



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

POSITION PAPER

ON HOUSE BILL NO. 13, "AN ACT PROVIDING FOR THE SPECIAL PROTECTION OF CHILDREN IN SITUATIONS OF ARMED CONFLICT AND PROVIDING PENALTIES FOR VIOLATIONS THEREFOR"

The Commission on Human Rights submits its position on House Bill No. 13 entitled, "*An Act Providing for the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Therefor*", pursuant to its constitutional mandate to "recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families"¹.

In the same manner, the Commission is committed to promote and protect the rights of children, specifically, those involved, affected or internally displaced in situations of armed conflict and defend them from all forms of abuse, violence, neglect, discrimination and other conditions prejudicial to their development.

At the onset, the Commission expresses its full support to the enactment of a measure that will identify, prohibit and penalize the commission of acts constituting grave child rights violation in situations of armed conflict. Currently, there is no law providing for a comprehensive mechanism protecting children in situations of armed conflict and institutionalizing specific programs for the rescue, release, rehabilitation and/or reintegration of children involved in armed conflict. There is a need to put in place feasible measure that will address these concerns and impel the State to take upon its primary obligation as *parens patriae* to protect these children and treat them as victims of violations, instead of perpetrators. Hence, the passage of the bill is not only timely but responsive to the present times as it will address the existing gaps in policies aimed at advancing the rights and interests of children in situations of armed conflict (CSAC).

While the Commission supports the proposed legislation, it recommends to the Committee on the Welfare of the Children of the House of Representatives to consider the following inputs to further enhance the proposed measure:

- 1) On SECTION 2 DECLARATION OF POLICY, subsection (b) thereof, the Commission recommends its modification to include the *Paris Principles on the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. Thus, the subsection is hereby proposed to be read as:—

(b) "take into account the **Paris Principles on the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups**, United Nations Guiding Principles on Internal Displacement,..."²

The *Paris Principles on the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* was adopted at the international conference 'Free Children from War' in Paris, held sometime in February 2007. The document consolidates global humanitarian knowledge and experience in working to prevent recruitment, protect children, support their release from armed forces or armed groups and reintegrate them into civilian life. It designed to guide interventions for the protection and well-being of such children and to assist in making policy and programming decisions.

2) To include in SECTION 5. DEFINITION OF TERMS the following prohibited acts under Section 9 (d):

a. **"Intentional Delayed Reporting of a Child in Custody"**³ refers to the failure of any person who shall take custody of children in armed conflict to report the same to the Local Social Welfare and within twenty-four (24) hours from taking such custody in accordance to Section 24 (c) of this Act;

b. **"False Branding of Children or Labelling Children"**⁴ refers to the voluntary and intentional act of referring to, calling, defining, reporting, or any other form of communication that incorrectly defines children as children involved in armed conflict, when the status or condition of such children are such that they are not actually involved in armed conflict;

c. **"False Reporting of a Child in Custody"**⁵ refers to the voluntary and intentional act of any person of providing false, incorrect, and mistaken information in relation to a child in custody in situations of armed conflict;

3) In the light of the proposed legislations on the re-imposition of death penalty and the lowering of minimum age of criminal responsibility presently pending in Congress, it is recommended that the *Right to Live, Survival and Development* of children under Section 7 be incorporated. Also, we recommend to include the *Right to Participation and Respect for the Views of the Child* as of one of the rights of children is situation of armed conflict. The proposed languages for these recommendations are as follows:

"The right of life, survival and development. Capital punishment or imprisonment for life without possibility of release shall never be used against a child who is proved to have committed an offense against international and domestic law."⁶

"The right to be heard and participate in all matters /

affecting them. As much as possible, the views of children, as well as the families and the communities to which children return, should be sought in all stages of assessment, planning, implementation and evaluation of activities to prevent the association of children with armed forces or armed groups; as well as in the development and design of policies, programs and services for the rescue, rehabilitation and reintegration of children involved in armed conflict.”⁷

4) To consider rewording the subsections (c) and (d) under SECTION 8. PREVENTION, as follows:

*c) provide educational assistance, whether formal or alternative learning system, that is child and culturally sensitive. **Girls should have an equal right to education irrespective of their status as mothers or wives.***

*d) **promote the values of non-violence and respect for human rights especially in conflict affected areas through peace education and other relevant campaign work by applying the peace and human rights modules for elementary and high school students, developed by the Department of Education (Deped). The conduct of education and campaign work should be implemented in collaboration with local NGOs, CHR, law enforcement agencies, and other civic organizations***⁸.

5) We recommend that the proposed measure should not make a distinction between intentional maiming and causal maiming. The proposed legislation should give equal protection to children who were victims of direct attacks of armed groups, and to children who were harmed as “collateral damage” of indiscriminate and disproportionate attacks by both state and non-state actors.

The recommendation is based on the principles of “Distinction” and “Proportionality” enshrined in the Geneva Convention and their Additional Protocols aim to protect civilians against the effect of hostilities and prevent unnecessary “collateral damage” resulting to combat operations.

The principle of proportionality prohibits military attacks if they result in civilian objects considered excessive when compared to the concrete and direct military advantage anticipated from attack. The principle of distinction demands that parties to conflict distinguished between civilians and combatant at all times and that attacks must not be directed to civilians. Clearly, these key principles of the law of armed conflict consider both direct attacks civilians, and indiscriminate and disproportionate military attacks as grave breaches of international humanitarian law.⁹

Thus, the subsection is hereby proposed to amended as:

"(a) It shall be unlawful for any persons to commit the following acts of grave child rights violations:

xx xx

(3) maiming¹⁰"

6) The Commission appreciates that House Bill No. 13 does not provide additional penalties for the parents¹¹. Under the UNCRC, parents play a very important role in providing direction and guidance in the exercise by the child of his/her rights. It is for this reason that we believe that incarcerating parents, unless it shall be established that the same be for the best interest of the child, will not benefit the child at all. Instead of criminalizing parents, the State should support and encourage parents into becoming active partners in the rehabilitation and reintegration of their children.

7) To ensure the implementation of policies, programs and services for the rescue, rehabilitation and reintegration of CSAC, it is suggested that a provision on the **development of programs for CSAC** be introduced under CHAPTER VII on REHABILITATION AND REINTEGRATION, RESCUE AND RELEASE. The proposal are as follows:

"Formulation of Rescue, Rehabilitation and Reintegration Programs for CSAC. - Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), the Department of Justice (DOJ), the Department of Health (DOH) and such other concerned government agencies, and human rights organizations shall formulate a comprehensive program for the rescue, rehabilitation and reintegration of children in situation of armed conflict.

The DSWD, the DOJ and the DOH shall also call on human rights non-government organizations duly recognized by the government to actively participate in the formulation of such program that shall provide for the physical, mental, social, psychosocial, educational, economic, and other basic and legal support for the CSAC, and their families, as may be necessary.

Towards the attainment of restorative justice, a parallel rehabilitation program for children recruited or used in armed conflict shall likewise be developed by the same agencies."

8) To provide wider protection to children who have been associated with armed forces or armed group, it is recommended that the following duties of the State, through its concerned agencies, be included under SECTION 24. RESCUED, TAKEN INTO CUSTODY, OR SURRENDERED CHILDREN INVOLVED IN ARMED CONFLICT, to wit:

"Children who have been rescued, taken into custody or surrendered shall not be subjected to tactical interrogation or any

handling and provision of immediate physical and psychosocial support¹²."

Unless contrary to the best interests of the child, all allegations of violence, including sexual and gender-based violence shall be promptly, thoroughly, and independently investigated and prosecuted, and adequate and effective follow-up care shall be offered to the child and her/his family¹³."

Further, to prevent re-recruitment of children who have been released from armed forces or armed groups, the succeeding paragraph be considered:

"Ongoing monitoring and, as necessary, intervention shall be provided to ensure that the chain of command between children and armed forces or armed groups is broken and children are not vulnerable to re-recruitment¹⁴."

9) To strengthen the mechanism, it is recommended that a specific provision be allotted in the proposed legislation for the establishment and operationalization of the **Monitoring, Reporting and Response System**. This will account for cases and identify responses of the State in case of grave child rights violation in the context of armed conflict. As an essential protection measure, it will serve as the basis for actions to pressure armed forces or armed groups to respect fundamental humanitarian and human rights norms. The proposed provision shall be read as follows:

"CHAPTER ____
MONITORING, REPORTING AND RESPONSE SYSTEM FOR
GRAVE CHILD RIGHTS VIOLATIONS IN SITUATIONS OF ARMED
CONFLICT
(MRRS-GCRVSAC)

SECTION ____ . Monitoring, Reporting and Response System for
Grave Child Rights Violations in Situations of Armed Conflict
(MRRS-GCRVSAC)

A monitoring, reporting, and response system for grave child rights violations in situations of armed conflict (MRRS-GCRVSAC) composed of different national agencies shall be established to prevent the occurrence of GCRVs and ensure the provision of appropriate and timely response in the event of such violations.

The MRRS-GCRVSAC shall generate standard data and information that will serve as a major primary government source on all matters pertaining to such violations.

SECTION ____ . Focal agency for the MRRS-GCRVSAC

The Council for the Welfare of Children (CWC) is tasked to

identify responses on grave child rights violations in the context of armed conflict. As the lead agency, CWC shall continue to establish the appropriate coordinate network at the national and local levels, and to formulate the comprehensive program framework to address GCRVs in the situations of armed conflict.

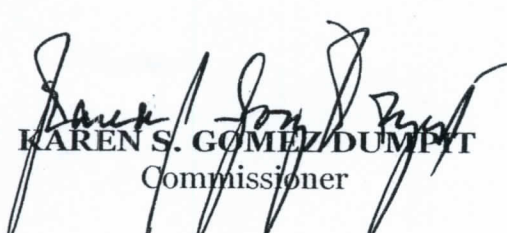
For this purpose, the CWC shall establish and maintain a database for the monitoring and reporting of CSAC concerns integrated in its monitoring system.”

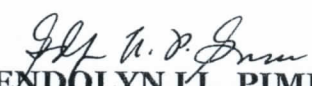
10) Finally, it is strongly suggested that our recommendations, *provided below*, in the position paper on the Substitute CSAC House Bill issued by the Commission in 11 April 2014, be reiterated. It is submitted that there is still a need for the Committee to thoroughly discuss the interfacing of the CIAC and CICL considering that the seemingly *unequal treatment* between the two child sectors may be raised once the deliberation of the subject bill is brought before the plenary.

“The Commission also strongly recommends a thorough discussion on the interfacing of the Children Involved in Armed Conflict (CIAC) and the Children in Conflict with Law (CICL) as this is expected to be a problem area once this bill is passed into law and implemented. For example, the different treatment of a CICL who allegedly committed illegal possession of firearms as against a CIAC who illegally possessed firearms. We suggest that the Bill lay down the difference in treatment, the basis, and the human rights safeguards to avoid confusion and the tendency to discrimination and exploitation making them more vulnerable”¹⁵.

Issued this 27th day of June 2017, Quezon City, Philippines.


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