

## HLP PRINCIPLES RELATED TO INDIGENOUS PEOPLES FOR SHELTER PARTNERS

March 2014

This Advisory note is designed to provide guidance to shelter agencies on key HLP considerations related to Indigenous Peoples (IPs) in the post Yolanda humanitarian shelter response.

### BACKGROUND

IPs in the Philippines represent 15-20 per cent of the total population of 80 million and live in 50 of the 78 provinces.<sup>1</sup> It is estimated that 61 per cent of IPs live in Mindanao while one third reside in Luzon. The other six per cent live throughout the Visayan Islands.<sup>2</sup>

IPs are among the poorest and most disadvantaged social groups in the Philippines, with much higher illiteracy and unemployment rates than the rest of the population. The income of IPs is also below national averages.<sup>3</sup>

### HLP PRINCIPLES RELEVANT TO IPs POST YOLANDA

#### 1. Everyone has the right to an adequate standard of housing

Everyone has the right to an adequate standard of housing including persons affected by natural disasters.

This right to adequate housing must be enjoyed without discrimination of any kind. In addition to clear international standards requiring non-discrimination against IPs,<sup>4</sup> the Philippines *Indigenous Peoples Rights Act (1997)* specifically requires that IPs not suffer any discrimination in their enjoyment of any rights, protections and privileges available to the rest of the citizenry.<sup>5</sup>

In all phases of disaster response the right to adequate housing for IPs should be respected and protected. The right to adequate housing is much more than a shelter commodity, it is the right to live somewhere in security, peace and dignity.<sup>6</sup> The criteria for an adequate standard of housing has been defined to include security of tenure; cultural adequacy; affordability; availability of services, materials, facilities and infrastructure; habitability; accessibility and location.<sup>7</sup>

Of particular concern to IPs in the post Yolanda humanitarian shelter response are the needs to ensure security of tenure and culturally appropriate shelter and housing.

#### *Security of tenure*

There are a multiplicity of legitimate tenure arrangements besides private ownership, such as public or private rental accommodation, cooperative housing, lease, emergency housing, occupation/rent

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<sup>1</sup> UN Commission on Human Rights, *Human Rights And Indigenous Issues: Report Of The Special Rapporteur On The Situation Of Human Rights And Fundamental Freedoms Of Indigenous People, Rodolfo Stavenhagen, Submitted In Accordance With Commission On Human Rights Resolution 2002/65 : Addendum*, 5 March 2003, E/CN.4/2003/90/ADD.3, para 4.

<sup>2</sup> *Ibid.*

<sup>3</sup> David E De Vera, *Indigenous Peoples in the Philippines: A Country Case Study*, 2007.

<sup>4</sup> See for example, *UN Declaration on the Rights of Indigenous Peoples*, 2007.

<sup>5</sup> Section 21, Republic Act No. 8371, *The Indigenous Peoples Rights Act*, 1997.

<sup>6</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.

<sup>7</sup> *Ibid.*

of land or property in informal settlements, and other user or occupancy rights through statutory, customary, religious or hybrid arrangements all with varying degrees of formality.

Notwithstanding the type of tenure, all persons including IPs should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

The vast majority of IPs in the Philippines do not have private ownership rights over the land on which they dwell. In many cases this is because of a customary belief in collective custodianship over the land, rather than individual private ownership. The lack of formal legal documents for many IPs is also attributable to the practice of maintaining an oral rather than written tradition.

The national law of the Philippines provides some security of tenure protection to IPs where they are living on ancestral lands.<sup>8</sup> This protection does not include those IPs who have migrated to other parts of the Philippines, for example those IPs who migrated from Mindanao to Leyte.

The *Indigenous Peoples Rights Act* (IPRA) recognises both ancestral domain<sup>9</sup> and ancestral land<sup>10</sup>, and establishes a mechanism for formally recognizing these two interests.

It is important to note that the recognition of ancestral domain and ancestral land can co-exist with other forms of tenure.<sup>11</sup>

The best way to avoid complications in providing shelter on ancestral lands is to consult with the relevant tribal leaders for each area. Also, as recognition is passed to IP tribal groups rather than to separate families, individuals often do not necessarily possess separate documentation setting out their interest in the land.<sup>12</sup>

### *Cultural Adequacy*

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

For IPs, it is essential that shelter actors providing support do so in genuine consultation with the community. For example, it has been suggested that in some instances, IPs would prefer the provision of materials, rather than the construction of a house.<sup>13</sup> The contact persons listed at the end of this document can provide advice and support on appropriate ways of engaging and consulting with IP communities.

## 2. The rights of the most vulnerable should be protected

Taking a human rights approach to the humanitarian response requires that efforts are targeted towards the most vulnerable and marginalized groups.

As noted above, IPs were a pre-existing marginalized and vulnerable group in the Philippines. However, this vulnerability has continued post-Yolanda and in some cases has been exacerbated through alleged cases of discrimination against IPs in the provision of humanitarian aid and in the geographic isolation of many communities from cities, supplies and the humanitarian response.

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<sup>8</sup> The Constitution of the Philippines provides that the State “shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.” Article XII, Section V, Constitution of the Philippines, 1987.

<sup>9</sup> Section 3(a), Republic Act No. 8371, *The Indigenous Peoples Rights Act*, 1997.

<sup>10</sup> Section 3(b), Republic Act No. 8371, *The Indigenous Peoples Rights Act*, 1997.

<sup>11</sup> Shelter Cluster, *Legal and Regulatory Issues: Typhoon Bopha*, March 2013, p27.

<sup>12</sup> *Ibid.*

<sup>13</sup> Shelter Cluster, *Legal and Regulatory Issues: Typhoon Bopha*, March 2013, p29.

### 3. IPs have the right to information and to genuine consultation in the shelter response

All affected groups and persons should have access to information and be able to participate meaningfully in the planning and implementation of the shelter response.<sup>14</sup>

As mentioned above, this is especially pertinent for IP communities who, based on cultural practices and traditions, may benefit from and value distinctive shelter support.

#### **NATIONAL LAWS RELEVANT TO THE DISPLACEMENT AND RELOCATION OF INDIGENOUS PEOPLES**

In addition to establishing a system of recognition of the ancestral land rights of IPs, the *IPRA* directly addresses the displacement and relocation of IPs in the event of natural disaster:<sup>15</sup>

“In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems:

Provided, that the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined:

Provided, further, that should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled:

Provided furthermore, that basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed.”

The *IPRA* further states that where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the IPs concerned and whenever possible, IPs shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist.<sup>16</sup>

When such return is not possible, as determined by agreement or through appropriate procedures, IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development.<sup>17</sup>

The *IPRA* also provides that persons thus relocated shall be fully compensated for any resulting loss or injury.<sup>18</sup>

#### **FURTHER INFORMATION**

For those shelter agencies intending to engage with IPs, the following specialist organisations and persons can be contacted for further information and guidance.

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<sup>14</sup> *IASC Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, January 2011, C.2.3; IASC, *Protecting Persons Affected By Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, 2006, para C.3.3.

<sup>15</sup> Section 7(d) Republic Act No. 8371, *The Indigenous Peoples Rights Act*, 1997.

<sup>16</sup> Section 7(c) Republic Act No. 8371, *The Indigenous Peoples Rights Act*, 1997.

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

<sup>18</sup> *Ibid.*

### National Commission on Indigenous Peoples

The National Commission on Indigenous Peoples (NCIP) is the primary government agency responsible for the formulation and implementation of policies and programs to promote and protect the rights of Indigenous Peoples.<sup>19</sup> The NCIP can be contacted to provide clear maps on which of the Yolanda affected areas are recognized as ancestral land or ancestral domain. The NCIP can also provide advice on laws and policies relevant to IPs.

NCIP, Regional Office for Regions VI and VII (also covers Regions VIII)

Mr. Alfonso B. Catolin, CESO III, Director

Regional Office, 3rd Floor CPBC Centennial Bldg, Fajardo Streets, Jaro, Iloilo City

<http://www.ncip.gov.ph/region-vi-vii.html>

Ms Hazel Toffefiel, NCIP

Negros Occ. Community Service Center, Old Capitol Building, Aguinaldo St, Bacolod City

Phone 09173351395

### Department of Social Welfare and Development

The Department of Social Welfare and Development has Regional Focal Persons for Indigenous People for Regions VI, VII and VIII. These Focal Persons can be contacted for reliable, up to date information on Indigenous Peoples, including the details of tribal leaders. The DSWD Regional Focal Persons can advise on best practice in engaging and consulting with Indigenous Peoples.

These focal persons are also currently developing a detailed database of Indigenous Peoples, with information on gender, number of family members and livelihood details throughout Regions VI, VII and VIII.

DSWD Regional Focal Person for Indigenous People, Region VI

Sonny Estoloso; Phone 09154448796

DSWD Regional Focal Person for Indigenous People, Region VII

Joseph Ronan Estoque; Phone 09166313297

DSWD Regional Focal Person for Indigenous People, Region VIII

Jay Mar Albaos; Phone 09173199767

### Shelter Cluster

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<sup>19</sup> Section 38, Republic Act No. 8371, *The Indigenous Peoples Rights Act*, 1997.