



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

**ON THE RIGHT TO ADEQUATE HOUSING
AND HUMANE TREATMENT OF INFORMAL SETTLERS**
An Advisory from the Commission on Human Rights

CHR (IV) No. A2011-003

WHEREAS, Article II Section 11 of the 1987 Philippine Constitution declares as a matter of policy that the State values the dignity of every human person and guarantees full respect for human rights;

WHEREAS, the right to adequate housing is a basic human right which is enshrined in and protected under various International Human Rights instruments that the Philippines has signed and ratified;

WHEREAS, Article 25 of the Universal Declaration of Human Rights declares that everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, **housing**, and medical care and necessary social services;

WHEREAS, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that State-parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions";

WHEREAS, under the ICESCR, the Philippine government has the obligation to achieve progressively the full realization of the right to adequate housing and, at the minimum, show that it is making every possible effort, within its available resources, to better protect and promote this right;¹

¹ United Nations Office of the High Commissioner for Human Rights (UN OHCHR), Fact Sheet No. 21 Right to Adequate Housing, p. 30.

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WHEREAS, it is likewise provided in Article XIII Section 10 of the 1987 Philippine Constitution that the urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. Moreover, no resettlement or urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated;

WHEREAS, in compliance with its international commitment, the Philippine government passed Republic Act No 7279, otherwise known as the "Urban Development and Housing Act of 1992" (UDHA);

WHEREAS, the local government units (LGUs) are primarily charged with the obligation to implement the UDHA, in coordination with concerned national agencies, the private sector and other non-government organizations;²

WHEREAS, all local chief executives (provincial governors, city and municipal mayors, and punong barangays) are to ensure that human rights are not ignored and due process is observed prior to, during, and after demolitions;³

WHEREAS, the Commission on Human Rights is mandated under Article XIII Section 18(7) to monitor the government's compliance with its international treaty obligations on human rights and in the process ensure the harmonization of domestic laws with international human rights norms, standards and principles;

RECOGNIZING the vulnerability of informal settlers in the face of various forcible evictions and demolitions occurring all throughout the country;

FURTHER RECOGNIZING the need to strengthen the capacity and effectiveness of concerned government agencies and instrumentalities in pursuing a rights-based approach to urban development, housing and treatment of informal settlers;

WHEREFORE, the Commission on Human Rights, as the National Human Rights Institution mandated to promote and protect the human rights of all Filipinos, issues the following Advisory on the

² UDHA, Sections 39 and 40.

³ DILG Memorandum Circular No.2010-31 (Apr. 27, 2010) in rel. DILG Memorandum Circular No. 2010-2 (Jan. 5, 2010).

Right to Adequate Housing and the Humane Treatment of Informal Settlers:

ON RIGHT TO ADEQUATE HOUSING

1. The State, from the national government down to the local government units, has the obligation to respect, protect and fulfil the right to adequate housing of all Filipinos.
2. The right to adequate housing contains freedoms.⁴ These *freedoms* include:
 - a. Protection against forced evictions and the arbitrary destruction and demolition of one's home;
 - b. The right to be free from arbitrary interference with one's home, privacy and family;⁵ and
 - c. The right to choose one's residence, to determine where to live and to freedom of movement.⁶
3. The right to adequate housing contains entitlements.⁷ These *entitlements* include:
 - a. Security of tenure;
 - b. Housing, land and property restitution;
 - c. Equal and non-discriminatory access to adequate housing; and
 - d. Participation in housing-related decision-making at the national and community levels.
4. Adequate housing must provide more than four walls and a roof.⁸ A number of conditions must be met before particular forms of shelter can be considered to constitute "adequate housing." For housing to be adequate, it must, *at a minimum*, meet the following criteria:⁹
 - a. *Security of tenure*. Housing is not adequate if its occupants do not have a degree of tenure security which guarantees

⁴ UN OHCHR, Fact Sheet No. 21 Right to Adequate Housing, p. 3.

⁵ See International Covenant on Civil and Political Rights (ICCPR), Art. 17 (1).

⁶ ICCPR, Art. 12 (1).

⁷ UN OHCHR, Fact Sheet No. 21 Right to Adequate Housing, p. 3.

⁸ *Id.*

⁹ CESCR General Comment 4, The Right to Adequate Housing, para. 8.

legal protection against forced evictions, harassment and other threats.

- b. *Availability of services, materials, facilities and infrastructure.* Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.
- c. *Affordability.* Housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.
- d. *Habitability.* Housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.
- e. *Accessibility.* Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account.
- f. *Location.* Housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.
- g. *Cultural adequacy.* Housing is not adequate if it does not respect and take into account the expression of cultural identity.

ON EVICTION AND DEMOLITION

1. Eviction is the removal of persons and their belongings from a structure or area.¹⁰ Demolition, on the other hand, is the dismantling of structures.¹¹
2. Evictions and demolitions are *prima facie* incompatible with the State's obligation to respect, protect and fulfil the right to adequate housing.¹² Thus, evictions and demolitions are discouraged by law.¹³
3. Forced eviction is the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to appropriate forms of legal or other protection. Forced

¹⁰ IRR of Section 28 of UDHA, Section 1(j).

¹¹ IRR of Section 28 of UDHA, Section 1(g).

¹² See CESCR General Comment No. 4, The Right to Adequate Housing, para. 18. See also CESCR General Comment No. 7, The Right to Adequate Housing: Forced Evictions, paras. 1 and 4.

¹³ UDHA, Section 28.

eviction *does not* include evictions carried out in accordance with law.¹⁴

4. Forced eviction, in itself, is a gross violation of human rights.¹⁵ While it manifestly violates the right to adequate housing, forced evictions also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home, and the right to the peaceful enjoyment of possessions.¹⁶
5. Evictions and demolitions are allowed by law only under the following situations:
 - a. When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks and playgrounds;
 - b. When government infrastructure projects with available funding are about to be implemented; or
 - c. When there is a court order for eviction and demolition.¹⁷
6. Evictions or displacements of population should be avoided or minimized in any development project or business venture involving the State.¹⁸ The government should explore fully all possible alternatives to evictions.¹⁹
7. There should always be a committee composed of concerned government agencies and instrumentalities, representatives of NGOs, POs and affected informal settlers to discuss, deliberate and decide on the matter of eviction and demolition.²⁰

¹⁴ CESCR General Comment No. 7, The Right to Adequate Housing: Forced Evictions, para. 3.

¹⁵ United Nations Commission on Human Rights Resolution 1993/77, para. 1.

¹⁶ CESCR General Comment No. 7, The Right to Adequate Housing: Forced Evictions, para. 4.

¹⁷ UDHA, Section 28.

¹⁸ Annex 1 of the report of the Special Rapporteur on Adequate Housing, A/HRC/4/18, paras. 30, 32, & 37.

¹⁹ *Id.*, para. 38.

²⁰ See Executive Order No. 708, Sec. 2, (Feb. 26, 2008) in relation to Executive Order No. 152, Sec. 1(1)-(3) (Dec. 10, 2002). See also DILG MEM. CIRC. NO. 2008-143, para. A (Sep. 19, 2008). Local Housing Boards which shall consult, deliberate and decide on the matter of eviction and demolition shall be composed of:

- a. The Chairperson of the Sanggunian Committee on Housing and Urban Development or its equivalent;
- b. The city/municipal planning and development coordinator;
- c. The city/municipal engineer;
- d. A representative from the PCUP;
- e. A representative from the PO operating in the city/municipality; and
- f. A representative of an SEC-registered and accredited NGO operating in the city/municipality.

8. No eviction or demolition should take place without approval of the mentioned committee and after adequate consultation with the affected informal settlers. A written report should be issued on the decision arrived at by the committee.²¹
9. Adequate consultation with affected residents requires the following:
- a. Effective dissemination of relevant information and documents including but not limited to land records, housing budgets, the proposed project, alternative housing options, comprehensive resettlement plans, etc;
 - b. Reasonable time for the public to review, comment and object to the proposed plan or project;
 - c. Provision of legal, technical, and other advice to affected persons about their rights and options by the government and/or non-government organizations;
 - d. Public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities; and
 - e. In case no agreement is reached on the proposals of concerned parties, an independent body having constitutional authority, such as a court of law, should mediate, arbitrate or adjudicate as may be appropriate.²²
10. In case eviction or demolition is deemed necessary as a measure of last resort, the following safeguards are mandatory and must be strictly complied with:
- a. Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
 - b. Presence of local government officials or their representatives during eviction or demolition;
 - c. Proper identification of all persons taking part in the demolition;
 - d. Execution of eviction or demolition only during regular office hours from Mondays to Fridays and not during inclement weather and disasters, unless the affected families consent otherwise;

²¹ See DILG Memorandum Circular No. 2008-143, para. B (Sep. 19, 2008) *in relation to* IRR of Sec. 28 of RA 7279 (Sep. 24, 1992), Sec. 3, part I.

²² Annex 1 of the report of the Special Rapporteur on Adequate Housing, A/HRC/4/18.

- e. No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
 - f. Proper uniforms for members of the Philippine National Police who should occupy the first line of law enforcement and observe proper disturbance control procedures; and
 - g. Adequate relocation.²³
11. In case of a court order for eviction or demolition, proper notice should be observed to include notice to the Committee. The mandatory safeguards must likewise be strictly observed.
12. Evictions and demolitions, if legally justified, must at all times be done in accordance with the general principles of reasonableness and proportionality.²⁴ Thus, unnecessary and disproportionate force should never be used, especially against the persons of the informal settlers.
13. Evictions and demolitions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.²⁵

ON RELOCATION

1. No eviction or demolition should ensue without the provision of an adequate relocation.
2. In case of eviction or demolition, efforts should be exerted for on-site relocation or in-city transfer.
3. Informal settlers who accept a “balik probinsya” offer should be closely monitored by the concerned government agencies and assisted by the receiving local government.
4. Relocation should conform with the following minimum conditions and standards:
 - a. Basic services and facilities should be available for informal settlers in the relocation site. Such basic services and facilities should include:
 - i. Potable water;



²³ UDHA, Section 28.

²⁴ CESCR General Comment No. 7, The Right to Adequate Housing: Forced Evictions, para. 14.

²⁵ *Id.*, para. 16.

- ii. Power and electricity;
 - iii. Sewerage facilities and an adequate solid waste disposal system;
 - iv. Access to primary roads and transportation facilities
- b. Education for the relocating children should not be disrupted by reason of the relocation.
- c. Relocated informal settlers should not be deprived of employment and livelihood opportunities.²⁶
5. To promote the general well-being of the resettled families, adequate social services in health, nutrition, education, responsible parenthood, environmental sanitation, etc., should, as far as possible, be provided in the resettlement sites jointly or under the auspices of cooperating agencies such as, but not limited to, the Department of Education, the Department of Health, the Department of Social Welfare and Development, and non-government organizations.²⁷
6. To generate employment and income opportunities for the relocated families, the resettlement project should act as a conduit for the families to avail of manpower training and livelihood program through sustained networking and resource syndication activities.²⁸
7. Under Article 29, paragraph 1 of the Universal Declaration of Human Rights, everyone has duties to the community in which alone the free and full development of his personality is possible. Persons who have accepted relocation, benefits and the like are duty bound to abide with the terms and conditions of their relocation agreement.

CONCLUSION

 The Commission urges all stakeholders, especially the local government units, the police and other government agencies to adopt as policy the standards and guidelines contained in this Advisory. 

The Commission cautions everyone against possible abuses and violations of rights in the conduct of evictions or demolitions. Anyone

²⁶ UDHA, Sections 21, 22, and 29,

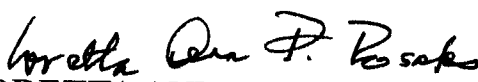
²⁷ IRR of Sec. 28 of UDHA, Section 3, Part III (b), par. 2.0.

²⁸ *Id.*, Section 3, Part III (b), par. 3.0.

who violates the provisions of the UDHA, its implementing rules and regulations, and the minimum human rights standards as elaborated in this Advisory may be charged with the appropriate criminal, civil and administrative cases.

The Commission takes this opportunity to remind everyone that all persons must, at all times, be treated humanely. Evictions or demolitions, even if clothed with authority of law, should never be an occasion for wilful disregard of human rights and human dignity.

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