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(Commission on Human Rights of the Philippines)

P r e f a c e

In the wake of natural disasters, inequalities are often made visible as the most marginalized are at greater risk of displacement and loss of livelihood. Experience has underscored the importance of getting recovery efforts right from a human rights perspective so that pre-existing patterns of vulnerability and disadvantage are neither perpetuated nor reinforced. The context in which the international community comes together to help the Philippines rise from the destruction brought about by typhoon Yolanda is no exception.

We believe that the Philippines should seize this opportunity to address these concerns as promptly and effectively as possible, and to prevent their recurrence by applying relevant international human rights norms and standards. Making comprehensive efforts to realize the right to adequate housing in reconstruction efforts is an opportunity. While disaster response will not — and should not — replace development efforts, it provides an occasion to redress the inequalities that either exacerbated the natural disaster's impacts or were made visible by it, and to contribute to efforts to progressively realize the right to adequate housing for all, notably by improving tenure security. In this spirit, this advisory on housing, land and property rights has been jointly developed to guide relevant national government agencies, local government units, affected communities and other stakeholders on the human rights-based approach to housing, land and property concerns arising in the context of the humanitarian response to natural disasters.

The large scale of destruction of housing, and the high level of displacement caused by the typhoon has called attention to the question of housing, land and property rights. Disaster relief and recovery efforts have so far, with notable exceptions, taken a compartmentalized view of standards protecting these rights. Without the benefit of information about the Government's recovery plan, adequate coordination among national and local authorities, and sufficient participatory mechanisms in decision-making processes, affected communities are at risk of being deprived of their rights through forced relocations.

It has been difficult to challenge these situations to enable affected families and individuals to receive fair and just compensation for losses as access to justice mechanisms has been debilitated in the typhoon stricken areas.

We hope that this advisory will prove useful in promoting and protecting the right to adequate housing of people affected by Typhoon Yolanda and other natural disaster situations in the Philippines.

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**HUMAN RIGHTS ADVISORY
CHR-A2014-001**

**HUMAN RIGHTS STANDARDS ON HOUSING, LAND
AND PROPERTY RIGHTS OF POPULATIONS AFFECTED
BY TYPHOON YOLANDA**

Recognizing the protection issues that populations affected by Typhoon Yolanda (Haiyan) face relating to housing, land and property rights, and the need to strengthen the capacity and effectiveness of the Government and other relevant stakeholders to adopt a rights-based approach to temporary and permanent relocation of internally displaced persons;

Reaffirming the power and function of the Commission on Human Rights of the Philippines (CHRP) under Article XIII, Section 18(7) of the 1987 Philippine Constitution to monitor the Government's compliance with international treaty obligations on human rights and, in the process, ensure the harmonization of domestic laws, policies and regulations with international human rights norms, standards and principles;

Emphasizing that the 1987 Philippine Constitution provides the following: the State values the dignity of every person and guarantees full respect for human rights;¹ *protection of property and promotion of the general welfare* are among the essentials for the enjoyment by all the people of the blessings of democracy;² no person shall be deprived of life, liberty or property without due process of law;³ the State should regulate the acquisition, ownership, use and disposition of property to the end that Congress gives highest priority to the enactment of measures that protect and enhance the right of all to human dignity, reduce inequalities and remove cultural inequities;⁴ urban or rural poor dwellers shall not be evicted and/or resettled except in accordance with law and with adequate consultation;⁵ and the State should protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being;⁶

Emphasizing further that, in compliance with international commitments and mandates of the 1987 Philippine Constitution, the Government passed laws, including the Climate Change Act of 2009 and the Philippine Disaster Risk Reduction Act of 2010 which protect the housing, land and property rights of disaster survivors and internally displaced persons, the Special Protection for Children of Abuse, Exploitation and Discrimination Act 1992 which cover circumstances which gravely threaten or endanger the survival and normal development of children who are victims of man-made, natural disaster or calamity and the Magna Carta of Women of 2008 which protects the rights of women affected by disasters and calamities;

¹ Article II, Section 11, 1987 Constitution of the Republic of the Philippines.

² Article II, Section 5, 1987 Constitution of the Republic of the Philippines.

³ Article III, Section 1, 1987 Constitution of the Republic of the Philippines.

⁴ Article XIII, Section 1, 1987 Constitution of the Republic of the Philippines.

⁵ Article XIII, Section 10, 1987 Constitution of the Republic of the Philippines.

⁶ Article XII, Section 5, 1987 Constitution of the Republic of the Philippines.

Recalling the Universal Declaration of Human Rights which provides the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including *housing*;⁷ no one shall be arbitrarily deprived of property and possessions;⁸

Mindful of international commitments of the Philippines relating to disaster risk reduction and management, such as the Hyogo Framework for Action 2005-2015 and the ASEAN Agreement on Disaster Management and Emergency Response, which provide for the rights of disaster survivors relating to housing, land, and property;

Highlighting the right to adequate and decent housing as a basic human right enshrined in international instruments to which the Philippines is a State Party, including the International Covenant on Economic, Social and Cultural Rights,⁹ the Convention on the Elimination of All Forms of Discrimination against Women,¹⁰ the Convention on the Rights of the Child,¹¹ the Convention on the Rights of Persons with Disabilities,¹² and ILO Convention No. 169;¹³

Taking into consideration the United Nations Guiding Principles on Internal Displacement, which incorporate key international precepts on the rights of internally displaced persons, such as non-discrimination,¹⁴ the right to an adequate standard of living,¹⁵ and access to basic shelter and housing;¹⁶

Affirming the rights of internally displaced persons relating to housing, land and property as elaborated in the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles);

Noting the Memorandum on a Response Mechanism to the IDP Victims of Typhoon Yolanda,¹⁷ in which the human rights protection activities of the CHRP in the response to Typhoon Yolanda are outlined;

Acknowledging the support of the United Nations Office of the High Commissioner for Refugees for the Commission's work on Internally Displaced Persons through the CHRP – IDP project and the Office of the High Commissioner for Human Rights for the support for the work of CHRP in the context of Yolanda;

Building on the Advisory and Supplemental Advisory on Human Rights Standards on Housing, Land and Property Rights of Populations Affected by Tropical Storms and Other Natural Disasters;¹⁸

⁷ Article 25(1), Universal Declaration of Human Rights.

⁸ Article 17(2), Universal Declaration of Human Rights.

⁹ Article 11, International Covenant on Economic, Social and Cultural Rights.

¹⁰ Article 14, Convention on the Elimination of All Forms of Discrimination against Women.

¹¹ Article 27, Convention on the Rights of the Child.

¹² Articles 9 and 28, Convention on the Rights of Persons with Disabilities.

¹³ Article 7 and 13-19, ILO Convention No. 169.

¹⁴ Principle 1, UN Guiding Principles on Internal Displacement.

¹⁵ Principle 18, UN Guiding Principles on Internal Displacement.

¹⁶ *Id.*

¹⁷ CHR Memorandum on a Response Mechanism to the IDP Victims of Typhoon Yolanda, CLAPR-M-06A14-2351, 6 January 2014.

¹⁸ CHR Advisory on Human Rights Standards on Housing, Land and Property Rights of Populations Affected by Tropical Storms and Other Natural Disasters, CHR (IV) – A2012-002, 21 May 2012 and CHR Supplemental Advisory on Human Rights Standards on Housing, Land and Property

Determined as the national human rights institution mandated under the 1987 Philippine Constitution to promote and protect human rights in the Philippines, CHR issues the following advisory:

I. CONTEXT

1. As of 29 January 2014, an estimated 4,095,280 people have been identified as being displaced by Typhoon Yolanda,¹⁹ with many being unable to return to their original places of residence. 1,140,332 homes have been identified as destroyed or severely damaged by the typhoon.
2. The Commission takes note of the action taken by the national Government, local government units in the affected areas, and other relevant agencies in responding to survivors through emergency shelter programmes. The Commission also recognizes the invaluable assistance of the United Nations, particularly, the High Commissioner for Refugees (UNHCR) and the Office of the High Commissioner for Human Rights (OHCHR) in past and continuing efforts in responding to the situation of displaced families and individuals by typhoon Yolanda.
3. The partnership with the UNHCR through the CHR – IDP project and with the OHCHR in monitoring the human rights situation of affected populations has been enabling for the Commission as we advance work in the context of the country's period of recovery and reconstruction. We acknowledge the notable contribution of the OHCHR and the UN Special Rapporteur on Adequate Housing to the development of this advisory.
4. Everyone has the right to adequate and decent housing, even in times of natural disasters. The State has the obligation to respect, protect and fulfil the housing, land and property rights of populations affected by Typhoon Yolanda in accordance with its international commitments on human rights, the 1987 Philippine Constitution and domestic laws.²⁰
5. National authorities have the primary responsibility to protect housing, land and property rights in the context of disaster response.²¹ Local government units (LGUs) through local disaster risk reduction and management offices or committees share the obligation to ensure that there is an efficient mechanism for shelter before, during and after natural disasters.²² Other relevant national agencies²³ and the private sector²⁴ are also involved in response activities under different mechanisms provided by law and the Constitution.

II. MATTERS OF HUMAN RIGHTS CONCERN

Rights of Populations Affected by Tropical Storms and Other Natural Distasters, CHR – 2013-010, 14 December 2014.

¹⁹ Situation Report No. 104 on the Effects of Typhoon Yolanda, 29 January 2014, National Disaster Risk Reduction and Management Council. Available online at <http://www.ndrrmc.gov.ph/attachments/article/1125/Update%20Sitrep%20No.%20104%20Effects%20of%20TY%20YOLANDA.pdf>

²⁰ CHR Advisory on Adequate Housing and the Humane Treatment of Informal Settlers, 2011. See Principle 3, paragraph 1, UN Guiding Principles on Internal Displacement.

²¹ Sec. 5, Republic Act No. 10121, *Philippine Disaster Risk Reduction and Management Act of 2010*. See also Sec. 5, Republic Act No. 9729, *Climate Change Act of 2009*.

²² See, for example, Sec. 15 & 12(c)(16), Republic Act No. 10121, *Philippine Disaster Risk Reduction and Management Act of 2010*.

²³ See, generally, *Id.*

²⁴ Article XIII, Section 9, 1987 Constitution of the Republic of the Philippines.

6. The key human rights issues identified by the Commission in the context of the Typhoon Yolanda response are as follows:
 - (a). **Non-discrimination and equitable assistance** in all housing, land and property rights interventions, especially during the beneficiary selection process for emergency shelter and resettlement, to ensure the protection of vulnerable populations;
 - (b). Ensuring that **genuine consultation** takes place with persons affected by displacement and resettlement, and that they are provided with comprehensive information on resettlement options available to them; and
 - (c). Conducting any **evictions, demolitions and imposition of "no-build or no-dwelling zones"** only as a measure of last resort and in compliance with the process mandated by law.

III. ADVISORY

A. Non-discrimination and Equitable Assistance

7. The Commission has been made aware that in the implementation of some assistance measures in response to Typhoon Yolanda certain individuals and groups may have received preferential treatment from some government officials, particularly in the beneficiary selection process for temporary housing and resettlement.
8. The Commission has also learned of reports of some officials and private contractors misappropriating funds designated for the construction of temporary bunkhouses and other similar facilities. While the Commission is not able to verify these claims, it reminds all persons and entities concerned of their obligations under Philippine law during disaster response activities.

International Human Rights Standards

9. Non-discrimination is a fundamental principle of human rights. Any distinction, exclusion, restriction or preference of any kind which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of housing, land and property rights should be avoided.²⁵
10. According to international human rights standards, internally displaced persons, including those displaced by natural disasters,²⁶ are entitled to the enjoyment of the right to an adequate standard of living, which includes access to essential food, potable water, basic shelter and housing,

²⁵ Principle 4, UN Guiding Principles on Internal Displacement. *See also*, for example: Article 1.1, International Covenant on the Elimination of All Forms of Racial Discrimination.

²⁶ Introduction, Section 2, UN Guiding Principles on Internal Displacement.

appropriate clothing, essential medical services and sanitation.²⁷ These standards must be enjoyed by all affected without discrimination.²⁸

11. When considering its response to Typhoon Yolanda, government authorities must give special attention to vulnerable and marginalised groups, such as women, unaccompanied minors, expectant mothers, mothers with young children, families whose head of household was injured or killed, persons with disabilities, and the elderly to provide them with the protection and assistance that is required by their condition of vulnerability.²⁹ The needs of the vulnerable including minorities and indigenous peoples must be given special attention during any community consultations on the topic of resettlement and alternative housing assistance.³⁰
12. The Commission considers that these standards require the Government to ensure that any assistance provided in response to Typhoon Yolanda is rendered on the basis of need. The Commission urges all local government units and national government agencies to prioritise those individuals and families who are most in need of aid when delivering assistance measures, including temporary shelter and resettlement.

Philippine Law on Non-Discrimination in Disaster Response

13. The *Omnibus Guidelines on Shelter Assistance* require that those families most in need are given priority in the delivery of post-disaster support. Families shall be eligible for shelter assistance if their monthly income falls below the monthly food threshold amount determined by the Philippine National Statistical Coordination Board.³¹
14. The *Omnibus Guidelines on Shelter Assistance* also state that for both core shelter and modified shelter assistance, the following categories of beneficiary should be prioritised:
 - (a). Families with small children;
 - (b). Families with pregnant and lactating mothers;
 - (c). Surrogate parents of orphaned children;
 - (d). Families with damaged houses and whose head of household has died or been incapacitated;
 - (e). Groups of five or more families originating from the same barangay; and
 - (f). Families with seriously ill members, persons with disabilities or other special needs.³²
15. The *Philippine Disaster Risk Reduction and Management Act* prohibits acts which lead to the misuse of funds designated for disaster relief activities and diverting relief commodities to anyone other than the intended recipients.³³ The Commission advises that the diversion or

²⁷ Principle 18, UN Guiding Principles on Internal Displacement.

²⁸ *Id.*, Principles 18 and 22.

²⁹ *Id.*, Principle 4.

³⁰ Principle 14, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).

³¹ Sec. VII(A.)(1)(1.2), Department of Social Welfare and Development, Administrative Order No. 17 series of 2010, *Omnibus Guidelines on Shelter Assistance*.

³² Sec. VII(A.)(1)(1.5)(a)-(f), Department of Social Welfare and Development, Administrative Order No. 17 series of 2010, *Omnibus Guidelines on Shelter Assistance*.

³³ Sec. 19(a) and (g), Republic Act No. 10121, *Philippine Disaster Risk Reduction and Management Act of 2010*

other similar misuse of funds designated for the construction of relief accommodation facilities is therefore prohibited under Philippine law, which carries severe penalties for such conduct, including lengthy periods of incarceration for offending individuals.³⁴

16. The *Special Protection of Children Against Abuse, Exploitation and Discrimination Act* provides that the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies. It also mandates to carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination which include man-made or natural disasters or calamity.
17. The *Magna Carta of Women* requires that during disaster response activities, the Government address the particular needs of women to ensure their protection from sexual exploitation and the provision of the full complement of services required to satisfy their specific needs.³⁵
18. The Commission reminds all national government agencies and local government units of their legal obligations pursuant to the above provisions.

B. Consultation and Provision of Information

19. The Commission is aware that many of those affected by Typhoon Yolanda, particularly those who have been displaced and their residences destroyed or damaged, have not received adequate information about, or have not been consulted on, the details of resettlement options available to them.

Local government units and national government agencies involved in disaster relief and resettlement activities are made aware of the following international human rights standards and reminded of their legal obligations under Philippine law to consult with affected communities.

International Human Rights Standards

20. Genuine consultation between the Government and affected communities is a central feature of many human rights standards. For communities subject to involuntary relocation, the Government has an obligation to consult with communities on all aspects of their resettlement.³⁶
21. For persons subject to internal displacement, any housing, land or restitution programmes must also be carried out on a voluntary basis and in full consultation with the individuals, groups and communities affected.³⁷ Consultation should be genuine and account for the interests of marginalised and vulnerable groups.

Philippine Law on Consultation Processes

³⁴ *Id.*, sec. 20.

³⁵ Sec. 10, Republic Act No. 9710, *Magna Carta of Women of 2008*.

³⁶ Para. 15, Committee on Economic, Social and Cultural Rights, General Comment 7 on the Right to Adequate Housing (Forced Evictions).

³⁷ Principle 14, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).

22. The 1987 Constitution of the Philippines guarantees that no resettlement shall be undertaken without adequate consultation with those affected and the communities where they are to be relocated.³⁸
23. Affected populations thus have a constitutional right to be meaningfully consulted on all matters concerning their resettlement, including proposed sites for temporary or permanent shelter, parameters in the selection of site beneficiaries, manner and time of relocations and all other relevant considerations relating to return, relocation and other shelter options. In view of this right, the Government and all other stakeholders are urged to disseminate the necessary information and engage with affected communities accordingly.
24. The *Urban Development and Housing Act* also identifies consultation with affected communities as a prerequisite to any forced evictions and resettlement.³⁹ The implementing rules and regulations to the *Urban Development and Housing Act* prescribe the detail of this consultative process, which must be fulfilled prior to any evictions or demolitions.⁴⁰ The Government must convene a series of consultative meetings between local officials, representatives of national agencies and of the communities affected.
25. The *Urban Development and Housing Act* also requires that private sector actors in resettlement development and housing construction are invited to participate in any consultative process.⁴¹
26. The Implementing Rules and Regulations of the *Magna Carta of Women* require that all levels of government ensure that women participate in every phase of relief, recovery, rehabilitation and reconstruction after natural disasters to ensure a gender sensitive response.⁴²
27. The Commission advises that all persons displaced by Typhoon Yolanda must be consulted according to these standards before they are resettled or prevented from reconstructing their original dwellings. It is recommended that comprehensive information dissemination and widespread community-based consultations are conducted as part of the resettlement activities of the Government to ensure compliance with these standards.

C. “No-Build Zones” or “No-Dwelling Zones” vis a vis Evictions, Demolition and Resettlement

28. The Commission is aware of the extensive demarcation of “no-build zones” and other variants, including “no-dwelling zones” by the Department of Environment and Natural Resources (DENR), Department of Public Works and Highways (DPWH) and other agencies and LGUs to prohibit the reconstruction of many residential dwellings destroyed by Typhoon Yolanda.⁴³ In view of this widespread practice the Commission

³⁸ Article XIII, Section 10, 1987 Constitution of the Republic of the Philippines.

³⁹ Sec. 28(2), Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁴⁰ Sec. 1(e), Implementing Rules and Regulations of Sec. 28 of Republic Act No. 7279, *Urban Development and Housing Act of 1992*

⁴¹ Sec. 24, Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁴² Sec. 13(B.), Implementing Rules and Regulations, Republic Act No. 9710, *Magna Carta of Women of 2008*.

⁴³ Based on numerous reports available online at:

<http://www.philstar.com/headlines/2013/11/24/1260147/dpwh-denr-identify-no-build-zones-leyte-dpw>,
<http://ph.news.yahoo.com/no-build-zone-yolanda-areas-strictly-implemented-180611516.html> ,

issues the following advice, which should be observed during the implementation and enforcement of any “no-build or no-dwelling zones”.

International Human Rights Standards

29. Forced evictions are *prima facie* incompatible with State obligations under international law to protect the right to adequate and decent housing.⁴⁴
30. The Government has a duty to establish conditions and provide means that allow displaced people to return voluntarily - in safety and with dignity - to their homes or places of habitual residence or to resettle voluntarily in another part of the Philippines.⁴⁵ “No-build zones”, which prevent people from voluntarily returning to their original places of residences and require them to involuntarily resettle in other areas, may constitute a breach of this duty.
31. The imposition of a “no-build or no-dwelling zone” may constitute a “constructive forced eviction” where the restriction or accompanying relocations render individuals with no choice but to leave their lands or (former) homes. As such, international human rights norms and standards relating to forced evictions and arbitrary displacement should apply.⁴⁶ The Commission therefore considers that the imposition of “no-build or no-dwelling zones” requires the resettlement of persons affected in accordance with international standards and Philippine law. Humanitarian assistance and disaster relief projects, especially those which include “no-build zones”, should not be a pretext to facilitate forced evictions.
32. As a matter of policy, the Governments must prioritise property restitution as the preferred remedy for persons displaced by natural disasters.⁴⁷ The Commission accordingly urges local governments and national agencies to adopt a policy of restitution and to permit displaced families to return to their original places of residence, where possible, before considering “no-build or no-dwelling zones”.
33. Like forced evictions, “no-build or no-dwelling zones” can be acceptable where they are imposed to protect affected persons from environmental hazards. However, the implementation of “no-build or no-dwelling zones” must be proportionate to the danger presented by the environmental hazard. Voluntary and consultative relocations should be pursued before implementation. Where “no-build or no-dwelling zones” are considered absolutely necessary they must be imposed in strict compliance with the human rights standards applicable during forced evictions.

<http://www.sunstar.com.ph/breaking-news/2013/12/13/tacloban-passes-40-meter-no-build-zone-ordinance-318688>, <http://www.usnews.com/provincial/tacloban-city-sp-yet-to-transmit-40-meter-no-dwelling-zone-ordinance-to-office-of-the-mayor/>, <http://cityofbacolod.com/2014/02/02/no-build-zone-in-yolanda-areas-strictly-implemented/>,

<http://news.pia.gov.ph/index.php?article=1141390188677>

⁴⁴ Para. 18, Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing.

⁴⁵ Principle 28.1, UN Guiding Principles on Internal Displacement.

⁴⁶ Paras. 44-46, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sixty-sixth session of the United Nations General Assembly, A/66/270, 5 August 2011.

⁴⁷ Principle 2.2, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).

34. "No-build or no-dwelling zones" should only be implemented if the following conditions are met, to guarantee the rights of those affected:
- (a). **"No-build or no-dwelling zones" must not render people homeless.** For those unable to provide for themselves, the Government must ensure that adequate housing or resettlement is made available in a reasonable time;
 - (b). **Persons affected by "no-build or no-dwelling zones" must be genuinely consulted** on alternative relocation plans in accordance with the requirements set out above;
 - (c). **Compensation must be provided to affected persons** for losses to property and shall be made available in addition or as a voluntary alternative to resettlement; and
 - (d). **Administrative appeals and judicial review** must be available to those affected."
35. The Government must provide resettlement or access to alternative housing for persons displaced as a result of forced evictions or preventative policies, such as "no-build or no-dwelling zones".⁴⁸ Resettlement must ensure safe and secure access to:
- (a). Essential food, potable water and sanitation;
 - (b). Basic shelter and housing;
 - (c). Appropriate clothing;
 - (d). Essential medical services;
 - (e). Livelihood sources;
 - (f). Fodder for livestock and access to common property resources previously depended upon; and
 - (g). Education for children and childcare facilities.⁴⁹
36. Since displacement should last no longer than required by the circumstances,⁵⁰ access to permanent core housing shelters must be provided to persons subject to relocation as soon as possible.

Safeguards Against and During Evictions under Philippine Law

37. Philippine law discourages evictions and demolitions.⁵¹ The 1987 Constitution of the Philippines states that evictions or demolitions are only permitted according to law and in a just and humane manner.⁵²
38. The *Urban Development and Housing Act* establishes an exhaustive list of circumstances in which evictions and demolitions are permitted by law, which is as follows:
- (a). When persons occupy "danger areas";⁵³
 - (b). When government infrastructure projects are about to be implemented;⁵⁴ and

⁴⁸ Para. 16, Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the Right to Adequate Housing (Forced Evictions).

⁴⁹ Para. 52, UN-HABITAT and OHCHR Basic Principles and Guidelines on Development-Based Evictions and Displacement.

⁵⁰ Principle 6.3, UN Guiding Principles on Internal Displacement.

⁵¹ Sec. 28, Republic Act No. 7279, *Urban Development and Housing Act of 1992*

⁵² Article XIII, Section 10, 1987 Constitution of the Philippines.

⁵³ Sec. 28(a), Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

- (c). When there is a court order for eviction and demolition.⁵⁵
39. As defined by the implementing rules and regulations of the *Urban Development and Housing Act of 1992*, "eviction" refers to the removal of persons and their belongings from a structure or area⁵⁶ while "demolition" refers to the actual dismantling of structures.⁵⁷ In the event of an eviction or demolition from urban settlements, the following mandatory safeguards under the *Urban Development and Housing Act* are to be enforced:
- (a). At least 30 days prior notice must be provided to affected persons prior to eviction or demolition;
 - (b). Authorities responsible for evictions and demolitions must undertake genuine consultations with designated representatives of families to be resettled and affected communities in the areas to which resettlement will occur;
 - (c). Local government officials must be present during all evictions and demolitions;
 - (d). All demolition crews must be identified as such with uniforms or other markings;
 - (e). Evictions and demolitions may only take place during regular office hours and during good weather, unless affected families consent otherwise;
 - (f). Heavy equipment must not be used, except for permanent structures or concrete materials; and
 - (g). Uniformed members of the Philippine National Police must be present at all evictions and demolitions as the first line of law enforcement and observe disturbance control procedures.⁵⁸
40. The Commission considers that the Government's enforcement of "no-build or no-dwelling zones" effectively gives rise to an eviction under Philippine law. The above mandatory safeguards will therefore be applicable", regardless of whether affected households still maintain residence in their original dwellings.
41. All concerned agencies and local government units are reminded of their procedural obligations under the *Urban Development and Housing Act* and urged to comply with its terms during the implementation of any activities which facilitate removal from or prevent return to areas classed as "no-build or no-dwelling zones".

⁵⁴ Sec. 28(b), Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁵⁵ Sec. 28(c), Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁵⁶ Sec. 1(j), Implementing Rules and Regulations of Sec. 28 of Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁵⁷ Sec. 1(g), Implementing Rules and Regulations of Sec. 28 of Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁵⁸ Sec. 28(1)-(7), Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

Conditions of Resettlement under Philippine Law

42. The 1987 Constitution of the Philippines requires that resettlement of rural and urban dwellers cannot be implemented until adequate consultation takes place with those to be resettled and with the community to which they will be resettled.⁵⁹
43. The *Urban Development and Housing Act* requires that adequate relocation, whether temporary or permanent, is provided to persons subject to eviction.⁶⁰ The Commission considers that persons whose dwellings have been destroyed or damaged by Typhoon Yolanda and are prevented from rebuilding due to “no-build or no-dwelling zones” are entitled to resettlement under these conditions.
44. The *Urban Development and Housing Act* requires further that government resettlement sites are equipped with the following essential services:
 - (a). Potable water;
 - (b). Power and electricity and an adequate power distribution system;
 - (c). Sewerage facilities and an efficient solid waste disposal system; and
 - (d). Access to primary roads and transportation facilities.⁶¹
45. The Government is also required to prioritise the implementation of health, education, communications, security, recreation, relief and welfare facilities.⁶² When planning the relocation of communities, the Government is also required by law to ensure resettlement sites are located within proximity of employment opportunities.⁶³
46. In the implementation of resettlement activities for those affected by Typhoon Yolanda, the Government should consider housing subsidy schemes established under the *Comprehensive and Integrated Shelter Financing Act of 1994*, and other programs of the Government and the private sector, as appropriate.⁶⁴ Otherwise at a minimum, as mandated by law, liberalised terms on credit facilities and housing loans should be given to people who are to be relocated.⁶⁵ The Commission recommends further that the Government grant no-interest loans, as authorised by the *Disaster Risk Reduction and Management Act*,⁶⁶ to households whose dwellings were destroyed or damaged by Typhoon Yolanda to assist them to rebuild.

IV. CONCLUSION

The COMMISSION urges all stakeholders, especially local government units, relevant housing agencies, the police and other government agencies to adopt the standards and guidelines contained in this Advisory.

⁵⁹ Article XIII, Section 10, 1987 Constitution of the Philippines.

⁶⁰ Sec. 28(8), Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁶¹ Sec. 21, Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁶² *Id.*

⁶³ Sec. 22, Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁶⁴ Republic Act No. 7835, *Comprehensive and Integrated Shelter Financing Act of 1994*.

⁶⁵ Sec. 25, Republic Act No. 7279, *Urban Development and Housing Act of 1992*.

⁶⁶ Sec. 17(d), Republic Act No. 10121, *Philippine Disaster Risk Reduction and Management Act of 2010*.

The COMMISSION may convene a hearing to monitor compliance with the laws and standards described in this Advisory. Furthermore, the COMMISSION, through our regional offices, particularly Regions IV, VI, VII and VIII⁶⁷ shall be closely monitoring compliance to this advisory.

LET THIS ADVISORY be adopted and disseminated to all duty bearers as widely as possible.

Done this 27th day of February 2014 at Quezon City, Philippines.


LORETTA ANN P. ROSALES
Chairperson

CECILIA RACHEL V. QUISUMBING
Commissioner


MA. VICTORIA V. CARDONA
Commissioner


NORBERTO DELA CRUZ
Commissioner


JOSE MANUEL S. MAMAUAG
Commissioner

⁶⁷ According to NDRRMC's Situation Report No. 14 issued last 29 January 2014, Regions affected include IV, V, VI, VII, VIII, X, XI and CARAGA. Available online at: <http://www.ndrrmc.gov.ph/attachments/article/1125/Update%20Sitrep%20No.%20104%20Effects%20of%20TY%20YOLANDA.pdf>

ANNEX: Extracts of Relevant Domestic Legislation

1. 1987 Constitution of the Philippines

Article XIII

Section 9: The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Section 10: 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.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

2. Presidential Decree No. 1067 December 31, 1976, *Water Code of the Philippines*

(Prohibiting construction of dwellings in certain areas)

Article 51: The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.

3. Republic Act No. 10121, *Philippine Disaster Risk Reduction and Management Act of 2010*

(Regulating disaster response activities)

Section 12: *Local Disaster Risk Reduction and Management Office (LDRRMO).* –
[...]

(c) The provincial, city and municipal DRRMOs or BDRRMCs shall perform the following functions with impartiality given the emerging challenges brought by disasters of our times:

[...]

(16) Respond to and manage the adverse effects of emergencies and carry out recovery activities in the affected area, ensuring that there is an efficient mechanism for immediate delivery of food, shelter and medical supplies for women and children, endeavor to create a special place where internally-displaced mothers can find help with breastfeeding, feed and care for their babies and give support to each other;

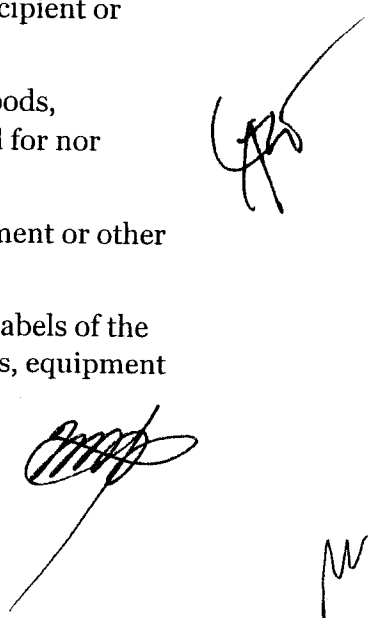
Section 17: *Remedial Measures.* - The declaration of a state of calamity shall make mandatory the Immediate undertaking of the following remedial measures by the member-agencies concerned as defined in this Act: [...]

- (d). Granting of no-interest loans by government financing or lending institutions to the most affected section of the population through their cooperatives or people's organizations.

Section 19: *Prohibited Acts.* - Any person, group or corporation who commits any of the following prohibited acts shall be held liable and be subjected to the penalties as prescribed in Section 20 of this Act:

- (a). Dereliction of duties which leads to destruction, loss of lives, critical damage of facilities and misuse of funds;
- (b). Preventing the entry and distribution of relief goods in disaster-stricken areas, including appropriate technology, tools, equipment, accessories, disaster teams/experts;
- (c). Buying, for consumption or resale, from disaster relief agencies any relief goods, equipment or other and commodities which are intended for distribution to disaster affected communities;
- (d). Buying, for consumption or resale, from the recipient disaster affected persons any relief goods, equipment or other aid commodities received by them;
- (e). Selling of relief goods, equipment or other aid commodities which are intended for distribution to disaster victims;
- (f). Forcibly seizing relief goods, equipment or other aid commodities intended for or consigned to a specific group of victims or relief agency;
- (g). Diverting or misdelivery of relief goods, equipment or other aid commodities to persons other than the rightful recipient or consignee;
- (h). Accepting, possessing, using or disposing relief goods, equipment or other aid commodities not intended for nor consigned to him/her;
- (i). Misrepresenting the source of relief goods, equipment or other aid commodities by:
 - (1). Either covering, replacing or defacing the labels of the containers to make it appear that the goods, equipment

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or other aid commodities came from another agency or persons;

- (2). Repacking the goods, equipment or other aid commodities into containers with different markings to make it appear that the goods came from another agency or persons or was released upon the instance of a particular agency or persons;
- (3). Making false verbal claim that the goods, equipment or other and commodity in its untampered original containers actually came from another agency or persons or was released upon the instance of a particular agency or persons;
- (j). Substituting or replacing relief goods, equipment or other aid commodities with the same items or inferior/cheaper quality;
- (k). Illegal solicitations by persons or organizations representing others as defined in the standards and guidelines set by the NDRRMC;
- (l). Deliberate use of false or inflated data in support of the request for funding, relief goods, equipment or other aid commodities for emergency assistance or livelihood projects; and
- (m). Tampering with or stealing hazard monitoring and disaster preparedness equipment and paraphernalia.

4. Republic Act No. 7279, Urban Development and Housing Act of 1992

(Regulation of urban eviction, demolition and resettlement)

Section 3(d): "Consultation" refers to the constitutionally mandated process whereby the public, on their own or through people's organizations, is provided an opportunity to be heard and to participate in the decision-making process on matters involving the protection and promotion of its legitimate collective interest, which shall include appropriate documentation and feedback mechanisms.

Section 21: *Basic Services.* - Socialized housing or resettlement areas shall be provided by the local government unit or the National Housing Authority in cooperation with the private developers and concerned agencies with the following basic services and facilities:

- (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 provisions of other basic services and facilities such as health, education, communications, security, recreation, relief and welfare shall be planned and shall be given priority for implementation by

the local government unit and concerned agencies in cooperation with the private sector and the beneficiaries themselves.

The local government unit, in coordination with the concerned national agencies, shall ensure that these, basic services are provided at the most cost-efficient rates, and shall set as mechanism to coordinate operationally the thrusts, objectives and activities of other government agencies concerned with providing basic services to housing projects.

Section 22: *Livelihood Component.* - To extent feasible, socialized housing and resettlement projects shall be located near areas where employment opportunities are accessible. The government agencies dealing with the development of livelihood programs and grant of livelihood loans shall give priority to the beneficiaries of the Program.

Section 23: *Participation of Beneficiaries.* - The local government units, in, coordination with the Presidential Commission for the Urban Poor and concerned government agencies, shall afford Program beneficiaries or their duly designated representatives an opportunity to be heard and to participate in the decision-making process over matters involving the protection and promotion of their legitimate collective interest which shall include appropriate documentation and feedback mechanisms. They shall also be encouraged to organize themselves and undertake self-help cooperative housing and other livelihood activities. They shall assist the Government in preventing the incursions of professional squatters and members of squatting syndicates into their communities.

In instances when the affected beneficiaries have failed to organized themselves or form an alliance within a reasonable period prior to the implementation of the program of projects affecting them, consultation between the implementing agency and the affected beneficiaries shall be conducted with the assistance of the Presidential Commission for the Urban Poor and the concerned nongovernment organization.

Section 24: *Consultation with Private Sector.* - Opportunities for adequate consultation shall be accorded to the private sector involved in socialized housing project pursuant to this Act.

Section 28: SECTION 28. Eviction and Demolition. - Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a). When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b). When government infrastructure projects with available funding are about to be implemented; or

(c). When there is a court order for eviction and demolition.

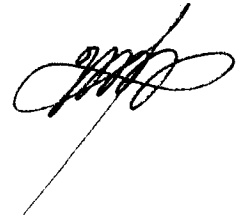
In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

- (1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- (2) Adequate consultations on the matter of settlement 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 have 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: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgement by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

Section 29: *Resettlement.* - With two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places as sidewalks, roads, parks, and playgrounds. The local government unit, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.

5. Republic Act No. 7279, Urban Development and Housing Act of 1992 (Implementing Rules and Regulations to Section 28)

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Section 3.1: Consultation Proper:

1.0 The LGU or government agency authorized to demolish shall preside over the consultation meetings to be attended by the barangay chairman, the affected families and the landowners or their duly designated representatives. Officials or representatives of concerned agencies and NGOs shall also be invited. The following shall be discussed:

1.1 the necessity of the demolition; 1.2 available options other than resettlement;

1.3 possible relocation sites - to include modes of payment, tenure, facilities and services thereat;

1.4 advantages of voluntary dismantling;

1.5 dismantling and resettlement procedures;

1.6 submission of requirements (family pictures, marriage contract, etc.)

1.7 school accommodation of children;

1.8 roles of agencies involved, such as but not limited to the Department of Social Welfare and Development (DSWD), the Philippine National Police (PNP), the Department of Education, Culture and Sports (DECS), the Department of Public Works and Highways (DPWH), the National Housing Authority (NHA), the Presidential Commission for the Urban Poor (PGUP), the Commission for Human Rights (CHR), and other concerned agencies; and

1.9 other problems and issues to ensure a peaceful and orderly relocation operation.

2.0 In every consultation meeting, attendance is recorded. If majority of the affected families are present, the meeting shall proceed; otherwise, another meeting shall have to be called and rescheduled within five (5) days therefrom. If still the majority of the residents are again not present, the consultation requirement for this particular case is considered satisfied.

3.0 The LGU or concerned government agency summarizes the points of agreement and disagreement arrive at through the formal consultations, and provides copies to participating agencies/entities for their signature. Should any party refuse to sign the agreement, the same shall be posted conspicuously in the area.

4.0 Schedules of the next meetings shall be set; including two (2) feedback meetings within twenty (20) days from the issuance of the notice of demolition and one (1) final meeting before the actual demolition.

6. Republic Act No. 7610, Special Protection of Children against Abuse, Exploitation and Discrimination

Section 3: Definition of Terms: (a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of

themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

[...]

(c) "Circumstances which gravely threaten or endanger the survival and normal development of children" include, but are not limited to, the following;

[...]

(2) Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development

(3) Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or basic services needed for a good quality of life;

(4) Being a member of a indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;

(5) Being a victim of a man-made or natural disaster or calamity; or

(6) Circumstances analogous to those abovestated which endanger the life, safety or normal development of children.

Section 4: *Formulation of the program.* - There shall be a comprehensive program to be formulated, by the Department of Justice and the Department of Social Welfare and Development in coordination with other government agencies and private sector concerned, within one (1) year from the effectivity of this Act, to protect children against child prostitution and other sexual abuse; child trafficking, obscene publications and indecent shows; other acts of abuse; and circumstances which endanger child survival and normal development.

7. Republic Act No. 9710, Magna Carta of Women of 2008

Section 10: *Women Affected by Disasters, Calamities, and Other Crisis Situations.* - Women have the right to protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation, and construction efforts. The State shall provide for immediate humanitarian assistance, allocation of resources, and early resettlement, if necessary. It shall also address the particular needs of women from a gender perspective to ensure their full protection from sexual exploitation and other sexual and gender-based violence committed against them. Responses to disaster situations shall include the provision of services, such as psychosocial support, livelihood support, education, psychological health, and comprehensive health services, including protection during pregnancy.

7. Republic Act No. 9710, *Magna Carta of Women of 2008* (Implementing Rules and Regulations)

Section 13: A. The national, regional and local disaster coordinating councils shall ensure the participation of women in the development of a gender-responsive disaster management, including preparedness, mitigation, risk reduction and adaptation.

B. In disasters, calamities and other crises, LGUs and agencies concerned in all phases of relief, recovery, rehabilitation and reconstruction efforts shall develop and implement a gender-responsive and rights-based work and financial plan that include:

1. Active participation of established inter-agency and multi-sectoral humanitarian cluster mechanisms that will help ensure a more coordinated and gender-sensitive response in all stages of the emergency;
2. Improved collection and use of age and sex-disaggregated data and reproductive health indicators in rapid and comprehensive assessments for strategic gender analysis and programming of humanitarian response;
3. Timely, adequate and culturally-appropriate provision of relief goods and services such as food, water, sanitary packs, psychosocial support, livelihood, education and comprehensive health services including implementation of the MISP for sexual and reproductive health at the early stage of the crisis;
4. Proactive adoption of measures by camp managers to prevent sexual violence in evacuation centers and relocation sites which include: (a) security and safety of women and children as key criteria for the selection of evacuation sites, (b) separate functional and well-lit latrines for men and women with locks, (c) bathing facilities with privacy, (d) regular security patrols preferably by female police officers; and (e) prohibition of alcohol, drugs and gambling, among others; and
5. Active involvement of women in the various camp committees organized for food and water distribution, nutrition, sanitation and hygiene, shelter, health, education, protection and security and safety especially in the decision-making processes.

8. Administrative Order No. 17 series of 2010 of the Department of Social Welfare and Development, *Omnibus Guidelines on Shelter Assistance*



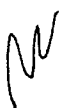
Section VII: Eligibility Requirements of Beneficiaries and Project Areas

A. Core Shelter / Modified Shelter Assistance

1 Beneficiaries

- 1.1 Family is not a recipient of any other housing assistance from any other individual groups or agency government or non-government for the disaster in question.

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- 1.2 Monthly income of a family of 6 should be below the food threshold that is P10,936.00 in urban areas and P9,767.00 in rural areas based on NSCB poverty statistic report dated March 2, 2007. The family monthly income rate shall be adjusted from time to time depending on the food threshold rate report of the NCSB.
- 1.3 House should have been totally destroyed by a man made or natural disaster; and limited resources prevents the family from repairing or reconstructing their permanent shelter units such that they continue to live with relatives or friends in evacuation centers, or in other makeshift shelters.
- 1.4 Possession of a guarantee of ownership or permanent or long term occupancy of at least 10 years on the lot on which to build the permanent shelter unit.
- 1.5 If resources warrant, vulnerable families residing in high risk areas maybe provided or may avail of shelter assistance as part of mitigation measures.

The following shall be considered priority for assistance indicated:

- a. Families with small children;
- b. Families with pregnant and lactating mothers;
- c. Surrogate parents of orphaned children living in evacuation centers who are equally situated e.g. with totally damaged shelter units;
- d. Families with damaged houses whose head of household died or were incapacitated as a result of the disaster;
- e. Priority will be given to beneficiaries who meet the geographical clustering requirement in a specific barangay with at least 5 beneficiaries living in proximity with each other to promote collective actions in realizing goals of the project and easy delivery of housing materials;
- f. Families with seriously ill members or persons with disabilities or with special needs. (Persons are considered with special needs if they have physical, developmental, mental, sensory, behavioral, cognitive or emotional impairment or limiting conditions that require medical management, health care interventions, and/or use of specialized services or programs.