

DOJ ISSUANCES

MARAWI COMPESATION BILL

DOJ Opinion No. 006, s. 2020

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SUMMARY

This was issued in response to a request by Representative Mohaman Khalid Q. Dimaporo, TWG Chairperson of the Marawi Compensation Bills House Committee on Disaster Management, for an opinion on whether the Philippine Government is liable or should be held liable to compensate private properties destroyed in the Marawi siege and its implications if such a measure is passed into law.

The Department of Justice ("DOJ") expressed that it had no objection on the three (3) Marawi Compensation bills, namely, House Bill Nos. (HBN) 3418, 3543 and 3922, introduced by Representatives Ansaruddin Abdul Malik Alonto Adiong, Mujiv S. Hataman and Amihilda J. Sangcopan and Yasser Alonto Balindong, respectively, provided that the criteria to be used in evaluating claims for compensation are clearly outlined therein. The DOJ also opined that the bill, if passed into law, will become a standard for compensation for losses in times of armed conflict, war, strife, among others, and will have an effect on the country's obligations under the "War Clause" in existing bilateral investment treaties and free trade agreements ("FTAs"). Further, because the issue of compensation losses is controversial under international humanitarian law and international investment law, the DOJ recommended further study on the subject.

DISCUSSION

It was also stated in the latter part of our Position Paper that should this bill be passed into law, this will serve as standard insofar as compensation for losses in times of armed conflict, war, strife, among others, is concerned, and has an effect on the country's obligations under the "War Clause" in existing bilateral

investment treaties as well as in the investment chapter of free trade agreements (“FTAs”).

An example of the said article on "Compensation for Losses" reads, as follows:

Each Party **shall accord to investors of another Party**, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory **owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:**

- (a) its own investors and their investments; and
- (b) investors of any other Party or non-Party and their investments.

This means that should the proposed bill become a law and later on, incidents similar to the Marawi siege happen and there are affected covered investments of investors of an FTA partner of the Philippines, the Philippines will also have to provide compensation to the said foreign investors in the same manner that the Philippines compensates its nationals.

This Department is aware that compensation for losses in times of war or civil disturbance is a controversial issue both under international humanitarian law and international investment law, and, therefore, **should be studied carefully.**

In this regard, the TWG may also wish to seek the views of relevant international organizations so that the TWG may be apprised on how other countries with similar experience as the Marawi City siege approach said matter. It is also suggested that the comments of the Board of Investments, which chairs the Inter-agency Committee on Investments, and which leads the negotiations of the country's bilateral investment treaties be also obtained.