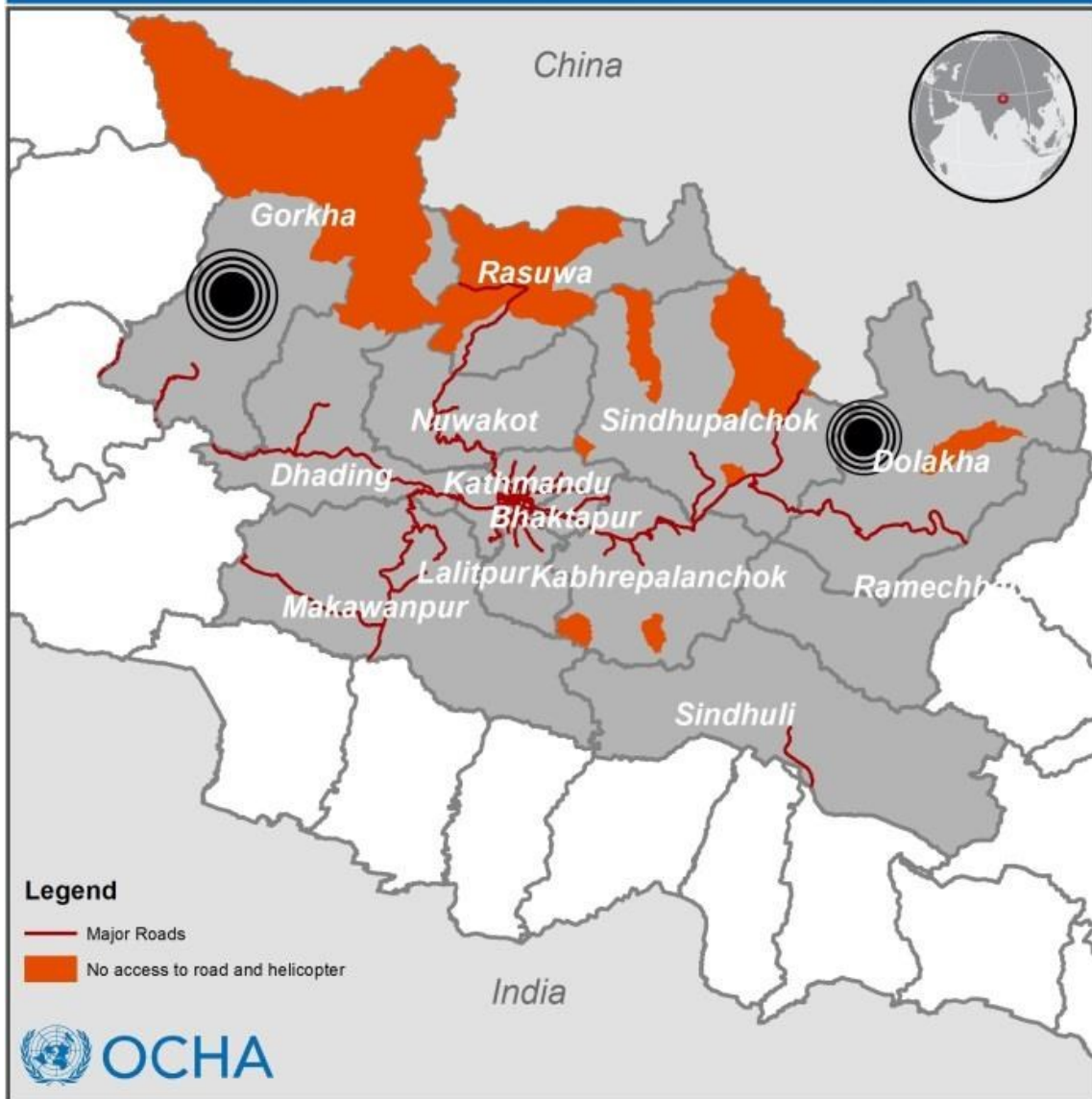
Cover photo: The 7.8 magnitude earthquake that took place in Nepal on 25 April 2015 caused mass destruction and killed over 8,000 people. This photograph was taken in Barpak village in the northern parts of Gorkha district, close to the epicentre of the quake.
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NEPAL: Areas with no road and helicopter access



Map Sources: Nepal Survey Department, USGS, WFP

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Map created on 15 May, 2015

Access data reported by the Nepal Food Security Monitoring Programme via WFP/Logistic Cluster prior to 25 April.

SUMMARY

Interventions to support and protect Nepal's earthquake victims and aid in their recovery must not only address the immediate need for material and psychological support, but should anticipate and address key human rights challenges. Continuing aftershocks and landslides make it clear that the earthquake in April was not a single disaster, but an ongoing emergency, posing serious challenges for the government, international community and above all the people of Nepal. There is an immediate need to guard against discrimination in the distribution of relief and to ensure protection of vulnerable groups. In the longer-term, Nepal must use all available resources to ensure the right to adequate housing, the right to livelihood, the right to recognition under the law, the right to health, and to freedom of movement, including protection against forced relocation of displaced persons.

A human rights compliant approach to the disaster response will be critical to ensuring that the quest for equality, justice and accountability in Nepal does not lose ground as the country struggles to recover from the devastation.

This briefing highlights some important areas of concern which Amnesty International believes could have an impact on the success of relief and reconstruction endeavours in Nepal.

Protection and respect for human rights has been severely weakened by Nepal's unsettled political climate at the national level and the resulting governance vacuum at local levels, and also impacted by the armed conflict between government forces and Maoist insurgents between 1996 and 2006. Impunity persists for gross human rights abuses, including enforced disappearances, a hallmark of the conflict, as do longstanding problems of discrimination and social exclusion that affect large segments of Nepali society.

Relief and reconstruction efforts grounded in human rights norms, including the universal principles of human dignity and non-discrimination, could help avoid further harm to recipients of humanitarian assistance and also have a better chance of successfully helping individuals and communities affected by the disaster to recover and become more resilient in future. Such efforts must include attention to deeper structural and systemic inequities that persist in Nepal and which accentuate the vulnerability of disadvantaged groups to the impact of the disaster.

BACKGROUND

As of 31 May, the Home Ministry reported a total of 8,693 deaths and 22,221 people injured in the initial 7.8 Richter earthquake on 25 April and its aftershocks. Over 505,000 homes were reported fully destroyed and another 275,000 partially destroyed.¹

Areas of Kathmandu most affected were to the northwest of the city where buildings crumbled and thousands of displaced residents sought shelter in open areas. Disaster response in Kathmandu was relatively prompt as opposed to the response in rural areas. Many remote rural areas remain in a dire situation.

The worst affected districts include Sindhupalchowk, Kavre, Nuwakot, Rasuwa, Dolakha in the Central Region and Kaski, Gorkha and Lamjung in the Western Region. Even under normal circumstances life is difficult in these areas. Mountainous villages often lack roads and other infrastructure, food security is fragile and accessing even the most basic health services is a challenge. Villages may be days from the nearest town and approachable only on foot. The earthquake and aftershocks made access to essential supplies, services and assistance even more difficult, destroying roads, causing health facilities and buildings where food was stored to collapse, and killing livestock.

On the day of the earthquake, the Prime Minister declared a state of emergency in 57 districts. Search and rescue operations began immediately with the army and other security forces taking the lead, soon supported by military from neighbouring countries in the region, principally China and India. Distribution of relief started around 28 April – three days after the first shock. But local transportation of relief personnel and goods were obstructed in many places by landslides.

Substantial amounts of unseasonal rain increased the potential for landslides, always a danger in hilly areas of Nepal but made worse by the earth tremors. Many government staff and buildings were also directly affected by the earthquake, further hindering the state response.

A further earthquake on 12 May killed more than one hundred people and resulted in new landslides blocking roads to already affected areas and the total collapse of many already damaged houses. Efforts by government engineers to assess damage to houses in affected communities had just begun when this second earthquake struck, rendering those results unusable. This situation has complicated the activities to facilitate the safe return of those whose home survived the disaster and to find alternatives for those whose homes were not deemed safe for habitation.

A striking feature of the humanitarian response, noted frequently by local media, has been the role of volunteer groups from within civil society, who by many accounts were the first to reach

¹ Government of Nepal Disaster Risk Reduction Portal, <http://www.drrportal.gov.np/>, accessed 31 May 2015.

some affected areas, before the government or international community. These groups have continued to deliver aid, and are also engaged in fundraising and sophisticated technical initiatives, such as mapping of displacement camps and damage using drones and crowd-sourcing satellite imagery. It is unclear how long these volunteers can sustain these efforts before they need to return to their normal responsibilities. The government and international community response that is now underway should consider lessons from the efforts of these volunteers, which have provided a helpful complement to (though not a substitute for) coordinated government and INGO efforts.

ENSURING INTERNATIONAL COOPERATION

The Nepali authorities bear primary responsibility for providing assistance and protecting victims of the disaster. The government also has the authority to coordinate and direct aid,* which it has done through the National Emergency Operations Centre (NEOC) operating under the Ministry of Home Affairs (MHA), relying heavily on the armed forces.

Other states not directly affected by this disaster – particularly those with more resources or better infrastructure – also have a responsibility to cooperate in providing disaster relief and humanitarian assistance, including assisting refugees and internally displaced persons. China, India and Pakistan responded immediately to aid Nepal's relief effort and were joined by other rescue and relief forces over subsequent weeks. The UN issued a flash appeal on 25 April seeking \$415 million to respond to the humanitarian needs of those affected by the earthquake, including food, drinking water, shelter and medication.

As a state party to the International Covenant on Economic, Social and Cultural Rights, Nepal has a duty “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights in the present Covenant by all appropriate means.”**

Where any government faced with a disaster is unable to provide these immediate interventions to ensure relief, assistance and protection or provide them adequately, it has a responsibility to seek international assistance and facilitate that assistance, ensuring rapid entry of relief staff and supplies, including by lifting customs duties, import tariffs, licensing and registration, and visa requirements that could slow down or obstruct delivery of relief.

Nepal's denial of entry to three Chinook helicopters from the United Kingdom in mid-May 2015 appears to have violated these fundamental principles by placing political concerns over basic humanitarian needs. The helicopters were sent to assist in the delivery of relief, including food, medical supplies, and shelter materials to victims of the earthquake in areas inaccessible by road. They were denied entry to Nepal after being deployed to an Indian Army Base in Chandigarh, despite repeated appeals from the British Government, including a telephone call between the prime ministers of each country.

The Nepali Government stated the helicopters were not needed since the country had moved from the immediate rescue and relief effort to the reconstruction phase in the wake of the earthquakes. But aid organizations said that many inaccessible areas could not be reached and helicopters continued to be desperately needed. Independent experts confirmed to Amnesty International that the Chinooks offered by the UK offer superior performance in delivering supplies, particularly at higher altitudes.

Diplomatic sources in Nepal confirmed that among the reasons for refusing the specialized helicopters was government, particularly army, resentment over the prosecution in the UK of Colonel Kumar Lama for torture allegations

stemming from his role during Nepal's decade long civil war.

New challenges loom. The monsoon season is expected to start in June, with an increased risk of landslides making the areas most affected by the earthquake even more inaccessible. Once rains begin humanitarian agencies say access to higher altitude villages will be seriously obstructed, but relief work will need to continue. Proper rebuilding can take place only after the monsoon (September-November) when there will be a short window before the winter starts, bringing colder temperatures and snow in the upper hills and mountain regions affected by the quake.

ENSURING HUMAN RIGHTS REMAIN FUNDAMENTAL

Human rights must be at the centre of all relief and reconstruction efforts at all phases of the disaster response. People affected by any disaster are entitled to the same protection of human rights law enjoyed by all others. They do not lose their rights as a consequence of displacement or any other aspect of a disaster. At the same time, victims of disasters have particular needs that demand specific protection and assistance measures that go beyond those of an unaffected population. These include for example, access to emergency housing, food, clean water and medical attention, the need for safe relocation options and assistance to rebuild once it is safe to do so, and protection from sexual and gender-based violence and trafficking and other forms of exploitation.

Disaster response should be based on a human rights framework in order to integrate all the basic needs of the victims into a comprehensive plan from the start of the relief phase and be at the core of the reconstruction effort. Humanitarian assistance must ensure non-discrimination; prioritise access to adequate levels of food, water, sanitation, education, health and housing; and focus interventions on those most in need of assistance and protection. All organisations responding to the earthquake in Nepal must act with due diligence, coordination and cooperation to ensure that relief and reconstruction efforts do not result in, or contribute to, human rights violations and that there are effective mechanisms for the meaningful participation of all affected people, including the most marginalized, in the relief and reconstruction efforts.

In addition to ensuring that economic, social and cultural rights are respected and protected, there is a need to protect civil and political rights, including freedom of expression, association and peaceful assembly throughout the relief and reconstruction period. Freedom of information can reduce uncertainty and social tension in the wake of disasters; help families to locate lost loved ones; help survivors to identify sources of assistance and help ensure that assistance provided is appropriate and effective (for example that food supplied is appropriate and healthy). It can also help limit corruption.

Authorities must remain alert to the possibility of agitation or other actions that may put individuals or communities at risk, such as hate speech in the context of competition for access

to relief. Policing of any demonstration must be carried out in a non-discriminatory manner and in accordance with international law and standards; authorities should not resort to the use of force unless strictly necessary and only to the extent require.

Last but not least, provision of information to affected communities and to the population as a whole is key to ensuring other human rights, as is the full engagement of civil society. As stated by the Inter-Agency Standing Committee (IASC) Principals - *'In all undertakings, primary consideration will be given to our accountability to affected populations to identify, understand and support their own protection measures. Different segments of affected populations need to be meaningfully engaged in all decisions and actions that have a direct impact on their well-being. A commitment to support national and local civil society in their important role to enhance the protection of persons affected and at risk is central to this endeavour.'*²

IMMEDIATE AND LONGER TERM HUMAN RIGHTS CONCERNS

Early reports from survivors suggest an immediate need to guard against discrimination in the distribution of relief and to ensure protection of individuals and groups from discrimination and violence.

As government officials have repeatedly acknowledged since the crisis began, local governance capacity has been weakened by more than 12 years without local elections. The absence of elected local government officials reduces accountability, overburdens the civil service, and makes systems vulnerable to political interference.³ Village Development Committee (VDC) Secretaries are the only government officials present at the local level. This poses a major hurdle for the relief and reconstruction efforts and hinders the possibilities for those affected by the disaster, particularly those already subject to discrimination, to be effectively consulted and take part in any decisions affecting their access to relief. The lead role assumed by the

² The Centrality of Protection in Humanitarian Action: Statement by the Inter-Agency Standing Committee (IASC) Principals

Endorsed by the IASC Principals on 17 December 2013

http://www.globalprotectioncluster.org/assets/files/tools_and_guidance/IASC%20Guidance%20and%20Tools/IASC_Principals_Statement_Centrality_Protection_Humanitarian_Action_December2013_EN.pdf

³ When the tenure of the locally elected representatives expired in 2002, the government authorized its civil servants to assume all functions of the local bodies, who, for lack of capacity and ability to command local legitimacy, had to rely almost entirely on relationships rather than procedures to perform their duties. By 2009, this coping strategy was adopted as the preferred political framework and acquired formal legitimacy with the formation of All Party Mechanisms (APMs). See, The Asia Foundation, Political Economy Analysis of Local Governance in Nepal, with Special Reference to Education and Health Sectors, available at <http://asiafoundation.org/resources/pdfs/analysislocalgovernancenepal.pdf>, accessed 21 May 2015. In many places, Nepal's powerful families at the local level reportedly joined the three key parties constituting the APM to ensure control.

Nepal Army in the early phase of the rescue and relief effort has been applauded in the media but (as discussed below) also adds further challenges to representative decision-making as the relief effort continues.

There are reports of discrimination in the distribution of relief, including on the basis of caste and gender, as well as political favouritism and patronage without regard to actual need.⁴ This is a particular risk where one party is dominant, where a VDC is demographically heterogeneous with different religions, castes or ethnic groups represented, lacking a coherent and fair decision-making mechanism, and where local political actors compete for status through the provision of relief.

Amnesty International is concerned that weeks after the first earthquake, the Government of Nepal and humanitarian agencies had still not adequately factored social and economic disparities into their relief operations. As the relief and recovery effort continues to take shape all those involved need to recognise the differential impact that disasters have on people based on their socio-economic status, caste, gender, etc. and ensure that relief provided corresponds to the varied impact. Government capacity to address these issues presumably will increase as the logistical and organizational challenges that have confronted the immediate response are overcome. To this end, we outline some of the most important issues that will confront affected populations in the coming months and years.

RIGHT TO NON-DISCRIMINATION

Caste, class, gender and ethnic inequalities are deeply entrenched in many communities in Nepal and pose severe obstacles to the enjoyment of several human rights.⁵ The earthquake has the potential to intensify existing inequalities and magnify social exclusion and injustice. The poor and the marginalised – in Nepal often those facing discrimination on the basis of other criteria such as caste, gender and ethnicity, suffer disproportionately in disasters: killed and injured by the collapse of sub-standard housing; residing in areas without access to medical care; or simply unable to negotiate systems of social support that habitually discriminate against them or simply do not work. Internally displaced persons, who have lost not only resources but the security of a cohesive community need extra protection from discrimination. People disabled by their injuries or with pre-existing disabilities also need ongoing assistance and protection against discrimination. Relief and reconstruction efforts must take note of these existing patterns of inequality and must ensure that the needs of those

⁴In Kavre District, a woman told Amnesty International that a senior Maoist parliamentarian told her that if she promised to vote for his party, she would receive relief. The District Committee Secretary of Nepal Congress (NC) in Nuwakot reportedly provided relief materials to one ward (where the majority of the population were NC supporters) in his VDC in Nuwakot. In Kavre, the CPN-UML, the NC's partner in government, was also said to have manipulated relief distribution. See also

<http://recordnepal.com/node/87>

⁵ See forthcoming Amnesty International Submission for the UN Universal Periodic Review of Nepal, 23rd Session of the UPR Working Group, 2-13 November 2015: "Caste-based discrimination remains acute despite legal recognition of equal rights. Political discontent over discrimination and social exclusion in Nepal was a root cause of the armed conflict that raged from 1996 to 2006, and has contributed to political strife since the first failure of the constitutional drafting process." See

<https://www.amnesty.org/en/countries/asia-and-the-pacific/nepal/> See also

http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf

most vulnerable to discrimination and marginalisation are addressed.

Amnesty International recognises that unequal access to relief is partly related to remoteness and inaccessibility of some communities. However it received reports suggesting that longstanding patterns of discrimination against members of groups such as Dalits⁶ and some disadvantaged Janajati groups (Indigenous Peoples) had also resulted in their unequal access to relief. Others such as people with disabilities, the elderly and women headed households, may not have been the focus of deliberate discrimination, but were denied crucial assistance because of the way it was being distributed. For example, the practice of leaving relief items by the nearest road for collection could mean a long trek down the mountain and a load to carry back up – which might be impossible for the elderly and people living with disabilities, and very difficult for single women with children.

The team recognises the pressures faced by distribution teams, the limited supplies, and lack of adequate information about need. Amnesty urges all efforts to ensure, however, that relief is distributed according to the fundamental humanitarian principle of need. Two examples give a sense of current shortcomings:

- On a visit to Nuwakot district, the team found that everyone was slated to receive 10kg of rice, regardless of whether they were farmers with ample rice supplies or Dalit families who had no rice beyond the stock buried under rubble.
- At the time of the Amnesty International visit to Kabilash (a VDC of 1,200 households in Nuwakot district), Village Development Committee (VDC) staff were going ward to ward distributing Rs 7,000 to each family, without regard to need.⁷ This relief scheme raises comparisons with the “interim relief scheme” used by the Nepali Government to compensate conflict victims. As documented widely, these were anything but equitable and subject to political manipulation.

All interventions, whether initiated by Nepali authorities, foreign donors, international humanitarian organizations, local NGOs, corporations or individuals must take into account the underlying factors that drive inequality in Nepal. In encouraging and supporting reconstruction, it is essential that the international community does not tolerate human rights violations or reinforce or replicate discriminatory attitudes and practices, even inadvertently. Assistance programs provide an opportunity for a concerted focus on addressing underlying human rights problems in affected communities and should actively work to reverse those dynamics that put people at risk.

⁶ Ibid

⁷ For more information, see ICTJ: “To Walk Freely with a Wide Heart” A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict Related Abuses in Nepal, September 2014, <https://www.ictj.org/sites/default/files/ICTJ-Report-Nepal-Reparations-2014.pdf>, accessed 21 May 2015; See also, ICTJ, “From Relief to Reparations: Listening to the Voices of Victims” (2011), <https://ictj.org/publication/relief-reparations-listening-voices-victims>, and “Discrimination and Irregularities: The Painful Tale of Interim Relief in Nepal,” Advocacy Forum, 2010, http://advocacyforum.org/downloads/pdf/publications/Discriminations_and_Irregularities_A_painful_tale_o_f_Interim_Relief_in_Nepal.pdf, accessed 20 May 2015

RIGHT TO ADEQUATE HOUSING

Some 800,000 people displaced by the earthquake in Nepal are struggling to survive in a context of persistent, widespread poverty, a severe lack of safe and adequate housing and disputes over land and property. The latter put those who have lost or never had legal documentation of ownership at a distinct disadvantage.

DISPLACEMENT CAMPS AND TEMPORARY SHELTER

At the time of the Amnesty International's visit, many people in both rural and urban areas were living outside their destroyed homes in formal and informal displacement sites under tarpaulins provided by the Nepali government, national organizations and international relief agencies. These included people whose houses had either been fully destroyed or were unsafe for habitation but also those choosing to live in tents during the night as a precautionary measure.

- A displacement camp in Bhakatapur visited by the Amnesty International team had flooded in recent rains. The poor conditions had reportedly driven some residents to leave the camp, possibly returning to unsafe accommodations.

Survivors told the team that the official distribution of tarpaulins favoured those with familial, political or other institutional connections and loyalties. The most widely reported media story in this regard featured parliamentarians taking tents intended for disaster victims. At the local level, the team heard similar complaints.

- In Kabilash VDC, Nuwakot district, people told Amnesty International that the government had sent 400 tarpaulins and the business community another 200. But while some families had secured more than one tarpaulin, others had none. Residents said that only "those with muscle" (meaning political connections) were able to get them.

As the monsoon quickly approaches, families who have managed to acquire tarpaulins are increasingly desperate to replace this with metal sheeting (tin or zinc). On 15 May, the government announced a decision to give families NRs.15, 000 (US \$150) to purchase these supplies, rather than engage in distribution. How people in remote areas will secure and transport these materials is unclear, as is the capacity of the government to deal with profiteering from suppliers and black marketeers. There have also been complaints that the amount is inadequate.

With or without these supplies many people are already attempting to construct temporary shelters using recycled materials from damaged houses including bricks/stones and corrugated sheets.

Given the imminent rains, the damage assessments of houses are even more important, as based on these assessments, the authorities could provide advice and assistance for those whose houses are not completely damaged to repair and rebuild. People in Kavre told Amnesty International that these technical assessments were among their highest priorities because without them they would not feel safe to return to their houses.

THE RIGHT TO FREEDOM OF MOVEMENT INCLUDING PROTECTION AGAINST FORCED RELOCATION

According to the United Nations Office for the Coordination of Humanitarian Affairs, there are 88,482 displaced people living in camps at 373 sites in 12 of the 14 affected districts (excluding Dolakha and Rasuwa, two very badly affected districts where the number of camps had not been able to be ascertained).⁸ Several of them have been declared “permanent shelters” by the government, which means people can stay for six months. What will happen to any families still sheltering at these sites when that period comes to an end is unclear.

The Government of Nepal should ensure that all displaced persons are protected against forced evictions and provided with safe options for return or relocation, including adequate and sustainable housing. Sites must not be closed based on an arbitrary deadline and people must not be evicted from the sites if adequate alternative housing for them is not offered.

The goal of any resettlement plan for people who have been affected by a disaster must be to make it as comprehensive as possible, ensuring healthy and secure surroundings, sustainable livelihoods, adequate education and cultural opportunities, and supporting and reuniting strong and healthy families and communities.

Nepal has an obligation to facilitate durable solutions for affected communities that protect their health and safety. The longer the displacement situation lasts, the greater the risk of human rights violations, including exploitation, social exclusion and discrimination based on their displaced status.

RIGHT TO FOOD

Nepal’s remote high and mountain communities rely largely on subsistence agriculture, augmented where possible by day or migrant labour. Many suffer from chronic food insecurity. The earthquake is expected to have a serious impact on food security and agricultural livelihoods in areas most affected by the earthquake. Food and seeds stocks have been lost; and even where field crops have survived, securing tools and adequate storing facilities once these crops are ready for harvest may present challenges.

Distribution of food aid to particularly remote and high lying places is difficult. Tens of thousands of earthquake survivors are in areas that can only be reached on foot or by helicopter. Many villages on high ridges were reported only to have elderly persons left at home – younger people had left to search for relief. On 18 May the World Food Program said it would begin deploying around 20,000 local porters to trek into some of the highest and most remote villages on foot, each carrying 30 kg of food and shelter materials on their backs.⁹ The National Human Rights Commission has raised concerns about the quality of some of the rice distributed,

⁸ For more information, please see www.tinyurl.com/NepalDTM, accessed 31 May 2015.

⁹ WFP Nepal Situation Report #7, 18 May 2015 <http://reliefweb.int/sites/reliefweb.int/files/resources/WFP%20Nepal%20Earthquake%20Situation%20Report%20%2307%2C%2018%20May%202015.pdf>, accessed 20 May 2015

including by the World Food Programme, although this claim is contested.¹⁰

RIGHT TO HEALTH

According to the UN, over 1,000 public health facilities have been damaged or destroyed in the quake and its aftershocks,¹¹ making access to health care (already a challenge in remote areas) even more difficult.

The sustained strain on people who experienced more than three weeks of aftershocks is substantial. Serious psychological and emotional problems have been reported, including among children. The government has said that it will provide counselling services to those affected, but healing will take time since even under ordinary conditions psychosocial resources are scarce in Nepal and mental illness is highly stigmatized.¹²

While living in makeshift tents near to their homes or in more formal displacement camps, people are at risk of mosquito bites resulting in malaria, chest infections and other health issues, which are likely to worsen due to a lack of adequate sanitation, especially as the rains intensify.

Humanitarian workers noted an urgent need for sanitary toilet facilities in damaged villages and in displacement camps. Already diarrhoea is a problem in the main displacement camp in Thundikel, central Kathmandu.

WOMEN'S HEALTH AND INCREASED RISK OF GENDER-BASED VIOLENCE

Media reports citing humanitarian and women's rights organizations have raised concerns about security risks for women in cramped displacement camps and potential for gender based violence, as well as the potential vulnerability of displaced women and girls to trafficking and other forms of exploitation – a persistent problem in Nepal.¹³

Ensuring adequate security for displaced people, health services for pregnant women, safe places for giving birth and post-natal care are all major challenges in the context of natural disasters. The UN estimated that over 100,000 pregnant women were affected by the earthquake and tens of thousands were left vulnerable to an increased risk of sexual or gender based violence.¹⁴

¹⁰ Do Not Consume Rice Distributed by WFP: Commission, Banepa (Nagarik News), 20 May 2015

¹¹ NEPAL Humanitarian Situation Report 11, 20 May 2015, <http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Nepal%20Humanitarian%20Sitrep%20%23%2011-%2020%20May%202015%20.pdf>, accessed 21 May 2015

¹² "Mental health in Nepal: The voices of Koshish," Psychology in Action, Psychology International, July 2011, American Psychological Association, <http://www.apa.org/international/pi/2011/07/nepal.aspx>, accessed 21 May 2015

¹³ Nepal quake survivors face threat from human traffickers supplying sex trade, The Guardian, 5 May 2015, <http://www.theguardian.com/world/2015/may/05/nepal-quake-survivors-face-threat-from-human-traffickers-supplying-sex-trade>, accessed 28 May 2015

¹⁴ UN women estimated on 1 May that among the over 8 million people affected by the earthquake

The women's rights organization WOREC reported many cases of vaginitis, due to lack of safe access by women to washing facilities for more than two weeks, in some cases.¹⁵

THE RIGHT TO BE RECOGNIZED AS A PERSON BEFORE THE LAW

Many communities including internal migrants and people living without citizenship cards are being excluded from relief assistance on the basis that they are not registered in the districts affected, even though this is where they have lived for a long time. Similarly, people who have lost, or never had, their citizenship cards, land certificates, engineer reports and other legal documents risk being excluded from access to relief. This is a violation of their right to be recognised as a person before the law.

The authorities should relax requirements for accessing relief assistance so that affected people are not disadvantaged due to the lack or loss of their documents. Processes for resettlement and other relief assistance must not discriminate against individuals and communities whose habitual residence in a particular area is not legally recognised.

THE RIGHT TO EDUCATION

Over 7,093 schools were damaged or destroyed in the earthquakes, while others are being used as temporary accommodation for the displaced. With the high-levels of destruction and ongoing aftershocks, it is essential that all schools (government and private) are assessed to ensure their structural safety before they are opened to students – a process that will take time in an environment where capacity is low and many schools are in areas which are difficult to reach.

THE ROLE OF THE ARMY IN DISASTER RESPONSE AND THE PROBLEM OF IMPUNITY

As first responders immediately following the earthquake on 25 April, the Nepal Army (NA), Nepal Police and paramilitary Armed Police Force have been praised for their role, particularly in rescuing people trapped in collapsed or damaged buildings and in providing immediate relief to survivors. The army's presence across the affected areas and its access to sophisticated equipment has made it critically important to the relief effort. The civilian government's response to the crisis was much less agile by comparison. The Nepali media have repeatedly juxtaposed the government's slow response with the security forces' more rapid one. However, while the security forces response has been creditable it is important that the Government asserts and is seen to assert civilian leadership over the relief and recovery effort.

Equally, the army's renewed popularity in the context of earthquake relief should not become an excuse for failing to address past human rights violations and to bring perpetrators to justice. All sides to the armed conflict have been resistant to calls for accountability for alleged human rights abuses. In February 2015, human rights defenders celebrated a rare victory when Nepal's Supreme Court rejected the possibility of granting amnesty to perpetrators of serious

approximately 126,000 were pregnant women; 21,000 of whom would need obstetric care in the coming three months. Approximately 40,000 women were considered at immediate risk of sexual and gender-based violence See, UN Women to address gender-based violence in the aftermath of the earthquake, 1 May 2015, <http://www.unwomen.org/en/news/stories/2015/5/un-women-to-address-gender-based-violence-in-the-aftermath-of-the-earthquake-in-nepal#sthash.x4XJxTCD.dpuf>, accessed 28 May 2015.

¹⁵ Amnesty International interview with Renu Rajbhandari, WOREC, 14 May 2015

human rights violations, striking down provisions in the 2014 legislation that established a Truth and Reconciliation Commission and Commission on Enforced Disappearances to investigate alleged abuses during Nepal's decade-long civil war and paving the way for the investigation and prosecution of perpetrators.

Lawmakers had retained the amnesty provisions over the strong objections of human rights organizations and victims groups, who accused the authorities of attempting to protect alleged perpetrators, many of whom still hold influential military and political positions.

Groups pushing for truth, justice and reparation for Nepal's conflict victims accept that the earthquake response is a priority at present and are not demanding immediate action from the government with regard to transitional justice, but Nepal's obligations to bring to justice those responsible for gross human rights abuses during the conflict cannot be derogated from, even in times of emergency such as is currently in force.

OBSERVATIONS ON APPLICABLE HUMAN RIGHTS PRINCIPLES AND CONSIDERATIONS

Amnesty International urges all those involved in disaster response to ensure that during the relief phase and as reconstruction goes forward, the following rights are promoted and protected:

- Access to safety and security of person, including relocation to a safe location if individuals are in areas where their lives or health are at risk, with consideration for their right to freedom of movement and with due consultation of those affected.
- Access to shelter, healthcare, adequate food, and clean water and sanitation to combat disease. Efforts should be made to enable the rural population to resume planting as soon as possible. This would help combat potential hunger and increased poverty.
- Freedom from all forms of discrimination, including non-discrimination in access to all relief supplies, non-discrimination in participation in decisions on reconstruction and in reconstruction efforts, and access to remedies to challenge discrimination.
- Protection of property: Caste, class, gender and ethnic discrimination may manifest themselves in unequal access to protection of property. Discrimination could inhibit access to justice and legal protection in the event, for example, of land disputes or replacement of personal documents.
- Protection of the rights of internally displaced persons: People left homeless by the earthquake will not be able to return to damaged homes without risks to their safety, and rebuilding will be costly and take time. Without effective assistance, displacement could last months or even years, particularly for poorer members of society. Amnesty International stresses the need to protect the rights of internally displaced people wherever they are sheltered, and to support them to make voluntary and informed decisions about their future. Freedom of movement must be respected. According to the UN's 'Guiding Principles on Internal Displacement', any relocation of internally displaced persons must be voluntary, unless the safety and health of those affected requires evacuation. People's decisions to move or stay should not be coerced in any way, including through the suspension of assistance.¹⁶ The right of internally displaced persons to return voluntarily to their former places of residence in safety and with dignity or to relocate elsewhere in the country should be respected at all times, and the authorities should assist them. Nepali authorities and international humanitarian and

¹⁶ The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), <http://www.unhcr.org/43ce1cff2.html>, accessed 29 April 2015.

development agencies should base all interventions on the UN's 'Guiding Principles on Internal Displacement' in addressing the security and humanitarian needs of the displaced.

- **Right to housing:** Plans for medium- to long-term housing for earthquake victims should respect international housing norms on adequacy of housing, avoid disproportionate rent inflation, forced evictions, illegal relocations and other abuses of the right to housing. Affordable, earthquake-safe housing alternatives should be sought to replace damaged and vulnerable structures in both urban and rural settings.
- **Freedom of information:** Ensuring fulfilment of the human rights to freedom of information and freedom of expression in disaster situations and their aftermath can save lives. It can reduce uncertainty; help with family reunification; ensure that people affected by the disaster know how to access aid and can help ensure that assistance provided is appropriate and effective. It can also serve as a safeguard against abuse and corruption.
- **Protection of the rights of specific groups who may be more at risk:** Relief efforts should prioritise support and protection for those whose situation requires particular attention. These include women who head households, who are separated from their families, who are pregnant or lactating, or who are caring for small children; children, especially those separated from their parents; the elderly; and people with disabilities. Relief and reconstruction work should emphasize their protection against violence and abuse and ensure their ability to participate effectively in decisions on relief and reconstruction.
- **Protection of women and girls from gender-based violence, including sexual violence:** Women and girls could face increased risk of sexual violence and exploitation in the aftermath of the disaster. They may also experience reduced or lost access to sexual, reproductive and maternal healthcare services, particularly when they are displaced. The UN's 'Guidelines for Gender-based Violence Interventions in Humanitarian Emergencies: Focusing on Prevention and Response to Sexual Violence' outline a range of response services required to meet the need of survivors of sexual violence.¹⁷ Amnesty International calls on all actors involved in humanitarian and reconstruction efforts in Nepal to adopt these guidelines as essential planning framework for their operations.
- **Combating the dangers of trafficking in persons, particularly of girl children:** Trafficking children and adults for sexual and labour exploitation is a persistent problem in Nepal. Children are among the most vulnerable members of any society and in a crisis their vulnerability to violence and abuse increases significantly due to strains on caregivers, loss of or separation from family and disability due to injuries.
- **As schools reopened in the affected areas as of 31 May, accelerated efforts are needed to**

¹⁷ Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies, Inter-Agency Standing Committee Taskforce on Gender in Humanitarian Assistance, September 2005, <http://www.unfpa.org/publications/guidelines-gender-based-violence-interventions-humanitarian-settings>, accessed 29 April 2015.

ensure that all children have access to a safe space to learn. Humanitarian agencies assess that this will require the establishment of around 10,500 temporary learning spaces and “back to school” campaigns to ensure that children and communities are aware that schools are running and safe. Without this an estimated 870,000 children will be unable to resume their education.



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NEPAL

EARTHQUAKE RECOVERY MUST SAFEGUARD HUMAN RIGHTS

Interventions to support and protect Nepal's earthquake victims and aid in their recovery must not only address the immediate need for their material and psychological support, but should anticipate and address human rights challenges. Continuing aftershocks and landslides make it clear that the earthquake in April was not a single disaster, but an ongoing emergency, posing serious challenges for the government, international community and the people of Nepal. There is an immediate need to guard against discrimination in the distribution of relief and to ensure protection of vulnerable groups. In the longer-term, Nepal must use all available resources to ensure the right to adequate housing, the right to livelihood, the right to recognition under the law, the right to health, and to freedom of movement, including protection against forced relocation of displaced persons. A rights-based approach to the humanitarian response will be critical to ensuring that the quest for equality, justice and accountability in Nepal does not lose ground as the country strives to recover from the devastation.

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