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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik

Summary

The present report is submitted in accordance with Human Rights Council resolution 6/27. The report underlines the importance of integrating human rights standards, and particularly the right to adequate housing, in post-disaster and post-conflict reconstruction processes. While taking account of the differences existing between post-conflict and post-disaster situations, the report focuses on common issues, and particularly on three key entry points: security of tenure, consultation and participation, and institutional coordination, through which the elements of the right to adequate housing are highlighted. To conclude, the report addresses a number of recommendations to States and the international community on how to improve prevention, relief and rehabilitation efforts by incorporating the right to adequate housing.

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I. Introduction

1. This is the third annual report submitted to the Council by the current Special Rapporteur, Raquel Rolnik.
2. The area of post-disaster and post-conflict reconstruction is of particular relevance to this mandate. Whether in natural disasters and their aftermath, or in countries recovering from conflict, the need to integrate human rights standards into prevention, relief and rehabilitation has been widely admitted.
3. The Special Rapporteur undertook research into how the right to adequate housing has been incorporated into national and international relief and reconstruction initiatives in post-disaster and post-conflict contexts. The present report summarizes her findings¹.
4. The first section of the report discusses human rights in the context of post-disaster and post-conflict situations. The second looks at key issues and questions concerning the right to adequate housing arising in those situations, with a focus on three areas: tenure security as a dimension of the right to adequate housing; the crucial role of consultation and participation; and institutional, coordination and phasing of action. The report concludes with a number of recommendations.

II. Human rights in post-disaster and post-conflict situations

5. Armed conflicts and natural disasters are a massive and growing problem worldwide. They have devastating consequences for the people affected and cause daunting challenges on a massive scale. Each year conflicts result in dislocation for hundreds of thousands of people. According to calculations by the Office of the United Nations High Commissioner for Refugees (UNHCR), the total number of people forcibly uprooted through conflict and persecution stood at 43.3 million at the end of 2009, “the highest number since the mid-1990s”. This included 15.2 million refugees, 983,000 asylum seekers, and 27.1 million internally displaced persons (IDPs).² At the same time the world is facing natural disasters on an unprecedented scale. During the period 2000-2008 an average of 392 disasters per year occurred worldwide. During 2009 a total of 335 disasters were reported, killing 10,655 and affecting more than 119 million persons, and causing more than US\$41.3 billion in damages³.
6. There are similarities and differences between post-disaster and post-conflict contexts⁴. While conflicts and disasters often result in large-scale human displacement, deliberate destruction of land records and systems is far more likely in post-conflict than in post-disaster contexts, as is the extent of secondary occupation of homes of those displaced. Housing rights issues in post-conflict situations arise mainly as a consequence of

¹ The Special Rapporteur wishes to thank the following researchers who assisted in the preparation of this report: Natalie Bugalski, Dana Clark, Jean du Plessis, Marisa Ensor, Chris Huggins and Roberto Ottolenghi. Valuable comments and suggestions were received from Szilard Friczka, Coordinator of the Human Settlements in Crisis Programme, Disaster and Post-Conflict Section, UN-Habitat

² UNHCR, 2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons (Geneva, 2010), p. 1.

³ F. Vos, J. Rodriguez, R. Below and D. Guha-Sapir, Annual Disaster Statistical Review 2009: The numbers and trends, CRED, Brussels, 2010, p. 1.

⁴ UN-HABITAT, Land and Natural Disasters. Guidance for Practitioners (Nairobi), pp. 10-11; W. Fengler, A. Ihsan, and K. Kaiser, “Managing Post-Disaster Reconstruction Finance: International Experience in Public Financial Management”, World Bank Policy Research Working Paper 4475, World Bank (Washington D.C., 2008), pp. 3-4.

International Humanitarian Law or International Human Rights Law violations committed during the conflict. In post-conflict situations there is therefore the question of how to redress the situation, how to guarantee justice to the victims and support the reconciliation process. Peace agreements and the establishment of transitional justice law frameworks and mechanisms can constitute an opportunity to address the right to adequate housing during post-conflict situations but everything depends on if and how these questions are addressed by these mechanisms and frameworks. The fact that conflicts can last for a long time also implies important differences between post-conflict and post-disaster situations. While taking account of such differences, this report will mainly focus on common issues and questions that arise in both contexts.

7. The impacts of both conflicts and disasters for the individuals, families and communities affected can be devastating. These include the loss of life and livelihoods; destruction of homes, property and infrastructure; disruption or termination of essential services; and the prolonged and sometimes even permanent forced displacement from land, home and community. Although wealth and power do not offer any immunity from these impacts, it is in most cases the poor and socially disadvantaged who are worst affected; and it is also they who are least able to withstand economic shocks and so generally take the longest to recover.

8. The poor often stand to lose most in disaster contexts because they often have to settle on fragile and exposed land that is highly susceptible to the effects of disasters. When a disaster strikes, their pre-existing vulnerabilities are exacerbated, with women, children and marginalized groups bearing the brunt of the impact. After the disaster, the poor often also find their attempts to return to their homes officially denied on the grounds that return would be unsafe, and/or not permissible as they did not have official proof of a right to live there in the first place. This can have dramatic consequences for the livelihoods of individuals, families and entire communities. In the case of conflicts, the displacement and dispossession of specific groups are often deliberate strategies of one group or side in the conflict against another. This can result in the total destruction and/or secondary occupation of their lands and homes, and obstruction of their attempts to return and reclaim what was theirs.

9. In addition to facing serious humanitarian problems and challenges, victims of disasters and conflicts are often exposed to grave human rights violations, invariably including the right to adequate housing. Humanitarian crises are human rights crises. Notwithstanding, given the concentration of international and national attention, resources and effort they often receive, such crises can also present important human rights opportunities. The World Bank has noted that "...while conflicts unleash horror and suffering, they also destabilize old ways of doing things and create new openings for poor people to get ahead. However, there is a narrow window of opportunity in the aftermath of conflict before old barriers begin to surface⁵."

10. Since the 1990s there has been a growing recognition of the importance of adopting a human rights approach (and the use of human rights enforcement mechanisms) in the resolution of conflicts and peacebuilding. The Secretary-General emphasized that the promotion of human rights is the common thread in the Organization's work in peace and security: "Human rights bodies are involved in early-warning and preventive activities, and human rights considerations are increasingly embodied in our response to crises⁶." He also announced that the United Nations had commenced implementation of a rights-based

⁵ World Bank, "Life After Conflict: Surprising Opportunities for Poor People to Escape Poverty," press release No. 2010/222/SDN (11 January 2010).

⁶ A/53/1. Report of the Secretary-General on the Work of the Organization, A/53/1, 27 August 1998, para. 172.

approach to development, which “describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society’s obligation to respond to the inalienable rights of individuals. It empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed⁷”. He then issued guidelines to his Special Representatives on how human rights standards should guide peace negotiations⁸. In 2000 the Report on the Panel on United Nations Peace Operations (the “Brahimi Report”) emphasized the importance of incorporating human rights into the work of peace missions. The Panel’s key recommendations on a peacebuilding strategy for the United Nations included “a doctrinal shift in the use of civilian police, other rule of law elements and human rights experts in complex peace operations to reflect an increased focus on strengthening rule of law institutions and improving respect for human rights in post-conflict environments⁹”. It also recommended that “the ability of the Office of the United Nations High Commissioner for Human Rights to plan and support the human rights components of peace operations needs to be reinforced¹⁰”.

11. Another important development was the formulation of the Principles on Housing and Property Restitution for Refugees and Displaced Persons, generally known as the “Pinheiro Principles¹¹”. These were the culmination of a shift that commenced in the early 1990s “from what were essentially humanitarian-driven responses to voluntary repatriation to more rights-based approaches to return [...] increasingly grounded in the principle of restorative justice and of restitution as a legal remedy which can support refugees and internally displaced persons in their choice of a durable solution (whether return, resettlement or local integration)¹²”.

12. It has taken longer for the human rights implications of post-disaster responses to be clearly recognized. According to the United Nations Inter-Agency Standing Committee (IASC), natural disasters have traditionally “been seen as situations that create challenges and problems mainly of a humanitarian nature¹³”, although the Committee on Economic, Social and Cultural Rights in its general comment No. 4 had explicitly included victims of natural disasters and people living in disaster-prone areas among a list of disadvantaged groups that “should be ensured some degree of priority consideration in the housing sphere¹⁴”. During the past decade there have been important and welcome shifts in this approach. According to IASC: “Increasingly, it has come to be recognized that human rights protection also needs to be provided in these contexts. The tsunamis, hurricanes and earthquakes, which hit parts of Asia and the Americas in 2004/2005, highlighted the need to be attentive to the multiple human rights challenges victims of such disasters may face.

⁷ Ibid., para. 174

⁸ International Council on Human Rights Policy, *Negotiating Justice? Human Rights and Peace Agreements*. International Council on Human Rights Policy, 2006, p. 18.

⁹ A/55/305, para. 47.

¹⁰ Ibid. para. 234.

¹¹ Sub-Commission on Human Rights, “Final report of the Special Rapporteur, Paulo Sérgio Pinheiro. Principles on housing and property restitution for refugees and displaced persons”, E/CN.4/Sub.2/2005/17.

¹² FAO, IDMC, OCHA, OHCHR, UN-Habitat and UNHCR, *Handbook on Housing and Property Restitution for refugees and displaced persons: implementing the ‘Pinheiro Principles’* (2007), p. 10. See also General Assembly resolution 60/147 of 16 December 2005: *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law*.

¹³ IASC, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, Brookings-Bern Project on Internal Displacement (Washington, D.C., 2008), p. 1.

¹⁴ United Nations Committee on Economic, Social and Cultural Rights CESCR, *General Comment 4: The right to adequate housing* (Art. 11 (1) of the Covenant) (Sixth session, 1991), para. 8(e).

All too often the human rights of disaster victims are not sufficiently taken into account. [...] Often the human rights violations are not intended or planned. Sometimes they result from insufficient resources and capacities to prepare and respond to the consequences of the disasters. More often, they are the result of inappropriate policies, neglect or oversight. These violations could be avoided if both national and international actors took the relevant human rights guarantees into account from the beginning¹⁵.”

13. IASC has further asserted that “Human rights have to be the legal underpinning of all humanitarian work pertaining to natural disasters. There is no other legal framework to guide such activities, especially in areas where there is no armed conflict”. This shift is also about longer-term sustainability. It helps the relevant actors to plan for what follows beyond the initial relief and stabilization operations¹⁶ .

III. The right to adequate housing in post-disaster and post-conflict situations: key issues and questions

A. Complex situations, difficult challenges

14. The right to housing as a component of the right to an adequate standard of living is internationally recognized. “[T]he right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity¹⁷”. In line with this interpretation, “adequacy” is measured against a list of key factors including: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy¹⁸. Housing is therefore not simply a shelter commodity. It is much more than a physical structure for protection from the elements, and its value extends beyond what it will cost to buy, sell or rebuild. Housing has inherent social value.

15. The right to adequate housing can be severely compromised by disasters and conflicts, through damage and destruction, loss of records and the displacement of individuals, families and communities. While the numbers of people affected are often staggering, the impact of conflicts and disasters on this right should not be measured simply in terms of numbers of physical assets destroyed and people displaced. It should also and perhaps primarily be understood in terms of the extent of disruption of social relationships, networks and assets; destruction of home-centred livelihoods built up over many years; and the undermining of complex, multi-layered land tenure rights. Destruction of housing as a physical asset can be addressed through repair, rehabilitation and reconstruction. This is an urgent and difficult enough task in the aftermath of disasters and conflicts. Destruction of housing as a social asset, on the other hand, requires more multi-faceted and longer-term responses based on a deeper understanding of the tenure systems and histories of the affected settlements and, in particular, of their poorer and marginalized residents. It also requires vigilance in the course of the restoration and reconstruction to ensure that previously held tenure rights are not undermined or diminished in any way but are, instead, protected and where possible strengthened.

¹⁵ IASC, Human Rights and Natural Disasters: Operational Guidelines and Field Manual, pp. 1-2.

¹⁶ *Ibid.*, p. 2.

¹⁷ General comment 4, para. 7.

¹⁸ *Ibid.*, para. 8.

16. These tasks are all the more challenging in cases of prolonged, mass displacement. Displacement is a notorious driver of human and particularly housing-rights violations. According to displacement and resettlement experts there are eight major displacement impoverishment risk areas: landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property resources, and social/community disarticulation¹⁹. While the impacts of displacement are devastating for all who are affected, they are most acutely felt by those groups more vulnerable to discrimination, including women, minorities, children and persons with disabilities. If not mitigated through intensive, concerted effort, the consequences are long-term, entrenching patterns of poverty, exclusion, dependency and disempowerment.

17. The process of return, recovery and reconstruction is regarded as an urgent priority in post-disaster and post-conflict contexts. According to IASC: “Experience has shown that the longer the displacement lasts, the greater the risk of human rights violations. In particular, discrimination and violations of economic, social and cultural rights tend to become more systemic over time²⁰.” The guiding principles put forward in a recent *Handbook for Reconstructing After Natural Disasters* suggest that a good reconstruction policy helps reactivate communities and empowers people to rebuild their housing, their lives, and their livelihoods and that reconstruction begins the day of the disaster²¹.

18. However, numerous obstacles often stand in the way of rapid return, recovery and reconstruction. These can include dangers (e.g. damage to buildings, health risks, unstable ground); difficulty of access; inability of the authorities to provide services to the area; and lack of resources. Nevertheless, it is incumbent upon the relevant authorities to take measures to overcome such obstacles with a minimum of delay. According to IASC guidelines: “After the emergency phase, persons displaced by the natural disaster should be granted the opportunity to choose freely whether they want to return to their homes and places of origin, to remain in the area to which they have been displaced, or to resettle to another part of the country. Their right of choice may not be subjected to any restrictions except those which are provided by law, and are necessary to protect national security, the safety and security of affected populations, public order (*ordre public*), safety, public health or morals or the rights and freedoms of others. In particular, the return of persons displaced by the disaster to their homes and places of origin should only be prohibited if these homes or places of origin are in zones where there are real dangers to the life or physical integrity and health of the affected persons. Restrictions should only last as long as such dangers exist and only be implemented if other, less intrusive, measures of protection are not available or possible²².”

19. Failure to take timely appropriate measures can have serious consequences for the people affected. In post-conflict contexts the situation can be even more complex, as obstacles in the way of return and recovery can also include threats of violence against a returning family or group/s, secondary occupation of land and houses, among others.

20. In both post-disaster and post-conflict situations there is an inevitable tension between the pressing need to act quickly and decisively in order to facilitate the return of the displaced to their lands and homes, and the need to be comprehensive and thorough in dealing with what are in fact very complex questions. In post-conflict situations this can

¹⁹ Cernea, M.M., “Impoverishment Risks, Risk Management, and Reconstruction: A Model of Population Displacement and Resettlement”, paper presented to the UN Symposium on Hydropower and Sustainable Development (Beijing, October 27-29 2004), pp. 9-28.

²⁰ IASC, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual*, p. 1.

²¹ Abhas, K. J. et al., *Safer homes, Stronger Communities: A Handbook for Reconstructing after Natural Disasters*, The World Bank and Global Facility for Disaster Reduction and Recovery (Washington D.C., 2010) pp. ix, 1-2.

²² IASC, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual*, pp. 20-21.

become particularly complicated, with the tension playing itself out between short-term peace demands and compromises, and the longer-term needs of a sustainable reconciliation and reconstruction process. Finding practical and locally appropriate ways to resolve the dilemma is very important. Given the expansive content of the right to adequate housing, protecting and realizing that right is never a clear-cut, linear process where an obvious causal link can easily be established between action on the ground and ultimate impact. Massive displacement, frequent destruction of records related to land and property, the equally frequent absence of documentation to prove the prior occupation history of long-term informal users and occupants of land, the emergence of “rights in conflict” (such as occupation versus restitution), inadequate legal frameworks governing land management, the actions of powerful interest groups keen on capitalizing on the opportunity for profitable investment; are all factors which would in principle call for caution and careful analysis of strategic options. In crisis situations, where the initial, overriding objectives for Government and for those external actors engaged on the ground would first and foremost be of an emergency shelter and basic livelihood support nature, housing rights and land tenure challenges may therefore seem impossible to address.

21. How should governments, bilateral and multilateral agencies, non-governmental organizations (NGOs) and other support institutions respond to these complex situations and difficult challenges? The Special Rapporteur has identified three key issues that she regards as crucial entry points to incorporate the right to adequate housing in the reconstruction efforts: security of tenure, participation and coordination, considering the impact they have on other elements of the right to adequate housing which are usually neglected or overlooked, including location, cultural adequacy and availability of services, facilities and infrastructure.

B. Tenure security

22. Security of tenure is a fundamentally important dimension of the right to adequate housing. It is included in the list of factors comprising adequacy of housing and offers important guidelines to institutions responding to post-conflict and post-disaster situations. According to general comment No. 4 “Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups²³”.

23. This recognition of a multiplicity of legitimate tenure forms, together with the obligation to offer protection to those holding them, is of great importance in developing responses to housing destruction or the displacement of residents. Security of tenure is essential for the realization of the right to adequate housing and has a great impact on location as another fundamental element of adequacy. Paradoxically, the absence of such security is often a pre-existing contributory cause of conflict and vulnerability to disaster. In trying to address housing rights in post-disaster and post-conflict situations, it is therefore important to investigate the tenure security challenges presented by those situations. Post-crisis responses to housing destruction and/or displacement that fail to take this into account are likely to be counterproductive, and could even themselves become drivers of future conflicts, dispossession and exacerbation of vulnerabilities. On the other

²³ General comment No. 4, para. 8(a).

hand, timely and decisive responses built on informed assessment and analysis of those underlying challenges can contribute significantly to strategies for restoration, reconstruction and development.

24. According to the Independent Evaluation Group (IEG): “Post-disaster operations need to deal early and forcefully with land ownership issues. Where possible land titles should be regularized or a functional proxy for land title should be provided [...] Where such measures are not possible, alternative means need to be found to ensure that land is not seized outright or that fraudulent claims are not honoured. The local government must help prevent profiteering on land that is urgently needed for the reconstruction process²⁴.” This assessment of urgency and need for forceful action is absolutely correct. However the emphasis on title regularization, with other forms of tenure covered by “functional proxy”, is problematic. Care should be taken that this does not result in programmes of rushed or enforced commodification of land and housing; or a process of favouring formal title resulting in the weakening or pushing aside of legitimate alternative forms of tenure security, as has happened in the case of Cambodia, discussed later. Many other equally legitimate forms of tenure require recognition, protection and support in their own right.

25. A useful example of the dangers of failing to deal with land tenure security challenges in a timely manner can be found in the case of post-conflict East Timor. It is estimated that during the violence that followed the 1999 referendum, 67,500 out of an estimated 170,000 houses (40 per cent of all housing stock) were rendered uninhabitable²⁵; while approximately 70 per cent of all physical infrastructure was destroyed or rendered inoperable²⁶. Administrative documents, including land title records, were also destroyed or taken to Indonesia²⁷. Approximately 300,000 people fled or were forced into Indonesian West Timor; while an estimated 450,000 were internally displaced, out of a total population of 900,000²⁸. Houses left empty by the refugees were occupied by others, often because their own homes had been destroyed. Over the following months and years, returning refugees frequently found their homes occupied and had to pay the secondary occupants compensation for “guarding” or improving their homes so that they would leave. In many cases the secondary occupants refused to vacate, forcing the returnees to seek shelter elsewhere²⁹. This left an extraordinarily complex land and housing rights legacy for the transitional administration and future government to unravel and resolve. To add to the complexity, the post-referendum events took place against a historical backdrop of waves of dispossession and displacement and externally imposed land systems through Portuguese colonization, Japanese invasion and Indonesian takeover.

26. The outcome was a situation of widespread tenure insecurity and tensions over land, property and housing during the period of transitional government under the United Nations and in the first years of the Government of the newly independent Democratic Republic of Timor Leste. In spite of urgent calls from 1999 onwards from a variety of actors, and the formulation of proposals by various agencies and Government units, the key tenure issues were never fully addressed. This failure is seen as one of the drivers of the violence that subsequently occurred in 2006-7, in the course of which 150,000 people (15 per cent of the

²⁴ Independent Evaluation Group (World Bank, IFC, MIGA), “World Bank Group Response to the Haiti Earthquake: Evaluative Lessons (2010, p. 2), available at: http://siteresources.worldbank.org/INTOED/Resources/disaster_note.pdf

²⁵ “Towards a Medium-Term Sector Strategy for Housing in East Timor”, Hassell Pty. Ltd., (March 2002) para. 27.

²⁶ Daniel Fitzpatrick, *Land Claims in East Timor* (Canberra, Asia Pacific Press, 2008), p.8.

²⁷ “Towards a Medium-Term Sector Strategy for Housing in East Timor”, para. 27.

²⁸ Fitzpatrick, *Land Claims in East Timor*, p.5.

²⁹ J. du Plessis and S. Leckie, “Housing Property and Land Rights in East Timor: Proposals for an Effective Dispute Resolution and Claim Verification Mechanism”, UN-Habitat, (31 May 2000), pp. 9-10.

total population of Timor-Leste) fled their land and homes; 65 IDP camps and transitional shelters were set up; secondary occupants inhabited many of the abandoned properties; an estimated 6,000 houses in Dili were destroyed or severely damaged; and in rural areas there were cases of entire villages being burned down³⁰.

27. This subsequent wave of violence and dispossessions prompted a well-considered and ambitious set of remedial actions in the form of a National Recovery Strategy (NRS) called *Hamutuk Hari'I Futuru* (Together Building the Future) launched in December 2007. The five pillars of this strategy focused on: IDP return and resettlement; establishing a social security system for the most vulnerable groups in society; addressing security issues including working with communities to identify and address sources of conflict; creating livelihood opportunities through job generation schemes; and building trust within communities and between the people and the government. However, various aspects of the strategy were not implemented. For example the range of options that was initially stated to be available to returning IDPs was drastically cut – essentially limited to the mass payout of cash compensation amounts. Ultimately these payments, combined with a reconciliation and dialogue process (discussed below), constituted the extent of the programme implemented to return or resettle IDPs and reconstruct housing. As of July 2010 payments were still being made and in total there had been approximately 17,000 recipient households³¹. Under the circumstances of potential further disturbances and lack of State capacity there were good arguments for giving people the funds with which to address their own housing and immediate livelihood needs. The approach also allowed for individually tailored solutions for housing and livelihood restoration. However there were a number of problems from a human rights perspective, including the following: (a) most payments went to male heads of households, with no measures in place to ensure that the funds would be spent on housing for the whole family; (b) families under severe financial stress could be under pressure to use the cash payments to cover more urgent, short-term expenses instead of housing; (c) through resorting to cash payments, the State missed an important opportunity to channel funds towards the provision of properly serviced sites for housing.

28. An even more serious concern was the fact that the NRS had to be implemented in the ongoing absence of a legal framework on land and property ownership and dispute resolution, in spite of many calls for action and proposals on establishing such a framework in order to bring certainty in a situation of profound tenure insecurity. Despite some commendable efforts to deal with the land tenure puzzle by a number of dedicated Timorese government officials and international advisors, visible progress towards such certainty only started during 2008. A “Decree on the Cadastre” was passed in July 2008, which authorized the restructured National Directorate for Land, Property and Cadastral Services and the *Ita Nia Rai* programme to undertake land tenure data collection around the country; and a draft Transitional Land Law was approved by the Council of Ministers on 10 March 2010 and as of September 2010 awaits consideration by Parliament.

29. Another significant post-conflict case is Cambodia, a country still recovering from the destructiveness of the Khmer Rouge era. Among other things, the Khmer Rouge systematically destroyed the prior land tenure system, forcibly evicted millions of people from their homes (including emptying the city of Phnom Penh), and destroyed land ownership records. Despite the passage of new land laws, weaknesses in the rule of law and lack of institutional capacity have allowed a culture of corruption and have facilitated land-grabbing, often by elites at the expense of the poor. A recent claim to the World Bank Inspection Panel, brought on behalf of people threatened with eviction from their homes

³⁰ Internal Displacement Monitoring Centre (IDMC), 2009. “Timor-Leste: IDPs have returned home, but the challenge of reintegration is just beginning”, Norwegian Refugee Council, 9 December 2009, Geneva, p. 3.

³¹ E-mail communication from the Ministry of Social Solidarity, Timor Leste, 20 July 2010.

near Boeung Kak Lake in Phnom Penh, illustrates some of these problems. The claimants challenged the design and implementation of the Land Management and Administration Project (LMAP), which was designed to support the Land Law of 2001. The project, funded primarily by the World Bank, “aimed at developing a land policy and regulatory framework, building capacity of the relevant Government agencies, developing a land registration system and a titling program, strengthening mechanisms for land disputes and developing State land management³².”

30. LMAP was able to accomplish a number of its goals including the development of key parts of the legal framework and the issuing of around 1.3 million land titles. However, “despite these achievements, the failure of the project to tackle fundamental inequities in the control and management of land meant that it did not improve tenure security for the segments of Cambodian society that are vulnerable to displacement³³.” Those who had less formal rights saw their security of tenure undermined: “The recognition of possession rights in the 2001 Land Law, including the right to convert possession into full ownership through title, was intended as a mechanism to incorporate this pre-existing tenure system into the formal centralized system....[However these] legal possessors are accused of being ‘illegal squatters’ because they do not have ‘hard’ formal title, and this in turn has become a common justification for eviction....By expanding the reach of the formal titling system, LMAP has increased the actual and perceived superiority of hard titles issued under the project vis-à-vis soft titles issued under the pre-existing tenure system. LMAP has thus unwittingly weakened the tenure status of those households who have been excluded from the formal system and must continue to rely on their ‘soft titles’ as proof of their rights to the land³⁴.”

31. Similar lessons can be learnt from post-disaster situations. Disasters occur in a social context framed by complex issues of power, politics and longstanding vulnerability and poverty, including widespread tenure insecurity. Understanding this complexity is fundamental to developing and implementing successful responses. This is illustrated in the case of Hurricane Mitch in Honduras in October 1998. According to official estimates Hurricane Mitch left 21 cities severely damaged, 82,735 houses damaged, 66,188 houses destroyed and 44,150 people homeless. In addition 123 health centres and 531 roads were damaged and eight health centres and 189 bridges were destroyed³⁵. As a result, an estimated 1.5 million people were negatively affected.

32. While people from all economic groups suffered from the effects of the hurricane, the damage disproportionately affected the most marginalized sectors of the population – poor women, peasants, indigenous groups. Significantly, many of these had been living under insecure tenure conditions in irregular settlements and inadequate housing, located in vulnerable areas exposed to strong winds, flooding and landslides. Although evacuation orders were issued, many refused to leave their homes for fear of losing their belongings, with disastrous and often fatal consequences. Vulnerability and in particular tenure insecurity was both the cause and effect of the disaster for such families. In the absence of officially recognized tenure rights, people ended up living on the fringes in dangerous areas, which due to their location were often worst affected by the hurricane. Any post-disaster response measures intended to form the basis for longer-term recovery would therefore have needed to address pre-existing insecurity, in order to provide a basis for the full realization of the right to adequate housing.

³² World Bank Inspection Panel, LMAP Eligibility Report, (2010) para. 23.

³³ N. Bugalski and D. Pred, “Land Title in Cambodia: Formalizing Inequality” in COHRE Housing and ESC Rights Law Quarterly, Vol. 7, No. 2, (June 2010), p. 4.

³⁴ N. Bugalski, M. Grimsditch and D. Pred, “Land Titling in Cambodia: Lessons from the Land Management and Administration Project” (forthcoming), p. 11.

³⁵ Secretaría de Salud de Honduras, Programa de Preparativos para Desastres.

33. In the wake of Hurricane Mitch, a combination of factors militated against satisfying the most basic housing needs of the affected Honduran population, much less the full realization of their right to adequate housing. Most analyses of post-Mitch responses conclude that both the country's government and the national emergency management system (as represented by its main agency, COPECO) were not adequately prepared to respond to the need of the victims. On the positive side, Hurricane Mitch led to the arrival of significant human and financial resources. Post-disaster housing response initiatives represented unprecedented opportunities to "build back better"³⁶. In particular, many women gained access to land and participation through some of these donor-funded responses who insisted that the deeds to all reconstructed houses bear the names of the female spouses (instead of the males), which was justified by the assumption that "women won't sell". Other projects compromised by proposing that post-disaster housing be registered under joint title and then established as family patrimony.

34. A number of successful rehabilitation and reconstruction initiatives in Honduras, where undisputed land was available at a reasonable distance from livelihood opportunities and facilities, illustrated how settlement development could be an appropriate means to support disaster-affected populations and introduce better practices in areas such as site planning, house design, use and production of building materials, water supply and sanitation and environmental protection. Cases such as El Progreso and Choluteca also included direct involvement by local authorities working in collaborating with other support institutions as well as members of the beneficiary community, all with the help of unprecedented levels of support from donors and relief organizations.

35. The post-Hurricane Mitch period also saw development in the legal framework related to land and housing issues, though the judicial system remained weak and so the potential benefits of the new legislation remained inaccessible to the poor. Missing from the current strategy in Honduras is a comprehensive programme to increase the supply of urbanized land and improve tenure security for the poor and the marginalized.

C. Consultation and participation

36. The long-term success of post-disaster and post-conflict responses to a great extent depends on a properly informed understanding of the local context. It also requires high levels of consultation with and direct involvement of the people directly affected in the process of relief and reconstruction within that context. With respect to the right to adequate housing and displacement, this specifically includes those people with less formalized land use and occupation rights.

37. Given the urgent, crisis nature of post-conflict and post-disaster situations, the approach of collecting and analysing detailed information, and of direct participation by the people affected, may seem difficult to achieve. This approach is likely to contradict powerful humanitarian and political pressures that emphasize speedy resettlement, rebuilding and re-housing. In post-conflict and post-disaster situations, "quick wins" easily become equated with rapid physical delivery, often with scant consideration, or even awareness, of possible counterproductive longer-term consequences. Getting "policy choices" right in the field of land and housing requires, in normal circumstances, the undertaking of complex analytical processes. In the midst of crises, the need for speedy decisions and practical livelihood support-oriented action may run counter to the need for caution and for intensive consultation with those directly affected.

³⁶ K. J. Abhas, et al., *Safer homes, Stronger Communities*; C.W. Gould, "The Right to Housing Recovery after Natural Disasters", in *Harvard Human Rights Journal*. Vol. 22, Issue 2 (2010).

38. In spite of these challenges, it is very important to ensure that time and opportunity are made for gathering of information, analysis and assessment of policy choices; and for intensive consultation with, and the involvement of, those affected. People directly affected by conflicts and crises are not mere helpless victims. They are invariably the first people “on the scene” and are often the first to take some form of action. In Honduras following the devastation caused by Hurricane Mitch the immediate post-disaster processes of rescue, relief and stabilization were characterized by remarkable personal determination and great displays of social solidarity, with private and public buildings opening their doors to the displaced and homeless. Communities in different parts of the country self-organized and developed their own survival strategies. Citizens joined neighbourhood or community solidarity groups, which, because of insufficient official assistance and their isolation, frequently carried out emergency tasks on their own initiative³⁷. Some of the most basic emergency interventions implemented included search and rescue operations, provision of temporary shelter, sanitation programmes such as the disposal of human and animal remains, and the distribution of water, food, blankets, and domestic items. This was in contrast to the Government’s response to the crisis which included immediate centralization of State power and, two days later, the announcement that plans to draft a national plan for reconstruction had been initiated, conducted without transparency in a secretive fashion.

39. Research conducted by the Active Learning Network for Accountability and Performance (ALNAP) and the ProVention Consortium in the wake of the 2005 South Asia earthquake found “accumulated evidence that *people affected by disasters want to participate fully in the response*, even if this means a slower implementation process. However, disbursement pressure – the need to get money out of the door – has in the past partly determined response mechanisms³⁸.” While emphasizing the importance of participation, the study also cautions: “When considering communities [...] it is important to remember: not to romanticise the coping capacities and resilience of local people and communities – they often face insurmountable difficulties when responding to major disasters; that often ‘communities’, particularly in areas of high inequality, are made up of different interest groups, and include marginalised groups who may well have difficulty getting their views represented; cultural ‘norms’ may also, for example, work against women’s rights³⁹.”

40. Ways need to be found around such obstacles, for at the heart of the matter lie the issues of ownership and accountability. In his 2006 report on lessons learned from the Indian Ocean Tsunami of 2004, the United Nations Secretary-General’s Special Envoy for Tsunami Recovery found that “It is a false trade-off to sacrifice local ownership for speed if that means short-circuiting the rights of affected populations to be informed in a timely manner about their choices, the assistance available to them, and any delays that are being experienced. The other side of this coin, of course, is accountability to the families and communities our recovery efforts are serving. Typically, demands for accountability come loudest from donors – private and institutional – and implementing agencies are more likely to focus on this kind of upward accountability. Too often, the less organized voices of the survivors are not heard, and this equally vital downward accountability is given second-priority at best. This is unfortunate, as a disaster’s survivors are best placed to design the

³⁷ Economic Commission for Latin America and the Caribbean (ECLAC), “Honduras: Assessment of the Damage Caused by Hurricane Mitch, 1998. Implications for Economic and Social Development and for the Environment”, LC/MEX/L.367, 14 April 1999, p.12

³⁸ T. Beck, “South Asia Earthquake 2005”, ProVention Consortium and ALNAP briefing paper, p.2.

³⁹ Ibid.p.2.

recovery strategy that best meets their needs. And they should be the ultimate judges of a recovery effort's success or failure⁴⁰.

41. With the correct approach and support from the national government and outside agencies, the people directly affected by disasters and conflicts ought to remain directly involved despite the enormity of the challenges they face. This is particularly important in the areas of resettlement and reconstruction. The individuals, families and communities affected possess vital local knowledge and experience, and when working together can be an invaluable partner in designing and implementing creative solutions. Community-based reconstruction, linked to planning and reconstruction processes developed at the municipal and national levels, should be promoted wherever possible. The IASC guidelines accordingly advise agencies "In the planning and rehabilitation of housing and human settlements, [to] devise community-based strategies to maximize the participation of all sectors of affected communities (e.g. community housing teams). Local communities should be involved in decision-making regarding the location, design and infrastructure of housing and settlements to ensure that they are safe, habitable, accessible and culturally appropriate⁴¹."

42. Studies have demonstrated the potential negative effects of failing to follow this approach. One example is research done in Gujarat, India, in the aftermath of the 2001 earthquake which left 1.2 million people homeless and damaged 1.7 million properties including 15,000 schools, affecting a total of 490 towns and 8,000 villages⁴². This was met with a comprehensive, generally successful and internationally acclaimed relief and rehabilitation effort managed by the Gujarat State Disaster Management Authority. The response was coordinated through a system of "village adoption", whereby NGOs and other entities took on responsibility for the reconstruction of the villages. Most affected households were offered two options: owner-driven reconstruction and donor-driven reconstruction. In the process different approaches were followed, allowing for flexibility, with varying success. A number of the lessons drawn from the study emphasized the importance of the involvement and active agency of the affected people, as well as the influence of location on the lives of affected communities. In one case, a new township constructed three kilometres from the original village that had been destroyed was found six years after the earthquake to be empty but for one or two houses occupied by migrant workers renting the properties from the intended owners. The intended inhabitants of this settlement, who had initially accepted the offer of houses built for them, had returned to the original village and built their own: "[The villagers said] that they did not want to leave their village, '*...it is the home of our ancestors*'. When asked who built the village, the proud response is that they did it themselves⁴³". In another village, while people had occupied the houses that had been built for them, they described their new settlement in "wholly negative" terms such as: "It is dead"; "We are bored"; "There are no shops⁴⁴".

43. The Gujarat study points to some of the dangers of resorting to rushed, donor-driven programming, which can neglect the social capital of the affected residents, and to contractor-driven reconstruction projects, which are rarely developmental in nature. The authors conclude that "The drive to rebuild quickly inevitably leads early on to the decision to hire commercial contractors. At this point projects such as these usually cease to be

⁴⁰ W. J. Clinton, *Lessons Learned from Tsunami Recovery: Key Propositions for Building Back Better*. United Nations, Office of the UN Secretary-General's Special Envoy for Tsunami Recovery (2006) p.4.

⁴¹ IASC, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual*, p. 47.

⁴² D. Sanderson and A. Sharma, "Winners and losers from the 2001 Gujarat earthquake", in *Environment and Urbanization*, Vol. 20, No.1 (April 2008) pp. 177-186

⁴³ *Ibid.* p. 181.

⁴⁴ *Ibid.*, p. 181.

developmental initiatives and become construction projects. The participation of residents is relegated to mixing concrete or making building blocks, or worse. [...] Fundamentally, the contractor-driven approach to shelter is focused on the construction of housing units. Yet shelter is far more than that⁴⁵”. They also warn that: “When powerful external agents are driving the process within an affected village, the social capital present within long-standing communities can be ignored or even damaged⁴⁶”.

44. In the case of East Timor discussed earlier, the importance and value of direct participation of the affected population in re-establishing a system of housing, land and property rights in the aftermath of the 1999 referendum was emphasized from an early stage. A 2000 report to the United Nations indicated that the majority of Timorese interviewed during a fact-finding study had confirmed the importance of involvement of customary local dispute resolution structures in future land dispute resolution and adjudication mechanisms, on the grounds of their persisting legitimacy in spite of decades of conflict and dispossession and also their role as a valuable source of “information, including details of boundaries, levels of rights and history of acquisition and loss⁴⁷”. On the basis of these submissions from a broad range of Timorese, the report recommended that where feasible, existing local dispute resolution structures should be used as a crucial first step in dealing with land, housing and property disputes. This mediation could commence “at any of a number of levels, right down to the level of family meetings⁴⁸”.

45. These and other proposals to address housing, land and property rights through the active participation of the affected people, and to build on existing community processes, were not taken up by the transitional authorities or the newly independent Government. In the aftermath of the later wave of violence, destruction and displacement of 2006-7, the need for such involvement became prominently recognised. The five pillars of the National Recovery Strategy included one aimed at building trust within communities and between the people and the Government. This was in the context of urgent attempts to achieve the reintegration and return of IDPs displaced by the violence to their communities, with the incentive of cash compensation from the State with which they could repair their homes or settle in alternative areas in cases where reintegration proved impossible. As part of a Dialogue, Communications and Outreach Programme, dialogue teams were established to manage the necessary conflict resolution, mediation and negotiation processes. This required the participation of local authorities, youth leaders and other groupings. The programme, which was still continuing in some communities in May 2010, incorporated the use of customary dispute resolution practices and peacebuilding ceremonies. It is widely regarded as having been successful and necessary for peacebuilding and the safe return of IDPs. Women reportedly participated far more actively than men in the community dialogue and reconciliation process. This was in contrast to the compensation payment process, which had been male-dominated.

46. The case of post-conflict Rwanda illustrates the use of a top-down developmental approach to land allocation, resettlement and housing in an effort to deal with the legacy of dispossession and displacement in the years leading up to and immediately following the 1994 Genocide. The majority of Rwandans had experience of forced displacement, either within the country or to a second or even third country, a reality which has shaped all subsequent efforts to manage land issues and to realize housing rights. From 1997 the Government attempted to implement the *imidugudu* (villagization) model nationwide, requiring the entire rural population of Rwanda to be concentrated in rural villages instead

⁴⁵ Ibid., pp. 182-183.

⁴⁶ Ibid. p. 185.

⁴⁷ du Plessis and Leckie, J. du Plessis and S. Leckie, “Housing Property and Land Rights in East Timor”, pp. 21 and 23.

⁴⁸ Ibid., p. 36.

of the traditionally scattered settlement patterns. Any further construction outside of dedicated village sites would be forbidden, while people were forced by the authorities to abandon and destroy their homes near their fields. Justified and pursued as an emergency shelter policy to deal with successive waves of approximately 2.5 million “old case” and “new case” refugees returning home after 1994, the *imidugudu* model had longer-term demographic, economic and governance goals. In the north-west of the country, it also served as a counterinsurgency measure in the context of incursions from ex-FAR and *Interahamwe* in Congo and violent reaction from Government troops.

47. While the Government directed significant domestic and foreign funding towards the construction of new housing, primarily through the *imidugudu* (villagization) model, and achieved some positive results, these efforts were only very rarely based upon consultation with local people, and in some cases involved direct pressure, eviction and dispossession that would appear incompatible with international human rights law. The opportunity of moving to housing constructed as part of the *imidugudu* programme was popular among some residents living in inadequate shelter, but it was much less popular amongst households who already lived in good-quality homes⁴⁹. Villagers were seriously concerned that the new villages put people further away from their fields, making cultivation more difficult, especially for women. They were also concerned that those who had given up some of their land to make way for the villages seldom received compensation, which caused tension and potential conflict. In addition, houses provided in the *imidugudu* were often of poor quality and the authorities frequently placed unreasonable restrictions upon existing home-owners, requiring them to upgrade or replace their homes without due regard for questions of affordability and cultural adequacy and appropriateness. The indigenous *Twa* people suffered particularly severely as a result, through the imposition of requirements ignoring their traditional values and housing practices⁵⁰.

48. The Rwandan *imidugudu* model was not simply about provision of shelter in an emergency context, the underlying vision was of a drastically re-engineered rural society, Consultation was limited, and participation mainly took the form of required “obligatory labour participation in construction activities⁵¹”. In spite of these obvious problems, and of lessons learnt in previous villagization projects in East Africa, the “emergency” status of post-1994 Rwanda secured the involvement of some international agencies⁵². However by 1999 international pressure and a related lack of donor funds essentially put a stop to the villagization programme.

49. The Rwandan Government remained in principle committed to the policy and re-launched the concept in 2007 following the promulgation of the 2004 Human Settlement Policy. In 2008, the Government announced plans to establish 30 pilot villages, one in every district, to encourage people to move into *imidugudu* through a system of positive incentives, such as the provision of agricultural tools and livestock. Major services, such as water sources and electricity supplies, have yet to be supplied in most cases, while many newly created villages have no services whatsoever. In addition, although the authorities stated their wish to be more open and to shift to an incentive-based rather than mandatory approach, the programme is still felt by many to be implemented in a “top-down” manner⁵³. Nevertheless the overall process is proceeding apace and the Government estimates that by

⁴⁹ E. Havugimana, *State Policies and Livelihoods: Rwandan Human Settlement Policy*. University of Gothenburg (Gothenburg, Sweden, 2009), p. 44.

⁵⁰ Jean-Pierre Bucyensege, “Residents vow to phase out grass thatched houses” in *The New Times*.

⁵¹ M. van Leeuwen, “Rwanda’s *Imidugudu* programme and earlier experiences with villagisation and resettlement in East Africa”, in *Journal of Modern African Studies*, 39 (4) (2001) p. 638.

⁵² *Ibid.*, p. 641.

⁵³ Site visits, field observations and multiple interviews by researcher Chris Huggins with implementers, officials and civil society organizations, 21 June to 1 July 2010.

May 2010 some 51 per cent of the rural population was located in *imidugudu*, a remarkably rapid increase from 22 per cent in 2008, and well on the way to the target for its *Vision2020* objective of 70 per cent by 2014⁵⁴. The long-term social consequences of these achievements are still unclear. In adopting and implementing the policy there has been a blurring of humanitarian, development and “security” or population control agendas, in the absence of genuine consultation, negotiation and reconciliation. This, coupled with a lack of sufficient pro-poor urban settlement practices, may lead to future problems.

D. Institutional coordination, phasing and the promotion of the right to adequate housing

50. In high-profile or “complex emergency”⁵⁵ cases, conflicts and disasters elicit international interventions and massive relief responses from a variety of institutions and States. In recent years, given the overwhelming scale, frequency and complexity of unfolding crises, there have been signs of a creeping sense of donor fatigue⁵⁶.

51. In response to serious problems experienced in the past, the humanitarian response system has since the 1990s undergone a process of reform to reduce the fragmentation of efforts which had beset its earlier engagements and been responsible for numerous contradictions and tensions. This has produced a much stronger co-ordination framework also involving bilateral institutions, International Financial Institutions (IFIs) and NGOs.

52. The process started in 1991 with General Assembly Resolution 46/182 designed to “strengthen the United Nations response to complex emergencies and natural disasters” as well as “aiming at improving the overall effectiveness of humanitarian operations in the field”. Crises in subsequent years (above all the Rwanda genocide in 1994 where the international community was explicitly faulted for inability to predict, prevent and respond) accelerated the pace of reform. The United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA) was established in 1998, as a department of the United Nations Secretariat with the mandate of co-ordinating humanitarian response, policy development and humanitarian advocacy. It merged all humanitarian functions of the United Nations until then performed by the United Nations Disaster Relief Organization (UNDRO) and the Department of Humanitarian Affairs under a single United Nations Focal Point, the Emergency Relief Co-ordinator (ERC). General Assembly Resolution 46/182 further established important inter-agency mechanisms and operational tools. These include: the Inter-Agency Standing Committee (IASC), gathering all humanitarian partners from United Nations agencies, funds and programmes, the World Bank, the Red Cross and the main international NGOs to function as an inter-agency decision-making body in response to complex emergencies; and, structured in clusters and phases related to specific funds and plans of action: the Flash Appeal (FA), the Consolidated Appeal Process (CAP), the Central Emergency Response Fund (CERF) and the Common Humanitarian Action Plan (CHAP).

53. In spite of these advances, a number of grey areas and fault lines remain, as does the need for further focusing on better systemic arrangements for the integration of human rights perspectives in disaster response. Post-conflict and post-disaster responses remain plagued by disconnections between various phases of activity. Many bilateral donors called

⁵⁴ Data provided by Ministry of Local Government, Community Development and Social Affairs, 28 June 2010.

⁵⁵ “Complex emergencies” occur where different natural and/or human crises blend and mutually reinforce each other.

⁵⁶ See for example: “Donor fatigue hits UN aid to Sudan”, BBC, 19 February 1998; “U.N. battles donor fatigue for funds for Pakistan”, Reuters, 17 August 2010.

upon to provide the funding to address crises have remained rigidly caught within two main areas of engagement, i.e. ‘humanitarian assistance’ and ‘development’. Budgets for these are not interchangeable and so the result has been an artificial separation of what should ideally be more interconnected activities. Current funding instruments (Flash Appeals) hardly allow for undertaking, from the start of humanitarian operations, the type of analyses and consultations which would help reduce the margins of uncertainty and error in resettlement, reconstruction, land tenure and the protection and realisation of the right to adequate housing. The history of applications by development agencies for FA funding for initiatives designed to build longer-term sustainability in humanitarian operations is a mixed one, and the scope for accessing resources to undertake critical policy development, legal reform and planning work has been very limited.

54. Part of the problem is an as yet incomplete understanding of the concept of “Recovery” (in its defined two phases of “Early” and “Long-term”) and of its programmatic implications in the course of humanitarian assistance. The earlier conceptualization of the transition from “relief” to “development” was not useful. The problem was that it attempted to establish a rigid sequential logic, which tended to overlook certain essential “non-humanitarian” actions that would need to commence from the very start of humanitarian assistance and carry through into the resumption of normal development processes.

55. The stakes in determining the ultimate success in ensuring equitable and efficient reconstruction and recovery are highest in the period immediately following the initial crisis “event”, which normally coincides with the start of humanitarian assistance. Key determinants for ultimate success or failure in long-term reconstruction and development are normally drawn during that early period, either through informed and proactive policy choices, or simply by default. This applies to many areas of recovery; perhaps nowhere more than in the area of human settlement, the right to adequate housing and land tenure. It is a matter of concern that there is a general lack of awareness of the consequences of overlooking key issues related to human rights and land tenure systems during the first critical months of a response. Steps are needed to ensure that early opportunities are recognized and utilized, in a way that protects and promotes instead of undermines the right to adequate housing for everyone affected by conflicts and disasters. In a context of stretched resources and huge pressure to deliver concrete results, costly policy mistakes can be made which, particularly in the area of the right to adequate housing and land tenure, can have serious long-term consequences. However not taking crucial necessary steps can also have disastrous consequences.

56. To do this requires resources from within countries, bilateral and multilateral international donors, relief agencies and NGOs etc. With regard to post-disaster housing challenges: “Reducing the impact of natural disasters on poorer countries is directly related to their ability to access sufficient funding to reconstruct properly in the post-disaster period. Post-disaster funding stimulates economic activity and restores critical components of ongoing economic growth. The key is whether or not the country can access financing early in the post-disaster phase of recovery⁵⁷.” Once accessed, allocation and use of those funds is also vitally important. If initial needs assessments are conducted on a competitive, sector-driven basis, this can result in competition between agencies for “their” projects and programmes, instead of much needed integration of forward-looking strategies. If such inputs are well used, crises resulting from disasters can in spite of all their negative impacts also be times of opportunity: “In post-disaster situations, intense periods of social rearrangement can occur, and legitimacy, authority and rules are much more fluid and open than perhaps at other times. While such situations present challenges such as low predictability and sometimes the overlooking of safeguards on the other hand they can also

⁵⁷ P. Freeman, “Allocation of Post-Disaster Reconstruction Financing to Housing”, in *Building Research & Information*, 32(5), 2004, p. 429.

provide a window of opportunity for implementing positive changes. Care must be taken, however, to ensure that good intentions are grounded in ‘Do no harm’ principles for humanitarian action.”⁵⁸

57. Given the lessons of the past two decades, and the institutional reforms already initiated, humanitarian agencies, and one would assume bilateral donors, are now much more aware of the risk of doing unintended long-term harm through well-meaning early action which ends up increasing the vulnerability of the poor. In the area of the right to adequate housing and particularly on the issues of security of tenure, location, cultural adequacy and availability of services, facilities and infrastructure, at least, the time has come for “Do no harm” guidelines to move to a next step where specific tools for timely analysis and proactive interventions (“Do the right thing”) are provided at the field level.

IV. Conclusions and recommendations

58. **Violations of the right to adequate housing can both contribute to and result from armed conflicts and natural disasters. The poorer and marginalized members of society are disproportionately affected. Addressing existing vulnerabilities can play an important role in both preventing and mitigating the impacts of disasters and conflicts. States should therefore:**

- **Urgently step up their efforts to respect, protect and fulfil the right to adequate housing, in all its dimensions, in both urban and rural contexts;**
- **Develop and implement land tenure reform policies and programmes that make suitably located, secure, safe and affordable housing accessible to all;**
- **Recognize and protect a variety of land tenure forms, instead of a predominant or exclusive focus on freehold ownership.**

59. **In the wake of a specific disaster or conflict, the right to adequate housing should be integrated as a key component of planning, preparation and implementation of any ensuing humanitarian, reconstruction and development responses.**

60. **Governments, with sustained support from international support agencies, should provide immediate, temporary shelter in reasonable adequate living conditions for anyone displaced by conflict or disaster.**

61. **In preparing for reconstruction and development, all relevant parties and actors should acknowledge that housing has an inherent social value of vital importance for social stability, alleviation of poverty and development. Any response to the impacts of conflicts or disasters on the right to adequate housing should go beyond a focus on the damage, loss or destruction of shelter and infrastructure and should seek to address, inter alia:**

- **The disruption of social and economic relationships and networks;**
- **The destruction of home-centred livelihoods;**
- **The specific rights and concerns of women and other groups particularly vulnerable to discrimination;**
- **Compromised access to facilities, amenities and livelihood opportunities;**

⁵⁸ UN-Habitat, *Land and Natural Disasters. Guidance for Practitioners*, (Nairobi) p. 10.

- The loss of tenure security, particularly by those who had been living under customary or informal tenure systems prior to the disaster or conflict.

62. A rapid assessment and analysis of pre-existing tenure and property rights systems should be conducted in the immediate aftermath of a disaster or conflict. The aims of this assessment should be: (1) to guide on urgent steps to be taken to protect the right to adequate housing and tenure security of all, but particularly the poorer and marginalized members of society; (2) to identify areas of opportunity where, with the presence and support of bilateral and multilateral international agencies, opportunities could arise for improvement and innovation (for example securing of previously unavailable housing-related rights and entitlements for women); (3) to identify and warn against risk areas where poorly informed actions would result in further housing rights violations. This rapid assessment should be an essential step towards the formulation of a more detailed and comprehensive land management, allocation and registration strategy for sustainable rehabilitation and reconstruction.

63. Dedicated funding mechanisms or channels should be established to provide resources to initiatives aimed at respecting, protecting and fulfilling the right to adequate housing from the very outset of humanitarian operations. In addition, structured capacity-building networks should be created at field level, accompanied by focused operational support. A documented body of evidence on past violations (and their causes) should be produced, made available and developed into guidelines for action.

64. The effective consultation and direct participation of affected communities in the design and implementation of post-conflict and post-disaster responses, particularly on matters of housing and land, should be ensured.

65. The right of all people displaced as a result of conflict or disaster (refugees or IDPs) to voluntarily return to their land and homes or any other location within their country should be recognized and all possible steps should be taken to assist them to exercise that right. In cases where the displaced have settled and begun to build new lives and communities, their preference to remain should also be respected and supported. Further, in cases where secondary occupants are in possession of the land and houses of people displaced, sustained efforts should be made to achieve a negotiated agreement that satisfies all parties, prior to any legal action being taken.

66. Housing and land issues should be addressed in peace agreements and where necessary institutions to deal specifically with property claims should be established.

67. In post-conflict and post-disaster situations mechanisms should be put in place to monitor violations of the right to adequate housing, including forced evictions. Victims of such violations should be entitled to legal remedies and have access to justice.
