

ROUNDTABLE DISCUSSION ON HOUSING, LAND, AND PROPERTY (HLP) REGULATORY BARRIERS TO SHELTER AND SETTLEMENTS FOR DISASTER-AFFECTED COMMUNITIES:

PHILIPPINE RED CROSS EXPERIENCE

**November 22 & 23, 2016
Philippine Red Cross Tower, Metro Manila**



BACKGROUND

A roundtable discussion on Housing, Land and Property Regulatory Barriers to Shelter and Settlements in Disaster-Affected Communities was held last November 22-23, 2016 in Manila, Philippines. This is the first national level roll-out of the “*Regulatory Barriers to Shelter and Settlements in Disaster Contexts in Asia Pacific*” training held last August 16-17, 2016 in Kuala Lumpur.

The roundtable discussion was intended primarily for the Philippine Red Cross national and field shelter officers and field operation heads. Participants from IFRC, British Red Cross, Japanese Red Cross, and shelter cluster members IOM, Catholic Relief Service, Habitat for Humanity attended the second day of the roundtable discussion. *Please see the attached participant list.*

First Session (November 22, 2016)

I. OBJECTIVES OF THE FIRST SESSION

EXPECTATION SETTING

The participants were asked to list down their expectations on what they could share and learn during the 2-day discussion, as follows:

- a. What to share
 - Challenges faced in the field regarding land and property issues, particularly: security of land tenure, ownership, access to land, tenants
 - Owner-driven approach to shelter and settlement interventions
 - Challenges faced in relocation projects
- b. What to learn
 - Laws and policies on land tenure
 - Implementing guidelines on shelter programming at the national and international levels
 - Key points on HLP rights
 - How to address basic regulatory barriers to shelter and settlement interventions, particularly land ownership and rights of tenants
 - What kind of law or regulation is needed to help support vulnerable families seeking access to land for shelter

The expectations were discussed briefly and were subsequently matched to the intended **objectives** of the first session, which are:

- To have better understanding of Housing, Land and Property rights and the regulatory barriers to the exercise of these rights in relation to shelter and settlement projects;
- To be updated on government actions / policies that were crafted to solve some of these regulatory barriers;
- To identify key mitigation actions that can be undertaken to ensure that shelter and settlements are more resilient to natural hazards; and
- To identify key PRC advocacy messages on:
 - i. institutionalizing ad hoc arrangements that have been established by PRC to overcome these barriers; and
 - ii. avoiding or overcoming existing HLP regulatory barriers for future PRC operations (e.g. What government policies need to be changed? Which shelter cluster guidelines can be translated into binding regulations?)

II. INTRODUCTION TO DISASTER LAW

As a preliminary, a basic introduction to Disaster Law and Advocacy was presented, identifying HLP rights in relation to shelter & settlement intervention as part of this body of law.

The auxiliary role of the Philippine Red Cross was also discussed, emphasizing that this role helps the Philippine Red Cross to have greater access to government in order to advocate for the needs of the most vulnerable. Part of this is advocacy for better regulations that will address barriers to humanitarian shelter and settlement aims.

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

III. DISCUSSION OF REGULATORY BARRIERS TO SHELTER AND SETTLEMENTS AND HLP RIGHTS

WHAT ARE REGULATORY BARRIERS?

The concept of “regulatory barriers” was explained in relation to the concept of “shelter and settlement aims”. **Regulatory barriers**, in general, refer to policies, laws and regulations that impede the attainment of these aims.

Participants were then asked to identify what they perceived to be the Philippine Red Cross’ shelter and settlement aims, and most of those identified matched with the following **shelter & settlement aims** of the Red Cross & Red Crescent Movement. The facilitators noted that the Movement does not have an absolute definition of its shelter and settlement aims, but that these aims reflect practice:

(a) Participatory and responsive to people’s needs

- This is in the sense that it consults the affected communities on shelter and settlement options. It also includes sensitivity and responsiveness to the differentiated needs of affected persons, e.g. PWDs, women and children, older persons, etc.

(b) Timely

- Shelter assistance should be provided immediately, but also noting that the different phases of shelter assistance should be provided at the right time and in the right context to avoid causing further harm
 - The facilitator provided as an example the American Red Cross shelter intervention in Haiti which has highly criticized; one of the main problems for the delay were HLP regulatory barriers

(c) Effective

- The shelter assistance should be adequate, in accordance with the needs of beneficiaries and standards of adequate housing

(d) Contributory towards a community’s path to a durable shelter and settlement solution

- The concept of “durable solutions” refers to respecting the rights of IDPs to choose freely between return to their homes, local integration at the they were displaced to, or resettlement to another part of the country, and competent authorities creating the conditions to allow IDPs to rebuild their lives in any of these locations

(e) Integrated risk reduction in the preparedness, emergency and recovery phases and in developmental shelter programming

- Participatory Approach for Safe Shelter Awareness (PASSA) is an example of integrating risk reduction into shelter programming

HOUSING, LAND AND PROPERTY RIGHTS

The facilitators discussed the basis of HLP rights in the Universal Declaration of Human Rights (UDHR) and International Convention on Economic, Social and Cultural Rights (ICESCR) and a comparison of the **humanitarian** and **human rights-based approach** in shelter and settlement interventions.

- Philippine Red Cross participants noted that they are more comfortable with using the humanitarian approach—assistance in the context of alleviating human suffering. They were concerned that using the human rights approach might give beneficiaries the idea that they can demand more than what the operation can offer, because the assistance will be perceived as a “right”. But they shared that they have also used the human rights lens when negotiating with authorities to facilitate the provision of shelter assistance.
- The facilitator emphasized that the Philippines ratified the ICESCR in the 1970s, and so the Philippine government is bound by the Right to Adequate Housing which is the basis of HLP rights.

Housing rights, land rights, and property rights were differentiated from one another. Examples on “bundle of rights” were also discussed--*rights to control, use, possess and transfer*.

It was emphasized that the “**do no harm principle**” should be observed in providing shelter assistance. The following preparedness measures can avoid future land disputes between the beneficiary and landowner:

- **Due diligence** on shelter assistance (e.g. process of checking land tenure/property rights and ensuring proper documentation for shelter beneficiaries)
- **Tenure mapping** (checking beforehand the different kinds of tenure in an area or community so that different shelter modalities are made available even before a disaster strikes)



Participants were then asked to take the “spectrum” exercise on their perception of how secure they felt about their property rights. Most of the participants felt that they had sufficient security of tenure, though they had varying types of tenure (e.g. owners, long-term and short-term renters). The facilitator highlighted how one’s perception of tenure can affect shelter interventions.

WHAT ARE HLP REGULATORY BARRIERS?

The facilitators explained the rationale for focusing on HLP regulatory barriers. **HLP regulatory barriers** are those laws or regulations which impede enforcement of HLP rights or render these rights ineffective, and thereby deterring the humanitarian organization from achieving its shelter and settlement aims.

Given the definition of HLP regulatory barriers, participants were then asked to share examples of HLP regulatory barriers which they had faced in past shelter and settlement programs post-disaster, particularly in Typhoon Haiyan and Typhoon Melor areas. The following are the regulatory barriers that they had initially identified:

- No-build zones (access to land)
- Tenure period requirement – the requirement for the beneficiary to obtain written authority to use land for the shelter assistance for a minimum of 5-10 years for on-site / 15-20 years for off-site shelter assistance limits the number of qualified shelter beneficiaries
- Availability of or access to documentary proof of ownership of/right to use land, limiting the number of qualified shelter beneficiaries

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

IV. BREAK-OUT GROUPS: IDENTIFICATION OF HLP REGULATORY BARRIERS; ACTIONS UNDERTAKEN BY PRC TO SOLVE THE PROBLEM

Participants were asked to group themselves into two to discuss their experiences with HLP regulatory barriers, and the actions that they have taken to solve these barriers in past operations. Participants also proposed solutions to some of these barriers which they thought should be part of the PRC HLP strategy. The following guidance was given:

- Sharing should be based on experience (personal or organizational)
- Participants were encouraged to identify at which level of government the barriers were present (e.g. HLP regulatory barriers at barangay level, at municipal level, etc.)
- Participants were encouraged identified the stakeholders that caused the HLP regulatory barriers



Below is a summary of the break-out group discussions:

HLP Regulatory Barriers	Actions Taken	Proposed Actions
(1) ACCESS TO DOCUMENTARY REQUIREMENTS REQUIRED BY GOVERNMENT (Note: PRC follows government criteria)		
Submission by affected persons of falsified tenure-related documents <ul style="list-style-type: none"> - documents to prove tenure and other government-imposed criteria requirements for shelter assistance - rooted in difficulty in accessing required documents 	<p>Reliance on barangay verification of authenticity</p> <p>Addressed the underlying problem—which is failure to access land—by looking for available land in other barangay, or by providing other modes of shelter assistance (e.g. cash)</p> <p>Flexibility in documentary requirements for other shelter assistance options (aside from core shelter)</p>	<p>Give affected persons assistance to access the necessary documents (so that they don't resort to falsifying the documents)</p> <p>Advocacy: Establish/expand list of alternative documents that may be submitted</p> <p>Advocacy: PRC Chapters can teach residents to include copies of critical legal documents in their preparedness kit</p>
Difficulty to prove possession of land <ul style="list-style-type: none"> - a lot of affected persons who do not own land but hold other land or property rights (possession, use) do not have formal documentation of these rights 		Advocacy: "Literacy on Land Rights" at the barangay level; HLP IEC materials for communities
(2) AVAILABILITY OF LAND		
No-build zones <ul style="list-style-type: none"> - Typhoon Haiyan 40 meter no build zone 	PRC offered a "menu of shelter assistance options" (e.g. If beneficiary cannot prove ownership of land, PRC did not	<p>Advocacy: Seek assistance from the government to clarify no-build zones</p> <p>Advocacy: Make sure that zoning issuances have scientific basis</p>

HLP Regulatory Barriers	Actions Taken	Proposed Actions
- Some proposed shelter sites are government-owned / public land	provide core shelter but still provided Shelter Repair Assistance)	
Available land is insufficient to comply with minimum area/space requirement for each core shelter		Mitigation: Look into an alternative solutions (e.g. resettling beneficiary into another barangay) Mitigation: revise shelter design, e.g 2 story shelter
(3) SECURITY OF TENURE		
Some land owners refused to sign tenure agreements with beneficiaries (and vice versa) - Land owners were wary of formalizing the right to use the land, while some beneficiaries prefer the informal arrangement because they believe they already have vested rights in the land which may be revoked by a time-bound written agreement on right to use land within the period required by PRC for the core shelter assistance	None	Legal assistance and advocacy
Disputes arising from the agreement between land owner and shelter beneficiary - Example: land owner evicted the beneficiary in violation of an existing agreement - Example: ownership of the land used for the shelter assistance was later on disputed by another claimant owner (co-owner of land who did not sign the agreement between landowner and shelter beneficiary)	MOA with all LGUs which has jurisdiction over the shelter sites, providing terms of PRC assistance and LGU counterpart **Problem: In practice, validity MOAs are coterminous with the local chief executive's term. Advocacy is needed here.	Advocacy: Establish referral process/legal assistance: <ul style="list-style-type: none"> • Option 1: Establish referral process for legal disputes involving PRC shelter assistance beneficiaries and landowners • Option 2: PRC can provide legal assistance directly (whether through own staff or a third party provider) • Option 3: Expressly include LGU counterpart in providing legal assistance/dispute resolution in the terms of the MOA Establish or streamline PRC Due Diligence process in shelter assistance
Agreement between landowner and shelter beneficiary does not state what the rights of the beneficiary are over the core shelter once the 5/10 year agreement with the landowner lapses	None	Mitigation: revise PRC template MOA to reflect clearer beneficiary rights after lapse of agreement

HLP Regulatory Barriers	Actions Taken	Proposed Actions
- This has led to insecurity of property rights of shelter beneficiary, and unsustainable shelter assistance		Advocacy: make sure that LGU (or DILG) is on board with the proposed revisions
(4) INTERNAL BARRIERS		
“Targeted approach” in providing shelter assistance, whether due to security or logistics concerns, sometimes limits PRC in providing shelter assistance to remote and more vulnerable areas	None	Review PRC shelter assistance guidelines

V. UPDATES ON HLP LAWS AND REGULATIONS



Updates on HLP laws and regulations were provided to participants primarily to assist them in analyzing whether the regulatory barriers they had earlier identified have already been addressed by the new regulations.

Regarding the Typhoon Haiyan No-Build Zone circular, the facilitator pointed out that there is still no official regulation that has superseded this circular, but that there was a press release issued by the Office of the Presidential Assistant for Rehabilitation and Recovery (OPARR) that the 40-meter no build zone should not be applied. The Comprehensive Rehabilitation and Recovery Plan (CRRP) for Typhoon Haiyan now includes the RRP of some of the affected LGUs wherein the “safe, no-dwelling and unsafe zones” in the LGU are indicated.

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

VI. EXAMPLE OF HLP RIGHTS IN ACTION: SOUTH AMERICA

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

VII. WAY FORWARD: PHILIPPINE RED CROSS HLP STRATEGY

ELEMENTS OF A STRATEGY

The participants returned to their breakout groups to identify key points for a Philippine Red Cross “mitigation and advocacy strategy” in addressing regulatory barriers to shelter and settlement interventions, particularly focusing on the protection of HLP rights.

The facilitators reiterated the elements of an HLP strategy:

- (1) Advocacy Strategy – this refers to external actions that seek to influence policies, laws or regulations that affect shelter assistance in the short and long term
- (2) Mitigation Strategy – this refers to practical actions that influence internal organizational processes and standards (e.g. due diligence, shelter designed)

As the participants had already proposed some actions that can be taken to address identified regulatory barriers, this session focused on synthesizing those proposed actions, noting that new laws or regulations on HLP still do not address most of these regulatory barriers.

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

KEY POINTS FOR A PHILIPPINE RED CROSS HLP ADVOCACY AND MITIGATION STRATEGY

The participants identified the following key points for a **Philippine Red Cross HLP Advocacy and Mitigation Strategy**:

(a) In general: map HLP stakeholders

(b) Improve “No-Build Zone” Regulations

Advocacy: PRC can advocate for ensuring that zoning policies have sound scientific basis reflected in multi-hazard or risk maps (instead of the blanket application of the 40-meter no-build zone in forest areas)

Mitigation: Review PRC shelter design, e.g. consider two story shelter in smaller shelter sites, “floating houses” in flood-prone areas.

(c) Referral Mechanism for Shelter Beneficiary’s Disputes with Landowner

Advocacy: (1) Establish referral mechanisms and, if possible, legal assistance for disputes arising from the tenure agreement between landowner and shelter beneficiary, to ensure that disputes are taken to the proper venue. This kind of assistance is being piloted by American Red Cross in its Haiyan project areas through a third party (Initiatives for Dialogue and Empowerment through Alternative Legal Services Inc. or IDEALS).

(2) Advocate for uniform application of government shelter assistance criteria (followed by PRC)

Mitigation: Review and revise PRC shelter guidelines (e.g. match intervention objectives with security of tenure concerns)

(d) Due Diligence in Shelter and Settlement Assistance

Advocacy: PRC can develop IEC materials on HLP rights and distribute to communities; these can be translated to local language

Mitigation: PRC can review its due diligence procedure when providing shelter assistance, to ensure that HLP rights are respected and shelter assistance is sustainable.

SECOND SESSION (November 23, 2016)

I. OBJECTIVES OF SECOND SESSION

In addition to Philippine Red Cross shelter staff (field and NHQ), representatives from IFRC Philippines, PRC Partner National Societies British Red Cross and Japanese Red Cross, and shelter cluster members Catholic Relief Services, IOM, and Habitat for Humanity attended the second session of the roundtable discussion.

The purpose of the second session was to get the perspective of other humanitarian organizations on HLP regulatory barriers and discuss their vision for an HLP rights strategy for the humanitarian community in the country.

II. PRESENTATION FROM PHILIPPINE RED CROSS

The Philippine Red Cross participants presented their key points for an HLP Advocacy and Mitigation Strategy (previously discussed).

III. PRESENTATIONS FROM SHELTER CLUSTER ORGANIZATIONS

Habitat for Humanity presented on their Solid Ground Campaign and Bohol Re-build Project (Bohol earthquake). Discussion points and questions from participants included:

- Gender and other vulnerable group discrimination in relation to HLP rights
- Policy framework on shelter needing to be reviewed to reflect current situation
- There is a need to map HLP issues
 - Habitat for Humanity is already doing this



- IFRC and Australian Red Cross in partnership with Allens law firm is also undertaking an HLP rights mapping for Philippines. Suggested action: connect relevant partners in Australian Red Cross and Habitat for Humanity to avoid duplication of effort.

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

IV. UPDATES ON HLP LAWS AND REGULATIONS

Land banking was discussed in relation to the 2015 National Housing Authority (NHA) Guidelines for Site Selection, Site Suitability and Site Planning for NHA Housing Development Projects.

**Please refer to the training materials, including speaking notes for more details of the training content for this part.*

V. BREAK-OUT GROUPS: IDENTIFICATION OF HLP REGULATORY BARRIERS AND HLP STRATEGY

The following is a summary of the regulatory barriers and proposed strategy of each group:



GROUP 1

Group 1 suggested that the humanitarian HLP strategy should include the following topics:

- Gender considerations (specific to what happens on the ground not at the policy level)
- Other vulnerable group considerations (again in reality not at policy)
- Indigenous peoples rights
- Access to land (including Disputes, Ownership vs. Possession, Shared Lot)
- Security of Tenure – spectrum
- Renters
- Zoning – governance and land zone conversion
- No Build Zones and No Dwelling Zones
 - Responsibility of LGU & Other Gov. Departments
 - Scientific basis – hazard mapping
 - Mitigation of risk measures
 - Due process regarding consultation
- Criteria for assistance (related to HLP vulnerability, esp. tenure) and matching packages of assistance to HLP rights context (e.g. renters could get rental assistance)
- Analysis of the Stakeholders involved in HLP rights (e.g. LGU officials, national level government offices, landlords, etc.)



- Due Diligence framework for the Philippines

There was a focused discussion on the issue of **No Build Zones** and actions that can be done in the preparedness, emergency and recovery phases:

GROUP 1			
HLP Regulatory Barrier	Preparedness Phase	Emergency Phase	Recovery Phase
No Build Zones & No Dwelling Zones	<ul style="list-style-type: none"> • Investigate safe land with LGU – Follow up questions to LGU on land-banking. 	<ul style="list-style-type: none"> • Blanket support – advocacy around humanitarian imperative and accessing areas which may later be declared as NBZ • Packages of assistance appropriate to both emergency and potential NBZ or NDZ area (may choose to not deliver durable construction materials) • Humanitarian agency due diligence procedure to be implemented around NBZ • Investigate safe land availability as early possible 	<ul style="list-style-type: none"> • Procedures needed for access to safe land for both transitional and permanent. Rezoning agriculture to residential takes years (could this be undertaken in the preparedness phase for the land-bank land). • Mitigation – PASSA use, Community infrastructure, example case studies (mangrove swamps, 2 floor housing, flood bunds, retaining walls and ground drainage) • LGU administered fund for community DRR infrastructure • Social housing (NHA, MPDC, DSWD) • Look more at small pockets of land as well as larger relocation sites

GROUP 2

Group 2 suggested that the humanitarian HLP strategy should include the following topics:

- Shelter assistance options for “Sharers” (Land & House Sharers)
- Defining the “family” (e.g. all sharing one budget)- extended family/ies) as the basic unit for shelter assistance
- Emergency Shelter Assistance Criteria (government assistance policy)
 - Clarify the terms--household or house owner (note: policy currently states “house owner”)
 - Is it per family or per household?
 - Clarify baseline for amount of the emergency shelter cash assistance, and establish guidance for families on what they can do with the cash assistance; how we tie technical assistance to it
- Access to land (private/government) for relocation
 - How to ensure affected persons can access suitable land for shelter assistance
 - Right of way
 - Basic services
- No Build Zones
 - Scientific basis needed
 - Hazard mapping
 - Agencies is responsible for certifying? LGU, PHIVOLCS, MGB
 - How No Dwelling Zones fit in
- Land for disaster affected people must be in CLUP/Gov’t site development plan: land-banking



There was a focused discussion on the issue of **security of tenure** and proposed strategies for renters and for shares, as follows:

GROUP 2			
HLP Regulatory Barrier	Strategy In General	How to Help Renters	How to Help Sharers
<p>Security of Tenure</p> <p>Those who don't own land have difficulty accessing adequate shelter assistance either because it is difficult to prove the</p>	<ul style="list-style-type: none"> • Create uniform terms in the affidavit of consent/authorization to stay • Streamlining beneficiary rights over shelter site (land) 	<ul style="list-style-type: none"> • Improve profiling, i.e. renters who own land elsewhere, renters with no land and only relying on a lease agreement for their housing 	<ul style="list-style-type: none"> • Define household • Reframe policy: basis should be “family” not “household” <ul style="list-style-type: none"> ▪ Usually 1 “household” would not reflect the

GROUP 2			
HLP Regulatory Barrier	Strategy In General	How to Help Renters	How to Help Sharers
<p>tenure that they hold, or their tenure is not recognized by government agencies. For example:</p> <ul style="list-style-type: none"> - Sharers (they cannot be lumped under 1 “household” because sharers cannot all fit in just 1 core shelter) - Renters - Caretakers/tenants - Informal settlers <p>How can we prioritize them? (i.e. HLP related vulnerabilities)</p>	<ul style="list-style-type: none"> • Philippine land and property guidelines should clearly define different kinds of tenure holders • Mapping of different kinds of tenure 	<ul style="list-style-type: none"> • Process flow for confirming renter status 	<p>amount of help needed if there are 2 or more families in 1 household;</p> <ul style="list-style-type: none"> ▪ Another option is to clearly define what a “household” means (to reflect reality that there can be more than 1 family in 1 household) • Clarify documents required to prove “family” relations

VI. WAY FORWARD FOR DEVELOPMENT OF AN HLP STRATEGY FOR THE PHILIPPINES

The participants reached a consensus on creating an HLP Advocacy and Mitigation Strategy for the Philippine humanitarian community. This would still need vetting by other humanitarian assistance cluster members (shelter and/or protection cluster).

The suggested timeline is 6 months for the draft strategy (by end of July 2017). In particular:

- 1) Draft structure of HLP strategy – February 2017
- 2) Consultation on structure with cluster (s) and other stakeholders
- 3) Drafting content of strategy
- 4) Further consultation regarding the draft strategy prior to finalization

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