

Philippines, Armed Group Undertakes to Respect Children

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N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

The NDFP Declaration and Program of Action for Filipino Children

[Source: Geneva Call, The NDFP Declaration and Program of Action for Filipino

Of the estimated total Philippine population of 95 million, about 42% are below 18 years of age. The National Democratic Front of the Philippines (NDFP) which fights for the national and social liberation of the Filipino people has consistently given serious attention to the rights, protection and welfare of children. In 2005, it published the NDFP's Defense of the Rights of the Filipino Child, which presented the conditions of Filipino children and the programs and policies of the NDFP regarding them.

[...]

From 2001 to 2010, [an NGO] documented 1,205 cases of different violations which include the false labelling of 41 children as child soldiers of the New People's Army, the use of 22 of them as guides or shield in military operations and the recruitment of four minors into paramilitary groups of the [...] government.

[...]

The NDFP regards the continuing gross and systematic violations of the human rights of the majority of Filipino children by the ruling system of big compradors and landlords as one of the compelling reasons for the revolutionary struggle of the Filipino people. Such violations have been aggravated by the deliberate targeting of these children in [government] military operations against communities suspected of being under the control and/or supportive of the revolutionary movement.

In view of the ever worsening conditions of children, the NDFP issued on April 24, 2012, its Declaration and Program of Action for the Rights, Protection and Welfare of Children. The NDFP proclaims this Declaration and Program of Action within the framework of its

political authority defined as follows:

[...]

3. In accordance with Art. 1, paragraph 4 in relation to Art. 96, paragraph 3 of the 1977 Protocol I Additional to the 1949 Geneva Conventions, the NDFP issued the Declaration of Undertaking to Apply the said Geneva Conventions and Protocol I on 5 July 1996 and submitted it to the proper depositary, the Swiss Federal Council on the same date. By proclaiming the said Declaration, the NDFP has assumed rights and duties under Protocol I, on top of those provided for under common Article 3 of the 1949 Geneva Conventions and under its Protocol II.

[...]

The NDFP reiterates its commitment under the 1998 GRP-NDFP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) to uphold, protect and promote “the right of children and the disabled to protection, care and a home, especially against physical and mental abuse, prostitution, drugs, forced labor, homelessness, and other similar forms of oppression and exploitation” (Part III, Respect for Human Rights, Art. 2, No. 24). It also reiterates its joint and separate commitment under the CARHRIHL “to provide special attention to women and children to ensure their physical and moral integrity. Children shall not be allowed to take part in hostilities.” (Part IV, Respect for International Humanitarian Law, Art. 10).

Cognizant of the rigors and risks for children in areas affected by the civil war, the NDFP and its allied organizations have taken special care to make decisions and implement measures to protect children from the adverse consequences of the armed conflict.

In 1988, the Political Bureau of the CPP's Central Committee stipulated that the NPA may recruit only persons who are 18 years and older as armed fighters for its combat units. On October 15, 1999 the Executive Committee of the CPP issued the "Memorandum on the Minimum Age Requirement for NPA Fighters" reaffirming the minimum age of 18 for NPA fighters. In 2002, at the 11th Plenum of the CPP Central Committee, the policy of the minimum age was reiterated.

[...]

Optional Protocol of 2002 and the So-Called Paris Principles

The NDFP recognizes the 1990 Convention on the Rights of the Child. However, it criticizes the 2002 Optional Protocol on the Involvement of Children in Armed Conflict, for its clear bias against liberation movements. This Optional Protocol prohibits "armed groups that are distinct from the armed forces of a State" from recruiting those under 18 in hostilities, under any circumstances yet allows schools under the control of States Parties to train persons below 18. The NDFP considers this Protocol not legally binding. Hence, it does not impose legal obligations on the NPA.

The Aquino government, in violation of its own declaration in its accession to the said Optional Protocol, has been exposed by human rights organizations as having forcibly recruited minors.

The so-called Paris Principles [and Guidelines on Children Associated with Armed Forces and Armed Groups, 2007, online:

<http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> ^[3], see in particular point 2.1.] have been used by the [government] to buttress the Optional Protocol to falsely accuse the revolutionary movement of recruiting child soldiers. These so-called principles,

which are not part of international law, contain a vague, expansive and misleading definition that mixes up and confuses combatant and non-combatant tasks and even construe innocuous social and community activities as acts of hostility or combat. These are prejudicial to liberation movements and practically require children to be physically and even permanently separated from parents, families and the community. They put children at grave risk by giving license to GPH security forces to accuse children falsely as child soldiers, treat them as military targets and be open prey to various kinds of rights violations.

Allegations by the reactionary government that the NPA recruits child soldiers have been vigorously refuted by the NDFP and have been confirmed to be false by independent human rights organizations in the Philippines and abroad. Unfortunately, such allegations have been repeated by some international bodies and nongovernmental organizations directed and funded by agencies adverse to the NDFP.

[...]

Program of Action

In the Declaration, the NDFP states its program of action for the rights, protection and welfare of children.

[...]

In time of an attack on a community by the reactionary forces, the children have the right to join their elders in protecting the community or assisting especially the women, the children below the age of 15 and those in frail health conditions, in saving themselves from enemy atrocities.

[...]

The NPA itself at all levels and in all units prevents the recruitment and use of child soldiers. The CPP's Military Commission and the NPA Operational Command direct all commands and units of the NPA in different areas of the country to strictly implement the pertinent CPP policies and NPA rules.

Furthermore, upon clear, credible and verifiable allegations of specific violations of any recruitment and use of children, the NDFP shall promptly investigate and ensure that appropriate disciplinary action is taken in line with international minimum standards.

[...]

Upon its own initiative or under its auspices, the NDFP shall continue to investigate and document all grave violations of the rights of children by the reactionary forces, including recruitment and use of children, killing and maiming of children, rape, abduction, attack against schools or hospitals, and denial of humanitarian access to children.

The NDFP is ever willing to receive from any entity clear, credible and verifiable allegation of specific violations of recruitment and use of children and shall promptly conduct investigation and make reports to the concerned parties. In case of any breach, the appropriate disciplinary action shall be undertaken against erring officers and personnel of the NPA.

The NDFP shall undertake the following organizational measures to uphold and defend children's rights. It shall create and operationalize under its Human Rights Committee within 6 months after approval of this Declaration and Program of Action a Special Office for the Protection of Children. This Special Office shall:

- a) oversee the implementation of this Program of Action
- b) report widely the achievements
- c) receive complaints and refer these to the organs concerned for appropriate action
- d) assist all NDFP forces with advice on all matters related to the protection of children in armed conflict
- e) organize educational programs and encourage the formation of child protection units under the auspices of the organs of political power and mass organizations especially of children, youth and women
- f) establish and maintain contacts and relations with all relevant international bodies
- g) issue an annual report on the situation of children in relation to the armed conflict and on the activities to uphold, defend and promote the rights of children.

[...]

NDFP Cooperation with Foreign or International Entities with Regard to Children

The NDFP is amenable to cooperate with international entities and engage in dialogue, present issuances, actions and mechanisms that its organizations have undertaken in order to uphold children's rights.

It is open to practical cooperation with international entities in investigating and monitoring children's conditions and problems provided that the NDFP's political authority and this

Declaration are acknowledged and respected.

[...]

Finally, subject to security consideration, regulations, terms and conditions set by its political and military authorities, the NDFP may allow access to areas within its jurisdiction after fully availing of the basic mechanisms stipulated in this Program of Action.

[...]

Call for Deep going Study and Resolute Implementation of this Declaration and Action Program

The NDFP National Council calls on all NDFP forces throughout the country and the Filipino people to undertake deep going study of the Declaration and Action Program and to implement resolutely and creatively the Program of Action for the Rights, Protection and Welfare of Children. This program of action is an integral part of the revolutionary struggle to achieve national and social liberation.

[...]?

Discussion

I. Classification of the situation

1. How does the NDFP classify the situation in the Philippines? What law does it apply to this conflict? Why has it chosen to assume all rights and duties incumbent on a party under the Conventions and Protocol I? Who decides if a conflict qualifies as a war of national liberation? What are the interests of the Filipino government in this matter? Does Art. 1(4) of Protocol I apply? If yes, would the Filipino government also

be fully bound by the Geneva Conventions and Protocol I, or would this declaration be valid only for the NDFP? (P I, Arts 1(4) ^[4] and 96(3) ^[5]).

2. If the conflict in the Philippines does not qualify as a war of national liberation, how would you qualify it? It is possible for an armed conflict to exist between two governments claiming to represent the same state? (GC I-IV, Art. 3 ^[6]).

II. Protection of children in armed conflicts

3. Which commitments did the NDFP undertake for the protection of children in the past? Do they go further than what IHL requires from armed groups? What is the advantage of such commitments compared to the applying merely applying the relevant IHL rules? (P I, Art. 77 ^[7]; P II, Arts 4(3) ^[8] and 6(4) ^[9]; CIHL, Rules 135 ^[10]-137 ^[11])
4.
 - a. Does IHL allow recruiting child soldiers and using them in hostilities? If they are between 15 and 18 years old? If they are below 15? What if the children voluntarily enlist? Which different formulations can you find in the provisions relating to child soldiers? Do these provisions draw a distinction between the obligations of governmental armed forces and non-state armed groups? Is it true that the Optional Protocol on the Convention on the Rights of the Child is biased against liberation movements and armed groups? (P I, Art. 77 ^[7]; P II, Art. 4(3)(c) ^[8]; CIHL, Rules 136 ^[12]-137 ^[11]; United Nations Convention on the Rights of the Child of 1989, Art. 38(2) ^[13] and (3) ^[13]; Document, Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, Arts 1 ^[14]-4 ^[15]; The International Criminal Court, Arts 8(2)(b)(xxvi) ^[16] and 8(2)(e)(vii) ^[16])
 - b. Is the NDFP bound by the Optional Protocol on the Convention on the Rights of the Child? Why? Does its declaration that it is not bound by the Optional Protocol have any legal consequences? (Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, Art. 4 ^[15])
5.
 - a. Why does the NDFP criticize the Paris Principles and their wide definition of a

child soldier? Does an effective protection of children require a prohibition of all kinds of activities performed for armed forces and armed groups? Do the Paris Principles disadvantage armed groups? How does the NDFP argue against these principles?

- b. Does IHL forbid children to defend themselves, other civilians or “their communities” when under attack?
- c. Under which circumstances may a child be targeted in an armed conflict? When it directly participates in hostilities? When it actively participates in hostilities? When it is used in hostilities? (P I, Arts 43 ^[17], 44 ^[18] and 51 ^[19]; CIHL, Rules 1 ^[20], 5 ^[21] and 6 ^[22]; Document, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities ^[23])

6.

- a. Which obligations does the NDFP assume in its declaration? Which different measures does it foresee to implement them? To what extent is the NDFP factually and formally bound by its declaration?
- b. Does the publication of this declaration by Geneva Call constitute a recognition of the NDFP? As a party to the conflict? As a people fighting a national war of liberation? As the legitimate government of the Philippines?

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Links

[1] <https://casebook.icrc.org/disclaimer-and-copyright>

[2] <http://theirwords.org>

[3] <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>

[4]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6C86520D7EFAD527C12563CD>

[5]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4B3EBFB356E8FA04C12563CD>

[6]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD>

[7]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8F7D6B2DEE119FBAC12563CD>

[8]

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[9]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DDA40E6D88861483C12563CD>

[10] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule135

[11] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule137

[12] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule136

[13]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=78E5DB8C13F849ECC12563CD>

[14]

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[15]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4DEECADA6226007B4125693C>

[16]

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[17]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=AF64638EB5530E58C12563CD>

[18]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=524284F49042D4C8C12563CD>

[19]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563C>

[20] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1

[21] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule5

[22] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule6

[23] <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>