

## KEY HLP PRINCIPLES FOR SHELTER PARTNERS

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Human rights, including housing, land and property (HLP) rights, must be integrated as a key component in any humanitarian response to disasters.<sup>1</sup>

#### WHAT ARE HLP RIGHTS?

HLP rights are the collective bundle of human rights laws, standards and principles that have a direct bearing upon the residential conditions in which people live and the rights they possess as dwellers.

HLP rights are applicable at all times, whether in peace, conflict, disaster or development.

HLP rights provide the legal basis for the rights that individuals possess as rights-holders as well as the obligations that Governments have as duty-bearers to respect, protect and fulfill these rights.

HLP rights in a post-disaster context include:

- The right to adequate housing;
- The right to non-discrimination in the HLP sector;
- The right to security of tenure;
- Protection against forced eviction;
- Protection of the most vulnerable and marginalized persons.

#### THE LEGAL FRAMEWORK FOR HLP RIGHTS IN THE PHILIPPINES

The Government of the Philippines has the responsibility to respect, protect and fulfill a broad range of HLP rights, based on:

- *International Commitments*: including: the Universal Declaration of Human Rights;<sup>2</sup> the International Covenant on Economic, Social and Cultural Rights;<sup>3</sup> the Convention on the Elimination of All Forms of Discrimination against Women;<sup>4</sup> the Convention on the Rights of the Child;<sup>5</sup> the Convention on the Rights of Persons with Disabilities;<sup>6</sup> ILO Convention No. 169 on Indigenous and Tribal Peoples<sup>7</sup> and the Hyogo Framework for Action 2005-2015.

<sup>1</sup> See Inter-Agency Standing Committee, *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, January 2011, p2; Special Rapporteur on Adequate Housing, *Report to the Human Rights Council, Sixteenth Session, UN Doc. A/HRC/16/42*, 20 December 2010, p3 and Special Rapporteur on the Adequate Housing, *Report to the General Assembly, Sixty-Sixth Session, UN Doc. A/66/270*, 5 August 2011, p4.

<sup>2</sup> Article 25(1) of the *Universal Declaration on Human Rights*.

<sup>3</sup> Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*.

<sup>4</sup> Article 14 (2) (h) of the *Convention on the Elimination of All Forms of Discrimination Against Women*.

<sup>5</sup> Article 27 (3) of the *Convention on the Rights of the Child*.

<sup>6</sup> Article 28 (1) of the *Convention on the Rights of Persons with Disabilities*.

<sup>7</sup> Article 20 (2) (C) of the *ILO Convention No. 169 on Indigenous and Tribal Peoples*.

- *The National Law of the Philippines*: including the 1987 Constitution of the Philippines; the 2009 Climate Change Act and the 2010 Philippine Disaster Risk Reduction Act.<sup>8</sup>
- *International Principles*: including the United Nations Guiding Principles on Internal Displacement<sup>9</sup> and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).<sup>10</sup>

In practice, the national authorities of the Philippines have the primary responsibility to protect HLP rights in the context of disaster response,<sup>11</sup> however, this responsibility is shared with Local Government Units (LGUs), other relevant national agencies and the private sector.<sup>12</sup>

## HUMANITARIAN AGENCIES AND HLP RIGHTS

Organizations providing protection and assistance to persons affected by natural disasters should respect the human rights - including HLP rights - of persons affected by disasters at all times and advocate for their promotion and protection to the fullest extent.<sup>13</sup>

Humanitarian organizations should not promote, actively participate in, or in any other manner contribute to, or endorse policies or activities, which do or can lead to HLP rights violations by States.<sup>14</sup>

## KEY HLP PRINCIPLES FOR SHELTER PARTNERS

### 1. EVERYONE HAS THE RIGHT TO AN ADEQUATE STANDARD OF HOUSING

In all phases of disaster response the right to adequate housing should be respected and protected. The right to adequate housing is much more than a shelter commodity, it is the right to live somewhere in security, peace and dignity.<sup>15</sup>

The criteria for an adequate standard of housing includes *Security of tenure; Cultural adequacy; Affordability; Availability of services, materials, facilities and infrastructure; Habitability; Accessibility and Location*.

#### Security of tenure

There is a multiplicity of legitimate tenure arrangements besides private ownership, such as public or private rental accommodation, cooperative housing, lease, emergency housing, occupation/rent of land or property in informal settlements, and other user or occupancy rights through statutory, customary, religious or hybrid arrangements all with varying degrees of formality. 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.

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<sup>8</sup> See generally, Commission on Human Rights of the Philippines, *Human Rights Advisory CHR (IV)* – A2012-002.

<sup>9</sup> UN Economic and Social Council (ECOSOC), *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2.

<sup>10</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17.

<sup>11</sup> Principle 3 of the *Guiding Principles on Internal Displacement*; see also, Commission on Human Rights of the Philippines, *Human Rights Advisory CHR (IV)*.

<sup>12</sup> See Commission on Human Rights of the Philippines, *Human Rights Advisory CHR (IV)*.

<sup>13</sup> General Principle III, IASC, *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, p3.

<sup>14</sup> *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, General Principle III, IASC, p3.

<sup>15</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, para 7.

### Cultural adequacy

Adequate housing should respect and take into account the expression of cultural identity and ways of life.

*N.B Please see the more detailed Guidance Note on the HLP Rights of Indigenous Populations for Shelter Partners prepared by the Shelter Cluster*

### Affordability

Personal or household financial costs associated with housing should not threaten or compromise the attainment and satisfaction of other basic needs (for example, food, education and access to health care).

### Availability of services, materials, facilities and infrastructure

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All persons should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, adequate sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

### Habitability

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. This means that there must be respect for safety standards aimed at reducing damage in cases of future disasters.<sup>16</sup>

### Accessibility

Adequate housing must take into account the specific needs of disadvantaged and marginalized groups, including the poor, the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems and the mentally ill.

### Location

Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. Housing should not be built on polluted sites nor in immediate proximity to pollution sources.

## **2. ALL AFFECTED PERSONS SHOULD HAVE ACCESS TO INFORMATION AND THE RIGHT TO PARTICIPATE**

All affected groups and persons should have access to information and be able to participate meaningfully in the planning and implementation of the shelter response.<sup>17</sup>

In particular, all affected persons should have the opportunity to participate in the identification and determination of tenure rights; the choice over planning and implementation of transitional shelter and permanent housing programmes, and of durable solutions (return, local integration, relocation); and in decisions over land use planning and restrictions.<sup>18</sup>

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<sup>16</sup> Inter-Agency Standing Committee, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, C.3.2, January 2011.

<sup>17</sup> See IASC *Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, January 2011, C.2.3, p41; *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, C.3.3, p28; and The IASC Principals' Commitments on Accountability to Affected Populations, 2011.

<sup>18</sup> *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, C.3.3, p28.

To the maximum extent possible, and provided that necessary safety standards are met, owners of destroyed houses should be allowed to decide on their own how to rebuild them.<sup>19</sup>

### **3. THE SHELTER RESPONSE SHOULD BE FREE FROM HLP DISCRIMINATION AND SHOULD ENSURE THE RIGHTS OF THE MOST VULNERABLE**

HLP rights must be enjoyed without discrimination of any kind on the basis of gender, race, colour, sex, sexual orientation, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status.

This includes the need to eliminate the common bias in favour of persons holding formal property title over other forms of tenure.

Taking a human rights approach to the humanitarian response means that efforts should be targeted towards the most vulnerable and marginalized groups, such as women, unaccompanied minors, expectant mothers, mothers with young children, heads of household, persons with disabilities and the elderly.

These principles are especially important during the beneficiary selection phase for temporary and long-term shelter.

*N.B Please see the Guidance Note on Beneficiary Selection Criteria for Shelter Partners prepared by the Shelter Cluster.*

### **4. AFFECTED PERSONS SHOULD HAVE THE RIGHT TO CHOOSE BETWEEN RETURN, LOCAL INTEGRATION AND RELOCATION**

After the emergency phase, affected persons should be granted the right to choose freely whether they want to:<sup>20</sup>

- Return to their homes and places of origin;
- To integrate locally in the area to which they have been displaced; or
- To settle elsewhere in the country.

Any restrictions on the right to these durable solutions – for example the imposition of a No Build Zone which restricts the right to return, remain and rebuild - should only be enforced in limited circumstances and only where international and national standards are met. In particular, the restriction must be:

- Provided for by law;
- Necessary and solely implemented to protect the lives and health of the affected population; and
- Only imposed where the risks to lives and health could not be mitigated by other adaptation or less intrusive protective measures.<sup>21</sup>

Where these restrictions result in the voluntary or forced relocation of populations, specific international and national standards must be met, including:

- Forced evictions and relocations should be a measure of last resort and should not render

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<sup>19</sup> *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, C.3.3, p28.

<sup>20</sup> Principle 28 of the *Guiding Principles on Internal Displacement*, 1998.

<sup>21</sup> *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, C.2.9. p27 and *IASC Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, January 2011, D.2.4, p48.

persons homeless or vulnerable to the violation of other rights;<sup>22</sup>

- Affected populations must be provided with adequate information on the eviction/relocation process, the reasons for the decision and the future use of the land;<sup>23</sup>
- Affected persons must be genuinely consulted during all phases of the relocation, including the choice of site and the construction of housing, services and livelihoods; this consultation should include vulnerable and marginalised groups;
- Adequate and reasonable notice must be given prior to the date of eviction/relocation;
- Legal remedies that respect due process guarantees should be provided, including the right to be heard and the right of access to an independent court or tribunal, as well as to just compensation.<sup>24</sup>

These protections apply to all affected persons, irrespective of their tenure status.

It must also be ensured that conditions at the site of relocation are adequate under national and international standards, including

- The proposed relocation sites are not exposed to secondary impacts of the disaster and are safe from recurrent disasters; and
- Affected persons have access to adequate housing, WASH, health services and education and livelihoods without discrimination.

*N.B Please see a more detailed Guidance Note on Principles and Standards around Relocation for Shelter Partners prepared by the Shelter Cluster.*

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<sup>22</sup> IASC Operational Guidelines on the Protection of persons in Situations of Natural Disaster, January 2011, C.2.5, p42

<sup>23</sup> Ibid, D.2.2, p47.

<sup>24</sup> Ibid, D.2.4, p49.