

# PHILIPPINE COMPLIANCE WITH INTERNATIONAL STANDARDS FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS\*

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## ABSTRACT

In 2013, the Zamboanga armed conflict and Typhoon Yolanda caused the displacement of thousands of families from their homes. Despite relief and rehabilitation efforts, the lack of access to basic needs and sources of livelihood remained a problem. The absence of a comprehensive legal framework for the protection of internally displaced persons (“IDPs”) accounts for the problematic *ad hoc* approach of the government in providing a long-term and sustainable solution. The Guiding Principles on Internal Displacement (“Guiding Principles”) provide an international standard by which relief and rehabilitation measures should be implemented. This paper evaluates the government’s compliance with the Guiding Principles in addressing the needs of IDPs and their living conditions in evacuation centers and transitory sites. It explains the inadequacy of current laws applicable to displacement situations. In response to the gaps in the present legal framework for IDP protection, Congress passed a bill, the Rights of Internally Displaced Persons Act, which seeks to incorporate the Guiding Principles into domestic law. An analysis of the strong and weak points of this pending piece of legislation is presented in this paper.

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## INTRODUCTION

In the early morning of September 9, 2013, Zamboanga City residents were awoken by gunfire. Soon, families were out on the streets, running with their possessions. The rebels had come to seize their village and use them as human shields. For several days, the siege of the Moro National Liberation Front (MNLF) in Zamboanga City was front-page news. Filipinos, Muslims and Christians alike, were one in praying for the safety of men, women, and children caught in the crossfire. The country held its breath as negotiators exhausted all possible means to peacefully end the bloody standoff.

Sixty days later, in November 2013, the largest typhoon recorded in recent history struck the Visayas region. Typhoon Yolanda cut across more than a hundred municipalities, leaving a trail of lost lives and ruined properties in its wake. People watched with horror as footages of storm surges were broadcast across television screens and the Internet. Volunteers arrived, local and foreign news media flew to disaster areas, donations poured in, and people searched for friends and relatives. For the weeks to come, all eyes were on the Philippines.

Months later, however, after the remaining news crew had packed up and gone, after the last group of disaster volunteers had left, and after the donations had stopped pouring in, those who lost their homes and were unable to return remained in makeshift shelters in evacuation centers. They wandered the streets and their camps, searching for food, livelihood, or a sense of normalcy—a sense that things would be back to the way they were. What was preventing them from returning home? Who was responsible for their protection?

In this paper, I attempt to shed light on the plight of internally displaced persons (“IDPs”) in the Philippines. I proceed from the premise that the government is responsible for the protection of IDPs within their territory. My main argument is simple: there are international standards that must be met in the protection of IDPs, and the Philippine government has not met these standards. In fact, I will show that the government even contributes to the aggravation of the situation of IDPs. In support of my thesis, I argue that the present *ad hoc* approach of the government in dealing with IDPs is not effective in ensuring long-term recovery and there is a need to establish a legal framework to address that problem.

In Part I, I put into context the term “internally displaced persons.” Who are IDPs? How are they displaced? Are they different from refugees? Is their protection provided for in any international legal instrument? Who are

primarily responsible for them? I answer these questions by reviewing scholarly articles that deal with the issues surrounding the protection of IDPs.

Part II discusses the Guiding Principles on Internal Displacement (hereinafter “Guiding Principles”),<sup>1</sup> a compilation of general principles of international law applicable to IDPs. In this section, I present how, despite being legally non-binding, the Guiding Principles have gained an authoritative status in the protection of IDPs in the international community. I do this by discussing its conception and development and its reception by states and international bodies.

In Part III, I examine the state of IDPs in the Philippines. I begin by focusing on the two biggest displacement causes within the last two years: the Zamboanga armed conflict and Typhoon Yolanda. For each case, I highlight the living conditions of IDPs in evacuation centers and transitory sites,<sup>2</sup> and the courses of action taken by the government to address the needs of IDPs. To illustrate the framework for IDP protection adopted by the government, I cite the Philippine laws currently applicable to displacement situations.

Part IV of this paper builds on Parts II and III with an assessment of the government’s compliance with the Guiding Principles in dealing with IDPs. My discussion follows the following pattern: (1) I present a Principle relevant to the displacement caused by the Zamboanga armed conflict or Typhoon Yolanda, (2) I cite the treaties and conventions from which such a Principle is derived (and which the Philippines has ratified), and (3) I discuss the corresponding government action relevant to such a Principle. I then provide an analysis of the government’s performance in IDP protection based on the standards set in the Guiding Principles. Here, I discuss my argument that without a legal framework to govern displacement situations, the government is unable to effectively protect IDPs. I highlight the need for such legal framework by presenting problems under the current *ad hoc* approach to IDP protection.

Finally, in Part V, I discuss the Rights of Internally Displaced Persons Act (hereinafter “IDP Bill”),<sup>3</sup> a pending piece of legislation which incorporates the Guiding Principles into domestic law. In this section, I enumerate the salient features of the IDP Bill, as well as its strong and weak points.

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<sup>1</sup> U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter “Guiding Principles”].

<sup>2</sup> Temporary shelter for IDPs while their permanent housing units are being constructed.

<sup>3</sup> H. No. 4744, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2014). This bill is the revived version of S. No. 3317, 15<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (2012) and H. No. 5627, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2011), which were vetoed by President Benigno Aquino III in 2013.

## I. CONTEXTUALIZING “INTERNALLY DISPLACED PERSONS”

From the time the issue of institutional protection of IDPs emerged in the late 1980s,<sup>4</sup> legal scholars have attempted to put into perspective the predicament of the internally displaced. Of these endeavors, some observations can be made. First, scholars are divided on the issue of whether refugee laws may apply to IDPs to address the latter’s lack of protection under an international legal instrument. Second, while some believe that IDPs are already adequately protected under the norms of human rights law and international humanitarian law, a majority argues that these norms are not sufficient, and standards for their protection need to be set forth in a distinct set of international laws. Lastly, there is consensus that the protection of the internally displaced is principally the responsibility of the states of which they are citizens.

### A. Application of Refugee Law to Internally Displaced Persons

“Internally displaced persons” do not enjoy a legal definition. From the time the concept gained popularity, available definitions of “internally displaced persons” have been generally informal or descriptive.<sup>5</sup> For the most part, IDPs have been considered “internal refugees”<sup>6</sup> because simplistically, an IDP differs only from a refugee in that the latter has crossed an international border. A refugee is defined under the 1951 United Nations Convention Relating to the Status of Refugees (hereinafter “Refugee Convention”)<sup>7</sup> as:

[A]ny person who [...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.<sup>8</sup>

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<sup>4</sup> The United Nations first raised the question of institutional protection of internally displaced persons at the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa held in Oslo in 1988. See Richard Plender, *The Legal Basis of International Jurisdiction to Act with Regard to the Internally Displaced*, 6 INT’L J. REFUGEE L. 345, 348 (1994).

<sup>5</sup> Luke T. Lee, *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?* 9 J. REFUGEE STUD. 27, 28 (1996).

<sup>6</sup> Erin Mooney, *The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*, 24 REFUGEE SURV. Q. 9, 13 (2005).

<sup>7</sup> July 28, 1951, 189 U.N.T.S. 137.

<sup>8</sup> Convention Relating to the Status of Refugees, art. I, ¶ (A)(2), July 28, 1951, 189 U.N.T.S. 137.

Because the only essential difference between a refugee and an IDP is the element of border-crossing, some scholars have supported the application of the Refugee Convention, or at least the principles thereof, for the protection of IDPs. On one hand, Franco, in asserting that “the rationale underlying many of [the Refugee Convention’s] principles is also relevant to the situation of displaced populations,”<sup>9</sup> enumerates these principles which include non-refoulement, admission, general physical protection, and voluntary repatriation.<sup>10</sup> On the other hand, to make the Refugee Convention directly applicable to IDPs, Lee proposed a “legal synthesis,”<sup>11</sup> that is, the deletion of the border-crossing element from the Refugee Convention so that it would cover both refugees and IDPs. The premise behind this “legal synthesis” is the argument that IDPs should be accorded the same level of international protection as refugees because the causes of their displacement are essentially the same.

A greater number of scholars, however, do not support the application of the Refugee Convention to IDPs. Cohen and Deng categorically state that “[r]efugee law is not directly applicable to the situation of internally displaced persons as international law defines refugees as persons who have fled across international borders.”<sup>12</sup> At most, they argue, refugee law “can be useful in proposing rules and establishing guidelines to protect the needs of the internally displaced.”<sup>13</sup> Arguing against Lee’s “legal synthesis” approach, Geissler maintains that the application of one convention to both IDPs and refugees “is only feasible if their factual *legal* situation can be compared. As this is not the case, there is no space for analogy to or even synthesis with the legal status of refugees under international law.”<sup>14</sup> Similarly, Phuong disagrees with Lee’s approach, saying that “one should not try to extend refugee protection to the internally displaced, but rather to consider IDP protection within a distinct legal framework.”<sup>15</sup> This legal framework, she writes, “draws heavily on international human rights law and international humanitarian law.”<sup>16</sup>

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<sup>9</sup> Leonardo Franco, *Safety Zones for Internally Displaced Persons*, in INTERNATIONAL LEGAL ISSUES ARISING UNDER THE UNITED NATIONS DECADE OF INTERNATIONAL LAW 893 (Najeeb Al-Nauimi & Richard Meese eds., 1995).

<sup>10</sup> *See Id.* at 893-895.

<sup>11</sup> Lee, *supra* note 5, at 30.

<sup>12</sup> ROBERTA COHEN & FRANCIS DENG, *MASSSES IN FLIGHT: THE GLOBAL CRISIS OF INTERNAL DISPLACEMENT* 85 (1998).

<sup>13</sup> *Id.*

<sup>14</sup> Nils Geissler, *The International Protection of Internally Displaced Persons*, 11 INT’L J. REFUGEE L. 451, 457 (1999).

<sup>15</sup> CATHERINE PHUONG, *THE INTERNATIONAL PROTECTION OF INTERNALLY DISPLACED PERSONS* 237 (2004).

<sup>16</sup> *Id.*

## B. Protection under Human Rights Law and International Humanitarian Law

That IDPs are not covered by one international legal instrument does not mean that there is no basis for their legal protection. The rights and guarantees to which the internally displaced are entitled stem from the fact that they are human beings in a situation of vulnerability to human rights abuses and neglect.<sup>17</sup> Thus, they enjoy the same rights guaranteed to other human beings by human rights law and international humanitarian law. As Deng states:

Human rights and humanitarian law may be seen as the principal sources of existing protections for internally displaced persons [...] While these bodies of law are conceptually distinct, they have influenced and informed each other and also contribute to a general corpus of laws capable of application to the problems experienced by internally displaced persons.<sup>18</sup>

The main human rights instruments that may be applied to IDPs are the Universal Declaration of Human Rights (UDHR),<sup>19</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>20</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>21</sup> Collectively, these instruments are called the International Bill of Human Rights. These instruments guarantee basic human rights such as the rights to life, integrity and dignity of the person, non-discrimination, freedom from arbitrary detention, liberty of movement, respect for family life, an adequate standard of living, medical care, access to legal remedies, possession of property, freedom of expression, freedom of religion, and participation in public life and education.

International humanitarian law applies only in situations of armed conflict. It provides protection to persons not taking part in hostilities. Its best-known codification is in the Geneva Conventions of 1949<sup>22</sup> and their two Additional Protocols of 1977, Protocol I<sup>23</sup> and Protocol II.<sup>24</sup>

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<sup>17</sup> WALTER KÄLIN, GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: ANNOTATIONS, 4-5 (2008).

<sup>18</sup> U.N. Secretary-General, *Comprehensive Study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the Human Rights Issues related to Internally Displaced Persons, pursuant to Commission on Human Rights Resolution 1992/73*, ¶ 57, U.N. Doc. E/CN.4/1993/35 (Jan. 21, 1993).

<sup>19</sup> G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) [hereinafter "UDHR"].

<sup>20</sup> Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter "ICCPR"].

<sup>21</sup> Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter "ICESCR"].

<sup>22</sup> Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the

A number of scholars believe that IDPs are adequately protected under the norms of human rights and international humanitarian law. In fact, Plender considers these norms as sufficient legal bases of international jurisdiction over the protection of IDPs.<sup>25</sup> Bugnion sees international humanitarian law as the “strongest bulwark” against displacement in that it aims to protect civilians from the risk of being uprooted in armed conflict.<sup>26</sup> Lewis is of the same view and maintains that “human rights and humanitarian law instruments provide a panoply of rights to protect citizens from forcible displacement and persecution during armed conflict, and thereby averts the need for their displacement.”<sup>27</sup>

### C. Government Responsibility

The body of refugee law, international human rights law, and international humanitarian law notwithstanding, there is consensus that the responsibility of providing protection to IDPs principally lies in their own governments.<sup>28</sup> This position is grounded on the concepts of state sovereignty and non-intervention, and in some measure, practical considerations.

International relations are premised on the concept of an independent or sovereign state, and the relations between these independent states. The closely related concept of non-intervention requires that “[i]f a state has complete control over its internal affairs, then it only follows that no other state has a right to intervene in that state’s internal matters.”<sup>29</sup> The role of sovereignty and non-intervention in the protection of IDPs is explained by Lewis, thus:

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Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

<sup>23</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3.

<sup>24</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) [hereinafter “Additional Protocol II”], June 8, 1977, 1125 U.N.T.S. 609.

<sup>25</sup> See Richard Plender, *The Legal Basis of International Jurisdiction to Act with Regard to the Internally Displaced*, 6 INT’L J. REFUGEE L. 345 (1994).

<sup>26</sup> François Bugnion, *Refugees, Internally Displaced Persons, and International Humanitarian Law*, 28 FORDHAM INT’L L.J., 1397, 1420 (2004).

<sup>27</sup> Corinne Lewis, *Dealing with the Problem of Internally Displaced Persons*, 6 GEO. IMMIGR. L.J. 693, 702 (1992).

<sup>28</sup> See JAMES HATHAWAY, *THE LAW OF REFUGEE STATUS* (1991); Ved P. Nanda, *International Law and the Refugee Challenge: Mass Expulsion and Internally Displaced People*, 28 WILLAMETTE L. REV. 791 (1991-1992); Lee, *supra* note 5; Geissler, *supra* note 14.

<sup>29</sup> Lewis, *supra* note 27, at 710.

The concepts of sovereignty and non-intervention are at the heart of the international community's unwillingness to involve itself with the problem of internally displaced persons. Since a state is responsible for the treatment of its own citizens within its borders, the state may claim that the situation which gives rise to the displacement of its citizens and the needs and difficulties that they encounter once they are displaced are internal matters. Furthermore, the state may claim that no other state has the right to assist or protect persons once they are displaced because to do so would be an intervention in the state's domestic affairs.<sup>30</sup>

Deng presents an illustration of the incompatibility between sovereignty and non-intervention on one hand, and international protection of IDPs on the other. In situations where governments cause or tolerate displacement, it may classify an internal armed conflict or violent tension as solely an internal affair within its domestic jurisdiction, so that international institutions may not step in to provide assistance according to their respective mandates. Deng calls this phenomenon the "paradox of national responsibility."<sup>31</sup>

Besides sovereignty and non-interference, practical considerations may also call for attributing primary responsibility for IDPs to their government. Basically, it is the government, more than international institutions, which can provide effective protection to the internally displaced. Domestic institutions, if willing to address the needs of IDPs, are regarded as "more powerful and efficient than international mechanisms, nearly all of which lack true enforcement power."<sup>32</sup> Most of these international mechanisms can do little more than recommend courses of action to domestic authorities, and generally, rely on publicity to exact compliance.<sup>33</sup>

## II. THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

### A. Development, Features, and Authoritative Nature

In the 1990s, when the number of persons displaced due to armed conflict, ethnic strife, and human rights abuses dramatically increased, the need

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<sup>30</sup> *Id.* at 710-711.

<sup>31</sup> Francis M. Deng, *Internally Displaced Populations: The Paradox of National Responsibility*, MASS. INSTITUTE OF TECHNOLOGY CENTER FOR INTERNATIONAL STUDIES AUDIT CONVENTIONAL WISDOM, at 1, 1 (May 2007).

<sup>32</sup> DAVID FISHER, GUIDE TO INTERNATIONAL HUMAN RIGHTS MECHANISMS FOR INTERNALLY DISPLACED PERSONS AND THEIR ADVOCATES 13 (2006), available at [http://www.brookings.edu/fp/projects/idp/Human\\_Rights\\_Mechanisms\\_for\\_IDPs.pdf](http://www.brookings.edu/fp/projects/idp/Human_Rights_Mechanisms_for_IDPs.pdf).

<sup>33</sup> *Id.*



for clear international standards for IDPs became apparent.<sup>34</sup> Relief organizations in the field, with no clear rules to rely on for assisting IDPs, “began to appeal for a document they could turn to that would define IDPs and their entitlements.”<sup>35</sup>

In 1992, Francis Deng was appointed Representative of the UN Secretary-General on Internally Displaced Persons. He was designated by the then United Nations Commission on Human Rights (UNCHR) to conduct a study on the applicability of international human rights law, humanitarian law, and refugee law to the protection of IDPs.<sup>36</sup> Deng conducted such study, the findings of which are embodied in his report, *Compilation and Analysis of Legal Norms*.<sup>37</sup> The study found that “IDPs receive a good deal of coverage under existing international human rights and humanitarian law and analogous refugee law. However, IDPs are not explicitly mentioned in that law, and there are significant areas in which the law fails to provide adequate protection.”<sup>38</sup>

Based on the *Compilation and Analysis*, the UNCHR requested Deng to prepare an appropriate framework that would address the plight of IDPs. In 1998, with the help of international legal experts and humanitarian and human rights organizations, Deng presented to the UNCHR the Guiding Principles on Internal Displacement.

### 1. Features of the Guiding Principles

The Guiding Principles “consolidate into one document the legal standards relevant to the internally displaced drawn from international human rights law, humanitarian law and refugee law by analogy.”<sup>39</sup> Consisting of thirty Principles, they are meant to provide guidance to: “(a) [t]he Representative of the Secretary-General on internally displaced persons in carrying out his mandate; (b) [s]tates, when faced with the phenomenon of internal displacement; (c) [a]ll other authorities, groups and persons in their relations with internally displaced persons; and (d) [i]ntergovernmental and nongovernmental organizations when addressing internal displacement.”<sup>40</sup>

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<sup>34</sup> Roberta Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, 10 GLOBAL GOVERNANCE 459, 460 (2004).

<sup>35</sup> *Id.* at 461.

<sup>36</sup> See UNCHR Res. 1992/73 U.N. Doc. E/CN.4/RES/1991/73, ¶ 2. (Mar. 5, 1992).

<sup>37</sup> Francis Deng (Representative of the UN Secretary-General on Internally Displaced Persons), *Internally Displaced Persons: Compilation and Analysis of Legal Norms* [hereinafter “*Compilation and Analysis*”], ¶ 416, U.N. Doc. E/CN.4/1996/52/Add.2 (Dec. 5, 1995).

<sup>38</sup> Cohen, *supra* note 34, at 463-464, citing *Compilation and Analysis*, *supra* note 37.

<sup>39</sup> KÄLIN, *supra* note 17, at xi.

<sup>40</sup> Guiding Principles, intro. ¶ 3.

An essential feature of the Guiding Principles is its adoption of a definition of an “internally displaced person.” IDPs are described as:

[P]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>41</sup>

The above description is not a legal description unlike the description of a refugee under the 1951 Refugee Convention. “By locating the description of ‘internally displaced persons’ in [the] introductory section rather than in [the] main body, the Guiding Principles seek to highlight the descriptive and non-legal nature of the term ‘internally displaced persons.’”<sup>42</sup> Accordingly, IDPs cannot be granted a special status under international law comparable to the status of refugees.<sup>43</sup>

The Guiding Principles description also provide the common causes of displacement: armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters. The words “in particular” indicate that this list is not exhaustive.<sup>44</sup>

Structurally, the Guiding Principles follow the phases of internal displacement: protection against displacement (Principles 5 – 9), protection during displacement (Principles 10 – 23), the framework for humanitarian assistance (Principles 24 – 27), and protection during return, local integration, and settlement (Principles 28 – 30).

## 2. *Harder than Soft Law*

The Guiding Principles are not a binding instrument. Unlike treaties such as the 1951 Refugee Convention, they have not been negotiated by states. They do not even constitute soft law.<sup>45</sup> One may argue that the Guiding

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<sup>41</sup> Guiding Principles, intro. ¶ 2.

<sup>42</sup> KÄLIN, *supra* note 17, at 5.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4.

<sup>45</sup> Walter Kälin, How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework, Presentation at Roundtable Meeting Ralph Bunche Institute for International Studies, CUNY Graduate Center (Dec. 19, 2001) (presentation at roundtable meeting, Ralph Bunche Institute for International Studies), *available at* <http://www.brookings.edu/fp/projects/idp/articles/Kaelin12-19-01.pdf>.

Principles are softer than soft law because they have been written by a group of independent experts who, in a state-centered international legal system, do not have the power to create law.<sup>46</sup>

However, the Guiding Principles are well grounded in international law, specifically international humanitarian law and international human rights law. For this reason, Walter Kälin, the Representative of the UN Secretary-General on Internally Displaced Persons, argues that it may be more authoritative than soft law instruments, thus:

[A] closer look at the Guiding Principles might reveal that this very soft instrument might actually turn out to be much harder than many well-known soft law instruments [...] It is possible to cite a multitude of existing legal provisions for almost every principle, which provided the drafters with strong normative guidance. Even where language was used that was not to be found in existing treaty law, no new law in the strict sense of the word was created in most cases. Instead, similar to a judge who has to decide to what extent a human rights guarantee invoked by an IDP does provide protection to that person, Dr. Deng's legal team tried to deduce specific norms from more general principles that are part of existing international law.<sup>47</sup>

Despite the fact that the Guiding Principles were not drafted or formally approved through an intergovernmental process, UN agencies, regional organizations, non-governmental organizations, and a growing number of governments cite and use them as the basis for policies, laws, and programs for the internally displaced.

In 2003, the UNCHR welcomed the fact that “an increasing number of States, United Nations agencies, and regional and non-governmental organizations [were] applying [the Guiding Principles] as a standard”<sup>48</sup> for dealing with situations of internal displacement. Cohen notes that this declaration by the UNCHR “certainly came close to an endorsement even if not adoption.”<sup>49</sup> In the 2005 World Summit, participating states unanimously recognized the Guiding Principles as an “important international framework for the protection of internally displaced persons[.]”<sup>50</sup> Similarly, Special Rapporteurs

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 6.

<sup>48</sup> UN Comm'n on Hum. Rts. [UNCHR] Res. 2003/51, ¶ 7, U.N. Doc E/CN.4/2003/L.11/Add.4 (Apr. 23, 2003).

<sup>49</sup> Cohen, *supra* note 34, at 469.

<sup>50</sup> G.A. Res. 60/1, ¶ 132, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

of the United Nations High Commissioner for Refugees (UNHCR),<sup>51</sup> the General Assembly,<sup>52</sup> and the UN Security Council<sup>53</sup> have referred to the Guiding Principles either as “a valid restatement of present international law or as a useful tool for properly addressing situations of internal displacement.”<sup>54</sup>

A number of states have incorporated the Guiding Principles into national legislation or policies. For example, Angola adopted the Guiding Principles into its law on resettlement of persons displaced by civil war.<sup>55</sup> Kenya enacted the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act which provides that “the provisions of the Guiding Principles shall apply to all internally displaced persons” in the country.<sup>56</sup> The National Framework for Relief, Rehabilitation and Reconciliation in Sri Lanka<sup>57</sup> provides for recommendations to adopt the Guiding Principles as “official policy for assisting internally displaced persons” and to “commit the concerned ministries to bringing their policies and programmes into alignment with these principles.”<sup>58</sup> In the United States, one of the three core principles of the United States Agency for International Development (USAID) in its policy toward protection of IDPs is to “[u]se UN Guiding Principles on Internal Displacement as a Framework for Response.”<sup>59</sup> In Colombia, the Guiding Principles have undergone a “judicial incorporation into the Colombian constitutional order as mandatory criteria for interpreting the scope of IDPs’ fundamental rights[.]”<sup>60</sup> Iraq’s National Policy on Displacement<sup>61</sup> takes

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<sup>51</sup> See, e.g. Asma Jahangir, *Extrajudicial, Summary, or Arbitrary Executions*, ¶ 44, U.N. Doc. E/CN.4/2000/3 (Jan. 25, 2000); Mona Rishmawi (Special Rapporteur), *Situation of Human Rights in Somalia*, ¶¶ 51-52, U.N. Doc. E/CN.4/2000/110 (Jan. 26, 2000).

<sup>52</sup> G.A. Res. 56/172, U.N. Doc. A/RES/56/172 (Feb. 26, 2002).

<sup>53</sup> S.C. Res. 1286, U.N. Doc. S/RES/1286 (Jan. 19, 2000).

<sup>54</sup> Kälén, *supra* note 45, at 8.

<sup>55</sup> Council of Ministers Dec. No. 79/02 (Dec. 6, 2002) (Angl.).

<sup>56</sup> Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, KENYA GAZETTE SUPPLEMENT NO. 220, § 3(b) (Dec. 31, 2012) (Kenya).

<sup>57</sup> NATIONAL FRAMEWORK FOR RELIEF, REHABILITATION AND RECONCILIATION (June 2002) (Sri Lanka), available at [http://www.brookings.edu/~media/Projects/idp/Sri-Lanka\\_Framework\\_2002.PDF](http://www.brookings.edu/~media/Projects/idp/Sri-Lanka_Framework_2002.PDF).

<sup>58</sup> *Id.* at 18.

<sup>59</sup> US Agency for Int’l Dev., *USAID Assistance to Internationally Displaced Persons Policy*, at 6 (Oct. 2004), available at <http://www.ehumanrights.org/docs/USAID-Assistance-to-Internally-Displaced-Persons-Policy.pdf>. It is stated in the same document, however, that “[a]lthough the United States does not accept the UN Guiding Principles as an expression of governing international law, it recognizes the valuable practical role the principles can play in the protection of IDPs.”

<sup>60</sup> Federico Guzmán Duque, *The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia*, in JUDICIAL PROTECTION OF INTERNALLY DISPLACED PERSONS: THE COLOMBIAN EXPERIENCE 175, 175 (Rodolfo Rivadeneira ed. 2009).

directions from the Guiding Principles, which it described as having become “part of international law.”<sup>62</sup> In Uganda, the 2004 National Policy for Internally Displaced Persons provides that national and local authorities shall take into account the Guiding Principles in the protection and treatment of IDPs.<sup>63</sup>

The authority of the Guiding Principles has also been recognized by regional intergovernmental organizations. The Inter-American Commission on Human Rights of the Organization of American States “began to use the principles as a benchmark for evaluating conditions in member states and as a basis for advocacy[.]”<sup>64</sup> In Africa, the Kampala Convention recognized the Guiding Principles as “an important international framework for the protection of internally displaced persons[.]”<sup>65</sup> The fifty-five member Organization for Security and Cooperation in Europe (OSCE) acknowledged the Guiding Principles as “a useful framework for the work of the OSCE [...] in dealing with internal displacement,”<sup>66</sup> and the Parliamentary Assembly of the Council of Europe urged certain states to “use the guiding principles as a basis for their present and future policies and programmes in support of internally displaced persons[.]”<sup>67</sup>

### 3. *Why not a treaty?*

It has been suggested that the way to strengthen the normative framework for the protection of IDPs is to enshrine the Guiding Principles in a treaty.<sup>68</sup> However, there are a number of arguments why the soft law character of the Guiding Principles should be retained.

First, states do not support the development of a treaty on IDPs.<sup>69</sup> “The idea that internal displacement is essentially an ‘internal affair’ remains strong in

<sup>61</sup> MINISTRY OF DISPLACEMENT AND MIGRATION, NATIONAL POLICY ON DISPLACEMENT (July 2008) (Iraq), available at [http://www.brookings.edu/~media/projects/idp/iraq\\_2008\\_national\\_policy.pdf](http://www.brookings.edu/~media/projects/idp/iraq_2008_national_policy.pdf).

<sup>62</sup> *Id.* at 6.

<sup>63</sup> OFFICE OF THE PRIME MINISTER, DEP’T OF DISASTER PREPAREDNESS AND REF., THE NATIONAL POLICY FOR INTERNALLY DISPLACED PERSONS (Aug. 2004) (Uganda).

<sup>64</sup> Cohen, *supra* note 34, at 469.

<sup>65</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa pmbi. ¶ 10, Oct. 22, 2009.

<sup>66</sup> Org. for Security and Cooperation in Europe Ministerial Council, Dec. No. 4/03, ¶ 13, MC.DEC/4/03 (Dec. 2, 2003).

<sup>67</sup> Eur. Parl. Ass., *Internal Displacement in Europe*, Rec. No. 1631 (Nov. 25, 2003).

<sup>68</sup> Walter Kälin, *The Future of the Guiding Principles on Internal Displacement*, FORCED MIGRATION REV. (SPECIAL ISSUE) 38, 39 (Dec. 2008), available at <http://www.brookings.edu/research/articles/2008/12/internal-displacement-kalin>.

<sup>69</sup> *Id.*

many parts of the world.”<sup>70</sup> It is feared that a treaty on IDPs would be an infringement on sovereignty. This is the reason the UNCHR, in requesting Deng to develop an *appropriate* framework based on the *Compilation and Analysis*, avoided the term “legal” to modify “framework” in the resolution.<sup>71</sup>

Second, the negotiation of a new treaty was deemed not necessary because sufficient international law applicable to IDPs already existed.<sup>72</sup> International humanitarian law, international human rights law, and refugee law were already being applied as sources of rights for the internally displaced. “What was required was to bring together the myriad of provisions now dispersed in a large number of instruments and to tailor them to the specific needs of the internally displaced.”<sup>73</sup>

Third, negotiating a treaty could take decades, while there exists an “urgent need for a document *now* to address the emergency needs of IDPs.”<sup>74</sup>

### III. INTERNALLY DISPLACED PERSONS IN THE PHILIPPINES

#### A. The Zamboanga Armed Conflict and Typhoon Yolanda

##### 1. *Zamboanga Armed Conflict*

On September 9, 2013, around a hundred MNLF forces entered Zamboanga City and attempted to raise their flag at the Zamboanga City Hall, taking several people hostage in the process.<sup>75</sup> This armed incursion was met by the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), which sought to free the hostages and expel the insurgents from the city. A standoff between the government and the MNLF forces brought parts of Zamboanga City to a standstill. Over the course of several days, barangays were occupied by the MNLF, civilians were killed, the Zamboanga International

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<sup>70</sup> *Id.* at 39.

<sup>71</sup> Cohen, *supra* note 34, at 464.

<sup>72</sup> *Id.* at 465.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 464.

<sup>75</sup> Andrei Medina, *Timeline: Crisis in Zamboanga City*, GMA NEWS ONLINE, Sept. 10, 2013, at <http://www.gmanetwork.com/news/story/325855/news/regions/timeline-crisis-in-zamboanga-city>.

Airport was shut down, and economic activity in the city was suspended. On September 28, 2013, the government declared the military crisis over.<sup>76</sup>

The skirmish caused 118,819 people<sup>77</sup> to flee from their homes. Of those who fled, 111,162<sup>78</sup> sought shelter in 57<sup>79</sup> evacuation centers in different barangays throughout the city, including the Joaquin F. Enriquez Memorial Sports Complex (JFE Sports Complex), the Tetuan Church, Tetuan Elementary School, Mampang Elementary School, and Talon-Talon National High School.<sup>80</sup> Those who did not settle in evacuation centers were scattered throughout Zamboanga City.

#### i. Government Relief Assistance

Immediate relief assistance was provided by national and local government authorities. On the day the hostilities broke out, Social Welfare and Development Secretary Dinky Soliman ordered the Department of Social Welfare and Development (DSWD) Region IX Quick Response Team to coordinate with the office of the Zamboanga City mayor in providing assistance to displaced families.<sup>81</sup> A standby fund of PHP 393,406 from DSWD Region IX was set aside and 1,693 family packs were prepared to augment relief efforts of the local government.<sup>82</sup> Social workers were instructed to conduct a profiling of the displaced families using the DSWD Disaster Assistance Family Access Card to aid the monitoring of goods distribution.<sup>83</sup> The Zamboanga City Local Crisis Management Committee monitored assistance from nongovernmental and humanitarian organizations such as the Philippine Red Cross (PRC), the International Committee of the Red Cross (ICRC), and the USAID.

By September 19, 2013, a total of 30.97 million pesos worth of food and non-food relief goods were distributed by the national government through the

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<sup>76</sup> *Id.*

<sup>77</sup> DSWD, *Total number of evacuees remains at 118,819 – DSWD*, DSWD WEBSITE, at <http://www.dswd.gov.ph/2013/09/total-number-of-evacuees-remains-at-118819-dswd-2/> (last modified Sept. 21, 2013).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *14,300 Displaced in Zamboanga Siege*, RAPPLER, Sept. 11, 2013, at <http://www.rappler.com/nation/38605-2000-families-displaced-zamboanga-clash>.

<sup>81</sup> DSWD, *DSWD keeps close watch of Zamboanga armed conflict*, DSWD WEBSITE, at <http://www.dswd.gov.ph/2013/09/dswd-keeps-close-watch-of-zamboanga-armed-conflict/> (last modified Sept. 9, 2013).

<sup>82</sup> *Id.*

<sup>83</sup> Leilani Junio, *DSWD provides P3M daily food assistance to evacuees in JFE Sports Complex*, ZAMBO TIMES, Sept. 19, 2013, at <http://www.zambotimes.com/archives/news/75882-DSWD-provides-P3M-daily-food-assistance-to-evacuees-in-JFE-Sports-Comp-lex.html>.

DSWD.<sup>84</sup> The DSWD partnered with local food service providers which provided about 70,000 ready-to-eat packed foods daily for the evacuees.<sup>85</sup> On the part of the local government, the City Social Welfare Development Office provided 12,000 ready-to-eat meals.

Medical stations from the Department of Health (DOH), Zamboanga City Health Department, Philippine Charity Sweepstakes Office, and PRC/ICRC were stationed at different evacuation sites to provide medical assistance and medicines, as well as psychosocial support services.<sup>86</sup> DSWD distributed hygiene kits containing bath soaps, detergents, towels, and pails.<sup>87</sup>

Security measures were put in place. The DSWD partnered with the PNP to ensure safety and order in the evacuation areas. A Gender-based Grievance Desk, tasked to receive reports on gender-based violence, was established in the JFE Sports Complex.<sup>88</sup>

Despite government efforts, however, living conditions in evacuation centers were inadequate.

#### ii. Living Conditions in Evacuation Sites

In the JFE Sports Complex, the largest evacuation center in the city, around 71,265<sup>89</sup> residents from different communities slept in makeshift tents and shared 52 emergency pit latrines and 10 bathing stations.<sup>90</sup> Access to potable water was also a problem. A relief volunteer described the situation in the following manner:

[I]t looks like their new found [sic] home. People started putting up their own “tents” all around the grandstand. Food distribution is now being done in open space. People who were lining up for food are stressed out and intensely hungry, the heat of the sun adding up to

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *DSWD distributes hygiene kits to maintain cleanliness at Zamboanga City evacuation center*, PHIL. TODAY, Sept. 20, 2013, at <http://www.philippinestoday.net/archives/6861>.

<sup>88</sup> *DSWD, DSWD-PNP Installs Stronger Security Measures in JFE Sports Complex*, DSWD WEBSITE, at <http://www.dswd.gov.ph/2013/09/dswd-pnp-installs-stronger-security-measures-in-jpe-sports-complex/> (last modified Sept. 30, 2012).

<sup>89</sup> *DSWD*, *supra* note 77.

<sup>90</sup> *52 more CRs, bath stations put up at JFE Sports Complex*, ZAMBOANGA TIMES, Oct. 26, 2013, at <http://zamboangatimes.ph/top-news/8884-52-more-crs-bath-stations-put-up-at-jfe-sports-complex.html>.



their burdens. Foul smell is highlighted due to improper sanitation and scarce sources of water.<sup>91</sup>

Crime became prevalent. Evacuees resorted to stealing food for their families.<sup>92</sup> On September 21, 2013, news broke out that a five-year-old girl was raped by her uncle as she was sleeping in her family's makeshift tent in the JFE Sports Complex.<sup>93</sup> Other cases of sexual assault were reported, especially in the communal toilets.<sup>94</sup> Among those assaulted were children who were found to be positive for sexually transmitted diseases.<sup>95</sup> Prostitution became rampant; female evacuees charged rates ranging from PHP 25 to PHP 300 to buy food and medicines.<sup>96</sup>

Disease spread among evacuees, especially the children and the elderly. Two months after the siege, local authorities monitored 14,467 cases of acute respiratory infection, 4,649 cases of fever, 3,136 cases of acute water diarrhea, 1,962 cases of skin diseases, and 1,075 cases of high blood pressure.<sup>97</sup> A total of 104 deaths were reported from September 2013 to March 2014, 48% of which were of children under age five.<sup>98</sup>

### iii. 3.89 Billion-Peso Rehabilitation Budget

Three weeks into the standoff, the national government was reported to have earmarked 3.89 billion pesos for the recovery program and rehabilitation of Zamboanga City, 2.9 billion pesos of which was allocated to shelter assistance and bunkhouses for the thousands of families displaced.<sup>99</sup> Of this budget, 2.13

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<sup>91</sup> 14,300 Displaced in Zamboanga Siege, RAPPLER, Sept. 11, 2013, at <http://www.rappler.com/nation/38605-2000-families-displaced-zamboanga-clash>.

<sup>92</sup> Nonoy Lacson, *The almost forgotten Zamboanga evacuees*, MANILA BULL., Nov. 16, 2013, available at <http://www.mb.com.ph/the-almost-forgotten-zamboanga-evacuees/>.

<sup>93</sup> Rouchelle Dinglasan, *5-year-old girl raped in Zamboanga City evacuation center*, GMA NEWS ONLINE, Sept. 21, 2013, at <http://www.gmanetwork.com/news/story/327552/news/regions/5-year-old-girl-raped-in-zamboanga-city-evacuation-center>.

<sup>94</sup> Julie Alipala, *Prostitution rife in Zamboanga evacuation centers*, PHIL. DAILY INQUIRER, Apr. 3, 2014, available at <http://newsinfo.inquirer.net/591577/prostitution-rife-in-zamboanga-evacuation-centers>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Julie Alipala, *Kids die of illnesses in Zamboanga City evacuation centers*, PHIL. DAILY INQUIRER, Nov. 4, 2013, available at <http://newsinfo.inquirer.net/520395/kids-die-of-illnesses-in-zamboanga-city-evacuation-centers>.

<sup>98</sup> United Nations Office for the Coordination of Humanitarian Affairs [hereinafter "UN OCHA"], *Philippines: Zamboanga Action Plan 2014 (Revision) (May 20, 2014)*, available at [https://docs.unocha.org/sites/dms/CAP/Revision\\_2014\\_Philippines\\_Zamboanga\\_Action\\_Plan.pdf](https://docs.unocha.org/sites/dms/CAP/Revision_2014_Philippines_Zamboanga_Action_Plan.pdf).

<sup>99</sup> Carolyn Arguillas, *Where will P3.89 billion for Zambo rehab go?*, MINDANNEWS, Sept. 29, 2013, at <http://www.mindanews.com/top-stories/2013/09/29/where-will-p3-89-billion-for-zambo-rehab-go/>.

billion pesos was allotted for the reconstruction of houses of 21,252 families at PHP 100,000 each while 797.25 million pesos was for the construction of bunkhouses.<sup>100</sup>

An amount of 212.52 million pesos was set aside for livelihood assistance for the 21,252 families, and 178.46 million pesos for relief assistance at PHP 250 per pack of relief goods for 30 days.<sup>101</sup> The rehabilitation program budget also includes 149.90 million pesos for work/training for 23,794 families at PHP 210 per family per day, 106.94 million pesos for educational assistance for 21,387 children at PHP 5,000 each, and 24.10 million pesos for supplementary feeding program for 15,446 kids aged two to five years at PHP 13 per child per day for 120 feeding days.<sup>102</sup>

#### iv. Z3R Plan

In December 2013, three months after the siege, 65,903 people remained displaced—24,140 continued to stay in evacuation centers and 39,763 “home-based IDPs” were living with relatives.<sup>103</sup> Most families were transferred to transitory sites in the JFE Sports Complex Bunkhouses, Tulungatung/DSWD Bunkhouses, Taluksangay, Rio Hondo, Mampang, Santa Catalina, and Buggoc.<sup>104</sup> The DSWD Region IX announced the phasing out of general food distribution in evacuation camps to be replaced by food-for-work<sup>105</sup> activities.

On December 22, 2013, President Benigno Aquino III approved the Zamboanga City Roadmap to Recovery and Reconstruction (“Z3R”) Plan, a rehabilitation plan formulated by the University of the Philippines Planning and Development Research Foundation, Inc. The Z3R Plan had three objectives: (1) improve the overall environment of the affected communities, (2) minimize adverse and social impacts and relocation, and (3) improve public safety and

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> UN OCHA, Philippines: Zamboanga and Basilan Emergency Situation Report No. 13 (as of 10 December 2013), available at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHAPhilippinesZamboangaBasilanEmergencySitrepN13.pdf> (last visited Apr. 27, 2015).

<sup>104</sup> UN OCHA, PHILIPPINES - Mindanao: Zamboanga City evacuation centres and transitory sites as of 18 December 2014, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/ECs%20and%20TSs%20Map%20as%20of%2018%20December.pdf> (last visited Apr. 27 2015).

<sup>105</sup> Under food-for-work programs, workers hired to do manual labor are paid in food.

security of the community.<sup>106</sup> Ultimately, the Z3R Plan aims to provide housing for IDPs seeking to resettle in new communities.<sup>107</sup> The President declared the allocation of 3.5 billion pesos for the implementation of the Z3R Plan and gave concerned agencies, such as the National Housing Authority (NHA) and the DSWD, an eighteen-month time frame starting January 2014 to accomplish the rehabilitation plan.

Initially, the accomplishment of the Z3R Plan seemed promising. A month after it was approved, the Plan was updated to include the preparation by the NHA of resettlement subdivision plans. An amount of 2.56 billion pesos out of the 3.5 billion-peso budget was allocated for shelter, land acquisition, land development, assistance, and contingency.<sup>108</sup>

#### v. A Year Later

Despite the promise of the Z3R Plan and the 3.9 billion-peso rehabilitation budget, a remarkable number of IDPs remained in evacuation centers and transitory sites a year later. By September 2014, the number of IDPs reported was 22,954.<sup>109</sup> The displaced persons who have left the remaining five evacuation centers and six transitory sites have either availed of the government's *Balik Probinsya* program (i.e., gone back to their places origin), or have chosen to rent a house or live with relatives in their new residence.<sup>110</sup>

At least half of those displaced faced obstacles in returning to their homes, either because their homes were in "no return" areas<sup>111</sup> or they were not declared eligible for housing assistance. For instance, the Badjao folk living in the seaside villages of Rio Hondo, Talon-Talon, Santa Catalina, Sta. Barbara, Kasanyangan, and Mariki were prevented from returning to their homes after

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<sup>106</sup> *Z3R plan kicks off in Paniran*, ZAMBOANGA CITY WEBSITE, at [http://www.zamboanga.gov.ph/index.php?option=com\\_content&view=article&id=4535:z3r-plan-kicks-off-in-paniran&catid=111&Itemid=27](http://www.zamboanga.gov.ph/index.php?option=com_content&view=article&id=4535:z3r-plan-kicks-off-in-paniran&catid=111&Itemid=27) (last modified May 26, 2014).

<sup>107</sup> Bong Garcia, *Aquino approves Zambo rehab plan*, SUN STAR DAILY, Dec. 22, 2013, available at <http://archive.sunstar.com.ph/zamboanga/local-news/2013/12/22/aquino-approves-zambo-rehab-plan-320169>.

<sup>108</sup> *City seeks Gazmin's aid to expedite Z3R plan*, PCNA, ZAMBOANGA CITY WEBSITE, at [http://www.zamboanga.gov.ph/index.php?option=com\\_content&view=article&id=4579:city-seeks-gazmins-aid-to-expedite-z3r-plan-pcna&catid=111&Itemid=27](http://www.zamboanga.gov.ph/index.php?option=com_content&view=article&id=4579:city-seeks-gazmins-aid-to-expedite-z3r-plan-pcna&catid=111&Itemid=27) (last modified June 14, 2014).

<sup>109</sup> Yen Delgado, *The internally displaced in Zamboanga City*, MANILA STANDARD TODAY, Sept. 9, 2014, available at <http://manilastandardtoday.com/2014/09/09/the-internally-displaced-in-zamboanga-city>.

<sup>110</sup> These persons are referred to as "home-based IDPs."

<sup>111</sup> These areas are determined by the government to be at high risk of floods or further attacks from the MNLF, or constitute protected areas under environmental laws.

the government determined that the construction of their houses would harm mangroves in the area, in violation of environmental laws.<sup>112</sup> These areas were declared as “no-build” zones.

In July 2014, the House of Representatives announced that it would conduct a probe on the DSWD for failing to bring aid to IDPs.<sup>113</sup> The Bayan Muna Party-list noted that despite the allocation for the Zamboanga rehabilitation, IDPs still had no permanent housing and lacked food support, medical support, financial support and sources of livelihood.<sup>114</sup>

In August 2014, the government declared the Zamboanga humanitarian assistance phase officially over<sup>115</sup> despite the fact that 35,000 IDPs with considerable humanitarian needs and no sustainable livelihood were still living in eight evacuation centers and three transitional sites.

Two months into 2015, with 30,000 still displaced in Zamboanga, new causes for displacement occurred: a clan feud between the Moro Islamic Liberation Front (MILF) and its breakaway group, the Bangsamoro Islamic Freedom Fighters (BIFF), and an “all-out offensive”<sup>116</sup> by the AFP against the BIFF. These incidents caused thousands to flee their homes, including those in Zamboanga City previously displaced in 2013.

## 2. Typhoon Yolanda

In November 8, 2013, Typhoon Haiyan, locally named Yolanda, made landfall in Visayas. It was called the largest typhoon ever recorded<sup>117</sup> with wind speeds of more than 300 kilometers per hour and storm surges of over four

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<sup>112</sup> DJ Yap, *Badjaos can go home now*, PHIL. DAILY INQUIRER, Mar. 26, 2014, available at <http://www.inquirer.net/help-philippines/articles/589047>.

<sup>113</sup> Gil Cabacungan, *DSWD faces probe for neglecting Zamboanga siege refugees*, PHIL. DAILY INQUIRER, July 6, 2014, available at <http://newsinfo.inquirer.net/617415/dswd-faces-probe-for-neglecting-zamboanga-siege-evacuees>.

<sup>114</sup> *Id.*

<sup>115</sup> UN OCHA, *Philippines: Zamboanga Crisis Timeline* (Oct. 3, 2014), available at <https://www.humanitarianresponse.info/system/files/documents/files/PHL-OCHA-Zamboanga%20Crisis%20Timeline-3%20Oct%202014.pdf>.

<sup>116</sup> Aries Hegina, *AFP chief Catapang orders 'all-out offensive' vs BIFF*, PHIL. DAILY INQUIRER, Feb. 25, 2015, available at <http://newsinfo.inquirer.net/675250/afp-chief-catapang-orders-all-out-offensive-vs-biff>.

<sup>117</sup> NORWEGIAN REFUGEE COUNCIL & INTERNAL DISPLACEMENT MONITORING CTR. [IDMC], *GLOBAL ESTIMATES 2014: PEOPLE DISPLACED BY DISASTERS 19* (2014).

meters high.<sup>118</sup> Yolanda caused torrential rain and severe flooding in 171 municipalities in 14 provinces and six regions.<sup>119</sup>

The super typhoon caused the biggest displacement of 2013, forcing 4.1 million people to flee their homes—a million more people than those displaced in Africa, America, and Europe combined.<sup>120</sup> Of the 4.1 million IDPs, four million were in dispersed settings (e.g., spontaneous settlements and host families or friends), while 101,500 sought shelter in evacuation centers.<sup>121</sup> Nearly all instances of displacement were concentrated in Leyte, Eastern Samar, and Samar.

#### i. Government response

On November 5, 2013, three days before the landfall, the government was alerted by the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) of the forthcoming super typhoon. The next day, the DSWD, in coordination with local government units (LGUs), identified possible evacuation centers and began the repacking of medicines and food.<sup>122</sup> LGUs conducted preemptive evacuation in different localities,<sup>123</sup> directing their constituents to the DSWD-identified evacuation centers.<sup>124</sup>

Initially, the government focused on life-saving emergency shelter assistance. On November 13, 2013, five days after Yolanda struck, some 100,500 persons were sheltered in evacuation centers that then numbered 933. The DOH deployed nurses and doctors to treat the injured and the sick, and the DSWD led massive repacking efforts across several centers in Manila and Cebu, producing an average of 150,000 food packs per day for Yolanda survivors.<sup>125</sup>

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<sup>118</sup> Office of The Presidential Assistant for Rehabilitation and Recovery [OPARR], *Yolanda Rehabilitation and Recovery Efforts* (July 28, 2014), available at <http://president.gov.ph/wp-content/uploads/2014/08/Revised-DraftYolanda-Rehab-Briefer-as-of-1-Aug-2014-w-status-report.pdf> [hereinafter “OPARR Report”].

<sup>119</sup> *Id.*

<sup>120</sup> NORWEGIAN REFUGEE COUNCIL & INTERNAL DISPLACEMENT MONITORING CTR., *supra* note 117.

<sup>121</sup> *Id.*

<sup>122</sup> *RescuePH: A detailed list of government rescue and relief efforts before and immediately after Yolanda*, OFFICIAL GAZETTE WEBSITE, at <http://www.gov.ph/rescueph-a-detailed-list-of-government-rescue-and-relief-efforts-before-and-immediately-after-yolanda/> (last visited May 27, 2015).

<sup>123</sup> Iloilo City, Miag-ao, Oton, Sta. Barbara, Ajuy, Concepcion, Catbalogan, Samar, Salcedo, Guiuan, Oras, all of Eastern Samar, Tacloban City, Tolosa, Gigaquit, and Gingoog.

<sup>124</sup> *RescuePH: A detailed list of government rescue and relief efforts before and immediately after Yolanda*, *supra* note 122.

<sup>125</sup> *Id.*

Weeks after the typhoon, a majority of IDPs left the evacuation centers and returned home. Other IDPs, whose homes were rendered unfit for occupancy, sought access to basic services or livelihood in other regions. Between November 2013 and January 2014, the total number of IDPs decreased to 3.95 million.<sup>126</sup> Of this number, around 101,000 remained in evacuation centers.<sup>127</sup>

By March 2014, the number of evacuation centers was reduced to 62, occupied by some 24,000 IDPs.<sup>128</sup>

## ii. Living Conditions in Evacuation and Transitional Sites

In May 2014, an evidence-based study was conducted by the DSWD, the International Organization for Migration (IOM), the Internal Displacement Monitoring Centre (IDMC) and the SAS to evaluate the living conditions of IDPs that remained in evacuation centers. The study found that:

Some sites still do not meet basic standards six months after the typhoon. One of the biggest challenges is providing basic services in line with agreed standards to tent cities, where almost a quarter (24%) of the displaced population resides. The majority of these sites (13 out of 14) are located in Tacloban due to a lack of funds to build temporary shelters despite the availability of land to build additional bunkhouses. In addition, drainage problems, lack of electricity and an insufficient number of latrines to population remain challenges faced in bunkhouses.<sup>129</sup>

Similarly, those living in transitional sites lacked protection, livelihood support, water, sanitation and hygiene (“WASH”), and proper shelter.<sup>130</sup> Most families lived in unsafe or inadequate makeshift shelters without further assistance.<sup>131</sup>

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<sup>126</sup> DSWD, IDMC, Int'l Org. of Migration [IOM] & SAS, *The Evolving Picture of Displacement in the Wake of Typhoon Haiyan: An Evidence-Based Overview*, at 19 (May 2014), available at <http://www.iom.int/files/live/sites/iom/files/Country/docs/The-Evolving-Picture-of-Displacement-in-the-Wake-of-Typhoon-Haiyan.pdf>.

<sup>127</sup> *Id.*

<sup>128</sup> UN OCHA, *Response to Typhoon Haiyan (Yolanda)* (Apr. 11, 2014), at <http://reliefweb.int/sites/reliefweb.int/files/resources/CCCM-Apr11.pdf>.

<sup>129</sup> DSWD et al., *supra* note 126, at 39.

<sup>130</sup> UN OCHA, *Typhoon Haiyan: One Year On*, HUMANITARIAN BULL. PHIL., Oct. 2014, at 1, 1, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHAPhilippinesHumanitarianBulletinNo.29.31October2014.pdf>.

<sup>131</sup> *Id.*

### iii. Rehabilitation and Recovery Efforts

On December 6, 2013, President Benigno Aquino III created the Office of the Presidential Assistant for Rehabilitation and Recovery (OPARR) through Memorandum Order No. 62. The OPARR, headed by “rehabilitation czar” Panfilo Lacson, was mandated to put together an “over-all strategic vision and integrated short-term, medium-term, and long-term plans and programs”<sup>132</sup> for the rehabilitation of Yolanda-affected areas. The OPARR was to be guided by the following policies and principles:

- a. Reconstruction Assistance on Yolanda (RAY) – This framework “guides the planning and implementation of recovery and reconstruction programs, projects and activities in the affected areas.”<sup>133</sup>
- b. Post-disaster Needs Assessment (PDNA) – This was an assessment of areas of concern based on ground verified information, which would aid in prioritizing recovery and reconstruction needs.<sup>134</sup>
- c. Build Back Better, Faster, and Safer – This principle, “serves as the guiding framework in the development and implementation of rehabilitation and recovery interventions.” The idea was to focus on sustainable efforts to “strengthen capacities to cope with future hazard events” while taking into consideration the urgent needs of those affected.<sup>135</sup>
- d. Cluster Approach – Five clusters—infrastructure, livelihood, resettlement, social services, and support—were established with functions corresponding to the different areas that require the attention of the OPARR. Under this framework, the OPARR would coordinate with certain government agencies which act as cluster heads. (e.g., the DSWD as head of the social services cluster).<sup>136</sup>
- e. Bottom-Up Approach – This approach entailed the cooperation of OPARR with LGUs which can better assess the needs of their respective areas. The LGUs were required to submit their own Local Government Rehabilitation and Recovery Plan, which would be integrated with the Comprehensive Rehabilitation and Recovery Plan (CRRP).<sup>137</sup>

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<sup>132</sup> OPARR Report, *supra* note 118, at 3.

<sup>133</sup> *Id.* at 4.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

The CRRP, embodied in an 8,000-page document, was signed by President Benigno Aquino III on October 29, 2014. This plan outlined specific projects, programs, and activities (“PPAs”) to be undertaken by the OPARR for the rehabilitation and recovery of devastated areas. The PPAs were grouped into the five clusters mentioned. The 167.86 billion-peso budget allocated for the implementation of the CRRP was sourced from the national budget.<sup>138</sup>

Of the entire allotment, 75.68 billion pesos was set aside for the resettlement of displaced persons.<sup>139</sup> This resettlement involved the relocation of approximately 205,000 families into safe areas and the construction of permanent housing units for such families in 116 cities and municipalities.<sup>140</sup>

The CRRP was well-received by various organizations. The Asian Development Bank praised the rehabilitation effort, saying that rehabilitation was moving faster than that done during the tsunami and earthquake which struck Indonesia in 2004.<sup>141</sup> By the middle of 2014, around 2,700 housing units were under construction.<sup>142</sup>

#### iv. Roadblocks Toward Recovery

Despite the directive of President Benigno Aquino III to accelerate the implementation of rehabilitation projects,<sup>143</sup> recovery remained a struggle.

Throughout 2014, the rehabilitation efforts faced several obstacles. Out of the 75.68 billion-peso budget for resettlement, only 2.44 billion pesos was actually funded.<sup>144</sup> Moreover, there was a discrepancy in the allocation of the resettlement fund; areas with the most number of Yolanda-damaged houses were not awarded the biggest resettlement funds.<sup>145</sup> The official OPARR report

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<sup>138</sup> Elizabeth Marcelo, *at How government will spend P167.86B for Yolanda Rehabilitation*, GMA NEWS ONLINE, Nov. 8, 2014, <http://www.gmanetwork.com/news/story/387222/news/nation/how-government-will-spend-p167-86b-for-yolanda-rehabilitation>.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Angela Casauay, *Slow Yolanda rehab? PH even faster than Aceh, says ADB*, RAPPLER, Nov. 3, 2014, [at http://www.rappler.com/move-ph/issues/disasters/typhoon-yolanda/73912-adb-post-yolanda-rehabilitation](http://www.rappler.com/move-ph/issues/disasters/typhoon-yolanda/73912-adb-post-yolanda-rehabilitation).

<sup>142</sup> OPARR Report, *supra* note 118, at 10.

<sup>143</sup> Natasha Gutierrez, *Aquino wants faster Yolanda rehabilitation*, RAPPLER, Apr. 14, 2015, [at http://www.rappler.com/nation/89895-yolanda-rehabilitation-cabinet](http://www.rappler.com/nation/89895-yolanda-rehabilitation-cabinet).

<sup>144</sup> OPARR Report, *supra* note 118, at 5.

<sup>145</sup> *Mismatch' in Yolanda resettlement fund estimates – watchdog*, RAPPLER, May 9, 2015, [at http://www.rappler.com/move-ph/issues/disasters/typhoon-yolanda/92650-budget-watchdog-yolanda-resettlement-fund](http://www.rappler.com/move-ph/issues/disasters/typhoon-yolanda/92650-budget-watchdog-yolanda-resettlement-fund).



announced, as part of its list of achievements under the Resettlement Cluster Plan, that 153 hectares of government-owned land have been identified for resettlement. However, the media reported the difficulty in finding land suitable for housing with appropriate environmental clearances,<sup>146</sup> and relocation sites which are not classified as reserved land.<sup>147</sup> While the OPARR reported the delivery of more than five million food packs, 1,540 medicine kits, and the distribution of cash amounting to 21 million pesos to households doing community work, those who were transferred to government resettlement areas still complained of poor quality housing and lack of access to potable water and electricity.<sup>148</sup>

The deficiencies in the rehabilitation efforts “were mainly blamed on bureaucracy, corruption, slow disbursement of money to support the relief and recovery efforts at the local level, and lack of clear guidelines and resources provided to LGUs to implement relocation.”<sup>149</sup>

## **B. Protection of Internally Displaced Persons under Philippine Law**

As of June 2015, the Philippines has no legal framework specifically for the protection of IDPs. What we have are various provisions in different laws applicable to certain aspects of displacement situations. These laws include the Philippine Disaster Risk Reduction and Management Act,<sup>150</sup> the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,<sup>151</sup> the Magna Carta of Women,<sup>152</sup> the Indigenous People’s Rights Act,<sup>153</sup> and the Local Government Code of 1991.<sup>154</sup>

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<sup>146</sup> 120,000 of needed 205,000 housing units for Yolanda survivors to be finished by 2015 - VP Binay (Jan. 11, 2015), INTERAKSYON WEBSITE, at <http://www.interaksyon.com/article/102772/120000-of-needed-205000-housing-units-for-yolanda-survivors-to-be-finished-by-2015---vp-binay>.

<sup>147</sup> *Id.*

<sup>148</sup> Jazmin Bonifacio, *More than a year after Yolanda: Home sweet home?*, RAPPLER, Apr. 25, 2015, at <http://www.rappler.com/nation/91115-poor-quality-relocation-yolanda>.

<sup>149</sup> IDMC, *Philippines: Long-term recovery challenges remain in the wake of massive displacement*, IDMC WEBSITE, at <http://www.internal-displacement.org/assets/library/Asia/Philippines/pdf/201502-ap-philippines-overview-en.pdf> (last modified Feb. 10, 2015).

<sup>150</sup> Rep. Act No. 10121 (2010).

<sup>151</sup> Rep. Act No. 7610 (1992).

<sup>152</sup> Rep. Act No. 9710 (2009).

<sup>153</sup> Rep. Act No. 8371 (1997).

<sup>154</sup> LOCAL GOV’T CODE, Rep. Act No. 7160 (1991).

*1. Philippine Disaster Risk Reduction and Management Act*

In May 27, 2010, the Philippine Disaster Risk Reduction and Management Act was signed into law by President Gloria Macapagal-Arroyo. The law overhauled the country's approach to disaster situations by providing policies and plans of action that pertain to the different aspects of disaster risk reduction and management. Some of the features relevant to IDPs are:

1. *The creation of the National Disaster Risk Reduction Management Council (NDRRMC).* The NDRRMC replaced the National Disaster Coordinating Council. It is comprised of representatives from various government agencies, including the Secretary of the Department of National Defense (DND) as chairperson and the Secretary of the DSWD as vice chairperson for disaster response.<sup>155</sup> The NDRRMC's powers include the management and mobilization of resources for disaster risk reduction and management, including the National Disaster Risk Reduction and Management Fund.<sup>156</sup> It may also “[c]oordinate or oversee the implementation of the country's obligations with disaster management treaties” and ensure that such obligations are incorporated into local disaster risk reduction and management frameworks, policies, plans, and projects.<sup>157</sup>
2. *Guidelines for Declaration of a State of Calamity.* The law empowers the NDRRMC to recommend to the President the declaration of a state calamity in barangays, municipalities, provinces, and regions, and the lifting thereof, based on criteria set by the NDRRMC.<sup>158</sup> Such declarations may warrant international humanitarian assistance.<sup>159</sup>
3. *Establishment of a mechanism for international humanitarian assistance.*<sup>160</sup> The law grants an exempt status under Section 105 of the Tariffs and Customs Code for donated food, clothing, medicine and equipment for relief and recovery, and other disaster management and recovery-related supplies.

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<sup>155</sup> Rep. Act No. 10121 (2010), § 5.

<sup>156</sup> § 6(h).

<sup>157</sup> § 6(q).

<sup>158</sup> § 16.

<sup>159</sup> § 16.

<sup>160</sup> § 18.

4. *Enumeration of prohibited acts<sup>161</sup> and penalties for their commission.<sup>162</sup>* The law prohibits acts that impede the distribution of relief goods to disaster-stricken areas<sup>163</sup> and the seizing<sup>164</sup> and selling<sup>165</sup> of goods intended for victims, among others. The commission of the acts enumerated subjects the offender to a fine of not less than PHP 50,000 and imprisonment of not less than six years and one day.<sup>166</sup>

2. *1992 Special Protection of Children  
Against Abuse, Exploitation and Discrimination Act*

The Special Protection of Children Against Abuse, Exploitation and Discrimination Act, signed into law on June 17, 1992 by President Fidel V. Ramos, was enacted to provide special protection to children against abuse, neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development.<sup>167</sup> It uses a human rights-based approach for the care of minors displaced due to armed conflict:

Section 23. *Evacuation of Children During Armed Conflict.* – Children shall be given priority during evacuation as a result of armed conflict. Existing community organizations shall be tapped to look after the safety and well-being of children during evacuation operations. Measures shall be taken to ensure that children evacuated are accompanied by persons responsible for their safety and well-being.

Section 24. *Family Life and Temporary Shelter.* – Whenever possible, members of the same family shall be housed in the same premises and given separate accommodation from other evacuees and provided with facilities to lead a normal family life. In places of temporary shelter, expectant and nursing mothers and children shall be given additional food in proportion to their physiological needs. Whenever feasible, children shall be given opportunities for physical exercise, sports and outdoor games.<sup>168</sup>

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<sup>161</sup> § 19.

<sup>162</sup> § 20.

<sup>163</sup> § 19(b).

<sup>164</sup> § 19(f).

<sup>165</sup> § 19(e).

<sup>166</sup> § 20.

<sup>167</sup> Rep. Act No. 7610 (1992), § 2.

<sup>168</sup> §§ 23-24.

### 3. 2009 Magna Carta of Women

The Magna Carta of Women, signed into law by President Gloria Macapagal-Arroyo on August 14, 2009, incorporates into the national law the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

It specifically addresses the needs of women in disaster situations:

Section 10. *Women Affected by Disasters, Calamities, and Other Crisis Situations.* Women have the right to protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation, and construction efforts. The State shall provide for immediate humanitarian assistance, allocation of resources, and early resettlement, if necessary. It shall also address the particular needs of women from a gender perspective to ensure their full protection from sexual exploitation and other sexual and gender based violence committed against them. Responses to disaster situations shall include the provision of services, such as psychosocial support, livelihood support, education, psychological health, and comprehensive health services, including protection during pregnancy.<sup>169</sup>

### 4. Indigenous People's Rights Act

The Indigenous People's Rights Act (IPRA) was signed into law by President Fidel Ramos on October 29, 1997. It recognizes and promotes all rights of Indigenous Cultural Communities (ICCs) and Indigenous Peoples (IPs),<sup>170</sup> and created the National Commission on Indigenous Peoples (NCIP). In recognizing the rights of ICCs/IPs to their ancestral domains, the law lays down their rights specifically in case of displacement therefrom:

Right in Case of Displacement. — In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: [...] Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed[.]<sup>171</sup>

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<sup>169</sup> Rep. Act No. 9710 (2009), § 10.

<sup>170</sup> Rep. Act No. 8371 (1997), § 2.

<sup>171</sup> § 7(d).

The IPRA also protects against the displacement of ICCs/IPs at the first instance, and their return or resettlement once the cause for displacement has ceased:

Right to Stay in the Territories. — The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist[.]<sup>172</sup>

### 5. *The Local Government Code of 1991*

Signed into law on October 10, 1991 by President Corazon Aquino, the Local Government Code seeks to implement the Constitution's policy of local autonomy for LGUs by providing for operative principles of decentralization.<sup>173</sup> Among others, it provides for the general powers and attributes of LGUs,<sup>174</sup> qualifications, election, and succession of local elective officials,<sup>175</sup> and the substantive and procedural laws governing local taxation.<sup>176</sup> A number of provisions found in the Local Government Code of 1991 may be applicable to the protection of IDPs:

1. *Powers of the Sanggunian.* The *Sangguniang Bayan*, *Sangguniang Panlungsod*, and *Sangguniang Panlalawigan*, in the exercise of their power to enact ordinances and pass resolutions, are authorized to adopt measures to protect the inhabitants of the LGUs from harmful effects of man-made or natural disasters and calamities, and provide relief services and assistance for victims during and in the aftermath of said disasters.<sup>177</sup>
2. *Powers of the local chief executive.* The Provincial Governor, City Mayor, and Municipal Mayor are empowered to carry out emergency measures as may be necessary during and in the aftermath of man-made natural disasters and calamities.<sup>178</sup>

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<sup>172</sup> § 7(c).

<sup>173</sup> LOCAL GOV'T CODE, § 3.

<sup>174</sup> Tit. I, ch. II.

<sup>175</sup> Tit. II, ch. I.

<sup>176</sup> Bk. II.

<sup>177</sup> §§ 447(a)(1)(iv), 458(a)(1)(iv), 468(a)(1)(iv).

<sup>178</sup> §§ 465(b)(1)(vii), 455(b)(1)(vii), 444(b)(1)(vii).

3. *Relief operations for evacuees.* Social welfare services that may be provided by a provincial government include relief operations and programs on returning evacuees.<sup>179</sup>

#### IV. ASSESSING THE PHILIPPINES' COMPLIANCE WITH THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

##### A. The Guiding Principles and Government Action

In this section, I present the Principles relevant to the displacement situation caused by the Zamboanga armed conflict and Typhoon Yolanda, and the treaties and conventions from which these Principles were derived.<sup>180</sup> For every Principle, arranged according to the four aspects of internal displacement, I cite the corresponding actions taken by the government.

##### 1. *Protection from Displacement*

###### i. Arbitrary Displacement

The Guiding Principles state that “[e]very human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”<sup>181</sup> This Principle was derived from Article 12<sup>182</sup> of the ICCPR, which the Philippines signed in 1966 and ratified in 1986. Article 12 guarantees the right to choose one’s residence, which includes the right to remain there.<sup>183</sup>

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<sup>179</sup> § 17 (b)(3).

<sup>180</sup> Each Principle is drawn from a number of treaties and conventions. However, to avoid a lengthy discussion, I will only cite the major treaties that the Philippines has ratified or recognized.

<sup>181</sup> Guiding Principles, Principle 6, ¶ 1.

<sup>182</sup> ICCPR, art. 12 provides:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

<sup>183</sup> KÄLIN, *supra* note 17, at 28.

The prohibition on arbitrary displacement in the Guiding Principles includes displacement “[i]n situations of armed conflict, unless security of the civilians involved or imperative military reasons so demand[.]”<sup>184</sup> This provision reflects Article 49<sup>185</sup> of the Geneva Convention IV, which was ratified by the Philippines in 1952. For non-international armed conflicts, the prohibition on forced displacement of civilians is codified in Article 17(1) of the Additional Protocol II to the Geneva Conventions.<sup>186</sup>

In the case of the Zamboanga armed conflict, the residents of the barangays were at risk of being taken hostage by MNLF forces and used as human shields. Most were in danger of being caught in the crossfire. Thus, security considerations necessitated their evacuation.

Another prohibition on arbitrary displacement is one effected “[i]n cases of disasters, unless the safety and health of those affected requires their evacuation[.]”<sup>187</sup> This is “consistent with human rights provisions guaranteeing liberty of movement and freedom to choose one’s residence, which allow limitations on rights only where necessary and where objective reasons exist.”<sup>188</sup>

“Reasons [other than the safety and health of people] are hardly imaginable in situations of natural or human-made disasters.”<sup>189</sup> The mass evacuation of residents of Visayas in anticipation of and in the aftermath of Typhoon Yolanda was unquestionably for their safety.

## ii. Duration of Displacement

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<sup>184</sup> Guiding Principles, Principle 6, ¶ 2(b).

<sup>185</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, art. 49, Aug. 12, 1949.

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand[.]

<sup>186</sup> Additional Protocol II, *supra* note 24.

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

<sup>187</sup> Guiding Principles, Principle 6, ¶ 2(d).

<sup>188</sup> KALIN, *supra* note 17, at 34.

<sup>189</sup> *Id.*

Displacement should last no longer than required by the circumstances.<sup>190</sup> This requirement in the Guiding Principles reflects the principle of proportionality in cases of limitation of human rights, as provided in Article 49(2) of the Geneva Convention IV which states that “persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.” In addition, customary international humanitarian law, applicable in both international and non-international armed conflict, dictates that “[d]isplaced persons have the right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.”<sup>191</sup>

The military crisis in Zamboanga was declared over by the government on September 28, 2013, nineteen days after the conflict broke out.<sup>192</sup> However, more than a year later, around 7,000 IDPs remained in evacuation centers while 12,600 were in transitional sites.<sup>193</sup> The displacement situation caused by Typhoon Yolanda was no better. A year after the natural disaster, 20,000 were still living in 56 displacement sites and with host families.<sup>194</sup>

### iii. Rights of Indigenous Peoples

The Guiding Principles recognize the rights of indigenous peoples who are displaced. It stipulates that:

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.<sup>195</sup>

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<sup>190</sup> Guiding Principles, Principle 6, ¶ 3.

<sup>191</sup> I INT’L COMMITTEE OF THE RED CROSS [hereinafter “ICRC”], CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 468 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005).

<sup>192</sup> Medina, *supra* note 75.

<sup>193</sup> UN OCHA, *Philippines: Zamboanga Humanitarian Snapshot* (Jan. 30, 2015), at [http://www.humanitarianresponse.info/system/files/documents/files/PHL-OCHA-Zamboanga%20Snapshot%2030%20Jan%202015\\_0.pdf](http://www.humanitarianresponse.info/system/files/documents/files/PHL-OCHA-Zamboanga%20Snapshot%2030%20Jan%202015_0.pdf).

<sup>194</sup> United Nations High Comm’r on Hum. Rts. [UNHCR], *1-year on from Typhoon Haiyan, thousands of people still rebuilding lives*, UNHCR WEBSITE, at <http://www.unhcr.org/545c9cda6.html> (last modified Nov. 7, 2014).

<sup>195</sup> Guiding Principles, Principle 9.



This Principle is a reflection of Article 13(1) of International Labor Organization (ILO) Convention No. 169<sup>196</sup> concerning Indigenous and Tribal Peoples which recognizes that:

[G]overnments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.<sup>197</sup>

When relocation of indigenous peoples is necessary, the Convention likewise provides that “peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.”<sup>198</sup>

The protection of displaced minorities was a contentious issue in the resettlement of those displaced by the Zamboanga conflict. Most of the displaced residents in the Cawa-Cawa Camp in Zamboanga City were Badjaos who lived in coastal areas and derived their livelihood from fishing and seafaring. They were prohibited by the local government from returning to their seaside villages which were declared “no-build, no-return” zones. Instead, as of May 2015, they are being relocated to the mountains. In April 2014, it was reported that the displaced Badjaos were not consulted about the government’s plans to relocate them.<sup>199</sup> The Human Rights Watch criticized this “arbitrary relocation,”<sup>200</sup> saying that “[r]ather than addressing return and resettlement in accordance with international law, the government is pushing forward a relocation process that is disregarding their basic rights.”<sup>201</sup>

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<sup>196</sup> As of May 2015, the Philippines has not ratified ILO Convention No. 169. However, the Indigenous Peoples’ Rights Act of 1997 drew heavily from the standards set by the Convention. See SEDFREY CANDELARIA, COMPARATIVE ANALYSIS ON THE ILO INDIGENOUS AND TRIBAL PEOPLES CONVENTION NO. 169, UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP), AND INDIGENOUS PEOPLES’ RIGHTS ACT (IPRA) OF THE PHILIPPINES 63 (2012).

<sup>197</sup> Indigenous and Tribal Peoples Convention art. 13(1), June 27, 1989, Int’l Lab. Org. [ILO] Convention No. 169.

<sup>198</sup> Art. 16(3)

<sup>199</sup> Coleen Jose, *The Badjao of Zamboanga: Victims of war and relocation*, RAPPLER, Apr. 22, 2014, at <http://www.rappler.com/nation/55885-badjao-zamboanga-war-relocation>.

<sup>200</sup> Hum. Rts. Watch, *Philippines: Protect Zamboanga’s Displaced Minorities*, HUMAN RIGHTS WATCH WEBSITE, at <http://www.hrw.org/news/2014/04/30/philippines-protect-zamboanga-s-displaced-minorities> (last modified Apr. 30, 2014).

<sup>201</sup> *Id.*

## 2. *Protection During Displacement*

### i. Rape and Gender-specific Violence

In recognizing every human being's right to dignity, and physical, mental, and moral integrity,<sup>202</sup> the Guiding Principles call for the protection of IDPs particularly against rape, gender-specific violence, forced prostitution, any form of indecent assault,<sup>203</sup> and sexual exploitation,<sup>204</sup> among others.

Acts violating the physical, mental, and moral integrity of persons are covered by the prohibition on torture, and cruel inhuman or degrading treatment or punishment set forth in Article 7 of the ICCPR<sup>205</sup> and Article 37(a) of the Convention on the Rights of the Child (CRC).<sup>206</sup> Gender-specific violence is addressed in a number of provisions in several human rights instruments, one of which is Article 27(2) of the Geneva Convention IV which states that “[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” Similarly, Article 6 of the CEDAW, ratified by the Philippines in August 1981, obliges state parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

In the case of the Zamboanga conflict, exploitation of and violence against women and children were major concerns in camps and transitory sites:

Threats include sexual exploitation, human trafficking, drug use and gender-based violence (GBV). With depleted assets, insecure livelihoods and dwindling assistance, displaced women in camps often have had no choice but look for alternative sources of income to feed their children. There were numerous reports during 2014 of displaced women, including pregnant women, engaging in prostitution. Other factors increasing protection risks for women and children include chronic power outages or lack of electricity and limited police presence in camps, particularly at night. Children, many of whom drop

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<sup>202</sup> Guiding Principles, Principle 11, ¶ 1.

<sup>203</sup> Guiding Principles, Principle 11, ¶ 2(a).

<sup>204</sup> Guiding Principles, Principle 11, ¶ 2(b).

<sup>205</sup> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>206</sup> No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Convention on the Rights of the Child [hereinafter “CRC”], 1577 U.N.T.S. 3, Nov. 20, 1989.

out of school as a result of displacement, also faced increased risks of trafficking and of being forced into child labour.<sup>207</sup>

In camps located in Yolanda-stricken areas, women and children lacked adequate bathing facilities and latrines and were considered to be at greater risk of domestic and sexual violence.<sup>208</sup>

## ii. Adequate Standard of Living

The Guiding Principles also provide that “[a]ll internally displaced persons have the right to an adequate standard of living.”<sup>209</sup> This Principle is derived from Article 25(1) of the UDHR, which recognizes the right of everyone “to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care.” The ICESCR<sup>210</sup> and CRC<sup>211</sup> contain similar provisions. The ICESCR was ratified by the Philippines in 1974.

In relation to the right to an adequate standard of living, the Guiding Principles enumerate the commodities essential for survival, thus:

At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.<sup>212</sup>

The rights to essential food and potable water, basic shelter and housing, and appropriate clothing are protected in provisions of several human rights and humanitarian law instruments such as Article 11(1) of the ICESCR,<sup>213</sup> Article

<sup>207</sup> IDMC, *supra* note 149.

<sup>208</sup> *Id.*

<sup>209</sup> Guiding Principles, Principle 18, ¶ 1.

<sup>210</sup> *See* ICESCR, art. 11(1).

<sup>211</sup> *See* CRC, art. 27(1).

<sup>212</sup> Guiding Principles, Principle 18, ¶ 2.

<sup>213</sup> The States Parties to the present Covenant 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

27(3) of the CRC,<sup>214</sup> and Article 25(1) of the UDHR.<sup>215</sup> The right to have access to essential medical services and sanitation is set forth in Article 25(1) of the UDHR, and issues of access to medical care are addressed in Article 12(1) of the CEDAW.

Although Zamboanga and Yolanda IDPs who sought refuge in government-run camps and transitory sites generally received basic assistance like food, water, sanitation, and shelter, such assistance has generally been inadequate to meet their basic needs.<sup>216</sup> In the case of Zamboanga evacuees, water shortages were a regular occurrence which necessitated the imposition of water rationing.<sup>217</sup> Access to water had to be brought by trucks because most evacuation sites were not connected to the municipal water system.<sup>218</sup> Lack of access to proper sanitation, along with overcrowding in evacuation sites, exposed IDPs to a range of communicable diseases. Despite the distribution of more than five million food packs and the provision of supplemental feeding in Yolanda evacuation centers,<sup>219</sup> those in resettlement areas had poor quality of housing and no access to potable water and electricity.<sup>220</sup> Moreover, individual cases of pneumonia, upper respiratory tract infections, and gastroenteritis were reported in evacuation centers.<sup>221</sup> Among those displaced by the Zamboanga conflict, almost 200 disease-related deaths were recorded as of January 2015, the leading cause of which was pneumonia.<sup>222</sup>

The qualification that access to basic needs shall be provided to IDPs “regardless of the circumstances” and “without discrimination”<sup>223</sup> is especially

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<sup>214</sup> States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

<sup>215</sup> 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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

<sup>216</sup> IDMC, *supra* note 149.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> OPARR Report, *supra* note 118, at 9.

<sup>220</sup> Jazmin Bonifacio, *More than a year after Yolanda: Home sweet home?*, RAPPLER, Apr. 25, 2015, at <http://www.rappler.com/nation/91115-poor-quality-relocation-yolanda>.

<sup>221</sup> Samuel Medelina, *Respiratory, waterborne disease rise in ‘Yolanda’ hit areas*, MANILA BULL., Nov. 19, 2013, available at <http://www.mb.com.ph/respiratory-waterborne-diseases-rise-in-yolanda-hit-areas/>.

<sup>222</sup> UN OCHA, *supra* note 193.

<sup>223</sup> Guiding Principles, Principle 18, ¶ 2.

relevant in the case of those displaced by the Zamboanga conflict. In 2014, the government refused to render aid to those it tagged as “informal settlers” who were allegedly not displaced by the conflict but came to affected areas to take advantage of humanitarian assistance:

This month, the city government shared the findings of a “census and tagging” exercise which it claims showed that up to half of the 13,000 IDPs in Zamboanga’s largest camp did not originate from the conflict-affected areas but came later to take advantage of the humanitarian assistance or housing assistance. Also referred to as “informal settlers” or “illegal squatters” they will be asked by the authorities to leave the camps.

Yet these findings are in contradiction to those of other agencies. According to a recent UNHCR profiling, only 90 out of the 4,523 families surveyed did not come from the conflict-affected areas, in fact the vast majority had been residing in Zamboanga for five years or more.

The cause of the discrepancy lies in the government’s questionable definition of who constitutes as an ‘IDP’, which appears to be based on the condition of having formal home or land ownership and being officially registered as a “fire victim”. There are real concerns that such a definition will result in a significant number of IDPs being excluded not only from humanitarian, but also from housing assistance.<sup>224</sup>

### iii. Recognition as a Person

In recognizing the IDPs’ right to recognition everywhere as a person before the law, the Guiding Principles require that they be issued documents necessary for their exercise of legal rights:

To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as

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<sup>224</sup> Frederik Kok, *Death in displacement: Why the Philippine government must allow Zamboanga’s IDPs to go back home*, IDMC WEBSITE, at <http://www.internal-displacement.org/blog/2014/death-in-displacement-why-the-philippine-government-must-allow-zamboangas-idps-to-go-back-home> (last modified July 4, 2014).

requiring the return to one's area of habitual residence in order to obtain these or other required documents.<sup>225</sup>

The right to recognition everywhere as a person before the law is stated in Article 6 of the UDHR.<sup>226</sup> However, “[p]resent international law does not adequately protect the needs of internally displaced persons for personal identification, documentation and registration.”<sup>227</sup> Principle 20, paragraph 2 of the Guiding Principles attempts to fill this gap.<sup>228</sup>

Among IDPs in Zamboanga and Yolanda-stricken areas, registration of newborns and procurement of birth certificates for children were issues. Even though the government worked with the UNHCR to operate a free mobile registration project “aimed at ensuring displaced people in remote areas received [sic] birth certificates and other forms of civil documentation that were lost or not obtained due to their protracted displacement”<sup>229</sup> in Mindanao, most of the IDPs in Zamboanga evacuation centers remained undocumented. The situation common to hundreds of displaced families was as follows:

Ernesto and Delma also face the challenge of obtaining birth certificates for their children. “We cannot afford to pay for these important civil documents on top of the daily needs of our family. This small retail store barely keeps our children in school. We have to save at least PhP86 (\$2) daily to cover our children’s transport fare to school and back,” Delma shared, holding back her tears. Birth certificates cost PhP330 (\$7.50) each.<sup>230</sup>

Children born to IDPs in Yolanda-stricken areas were also “highly unlikely to be registered at birth.”<sup>231</sup>

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<sup>225</sup> Guiding Principles, Principle 20, ¶ 2.

<sup>226</sup> “Everyone has the right to recognition everywhere as a person before the law.”

<sup>227</sup> *Compilation and Analysis*, *supra* note 37, at ¶ 268.

<sup>228</sup> KALIN, *supra* note 17, at 94.

<sup>229</sup> UNHCR, *UNHCR Global Report 2013 – The Philippines*, at 3, UNHCR WEBSITE, at <http://www.unhcr.org/539809fdb.html> (last visited June 4, 2015).

<sup>230</sup> UN OCHA, *Displaced communities in Zamboanga still beset by challenges*, Issue 1 Humanitarian Bulletin Philippines, at 2 (January 2015), available at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHAPhilippines%20Humanitarian%20BulletinNo1%20%28January%202015%29%20FINAL.pdf>.

<sup>231</sup> IDMC, *Getting on the list: the registration of children born to IDPs*, at 5, IDMC WEBSITE, available at <http://www.internal-displacement.org/assets/publications/2015/201505-global-getting-on-the-list-en.pdf> (last modified May 15, 2015).

#### iv. Right to Education During Displacement

The Guiding Principles recognize IDPs' right to education. This is in keeping with Article 26(1) of the UDHR<sup>232</sup> and Article 13(1) of the ICESCR.<sup>233</sup> In order to give effect to this right, the Guiding Principles state that authorities concerned shall ensure that displaced children "receive education which shall be free and compulsory at the primary level."<sup>234</sup> This wording closely follows Article 26(1) of the UDHR, which provides that "education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory." Likewise, Article 13(2)(a) of the ICESCR<sup>235</sup> and Article 28(1)(a) of the CRC<sup>236</sup> recognize the compulsory and free character of primary education.

Following the armed clash in Zamboanga, classes were suspended and 54 schools were closed.<sup>237</sup> When classes resumed on September 25, 2013, only about 3% of children were able to go back to school.<sup>238</sup> This is mostly due to the use of schools as evacuation centers. Four hundred thousand packs of learning kits and 180,000 copies of learning materials were distributed to school-aged children in evacuation centers.<sup>239</sup> However, as of January 2015, almost half of these children were still not attending school due to financial constraints or the necessity of working to support their family.<sup>240</sup>

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<sup>232</sup> "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory[.]"

<sup>233</sup> The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

<sup>234</sup> Guiding Principles, Principle 23, ¶ 2.

<sup>235</sup> "The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right, primary education shall be compulsory and available free to all."

<sup>236</sup> "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all."

<sup>237</sup> United Nations Children's Fund [UNICEF], *Philippines Humanitarian Situation Report*, at 3 (Jan. 22, 2014), at [http://www.protectingeducation.org/sites/default/files/documents/unicef\\_philippines\\_zamboanga\\_sitrep\\_22\\_january\\_2014.pdf](http://www.protectingeducation.org/sites/default/files/documents/unicef_philippines_zamboanga_sitrep_22_january_2014.pdf).

<sup>238</sup> *Id.*

<sup>239</sup> OPARR Report, *supra* note 118, at 9.

<sup>240</sup> UN OCHA, *supra* note 230.

### 3. Principles Relating to Humanitarian Assistance

The Guiding Principles provide that “[t]he primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.”<sup>241</sup> This is a reflection of the generally recognized principle of sovereignty contained in Article 2(7) of the UN Charter which prohibits intervention in matters “which are essentially within the domestic jurisdiction of any state[.]”<sup>242</sup> Consequently, the UN General Assembly has reaffirmed “the sovereignty of affected States and their primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories[.]”<sup>243</sup>

The Guiding Principles also state that “[a]ll authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.”<sup>244</sup> This is derived from Article 70(2), Additional Protocol I of Geneva Convention IV, which provides that “[t]he parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel[.]”<sup>245</sup>

It is recognized that the Philippines has “established and well-developed mechanisms and coordination structures”<sup>246</sup> for immediate humanitarian assistance to displaced persons. This is due, to a large extent, to the NDRRMC’s use of the UN’s Cluster Approach in disaster management where, when a cause for displacement occurs, “cluster heads” or government agencies (e.g. DOH) have designated tasks related to their mandates or “clusters” (e.g. nutrition, health and water, sanitation and hygiene). One author notes:

[T]he Philippines’ experiment of importing the cluster concept into national procedures, and of clearly integrating national and international efforts in this way, was successful in improving coordination and mutual trust in the response to Typhoon Yolanda. In light of this, other governments may wish to consider a similar step.<sup>247</sup>

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<sup>241</sup> Guiding Principles, Principle 25, ¶ 1.

<sup>242</sup> U.N. CHARTER, art. 2(7).

<sup>243</sup> G.A. Res. 45/100, ¶ 2, U.N. Doc. A/RES/45/100 (Dec. 14, 1990)

<sup>244</sup> Guiding Principles, Principle 25, ¶ 3.

<sup>245</sup> For a discussion of the applicability of this provision in non-international armed conflicts, *See* ICRC, *supra* note 191, at 193-200.

<sup>246</sup> IDMC, *supra* note 149.

<sup>247</sup> Disaster Response Dialogue, *Learning Review of the cooperation between the Government of the Philippines and humanitarian actors in their response to Typhoon Yolanda*, at 15 (June 18, 2014), available at [http://www.drdinitiative.org/v2/files/armadillo/media/DRD\\_learningreviewFINAL5Aug.pdf](http://www.drdinitiative.org/v2/files/armadillo/media/DRD_learningreviewFINAL5Aug.pdf).



In the case of Typhoon Yolanda, the government's coordination with humanitarian agencies, the private sector, and other states was praised by a number of international organizations.<sup>248</sup> As one humanitarian agency observed:

This unprecedented scaling up of response structures and personnel was set against the backdrop of a middle-income country with strong national capacities and a well-developed disaster management system. Long-standing relationships meant that coordination with the government was strong from the outset. Government-led humanitarian clusters – enshrined in national law in 2007 – led and oversaw coordination for the response, with the support of international actors. Despite being heavily affected itself, the government provided an enabling environment for international responders, with visas being waived during the first months, and some Local Government Units (LGUs) hosted humanitarian agencies throughout the response.<sup>249</sup>

The AFP collaborated with military personnel from 21 other countries in providing assistance during the first two months of the humanitarian response.<sup>250</sup> During the first few days after the disaster, thousands of foreign military personnel were deployed to disaster areas to assist humanitarian workers. “Many humanitarian and military leaders noted that the civil military coordination during the Yolanda response was some of the best they had seen.”<sup>251</sup>

#### *4. Principles Relating to Return, Resettlement, and Reintegration*

The Guiding Principles state:

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons 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 country. Such authorities shall

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<sup>248</sup> IDMC, *supra* note 149; David Carden & Ashley Jonathan Clements, *Coordinating the Response to Typhoon Haiyan*, HUMANITARIAN EXCHANGE, Jan. 2015, at 3, available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-63/coordinating-the-response-to-typhoon-haiyan>.

<sup>249</sup> David Carden & Ashley Jonathan Clements, *Coordinating the Response to Typhoon Haiyan*, HUMANITARIAN EXCHANGE, Jan. 2015, at 3, 3, available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-63/coordinating-the-response-to-typhoon-haiyan>.

<sup>250</sup> Disaster Response Dialogue, *supra* note 247, at 16.

<sup>251</sup> *Id.*

endeavour to facilitate the reintegration of returned or resettled internally displaced persons.<sup>252</sup>

While there is no rule under the present human rights law that explicitly affirms the right of IDPs to return to their original place of residence or to move to another safe place of their choice within their state,<sup>253</sup> such right can be deduced from the right to the liberty of movement and the right to choose one's residence<sup>254</sup> embodied in Article 12 of the ICCPR.<sup>255</sup> Such right can also be deduced from Articles 16(3) and 16(4) of the ILO Convention No. 169.<sup>256</sup>

The IDPs in Zamboanga faced difficulties in returning to their homes and resettlement in new areas mainly due to the government policy on “no-build” and “no-return” zones. As explained in a news article:

In a related development, hundreds of IDPs were in tears after learning that they can no longer return to the mangrove areas of the Leha-Leha, Layag-Layag, Sumariki, and Sumatra, where they once have their homes, but lost them during the bloody September 2013 siege.

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<sup>252</sup> Guiding Principles, Principle 28, ¶ 1.

<sup>253</sup> KÄLIN, *supra* note 17, at 126.

<sup>254</sup> *Id.*

<sup>255</sup> ICCPR, art. 12 provides:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

<sup>256</sup> Indigenous and Tribal Peoples Convention art. 16(3)-(4), June 27, 1989, ILO Convention No. 169. The provisions read:

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

Majority of the IDPs pleaded to the authorities to allow them to return to their former places, and for the reconstruction of their sea farms for their livelihood, but the military apparently declined heed.

Task Force Zamboanga (TFZ) commander Colonel Andreelino Colina had earlier announced that the subject areas had been declared as a “no-build zones.”

According to Colina, the IDPs whose source of livelihood is sea farming can visit the area during the daytime, but cannot stay overnight, and could not build their houses at any part of the restricted areas along the coast.<sup>257</sup>

## B. Analysis

In the preceding sections, I discussed government efforts to address internal displacement caused by an armed conflict and a natural disaster under our current state of IDP protection—one without a comprehensive legal framework to address the needs of IDPs. In this section, I examine the strength and weakness of IDP protection under the present regime and argue that problems in displacement situations are caused by the lack of an established framework which addresses the rights of IDPs.

### *1. Government protection of IDPs: Big on short-term relief efforts, short on long-term recovery*

In both cases of an armed conflict and a natural disaster, the government was successful in meeting the immediate needs of IDPs. After the government was alerted by PAGASA of the incoming Typhoon Yolanda, possible evacuation centers were identified, medical personnel were deployed, and repacking efforts were undertaken. In the case of the Zamboanga armed conflict, those not caught in the crossfire and taken hostage were evacuated by the military on the day the siege broke out. In the aftermath of the armed clash and the typhoon, immediate humanitarian assistance was rendered to IDPs by government agencies, in coordination with the private sector. As discussed in Part IV, the NDRRMC’s use of the Cluster Approach in disaster management was the key factor in such a prompt humanitarian response.

After the initial relief efforts, however, national and local authorities faced many challenges in long-term recovery and rehabilitation. IDPs’ access to adequate food, water, and shelter was limited, communicable diseases became

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<sup>257</sup> Nonoy E. Lacson, *Zamboanga IDPs living hazardously*, MANILA BULL., Mar. 25, 2014, available at <http://www.mb.com.ph/zamboanga-idps-living-hazardously/>.

widespread due to the lack of readily available healthcare across all camps, and gender-based violence, trafficking, and prostitution became a major concern in evacuation centers and transitional sites. Moreover, IDPs were prevented from returning to their homes or relocating to an area of their choosing due to funding problems in the construction of housing and the declaration of “no-build zones.”

The IDMC attributes the government’s poor performance in long-term recovery to underfunding and insufficient attention to IDPs’ long-term needs, thus:

As in previous years, the government made significant efforts to address the immediate humanitarian needs of people displaced by conflict and violence. Underfunding and insufficient attention paid to IDPs’ long-term reintegration and recovery needs, however, continued to undermine their achievement of durable solutions. There is often weak capacity and poor understanding of IDPs’ rights at the local level, in particular in the poorest municipalities which also have few resources to assist and protect the displaced.<sup>258</sup>

## 2. *The Significance of a Legal Framework*

That the government does not prioritize the long-term recovery needs of IDPs and their rehabilitation may indeed be the reason for its poor performance in such aspect. However, I submit that the success or failure of relief and rehabilitation efforts is rooted on a much deeper cause: the lack of a legal framework for IDP protection.

The Philippine Disaster Risk Reduction and Management Act is the established framework for disaster response and management. This law aids national and local authorities in dealing with the short-term relief efforts for IDPs. As discussed in Part II, it created the NDRRMC to coordinate and oversee disaster response.<sup>259</sup> The law also provides for a mechanism for international humanitarian assistance,<sup>260</sup> guidelines in the declaration of a state of calamity,<sup>261</sup> and remedial measures to be taken subsequent to such declaration.<sup>262</sup>

In contrast, there exists no legal framework for *long-term* recovery and rehabilitation. The responsibilities of the government, the rights of IDPs during

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<sup>258</sup> IDMC, *supra* note 149. (Citation omitted).

<sup>259</sup> Rep. Act No. 10121 (2010), § 6(q).

<sup>260</sup> § 18.

<sup>261</sup> § 16.

<sup>262</sup> § 17.

different stages of displacement, and the role of key agencies are not set out in a single, comprehensive law.

Presently, the government relies on *ad hoc* programs such as the Z3R Plan and temporary bodies like the OPARR to deal with recovery and rehabilitation. I find three significant problems with this *ad hoc* approach.

The first is the lack of accountability of those in charge of recovery and rehabilitation efforts. When authorities prematurely cease providing humanitarian assistance to IDPs in evacuation centers, or when IDPs are made to stay indefinitely in areas unfit for livelihood, they are left with no recourse. Can they sue the erring officials? On what ground? Can another agency compel these officials to continue rendering aid to IDPs? Without a legal framework providing IDPs protection, they do not have any legal remedy for violations of their rights.

The second problem is the lack of a fixed appropriation to fund rehabilitation programs. Without a law fixing the source of funds for IDP recovery and rehabilitation, the government depends on foreign loans and the influx of donations from other states and the private sector. If loans are not granted and cash donations are insufficient, rehabilitation projects come to a standstill. This incident happened in the case of the Yolanda rehabilitation, where 170.92 billion pesos was determined as the total amount of “required resources for priority projects,” but only 37.4 billion pesos was raised.<sup>263</sup>

The third problem with the current *ad hoc* approach to long-term rehabilitation is that the duration of these rehabilitation projects is uncertain. Without benchmarks defining the adequate conditions for IDPs, projects and bodies may be terminated even when long-term recovery has not yet been achieved. For example, in the case of the Zamboanga armed conflict, the DSWD officially declared the humanitarian phase over despite the fact that thousands of IDPs were still living in evacuation centers and transitional sites with no sustainable livelihood.

Indeed, a legal framework is essential in answering unresolved issues under the current *ad hoc* system of IDP protection, such as, what are the rights of IDPs? How are these rights to be protected? By which government agencies? With what funds? Is there a penalty for failing to protect the rights of IDPs? Who will monitor compliance with the guidelines for IDP protection? Although the Guiding Principles already enumerate the rights of IDPs, mere conformity to such instrument is not sufficient. The Guiding Principles are based on

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<sup>263</sup> OPARR Report, *supra* note 118, at 5.

“applicable but *very general* norms of international human rights and humanitarian law.”<sup>264</sup> The most effective way of protecting IDP rights is still the creation of a legal framework, enshrined in a law, translates abstract principles into concrete standards and courses of action for IDP protection. Wyndham explains this point convincingly:

The Guiding Principles contain abstract general principles of international law that, in order to be effectively implemented in a national context, should be translated into concrete action on the ground that reflect each country’s situation. The process of developing a comprehensive law or policy presents an opportunity for all relevant stakeholders to share perspectives on the best practices for addressing internal displacement. This process would necessarily involve issues unique to each country such as the governmental bodies that need to be engaged in providing assistance and protecting the rights of IDPs[.]<sup>265</sup>

The impact of a law on internal displacement is evident in the case of Colombia, where Law 387, a comprehensive law adopting the Guiding Principles, was passed by Congress in 1997. It was observed that:

Before 1997, the State responded to forced displacement in an *ad hoc* and ineffective manner. A specific national policy to address the problem did not exist. Aid of any sort was provided to IDPs within the general social welfare and emergency response systems. Overall, the problem was given an extremely low priority and accorded little visibility within the Colombian public sphere.

The adoption by Congress of Law 387 [on internal displacement] of 1997 represented a major breakthrough [...] [I]t is undeniable that the very adoption of Law 387 of 1997 represented a substantial achievement[.]<sup>266</sup>

The current state of IDP protection in the Philippines is the same as that of Colombia before their law on internal displacement; IDPs were protected under the general social welfare and emergency response systems. Thankfully, our lawmakers have recognized the need for an established framework. As of

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<sup>264</sup> KĀLIN, *supra* note 17, at 8. (Emphasis supplied.)

<sup>265</sup> Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, 14 HUM. RTS. BRIEF 7, 8 (2006).

<sup>266</sup> Manuel José Cepeda Espinosa, *The Constitutional Protection of IDPs in Colombia*, in JUDICIAL PROTECTION OF INTERNALLY DISPLACED PERSONS: THE COLOMBIAN EXPERIENCE 1, 6-7 (Rodolfo Rivadeneira ed., 2009).

June 2015, a bill which would serve as a basis for IDP protection in the Philippines is pending in Congress.

**V. THE RIGHTS OF INTERNALLY DISPLACED PERSONS ACT:  
INCORPORATING THE GUIDING PRINCIPLES  
INTO NATIONAL LAW**

In February 2013, the Senate and the House of Representatives passed an earlier version of the IDP Bill.<sup>267</sup> This bill declared the state policy of promoting and protecting the rights of IDPs “[c]onsistent with the principles enshrined in the 1987 Constitution, the standards set by international humanitarian law and human rights laws, [and] international treaties and conventions adhered to by the Philippines[.]”<sup>268</sup>

The passage of the bill was lauded by various international bodies and humanitarian organizations, including the UN Refugee Agency which praised the measure as a “milestone for the protection of internally displaced people in the Philippines”<sup>269</sup> and saw the bill as a “model example for other countries,”<sup>270</sup> being the first of its kind in Asia. Similarly, the IDMC “applaud[ed] the government of the Philippines for approving a landmark piece of legislation,”<sup>271</sup> which is “an important step in further strengthening the rights of IDPs in the Philippines.”<sup>272</sup>

In May 2013, however, the proposed law was vetoed by President Benigno Aquino III. In his veto message sent to Congress, he explained that the veto was due to three key reasons:

1. A provision allowing IDPs to claim financial assistance and compensation from the government “opens the door to a slew of claims or cases against the government and goes against the ‘non-suability’ character of the State;”

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<sup>267</sup> Conf. Rpt., 15<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (2013). Conference Committee on the Disagreeing Provisions of H. No. 5627 and S. No. 3317. *See* S. No. 3317, 15<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (2012), H. No. 5627, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2011).

<sup>268</sup> § 2.

<sup>269</sup> UNHCR, *Philippines passes historic bill to protect internally displaced*, UNHCR WEBSITE, at <http://www.unhcr.org/5114dd5c9.html> (last modified Feb. 8, 2013).

<sup>270</sup> *Id.*

<sup>271</sup> IDMC, *IDMC lauds the Philippines for landmark bill on human rights* (Feb. 5, 2013), at <https://idmcnrc.wordpress.com/2013/02/05/idmc-lauds-the-philippines-for-landmark-bill-on-human-rights/>.

<sup>272</sup> *Id.*

2. The bill's provision on damages "unlawfully differentiates between displacements caused by security agents of the State and other entities;" and
3. The powers granted to the Commission on Human Rights (CHR) to determine damages incurred against IDPs impinges on the judiciary's exclusive power to facilitate the award of such claims.<sup>273</sup>

After the MNLF takeover in Zamboanga, Congress revived the vetoed bill as House Bill No. 4744. In this latest version of the IDP Bill, the provisions vetoed by the President were taken out or modified. For example, the determination of damages incurred by IDPs is no longer the task of the CHR, but of "proper and competent civilian courts."<sup>274</sup> In August 2014, the bill was approved on second reading. As of May 2015, the bill is still pending with the Senate.

#### A. Features of House Bill No. 4744

Unlike its previous version, House Bill No. 4744 expressly cited the Guiding Principles as its bases for IDP protection.<sup>275</sup> The following are the salient features of the IDP Bill:

##### 1. Definition of "Internally Displaced Person"

The IDP Bill defined "internally displaced persons" as:

[A]ny person or group of persons who has or have been forced or obliged to flee or to leave their homes or places of habitual residence within the national borders, as a result of or in order to avoid or minimize the effects of armed conflict, situations of generalized and/or organized violence, violations of human rights, implementation of development projects, natural, human-induced and human-made hazards.<sup>276</sup>

This definition is not a mere reproduction of the Guiding Principles definition. Three distinct features are apparent in the IDP Bill's definition: (1) the phrase "and who have not crossed an internationally recognized border" under the Guiding Principles definition was changed to "within national

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<sup>273</sup> *Aquino vetoes bill on internally displaced persons*, RAPPLER, May 29, 2013, at <http://www.rappler.com/nation/30200-aquino-vetoes-internally-displaced-persons-bill>.

<sup>274</sup> H. No. 4744, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2014), § 16.

<sup>275</sup> § 2.

<sup>276</sup> § 3(h).



borders,” (2) “implementation of development projects” was added as a cause of displacement, and (3) the phrase “human rights or natural human-made disasters” under the Guiding Principles definition was changed to “natural, human-induced and human made hazards.”

### *2. Scope of IDP protection*

The proposed law shall primarily “provide for the protection of rights of IDPs during and after displacement, as well as their return, local integration or resettlement elsewhere.”<sup>277</sup> It shall also cover “arbitrary internal displacement of civilians as a result of or in order to avoid the effects of armed conflict, situations of generalized and/or organized violence, violations of human rights, implementation of development projects, natural, human-induced and human-made hazards.”<sup>278</sup>

### *3. Government duty*

The IDP Bill expressly acknowledges that “[n]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction.”<sup>279</sup>

### *4. Enumeration of IDP rights*

An enumeration of the rights IDPs during and after displacement is found in Section 9 of the IDP Bill. These rights include access to basic necessities,<sup>280</sup> protection against criminal offenses and acts of violence,<sup>281</sup> freedom of movement,<sup>282</sup> recognition and issuance of necessary documentation,<sup>283</sup> family unity,<sup>284</sup> health and education,<sup>285</sup> and protection of their property and possessions.<sup>286</sup> Section 9 is a consolidation of IDP rights laid out across different Principles.<sup>287</sup>

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<sup>277</sup> § 4.

<sup>278</sup> § 4.

<sup>279</sup> § 5.

<sup>280</sup> § 9(a).

<sup>281</sup> § 9(b).

<sup>282</sup> § 9(c).

<sup>283</sup> § 9(d).

<sup>284</sup> § 9(e).

<sup>285</sup> § 9(f).

<sup>286</sup> § 9(g).

<sup>287</sup> Specifically, Principles 10, 11, 16, 18, 19, 20, 21, and 22 of the Guiding Principles.

### 5. *Acts of Arbitrary Displacement*

Acts of arbitrary displacement are punished under the IDP Bill. “Arbitrary internal displacement” is defined as:

[An] act of displacement or any other coercive act committed by any person or group/s of persons and directed against the civilian population, which are contrary to law, good morals, public order or public policy, or committed with abuse of authority, oppressive or wanton disregard of the right to life, liberty or property and abode of the residents of an area in which they are lawfully present, and characterized by those situations as defined in Section 6 of this Act.<sup>288</sup>

Section 6 of the IDP Bill provides an enumeration of the prohibited acts of arbitrary displacement, to wit:

Section 6. *Prohibited Acts of Arbitrary Internal Displacement.* – The prohibited acts of arbitrary internal displacement shall include those committed:

- a) based on policies of apartheid, ethnic cleansing, or similar practices aimed at or resulting in altering the ethnic, religious or racial composition of the affected population;
- b) in situations of armed conflict, unless the safety and security of civilians are involved or imperative military reasons so demand;
- c) in cases of development projects, which are not justified by compelling and overriding public interest and with proper implementation of return, local integration or resettlement elsewhere of affected IDPs;
- d) in cases of natural, human-induced and human-made hazards, unless the safety and health of those affected require their evacuation;
- e) when used as a form of collective punishment;
- f) in cases of clan wars, unless the safety and security of those civilians not involved in the conflict are endangered;
- g) in violation of the rights of IDPs granted under Section 9, paragraphs (b) and (g) of this Act; and
- h) in cases where there is malice, bad faith, gross negligence or in any manner causes willful violation of the rights

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<sup>288</sup> H. No. 4744, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2014), § 3(b).

granted under Section 9, paragraphs (a), (c), (d), (e) and (f) of this Act.<sup>289</sup>

#### 6. *Imposition of Imprescriptible Penalties*

Section 13 of the IDP Bill provides for the penalty of *reclusion temporal* upon those who directly commit the act of arbitrary internal displacement,<sup>290</sup> and a penalty of *prision mayor* upon those who participate in the same offense subsequent to its commission.<sup>291</sup> Under Section 14, provisions of the Revised Penal Code and other special penal laws shall apply suppletorily. Additionally, Section 15 provides that the crimes penalized under the IDP Bill are imprescriptible.

#### 7. *Award of Damages to IDPs*

A court of competent jurisdiction shall determine the damages suffered by IDPs.<sup>292</sup> Actions for damages shall be considered independent civil actions and summary in nature.<sup>293</sup>

#### 8. *Role of the CHR*

The IDP Bill designates the CHR as the institutional focal point for IDPs and enumerates its additional functions in the protection of IDPs:

- (a) To monitor IDP conditions [...] to ensure that IDP rights are respected, protected, and fulfilled in all phases of internal displacement;
- (b) To conduct public inquiries, document violations of human rights, assist IDPs in seeking redress of grievances [...];
- (c) To investigate, on its own or on complaint by any party, all forms of human rights violations against IDPs [...];
- (d) To render financial assistance at its sole discretion [...];
- (e) To recommend to the other agencies of government [...] the grant of assistance to IDPs, as may be appropriate;
- (f) To cite any person in contempt for violations of the orders issued by them in accordance with the Rules of Court;
- (g) To follow up on early warning and ensure effective measures to protect the civilian population against arbitrary internal displacement;

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<sup>289</sup> § 6(a)-(h).

<sup>290</sup> § 13(a)(1).

<sup>291</sup> § 13(c).

<sup>292</sup> § 17.

<sup>293</sup> § 17(c).

- (h) To advise the government on the rights of IDPs, formulate sound national policy and legislation [...];
- (i) To undertake educational activities and training programs for State authorities, including the AFP;
- (j) To hold public information drives on the protection and rights of IDPs [...]; and
- (k) To carry out such other acts that may be necessary to fully implement the purposes of this Act.<sup>294</sup>

The CHR shall determine the necessity of internment or confinement in evacuation centers,<sup>295</sup> ensure prior consultation with IDPs during the planning of their return, local integration or resettlement,<sup>296</sup> and render financial assistance for the reparation of IDPs.<sup>297</sup>

### *9. Inter-agency Coordinating Committee*

An inter-agency coordinating committee was created to monitor compliance with the provisions of the IDP Bill. The committee, to be headed by the Chairperson of the CHR, shall be composed of representatives from the DSWD, DND, DILG, DOH, Department of Justice, and NDRRMC, among other government agencies.

## **B. Assessment of House Bill No. 4744**

Following the increasing number of states seeking to adopt the Guiding Principles into domestic legislation, the Representative of the UN Secretary-General on Internally Displaced Persons, Walter Kälin, initiated the drafting of a Manual for Law and Policymakers (hereinafter “Manual”).<sup>298</sup> The Manual prescribes guidelines for national authorities in drafting a national law that would address the needs of IDPs. My discussion of the strong and weak points of the IDP Bill shall be guided by the standards set forth in the Manual.

### *1. Strong Points*

Some strong points in the IDP Bill are its comprehensive scope, the penal provisions for the commission of acts of arbitrary displacement, and the legal remedies for violations of the rights of IDPs.

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<sup>294</sup> § 21.

<sup>295</sup> § 9 (b)(4).

<sup>296</sup> § 11, ¶ 2.

<sup>297</sup> § 19, ¶ 2.

<sup>298</sup> BROOKINGS INSTITUTION – UNIVERSITY OF BERN, PROTECTING INTERNALLY DISPLACED PERSONS: A MANUAL FOR LAW AND POLICYMAKERS (2008). [hereinafter “MANUAL”].

### i. Comprehensive Scope

Wyndham observed four principal models in existing laws and policies on internal displacement: “(1) a brief instrument adopting the Guiding Principles; (2) a law or policy developed to address a specific cause or stage of displacement; (3) a law or policy developed to protect a specific right of the internally displaced; and (4) a comprehensive law or policy addressing all causes and stages of internal displacement.”<sup>299</sup> Among these four models, the last is deemed the most effective for IDP protection.

The IDP Bill follows the fourth model. It is a comprehensive law addressing all causes and stages of internal displacement, from prevention of displacement to resettlement of IDPs.<sup>300</sup> The adoption of a comprehensive law for IDPs in the Philippines is significant; it is the first of its kind in Asia, and laws following Wyndham’s fourth model is uncommon. Close approximations of a comprehensive law are the Colombia’s Law 387 and the National Policy for Internally Displaced Persons of Uganda. However, Law 387 does not address displacement caused by natural disasters. In addition, Uganda’s policy for IDPs does not provide for long-term recovery or resettlement.<sup>301</sup>

### ii. Penalties for Commission of Acts of Arbitrary Displacement

The Manual requires, as a “minimum essential element of state regulation” of IDP protection, that competent authorities should “[p]enalize arbitrary displacement in domestic law under circumstances in which it amounts to a crime against humanity or war crime in accord with the Rome Statute.”<sup>302</sup> The prohibited acts of arbitrary displacement are enumerated in Section 6 of the IDP Bill, and penalties for the commission of such acts are provided in Section 13. However, the proposed law does not lay down the elements of an act of arbitrary internal displacement; it merely cites the acts that fall under the said crime.<sup>303</sup> In addressing this omission in a subsequent version of the bill, Congress may be guided by the elements of deportation or forcible transfer of population, which is considered a crime against humanity under the Rome Statute:<sup>304</sup>

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<sup>299</sup> Wyndham, *supra* note 265, at 8.

<sup>300</sup> H. No. 4744, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2014), § 4.

<sup>301</sup> Wyndham, *supra* note 265, at 9.

<sup>302</sup> MANUAL, *supra* note 298, at 47.

<sup>303</sup> See H. No. 4744, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2014), § 13(a)(1).

<sup>304</sup> Rome Statute of the International Criminal Court, art. 7(1)(d), UN Doc. A/CONF. 183/9 (July 17, 1998).

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>305</sup>

Penalizing acts of arbitrary displacement may address the problem of lack of accountability of persons violating the rights of IDPs, discussed in Part III.

### iii. Legal Remedy for IDPs and Right to Claim Damages

The Manual prescribes that “[w]hen competent authorities fail to take reasonable steps to prevent or mitigate disaster risks and that failure results in aggravated displacement and loss of life and property, victims should be entitled to legal remedies.”<sup>306</sup> Further, it recommends that states must “[e]nsure that steps are taken to secure the claims of IDPs to remedies—including restitution and compensation—for deprivations of their rights to property and possessions suffered in the course of displacement[.]”<sup>307</sup>

The IDP Bill substantially complies with this directive. In addition to being criminally liable for acts of arbitrary displacement, any public officer or employee, or private person, who violates or impairs any of the rights of an IDP shall be liable to the latter for damages.<sup>308</sup> Further, the IDP Bill requires that financial assistance be extended to IDPs for their reparation, return, local integration, and resettlement.<sup>309</sup>

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<sup>305</sup> Rep. of the Preparatory Comm’n for the Int’l Crim. Ct.: Addendum, at 11, U.N. Doc. PCNICC/2000/1/Add.2 (Nov. 2, 2000). This document provides for the elements of crimes defined and penalized under the Rome Statute.

<sup>306</sup> MANUAL, *supra* note 298, at 58.

<sup>307</sup> MANUAL, *supra* note 298, at 141.

<sup>308</sup> H. No. 4744, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2014), § 18.

<sup>309</sup> § 19.

## 2. *Weak Points*

The designation of the CHR as the “institutional focal point” for IDP protection might be considered untenable. The CHR’s experience and competence in IDP protection is questionable. Unlike government agencies such as the DSWD, DOH, or DND, the CHR has never been part of any disaster management or post-disaster rehabilitation mechanism. It is not even designated as one of the 36 members of the NDRRMC. The Manual, in fact, describes the kinds of institutions that may be designated as a “national institutional focal point” for the protection of IDPs. These include:

- existing government agencies with relevant mandates that also are charged with coordination of IDP issues;
- new agencies or offices specifically set up to coordinate responses to displacement, often at the level of the Office of the President or Prime Minister;
- standing committees, working groups, or task forces institutionalizing the collaboration of all involved ministries and agencies.<sup>310</sup>

If Congress were to comply with the Manual, the CHR should instead be designated as a *monitoring* agency, to ensure that existing provisions of IDP laws and policies are being fully and consistently implemented. The Manual provides that “[i]n most cases, the ideal body for monitoring the implementation of laws and policies on internal displacement will be national human rights institutions [...] or ombudspersons.”<sup>311</sup>

Thus, Congress must reevaluate its designation of the CHR as the IDP Bill’s “institutional focal point.” Although I am not in the position to endorse an appropriate government agency to take the place of the CHR, I submit that Congress must consider an agency that already has rich experience and sufficient resources in dealing with IDPs such as the DSWD.

## CONCLUSION

Displaced persons bear the brunt of armed conflict and natural disasters. Despite the cessation of the causes of displacement, IDPs continue to endure harsh living conditions and suffer from uncertain livelihood until the

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<sup>310</sup> MANUAL, *supra* note 298, at 30.

<sup>311</sup> MANUAL, *supra* note 298, at 31.

government can provide for their recovery, rehabilitation, return, or resettlement.

I have shown the distressing conditions of IDPs in the Philippines in the context of two major displacement situations. I also emphasized that there are international standards enshrined in the Guiding Principles that the government has a duty to uphold, but fails to do so. I have argued that the reason behind the inadequacy of government action is that presently, our government operates under an *ad hoc* system of IDP protection. While the government's current approach is effective in providing immediate relief assistance to IDPs, it does not address their long-term rehabilitation and recovery. Worse, the government is actually the main impediment to such recovery in some situations.

We are on the verge of a breakthrough in IDP protection with the IDP Bill is pending in Congress. The task at hand is for lawmakers to review the proposed law and ensure that it is effective in implementing the international standards for IDP protection.

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