

# The great land theft

by Scott Leckie

*The tsunami has reminded us of the need for a rights-based approach to post-disaster reconstruction. If housing, land and property rights are put at the heart of a post-disaster plan – rather than cast aside as too complicated or expensive – the chances are that it will succeed. If these rights are ignored or, more ominously, systematically violated, not only will rights be abused but also reconstruction will fail.*

Once again as post-tsunami aid poured in we heard the old refrain: “This time it’s going to be different; this time we will not fail the victims”. Six months on, it is time to ask just how different from other disasters has the massive recovery and reconstruction process really been. Has the post-disaster rebuilding effort achieved what was needed? Are the homeless already housed and able to move on with their lives? Have survivors been treated in accordance with their rights? Are the survivors in Aceh, the Maldives, Sri Lanka and India better off than those who survived earthquakes in Bam, Gujarat or Kobe or hurricanes in Central America or the Caribbean? Or have they become victims and their human rights sidelined as political actors used the pretext of disaster to achieve otherwise unachievable objectives?

## Land lost and gained

In every disaster, lives and livelihoods are destroyed, economic hardship is ubiquitous and severe disruption of ordinary life is assured. But there is a common thread running through all disasters and one that holds the key to successful reconstruction, rebuilding and regeneration: land, housing and property (HLP) rights.

Beyond the human toll, the tsunami provided a pretext for evictions, land grabs, unjustifiable land-acquisition plans and other measures designed to prevent homeless residents from returning to their original homes and lands. Thailand, India and other affected countries have restricted the right to return but Sri Lanka stands out as the tsunami-affected country which has sought most dramatically to re-shape its residential landscape through the reconstruction process.

Government policies now prohibit new construction within 100 metres of the mean sea level (in some areas 200 metres). The overwhelming majority of the more than 500,000 people displaced lived within 100 metres of the coast when the tsunami struck. The government has promised to rehouse those affected by the construction regulations and has undertaken to build a house for every affected house owner. While privately owned land within the 100-metre zone will remain the property of the original owners – and the government states that it will not claim ownership to such property – the 100-metre rule will permanently prevent hundreds of thousands of people in fishing communities and others who lived and worked on or near the shore from returning to their former lands. Understandably, those affected are not happy.

This desire to protect the coastline and former residents from any future tsunami may appear entirely reasonable and consistent with human rights standards. However, these manoeuvres to change the demographics of the Sri Lankan coastline can be criticised on several fronts. First, the people themselves do not want to move and generally long to return to their former lands. Second, there has effectively been no consultation on the 100-metre rule in Sri Lanka. And third, the exceptions to the 100-metre rule now being allowed – for hotels, wealthy property developers and other privileged groups – raise serious concerns of favouritism.

## Housing uncertainty

While the authorities in Aceh have significantly changed their policies on voluntary return to allow people to go home rather than face per-

manent relocation, new problems are facing Acehese survivors. The re-building process has been painfully slow with almost no new homes yet constructed in the most severely affected areas. An important process of community mapping has taken place in Aceh, led by NGOs, but the local authorities are reluctant to accept such bottom-up initiatives. This is perhaps influenced by the World Bank-supported ‘rapid title registration programme’ in Aceh which, though financially well-endowed, is far too slow and prone to possible conflicts to assist in expediting the broader reconstruction process.

In Sri Lanka, hundreds of thousands of tsunami survivors continue to live in temporary shelters or tents some six months after the disaster. Reports indicate that the government has plans to build new housing four or five – in some cases even 14 – kilometres from traditional coastal villages. This will have a serious impact on peoples’ livelihoods, especially fishing families dependent on the sea and immediate access to it. When one visits temporary resettlement sites in Sri Lanka, it is not difficult to get the feeling that tsunami survivors are going to be waiting for many years before all of the housing that is needed is actually in place.

Failure to actively involve these communities in the re-building effort is causing additional frustration. Throughout the tsunami-affected countries, reconstruction efforts have generally been top-down initiatives, excluding many affected communities from decision making. Given the still huge housing backlog throughout the affected region, governments, communities and NGOs will have to make a special effort to work together to find housing solutions that are quick to achieve and acceptable to all affected individuals, families and communities. Governments and foreign agencies might consider the example of the government of Gujarat which, in the aftermath of the 2001 earthquake, allowed local communities and local NGOs to lead the reconstruction process; survivors there achieved a return to housing normalcy far more quickly than would have been the case had the state or private sectors led the re-housing effort.



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Where houses stood, Sri Lanka.

### Rights-based reconstruction

The human tragedy inherent in this natural disaster must not be exacerbated by violations of the human rights of survivors as they seek to reestablish their homes, livelihoods and communities. HLP rights are key elements of any post-disaster setting and need to be an integral part of any future recovery efforts. An HLP rights framework in relief and reconstruction efforts would go some way – in future disasters – to avoid some of the more callous policies pursued in response to the tsunami. A rights-based approach should focus on seven key areas:

- 1. The right to voluntary return:** All survivors of disasters should be assured of the right to voluntarily return, without discrimination, to the land on which they originally lived. If homes are still intact or capable of repair, their rights to recover, repossess and re-inhabit these homes should be respected. Any unjustifiable restriction on return amounts to forced eviction, which is illegal under international law.
- 2. The right to adequate housing and secure tenure:** Following all disasters, all affected families and individuals should be provided with access to adequate and affordable housing, in accordance with international human rights, in as expeditious a manner possible. Upon return or resettlement, security of tenure should be granted to affected individuals and communities, and this should be properly registered within official housing and

land registries. Nobody should become homeless as a result of the reconstruction process.

- 3. The right to participation, consultation and non-discrimination:** Special efforts should be made to ensure the full participation of disaster-affected persons in the planning and management of their return, re-housing or resettlement. All affected communities should be consulted on any housing plans and encouraged to form community-based organisations to represent their own interests. Fully participatory, transparent and accountable systems must be developed to ensure that only former residents – and poorer residents in particular – benefit from the rebuilding of homes and related infrastructure. All reconstruction and rehabilitation efforts should take account of the needs of especially vulnerable or marginalised groups.
- 4. The right to protection in temporary housing arrangements:** The setting up and running of temporary housing settlements following disasters should be in full conformity with international human rights standards. In addition to fulfilling camp residents' minimum rights to shelter, water, food, medical care and education, the camps should be managed in full consultation and cooperation with the displaced themselves. The provision or withholding of emergency assistance should not be used as a means of control or oppression. Within all temporary camps, physical and psychological security and

mental health – particularly of women and children – should be maintained and protected.

- 5. Rights to livelihoods, social security, water, health and education:** Post-disaster aid efforts should not be disproportionately directed towards providing emergency assistance and establishing temporary camps. A significant amount of the resources available for reconstruction and rehabilitation should be devoted to building appropriate housing and to restoring lost livelihoods, assets for social security and health, education and community facilities.
- 6. Equal rights to inheritance:** All inheritance and property-ownership laws or practices, whether formal or informal, that are discriminatory and may thus prevent the equitable transfer of property to survivors (particularly women and children) should be scrapped. Widows should be given legal title to land and housing in their own names, and married women should be recognised on the title deed along with their husband and children, if any.
- 7. Women's rights:** Women have traditionally been at the forefront in ensuring the survival and welfare of their communities. Therefore, in addition to safeguarding the women's rights emphasised above, it is particularly important to support women in the relief, reconstruction and rehabilitation effort and to respect their rights to participation.

The Indian Ocean tsunami provides many lessons to policy makers entrusted with responding to the next massive natural or man-made disaster. It is to be hoped that the manipulation of the recovery process by governments in the region which we have witnessed will not be repeated when the next disaster strikes.

*Scott Leckie, Executive Director of the Centre on Housing Rights and Evictions (COHRE [www.cohre.org](http://www.cohre.org)), worked on housing, land and property rights issues in Sri Lanka and the Maldives in the immediate aftermath of the tsunami. Email: [scott@cohre.org](mailto:scott@cohre.org). COHRE recently established an office in Colombo (contact [bret@cohre.org](mailto:bret@cohre.org)) to monitor human rights abuses in reconstruction programmes in all tsunami-affected countries.*