



Felix Baong, 74, a farmer tenant from Barangay Catahay, Guiuan, Eastern Samar. As farmer-tenants, Felix and his wife Clara have to share half of their produce with the landowner. Eighty percent of the more than 200 coconut trees on the couple's farm were destroyed by Typhoon Haiyan. Felix and Clara are among the undetermined number of tenants in affected areas struggling to recover their livelihoods. Photo: Caroline Gluck/Oxfam 2014

# BEYOND SAFE LAND

## Why security of land tenure is crucial for the Philippines' post-Haiyan recovery

**Building back better after Typhoon Haiyan requires more than houses on safe land. It requires measures to improve the security of land tenure for poor and vulnerable people. Security of land tenure is essential to re-establish shelter and livelihoods and to reduce the risks of chronic poverty. Without measures to promote land tenure security in the Philippines, there are risks that those most affected by the disaster will be more vulnerable to future disasters.**



# EXECUTIVE SUMMARY

Following the devastation caused by Typhoon Haiyan in November 2013, the Philippines authorities pledged to ‘build back better’ – a vision designed to ensure that affected communities were stronger and more resilient in the face of future storms. Significant efforts and some important steps have been taken by various authorities to begin fulfilling that vision.

But unless the fundamental issue of security of land tenure is addressed, poor and vulnerable people – those most affected by Typhoon Haiyan – are at risk of being left out of any lasting recovery and rehabilitation in the aftermath of the strongest storm to ever make landfall.

The government’s commitment to build back better after Typhoon Haiyan requires more than building safe houses. It also demands measures to provide land tenure security for poor and vulnerable people as part of relocation and resettlement efforts, and as part of livelihoods recovery programs.

## Why security of land tenure matters

The lack of secure access to land is closely linked to poverty, especially in rural Philippines. In Region VIII alone, which includes the disaster-affected areas of Leyte and Eastern Samar, approximately 32 percent of the total population are informal settlers. This striking degree of tenure informality – almost one-third of the population – correlates with one of the highest rates of poverty in the country.

Tenure insecurity creates cycles of vulnerability to natural disasters. Displaced persons who do not have a rightful claim to land are more likely to:

- Fall into poverty, as evictions – or the threat of eviction – prevent restoration of livelihoods;
- Move back from sites of displacement or relocation to unsafe land, and;
- Form residual caseloads of landless groups without access to land and permanent housing.

Calamities provide opportunities for land speculation and land grabs as a result of population displacement and massive relocation programs. Both in urban or rural areas, women face particular risks of exclusion or marginalization despite policies that guarantee their entitlements to property rights and land ownership.

People with insecure forms of tenure are more at risk of eviction when their efforts to return, repair and rebuild their homes are prevented. This briefing discusses incidents of ongoing threats of unreasonable evictions, particularly where land is valued for other purposes, such as tourism.

A further threat of eviction arises from government proposals to move as many as 200,000 people away from the seashore as part of its efforts to build safer communities.

It is a positive step that the process to determine which communities will be

relocated now includes geo-hazard mapping of safe, unsafe and controlled zones. Nevertheless, secure and inclusive resettlement also requires effective land use planning.

Land use planning reduces the risk of future displacement or evictions of vulnerable communities by facilitating their participation in identifying suitable areas for settlements that are based on safety considerations as well as development and infrastructure needs.

A national land use policy is also needed, as proposed by the pending legislative measures on National Land Use and Management, to ensure coherence and complementarity among land use plans of adjacent local governments, and to integrate disaster risk reduction measures in long-term local land use, while making subsequent investment and development plans risk-sensitive.

People with no secure access to land are at risk of missing out on permanent shelter programs put in place as part of the response to Typhoon Haiyan. The Omnibus Guidelines for Shelter Assistance after natural disasters in the Philippines have the potential to exclude lessees and informal settlers from permanent shelter assistance because of the requirement that beneficiaries have a guarantee of ownership or permanent or long-term occupation of at least 10 years over the land.

There is a need for shelter assistance guidelines to provide guarantees of ownership or long-term occupancy of land to informal settlers and lessees in order to ensure their eligibility for permanent shelter assistance. The guarantees may be based on housing programs for the poor under the Urban Development and Housing Act. Legal options for tenure security guarantees include ownership, community mortgage or usufruct, as appropriate.

In agricultural communities, farmers and farm workers at risk of forced eviction can also potentially miss out on opportunities for livelihoods recovery, including equitable shares in net proceeds of agricultural crops. Vulnerability to eviction is the case not only for coconut tenant farmers and farm workers because their trees have been destroyed, but also for all landless farmers and farm workers and existing agrarian reform beneficiaries in the region.

The destruction of land records has opened the possibility of further delays in the implementation of the government's Comprehensive Agrarian Reform Program. In response, the government should pass new legislation to provide for the completion of the land acquisition component of the program, and the Department of Agrarian Reform should expedite the processing of land claims under the land acquisition and distribution (LAD) component of the program, particularly in Region VIII.

Fishing communities affected by Typhoon Haiyan are particularly vulnerable to displacement or inappropriate relocation, as they need to live near the coast to maintain their livelihoods. Under the *Philippine Fisheries Code of 1998*, fishing communities are entitled to be relocated to land 'near [their] fishing grounds' and are entitled to ownership of lands to which they are resettled.

Philippine laws provide measures to promote security of tenure for persons affected by Typhoon Haiyan. These laws include the Urban Development Housing Act (UDHA), the Comprehensive Agrarian Reform Law, the Fisheries

Code, and the Magna Carta for Women.

The challenge is to ensure the full implementation of existing laws and programs in the recovery process. In particular, there is a need to prioritize tenure security measures to ensure access to land, as well as inclusive access to permanent shelter and livelihoods recovery, for all displaced landless settlers, farmers and fisherfolk in Typhoon Haiyan affected areas.

Land tenure issues in the Typhoon Haiyan recovery cut across urban and rural contexts. Humanitarian actors need to address common land tenure issues across the shelter and livelihoods clusters through a land tenure working group.

Building back better and raising people's resilience require a stronger and more coherent land governance mechanism that prioritizes land tenure security for the poorest and most vulnerable members of typhoon-affected communities.

## RECOMMENDATIONS

### 1. To address the immediate needs of affected homeless families, especially informal settlers and lessees or tenants:

**For the national government, specifically:**

- The **Office of Presidential Adviser on Rehabilitation and Recovery** should ensure that recovery and rehabilitation plans at all levels provide measures that safeguard the tenure security of displaced homeless people, including lessees and tenants in relocation and resettlement programs, and also ensure that livelihood recovery measures especially in agricultural communities comply with the Comprehensive Agrarian Reform Law.
- The **Government Resettlement Cluster** lead should issue shelter guidelines to local government units and implementing government agencies that provide guarantees of ownership or long-term occupancy of land to informal settlers and lessees in order to ensure their eligibility for permanent shelter assistance.
- The **Department of Agriculture – Bureau of Fisheries and Aquatic Resources** and the **Department of Budget and Management** should provide the necessary funding and resources to support relocation needs of the affected population and expand the implementation of National Fisherfolk Shelter for Stewards (FiSH for Stewards) Program as mandated in the Philippine Fisheries Code to address decent shelter and special settlement needs of affected fisherfolk communities.
- **The Members of the 16<sup>th</sup> Congress of the Philippines should urgently pass, and the President of the Philippines sign into law, the National Land Use and Management Act** to establish a common frame that will guide strategic plans of local governments so as to ensure safe settlement and resettlement areas, safeguard rights and security of the poor and the vulnerable sectors against displacements, effectively integrate disaster-risk planning into local government land use plans and address potential conflicts that may arise from overlapping land use of different local government units.

**Local government units should:**

- Coordinate closely with the Government Resettlement Cluster Coordinator to implement guarantees of ownership or long-term occupancy of land to informal settlers and lessees, in order to ensure their eligibility for permanent shelter assistance.

**International donors and humanitarian organizations should:**

- Establish a land tenure working group that cuts across the current work of the Emergency Shelter Cluster (urban land) and the Food Security and Agriculture Cluster (rural land) so as to ensure an integrated development approach that addresses common land tenure issues across shelter and livelihoods.

**2. In addressing the tenure security needs of tenants and farm workers in agricultural communities:****For the national government, specifically:**

- The **Members of the 16<sup>th</sup> Congress of the Philippines** should urgently pass, and the President sign into law, pending legislative measures that will provide necessary resources for the completion of the land acquisition component of the Comprehensive Agrarian Reform Program, especially in areas affected by Typhoon Haiyan.
- The **Department of Agrarian Reform** should:
  - Expedite the processing of land claims by tenants and farm workers under the land acquisition and distribution component of the Comprehensive Agrarian Reform Program;
  - Improve incomes and land tenure security of tenants and leaseholders by ensuring fair and equitable shares in net proceeds of agricultural crops and adequate agricultural support to tenants and leaseholders.

**Civil society actors should:**

- Provide organizing and paralegal support to small farmers, tenants, leaseholders and farm workers in the negotiation process between tenants and leaseholders, and landowners, to ensure fair shares in the net proceeds from felled coconut trees and other crops planted in farms under leasehold arrangements;
- Establish a land tenure monitoring, advocacy and awareness program for women in collaboration with the Philippine Commission on Women and the Department of Agrarian Reform.



# 1 INTRODUCTION

On 8 November 2013, Typhoon Haiyan (locally known as Yolanda) hit the Central Philippines. The regions affected by Typhoon Haiyan are among the poorest areas of the country.

Region VIII (covering the provinces of Biliran, Leyte, Southern Leyte, Western and Eastern Samar) suffered the worst of typhoon Haiyan, and had been experiencing worsening poverty even prior to the typhoon. From 2006 to 2012, poverty rates increased from 41.5 percent to 45.2 percent. This compares with a national poverty rate of 25.2 percent.

Among the basic sectors of Region VIII, a significant increase in the incidence of poverty was particularly noted among women (from 33.7 percent in 2006 to 37.4% in 2012).<sup>1</sup> The region also experienced the largest increase in poverty rates among farmers, migrants, the unemployed and individuals residing in urban areas between 2006 and 2009.<sup>2</sup>

The typhoon had a disproportionate impact on communities living and deriving their livelihoods in areas considered as hazard-prone. These groups included fisherfolk and farmers in rural areas, and informal settlers in both rural and urban communities.

In December 2013, the Philippine government announced a commitment to support farmers and fisherfolk communities affected by Typhoon Haiyan.<sup>3</sup> The Reconstruction Assistance to Yolanda (RAY) plan issued by the National Economic Development Authority in December 2013 includes proposals to ‘build back better’ for all disaster victims, including assurances of respect for pre-disaster property rights.<sup>4</sup>

Past experiences of disasters confirm the need to include tenure security measures in recovery planning and rehabilitation. Security of land tenure is essential to re-establish shelter and livelihoods and to reduce the risks of chronic poverty for those most affected by Typhoon Haiyan. Without measures to promote secure tenure rights to land, there are risks that those most affected by the disaster will be more vulnerable to future disasters.

The briefing highlights operational challenges in securing land tenure for the poorest and most vulnerable sectors of affected communities, especially for farmers and fisherfolk in rural areas. It also provides practical recommendations to assist the Philippines in meeting its commitment to build back better, through inclusion of land tenure security measures in disaster recovery and rehabilitation.

The briefing is based on a review of policy documents and on fieldwork, including interviews with key informants and focus group discussions involving local government units, regional and provincial representatives of key government agencies, farmers and fisherfolk in Cebu – Bantayan Island (Santa Fe, Bantayan and Madridejos), Leyte – Tacloban City, Tanauan and Palo, and Eastern Samar – Guiuan and Quinapondan undertaken in February 2014, and follow-up discussions with key government agencies.<sup>5</sup>

## 2 LAND ISSUES IN AREAS AFFECTED BY TYPHOON HAIYAN

### 2.1 LAND ISSUES IN RELOCATION EFFORTS

In December 2013, the United Nations undertook a multi-cluster needs assessment (Phase II). The needs assessment provided data on community services, markets, livelihoods, food security, health, water and sanitation, nutrition and protection. It also noted that 49 percent of people living in evacuation centers were in the poorest quartile of the population. Due to the urgent humanitarian circumstances, the needs assessment did not provide data on the cross-cutting issue of rights to land.<sup>6</sup>

In March 2014, the National Disaster Risk Reduction and Management Council (NDRRMC) highlighted the extent of population displacement caused by Typhoon Haiyan. With more than 1.14 million houses damaged, some 890,895 families (4.1 million persons) were displaced. At the time, 20,924 families were still housed in evacuation centers and an even greater number – some 869,971 families (4 million individuals) – were staying with host families or had sought other housing alternatives.

Even before Typhoon Haiyan struck, there were large numbers of informal settlers including lessees or tenants in informal settlements in the Philippines. According to the 2007 Census, there were 62,187 tenant households and 11,462 informal settler households out of a total of 804,991 households in Region VIII alone. A further 251,480 households lived rent-free on land with the consent of the landowner.<sup>7</sup> In sum, 32 percent of the population of Region VIII fell into the category of 'landless'. Many of these informal settlers live in urban and urbanizing areas such as Tacloban city.

In Tacloban City and Tanauan, Leyte, in Eastern Samar and in Bantayan Island, Cebu, interviews with community leaders and displaced persons revealed cases where informal settlers have been prohibited from returning to their former homes.

In Tanauan, Leyte, the prevention of return by informal settlers is connected to uncertainty as to the status of zones designated as 'unsafe' by the government.

In Bantayan, Cebu, there are people who have lived on land for 25 years who are now unable to return because the local government unit (LGU) recognized another person as the owner due to their payment of real estate tax, even though the land is classified as a public foreshore land. In Sta Fe, Bantayan Island, Cebu, there are cases of informal settlers who were prevented from reconstruction of permanent structures, including essential toilet facilities.

#### **Eligibility for relocation**

Unclear and changing guidelines and pronouncements over 'no build zones' have left unsolved questions among the displaced residents living in these affected

areas: where will they be relocated and who will be eligible for relocation? The government, especially the Resettlement Cluster Coordinator, needs to issue clear guidance to local government units and ensure that the landless will not be excluded in the relocation efforts.

Since President Aquino III announced the proposal to observe 'no-build zones' within 40-meter shorelines in December 2013, an ensuing lack of clarity around how to relocate affected populations living within this margin has contributed to further marginalization of landless people left without housing after Typhoon Haiyan.

While the no-build zone proposal was designed to meet plans to build back better after the disaster, it did lead to some confusion as to the extent of such zones, the requirements for local government implementation, and the basis for an exception to no-build requirements.

A major source of uncertainty is the lack of standard criteria to determine eligibility for permanent shelter in the context of relocation. This uncertainty as to eligibility continues even though the Presidential Adviser on Recovery and Reconstruction (PARR) in March 2014 recommended distinguishing between safe, unsafe and controlled zones based on geo-hazard mapping rather than a standardized 40-meter limit.

Without standardized guidelines on eligibility for relocation, the LGUs are likely to adopt a range of criteria that will potentially exclude affected lessees and informal settlers. In our interviews, some LGU officials indicated that ineligible people for relocation programs include:

- lessees and/or tenants of boarding houses and apartments, as 'only owners have lost something, lessees and/or tenants can just rent somewhere else';
- informal settlers who have been living outside the no-build zone, whose houses had been destroyed and who were being refused permission to rebuild, and;
- anyone eligible for emergency accommodation (such as in bunkhouses) that refused to take up emergency accommodation assistance, as doing so would require a waiver of their right to all future shelter assistance, including permanent shelter.

In Tacloban City, the eligibility criteria for relocation will likely include informal settlers along the foreshore. However, there are reports from municipal staff that lessees and informal settlers living in 'unsafe zones' will potentially be excluded in relocation programs.

In Tanauan, Leyte there are reports that informal settlers will not be eligible for relocation, even though they have not been allowed to return to their land. The case is different in Bantayan, Cebu where informal settlers will be included in relocation initiatives.

Without specific shelter guidelines for post-Typhoon Haiyan recovery and rehabilitation, the DSWD Omnibus Guidelines on Shelter Assistance after natural disasters provide the basic framework for shelter assistance in areas affected by Typhoon Haiyan. The guidelines establish eligibility criteria based on poverty in relation to DSWD shelter assistance programs (Core Shelter Assistance [CSA] and Modified Shelter Assistance [MSA]).



The guidelines have the potential to exclude informal settlers including lessees from CSA and MSA programs because they require that beneficiaries have a guarantee of ownership or permanent or long-term occupation of at least 10 years of the land to be used for shelter.

The requirement of secure land tenure is designed to avoid investments in housing on land that is subject to dispute or unclear ownership. However, if the guidelines are used as the basis of determining eligibility for permanent shelter assistance, they may have the perverse effect of excluding large numbers of people simply because of their insecure tenure status.

This unintended and exclusionary result highlights the importance of sequencing tenure security measures into shelter policies and programs. Without priority measures to guarantee ownership or long-term occupation of land, including in resettlement locations, informal settlers and lessees will potentially be excluded from permanent shelter assistance provided by DSWD.

The Government Resettlement Cluster lead should issue permanent shelter assistance guidelines to local government units and implementing government agencies that incorporate tenure security measures for poor and vulnerable people. Informal settlers and lessees should receive guarantees of ownership or long-term occupation in resettlement locations, in particular, to ensure their eligibility for permanent shelter assistance. (see Box 1).

#### **Box 1: Land tenure instruments for poor and homeless people**

UDHA housing programs include land tenure security options that are relevant to recovery from Typhoon Haiyan. These options include:

**Freehold ownership:** Freehold ownership provides the highest form of legal security of land tenure. It involves a certificate of award from the National Housing Authority to the beneficiary. Until final payment for the land and house parcel – over a 30-year period with a 6 percent interest rate – the beneficiary has a right of occupation but not sale, transfer or lease (UDHA, s. 12). On final payment the beneficiary receives ownership, but may not sell or transfer the land for a further 10 years. There are low rates (approximately 30 percent) of complete payment by beneficiaries to the National Housing Authority for their freehold title.

**Community mortgage:** The Community Mortgage Program (CMP) in the Philippines allows Community Associations of subsidized housing beneficiaries access to mortgage finance to develop land through a community ownership structure. The Community Association mortgages the land to the Social Housing Finance Corporation in exchange for development finance. On full repayment of the community loan, individual beneficiaries receive ownership of their lot through a Lease Purchase Agreement with the Community Association. Prior to full repayment, individuals pay rent to the Community Association under their Lease Purchase Agreement. The community mortgage process is less expensive than freehold and allows community control over development of the land. Its disadvantages are that it requires a relatively small and cohesive community.

**Usufruct:** Under the Philippines Civil Code a right of usufruct allows the right to use land belonging to another person, and to lease or alienate the right of usufruct subject to the conditions of the grant (Civil Code, Art. 572). The usufruct right expires on the expiry of an agreed term or on the death of the beneficiary. Usufruct rights are not common in the Philippines but they have been used by some LGUs

(e.g. the City of Taguig in collaboration with Habitat for Humanity, and Muntinlupa in collaboration with the NHA). In these cases the LGU retained ownership of the land and the beneficiaries received a renewable usufruct right of between 25 to 50 years. The usufruct right has most of the benefits of freehold but is less expensive, as beneficiaries do not need to pay for ownership of the land. Its disadvantages are that it is not commonly used and is not subject to detailed implementing regulations under the UDHA.

Without permanent shelter assistance, it is likely that informal settlers including lessees will either form residual caseloads of the homeless, or return to build temporary shelters on unsafe land. In such cases, their vulnerability to future disasters will be aggravated and their ability to move out of poverty further compromised.

## **Not enough safe land for relocation**

Availability of land has been a major challenge in the ongoing reconstruction and rehabilitation efforts.

Within the 50-kilometer buffer of Typhoon Haiyan track, some 252,688 families living in affected coastal *barangays* have insecure tenure.<sup>8</sup>

In Tacloban City, the urban context means that there may not be enough available land to relocate as many as 30,000 inhabitants in foreshore communities.

In February 2014, when the field visits for this report were done, lands identified by the local government units could resettle only 10,000 people. One identified site contains a large garbage dump, which cannot currently be filled in for logistical reasons. Preparation of the site is going on around the dump.

In Quinapondan, Eastern Samar, local government officials indicated that there was no public land available for relocation, and that funding was required to acquire private land.

At the same time, informants noted substantial increases in the price of land in Guiuan, Eastern Samar. All these cases indicate widespread uncertainty as to where permanent shelters will be located.

**Box 2: A community without land: Barangay Naga, Quinapondan Municipality, Eastern Samar**



Photo: Golda Hilario/Oxfam

*'Araw-araw, pag-gising pa lang, iniisip naming saan maghahanap ng lupa'* (Every waking day, we worry about where to find land'), Belen (second to the left) laments.

Belen, Janette, Marivic and Ester have lived near to each other all their lives. Their families had moved to a new community when they were children, and they grew up believing they would live there forever. Once the landowner passed away, the heir to the property forced them to leave. With no money, and nowhere to move to, the community of 28 families relocated to a sea wall. Working in fishing and copra farming, the community lived together for 15 years on the sea wall.

Typhoon Yolanda wiped out everything they owned, and killed two of their community members. The 28 families are currently living in a bunkhouse in Quinapondan, Eastern Samar though they know they have to leave this shelter by May. They have been refused permission to build shelters on the coconut lands they have been tending, and the cost of renting land is beyond their means. With no money or assets to purchase land, the community is terrified of having to relocate back to the sea wall.

As Jeanette and Marivic said, 'land is [our] number one priority.' *'May mga donors gusto magdonate para sa bahay, pero kailangan ng lupa'* (There are donors who are willing to pay for the construction of [our] houses, but it needs land), Belen explained.

There are many informal settlers like Belen, Janette, Marivic and Ester whose lack of secure access to safe land worsened because of Typhoon Haiyan.

## **Lack of a coherent land use policy**

The debate over relocation after Typhoon Haiyan has brought attention to the national issue of inadequate land use planning and management.

Land use planning is not only a question of geo-hazard mapping of safe and unsafe land as part of disaster risk reduction efforts. It also provides a policy framework for stakeholders to properly locate where safe settlements, sound infrastructures, buffers and protection areas, and agriculture production areas should be situated to address potential conflicts arising from overlapping use of lands.

Effective land use planning provides a mechanism to protect against forced evictions and to improve tenure security for poor and vulnerable people. For example, the zoning of land for agricultural purposes provides protection against evictions for commercial developments.

Such planning also informs affected persons where safe settlements should be placed, and allows community participation in site selection and planning. This can support the increased resilience of disaster-affected communities, enabling stronger protection of livelihoods, greater community leadership in disaster management and more robust recovery following a disaster.

Local government units in areas affected by Typhoon Haiyan have been urged to either produce or update their respective land use plans. However, a lack of technical capacity and funding has slowed down local government unit responses in relation to land use planning. Land use planners need accessible sets of data and more concise topographic maps for more accurate planning. Moreover, land use plans of neighboring communities require complementarity to avoid potential overlaps.

As large scale relocations are likely to be an ongoing feature of post-disaster rehabilitation programs in the Philippines, there is a need to establish the necessary national legislative framework to ensure that such relocations support the voluntary and informed movement of community members to safe sites that enable access to basic services, livelihood opportunities and social networks. A rights-based and gender-sensitive approach that is community-led is critical to realizing sustainable relocation.

The National Land Use and Management Act, pending before the 16<sup>th</sup> Congress, and which Oxfam and civil society organizations have supported, provides a means to bring greater coherence and community participation to disaster risk reduction in the Philippines.

## 2.2 AGRARIAN ISSUES IN AREAS AFFECTED BY TYPHOON HAIYAN

There is a close relationship in the Philippines between rural poverty and issues of access and control relating to land as a basic resource for production. For example in Eastern Samar, where over 50 percent of coconut farmers lack tenure security, it is estimated that 59.4 percent of the population live in poverty.<sup>9</sup>

Without access to their own land and lack of necessary capital to support agricultural production, farmer-tenants have little choice but to enter into shared net produce agreements with land owners, often splitting net profit on a 50/50 basis. This severely limits farmers' ability to move beyond subsistence-level agriculture.

Farmers are often unable to negotiate better terms given the highly unequal power relations between farmers and land owners that exist in rural areas. Consequently, they have little incentive to re-invest in their livelihoods and they are constantly vulnerable to evictions.

## **Delays in agrarian reform**

The Eastern Visayas region has long been lagging behind in the implementation of the Comprehensive Agrarian Reform Program (CARP) under the Comprehensive Agrarian Reform Law of 1998. CARP is a state policy that seeks a more equitable distribution of land to landless farmers and regular farm workers, and a just share of agricultural produce and tenancy agreements for other farm workers.

The CARP program was further amended in 2009 with the enactment of the Comprehensive Agrarian Reform with Extended Reforms (CARPER) to extend the state's obligation to complete the public acquisition and distribution of eligible agricultural lands through issuances of 'Notice of Coverage' until June 30, 2014. The Notice of Coverage is a prerequisite letter that informs landowners that their landholdings will be covered by the program and states his or her rights under the law before land acquisition and distribution will be completed. CARPER also expanded provision of support services for the program beneficiaries.

As of January 2013 in the province of Leyte alone, a total of 42,000 hectares of agricultural land still needs to be acquired and distributed to tenants and farm workers. Typhoon Haiyan further slowed down the issuance of the necessary notices-of-coverage to landowners whose landholdings should be subjected to the government's compulsory acquisition and distribution of land under CARPER.

Long-standing issues of landlord resistance to agrarian reform have been common in the Philippines, especially in western areas of Leyte where aggregated plantations are situated. Even for lands already covered by CARP, and farmers already awarded with Certificate of Land Ownership Awards (CLOAs), there have been situations where recipient farmers and farm workers could not be installed in the respective farm lots awarded to them. In the aftermath of Typhoon Haiyan, there is a need to locate these CLOA holders and ensure necessary measures for them to take possession of their farm lots so that they can effectively rebuild their livelihoods.

## **Displacement due to land conversion**

The destruction caused by Typhoon Haiyan provided an opportunity for landowners to evict tenants from land so it could be redeveloped for commercial purposes like tourism. In Eastern Samar, field personnel from the Provincial Agrarian Reform Office cited an instance when a landowner sought their certification to confirm the absence of farm tenants on a landholding that has a pending application for legal land conversion under CARP, despite objections from the tenant.

It is estimated that some 33 million coconut trees have been damaged in typhoon-affected areas. One of the bases for evictions from agricultural tenancies

is an argument that there are legal obligations on tenants to cultivate the land. Yet, with replanting hampered by uncleared felled coconut trees, tenants are unable to commence land cultivation.

Furthermore, there is a powerful economic incentive for landowners to evict coconut farmers, as it takes at least five years for replanted coconut trees to become productive again. In recognition of this, the Department of Agrarian Reform issued Administrative Order No. 2 series of 2014, which provides that no tenant shall be ejected from the land or dispossessed as a result of non-payment of lease due to natural disaster, except where dispossession is authorized by an appropriate body or court in a judgment that is final and executory.

## Loss of documents and problematic land documentation

Typhoon Haiyan destroyed essential land records and documentation in the Leyte Provincial Agrarian Reform and the Department of Environment and Natural Resources offices. Among those lost were notices of coverage that were ready to be redistributed to the landowners, and the survey maps needed to indicate technical descriptions of the land covered for distribution. This makes it harder for the Provincial Agrarian Reform office to retrieve and reconstruct lost documentation for lands that are subjected to ongoing land acquisition and distribution coverage under CARPER.

Even for those who claim ownership of land there were shortfalls in accurate documentation before Typhoon Haiyan. Large numbers of landowners do not have documents of title to land in the Philippines.<sup>10</sup> Our field consultation suggests that relatively few landowners had formal or up-to-date forms of land title documentation.

### Box 3: Land rights documentation in Eastern Samar

In Barangay 7, Quinapondan, Eastern Samar, informants described a range of assertions of their land rights, including purchase, inheritance and processes of borrowing land. While some residents had land tax documents, not one had formal certificates of ownership.

The Mayor of Quinapondan described a common situation where land documentation such as tax declarations remained in the names of the parents of current occupiers. The Mayor indicated that the lack of formal land title documents was a result of errors in the cadastral maps of the municipality. The local government unit did not wish to distribute formal title documents for fear of community and social unrest, and because the costs of having land remapped were prohibitive.

## 2.3 LACK OF SUITABLE LAND FOR FISHING COMMUNITIES

The relationship between poverty and tenure status also applies to fisherfolk families. Most fishing settlements are situated on areas classified as public foreshore lands, and are subject to the threat of evictions. For fishing



communities, the issue of relocation is particularly problematic because their livelihoods are largely dependent on the sea.

According to a survey prepared by the Philippines Partnership for the Development of Human Resources in Rural Areas, 87 percent of coastal respondents identified fisherfolk in their communities as informal settlers, and 69.6 percent identified fisherfolk as those who were at risk of eviction.<sup>11</sup>

**Box 4: Where to live? Barangay Hollywood, Guiuan Municipality, Eastern Samar**

Flora Oгатia lives with 24 family members in two plywood shacks built over the water in Guiuan. Flora and her family earn their income by fishing and repairing nets. Even though Typhoon Haiyan made landfall on the coastline, the Oгатia family was lucky: their boats and housing were only damaged, and they were still able to return to live where they were.

Flora has been told that her family will have to relocate, but she has no idea where they can move to. Flora says that even before Typhoon Haiyan ‘the price [of land] was outrageous.’ While they would like to move, the family is trying to raise money to repair their boat and their house. There is no money left to pay rent or to buy land. The family stressed that, no matter where they were to move, they would need to be within walking distance to the sea so they could continue their trade.

Families like the Oгатias, who rely on the sea for their survival, are among many Typhoon Haiyan victims who are at risk from future extreme weather events.

In 2009 the poverty rates for fisherfolk were estimated at 41.4 percent compared with a national poverty rate of 26.5 percent.<sup>12</sup> In Region VIII, 29 percent of fisherfolk were classified as poor in 2006, rising rapidly to 45.7 percent in 2009 (compared with 35 percent in 2006 and 41.4 percent in 2009 for fisherfolk in the Philippines generally).<sup>13</sup>

Because of their livelihoods, fisherfolk need to live near the sea and their fishing grounds. These special needs are provided for in section 108 of the Philippine Fisheries Code of 1998. However, it has yet to be implemented (see Box 5 below). The National Fisherfolk Shelter for Stewards (FiSH for Stewards) program is intended to implement this provision. The FiSH for Stewards program should be further supported and mainstreamed into the Typhoon Haiyan recovery process.

### **Box 5: Where laws need to be implemented and why fisherfolk communities have insecure land tenure**

The Fisheries Code of 1998 (Republic Act 8850) seeks to protect the access and rights of small-scale fisherfolk over municipal waters and also put emphasis on their role as stewards and protectors of community marine resources and fishing grounds. Section 108 of the Fisheries Code likewise requires the Department of Agriculture to create settlement areas for fisherfolk on public land near to fishing grounds. The Department of Agriculture must coordinate with local government units to identify areas of public domain for the settlements. Ownership of the land in the settlement area is to be vested in the fisherfolk.<sup>14</sup>

The Philippines House of Representatives Committee on Aquaculture and Fisheries conducted an investigation in 2012 into the failure to implement this aspect of the Fisheries Code. The Committee concluded that the failure to establish fisherfolk settlement areas was due to lack of: (1) capacity in the Department of Agriculture, (2) coordination among government agencies, (3) legal authority in the Department of Agriculture with respect to public domain land, and (4) rules and regulations to implement Section 108. A further obstacle was the authority of local government units over land zoning.<sup>15</sup>

This prompted the Department of Agriculture – Bureau of Fisheries and Aquatic Resources and the National Anti-Poverty Commission to issue Joint Administrative Order 01 series of 2012. The joint policy issuance mandated the formation of Task Force Fisherfolk Settlement that aimed to (1) formulate implementing rules and regulations of Section 108 of RA 8550; (2) formulate a comprehensive program for fisherfolk settlement, which eventually became the Fisherfolk Shelter for Stewards (FiSH for Stewards) Program.

Until now, the DA – BFAR still has to sign the implementing rules and regulations of Section 108 of RA 8550. At the same time, the National Anti-Poverty Commission Fisherfolk Council was pushing for the President to sign an executive order that will allow for budget allocation for the Fish for Stewards Program. Meanwhile, civil society organizations such as the Save the Fisheries Now! network and the NGOs for Fisheries Reform lobbied for 300 million pesos allocation for the FiSH for Stewards Program under the DA – BFAR's budget in the proposed 2014 General Appropriations Act (GAA). However, this was removed in the approved version of the 2014 GAA.

*Source: NFR Terminal Report to Oxfam*

## **2.4 SPECIAL ATTENTION NEEDED TO ENSURE TENURE SECURITY FOR WOMEN**

Specific measures are required to ensure that women have security of land tenure after Typhoon Haiyan. Before the typhoon, women were already reported to have only received 18 percent of titles to land distributed by the Comprehensive Agrarian Reform Program, despite provisions that recognize the right of rural women to equal ownership of land and equal shares in produce.<sup>16</sup>

Farming and fishing communities such as in Barangay Sta Cruz and Calugcog in Tanauan, Leyte, where there are reports a majority of the male members perished, should be areas of special concern to assist women farmers and fisherfolk in

reconstituting lost documents and in facilitating transfer of ownerships and tenurial instruments to their names. This will protect them from potential dispossessions and ensure their inclusion in recovery and rehabilitation efforts.

There are laws and policies in the Philippines that recognize the right of women to access and control over lands and productive assets (see Section 3 below). The challenge is to ensure compliance by government agencies, international donors and civil society actors with legal safeguards relating to land tenure for women.

## 2.5 CHALLENGES IN LAND GOVERNANCE

Widespread insecurity in land tenure arrangements arises from a number of ongoing governance challenges in the Philippines land sector.

These challenges include:

- fragmentation of land administration and planning functions across different government agencies;
- a history of unequal land ownership and incomplete implementation of crucial social justice and asset reform programs, including the Comprehensive Agrarian Reform law and the Fisheries Code (box 2);
- bureaucratic processes and the cost of documenting legal rights to land, especially for poor and vulnerable groups.

A major governance challenge concerns the crucial role of local government units (LGUs) in land administration and land use planning. LGUs have statutory responsibility for:

- compulsory land acquisition for public purposes;<sup>17</sup>
- land use planning, including the zoning of land;<sup>18</sup>
- resettlement of persons living in unsafe areas;<sup>19</sup>
- provision of land for 'underprivileged and homeless citizens' subject to Court orders for eviction.<sup>20</sup>

Even before Typhoon Haiyan hit, LGUs often lacked the capacity, resources and political will to implement their statutory responsibilities relating to land. The capacity of LGUs to meet legislative responsibilities for land after the disaster has also been affected by a loss of personnel, damage to infrastructure, and the demands of other frontline post-disaster responsibilities.

## 2.6 THE NEED FOR A HOLISTIC APPROACH TO LAND

Because land tenure issues in the Typhoon Haiyan recovery cuts across both urban and rural land, the international community needs to ensure an integrated approach to recovery coordination.

Currently, the Emergency Shelter Cluster is responsible for issues relating to urban land and the Food Security and Agriculture Cluster deals with rural land.

A land tenure working group is needed to ensure an integrated development approach that addresses cross-cutting land tenure issues across shelter and livelihoods, and ensures close coordination between the Emergency Shelter Cluster and the Food Security and Agriculture Cluster.

### 3 LESSONS FROM PREVIOUS DISASTERS AND LAND TENURE INSTRUMENTS

The challenges facing the Philippines in the recovery from Typhoon Haiyan are substantial. Based on experience from past disasters, and utilizing existing legislative mechanisms, the government has the opportunity to put the needs of landless poor and vulnerable people at the heart of recovery and reduce the risks of further vulnerability to future disasters.

#### 3.1 HOUSING FOR THE LANDLESS

In the context of recovery from Typhoon Haiyan, the present lack of clarity on who will be eligible for permanent housing assistance among those who will be relocated is a cause for concern.

Eight months after the typhoon, there is a real danger of long-term residual caseloads of displaced persons. Ongoing displacement impacts on the ability to resume livelihoods, leaving residual caseloads at a greater risk of entrenched poverty and vulnerability to the impacts of future disasters. Past disasters such as Typhoon Ketsana in September 2009<sup>21</sup> and Typhoon Bopha in December 2012<sup>22</sup> have also shown that residual caseloads of displaced people often return to unsafe lands.

A similar situation occurred in Indonesia after the 2004 Indian Ocean tsunami (Box 6). Temporary shelter arrangements could not be decommissioned as there was an initial failure to provide access to housing programs for tenants and informal settlers.

The lack of targeted housing programs for tenants and informal settlers prevented transitions from humanitarian response to early recovery. The temporary shelters were only decommissioned, and residual caseloads of displaced people provided with durable shelter, when the agency for reconstruction and recovery made land available for rental and social housing.

### Box 6: Tenants and informal settlers in tsunami-affected Indonesia

In June 2006, Indonesia's Aceh and Nias Reconstruction Authority (BRR) issued a regulation on access to housing assistance after the Indian Ocean tsunami.

Pre-tsunami landowners who had lost land would receive free land and a basic 36m<sup>2</sup> house. Pre-tsunami tenants and extralegal occupiers who could not return home would be given a cash payment that could be used for housing purposes only. Without land of their own, lessees and extralegal occupiers would not receive a house from the government.

Over time, it became clear that temporary living centers ('the barracks') could not be decommissioned without land and housing solutions for homeless renters and informal or extralegal occupiers. Without a decommissioning process, there were fears that the barracks would become sources of social unrest and welfare dependency. In early 2007, Oxfam provided a memorandum on renters and extralegal occupiers to Bill Clinton, the UN Special Envoy for Tsunami Recovery. Former US President Clinton duly raised the issue with the head of BRR. In February 2007, BRR announced major amendments to Regulation 21/2006. These amendments substantially replaced the program of cash assistance with a policy of free land and housing for renters and informal or extralegal occupiers.

Source: Fitzpatrick and Zevenbergen, J, Addressing Land Issues after Natural Disasters: A Case Study of Tsunami-Affected Aceh, Indonesia, [www.glt.n.net](http://www.glt.n.net)

## 3.2 RAPID CONFIRMATION OF LAND OWNERSHIP AFTER DISASTERS

The process of recovering and reconstituting lost documents can be slow and mechanisms should be explored to fast-track confirmation of identities, claims and ownerships of land. After Typhoon Haiyan, one mechanism undertaken by the Department of Agrarian Reform was to publish in major daily newspapers with nationwide distribution the issuance of notices-of-coverage that were destroyed.

Similarly, in Aceh, Indonesia the national land agency issued a regulation allowing affidavits of ownership as a legal basis for proof of rights to land. The affidavits required the signatures of neighbours and the local village head. The affidavit system provided a rapid mechanism to confirm land rights without the delays of replacing lost land ownership documents.<sup>23</sup> This mechanism can be applicable for documents lost by CLOA holders that were also destroyed in government offices.

## 3.3 LAND TENURE SECURITY FOR WOMEN

Key lessons from other disasters include the need to address the multiple risks of land tenure insecurity faced by women after a disaster (Box 7).

This requires the early collection of gender-disaggregated data, particularly so as to identify the numbers of widows and female-headed households.

Local resistance to inheritance of land rights by women should also be



anticipated, and managed by (1) information and awareness rights programs, and (2) access to justice mechanisms that allow women to take claims beyond the family and community levels.

#### **Box 7: Women's rights to land in tsunami-affected Indonesia**

In tsunami-affected Indonesia, the Reconstruction Agency and the National Land Agency worked together to develop mandatory requirements that land titles for marital land in relocation areas will be issued with the name of the husband and wife. However, the program of mandatory joint titling was not implemented by local government agencies for a number of reasons, including the fact that land acquisition procedures did not include mechanisms for recording the names of both husbands and wives. Similarly, the World Bank-designed systematic land titling project that followed the tsunami disaster included a number of gender-sensitive elements to protect against gender discrimination in the issue of new post-disaster land tenure documentation. However, empirical data suggest that a significant percentage of women did lose rights to land as a result of the land titling program.

Source: Fitzpatrick D., *Women's Rights to Land in Tsunami-Affected Aceh*, Asian Research Institute Aceh Working Paper Series 2008, National University of Singapore, available at [www.ari.nus.edu.sg](http://www.ari.nus.edu.sg)

The Department of Social Welfare is collecting information on victims of Typhoon Haiyan through Disaster Assistance and Family Access Cards or 'Green Cards'. The Green Cards ask respondents to identify whether they:

- owned their house and lot (i.e. land parcel);
- owned their house and rented the lot;
- rented their house and lot;
- owned their house and occupied the lot rent-free with owner's consent;
- owned their house and occupied the lot rent-free without owner's consent;
- occupied their house and lot rent-free with owner's consent;
- occupied their house and lot rent-free without owner's consent.

The Green Cards provide the basis for gender-disaggregated data on rights to land as they also ask the head of the household to state their gender. The availability of this gender-disaggregated data is a critical foundation that should be utilized to inform more gender-equitable land tenure measures.

Further, Philippine law provides a number of mechanisms to ensure that land tenure documentation after Typhoon Haiyan rightfully records women as owners of land. Under the Magna Carta for Women, women have 'priority rights'<sup>24</sup> that include equal rights in the issue of registered land titles (patents),<sup>25</sup> and as beneficiaries of land ownership under the Agrarian Reform Program.<sup>26</sup>

Under the Family Code, wives own in common with their husbands all conjugal property.<sup>27</sup> Subject to certain exceptions, the husband cannot alienate or encumber any real property of the conjugal partnership without the consent of his wife.<sup>28</sup>

Under the Fisheries Code, women are recognized as fisherfolk,<sup>29</sup> and thus have equal entitlements to any land granted as part of any fisherfolk settlement program.<sup>30</sup>

## 3.4 SAFEGUARDS AGAINST EVICTIONS

Philippine laws provide adequate protection against eviction of persons. It is important that any eviction, whether for the implementation of resettlement programs or the removal of a single informal settler from privately owned land, are conducted in accordance with Philippine laws.

The Philippine Constitution requires that evictions take place ‘in accordance with law and in a just and humane manner.’<sup>31</sup> The Urban Housing and Development Act (UDHA) provides further safeguards against evictions. It requires that evictions be limited to circumstances where informal dwellings are situated on hazardous or dangerous land, and where there is a court order for the demolition of dwellings. The UDHA also requires a 30-day notice of eviction, a period of consultation, and provision of an alternative site for residence.

The Commission on Human Rights of the Philippines considers that the mandatory anti-eviction safeguards of the UDHA apply to evictions arising from proposals for relocation away from designated unsafe zones after Typhoon Haiyan.<sup>32</sup> However, a potential limitation is that UDHA only applies to protect ‘underprivileged and homeless citizens’ who are eligible for socialized housing programs in urban or urbanizable areas.

In agricultural lands, the Comprehensive Agrarian Reform Law and its supporting policy guidelines, DAR Administrative Order No. 2 series of 2006 recognizes the right of agricultural lessees to be afforded and/or continue the exclusive possession and enjoyment of home lots, aside from safeguards against unauthorized dispossession.<sup>33</sup> The recent DAR Administrative Order No. 2 series of 2014 further stressed that no tenant-lessee in coconut farms shall be ejected from their landholding as a result of non-payment of lease rentals due to disasters.<sup>34</sup>



A ‘no-build zone’ policy in Haiyan-affected areas prohibited building any structure within 40 meters from the coastline, putting livelihoods at risk for fishing communities. The government has since backtracked on this policy, saying it will instead do local hazard mapping and planning analysis to identify communities that will need to be relocated from unsafe areas. An estimated 200,000 people are now at risk of resettlement. Photo: Caroline Gluck/Oxfam

## 4 CONCLUSION

Building back better requires a stronger and more coherent land governance mechanism that prioritizes and improves land tenure security for the poorest and most vulnerable people in the Philippines.

This means that priority should be given to implementing land tenure security measures to ensure inclusive access to permanent shelter and livelihoods recovery of the displaced landless settlers, farmers and fisherfolk in areas affected by Typhoon Haiyan. A national policy that integrates disaster risk-reduction strategies into long-term land use and management plans is critical to realizing the tenure security that is so badly needed across the Philippines.

There are existing policy frameworks in laws and government programs that provide measures to promote tenure security of the poorest groups. These include the Urban Development Housing Act (UDHA), the Comprehensive Agrarian Reform Law and its continuing program CARPER, the Fisheries Code and the Fisheries as Stewards Shelter Program, and the Magna Carta for Women.

The challenge is to apply these laws, integrate their programs into the recovery and rehabilitation process and ensure their implementation. This requires complementary and close coordination among government agencies, local government units and wider civil society.

## RECOMMENDATIONS

### 1. To address the immediate needs of affected homeless families, especially informal settlers and lessees or tenants:

#### For the national government, specifically:

- The **Office of Presidential Adviser on Rehabilitation and Recovery** should ensure that recovery and rehabilitation plans at all levels provide measures that safeguard the tenure security of displaced homeless people, including lessees and tenants in relocation and resettlement programs and also ensure that livelihood recovery measures especially in agricultural communities comply with the Comprehensive Agrarian Reform Law.
- The **Government Resettlement Cluster** lead should issue shelter guidelines to local government units and implementing government agencies that provide guarantees of ownership or long-term occupancy of land to informal settlers and lessees in order to ensure their eligibility for permanent shelter assistance.
- The **Department of Agriculture – Bureau of Fisheries and Aquatic Resources** and the **Department of Budget and Management**, should provide the necessary funding and resources to support relocation needs of the affected population and expand the implementation of National Fisherfolk Shelter for Stewards (FiSH for Stewards) Program as mandated in the Philippine Fisheries Code to address decent shelter and special settlement needs of affected fisherfolk communities.
- **The Members of the 16<sup>th</sup> Congress of the Philippines should urgently pass, and the President of the Philippines sign into law, the National**

**Land Use and Management Act** to establish a common framework that will guide strategic plans of local governments so as to ensure safe settlement and resettlement areas, safeguard rights and security of the poor and the vulnerable sectors against displacements, effectively integrate disaster-risk planning into local government land use plans and address potential conflicts that may arise from overlapping land use of different local government units.

**Local government units should:**

- Coordinate closely with the Government Resettlement Cluster Coordinator to implement guarantees of ownership or long-term occupancy of land to informal settlers and lessees in order to ensure their eligibility for permanent shelter assistance.

**International donors and humanitarian organizations should:**

- Establish a land tenure working group that cuts across the current work of the Emergency Shelter Cluster (urban land) and the Food Security and Agriculture Cluster (rural land) so as to ensure an integrated development approach that addresses common land tenure issues across shelter and livelihoods.

**2. To address the tenure security needs of tenants and farm workers in agricultural communities:**

**For the national government, specifically:**

- The **Members of the 16<sup>th</sup> Congress of the Philippines** should urgently pass, and the President sign into law, pending legislative measures that will provide necessary resources for the completion of the land acquisition component of the Comprehensive Agrarian Reform Program, especially in areas affected by Typhoon Haiyan.
- The **Department of Agrarian Reform** should:
  - Expedite the processing of land claims by tenants and farm workers under the land acquisition and distribution component of the Comprehensive Agrarian Reform Program;
  - Improve incomes and land tenure security of tenants and leaseholders by ensuring fair and equitable shares in net proceeds of agricultural crops and adequate agricultural support to tenants and leaseholders.

**Civil society actors should:**

- Provide organizing and paralegal support to small-scale farmers, tenants, leaseholders and farm workers in the negotiation process between tenants and leaseholders, and landowners, to ensure equitable fair shares in the net proceeds from felled coconut trees and other crops planted in farms under leasehold arrangements;
- Establish a land tenure monitoring, advocacy and awareness program for women in collaboration with the Philippine Commission on Women and the Department of Agrarian Reform.

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Campaign for Land Use Policy Now (CLUP Now!) is a loose multi-sectoral coalition of POs and NGOs advocating for the enactment of a national land use act in order to address the multifaceted, multi-sectoral character of land use. Currently composed of 32 People's Organizations, NGOs, and civil society advocates, CLUP Now! represents the concerns of fisherfolks, farmers, urban poor, indigenous people, women, and environmental groups.

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