

21 November 2016

REP. EMMI A. DE JESUS

Chairperson

Committee on Poverty Alleviation

House of Representatives

Quezon City

Dear **Representative De Jesus**:

Greetings!

We respectfully submit the Department of Social Welfare and Development's reservations, comments, and recommendations on the proposed Magna Carta of the Poor articulated in several bills pending before your Committee as follows: HB No. 31 filed by Rep. Del Mar; HB No. 232 filed by Rep. Marcoleta; HB No. 478 filed by Rep. Sy-Alvarado; HB No. 1122 filed by Rep. Alejano; and HB No. 1895 filed by Rep. Fortunato.

As the government's frontline agency in social protection, the Department is keen on seeing more laws passed and additional structures set up addressing poverty amongst the Filipino people. However, after our review and re-assessment of the bills' identical contents, we have the following reservations, comments and recommendations:

The poor, defined.

The bill defines "*poor*" as follows:

"Poor refers to individuals or families whose income falls below the poverty threshold as defined by the National Economic and Development Authority (NEDA) and/or who cannot afford in a sustained manner to provide their minimum basic needs of food, health, education, housing, or other essential amenities of life"

The above definition may prove to be inadequate or inept to include all the poor amongst the Filipino people. While poverty threshold or poverty line delineating the poor from non-poor is useful in crafting programs and projects targeting the poor, it does not accurately define poverty. Thus, defining who among the poor are qualified to the guarantees of the enumerated fundamental rights might result to exclusion of others who are similarly situated and, thus, also entitled to the same guarantees.

It is also worth mentioning that in setting the poverty threshold, the government uses absolute minimum standard or level of income deemed adequate for a person to purchase basic food and non-food utilities which, arguably, does not even take into consideration, for example, the concept of a living wage vis-à-vis minimum wage.

Likewise related to the bill's definition of the "*poor*" is its provision providing for a single and uniform system of classification to be used for targeting the beneficiaries of the government's poverty alleviation programs and projects.

The Department has a reservation in legislating a uniform system of classification applicable for all purposes as this may be inapplicable in particular programs and projects and may also be counter-productive because it might render useless or of minimal use the systems of classification now in place in various government agencies. In the case of DSWD for example, this provision may have an effect on the Department's existing Listahanan. It is worth noting that while the existing systems and databases are not without limitations, government funds have been spent therefor. Hence, the implication of legislating a uniform system of classification must be subjected to a more thorough review.

It is also the Department's opinion that the comments previously raised by the Department of Finance that "the classification of the "poor" and conferring them of certain rights and privileges may be violative of the equal protection clause" must be studied and considered. In this connection, Article XIII of our Constitution provides:

"ARTICLE XIII

Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

SECTION 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance." (Emphasis supplied)

The Department, thus, respectfully recommends that the Committee takes a second look at the necessity, practicality and constitutionality of legislating a blanket definition or classification of the poor.

The scope and fundamental rights of the poor enumerated.

According to the bill, the following are the poor's fundamental rights:

- a) Right to adequate food;
- b) Right to decent work;
- c) Right to relevant and quality education;
- d) Right to adequate housing; and
- e) Right to the highest attainable standard of mental and physical health.

The above enumeration of the poor's fundamental rights vis-à-vis their scope appears to simplify, limit, and restrict the poor's fundamental rights.

For example, the ***right to adequate food*** is defined as "the right of individuals or families to have physical and economic access to adequate and healthy food, or the means to procure it." In relation thereto, the DSWD, Department of Agriculture (DA), and other implementing agencies are directed to:

- (1) Undertake necessary actions to mitigate and alleviate hunger especially in times of calamities/natural and human-induced disasters;
- (2) Fully implement and maintain supplementary feeding programs in day care centers and schools;
- (3) Ensure the availability, accessibility and sustainability of food supplies in a quantity and quality sufficient to meet the dietary needs of poor individuals and families; and
- (4) Proactively engage the poor in activities intended to promote their self-sufficiency and strengthen their access to resources and means to ensure food security.

As seen, the poor's right to adequate food is formulated along conditions of extreme need (i.e. hunger mitigation and hunger alleviation, in times of calamities or disaster) and not along the condition of food security and sustainability.

In the same vein, ***right to decent work*** is focused on right or access to obtain employment and not on right to employment, living wage and security of tenure. Not only is decent work alone inadequate without a living wage, right to decent work as defined in the bill can easily be rendered meaningless if not coupled with the State's obligation to generate employment.

The bill provides no separate appropriation to realize the enumerated fundamental rights of the poor nor does it contain a penalty clause for violation of these rights.

Another noted inadequacy of the bill is its failure to provide a separate appropriation to fund the realization of the enumerated fundamental rights of the poor as well as its lack of penalty clause for violation of or non-realization of these rights.

The bill provides that funding requirements shall be sourced from existing appropriations of different departments and agencies that are already implementing poverty alleviation programs and projects. And while it reiterates guarantees of some rights of the poor as well as provide for non-diminution of rights of the poor, it does not contain any penalty clause for their violation or non-realization.

In sum, the Department's reservations, comments and recommendations are as follows:

Comments:

- 1) The Department reiterates its policy to support genuinely pro-poor legislations in line with the government's thrusts and priorities;
- 2) The proposed Magna Carta of the Poor appears to simplify, limit and restrict the fundamental rights of the poor to those that are only positively enumerated in the bill. The people's rights which are guaranteed in the Constitution and in various laws passed by Congress must not be directly or indirectly limited. In relation to this, our Constitution mandates Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good", and "the promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance."
- 3) The proposal to legislate the definition of "*poor*" faces some practical and constitutional issues;
- 4) The bill does not seem to offer additional and concrete rights and demandable benefits than those already existing in the laws. There is no separate funding appropriation to carry out the defined scope of the enumerated fundamental rights and the bill is wholly reliant on existing appropriations of different

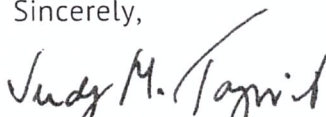
departments and agencies that are already implementing poverty alleviation programs and projects; and

- 5) The Department recognizes the legislators' noble intent to give preferential treatment to the poor. However, in its estimation, the bill falls short of the necessary measures and structures required to realize such objective. As mentioned, for example, there is no mechanism to exact accountability and liability for its violation or non-realization.

Recommendations:

- 1) Thoroughly study the necessity, practicality and constitutionality of legislating a blanket definition or classification of the poor;
- 2) Consider the reservations made by the Department and provide spaces for the poor and ensure their participation and inputs in the enhancement of the proposed measure or in seeking an alternative thereto;
- 3) Enhance or capacitate existing programs and projects targeting the poor;
- 4) In the exercise of Congress' oversight functions, review, assess and recalibrate the implementation of existing programs and projects of the government in order to align them with the present administration's thrusts and priorities.
- 5) Likewise in the exercise of Congress' oversight functions, convergence planning and strategy in ensuring that the poor have access to social protection programs of the government, through the Department and other government agencies and their partners, must be reinforced and harnessed in order to avoid duplication of programs and efforts.

Sincerely,



JUDY M. TAGUIWALO

Secretary