

## HLP GUIDANCE NOTE ON RELOCATION FOR SHELTER PARTNERS

### March 2014

This Advisory Note provides guidance to Shelter Cluster Partners on national and international standards related to relocation as well as examples of best practice. The note is designed to support Shelter Partners in their decision making on whether or not to become involved in relocation processes, and where they do decide to become involved, to ensure that relocation is undertaken with a holistic perspective and in a manner that respects the rights of all affected persons. In other words, that the relocation is undertaken utilising an approach that has the best possible chance of succeeding.

#### **Beyond shelter, the social and economic challenges of relocation**

Experience shows that relocating people involves large costs in terms of infrastructure and services and can also severely disrupt people's livelihoods and community lives.<sup>1</sup> Settlement and housing patterns are not random but reflect a specific economic and social fabric that may be difficult to replicate elsewhere.<sup>2</sup>

Responsible settlements are about more than the construction of shelter, they are about creating a safe environment for the entire community where they not only have access to an adequate standard of housing but also to utilities, critical infrastructure and livelihood opportunities. Adopting a settlements perspective involves the consideration of other aspects of community life beyond shelter and how they all fit together physically and functionally.<sup>3</sup>

#### **STANDARDS ON VOLUNTARY AND INVOLUNTARY RELOCATION**

After the emergency phase, persons affected by Typhoon Yolanda should be granted the right to choose freely whether they want to:

- 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.<sup>4</sup>

Affected persons should be provided with the information necessary to exercise their right to decide freely.

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<sup>1</sup> See World Bank, *Hazards of Nature, Risks to Development: an IEG Evaluation of World Bank Assistance for Natural Disasters*, 2006, p46; Active Learning Network for Accountability and Performance in Humanitarian Action, *Responding to earthquakes, 2008: Learning from Earthquake Relief and Recovery*, 2008, p21.

<sup>2</sup> Special Rapporteur on the Adequate Housing, *Report to the General Assembly, Sixty-Sixth Session*, UN Doc. A/66/270, 5 August 2011, para 48.

<sup>3</sup> IFRC, *Post-disaster Settlement Planning and Guidelines*, 2012, p7.

<sup>4</sup> IASC, *Protecting Persons Affected By Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, 2006, para A.1.6.

Of these three options, the return of affected persons to their homes or places of former habitual residence should be the preferred solution.

#### *Voluntary Relocation*

Affected communities have the right to choose to be relocated, rather than to return and rebuild in their places of former habitual residence.

This decision should be based on objective, accurate and up-to-date information and genuine consultation.

Further, it is essential that affected communities are provided with adequate time within which to make a free and informed decision on whether or not to relocate.

For those persons that choose to be voluntarily relocated, the below guidance on “General Standards on Relocation” should apply.

#### CHECKLIST 1. IS THE RELOCATION VOLUNTARY?

##### *Forced Relocation*

National and international standards are clear that the right of affected persons to return and rebuild may not be subject to any restrictions except those which are:

- 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>5</sup>

International standards are also clear that involuntary relocation must be viewed as a measure of last resort.<sup>6</sup>

In all cases of prohibitions on remaining, returning and rebuilding, measures should be taken to provide owners with due process guarantees, including the right to be heard and the right of access to an independent court or tribunal, as well as just compensation.<sup>7</sup>

#### CHECKLIST 2. WHERE RELOCATION IS NOT VOLUNTARY, IS IT NECESSARY?

Where relocation is not voluntary, national and international standards on forced eviction must be adhered to.

The *Constitution of the Philippines* states that “urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner.”<sup>8</sup>

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<sup>5</sup> IASC, *Protecting Persons Affected By Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, 2006, para A.1.6 and C.2.9; *IASC Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, 2011, para D.2.4.

<sup>6</sup> IFRC, *Post-disaster Settlement Planning and Guidelines*, 2012, p11.

<sup>7</sup> IASC, *Protecting Persons Affected By Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, 2006, para C.2.9.

<sup>8</sup> Article XIII, Section 10, *Constitution of the Republic of the Philippines*, 1987.

Evictions and demolitions are also specifically discouraged under the Philippines' *Urban Development and Housing Act*.<sup>9</sup>

Forced evictions are recognized under international law as being *prima facie* incompatible with the right to adequate housing and can “only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”.<sup>10</sup>

Where forced eviction occurs, the *Urban Development and Housing Act* states that the following shall be mandatory:<sup>11</sup>

- (1) Notice upon the affected persons or entities at least thirty days prior to the date of eviction or demolition;
- (2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- (3) Presence of local government officials or their representatives during eviction or demolition;
- (4) Proper identification of all persons taking part in the demolition;
- (5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- (6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- (7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- (8) Adequate relocation, whether temporary or permanent.

International standards further require that:

- Forced evictions should not render persons vulnerable to the violation of other rights;<sup>12</sup> and
- When forced eviction occurs, people should have access to remedies, including to a fair hearing, access to legal counsel and to receiving reparation, such as housing or land restitution, adequate compensation, or alternative housing/land if they so choose.<sup>13</sup>

**CHECKLIST 3. WHERE RELOCATION IS NOT VOLUNTARY, ARE NATIONAL AND INTERNATIONAL STANDARDS ON FORCED EVICTION MET?**

<sup>9</sup> Section 28, Republic Act No. 7279, *Urban Development and Housing Act*, 1992.

<sup>10</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 18.

<sup>11</sup> Section 28(a), Republic Act No. 7279, *Urban Development and Housing Act*, 1992.

<sup>12</sup> *IASC Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, January 2011, C.2.5, p42; see also Report of the Special Rapporteur para 46, p 18 A/66/270.

<sup>13</sup> See: UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, para 13; Special Rapporteur on the Adequate Housing, *Report to the General Assembly, Sixty-Sixth Session*, UN Doc. A/66/270, 5 August 2011, para 45.

## GENERAL STANDARDS ON RELOCATION

The following standards and guidelines apply to all relocations, whether voluntary or forced, transitional or permanent:

1. Site selection should ensure that the relocation site is adequate.
2. Shelter at the relocation site must be adequate.
3. Adequate WASH and other facilities should be ensured at the relocation site.
4. Affected communities should have adequate information and be adequately consulted in any relocation planning.
5. A non-discrimination approach and the rights of the most vulnerable must be ensured throughout the relocation process.

### 1. SITE SELECTION SHOULD ENSURE THAT THE RELOCATION SITE IS ADEQUATE

In selecting an appropriate site for relocation, the following considerations should be taken into account:

*- Is the site free from natural hazards?*

The safety and security of the persons to be relocated, including from the threat of a further natural disaster, is a principal consideration when selecting sites for relocation. The site should be assessed by independent suitably qualified parties to ensure that it is not prone to hazards, including flooding, landslides, earthquakes, tsunamis, contamination or rising water levels.<sup>14</sup>

*- Have land tenure and legal issues been verified?*

It is essential to clarify and verify rights over the land at the relocation site.<sup>15</sup>

*- Is the site well connected with critical infrastructure and social services?*

Site selection should ensure accessibility to critical infrastructure such as water supply and transport links, as well as social services, including education and health care facilities.<sup>16</sup>

*- Is the site in close proximity to the beneficiary's livelihoods?*

Alternatively, are there other economic opportunities available within the vicinity?<sup>17</sup>

*- Is the Host Community receptive to the relocation?*

Sites located within a receptive host community who will be accepting and will integrate well with the settled community should be encouraged. Site selection should also take into account claims to land by local or adjacent groups.<sup>18</sup>

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<sup>14</sup> IFRC, *Post-disaster Settlement Planning and Guidelines*, 2012, p91.

<sup>15</sup> For guidance on this process, see: Shelter Cluster, *Land Rights and Shelter: The Due Diligence Standard*, December 2013 <https://www.sheltercluster.org/Asia/Philippines/Typhoon%20Haiyan%202013/Pages/HLP-Advisories.aspx>; IFRC, *Post-disaster Settlement Planning and Guidelines*, 2012, p93.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> IFRC, *Post-disaster Settlement Planning and Guidelines*, 2012, p93.

*- Is the relocation site near to where the community lived previously?*

The location of the relocation site at or near where the community lived before minimizes the risk of land grabbing, eviction, community fragmentation, maintains livelihoods and permits people to protect their own land and property.

#### CHECKLIST 4. IS THE RELOCATION SITE ADEQUATE?

##### 2. SHELTER AT THE RELOCATION SITE MUST BE ADEQUATE

Everybody has the right to an adequate standard of housing, including persons affected by natural disasters and including those persons both voluntarily and involuntarily relocated.<sup>19</sup>

The right to an adequate house is much more than a shelter commodity, it is the right to live somewhere in security, peace and dignity.<sup>20</sup>

The criteria for determining an adequate standard of housing includes security of tenure; cultural adequacy; affordability; availability of services; materials, facilities and infrastructure; habitability; accessibility and location.

*- Is there sufficient security of tenure?*

There are many legitimate tenure arrangements beyond formal private ownership, including 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 arrangement, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

*- Is the shelter culturally adequate?*

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

*- Is the shelter or housing affordable?*

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).

*- Is there sufficient 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.

<sup>19</sup> See Shelter Cluster Philippines, *Key HLP Principles for Shelter Partners*, March 2014.

<https://www.sheltercluster.org/Asia/Philippines/Typhoon%20Haiyan%202013/Pages/HLP-Advisories.aspx>;

<sup>20</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.

*- Is the shelter habitable?*

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>21</sup>

*- Is the shelter or housing accessible?*

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.

*- Is the location of the shelter or housing adequate?*

Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities.

In a humanitarian context, it has been recognized that not all of the features of the right to an adequate standard of housing can be achieved immediately. To this end, the Sphere Project has developed “*Five Minimum Standards for Shelter and Settlement*”. The Sphere standards are not a complete expression of the right to adequate housing, but reflect the core content of the right and contribute to the progressive realization of this right.<sup>22</sup>

The Sphere Standards include:<sup>23</sup>

1. *Strategic planning*: shelter and settlement strategies should contribute to the security, safety, health and well-being of both displaced and non-displaced affected populations and promote recovery and reconstruction where possible.
2. *Settlement planning*: the planning of return, host or temporary communal settlements should enable the safe and secure use of accommodation and essential services by the affected population.
3. *Covered living space*: people should have sufficient covered living space providing thermal comfort, fresh air and protection from the climate ensuring their privacy, safety and health and enabling essential household and livelihood activities to be undertaken.
4. *Construction*: local safe building practices, materials, expertise and capacities should be used where appropriate, maximizing the involvement of the affected population and local livelihood opportunities.
5. *Environmental Impact*: Shelter and settlement solutions and the material sourcing and construction techniques used should minimise adverse impact on the local natural environment.

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<sup>21</sup> IASC, *Protecting Persons Affected By Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, 2006, para C.3.2.

<sup>22</sup> Sphere Project, *Sphere Handbook: Humanitarian Charter and Minimum Standards in Disaster Response*, 2011, p244.

<sup>23</sup> For further information on the Sphere Standards, including key actions, key indicators and guidance notes under for each of these standards, please see: Sphere Project, *Sphere Handbook: Humanitarian Charter and Minimum Standards in Disaster Response*, 2011, “Minimum Standards in Shelter, Settlement and Non-Food Items”.

## CHECKLIST 5. IS SHELTER AT THE RELOCATION SITE ADEQUATE?

### 3. ADEQUATE WASH AND OTHER FACILITIES SHOULD BE ENSURED AT THE RELOCATION SITE

In addition to an adequate site and adequate standard of housing, access to adequate WASH and other services and facilities should also be ensured.

The *Urban Housing and Development Act* of the Philippines requires that resettlement areas be provided with the following basic services and facilities:<sup>24</sup>

- a) Potable water;
- b) Power and electricity and an adequate power distribution system;
- c) Sewerage facilities and an efficient and adequate solid waste disposal system; and
- d) Access to primary roads and transportation facilities.

The *Urban Housing and Development Act* further requires the planning and priority implementation of other basic services and facilities, such as:<sup>25</sup>

- Health;
- Education;
- Communication;
- Security;
- Recreation; and
- Relief and welfare.

Finally, the *Urban Housing and Development Act* requires, to the extent feasible, that resettlement projects shall be located near areas where employment opportunities are accessible.<sup>26</sup>

It is also required that this planning and implementation should be undertaken in cooperation with the beneficiaries themselves".<sup>27</sup>

## CHECKLIST 6. ARE ADEQUATE WASH AND OTHER FACILITIES ENSURED AT THE RELOCATION SITE?

### 4. AFFECTED COMMUNITIES SHOULD HAVE ADEQUATE INFORMATION AND BE ADEQUATELY CONSULTED IN ANY RELOCATION PLANNING

The *Constitution of the Philippines* requires that "no resettlement of rural or urban dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated".<sup>28</sup>

Responsible settlement programmes require that the affected population are kept engaged in the process from the outset.<sup>29</sup> This includes access to information and genuine participation and consultation in any planning and implementation of relocation programmes.<sup>30</sup>

<sup>24</sup> Section 21, Republic Act No. 7279, *Urban Development and Housing Act*, 1992.

<sup>25</sup> *Ibid.*

<sup>26</sup> Section 22, Republic Act No. 7279, *Urban Development and Housing Act*, 1992.

<sup>27</sup> Section 21, Republic Act No. 7279, *Urban Development and Housing Act*, 1992.

<sup>28</sup> Article XIII, Section 10, *Constitution of the Republic of the Philippines*, 1987.

<sup>29</sup> IFRC, *Post-disaster Settlement Planning and Guidelines*, 2012, p13.

Affected communities should have access to objective and accurate information and be consulted in all stages of the planning and development of the relocation site, including:

- The beneficiary selection process;
- Programmes preparing them to live in the new relocation site;
- The design and layout of the relocation site;
- Shelter design and construction;
- The provision of infrastructure and social services;
- The identification and determination of tenure rights;
- Decisions over land use planning and restrictions;
- The purported use of the former site of residence for the community;
- The manner and time of any relocations; and
- The opportunity for “go and see” visits prior to any relocation taking place.

This information should be provided in an accessible language, a format that all can understand and using multiple means of dissemination for example, radio, pamphlets, local language, signboards and community meetings. Consultation should include all members of the affected community, including vulnerable and marginalized groups, women, children, unaccompanied minors, older persons, persons with specific needs and vulnerable persons.<sup>31</sup>

**CHECKLIST 7. HAS THE COMMUNITY TO BE RELOCATED AND THE HOST COMMUNITY RECEIVED ADEQUATE INFORMATION AND BEEN ADEQUATELY CONSULTED?**

**5. NON-DISCRIMINATION AND THE RIGHTS OF THE MOST VULNERABLE MUST BE ENSURED THROUGHOUT THE RELOCATION PROCESS**

The rights of all affected persons 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 ensuring non-discrimination throughout all stages of the planning and implementation process of any relocation programmes.

Taking a human rights approach to the humanitarian response, including in relocation programmes, means that efforts should be targeted towards ensuring the rights of 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.

In particular, beneficiary selection for any relocation programme should ensure no discrimination and that the rights of the most vulnerable are protected.

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<sup>30</sup> IASC *Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, January 2011, C.2.3, p41; IASC, *Protecting Persons Affected By Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, 2006, para C.3.3.

<sup>31</sup> For further guidance on ensuring adequate information and consultation with communities, see: IFRC, *PASSA: Participatory Approach for Safe Shelter Awareness*, 2011.



Beneficiary selection criteria should also result from genuine consultation with affected communities. The criteria should be clear, easily understood and meet national and international standards. The process for beneficiary selection should include grievance mechanisms.

In addition to ensuring no-discrimination and the rights of the most vulnerable, the beneficiary selection process should, if possible, promote community cohesion (for example, by re-establishing communities, which were fragmented due to displacement).

**CHECKLIST 8. HAS NO-DISCRIMINATION AND HAVE THE RIGHTS OF THE MOST VULNERABLE BEEN ENSURED THROUGHOUT THE RELOCATION PROCESS?**

### RELOCATION CHECKLIST FOR SHELTER PARTNERS

1.	Is the relocation voluntary?
2.	Where relocation is not voluntary, is it necessary?
3.	Where relocation is not voluntary, are national and international standards on forced evictions met?
4.	Is the relocation site adequate?
5.	Is shelter and housing at the relocation site adequate?
6.	Are adequate WASH and other facilities ensured at the relocation site?
7.	Has the community being relocated and the host community received adequate information and been adequately consulted?
8.	Has no-discrimination and have the rights of the most vulnerable been ensured throughout the relocation process?

For further information and guidance on standards related to relocation, please contact:

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