

Legal and regulatory issues: Typhoon Bopha

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On behalf of the TC Pablo Shelter Cluster

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Executive Summary

On December 4, 2012, Typhoon Bopha descended upon the Philippines, hitting the southern part of Mindanao and claiming the lives of over 1,000 people. Over 235,000 homes were damaged or destroyed, and more than three months on, 46 percent of those homes remain completely uninhabitable.¹ As the Global Shelter Cluster (GSC) moves forward from emergency to recovery programming, this report attempts to highlight some concerns linked to the legal and regulatory framework in the Philippines. These include the process of declaring ‘No Build Zones’, relocation procedures, and issues related to tenure security and indigenous land rights.

At the time of writing this report in March 2013, the government had not yet started its shelter assistance programme. The government focus had primarily been on the provision and construction of bunkhouses and the provision of tarpaulins, and the response of humanitarian actors had consisted of the distributions of tarpaulins and emergency shelter kits to those with damaged and destroyed houses.

For the GSC, the period in which the affected population will remain in emergency shelter conditions is a primary concern. Meanwhile, the government policy focus has now turned to permanent shelter solutions, with most discussions and meetings focusing on relocation sites and construction of new housing. External shelter providers foresee that resettlement will take up to two years, and in the meantime, people will continue to live in makeshift homes and under tarpaulins. It seems transitional shelter solutions are likely to be bypassed.

Part of this problem stems from ambiguity surrounding definition of terms like ‘transitional’. For example, while the government appears to view bunkhouses as transitional options, international actors do not classify bunkhouses in the same way. Additionally, other obstacles for shelter providers is their inability to act while waiting for pending decisions of different levels of government and the impending elections in May.

No Build Zones

Shelter providers, local government, national authorities and affected communities are all concerned about how the identification of “No Build Zones” (NBZs) will affect the response and recovery to Typhoon Bopha. NBZs will be identified on the basis of recommendations of the Mining and Geo-Sciences Bureau (MGB) and the National Economy and Development Authority (NEDA), and enforced through zoning ordinances passed by Local Government Units (LGUs). Although LGUs are not legally compelled to act upon the advice of the technical authorities, an instruction has been issued by President Aquino that all local governments must adopt the recommendations of the MGB, and in order to obtain approval for relocation sites for resettlement programs from national authorities, local governments must submit a certification from MGB that the relocation site is a safe area.

¹ Reach, ‘Shelter Sector Progress Assessment in Mindanao, Philippines, Shelter Cluster Report, Final Assessment Report’ (March 2013), 8 http://www.reach-initiative.org/wp-content/uploads/2012/12/2013-04-02-Philippines_Bopha_Shelter-Sector-Progress-Assessment-Report_14Mar2013_FI.pdf

Though MGB has completed most assessments, stakeholders are predicting that the process of issuing ordinances and formally declaring NBZs will take a considerable amount of time. Decisions may not be made on NBZs before the elections have passed in May this year. For some municipalities, the recommendations of MGB involve particularly drastic measures, like moving most of the municipality to just two safe neighbourhoods. While certain Mayors are requesting the national authorities explore viable mitigation measures instead of relocation, to date there has been no formal response to their proposal. As time passes, consideration should be taken to ensure those currently living in NBZs still have access to shelter assistance in the interim.

Relocation

The demarcation of NBZs also gives rise to concerns about relocation. The relevant legal framework describes a set of 'mandatory safeguards' that must be complied with in the event of eviction or demolition (e.g. 30 days prior notice, adequate consultation, presence of local government officials as well as adequate relocation). The Commission on Human Rights of the Philippines (CHRP) is actively seeking to ensure that local and provincial governments are aware of these processes, and their obligations, under the legal framework. Shelter providers, however, are restricted in their activities until such time as decisions are made about relocations, both in terms of sites and who will be relocated.

Moreover, once sites have been identified, undertaking the required consultation processes, acquiring and legally converting land to be used for relocation sites is still expected to take a considerable amount of time.

Tenure arrangements

While the tenure status of those affected has not been problematic in the emergency phase, it is expected to become a more prevalent issue as the response develops to recovery. Assessments indicate that many of the worst affected were living under informal arrangements, with no documentation to demonstrate that they were lawfully living on an area of land, prior to Bopha. Validating information on land ownership and occupation is also expected to take some time. At this stage, it is not clear what options will be available for those households who do not have documentation of their previous land arrangements.

In order to receive the Government assistance to relocate or build a new home in their original location, permission to remain for at least 10 years on the lot to build the permanent shelter must be shown in order to be eligible.² While this is expected to be provided to recipients of the government resettlement programmes, there is a concern that only existing land owners will be prioritised in this housing assistance. With regard to transitional shelter, a number of non-government shelter providers explained that part of the criteria to provide transitional shelter is to confirm that people have either land title or have permission to remain on the land for a number of years as well. With government decisions still pending, shelter providers are currently reluctant to provide transitional or permanent shelter assistance, for fear that recipients may later be evicted or relocated.

² *Omnibus Guidelines on Shelter Assistance* (Administrative Order 17 of 2010), Section VII, B, I

Indigenous groups

As most assessments indicate that approximately 60-80% of the people affected identified themselves as being from an indigenous group, concerns also exist about ensuring indigenous land rights will be understood and respected. Much of the affected area is under Certificate of Ancestral Domain Title or Ancestral Domain Claim. As both can co-exist with other forms of tenure, the best way to avoid any complications in providing shelter on ancestral lands is to consult with the relevant tribal leader for each area.

Moving Forward

In setting out the legal background for a range of issues, followed by an analysis of the application of this in practice based on a number of interviews, this report provides some suggestions on steps that could be taken in moving forward with the shelter response. In summary, it is suggested the consideration be taken by the GSC to:

- Include references to the CHRP Advisory A2012-002 and the forthcoming advisory within the GSCOF.
- Work towards a common understanding within the shelter cluster (especially as between government and non-government) of terminology such as ‘transitional’.
- Clarify the types of assistance that will be available and to whom by encouraging the distribution of a whole of government shelter strategy. In particular, clarify the combined assistance provided by the Department of Social Welfare and Development (DSWD) and National Housing Authority (NHA).
- Increase awareness of other shelter providers of criteria and procedures set out in the Administrative Order: *Omnibus Guidelines on Shelter Assistance*.
- Address need for alternate options while awaiting permanent housing.

Beneficiary Selection

- Monitor whether those families who have already received some shelter assistance will be barred from accessing DSWD shelter assistance, as indicated in the Omnibus Guidelines.
- Promote a wider consultation in the verification of beneficiary information and the development of beneficiary lists.
- Emphasise the need to support household remaining in places of origin

No Build Zones

- Clarify how NBZs will be physically demarcated.
- Advocate that any delay in officially declaring NBZs should not delay access to shelter assistance.

- Ensure that those identified as living within “high risk” areas by MGB are informed of the risks that they face and participate in consultations regarding relocation.
- Consider proposing the development of a clearer legal instrument detailing the process of declaring and enforcing a NBZ.
- Consider funding short term capacity support for MGB to undertake the high volume of assessments, and for further research to be undertaken on feasible mitigation measures besides relocation.

Relocations

- Continue to draw attention to the processes and considerations highlighted in the CHRP Advisories for relocations, which address compliance with humanitarian principles, consultation processes and basic facilities to be provided on relocation sites.
- Look further into the benefits of promoting ‘land banking’ to prevent delays in future disasters.
- Advocate for decisions to be made on NBZs, and consequently, who will be relocated, as soon as possible.
- Ensure that those who are not going to be relocated still receive adequate assistance to rebuild their homes.

Tenure arrangements

- Propose that special procedures/mechanisms be developed to expedite the validation process for land ownership/occupation arrangements.
- Direct attention to ensuring that those people without proper documentation of pre-Bopha land interest still have adequate access to shelter assistance.
- In the GSCOF, reference should be made to the CHRP Advisory which states that ‘all persons should possess a degree of tenure security’, and highlights Philippine law which provides that beneficiaries of resettlement programs ‘are entitled to support services, such as land surveys and titling at minimal cost and exemption from the payment of documentary stamp tax, registration fees and other fees for the issuance of transfer certificates of title.’

Indigenous groups

- Obtain clear maps from NCIP on which areas are under AD title/claim and the details of relevant group leaders.
- Reiterate that sufficient attention be paid to remote areas and encourage shelter providers to direct services to these areas.

- In areas which are under ancestral domain claim/title, identify tribal leaders and ensure that shelter providers in that area consult with the relevant tribal leader in developing shelter solutions.
- Invite representatives/tribal leaders to GSC meetings and ensure that they are provided with opportunities to comment on or provide input to the development of recovery plans.
- Encourage the provision of building materials rather than construction of new houses in AD areas.

Logging issues

- Consider seeking logistics support in order to make use of the fallen lumber which is now legal to use for shelter purposes.
- Be aware, for future operations, of optimum usage times for local (recycled) construction material.
- Consider joint programming with livelihoods and early recovery cluster addressing debris clearance and uses of lumber for shelter recovery.
- Coordinate with the Cash for Work project to cut, collect and store coconut trees needed for shelter construction for emergency, temporary/transitional and permanent shelter.

List of Abbreviations

AD: Ancestral Domain

CHRP: Commission on Human Rights of the Philippines

CSA: Core Shelter Assistance

DAFAC: Disaster Assistance Family Access Card

DRRM: Disaster Risk Reduction and Management

DSWD: Department of Social Welfare and Development

ESA: Emergency Shelter Assistance

GSC: Global Shelter Cluster

GSCOF: Global Shelter Cluster Operational Framework

ICC: Indigenous Cultural Communities

IP: Indigenous Peoples

IPRA: Indigenous People's Rights Act of 1997

LGU: Local Government Unit

MGB: Mining and Geo-sciences Bureau

MSA: Modified Shelter Assistance

NASA: Neighbourhood Association for Shelter Assistance

NBZ: No Build Zone

NCIP: National Commission for Indigenous Peoples

NHA: National Housing Authority

PDRRM Act: Philippine Disaster Risk Reduction and Management Act of 2010

1. Introduction

To support the Global Shelter Cluster (GSC), it was proposed that a representative of the IFRC be deployed to the Philippines (primarily Davao City) for a period of eight days (from 20 – 28 February) to collect information regarding legal and regulatory barriers to the provision of emergency and transitional shelter. In collating the information obtained during this mission, this report will attempt to highlight a collection of the emerging legal and regulatory issues which should be monitored by the GSC as it progresses from emergency to transitional programming. Furthermore, a number of the issues identified should be considered by the GSC's member agencies going forward when permanent shelter programmes are being devised. It should be noted, however, that many of the issues of concern for the GSC are not necessarily of strict legal nature nor do they necessarily have 'legal' solutions. The issues discussed below may simply require consideration in programming, and where relevant, certain advocacy measures.

Discussions with the GSC coordinator indicated that there were no pressing legal issues in the emergency phase of the Bopha response, as the response has been primarily focused on distributions of tarpaulins, emergency shelter kits and repair to those with damaged houses, regardless of tenure status. The main issues of concern going forward for the GSC were identified as being:

- 1) Process and effect of declaration of 'No Build Zones'
- 2) Legal considerations that should be taken into account for Indigenous People in the affected areas
- 3) Legal considerations applicable to beneficiary selection criteria
- 4) Logging bans and effect on shelter assistance

This report will discuss these, and other connected issues below. This report is by no means comprehensive or exhaustive, it aims to simply highlight some of the main issues of concern, setting out some of the legal background, followed by an analysis of the application of this in practice based on a number of interviews, and concluded by some general recommendations on what needs attention and steps that could be taken to address the issue. Furthermore, it is understood that decisions and policies change on an ongoing basis and therefore this report should be read with the date of the visit borne in mind. It is also hoped that by documenting these issues now, it can form a useful background for any future disasters, particularly in Mindanao.

2. Response: from emergency to permanent

In order to understand the arising legal problems, it is necessary to first set out the nature of the government response.

a. Legal background

Disaster response is governed nationally by the Philippine Disaster Risk Reduction and Management Act of 2010 (the PDRRM Act), which establishes committees for disaster risk reduction and

management (DRRM) at the national, regional³ and local government level.⁴ The PDRRM Act does not specifically address the provision of shelter assistance, save to say that the provincial, city and municipal DRRM offices or barangay⁵ DRRM offices will be responsible for ensuring the ‘immediate delivery of food, shelter and medical supplies for women and children.’⁶

The provision of shelter assistance is primarily set out in the *Omnibus Guidelines on Shelter Assistance* (Administrative Order 17 of 2010) (The Omnibus Guidelines). These Guidelines establish the types of shelter assistance that will be available to those affected by disasters, the beneficiary selection process, and the roles and responsibilities of different departments and committees in implementing relocation and resettlement programs.

The Omnibus Guidelines provide for three types of assistance:

1. **Core Shelter Assistance (CSA):** This entails the provision of new shelter units, withstanding winds of up to 220 kph – provided to ‘family-victims’.
2. **Modified Shelter Assistance (MSA):** Limited financial or material assistance to supplement existing materials /resources of the family. While CSA has set unit designs, MSA may use different designs because of cultural, economic, religious and political considerations. The Omnibus Guidelines indicate that MSA will be provided for constructing houses on relocation sites, but DSWD has indicated that they intend to provide MSA to support the reconstruction of totally damaged houses within Build Zones as well.
3. **Emergency Shelter Assistance (ESA):** The provision of materials or financial assistance to “self-build”, available to those who ‘opted not to be relocated’.

It is primarily the Department of Social Welfare and Development (DSWD) that is responsible for the implementation of these guidelines, together with the Local Government Units (LGUs) for each municipality. Pursuant to the Omnibus Guidelines, the LGUs must submit a range of documentation to DSWD for implementation of shelter assistance, including a Disaster Terminal Report (essentially a situation report), a rehabilitation plan, a project proposal, copies of documentation attesting to the availability of sites for relocation and a master list of beneficiaries.⁷

Once a final list of beneficiaries has been prepared by the DSWD Field office, the Omnibus Guidelines outline a process of ‘organizing’ the beneficiaries into a Neighbourhood Association for Shelter Assistance (NASA). The NASA shall be made up of a maximum of 30 people and should elect a President and Treasurer. Following this, financial grants can then be directly transferred to the NASA Organization, which will be responsible for acquiring construction materials and overseeing the shelter construction. The NASA, as a new legal entity, must also enter into a contract with the LGU and DSWD undertaking not to sell, rent out or mortgage the new houses. Whether this NASA

³ Philippine Disaster Risk Reduction and Management Act 2010, s10.

⁴ Philippine Disaster Risk Reduction and Management Act 2010, s11.

⁵ A barangay is the lowest government division in the Philippines and is made up of at least 2,000 inhabitants outside of ‘highly urbanised cities’ and 5,000 inhabitants within ‘highly urbanised cities’ (Local Government Code of the Philippines).

⁶ Philippine Disaster Risk Reduction and Management Act 2010, s 12.

⁷ Omnibus Guidelines on Shelter Assistance, VII, page 7.

process will be adopted in the Bopha response is not clear yet. The Omnibus Guidelines also sets processes for DSWD to work with another agency/NGO/private sector partner to implement a shelter project.⁸

The shelter response is also guided by the Global Shelter Cluster Operational Framework (GSCOF) for Typhoon Bopha (Pablo) 2012. This states that that ‘the provision of temporary housing is to be guided by relevant international standards particularly the UN Guiding Principles on Internal Displacement.’ No further international standards are cited within the Framework (although it is understood that the GSCOF is being continuously revised).

Following Tropical Storm Sendong (Washi) last year, the Commission on Human Rights of the Philippines (CHRP) issued a Human Rights Advisory on Human Rights Standards on Housing, Land and Property Rights of Populations Affected by Tropical Storms and Other Natural Disasters. This Advisory clearly sets out the national law and international standards applicable to shelter and permanent housing solutions for those displaced by natural disasters. Although it was developed in reference to Sendong, it has been acknowledged by the CHRP to be applicable in the response to Bopha (Pablo) as well. The Advisory references not only the UN Guiding Principles on Internal Displacement, but the Pinheiro Principles, relevant international human rights conventions to which the Philippines is a party as well as the applicable national and constitutional law.

While the Advisories of the CHRP are not themselves legally binding, they serve to remind authorities of their legally binding obligations under relevant provisions of national law, as well as to guide authorities on the relevant international standards. It is positive to see that the CHRP, together with UNHCR, is directing efforts to sensitising provincial and local governments on the content of the Advisory through inter-agency meetings. Further reference to this Advisory could be made in the GSCOF to enhance its implementation and to inform those engaged in shelter activities of the relevant national law on topic.

b. Current situation

President Aquino declared a state of national calamity pursuant to the PDRRM Act on Friday 7 December 2012. Following this, the Senate adopted a resolution urging President Aquino to create a task force that would handle relief operations and resettlement of the victims of Typhoon Bopha in Compostela Valley and Davao Oriental. This taskforce was then established and is now responsible for the overall oversight of the response, recovery and resettlement programme of the government. Provinces must propose budgets to “Taskforce Pablo”, based on post disaster needs assessment.

The main actors in terms of the provision of shelter are:

- Department of Social Welfare and Development (as GSC lead)
- Provincial Inter-Agency Committees and sub-committees relating to shelter
- National Housing Authority
- Local Government Units

⁸ Omnibus Guidelines on Shelter Assistance, p 16.

Though three months since the typhoon, at the time of this mission, the government had not yet started its emergency shelter assistance (ESA) yet, as it has been waiting for a national allocation from the budget. The government focus to date has primarily been on the provision and construction of bunkhouses. The government (with support from international actors like IOM) has housed approx 12,000 people in bunkhouses. As indicated in the GSCOF, and a number of presentations, bunkhouses are viewed as both an emergency and a transitional solution for people awaiting permanent housing.

In determining where bunkhouses are constructed, DSWD has taken the advice of Mining and Geosciences Bureau (MGB) on safe areas on government owned-land. At the time of writing this report, DSWD had recently directed provincial and local governments to stop building bunkhouses now and to focus more on longer term permanent housing options.

Discussions with DSWD indicated that the assistance provided by DSWD would be as set out in the Omnibus Guidelines (though clarification is still needed as to whether Modified Shelter Assistance would be available to those who remain on site). Other assistance would also be provided by the National Housing Authority (NHA) to supplement DSWD assistance and develop land for resettlement. For example, the NHA has a Housing Materials Assistance Program, which will involve distributing packages of CGI sheets and nails (worth 5,000PHP) to partially damaged houses, and would be provided in addition to the DSWD's ESA of 10,000PHP. The Housing Material Assistance will be available to those living in 'build zones' who are listed in the 'master list' certified by the Mayors.⁹ However, no written documentation could be obtained on this policy. Recent reports also indicate that this assistance will only be made available to 600 households in Compostela Valley and another 600 households in Davao Oriental.

The CSA available for those identified as being in No Build Zones will consist of a new shelter unit, with 70,000PHP provided by DSWD and 55,000PHP provided by NHA, being a total of 125,000PHP. For the development of the relocation site, NHA will be providing 800PHP/m² or 8,000,000 PHP/Ha with 100houses/Ha. The MSA will consist of DSWD's 70,000PHP, without the additional funds from NHA for new site development.

In terms of acquiring new land for resettlement, the responsibility rests with the LGU. NHA will support the development of the site (including levelling of land, access, drainages, electricity, water and sanitation). If the relevant LGU does not have the funds to purchase new land, they may request additional funds from the National Government.

In determining what government assistance would be available to those affected, assessments were undertaken by a team of assessors soon after Pablo to assess houses as either 'totally damaged', in that they were completely uninhabitable, or 'partially damaged' in that only a portion of the house was damaged and other parts could still be lived in. More precise criteria for the damage assessment could not be located.

In sum, the planned government assistance available is as follows:

⁹ See Minutes of Compostela Valley, Provincial Inter-Agency Committee meeting, 25 January 2013.

- a. Totally damaged housed in NBZs = relocation and CSA or MSA
- b. Partially damaged housed in NBZ = relocation and CSA or MSA
- c. Totally damaged houses in build zones = ESA and rebuild on site with MSA
- d. Partially damaged houses in build zones = Repair on site with ESA

According to one meeting with DSWD, all of the above are also eligible to receive the 10,000 pesos ESA, as a temporary measure, even if they are in NBZs. However, this could not be confirmed in writing. As of March, records indicate that DSWD have allocated ESA for 3381 households in Compostela Valley and 1571 in Davao Oriental, with most of the ESA being provided in kind instead of cash.

While there seems to be a general awareness and understanding of the policy described in the Omnibus Guidelines, how that policy will be carried out, how it will relate to other shelter assistance, the details of what will be available to which families, and the assignment of responsibilities between relevant authorities from national to regional, provincial and local level appeared to be in need of clarification. The details of the government assistance set out above are drawn from interviews and discussions. To date, the government has not issued a clear strategy or policy document on the assistance to be provided, which has resulted in speculation and different understandings of the terms and conditions which will apply. Instead, it seems each province has been working on different strategies, such as the 'Building Back Better Shelter Program' of Davao Oriental.

Additionally, the burdens on LGUs at this stage are also serving to delay the response. Playing such a pivotal role in beneficiary selection, as well as relocation site identification, the requirements on LGUs to prepare and submit all the necessary documentation to DSWD and NHA require time and resources which, in many cases, may exceed their current capacity. This situation is further exacerbated by the upcoming elections, and the pressures and expectations associated with being re-elected.

c. Lack of transitional options

The nature of the response demonstrates that there is a clear need to look at the gap emerging in terms of transitional shelter. It seems that there are similar problems as in Washi (from CRS report 11 and the ProCap paper), in that the government is not considering any further transitional shelter solutions apart from the shelter assistance set out above.. External shelter providers foresee that resettlement will take about two years, and in the meantime, people are living in makeshift homes and under tarpaulins. Although the government views bunkhouses as transitional shelters, there were numerous reports by local governments and different shelter providers complaining that people are particularly unhappy in bunkhouses where there is little privacy between families. Some shelter providers are trying to focus on this gap, and providing transitional homes which can be used on site, like Catholic Relief Services and Philippine Red Cross.

Meetings with government officials indicated that there was an ambiguity surrounding definition of terms like 'transitional'. For example, during a presentation by the Provincial Planning Committee of Davao Oriental, the representative referred to tents and bunkhouses as being 'transitional shelter.'

There is also a reference in the GSCOF to bunkhouses being a transitional option. Bunkhouses, while viewed by the government as being transitional housing, are not viewed in the same way by international actors, who classify them as being shorter-term emergency shelter. Additionally, stakeholders reported that provincial officials have classified different types of transitional shelter as being permanent shelter. In general terms, it seems the government is referring to any type of shelter where people will ‘transiting’ before being relocated as ‘transitional shelter’. For example, Davao Oriental’s ‘Building Back Better Shelter Program’, refers to “ladderized housing delivery services”, whereby “all transition housing units/bunkhouse and temporary shelters shall be reused for the next qualified beneficiaries for permanent shelter.”¹⁰ If terminology is not clarified, inequalities and inconsistencies may arise in terms of the assistance being provided to those affected.

d. Delays in decision-making

It seems one of the biggest issues for the shelter cluster (inclusive of both government and international agencies) is their inability to act while waiting for the pending decisions of different levels of government. The government appears to be focusing on relocations, and as the first step, identifying relocation sites within the affected provinces. Who will be relocated, however, is still to be decided. Government decisions on relocations (both in terms of sites for location and areas to be relocated), are dependent on the outcome of geo-hazard mapping being undertaken by MGB and the National Economy and Development Authority (NEDA), as will be discussed below.

e. Moving Forward

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

- Include references to the CHRP Advisory A2012-002 within the GSCOF.
- Work towards a common understanding within the shelter cluster (especially as between government and non-government) of terminology such as ‘transitional’.
- Clarify the types of assistance that will be available and to whom (combined DSWD and NHA) by encouraging the distribution of a government shelter strategy. For example, clarify whether I MSA will be available to both those who remain on site and those who are relocated and whether CSA will only be available to those relocated.
- Increase awareness of other shelter providers of criteria and procedures set out in the Omnibus Guidelines.
- Address need for alternate options while awaiting permanent housing and encourage government to also consider transitional housing.

3. Beneficiary selection

Beneficiary selection issues will become a more prevalent issue in the coming months as decisions are made on transitional and permanent options and beneficiary lists get longer and longer. Some

¹⁰ General Guidelines “Building Back Better Shelter Program”, Davao Oriental. March 2013.

of the issues related to beneficiary selection will be dealt with separately below (effect of tenure status and indigenous people), but it is first necessary to set out the relevant background.

a. Legal Background

The Omnibus Guidelines set out eligibility requirements for Core and Modified Shelter Assistance and Emergency Shelter Assistance separately. For both types of assistance, the Omnibus Guidelines require that the monthly income of a family of six be below the ‘food threshold’¹¹ in order to receive both types of assistance. They also state that the family ‘must not be a recipient of any other housing assistance of any other agency for the disaster in question’. It is worth investigating how literally this is taken, and how strictly it is enforced, as it could potentially put those who have received some assistance from external agencies at a disadvantage in terms of receiving assistance from the government.

For Core and Modified Shelter Assistance (construction of new permanent shelters) priority groups for shelter assistance is as follows:

- ‘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’

The above are identified through the Disaster Assistance Family Access Card (DAFAC). Pursuant to the Omnibus Guidelines, a team consisting of municipal social welfare and development officers and local NGOs should verify the circumstances of the intended beneficiaries. The final list of beneficiaries will be prepared by the DSWD Field Office.¹² Documentation related to the beneficiary selection process for other government departments like NHA, and other non-governmental agencies could not be located during the short mission.

b. Current selection process

According to DSWD, LGUs will decide on eligibility for access to shelter assistance based on criteria from the DAFAC. We were informed that 300 people were deployed to fill in these cards by the National Targeting Unit, which were then validated by either municipality DSWD officers or barangay captains. DSWD explained that the cards aim to identify people with disabilities, older persons, and other minorities as set out in the Omnibus Guidelines, especially the particularly poor. According to DSWD, people staying in bunkhouses (those with totally damaged houses) will most likely be prioritised for relocation to new permanent shelters to be constructed. As beneficiary lists are being developed, DSWD also plans to hold a range of community assemblies as a means of consultation.

¹¹ P10,936.00 in urban areas and P9,767.00 in rural areas based on the poverty statistic report dated March 2, 2007

¹² Omnibus Guidelines on Shelter Assistance, IX General Policies, 8.

As for other agencies, it seems many of them will undertake their own surveys and consult with prominent community leaders like barangay captains, puroq leaders and the church. In practice there appears to be heavy reliance on the word and advice of a barangay captain in developing beneficiary lists. Some caution should be exercised in relying on the advice and opinion of one person in the selection of beneficiaries.

While in practice non-governmental agencies may use similar methods and resources as government, it is important to emphasise the independence held by members of the GSC in their beneficiary selection process. Without any clear policy on what will be determined as ‘partially’ or ‘totally’ damaged houses, an artificial, or inconsistent, distinction may arise in determining beneficiaries of government assistance. Moreover, In the context of NBZ and the associated pressure to provide support only to those currently in ‘safe zones’, it is also relevant to highlight the humanitarian imperative in the provision of assistance: agencies need to be able to select on the basis of need and in places of origin.

c. Moving Forward

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

- Monitor whether those families who have already received some shelter assistance will be barred from accessing government shelter assistance.
- Promote a wider consultation in the verification of beneficiary information and the development of beneficiary lists.
- Emphasise the need to support household remaining in places of origin

4. Identification of No Build Zones

Following on from the response to Typhoon Washi, where the identification and demarcation of No Build Zones was particularly problematic, shelter providers, local government, national authorities and affected communities alike, are concerned about how the identification of NBZs will affect the response and recovery to Typhoon Bopha.

a. Legal Background

Although there is not one discrete law which addresses the use of NBZs, the *Water Code Of The Philippines*,¹³ *New Civil Code*,¹⁴ *Public Land Act*,¹⁵ *Philippine Fisheries Code of 1998*¹⁶ each address aspects of land use planning. LGUs are mandated to enact zoning ordinances containing

¹³ Presidential Decree No. 1067. Article 51 reads –

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.

¹⁴ Republic Act No. 386.

¹⁵ Commonwealth Act No. 141.

¹⁶ Republic Act No. 8550.

comprehensive land use plans for their territory.¹⁷ As part of this process they are required to take into account 'human settlements'.¹⁸ The land use plans should be compliant with the standards and guidelines established by the Housing Land Use Regulatory Board for cities,¹⁹ and the sangguniang panlalawigan (Provincial Council) for component cities and municipalities.²⁰ It is within these land use plans that NBZs should be identified and demarcated.

Though no legal instrument could be located (during the mission) detailing this process, practice indicates that NBZs are identified primarily on the basis of recommendations of the MGB. An interview with MGB revealed that the National Economy and Development Authority (NEDA) will be responsible to consolidate the information provided by three agencies involved in the identification and recommendation of the Non-Building Zones (NBZ). The 3 agencies are:

- MGB: responsible for defining the geo-hazards maps for flood and landslides. Identification takes place primarily on the ground through field officers.
- Department of Sciences and Technology (DOST): responsible for identifying the theoretical floods risk areas through recreation of flood models in the area using satellite/plane images.
- Philippine Volcanology and Seismology Agency (PHIVOLSYS): responsible for defining the geo-hazards maps for earthquake and tsunami.

Reports issued by MGB include the identification of the level of risks (floods and/or landslides) of areas, maps and recommendation for mitigation measures). The reports identify areas as being:

- High risk – where it is unsafe to build
- Medium risk – where mitigation measures may be appropriate
- Low Risk – safe to build.

The MGB provides recommendations on action that should be taken, which could be quite specific, like moving certain houses only a matter of metres away, or quite drastic, like declaring a NBZ and relocating communities.

A gap in the legal framework was previously identified by the Internal Displacement Monitoring Centre and Norwegian Refugee Council report, "in that MGB's hazard maps and assessments are only recommendations and cannot legally compel LGUs to act."²¹ According to this report, following Washi, it became apparent that people had been living in hazardous areas without being informed, because the relevant LGUs had decided not to act upon the advice of the MGB.

This gap in the legal framework is being addressed in a number of ways following Bopha. For one, an instruction has been issued by President Aquino that all local governments must adopt the

¹⁷ Section 20(c), Republic Act No. 7160 otherwise known as The Local Government Code.

¹⁸ Ibid.

¹⁹ Section 1(c), Executive Order No. 72 issued on 25 March 1993. Cross reference to Republic Act No. 7279 otherwise known as the Urban And Housing Development Act (UDHA)

²⁰ Ibid, Section 2(a).

²¹ Internal Displacement Monitoring Centre and Norwegian Refugee Council, "Disaster-induced internal displacement in the Philippines: The Case of Tropical Storm Washi/Sendong" (2013), 26

recommendations of the MGB and NEDA (the instruction could not be obtained during the course of this mission). Secondly, national level authorities are refraining from providing rebuilding assistance to those in NBZs (though there are differing accounts of whether a household in a NBZ will still be able to access the ESA). Thirdly, in order to obtain approval for relocation sites for resettlement programs, local governments must submit a certification from MGB that the relocation site is a safe area.²²

Apart from the identification of new NBZs, in Davao oriental, it was reported that the Department of Works and Highways requires an easement of 15metres along either side of specified highways. The Water Code also imposes an easement along the shores of the seas, lakes, and rivers of three metres for urban areas, 20 metres for agricultural areas, and 40 metres for forest areas. It seems there is already a general awareness of this requirement at the barangay level (cited by a barangay captain during an interview) and while not previously enforced, Bopha may provide an opportunity for more strict enforcement of the Water Code given that most of the houses within this zone were totally destroyed.

In terms of human rights considerations in enforcing NBZs, the CHRP Advisory A2012-002 and the Urban Development and Housing Act of 1992 addresses NBZs to the extent that it stipulates that people have the 'right to be informed of matters relating to land, property and housing' and must be consulted, to be heard and participate in decision-making processes.²³ In response to the generation of discussion surrounding NBZs, the CHRP is developing a new advisory to supplement the advisory A2012-002 it issued in response to Typhoon Washi. This advisory will specifically address the enforcement of NBZs. In its current draft, it defines and distinguishes 'NBZs' and 'No habitation areas'. NBZs are defined as 'areas where there is permanent danger or threat of landslides or flooding. Construction of any kind of structures therein, permanent or otherwise, whether for residential, commercial, industrial or other purposes are not allowed.' On 'No habitation zones', on the other hand, only residential construction is not permitted. This distinction was not made apparent during the discussion and meetings held during the course of this mission.

With regard to consultation procedures, the draft new CHRP Advisory specifically states that 'public consultations' must be conducted before ordinances are issued by the local government, and in reference to the Guiding Principles on Internal Displacement, states that 'Communities concerned should be able to give a free and informed consent with respect to matters relating to displacement, relocation or resettlement.' It also provides that grievance redress mechanisms should be accessible for those affected by the ordinances. It should be noted, however, that the Advisory is still in its draft form and may be subject to change.

b. Current obstacles with NBZs

Consultations indicated that both DOST and PHIVOLSYS are currently facing challenges in meeting demands with limited personnel. Despite not having information from DOST, however, MGB had completed the geo-hazards maps for floods and landslides for the 3 municipalities at Davao Oriental

²² See minutes from Compostela Valley Provincial Inter-Agency meeting, 25 January 2013, p 7. .

²³ Human Rights Advisory CHR (IV) - A2012-002, para 7 and 8, UDHA s25 and 26.

(Boston, Cateel and Baganga) and 2 out of 5 highest affected areas in Compostela Valley: New Batan and Moncayo. The remaining were expected to be completed in the following month.

From the variety of government meetings attended in researching this report, it is clear that MGB's advice is crucial in the development of plans for both transitional and permanent shelter solutions. The decisions of national, regional, provincial, municipal and even barangay level authorities involved in shelter are all dependent on the outcome of MGB's advice. The capacity of MGB was initially very stretched but it is understood that this is now being addressed. However, given the reliance on the MGB by all government agencies concerned, demands still remain considerable. To get a full sense of the risk faced in one area, it also requires overlapping of several maps, which is not always technologically possible for LGUs. It seems in practice, 'safe areas' are increasingly determined by local authorities and barangay captains, in conjunction with MGB maps, on the basis of local knowledge and observation.

On 15 February Taskforce Pablo convened a meeting in Compostela Valley in order for MGB to share the findings of their updated survey mapping of hazardous areas, and for the initial identification of potential relocation sites. Following this meeting, it is now the responsibility of the municipalities to pass an ordinance and start informing people within their constituencies.

Most stakeholders are predicting that the process of issuing ordinances and formally declaring NBZs will take a considerable amount of time. The pending government decisions are further complicated by the upcoming elections. Most agree that no decisions will be made on NBZs before the elections have passed in May this year. Candidates may be concerned about relocating constituents away from their constituency, or upsetting existing constituents by declaring NBZs over their existing properties.

To date, no NBZs have officially been declared yet and many doubt whether they will ever be officially declared. For some municipalities, like New Bataan, the declaration of NBZs involves particularly drastic, and virtually unrealistic, measures. Almost the whole of municipality of New Bataan has been identified as a high risk area by MGB, and the recommendation of MGB has been to relocate almost the whole municipality to two identified safe puroks (neighbourhoods) in higher areas. The Mayor of New Bataan is strongly arguing for the use of mitigation measures, like dykes, to be taken in some instances instead of complete relocation – which involve relocating all of the key municipal buildings like the town hall etc. He, and other concerned local governments, voiced their concerns at meeting of Taskforce Pablo on 15 February, and to date there has been no formal response to their proposal to implement mitigation measures instead.

While mitigation measures are included in the reports done by MGB, the measures are not always seen as viable and they often require a heavy financial investment. The current budget focus has been on relocation and reconstruction costs, and most of these figures will only be finalised and transferred after the election, and once NBZ have been confirmed. To date, it seems little attention has been paid to estimating budgets for mitigation measures.

There are signs, however, that the authorities are taking the recommendations of MGB seriously and will implement its advice through enforceable measures. The Province of Davao Oriental, for example, is currently sharing its plans to update their Comprehensive Land Use Plans and legally

enforce the identified NBZ.²⁴The Barangay captain of Baganga also referred to relocating all those people who had been living in the easement area of 30 metres (which existed before Bopha) from the sea.

As the process of identifying and declaring NBZs progresses in the affected areas, it is important to note the experience following Washi, where there were problems occurring in demarcation, where the maps used by the Department of City Planning did not necessarily match barangay boundaries and were not coordinated by Office of City Planning. Authorities did not physically delineate boundaries either, and no official statement was made about use of “high risk zones”. As Bopha affected more rural areas however, some of those interviewed did not seem as concerned with the demarcation issue.

c. Moving Forward

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

- Clarify how NBZs will be physically demarcated.
- Advocate that any delay in officially declaring NBZs should not delay access to shelter assistance.
- Ensure that those identified as living within “high risk” areas by MGB are informed of the risks that they face and participate in consultations regarding relocation.
- Consider proposing the development of a clearer legal instrument detailing the process of declaring and enforcing a NBZ.
- Consider funding short term capacity support for MGB, DOST and PHIVOLSYS to undertake the high volume of assessments, and consider further research on feasible mitigation measures which could be used instead of relocation.

5. Relocation issues

With the consideration of NBZs comes the necessary implication of relocation. Although relocation would not normally be considered within the ‘emergency and transitional phase’ and thereby falling under the purview of this research, in this case, it is worth discussing because of its impact on emergency and transitional shelter in this response. While the government may have been delayed in issuing emergency shelter assistance and identifying NBZs, it is quickly focusing on obtaining, clearing and developing land for relocation of communities. The process of determining *who* will be relocated, however, will take significantly more time.

Shelter providers are accordingly restricted in their activities until such time as decisions are made about relocations, effectively extending the emergency phase of the response to Bopha. In providing assistance, shelter providers need to know who will be remaining on their pre-Bopha land and in

²⁴ Presentation at ‘Building Back Better and Resilient Post Pablo Communities, Livelihoods and Environment in eastern Mindanao – A Roundtable Discussions and Forum’, 27 February 2013.

need of support to repair or rebuild their homes, and who will be relocated to new sites deemed 'safe' by the government. As there are no real 'transitional' options available yet, this has left, and will leave, affected households living under emergency shelter conditions for sometime to come.

a. Legal Background

The Urban Development and Housing Act (UDHA) discourages evictions,²⁵ and the Advisory of the CHRPA confirms that this is still the case for 'no-build and geo-hazard zones as declared in proper local ordinances.'²⁶ Once all other alternatives have been explored, however, the UDHA describes a set of 'mandatory safeguards' that must be complied with in the event of eviction or demolition (e.g. 30 days prior notice, adequate consultation, presence of local government officials as well as adequate relocation). These are reaffirmed as being applicable in implementing NBZs in both the CHRPA Advisories.²⁷

The CHRPA Advisory also emphasises that displaced persons should have a choice about their relocation. It states that the Government should '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, based again in reference to the UN Guiding Principles on Internal Displacement (principle 28). In the event an area is declared as a NBZs and voluntary return is not possible, the Advisory states that 'communities concerned should be able to give a free and informed consent with respect to matters relating to displacement, relocation or resettlement.'²⁸ Public consultations are the suggested method of obtaining this consent.

The Advisory also clearly sets out the minimum standards and conditions prescribed by Philippine laws in relocated displaced persons. Applying the standards of the UDHA,²⁹ basic services (potable water, power and electricity, sewerage facilities, etc) must be accessible to all those in a relocation site, and there must be opportunities available to sustain employment and livelihoods.

In terms of identifying suitable land for relocation, the CHRPA Advisory states that 'the unavailability of land should not be a stumbling block to finding durable solutions', and reference is made to the mandate of the NHA to engage in 'land banking' for resettlement programs.³⁰

At the time of writing, the Congress of the Philippines had just passed a landmark bill on the protection of the rights of internally displaced persons (IDPs). The bill sets out a collection of rights for people during and after they have been forced to leave their homes for a range of reasons, including natural disasters. It provides that they must have access to certain basic facilities and sets out procedures that must be followed for their return and resettlement. The bill is still awaiting endorsement from President Benigno Simeon C. Aquino III, so it will not be applicable in the response to Bopha. This bill should be noted, however, for any future disasters causing internal displacement in the Philippines.

²⁵ Urban Development and Housing Act, s 28.

²⁶ Human Rights Advisory CHR (IV) - A2012-002, para 9.

²⁷ Paragraph 9 – 18 addresses the procedures to be adopted for relocation, evictions and resettlement

²⁸ Stemming from Principle 7(c), United Nations Guiding Principles On Internal Displacement,

²⁹ Urban Development and Housing Act, s 21 and 22.

³⁰ Comprehensive and Integrated Shelter Financing Act of 1994, s4(a).

b. Current progress in identifying relocation sites

The process of identifying relocation sites is currently ongoing, involving the NHA, the MGB, provincial and local authorities. In the province of Compostela Valley the provincial government, local governments and NHA were all playing a role in the undertaking of site evaluation and development plans. Once a site has been identified, the Mayor and Provincial Governor must approve and an application must be made to NHA containing (Minutes of Prov-IAC):

- Title (in the name of the LGU)
- Updated tax declaration
- Updated tax clearance
- Topographic map (schematic) or site upgrading
- MBG clearance
- Access road or road right of way
- Access to utilities

Once approved, a legal procedure will also be required to convert the relocation sites from ‘agricultural’ or ‘institutional’ land to ‘residential’ land, and this requires an environmental certification process by a bureau under Department of Environment and Natural Resources. This process is meant to take around 20 days but may be longer, and some reported concerns about this legal procedure taking time. In Compostela Valley, the New Bataan LGU recently distributed the first copy of a certification for a relocation site on what was private land. Dates on the documentation indicate that it took more than one month from the date of issuance to the certification.

One of the biggest delays seems to be in actually acquiring the new land for relocation. While government owned land can be more quickly cleared and developed, it will take some time to negotiate purchase of other land that is privately owned. Unfortunately it does not appear the municipalities have undertaken the same process of ‘land banking’ in these affected areas, which was a useful mechanism following Washi to acquire land for resettlement.³¹ Ensuring that relocation areas comply with the necessary requirements concerning access to basic facilities, services and livelihoods will presumably take some time as well.

Although concerns exist about the willingness of those within the NBZs to relocate, in some cases it does seem accepted that there is a need to relocate. In the barangay Baganga, for example, the relocation site had been identified by the Barangay Captain, and apparently approved by MGB, but apparently they were just awaiting funding and go ahead from higher levels of government. Some of those identified for relocation within the coastal no-build area seemed to be aware of the need to relocate and willing to do so. It should be noted, however, that these were not land owners.

c. Moving Forward

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

³¹ Seki Hirano, ‘Learning from Urban Transitional Settlement Response in the Philippines: Housing, Land and Property Issues’ (Catholic Relief Services 2012), 8.

- Continue to draw attention to the processes and considerations highlighted in the CHRP Advisory for relocations, which address compliance with humanitarian principles, consultation processes and minimum standards for relocation sites.
- Look further into the benefits of promoting 'land banking' to prevent delays in future disasters.
- Lobby for decisions to be made on who will be relocated as soon as possible.
- Ensure that those who are not going to be relocated still receive adequate assistance to rebuild their homes.

6. Tenure status and its effect on provision of shelter.

A range of different tenure types exist in the affected areas. Although Bopha was largely a rural disaster, with many farms affected, the affected areas also include property and land interests of mining companies, the military, indigenous groups, the government and private individuals. Tenure has not been problematic in the emergency phase, because the response has been primarily focused on distributions of tarpaulins, emergency shelter kits and repair, which have not required validation of land occupation arrangements. As the areas are primarily rural, it has not given rise to the same problems of space as in urban disasters either. However, as the response moves forward to more transitional and permanent solutions, the tenure status of those affected will become a prevalent issue, as identified in the second assessment undertaken by Reach³².

a. Legal Background

This report will not attempt to describe the complex array of land tenure options used in the Philippines. More generally it can be said that agricultural, forest, mineral and national park lands are considered public domain and owned by the state³³ and only agricultural lands can be privately owned. The 1987 Public Land Act further describes the categories and uses of public lands.

Public lands aside, rural land tenure can be briefly summarised as follows:

1. **Private Land** - ownership of private land may be acquired through succession, sale and other modes of conveyance, and Agricultural Tenancy (tenant is allowed to own the land he tills under the Comprehensive Agrarian Reform Law)
2. **Public Lands suitable for agriculture** (refer to Commonwealth Act 141, Public Land Act):
 - For homestead settlement
 - By sale
 - By lease
 - By confirmation of imperfect or incomplete titles (judicial legalization or administrative legalization: free patent)

³² Reach: Typhoon Pablo 2012. Shelter Cluster Report – Final Assessment Report, March 2013.
http://www.reach-initiative.org/wp-content/uploads/2012/12/2013-04-02-Philippines_Bopha_Shelter-Sector-Progress-Assessment-Report_14Mar2013_FI.pdf

³³ 1987 Constitution of the Republic of the Philippines, art 7 s(3).

3. **Certificate of Ancestral Land/ Ancestral Domain Title/ Ancestral Domain Claim** for under Indigenous Peoples’ Rights Act.

b. Effect of land tenure status on shelter assistance

Following Typhoon Bopha, the National Targeting Unit conducted assessments in the affected areas and were required to fill in a DAFAC for each family. On the DAFAC it also required the household to identify one of the following types of tenure:

Own house and lot
Own house but rent lot
Own house, rent-free lot WITH consent of owner
Own house, rent-free lot WITHOUT consent of owner
Rent house/room including lot
Rent-free house and lot WITH consent of owner
Rent-free house and lot WITHOUT consent of owner

Results from this assessment were not able to be obtained, nor did DSWD indicate how the type of tenure would affect the type of assistance available.

The second Reach assessment also asked tenure related questions using the same options. The report found that, in some cases, the land tenure status of households had changed since the Typhoon, presumably because they’ve had to move to other areas. According to the findings of the Reach report, 48% of rural households own their house and are living rent free on the land with the consent of the owner, and 22% of households (living in urban/peri urban houses) had no response to questions about land tenure. Results from questions related to the form of documentation they use to demonstrate consent were inconclusive, with the report noting that in many cases, the landowner is an extended family member that has permitted for a house to be built on the land rent-free. Additionally, the Reach assessment noted there was a general ‘discomfort in answering’ questions related to formal land arrangements, because many families are living on land without the consent of the landowner. As such, the second Reach Assessment Report identifies the tenure status of those affected as being a primary issue of concern.

Active shelter providers explained that most people do not have documentation readily accessible. Similarly, in the assessments witnessed during this mission, it seems like many of those worst affected were living under informal arrangements, with no documentation to demonstrate that they were lawfully living on an area of land prior to Bopha. In light of the above findings, validating information on land ownership and occupation will take some time. From provisional research, there do not seem to be any particular plans or processes developed for verification of title/occupation arrangements: the current responsibility rests with the Bureau of Lands Management. Given the findings of the Reach Assessment that many rural households either have a general consent from an extended family member or no consent at all, special attention should be paid to ensuring that these households are not disadvantaged or neglected in the provision of shelter assistance.

Importantly, the Omnibus Guidelines provide that ‘families with or without land ownership but situated in safe areas’³⁴ should be able to access Emergency Shelter Assistance. In order to receive the Core or Modified Shelter Assistance to relocate or build a new home, however, ‘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’ must be shown in order to be eligible. With regard to new resettlement areas developed by the Government, DSWD and NHA indicated such documentation demonstrating ‘possession of a guarantee of permanent or long term occupancy’ would be provided to those being relocated. Despite this indication, there seems to be some ambiguity surrounding the tenure situation for those who are relocated to resettlement areas. During a short interview, the NHA representative said that those relocated will have usufruct over the new core shelter units. This was at odds with the advice of DSWD, who said that they would have property ownership.

For those landowners that will be relocated away from their property because it is identified as being within a NBZ, DSWD noted that ownership of the land would still remain with the original landowner. Whilst they will not be permitted to reside on the land, landowners will still be able to use the land for livelihood purposes (without building on the land). No legal documentation could be located during this short mission to confirm this. If ownership does remain with the original landowner, this means that the LGUs will have a long term role in enforcing NBZ, initially demolishing buildings and relocating people, but also continuing to monitor whether people return back to their own lands for residential purposes in the following years. By not compulsorily acquiring land declared to be within a NBZ, it may allay concerns about motivations for declaring certain areas as NBZ, however, as the process of relocating progresses, it may be worth clarifying the plans for longer term enforcements of NBZ and the tenure status of land located within new NBZs.

With regard to transitional shelter, a number of non-government shelter providers explained that part of the criteria to provide transitional shelter is to confirm that people have either land title or have permission to remain on the land for minimum number of years, (one said 15 years!) so as to avoid them being evicted and the shelter rendered useless. PRC explained that it is particularly difficult to provide assistance to those without documentation, as shelter providers need some assurance that the shelter will not be demolished or that the family will not be evicted.

It is not clear what options will be available for those households who do not have documentation of their previous land arrangements and were living in a NBZ and must be relocated. A representative from the CHRP, Ms Junitte Rose F. Barroquillo, had a positive outlook on the opportunities that Bopha may provide. “Typhoon Bopha, without intending it, may actually alleviate the plight of our informal settlers, among others,” she said. Through the promotion of principles of non-discrimination and equitable assistance, Ms Barroquillo explained that “informal settlers will be included in the relocation plans to safe areas, giving them access to better living conditions and arrangements.”³⁵

³⁴ Omnibus Guidelines on Shelter Assistance, Section VII, B, I

³⁵ Interview with Ms Junitte Rose F. Barroquillo, and also Sheu Jeen Lee and Tessa Kelly, ‘Stories from the field: Legal Issues in Typhoon Bopha’s Shelter Response’ <http://ifrc.org/en/what-we-do/idrl/latest-news/current-disaster-law-programme-news/stories-from-the-field--legal-issues-in-typhoon-bophas-shelter-response-61150/>

c. Moving Forward

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

- Propose that special procedures/mechanisms be developed to expedite validation process for land ownership/occupation arrangements.
- Clarify the future tenure arrangement for landowners with land located within NBZs.
- Direct attention to ensuring that those people without proper evidence or documentation of pre-Bopha land interest still have adequate access to shelter assistance.
- In the GSCOF, reference should be made to the CHRP Advisory which states that ‘all persons should possess a degree of tenure security’, and highlights Philippine law which provides that beneficiaries of resettlement programs ‘are entitled to support services, such as land surveys and titling at minimal cost and exemption from the payment of documentary stamp tax, registration fees and other fees for the issuance of transfer certificates of title.’

7. Indigenous people considerations

Most assessments indicate that approximately 60-80% of the people affected identified themselves as being from an indigenous group. Much of the affected area is also under Certificate of Ancestral Domain Title or Ancestral Domain Claim, which may each individually extend over large areas of land.³⁶

In developing shelter solutions for people who are living in these areas, it is important to have an understanding of the legal background to indigenous land rights issues in the Philippines as well as a contextual understanding of the difficulties faced by indigenous peoples in accessing shelter.

a. Legal Background

The Indigenous People’s Rights Act (IPRA) of 1997 establishes a system of recognising ancestral property rights and interests in the Philippines. The IPRA recognises two types of ancestral land interests:

- **Ancestral Domain:** Areas ‘generally belonging’ to indigenous peoples, and includes ‘ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by indigenous peoples (IPs) and indigenous cultural communities (ICCs).³⁷

³⁶ The affected municipalities which have the most ADT or ADC are in New Bataan and Boston (both have AD title) and Cateel also has an AD claim.

³⁷ Indigenous People’s Rights Act (IPRA) of 1997, s3(a)

- **Ancestral Land:** Is a more exclusive interest, referring ‘to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs.’³⁸

A certificate formally recognizing these two interests may be issued upon resolution of a claim. One important aspect of this law is that it requires ‘free prior and informed consent’ from an indigenous group before implementation of a development project which will affect the land held under an ancestral title (or even a claim).

It is important to note that both Ancestral Domain (AD) claims and title can co-exist with other forms of tenure. Any tenure instrument which existed before the IPRA was enacted also remains. This means that in any one area of AD claim or title, the initiatives taken under the Comprehensive Agrarian Reform Law may apply as well as community based forest management agreements, mining tenements and even private property. As the National Commission for Indigenous Peoples (NCIP) explained, this involves the administration of three different government bodies: NCIP, Department of Agrarian Reform and Department of Energy/Environment and Natural Resources (an agreement recently had to be signed between these three bodies due to issues arising in the administration of these areas).

In terms of identification and documentation, NCIP explained that one title or claim is issued in the name of a tribal group, not to separate families. Claim books list who is part of the tribal group and considered part of the community, and the tribal leaders also have this knowledge. Individuals do not necessarily possess separate documentation setting out their interest in the land.

Another important aspect of the IPRA is the provisions addressing relocation of IPs in the event of natural disaster. Section 7 (d) states that in the event the IPs are displaced as a result of a ‘natural catastrophe’, the state shall ensure that:

- i) The displaced IPs have the right to return to abandoned lands when it is determined safe
- ii) If their ancestral domain lands are no longer safe to return to, the state should ensure IPs enjoy ‘security of tenure over lands to which they have been resettled’
- iii) Basic services and livelihood shall be provided to them

The draft new CHRP Advisory also addresses IPs specifically, and reiterates these provisions of the IPRA. It also states that IPs shall ‘have the right to participate in decision-making in matters affecting their life and rights’, and that pursuant to the IPRA, free and informed consent must be obtained with regard to relocation and resettlement.³⁹

Additionally, in identifying relocation sites, the Advisory also notes that, the State, in cooperation with the IP/ICCs, shall ensure that indigenous sacred places, including burial sites, be ‘preserved, respected and protected’.⁴⁰

³⁸ Indigenous People’s Rights Act (IPRA) of 1997, s3(b)

³⁹ CHRP draft advisory para 11, and Indigenous People’s Rights Act (IPRA) of 1997.

⁴⁰ CHRP draft advisory para 10, and Indigenous People’s Rights Act (IPRA) of 1997.

b. Current obstacles and issues

According to NCIP, the biggest obstacle is ensuring that indigenous people have physical access to shelter assistance, as they are often in very remote and isolated areas. NCIP also explained that generally it is not culturally appropriate to ask for help, so it is unlikely tribal leaders would seek assistance. A number of stakeholders stressed that IPs should not be forgotten, even if they are hard reach. Indigenous group representatives also said that they have difficulty accessing funds and assistance because they are so remote.

DSWD asserted that they are currently engaging in a process of talking to tribal chiefs, and each municipality has a tribal coordinator which provincial authorities must liaise with. When it comes to issues of NBZs and relocation, the most important consideration according to NCIP is to remember to consult with indigenous groups. The regional director of NCIP did not foresee major objections to relocation, so long as there is a thorough and genuine process of consultation and information sharing. For each indigenous group, tribal leaders are nominated and LGUs can, and should be encouraged to gather together the tribal leaders to inform them of the safe and unsafe areas and to invite their input in recovery plans.

A shared complaint by representatives of indigenous groups who attended a multi-stakeholder workshop on 'building back better' following Bopha, was that there are no specific plans for IPs in remote areas, nor integration of IPs in the plans. They asserted that current recovery plans are not addressing IPs and their needs, and suggested that there should be representatives from IPs in the committees developing the recovery plans.

With regard to the development of housing designs for IPs, DSWD has said that they will use a special design for IP housing, using wood and not concrete. NCIP stressed that bunkhouses were not appropriate options for indigenous people, who are accustomed to living in one house per family. NCIP also noted that instead of constructing new houses, most IPs would prefer the provision of materials to rebuild their own homes.

c. Moving Forward

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

- Obtain clear maps from NCIP on which areas are under AD title/claim and the details of relevant group leaders.
- Advocate for sufficient attention to be paid to remote areas and encourage shelter providers to direct services to these areas.
- In areas which are under ancestral domain claim/title, identify tribal leaders and ensure that shelter providers in that area consult with the relevant tribal leader in developing any shelter solutions.
- Invite representatives/tribal leaders to GSC meetings and ensure that they are provided with opportunities to comment on or provide input to the development of recovery plans.

- Encourage the provision of building materials rather than construction of new houses in AD areas

8. Logging bans.

Lumber is highly valued and sought after in the Philippines. Following heavy floods in 2011, President Aquino imposed a nationwide moratorium on all logging. With Typhoon Bopha causing six million coconut trees to fall in Davao Oriental alone, and with the increasing need for construction materials, the government has recognised the necessity to use normally banned logs/lumber. On the instruction of the president, the department of Environment and Natural Resources issued a Directive on 13 December 2012 to the Regional Director of Davao City to ‘donate all confiscated logs/lumber and retrieved timbers’ to DSWD and the Department of Social Works and Highways for shelter reconstruction. Further, the Directors were asked to coordinate with relevant departmental directors to implement the ‘necessary arrangements for the immediate retrieval of fallen timbers from natural forests, under the Cash-For-Work Program of the DSWD.’

To make use of all the fallen lumber is an ambitious task, with a three month time limit on the lumber before it becomes unusable.⁴¹ The Task Force Chief Coordinator of Davao Oriental’s Building Back Better Shelter Program and the Early Recovery cluster, co-led by UNDP, recently made a call to coordinate the cutting of fallen trees by mobilising chainsaws before the end of June to avoid infestation of Rhinoceros beetles in the lumber. DSWD has noted that they intended to provide a chainsaw to every barangay, but most assume that the majority of the lumber will still go to waste. Many of the more expensive hard woods have also fallen in public lands, but are in particularly high and hard to access places. DSWD stressed the need for logistics support in order to transport the lumber from mountainous areas into areas where they could be put to use.

i. Moving Forward:

In order to address the emerging issues set out above, it is suggested that consideration be taken by the GSC to:

- Consider seeking logistics support in order to make use of the fallen lumber which is now legal to use for shelter purposes.
- Be aware, for future operations, of optimum usage times for local (recycled) construction material.
- Consider joint programming with livelihoods and early recovery cluster addressing debris clearance and uses of lumber for shelter recovery.
- Coordinate with the Cash For Work project to cut, collect and store coconut trees needed for shelter construction for emergency, temporary/transitional and permanent shelter.

⁴¹ According to an interview with DSWD.

9. List of consultations

For the compilation of this report, meetings, discussions or telephone interviews were conducted with the following government agencies, organisations and individuals:

- Shelter cluster coordinator
- DSWD (twice)
- Mayors (met and also heard at meetings)
- CHRP
- UNHCR
- International Organisation for Migration
- Catholic Relief Services
- Habitat for Humanity
- International Committee of Red Cross
- National Housing Authority
- Reach
- National Commission for Indigenous People
- United Nations Development Programme
- UNOCHA
- PRC