ACHIEVING PEACE WITH HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW AT THE FOREFRONT: A LOOK AT THE PHILIPPINES' COMPREHENSIVE AGREEMENT ON RESPECT FOR HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW (CARHRIHL)

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Two bloody world wars compelled nations to take stock of the human cost of war. Spurred by a genuine desire to curb, if not eliminate, collateral loss during wartime, the international community developed the concept of international humanitarian law (IHL), and has endeavored to incorporate its principles into constantly-evolving rules of engagement. Since its formal introduction at the end of the Second World War, States have attempted to practice IHL when engaging in armed conflict, whether international or domestic.

Rare is the domestic conflict in which the non-state aggressor is willing to be bound by the principles of IHL. But over 12 years ago in the Philippines, the government, locked in a protracted armed struggle with the insurgent National Democratic Front of the Philippines (NDFP), entered into the first agreement of its kind expressing a mutual commitment to respect, in the course of their operations, Human Rights and International Humanitarian Law. The CARHRIHL, or Comprehensive Agreement for the Respect of Human Rights and International Humanitarian Law, has endured, even as the armed conflict between the Philippine government and the NDFP continues.

In this discourse, the origins of the CARHRIHL is examined, its implications for both parties to the agreement and on the application of IHL on domestic conflicts. The first of several agreements toward a lasting, peaceful resolution to the communist insurgency, CARHRIHL is a landmark instrument in the application of IHL and could have paradigm-altering implications on creating peaceful solutions to drawn-out conflicts within nation states.

1. How International Humanitarian Law Changed the Face of Warfare

Two bloody world wars have, after centuries of conflict, compelled various peoples to take stock of the human cost of war, which often outstrips the military losses suffered by either side. Spurred by a genuine desire to curb, if not eliminate, collateral loss during wartime, the international community developed the concept of International Humanitarian Law (IHL), and has endeavored, in the last two centuries, to incorporate its principles, as well as the age-old concept of human rights, into constantly-evolving rules of engagement. Since its formal introduction at the end of the Second World War, States have, in varying degrees, attempted to practice IHL when engaging in armed conflict, whether international or domestic.

1.1 The International Red Cross as a Precursor to the International Humanitarian Law

When Swiss businessman Henri Dunant, as a result of his horror at the carnage of the Battle of Solferino, wrote his seminal book *A Memory of Solferino* (1862, 1986), he was not the first person in human history to comment on the brutality of war, and he would certainly not be the last. In sharing his experience, however, he effectively transported his readers onto the battlefield, with its lakes of blood and mountains of battered and broken human bodies, and expressed ideals that would prove pivotal to the way nations approached armed conflict. This led to the birth of the International Committee of the Red Cross (ICRC), and eventually to the creation of International Humanitarian Law (IHL).

1.2 The Birth of the International Humanitarian Law

After the excesses of World War II, the international community was more or less in agreement as to what needed to be done about the brutality of war, and as a result IHL, as embodied by the Geneva Conventions and Hague Declarations, was born.

International Humanitarian Law (IHL), applies solely in armed conflict situations, and its first rule is very emphatic: "The parties to the conflict *must at all times* [1] distinguish between civilians and combatants. Attacks may only be directed at combatants. Attacks must not be directed against civilians (Henckaerts and Doswald-Beck, 2009, p.3)." Also, IHL prohibited several types of combat tactics and practices with the goal in mind of, curbing if not completely eradicating such weapons and tactics which cause indiscriminate damage or unnecessary suffering.

The scope of IHL also applies to domestic conflicts between states and non-state actors thanks to Additional Protocol II to the 1949 Geneva Conventions (1977). IHL, therefore, applies to the Philippines, which is embroiled in a number of its own domestic conflicts.

2. The Philippines' History of Violence

The Philippines is no stranger to conflict, having been occupied by the Spanish, Americans and Japanese over a four-hundred year period, more often than not with varying levels of armed force involved.

2.1 Colonial History

After Spain colonized the Philippines in the 16th century, its rule lasted for over three (3) centuries of Spanish Rule, and was often characterized by an iron fist. Organized attempts to repel the Spanish colonists were few and far between, and often dealt with swiftly and brutally (Constantino, 1969, pp. 13-23). The American rule that followed only lasted a fraction of the time, (1899 to 1946) but it was, in the beginning at least, just as brutal. Indeed, the American troops, in their conquest of the Filipino Muslims in Mindanao, even murdered women and children (Bacevich, 2006).

2.2 World War II

Although the Japanese occupation marked the shortest period in which a foreign power colonized the Philippines, it marked one of the most brutal periods in the country's history. From the actual invasion of the country by the Japanese to the infamous Death March, the Japanese occupation, which was marred by incidents of murder, plunder, torture and rape, scarred the Filipino people like nothing ever had before. Not only that, but even in the course of their liberation from the Japanese, the Filipino people were brutally bombed and shelled by their very saviors in their attempts to drive the Japanese out of Manila (Aluit 1994).

With such a troubled, violent history, it was therefore inevitable that the Philippines would, along with most of the global community, embrace IHL.

2.3 The New People's Army

The Philippines has not had any meaningful involvement in any international conflict since World War II, but it is currently involved in a number of domestic conflicts, including one with a group of Maoist rebels currently known as the Communist Party of the Philippines (CPP). The Partidong Komunista ng Pilipinas (Communist Party of the Philippines in Filipino or PKP) was first formed in 1930 (Saulo, 1990, pp.2-3), but it was from this movement that the eventual founders of the CPP, Jose Ma. Sison, would come (Saulo, 1990, pp.79-83). In 1969, the Communist Party of the Philippines (CPP) was reborn in the form of the New People's Army (NPA), and its civilian front the National Democratic Front (NDF). The Movement (CNN for short) as well as its precursor were formed to fight social injustice, a struggle that involved a considerable amount of violence and therefore conflict with the Philippine government, in particular

with the administration of former President Ferdinand Marcos, who was in power for over 21 years, the last fourteen of which were characterized by rampant suppression and often complete disregard for basic human rights (Chapman, 1987, p.24).

On February 25, 1986, Marcos was ousted by a popular, bloodless revolution, the first and as yet the only one of its kind which, actually originated as an attempted *coup d'etat* by the very officers he had trained to be his attack dogs.

3. The Long Road to the CARHRIHL

With the sudden ascension to power of Corazon Aquino on the wings of people power came an equally new development in the Communists' struggle with the government: a formal peace process. While the talks initiated by Mrs. Aquino with the CPP-NPA ultimately failed to bring about an end to the hostilities by the end of her term, they helped lay the groundwork for some very important strides by her successors in pursuing peace.

3.1 The People Power Revolution

In 1986, for the first time in the then 17-year history of the CNN, the Philippine government was willing to sit down and talk. However, having come from a long, protracted struggle with a ruthless adversary who knew virtually no compunction and who had managed to perpetuate both his rule and his excesses for nearly two decades, the CNN inevitably approached the peace process with the newly-installed government under President Corazon Aquino with trepidation. William Chapman (1987, p. 21) quotes Satur Ocampo as having said that he did not expect peace negotiations with President Aquino to succeed, as in fact they did not.

Although the country's Chief Executive had changed, many of the key persons around her had been retained from the previous administration. Secondly, despite changes in the country's leadership, many of the same inequities persisted.

Perhaps worst of all, however, was the fact that the very same military that had hounded, tortured and summarily killed many of the CNN and their supporters was still very much in the picture, up and down the ranks. (McCoy, 1999)

3.2 Office of the Peace Commissioner

With the military that had long persecuted them looming in the background, the CNN, negotiating through the NDF, wanted human rights to serve as the starting point for the peace negotiations, as opposed to the Aquino government's desire to focus on socio-economic programs. In 1987, President Aquino created the Office of the Peace Commissioner under Administrative Order No. 30, which would eventually

metamorphose into the Office of the Presidential Adviser on the Peace Process and appointed then-Health Secretary Alfred Bengzon as the Peace Commissioner (Office Of the Presidential Adviser On the Peace Process (OPAPP), 2006, pp. 1-2).

For all her efforts, however, she was unable to make significant headway in the peace process itself in her six-year tenure.

3.3 Hague Joint Declaration and Beyond

Ironically, it was under the Presidency of Aquino's successor, Fidel V. Ramos, who had not too long ago headed the Philippine Constabulary and under whose watch many of the CNN and their supporters had been tortured or killed, that the peace negotiations between the GPH and the NDF began to make some solid gains. The Hague Joint Declaration of September 1, 1992, signed by Congressman Jose Yap on behalf of the GPH and Luis Jalandoni on behalf of the NDF finally laid down a substantive agenda for the peace negotiations. The first agreement to be hammered out would be one on human rights and IHL, the second would deal with socio-economic reforms, the third would deal with political and constitutional reforms, and the final agreement would mark the end of hostilities and the disposition of the forces. (OPAPP, 2006, pp. 50-51)

3.4 The CARHRIHL

The first and only agreement of the planned four-step peace process which the parties have been able to agree upon so far was the one on Human Rights and IHL. As a result, on March 16, 1998, the Comprehensive Agreement on Human Rights and International Humanitarian Law (CARHRIHL) (OPAPP, 2006, pp. 88-98) was signed, and on August 7, 1998, then President Joseph Estrada, issued Memorandum Order No. 9 dated August 7, 1998 which approved the implementation of the Agreement in accordance with the constitution and the legal processes of the Republic of the Philippines.

The CARHRIHL consists of a preamble and six sections: (1) The Declaration of Principles; (2) The Bases, Scope and Applicability; (3) Respect for Human Rights; (4) Respect for International Humanitarian Law; (5) The Joint Monitoring Committee and VI. Final Provisions.

The Preamble of the agreement places emphasis on the importance of the observance of human rights and international humanitarian law even in the midst of the conflict and emphasized the parties' mutual desire to adhere to these principles.

Parts I and II, critically, make repeated reference both to the primordial nature of both human rights and IHL to the success of the peace negotiations as well as to the importance of mutuality and reciprocity in the implementation of the agreement. Part II also makes

mention of mechanisms and measures for monitoring and verifying compliance with the agreement, and of the fact that the CARHRIHL is but the first of several contemplated agreements between the parties.

Parts III and IV contains what one might call the "meat" of the agreement, as they detail the various human rights which the parties agree to uphold as well as acts which constitute violations of HR law and IHL. Part III also contains an expression, phrased somewhat like a reminder of the GPH's commitment to cause the repeal or annulment of what is termed "repressive" legislation and case law, and calls for the application of doctrine that distinguishes acts of rebellion from common crimes.

The human rights enumerated in Part III are basically truncated versions of those found in such instruments as the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights. The acts listed in part IV as violations of IHL, however, are not complete, with some arguably very important provisions designed to secure the safety of civilians and non-combatants, such as the prohibitions on hostage-taking and the use of human shields.

Part V contains provisions for the mechanism to be used in the monitoring of compliance with and violations of the CARHRIHL, namely the creation of the Joint Monitoring Committee (JMC), which would, per agreement, comprise an equal number of representatives from each of the parties. Each component of the Monitoring Committee would have three members, two independent observers, and a secretariat. The JMC would receive complaints alleging violation of HR or IHL and, upon consensus that such complaints constituted, per their appreciation, were worth investigating. It would then ask the party concerned to investigate the complaint and would make recommendations. This would prove to be one of the more contentious aspects of the CARHRIHL.

The most notable section of Part VI is Article 3, where it is provided that the agreement does not affect the legal or political status of the parties, and that the agreement shall be further subject to the subsequent agreements on political and constitutional reforms. This represents a compromise on perhaps the single most contentious portion of the entire agreement, which were the proposed political reforms perceived by the government as a derogation of its sovereignty and by the CNN as a necessary step to lasting peace. It was agreed that such questions would be deferred until it was time to implement the agreements on political reform, which may have created problems regarding terms of reference.

Despite the signing and implementation of the agreement, however, the peace process was to hit yet more stumbling blocks. Upon President Estrada's issuance of Memorandum Order No. 9, Senator Franklin Drilon, the co-chair of the GPH Peace Panel at the time, together with the rest of the Panel, sat down with their counterparts from the NDF in October 1998 and attempted to assert the GPH's exclusive right to prosecute, try

and apply sanctions against violators of human rights in the implementation of the CARHRIHL. The NDF rejected the proposition insisting that its own form of judicial process should be allowed to co-exist with that of the GPH, who in turn rejected this proposition as it impinged on the Republic's Constitutional sovereignty and would only institutionalize the divisiveness of the conflict. This was the first impasse. The second occurred when the NPA abducted five members of the Philippine National Police and, in the course of GPH's attempts to negotiate their release, the NDF attempted to gain political leverage, a gambit which ultimately failed, though the hostages were eventually safely released. The third impasse, which would ultimately prove fatal to the national peace process under President Estrada's relatively brief tenure (he resigned from office in January 2001), occurred when the GPH ratified the Visiting Forces Agreement (VFA) with the United States. (OPAPP, 2006, pp. 4-5).

When Gloria Macapagal-Arroyo ascended to what would eventually turn out to be a ten-year presidency in 2001, one of the first things she did was reactivate the peace process. Formal peace negotiations between the parties resumed on April 27-30, 2001 in Oslo, Norway, with the Royal Norwegian Government (RNG) acting as host. The parties discussed confidence building measures and the modality for implementing the CARHRIHL. Over three years after its signing, the Joint Monitoring Committee (JMC) had yet to be created. They also discussed meetings of the RWC on Socio-Economic Reforms (SER) to discuss the mechanics for conducting negotiations on the draft Comprehensive Agreement on SER (CASER). Prospects looked bright for the peace process until just after the second round of talks on June 10-13, 2001, where the GPH took exception to the expression of congratulations by the NDF Panel chairperson to the NPA for the killing of a Congressman, an act which the GPH considered a violation of the confidence-building measures meant to improve the climate of the negotiations. The peace negotiations went on recess, which lasted for three years. During this period, there were a number of developments such as the redeployment of government troops to areas where NPA troops were active, the United States Government's designation of the CPP and NPA as foreign terrorist organizations, and the European Union's declaration that the NPA and Sison were terrorists, but the GPH kept its lines of communication open with the NDF. During this time, informal and back-channel talks between the parties continued, but without any meaningful outcome. Members of the GPH Panel met periodically with their NDF counterparts, in January 2002, February 2003 and in June 2003, proposing at first enhanced processes for reaching a final peace accord and later presenting a draft of a Final Peace Agreement, all of which the NDF rejected (OPAPP, 2006, pp.5-6).

However, in October and November of 2003, the parties held two consecutive rounds of exploratory talks and informal negotiations during which they were able to thresh out several of the more contentious issues that needed to be resolved for the formal talks to resume. The two panel chairpersons signed a Joint Statement on January 13, 2004 agreeing to resume formal talks and on the same day, President Arroyo announced the

resumption of formal peace negotiations. Formal talks resumed in February, April and June 2004, during which much ground was covered including commitments to resume work on addressing social, economic and political reforms, the formation of the Joint Monitoring Committee, and an agreement to conduct another round of talks on August 24-30, 2004 in Oslo. However, this did not push through due to the renewed terrorist listing of the CPP, NPA and Sison by the U.S. government (OPAPP, 2006, p.7). It is worth noting, however, that on February 14, 2004, President Arroyo issued Executive Order No. 404, by virtue of which the GPH-MC, the Government half of the Joint Monitoring Committee, was created (OPAPP, 2006, pp.31-34). The NDF nominated its own half of the JMC.

In February 2005, President Arroyo reorganized the GPH Peace Panel and expressed the hope that this reorganization would help accelerate the peace process. However, in the months that followed a series of events unfolded that would lead to the suspension anew of the peace talks.

In June 2005, potential evidence of massive fraud at the 2004 elections emerged, thereby casting into doubt the results of those elections, under which Gloria Macapagal-Arroyo had been proclaimed president and creating a crisis of legitimacy for the Arroyo government. For at least two years thereafter, there was considerable civil unrest.

As a result of this, the CNN decided to withdraw from the peace process, with its spokesman Roger Rosal questioning the use of "continuing talks with a lame duck regime that will be gone very soon (OPAPP, 2006, p.8)."

The Arroyo government, however, ran its course until her successor, Benigno Simeon Aquino III, was proclaimed the 15th President of the Republic last June 30, 2010.

Because of the indefinite suspension of the peace talks the Joint Monitoring Committee could not function as originally contemplated in the CARHRIHL, as a result of which the Monitoring Committees of the GPH and the NDF have been operating separately for the last five years gathering complaints for violations of the CARHRIHL against the parties and conducting other activities related to the CARHRIHL. There is some level of cooperation between the two MCs; there is a mutual sharing of data for example, as by agreement both Secretariats maintain complete records of all complaints for violation of the CARHRIHL that are filed. There have also been a number of joint activities through the years, mostly discussions and the occasional socials, and a number more are still being planned, but for the most part the two halves of the JMC operate independently of one another.

For its part, the GPH-MC, working through its Secretariat has, for the last five years, been very active in pursuing its mandate. It has, apart from documenting and assessing the complaints for the CARHRIHL violation, conducted Basic Orientation Seminars (BOS)

in the CARHRIHL and its key components, HRL and IHL, for the participants and stakeholders in the armed conflict including members of the security forces and affected communities, and has explored partnerships or similar collaborative arrangements with various government agencies, civil society groups and special interest groups to help improve the scope of its monitoring capability.

4. Catalyst for Change

The CARHRIHL is far from a perfect instrument for a number of reasons, but the significance of its character and implications cannot be overlooked both in terms of what it represented at the time of its conception and birth, and in terms of how it should be assessed today.

To fully appreciate what the CARHRIHL has helped make possible, one must compare the society into which it was introduced with the one that exists 12 years later.

When the CARHRIHL was first signed in 1998, apart from a prohibition in the 1987 Constitution against torture, secret detention places, and solitary or incommunicado confinement (Section 12(2), Article III, 1987 Constitution), there were no specific laws prohibiting, much less penalizing such practices. In 1998, the only remedy for persons whose loved ones and friends were seized by government forces was to file a petition for a writ of habeas corpus with the courts, and in most if not just about all such cases the response of the government forces would be to deny any knowledge of the whereabouts of the person missing, as they were entitled to do under the rules.

According to recorded statistics such as those presented by Alfred McCoy (1999) a year later, human rights violations were rampant, with the Philippine National Police in particular, which at the time was headed by alumni of PMA Batch '71, leading the way in terms of the count of violations, with over 1,074 recorded violations in 1997 (McCoy, 1999), with no signs of slowing down. The Marcos-bred military was comfortably ensconced in the Estrada government, and one of its most prominent officers, Gregorio "Gringo" Honasan had been a senator of the Republic for three years already.

The CARHRIHL, however, represented something new; in the absence of laws clearly binding the state to adhere to HRL and IHL despite the fact that the Philippine government had long been a signatory to most of these conventions and, moreover, by Constitutional fiat, adopted the general principles of international law as part of the law of the land, the CARHRIHL represented a concrete rather than theoretical commitment to be held accountable by a specific standard. While the consequences of any breaches of the CARHRIHL remain vague, the notion of a mutual commitment to somehow be held accountable for one's actions was refreshingly new.

Today, a little more than a decade later, the situation is different in a number of very significant ways. There are now studies, judicial remedies, and even laws in place that strive to address the human rights situation in the Philippines on a scale that has never before been attempted.

In 2007, Australian academic Philip Alston was assigned by the United Nations Human Rights Commission to conduct a study of the reports of widespread extrajudicial killings that had been taking place in the Philippines for the past several years. His findings were grim; over a six-year period, approximately 800 activists and journalists had been killed. He also voiced the opinion, based on his research, that a large number of the killings had been perpetrated by state agents. While he took some encouragement from the efforts of the government to investigate and prosecute such killings, he lamented the government's lack of action on the killings, noting that of the hundreds of killings there had only been six convictions for the killings of journalists, and none for the killing of leftist activists. Alston observed that one of the reasons these killings continued year after year was that their perpetrators realized they could do so with impunity (cited in Ubac, Papa & Dizon, 2007).

Interestingly, in a more recently published report by Human Rights lawyer Al Parreño who prepared the same while working in partnership with the Asia Foundation, the number of extrajudicial killings between 2001 and 2010, an even longer period than that which Alston's report covered, was only at 305, less than half of the number reported by Alston (cited in Calonzo, 2010). In other aspects, however, Parreño's findings were no less damning considering that his data reflects that only a little over half of those killings have been filed as criminal complaints, and of those only four convictions have been secured. (Parreño cited in Calonzo, 2010).

Also in 2007, the Supreme Court of the Philippines held a Human Rights summit to discuss the situation on the ground and possible remedies that could be introduced to improve it. The product of that summit was the introduction of two landmark procedural remedies: the writ of Amparo[2] and the writ of Habeas Data.[3] The writ of Amparo patterned after a similar judicial remedy used in Mexico, entitles the bearer of the writ to protection from abuses by the respondent, while the writ of Habeas Data compels authorities to release the persons they are detaining without a lawful judicial order and entitles the petitioner to all military and police information about "*desaparecidos*."

Most critically, though, both rules specifically bar respondents who are government agents from offering the defense of plain denial, which was the traditional defense employed by state agents when served with a writ of habeas corpus.

The rule, therefore, clearly imposes a considerable responsibility on public officers, who in theory should have access to a wealth of information and resources to be able to

determine the whereabouts of a given person and should be able to tell the court why this person is not in their custody.

The judiciary, therefore, has shown considerable interest in ensuring that human rights are respected, most importantly by the state. This, fortunately, is one of the legacies of the 1987 Constitution which Corazon Aquino's presidency made possible, which was not available at the time most of Marcos government developed its strategy for dealing with dissenters: a judiciary that would not hesitate to check the excesses of the executive branch of government.

The legislature soon followed suit.

In 2009, the Philippine Congress passed Republic Act No. 9745, also known as the Anti-Torture Law, which describes, prohibits and provides severe penalties for several of the torture practices of state authorities which date back to martial law, and which also provides for the protection and extensive compensation of the victims of such torture.

Later in the year, Congress also enacted Republic Act No. 9851, titled the "Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity" which marked a watershed in Philippine Law.

After the adoption by several members of the international community of the Rome Statute of the International Criminal Court back in 1998, created to punish genocide and other crimes against humanity, President Estrada signed the same but, before he was able to transmit it to the Philippine Congress, a prerequisite for ratification by the state of the convention, he was ousted from office. The Arroyo government, in what was perceived to be a gesture of solidarity with the United States government at the time, which refused to ratify the convention as it would have placed them under the jurisdiction under the ICC, withheld the document from the Philippine Congress. Ratifying the document would have meant that the agents of the Philippine state could now be open to prosecution under the Rome Statute for violations of HR. However, Republic Act No. 9851, which reproduces most of the provisions of Customary International Humanitarian Law, makes specific offenses for which parties to armed conflict, both state and non-state actors can be held accountable, and lists, in addition, acts which are described and punished as genocide or as crimes against humanity. It removes from such persons defenses that may have had to do with their capacity as public officers and makes no distinction between state actors and organized non-state actors such as the NDF. It makes specific reference to enforced or involuntary disappearance, but unlike the rules on writ of Amparo and Habeas Data, which are limited by their nature as judicial remedies, it penalizes them.

To be absolutely clear, there is no direct correlation between the existence of the CARHRIHL and the introduction of these reforms. The problem of extrajudicial killing

and abuse of human rights in general is a serious one which would exist whether or not the GPH and the CNN had entered into the CARHRIHL. The topic of EJKs alone requires a lot more discussion that this author can possibly devote to it in a paper primarily about the CARHRIHL, and the history of human rights violations in the Philippines is a concern that spreads well beyond the conflict between the government and communist insurgents.

That said, there is something worth mentioning when looking at all of these concrete indicators that the Philippine state is finally coming to grips with the unfortunate fact that it appears to have a serious problem with human rights violations: the CARHRIHL predates all of these issuances, reports, rules and laws.

The CARHRIHL provided a rallying point for individuals and civil society organizations to rail against the rampant human rights violations that were taking place across the countryside. Considering that several of the victims were either known leftist activists or identified with the left, the CARHRIHL was particularly relevant to their situation. Whether or not the killings were perpetrated in relation to the armed conflict, the point was that efforts by the proponents of the CARHRIHL were able to get these killings the attention they deserved.

Arguably it was the efforts of human rights-oriented civil society organizations like Task Force Detainees of the Philippines, Karapatan, Amnesty International and Sulong CARHRIHL, an organization specifically created for the purpose of advocating the CARHRIHL, as well as several other like-minded individuals and organizations that helped pave the way for these reforms.

The CARHRIHL had another positive effect as well; in spreading awareness of the CARHRIHL among various local communities across the country, the GPH-MC has helped empower some communities caught up in the conflict between the GPH and the NDF, helping their leaders realize that they have the option to declare that enough is enough to both sides. Communities in various parts of Luzon and Visayas, including those with special concerns such as indigenous cultural communities, have started to acquaint themselves with the CARHRIHL and formulate their own solutions to dealing with the situation.

Cognizant as well of the socio-economic factors that often draw the CNN's attention to a given locality, some communities have come to recognize that the key to keeping the conflict away is to address basic issues such as social services and the local economy. One such example is the province of Bohol, whose experience in dealing with the basic societal problems is narrated in a fair amount of detail in a story that was published by the British Broadcasting Corporation's news arm fairly recently and which appears on the website of the United Nations Development Programme (UNDP, 2010).

The CARHRIHL, therefore, has clearly proven its worth as an effective vehicle for the promotion of HRL and the more esoteric concept of IHL and continues to be an effective medium for such education.

Some challenges remain; among the soldiers the GPH-MC has oriented a number of them have propounded the somewhat *non-sequitur* argument that the insurgency problem is one of the Philippine National Police rather than their own, suggesting that the CARHRIHL was irrelevant to them and therefore that they are exempt from the requirement of observing HR and IHL in dealing with the insurgents, but were apparently receptive to the explanation that granting that the conflict should be the concern of the police, this does not relieve them of their obligations to observe HRL, and that the CARHRIHL provides a better framework for them to do so.

Clearly, there remains a bit of work to do, but the existence of the CARHRIHL ensures that the work of promoting HRL and IHL will be considerably easier.

5. Weaknesses of and Challenges Facing the CARHRIHL

As stated, the implementation of the CARHRIHL has been a point of controversy between the parties since the very beginning. The question of how violations of the CARHRIHL will be prosecuted is one which remains unanswered. The GPH has insisted that all offenses be tried within the context of the state's Constitution and laws, including its rules of procedure, while the CNN has insisted that its court system be allowed to co-exist, each party's position completely unacceptable to the other.

The GPH's refusal to accede such status to the CNN is understandable. In 2008, the GPH, in the course of its peace negotiations with the separatist group, the Moro Islamic Liberation Front (MILF), proposed a radical solution to the conflict in the form of Memorandum of Agreement which would effectively cede political and economic control over several locations in Mindanao to the aggregation of Filipino-Muslims the rebels purportedly represented, entitled the Memorandum of Agreement on Ancestral Domain (MOA-AD). Before the parties could sign the Agreement, however, which was to be signed in Kuala Lumpur, it encountered vehement opposition from several sectors including a number of constitutionalists, who took their grievances straight to court. In October of the same year, the Supreme Court rendered a Decision (Sacdalan vs. Garcia, 2008) which struck down the proposed MOA-AD for being unconstitutional and "counter to the national sovereignty and territorial integrity of the Republic."

Even granting that the Philippine government, through the executive, would be willing to cede such power to the NDF and its court system, which has been derisively described by some as a "kangaroo court," the Philippine judiciary, charged with upholding and interpreting the entire body of Philippine law, would, barring any constitutional

amendments that would allow for such a power-sharing arrangement, almost certainly strike such an arrangement down, especially considering that such an agreement would amount a considerable diminution of its own power.

Moreover, there has been little transparency as to how the CNN's "people's court" system works, and there is therefore no real guarantee that those tried under this system will receive the "judicial guarantees" required under International Humanitarian Law before one can be sentenced to death.

Even Philip Alston, whose report to the UNHRC was, by and large, an indictment of the Philippine government's counter-insurgency practice, and which most HR advocates cite in condemning the practices of the military, was quite critical of the CNN's "people's court" in his report, calling it either "flawed" or "a sham" (2007, p.14).

Finally, in 2006, the Philippine Congress abolished the death penalty, thereby removing the state's capacity to impose it (Datinguinoo, 2006). To allow an alleged justice system which still carries the power to impose the death penalty to co-exist with Philippine courts, therefore would, theoretically at least represent a glaring disparity, which would transgress the spirit of parity that the parties have strived to maintain throughout the peace process, especially in the implementation of the CARHRIHL.

On the other hand, there are also a number of reasons for the NDF to refuse to submit to the state's judicial processes. Philippine courts are notorious for the length they take in rendering decisions on most cases, with the average criminal case taking, on the average, two to three years to resolve in the trial court, with the appellate processes adding several more years besides.

There are occasional cases involving public interest which are resolved with reasonable promptness, but these are few and far between, and with the vast majority of persons on trial for criminal offenses having to wait years for a decision on their cases, there is understandable trepidation. Moreover, the Philippine judiciary has also been plagued with corruption throughout its existence, with magistrates at almost all levels having often been susceptible to financial and other considerations at one point or another. In fact, a relatively recent report commissioned by the United States State Department revealed the Philippine Judiciary to be "corrupt and inefficient (Brago, 2009)."

Due to these flaws, there is the not-necessarily-incorrect perception that persons with cases before the courts are not necessarily guaranteed to receive just or prompt decisions.

Each side, therefore, harbors deep and arguably valid concerns about acquiescing to the position of the other, and barring any major institutional changes in the near future these concerns are not likely to diminish any time soon.

Another problematic aspect of the Agreement, the wording of part V of the CARHRIHL, which, like most of the Agreement involving the actions of both parties, calls for consensus, provides both parties with effective mechanisms for creating deadlock and no mechanisms for resolving the same.

This already complicated situation has, of course, been compounded by the fact that the peace talks were suspended for over six years before they recently resumed.

As a result, both halves of the Joint Monitoring Committee have spent the last several years gathering complaints and processing them to the extent that their respective mandates allow, screening and categorizing them according to issues and degree of substantiation, but have been unable to do anything else with them. The JMC, after all, is not a court, nor is it any form of quasi-judicial body.

The biggest problem with the CARHRIHL is that, even though it is purportedly an agreement between the two parties, in several material respects it does not represent what lawyers and jurists would refer to as a meeting of the minds. As a result, whenever there is failure to agree on a given point, there is ample opportunity in its provisions to create a situation of détente.

One could say that the CARHRIHL it is in some respects a political instrument with aspirations of being a legal one, and as a legal instrument it falls noticeably short. It contains a list of violations and a mechanism for reporting the same to the members of the Joint Monitoring Committee, but does not offer any real resolution to such complaints. This has created considerable frustration among those who might otherwise be inclined to file complaints against either side of the GPH-NDF conflict.

In dealing with other Philippine government agencies, this author and the other staff of the GPH-MC Secretariat have been confronted with the potential problem of the GPH-MC's work constituting a duplication of theirs, such as the Commission on Human Rights, which carries the mandate of investigating all forms of human rights violations and not simply those confined to the armed conflict between the GPH and the NDF, and of making recommendations to the appropriate authority. Indeed, even though the GPH-MC, as a creation pursuant to the provisions of the CARHRIHL, is limited to monitoring complaints involving violations of the CARHRIHL, there is still a striking similarity between its functions and those of the CHR. On a practical level, however, it has been observed that it is possible for the GPH-MC and the CHR to work in cooperation, with the GPH-MC's focus on CARHRHL-violations giving it the opportunity to take some work off the hands of the CHR, which in many areas throughout the archipelago is understaffed and not adequately-equipped to properly follow investigations of HR violations.

In addition to the contention that the GPH-MC's work represents an unnecessary replication of the functions of existing state agencies, one must consider the disturbing possibility that in view of the passage into law of Republic Act No. 9745 and, more crucially, Republic Act No. 9851, the CARHRIHL is now obsolete.

It is worth going over the distinct advantages Republic Act No. 9851, on paper at least, has over the CARHRIHL. Both documents, after all are derived from international law, with R.A. No. 9851 being in many instances a veritable word-for-word replication of several of the provisions of Customary IHL.

The CARHRIHL, as stated, is a political instrument, while the Republic Act No. 9851 is a legal one. In its current incarnation, the CARHRIHL provides only for the monitoring and investigation into complaints of its violation, whereas R.A. No. 9851 provides for the prosecution of these offenses. The CARHRIHL affords no protection measures for those who would have the courage to report violations by either side; in fact the author has knowledge of at least one complainant who was forced to flee her home upon filing a complaint with the GPH-MC, and another, who because she filed a complaint, was subject to even more harassment by the respondent against whom she leveled her complaint. R.A. No. 9851, in contrast, contains provisions for the protection of witnesses. Of course, whether or not these will be implemented is down to the state's ability to institute adequate protection mechanisms. Finally, unlike the CARHRIHL, R.A. No. 9851 does not contain provisions which would enable a deadlock in the prosecution of offenses under its provisions. The only problem, of course, with R.A. No. 9851 is that, it being a law promulgated by the state, there is no guarantee that the CNN will recognize it, thereby making its applicability to the peace process questionable.

Considering the problems besetting the CARHRIHL, however, and the fact that they stem from the text of the document itself, both the GPH and the NDF might want to consider how they can possibly synthesize R.A. No. 9851 and its provisions into the CARHRIHL. For years, the CARHRIHL carried the distinction of being the only instrument prepared by Filipinos (as opposed to the Geneva Conventions, which were not) bearing the categorical promise of the Philippine government to specifically observe the provisions of HRL and IHL and to take action against those who would violate it, however vague that action was. As a compact and reasonably easy to explain document, it was a very effective mode of explaining the concept of HRL and even IHL to those who would otherwise struggle with concepts which may tend to sound technical and legalistic in other contexts. It has helped empower those who would otherwise feel helpless to stop the inexorability of armed conflict from infringing on their lives and their basic rights. As a document which truly affords legal remedy, however, it still falls short.

6. Postscript and Conclusion

As of writing, the peace process between the GPH and the NDF has resumed, marking the first time in over six years that the two sides engaged in formal peace negotiations (OPAPP, 2011). While the protagonists are hard at work on all aspects of the peace process, the CARHRIHL, being so far the most significant substantive agreement between them, remains at the forefront of the process. As the peace process is more political than legal in nature, it is not at all certain that discussions on the legal and practical difficulties that saddle the implementation of the CARHRIHL mentioned here will be of high priority, although the parties will most likely be aware of them. Thus far, fortunately, nothing has emerged from the negotiations that have sparked the outcry that almost immediately followed the government's attempt to divide up Mindanao with the MILF. At the end of the day, if the peace process yields a lasting solution, the CARHRIHL, legal gray areas and all, will have served its purpose as a stepping stone to something more significant and enduring than itself, and for so long as the human rights of all Filipinos on both sides of the ideological coin are respected, it will be a success.

In fact, given the visible improvements in the human rights landscape in the Philippines, in terms of remedies, laws and even general awareness of human rights as a concept in the thirteen years that have passed since it was first signed, it may reasonably be argued that the CARHRIHL already is.

ENDNOTES

[1] Italics provided
[2] Administrative Matter No. 07-9-12-SC, September 25, 2007
[3] Administrative Matter No. 08-1-16-SC, January 22, 2008

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