

05 June 2017

REPRESENTATIVE DIVINA GRACE C. YU

Chairperson

Committee on the Welfare of Children
RVM Building, House of Representatives
Quezon City

Re: House Bill Nos. 13, 1280, 3050, 2345 and 4676 otherwise known as "Special Protection of Children in Situations of Armed Conflict"

Dear Representative Yu,

Greetings from the Department of Social Welfare and Development (DSWD)!

The DSWD respectfully manifests its unwavering commitment to protect the rights of children in all situations, especially those in situations of armed conflict who, in view of the complexities of their environment, require special care and attention. The DSWD, thus, is one with you and the entire children's rights movement in recognizing the most pressing need to address the violations committed by state and non-state actors in the forcible recruitment and use of children as combatants. With this special protection to children in situations of armed conflict as the main consideration, and the overall impact of the proposed bills to children, the DSWD regrets that, after re-studying their provisions vis-à-vis those of the Paris Principles or the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, it cannot give its support to the bills in their present form.

This position is reached with careful consideration of the nature, particularities and complexities of armed conflict in the country. After all, the Paris Principles itself recognizes that when it comes to the problem of children associated with armed forces or armed groups, "the precise nature of the problem and the solution will vary according to the context."¹ It is the context and peculiarities of the armed conflict in the country that the DSWD wishes to highlight in this position paper, hoping that in the end, the best interest of the child will be upheld.

¹ 1.7.0 Paris Principles.

Far from the African countries' experience which was the backdrop of the Paris Principles, armed conflict in the Philippines, owing to its decades-long of existence has evolved into a community-based, participatory type of struggle, hence, lacking the element of coercion. Major non-state armed-groups in the country – the MILF, MNLF and the NPA, for example, are in their four decades of existence. Over these decades, these groups have gathered mass support, acceptance and homegrown solidarity in the communities where they are found, not to mention that many of them are original residents in these communities. Given this context, the DSWD is concerned that the expanded coverage of the proposed bills stand to outweigh the other positive features found therein.

To expound, *children in situations of armed conflict*² is defined under HB No. 13 as those "xxx children involved in armed conflict, children affected by armed conflict and internally displaced children." *Children affected by armed conflict*³, meanwhile, "refers to all children population experiencing or who have experienced armed conflict" and "*children involved in armed conflict*"⁴ refers to children who are either forcibly, compulsorily recruited or who voluntarily joined any government armed forces or any armed group in any capacity to participate directly in armed hostilities as combatants or fighters, or take support roles such as scouting, spying, sabotaging, acting as decoys, assisting in checkpoints, acting as couriers, messengers, porters, cooks, and being sexually abused (*Emphasis supplied*).

With whole communities involved in or affected by armed conflict in various parts of the country, the question is, how will the expanded coverage of the proposed bills be implemented without raising the dangers of children being exposed to false branding or malicious tagging by either party in the conflict?

To clarify, the DSWD is vehemently opposed to recruitment of children as combatants. Children are not to bear arms but go to school or train to become productive individuals and those who recruit them to become combatants or give them arms must rightfully be dealt with by law. But non-combatant children wherever they may be found must be granted free and safe mobility to and from home and school and vice-versa. With due respect, given the expanded definition

² Sec. 5(j), HB No. 13.

³ Sec. 5(i), HB No. 13.

⁴ Sec. 5(h), HB No. 13.

or coverage above-mentioned, children who are non-participants to the armed conflict instead of being protected may end up finding themselves in harm's way.

Moreover, the bills expose to risk those children who have parents, neighbors and friends belonging to people's organizations that have been accused by the state as "front organizations" of the non-state armed groups as they too will be subjected to programs and interventions for "children associated with armed groups".

The DSWD likewise considers the fact that existing laws already fully afford protection to children in situations of armed conflict. For example, Republic Act No. 7610 or "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" devote a full article, Article X to "Children in Situations of Armed Conflict" which provides as follows:

ARTICLE X

Children in Situations of Armed Conflict

Section 22. Children as Zones of Peace. – *Children are hereby declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflicts in order to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed.*

- (a) Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment;*
- (b) Children shall not be recruited to become members of the Armed Forces of the Philippines of its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies;*
- (c) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;*
- (d) The safety and protection of those who provide services including those involved in fact-finding missions from both government and non-government institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;*
- (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and*
- (f) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated 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.

Section 25. Rights of Children Arrested for Reasons Related to Armed Conflict. – Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights;

- (a) Separate detention from adults except where families are accommodated as family units;
- (b) Immediate free legal assistance;
- (c) Immediate notice of such arrest to the parents or guardians of the child; and
- (d) Release of the child on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.

If after hearing the evidence in the proper proceedings the court should find that the aforesaid child committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the Government, or duly-licensed agencies or any other responsible person, until he has had reached eighteen (18) years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and

Development or the agency or responsible individual under whose care he has been committed.

The aforesaid child shall subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly-licensed agency or such other officer as the court may designate subject to such conditions as it may prescribe.

The aforesaid child whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.

Section 26. Monitoring and Reporting of Children in Situations of Armed Conflict. – *The chairman of the barangay affected by the armed conflict shall submit the names of children residing in said barangay to the municipal social welfare and development officer within twenty-four (24) hours from the occurrence of the armed conflict.”*

There are also Republic Act No. 9344 or the “Juvenile Justice and Welfare Act of 2006” and the Revised Penal Code. Notably, while RA No. 7610 also mentioned children being used as guides, couriers, or spies, its context is clear – the context of **actual** use or performance as guides, couriers, or spies, thus, excluding in its purview the future act of taking support role. In other words, children merely found in communities affected by armed conflict are not included in the coverage unless they are caught armed or actually taking support roles.

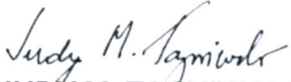
This delineation when applied using a context foreign to ours may seem innocuous but rather crucial when viewed using the Philippines own particular context of armed conflict or armed struggle. The sad experiences of Lumad children illustrate this point. Reported violations were committed against ordinary children, some of them schoolchildren, who were arrested after having been chanced upon by government troops during counter-insurgency operations. They were then reportedly arrested, detained and branded as child soldiers with some reportedly forced to admit under duress and torture to membership with the armed groups. Then there were the actual burning and destruction of ALCADDEV schools, the schools having been tagged as communist-operated schools, and the killings of its teachers / leaders.

Given the foregoing considerations, the DSWD given its mandate to protect children wherever they may be found and whatever their affiliations may be,

cannot under the current dispensation, lend its support to the bills that are not seen to provide added protection to children in situations of armed conflict (given the existing laws in place) but on the contrary, even tend to place a group of children in harm's way. It behooves thus upon the DSWD with its "*patas na pagtrato sa komunidad*" mantra to speak for these group of children.

In closing, the DSWD reiterates its belief that under existing laws, grave violations against children in armed conflict can be stopped as they must be stopped, now!

Sincerely,


JUDY M. TAGUIWALO
Secretary