HOW DO YOU SOLVE A PROBLEM LIKE THE GRP-NDFP PEACE PROCESS? Part 2

SOLIMAN M. SANTOS, JR.

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SULONG PEACE, INC.
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LIKE THE GRP-NDFP PEACE PROCESS? Part 2

by Soliman M. Santos, Jr.

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COVER PHOTO: GRP-NDFP Peace Talks 2016

(Left to right:) CPP-NDFP leaders and consultants spouses Benito and Wilma Tiamzon, then NDFP peace panel chair Luis Jalandoni; President Rodrigo Duterte; then GRP peace panel chair Secretary Silvestre Bello, NDFP consultant Alan Jazmines; and presidential peace adviser Secretary Jesus Dureza.

Photo Credit: Presidential Communications Operations Office via ABS-CBN
https://news.abs-cbn.com/news/09/27/16/look-duterte-meets-tiamzons-ndf-leaders-in-malacaang

BACK COVER: Shalom: Kwentong Kapayapaan produced by Sulong Peace Inc. (then Sulong CARHRIHL) in 2018

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FOREWORD

By Kristian Herbolzheimer

The Maoists have been waging a *protracted people's war* in the Philippines over the past 53 years. There is no indication they have achieved any significant military or political gains through this approach. On the other hand, the military claim, time and again, they are about to eradicate the *terrorist threat* of communist insurgency. And yet the insurgency remains, expressing a significant social, political, and military resilience. The country is thus stuck in a power struggle between warring forces that still put more faith in the *barrel of the gun* (a Maoist term which the Armed Forces of the Philippines seem to share) than in political dialogue with their adversaries. In the meantime, the structural problems of social injustice and weak democratic institutions remain or even deteriorate further.

Paradoxically, all Presidents in the Philippines since 1986 have entered into peace negotiations with the National Democratic Front (NDF). After some positive developments under general Ramos' administration (1992-1998), on-off negotiations did not produce any results for twenty years, until the early days of the Duterte government, when parties agreed on ceasefires and to fast-track the negotiating agenda. Duterte even appointed people close to the revolutionaries in his cabinet. However, this initial sweet moment did not last very long and soon the confidence-building measures gave way to new and worsened blame games and resumption of military confrontation.

The Philippines is thus suffering one of the most protracted armed conflicts in the world and there is no indication this dynamic will change in the near future. It is indeed difficult to imagine how this situation could ever change; how people concerned with peace and social justice could organise to change this seemingly endless draw.

In this regard it might be interesting to review how other armed conflicts have terminated over these past decades. Based on such observation we can conclude that:

- Armed insurgency rarely leads to victory. Exceptions include high-intensity and highly internationalised wars of independence or expelling occupying forces, such as happened in Kosovo (2008) and Afghanistan (2021).
- Military victory is also rare and, most often, linked to massive human rights violations and/or new forms of violence (Sri Lanka, Chechnya, Iraq, Syria).
- Peace agreements are more frequent. In some cases, they have led to dramatic political changes, with former insurgents taking on positions in government (South Africa, Northern Ireland, Timor Leste, Nepal).

However, peace agreements are not a panacea. Peace does not trickle down from a piece of paper. In the best-case scenario, they put an end to direct violence; but they are often unable to address the structural social, economic, and political problems, no matter how just and well drafted the provisions. There is thus a need to nuance our expectations in regards to peace agreements and to better understand the diversity of players, the agenda, the processes, and the time frames required to make change happen.

The peacebuilding experience over the past decades also tells us that peace processes need to be locally framed, owned, and led. There is no recipe. International law, the universal human rights framework and foreign diplomats, and civil society organisations may provide relevant guidelines and support. But each context needs to identify what will work best for them, and conflict-affected people need to perceive that change is in their hands instead of something that is imposed from outside or above.

Many argue that making war is easier than making peace. Indeed, peacebuilding requires serious efforts to understand the conflict dynamics, the local and international tools available to address the conflict, solid theoretical and practical experience, and the ability to communicate across conflict-divides.

Sol Santos, the author of the publication you are reading, is one of these few persons that combine analytical capacity, creativity, and perseverance. A staunch and relentless peace advocate, human rights activist, scholar and practitioner, internationalist and proud Filipino, Sol has never given up to seek to contribute to a peace process between the Government and the Maoist insurgency.

This publication compiles his reflections over the past 18 years. Some of them he had published. Others he simply shared with a circle of fellow peace advocates and the parties to the conflict. In reading his articles, you will encounter an open-minded, creative, and independent thinker. A rare attribute in a context of deep polarisation, of "us versus them" thinking. His appeals for ceasefires and resumption of peace talks are all grounded in national and international law, as well as customary Filipino culture and tradition.

Sol has no problem in pointing to what is wrong, whether the killing of the Absalon brothers by an NPA-activated explosive, or the killing of elderly and sick natdem militants by the police. But he does not stop at these tragedies; he does not look back to blame the perpetrators: he looks forward to prevent further loss of lives, whether innocent civilians or also combatants.

Sol's writing may be uncomfortable for some because he does not follow mainstream narratives. But then, as I learned from a group of Filipino and Colombian women peace advocates, building peace requires stepping out of one's comfort zone. For anyone willing and able to take such steps, this publication provides insights and guidance for ways to bring lasting peace to the Philippines.

Barcelona, 18 April 2022

Kristian Herbolzheimer is Director of the International Catalan Institute of Peace (ICIP) and former member of the International Contact Group on Mindanao, assisting peace talks between the Government of the Philippines and the Moro Islamic Liberation Front**.**

BY WAY OF INTRODUCTION FROM WHERE WE LEFT OFF

Author's Remarks at the Book Launch of
How Do You Solve A Problem Like the GPH-NDFP Peace Process? Part 1
(11 July 2016)

Mayong Buntag! That's how the morning is greeted in Davao City, the new capital of the Philippines. *Marhay na aga!* That's the corresponding greeting in Naga City, the second capital.

Before anything else, I wish to thank Emma Leslie and the Centre for Peace and Conflict Studies (CPCS) for their faith in me by publishing this book despite the seven articles compiled here all being written during and about the very problematic Government of the Philippines-National Democratic Front of the Philippines (GPH-NDFP) peace process under the just retired Aquino administration starting in 2010. Even the Introduction was written on March 29, 2016, the 47th Anniversary of the New People's Army (NPA) and during the last election campaign period. Not only is there a new presidential administration, which the Communist Party of the Philippines (CPP) refers to as the "Duterte regime" (mind you, not the "U.S.-Duterte regime"). But the newly-elected President Rodrigo Duterte, even before assuming office, has already become a game-changer for the peace process, among other fronts of governance in this country. Now, the fast-moving GPH-NDFP peace process does not seem to be too much of a problem any more. And so, I am tempted to say that my book has become irrelevant, except for its cover. To many, the answer to our title or theme of "How do you solve a problem like the GPH-NDFP peace process?" is obvious in the cover photo. Agree or disagree? Anyway, if only for that nice cover photo captured from the then presumptive President's Facebook account, you should have a copy of this book.

But there is something further in that cover that is touched to some extent in the book. I am referring to its sub-title "Paradigm Shifts for 2016 and Beyond," particularly **the need for paradigm shifts** to ultimately or decisively solve the problem of a long stalemated or going-around-in-circles GPH-NDFP peace negotiations—of this protracted peace process almost as long as the protracted people's war. If you will allow me to draw a little

from my recent judicial training in mediation, a "paradigm shift" is one important factor for successful alternative dispute resolution. It is defined as "a change in perception or way of thinking giving us new dimensions and understanding, bringing us to new ways of thinking, often requiring adjustments to new rules or methods." Paradigm shifts are often necessary to achieve a compromise settlement in court cases—AND in a negotiated political settlement via peace processes. According to the CPP, in a statement on the positive outcome of the last Oslo talks, "The attitude of the incoming Duterte regime toward peace negotiations with the NDFP is a big departure from that of the Aquino and Arroyo regimes. Under the previous two regimes, peace negotiations were regarded mainly as a psywar operation that was a secondary to and served only the counter-revolutionary war of suppression." So, it also has to be asked, how about on the part of the NDFP or the CPP, are peace negotiations to be no longer secondary or tertiary to and serving only the protracted people's war?

Stated otherwise, the question is whether both the GPH under Duterte and the NDFP have made a strategic decision to go for a peace strategy, with the primacy of the peace process as the mode for resolving the armed conflict. Both parties have to engage in an honest-to-goodness peace process as the conflict-resolution strategy. It will not work if even just one side engages in peace negotiations as tactics under a war strategy. Of course, it is fair enough for each side to test the waters, to test the sincerity of the other side and even test the limits—the latter, the NDFP appears to be purposively doing at an accelerated rate. So, as they say, the jury may still be out on whether or not the NDFP or the CPP has made that strategic decision to go for a fair enough, if not fully just, peace—even as the Duterte administration by its early policy announcements and actual moves has clearly shown its political will for that strategic direction as a key component of its promised "change is coming," including no less than charter change for federalism as also a key measure for the Mindanao peace process. Of course, the Duterte administration is one thing, the Philippine ruling class and ruling system is another thing. As Rey Casambre of the Philippine Peace Center put it when writing on the significance of the last Oslo talks, "Even assuming there is a healthy reserve of mutual trust, goodwill and understanding, the Parties would have to contend, perhaps more than with each other, with the powerful forces and influences of reaction that oppose any meaningful or substantial reform in the system.

These include the big landlords and big comprador-bourgeoisie, the big bureaucrat-capitalists under the baton of U.S. imperialism and other foreign capital." (with due respect to the U.S. Embassy representative here, I am only quoting Mr. Casambre)

This will be tested come the time for the actual nitty-gritty of negotiations for the completion of the substantive agenda on socio-economic reforms and on politico-constitutional reforms. The coming Oslo meeting's preliminary agenda items of past agreements affirmation, accelerated negotiation process development, safety and immunity guarantees reconstitution, amnesty for release of detained political prisoners, and interim ceasefire mode may be the easiest part of the Duterte peace process with the NDFP. Its Chief Political Consultant Jose Maria "Joma" Sison has told a Davao media forum that the plan to accelerate the peace negotiations is meant "to measure the seriousness of the Duterte government to make substantive progress…"

And so what would be the NDFP's measure of substantive reforms? Would it be its well-propagated 12-point program for a national-democratic society with a socialist perspective? Would something less than that be "satisfactory" or acceptable to the NDFP? Would effectively ending the "70-year semi-colonial and semi-feudal system" be the "measure" of "substantive progress"? How about solving Joma's "three basic problems" of "U.S. imperialism, feudalism and bureaucrat-capitalism"? Is this to be the "measure"? And how about "addressing the roots of the armed conflict"? How is that to be "measured"? Would it be a fair standard for peace process purposes? What if the Duterte government somehow does not "measure" up to the NDFP standard of "substantive progress"?

Take the NDFP program's key socio-economic reform area of land reform which has its minimum and maximum programs. Forgive again the mediation terminology but, in the zone of potential agreement (ZOPA), or the bargaining and settlement range between the worst and best alternatives to a negotiated agreement, what extent of GPH partial adoption of that revolutionary land reform program would be "satisfactory" or acceptable to the NDFP? How is this to play out now that Duterte's Secretary of Agrarian Reform, thus an alter ego no less of the President under the presidential system, is one of several NDFP-nominated persons in the Duterte cabinet? Which brings up the tricky question, is the NDFP

part of a de facto coalition government of President Duterte? If so, at least to some extent, what do we make out of the NDFP's negotiating with a government that it is indirectly part of? I do not know the answers to all these questions. That is why we have a panel here for discussion and of course other resource persons and experts here to help out or add more confusion (especially the U.P. professors, of which Joma was one).

I am still on my main point about the need for paradigm shifts or other new thinking out of our old boxes. In the book's Introduction, I noted that sometime back it was reported in the news that presidential candidate Duterte had asked his former Lyceum (not U.P.) professor Sison to abandon the armed struggle and join the democratic process instead and use it to fight for the change the communists had been pushing for. "Armed struggle as a means to achieve change is passé in the modern world we are living in today," Duterte said, adding that the "over 40 years of armed struggle and thousands of lives lost is too much to bear." Is it not a viable alternative for the revolutionary movement to strategically and transformationally "join [and reform] the democratic process instead" based on the movement's faith in the masses and in the merits of the national-democratic (or even socialist) program? Are the masses who make history not bound to sooner or later support that program which presumably represents their best interests if that program and its standard-bearers are offered as a choice in a viable democratic political process that does not involve a costly resort to arms? Not all the roots of the armed conflict can nor should be fully addressed in the negotiations—otherwise it might take another 30 years! Some of such addressing and necessary reforms, will have to be left to the dynamics of other political and democratic processes with the people's meaningful participation in the policy decisions that affect them—and which other political and democratic processes can also be agreed upon in the talks.

I do not know if this already indicates a presumptive paradigm shift about the armed struggle but Joma also told the afore-mentioned Davao media forum this about "the impending interim ceasefire": "The ceasefire between the armed forces of the GPH and the NDFP and the eventual conclusive success of the peace negotiations should make more resources available for expanding industrial and agricultural production and education, health and other social services… The people's army will not be idle even if it is in a mode of self-defense and does not actively carry out offensive military campaigns and operations against the AFP and PNP.

It can continue to engage in mass work, land reform, production, health care, cultural work, politico-military training, defense and protection of the environment and natural resources against illegal mining, logging and land grabbing and it can continue to suppress drug dealing, cattle rustling, robbery, kidnapping and other criminal acts as well as despotic acts of local tyrants."

Ceasefire used to be the hardest word for the CPP, NPA, and NDFP. Not so any more, it seems. Paradigm shift? Not so fast. And we probably should say the same about the current GPH-NDFP peace process, not so fast. One of the CPP's reaffirmist principles is "Wage the protracted people's war in stages and carry out extensive and intensive guerrilla warfare based on an ever widening and deepening mass base." The CPP and NPA anniversary statements year in and year out for some time now have invariably called for advancing towards the strategic stalemate stage. They still adhere to the Maoist dictums that "political power grows out of the barrel of a gun" and "without the people's army, the people have nothing." Has a change in that thinking come? Maybe not or not yet, as we said, not so fast. The CPP has posited: "By strengthening his stand for national freedom, Duterte *can* work with the Filipino people in pushing the Philippines to a new unprecedented chapter of economic progress, modernization, social justice, and people empowerment…. Such are the potentials <u>if</u> the Duterte regime chooses to work in a patriotic and democratic alliance with the Filipino people and their progressive and revolutionary forces." The CPP is saying that the Duterte administration's engagement with the NDFP will help bring about necessary and salutary social change. What the CPP is not saying is whether the NDFP's engagement with the Duterte administration, including through the peace process, would also bring about a necessary and salutary strategic change or paradigm shift in the CPP. Or are we dreaming too much about those changes coming on both sides?

The book's collected articles on the problematic GPH-NDFP peace process during the past Aquino administration perhaps still have the residual relevance and merit of bringing our feet back to the ground. It shows how the process can bog down even on side issues that are not on the substantive agenda. Such bogging down is largely due to the strategic orientations and corresponding tactical approaches of the parties. There is enough blame to share on both sides. What is important now is to learn the lessons from that negative experience so as not to repeat it. New players on the GPH side do not automatically guarantee a non-repetition of history.

The GPH peace teams which change with each presidential administration tend to have a lack of institutional memory and policy continuity—in contrast to the protracted NDFP peace team.

To go back to what Duterte told Sison during the election campaign: "…over 40 years of armed struggle and thousands of lives lost is too much to bear." It takes two to "armed struggle," so this term can be said to refer not only to the NPA but also to the AFP although its version is usually referred to as "counter-insurgency."

One settlement strategy to handle or break an impasse in court-related mediation is to present a cost-benefit analysis of the dispute and its litigation. With more reason does it behoove both sides of the armed conflict to honestly sum-up and evaluate the cost-effectiveness of their respective armed strategies of "over 40 years." If done honestly, the summings-up and evaluations should occasion a paradigm shift. At what tipping point do the sacrifices in lives become unnecessary? Speaking of "thousands of lives lost" as a cost, a couple of articles in the book highlight some of the fallen rebels and soldiers by names and stories beyond the cold casualty statistics—which also include civilians caught in the crossfire. But for the paradigm to shift, there must be more value given to such loss of life which has an exponential effect beyond each individual person killed. It of course helps when we know or are related to them personally. Even if they are the "enemy," their lives matter too.

SOME BACKGROUND AND EARLIER REFORM AGENDA ON THE WAR AND PEACE FRONT

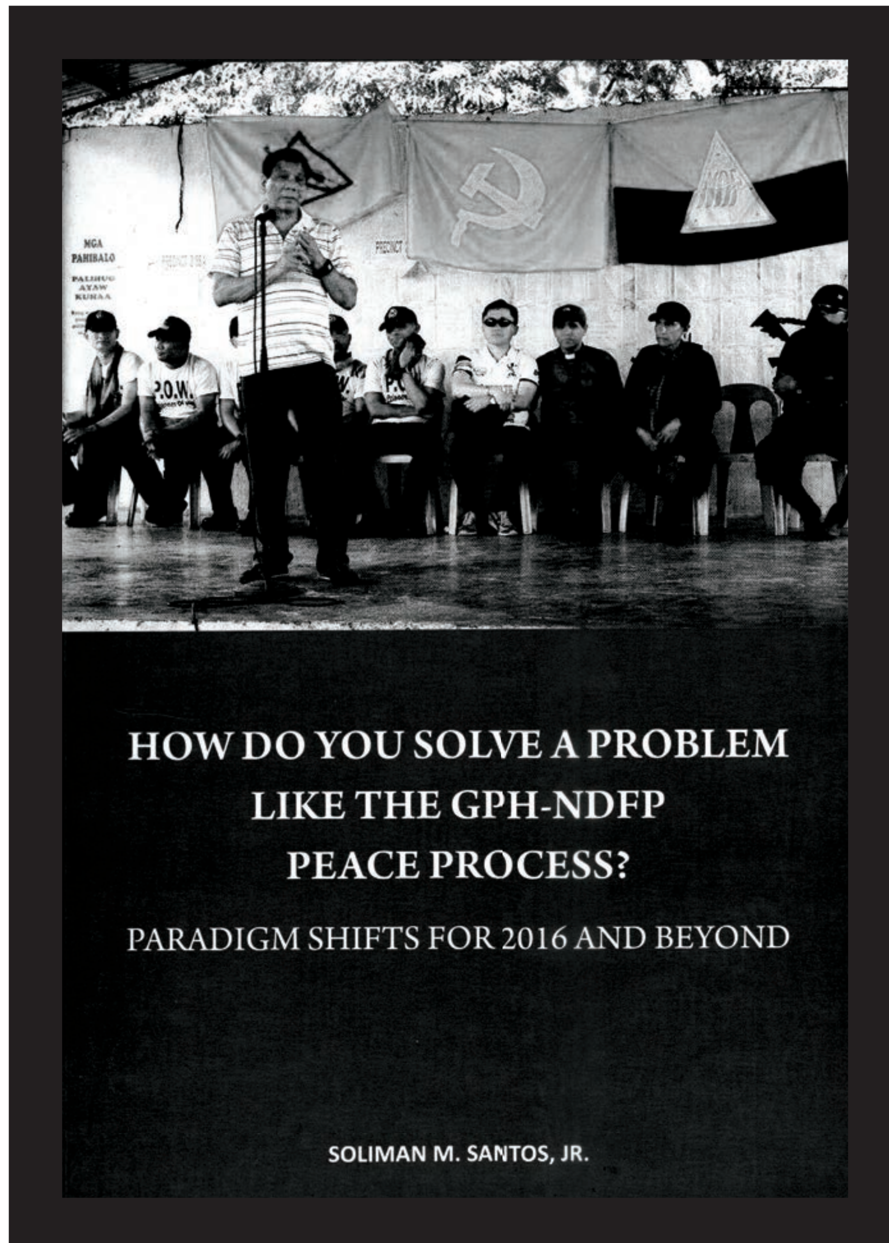

Photo: Book Cover, *How do you Solve a Problem Like the GPH-NDFP Peace Process Part 1*, 2016

Peace Negotiations in the CPP-NPA-NDF's Protracted People's *War*

(Excerpt from the background paper "Evolution of the Armed Conflict on the Communist Front" prepared for the awarded *Philippine Human Development Report 2005: Peace, Human Security and Human Development in the Philippines,* 23 March 2005)

This area is related to the key question, what would it take to peacefully resolve the conflict? Are there *ideological* requirements for this?[1] What are the prospects with the GRP-NDF peace negotiations, a particularly relevant *political* engagement/arena of the parties?

It doesn't look too good because of both parties' tactical or instrumental frameworks or approaches to the peace negotiations. For the GRP, the policy is mixed or incoherent because, on one hand, "peaceful negotiated settlement with the different rebel groups" is one of the official "Six Paths to Peace,"[2] but on the other hand the pursuit of a "multi-track peace process" is also subsumed under the national internal security plan and strategy to overcome insurgency nationwide.[3] There is also a strong policy position or tendency towards "pacification and demobilization" of, if not "military victory," over the NPA. The "pacification and demobilization" position consists of negotiating concessions (maximum from adversary,

[1] Isagani R. Serrano, Vice President, Philippine Rural Reconstruction Movement, phone interview by the author (Quezon City, 9 January 2005).

[2] As institutionalized in Executive Order (EO) No. 125 of President Ramos dated 15 September 1993 and EO 3 of President Arroyo dated 28 February 2001, which both deal with the approach/policy and (administrative) structure for government's comprehensive peace process/efforts. The "Six Paths to Peace" are: (1) pursuit of social, economic and political reforms; (2) consensus-building and empowerment for peace; (3) peaceful, negotiated settlement with the different rebel groups; (4) programs for reconciliation, reintegration into mainstream society, and rehabilitation; (5) addressing concerns arising from the continuing armed hostilities; and (6) building and nurturing a climate conducive to peace.

[3] See e.g. "Strategic Precepts of the National Peace and Development Plan," Annex D of Office of the President, *National Peace & Development Plan*.

minimum from one's side) necessary to achieve the cessation of hostilities and demobilization of rebel combatants, basically to end the insurgency. The "military victory" position seeks the military defeat of the adversary without concessions.[4]

For the CPP, the peace negotiations are clearly subordinate to the protracted people's war (PPW) strategy and is only of at most tertiary importance as a form of struggle. There has been no strategic decision (unlike the cases of the MNLF and MILF) to give peace negotiations a real chance for a negotiated political settlement. There are only tactical objectives: international diplomatic recognition of belligerency status; propaganda; prisoner releases; and more recently to help secure the legitimacy of the CPP, NPA and Sison internationally in view of their "terrorist" listing.[5] Some critics, from the Left at that, even say that CPP leader Sison, as chief political consultant of the NDF for the talks, is fashioning protracted peace talks to be a form of struggle within the PPW.

The CPP engagement in peace negotiations through its NDF was actually an ingenious way out of a diplomatic bind of dwindling international support the CPP found itself in from the fall of Marcos in 1986 up to the collapse of the Soviet Union in 1991. By getting Western European governments and parties to support peace negotiations, they would in effect accord the NDF implicit recognition as a force representing a significant section of the Filipino people, and treat the GRP and the NDF as negotiating co-equals. By drawing more governments and parties, especially the involvement of a third-party facilitator or mediator, the NDF in its thinking would be able to achieve "belligerency status" eventually.[6]

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[4] See Dr. Paul Oquist, "Mindanao and Beyond: Competing Policies, Protracted Peace Process and Human Security" (Fifth Assessment Mission Report, Multi-Donor Programme for Peace and Development in Mindanao, UNDP Manila, Philippines, 23 October 2002). See also along similar but more concise and updated lines, Dr. Paul Oquist, "From National Security to Human Security in Mindanao: Protracted Armed Conflict in National and Regional Policy Perspectives" (Paper presented at the 27th General Assembly and Annual Meeting of the Catholic Bishops Conference for Human Development, Taguig, Metro Manila, 8 July 2003). A major part of the analysis on the Philippines is a result of intensive work undertaken jointly with Alma R. Evangelista, UNDP Philippines Peace and Development Advisor.

[5] Jose Maria Sison with Ninotchka Rosca, *Jose Maria Sison: At Home in the World: Portrait of a Revolutionary* (Greensboro, North Carolina: Open Hand Publishing, LLC, 2004) 97, 101, 140, 177, 204-06.

[6] Nathan Gilbert Quimpo, "CPP-NDF Members in Western Europe: Travails in Pursuing International Relations Work" (n.d.).

Actually, it is the mutually antagonistic frameworks of the parties which account for the protraction of the peace negotiations. And so we have had this historical situation of PPW (36 years from 1969 to the present) and protracted peace talks (19 years from 1986 to the present but more off than on). These two tracks have run simultaneously since 1986 without an interim general ceasefire except for a brief 60-day period in 1986-87, thus constituting a mode of "talking while fighting," though it has been much more fighting than talking. This of course creates its own dynamic, with developments in the field like arrests, captures, and killings often impinging on the talks.

There have been two series of peace talks. The first was a one-shot affair from August 1986 to February 1987 during the Aquino administration which collapsed because, among others, the parties could not even agree on a framework for the talks, as in fact each side did not have a clear framework or game plan of its own. The second in the series started in September 1992 during the Ramos administration with an agreed framework in the *Hague Joint Declaration* which provided for mutually acceptable principles and for a four-point substantive agenda. Since then up to present, there have been many rounds of talks but most of these were on preliminary and peripheral matters or side issues, aside from there having been long suspensions and impasses.

Be that as it may, the peace negotiations on its sixth year (1998) produced its first substantive comprehensive agreement on human rights and international humanitarian law[7] (CARHRIHL), and continues to hold the promise of socio-economic, political and constitutional reforms next on the agenda[8] (which reforms are also supposed to address the root causes of the conflict under the "Six Paths" framework). On the other hand, the reform agenda in the peace negotiations may not progress much further without a framework or paradigm shift at the strategic level on both sides. Otherwise, maximizing the CARHRIHL through implementation, or the framework of human rights and IHL, might be the best we can hope for

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[7] *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines* dated 16 March 1998, popularly known as the CARHRIHL.

[8] Government of the Republic of the Philippines and National Democratic Front of the Philippines, *Joint Declaration*, 1 September 1992, The Hague, The Netherlands., particularly paragraph 5(b).

(especially in a scenario of intensified armed conflict) until there is some kind of breakthrough, aside also from pursuing the reform agenda on its own merits *outside* the peace negotiations but which can still be seen as part of a broader peace process.

The GRP's recent attempt this early 2005 at a paradigm shift of sorts is to break the "talk and fight" mode by demanding an interim ceasefire for a limited period of say six months of intensive talks focusing on the substantive agenda towards hopefully a final peace agreement.[9] The NDF has outrightly rejected this, not surprisingly because of its well-known aversion to what it considers long ceasefires like six months. This is now part of the current impasse in the talks, perhaps the most serious or critical all these years because of the likely shift from "talk and fight" to "fighting without talking." With due respect to the GRP, it is hard to see how this can be better. It is simply not true that "talking while fighting" is untenable "talking for the sake of talking" which has not brought any results, including some reduction in the level of violence.

People forget that the "talk and fight" mode at least produced the CARHRIHL and other agreements, the groundwork for the next substantive negotiations, and maintained lines of communication and discussion on certain issues even if peripheral but still relevant to some reduction in the level of violence. The substantive talks should not be held hostage even by the valid desire, including of the people, for a ceasefire—especially since this lately "seems to be the hardest word" on both the Communist and Moro fronts.

On the other hand, neither should the substantive talks be held hostage by the likewise valid demand by the NDF for more effective GRP action on the lifting of the foreign "terrorist" listing of the CPP, NPA and Sison. This was the cause of the current suspension of the talks by the NDF in August 2004. This is of course directly related to the post-9/11 U.S.-led "global war on terror" to be discussed in the next section. There are all indications that the GRP has taken advantage of this to keep the diplomatic pressure on the CPP, NPA, and especially Sison in his place of self-exile, The Netherlands. This appears to be part of what the GRP likes

[9] Sec. Teresita Quintos-Deles, Presidential Adviser on the Peace Process, at a meeting with peace advocates on 16 February 2005 in Quezon City.

to describe as a "multi-track process," including military and diplomatic components, in dealing with insurgencies, whether on the Communist or the Moro front.[10] Unfortunately, some so-called progressives seem to welcome and even coach such an approach on the military and diplomatic fronts, by saying "There is, understandably, considerable government frustration with a situation where the CPP derives propaganda mileage from peace talks while militarily and politically intensifying its attacks on the government."[11] The government cannot seem to develop a bolder, more imaginative and coherent plan of dealing with the CPP-NPA-NDF that puts the main premium on a negotiated political settlement.

Here in the GRP-NDF peace negotiations is most true the observation, albeit made in the Moro context, that "If war, as once aptly put, is an extension of politics, and negotiation is an aspect of war, then negotiation is war in another form."[12]

[10] *Ibid.*

[11] Joel Rocamora, "War and Peace: The government cannot go on with its 'talk and fight' stance with the NDF," Newsbreak, 14 March 2005, p. 30.

[12] Salah Jubair, Bangsamoro: A Nation Under Endless Tyranny (Kuala Lumpur: IQ Marin SDN BHD, 3rd ed., 1999) 172.

The GRP-NDF Peace Process & Its Reform Agenda: A Brief Overview

(Paper read at the "Waging Peace in the Philippines: RTD on Good Governance for Sustainable Peace," 9 December 2004, Ateneo Professional Schools, Makati City)

We have this *historical situation of protracted people's war* or PPW (35+ years from 1969 to the present) *and protracted peace talks* (18+ years from 1986 to the present but more off than on). These two tracks have run simultaneously since 1986 without an interim general ceasefire except for a brief 60-day period in 1986-87, thus constituting a mode of "talking while fighting," though it has been much more fighting than talking. This of course creates its own dynamic, with developments in the field like arrests, captures and killings often impinging on the talks.

There have been *two series of peace talks*. The first was a one-shot affair from August 1986 to February 1987 during the Aquino administration which collapsed because, among others, the parties could not even agree on a framework for the talks, as in fact each side did not have a clear framework or game plan of its own. The second in the series started in September 1992 during the Ramos administration with an agreed framework in the *Hague Joint Declaration*. Since then up to present, there have been many rounds of talks but most of these were on preliminary and peripheral matters or side issues, aside from there having been long suspensions and impasses, like the current one on the issue of the "terrorist" listing of the CPP, NPA, and leader Jose Maria Sison.

Actually, it is the *mutually antagonistic frameworks* of the parties which account for the protraction of the peace negotiations. *For the GRP*, the policy is mixed or incoherent because, on one hand, "peaceful negotiated settlement with the different rebel groups" is one of the official "Six Paths to Peace," but on the other hand the pursuit of a "multi-track peace process"

is also subsumed under the national internal security plan and strategy to overcome insurgency nationwide. There is also a strong policy position or tendency towards "pacification and demobilization" of, if not "military victory," over the NPA.

For the CPP, the peace negotiations are clearly subordinate to the PPW strategy and is only of at most tertiary importance as a form of struggle. There has been no strategic decision (unlike the cases of the MNLF and MILF) to give peace negotiations a real chance for a negotiated political settlement. There are only tactical objectives: international diplomatic recognition of so-called belligerency status; propaganda; prisoner releases; and more recently to help secure the legitimacy of the CPP, NPA and Sison internationally in view of their "terrorist" listing.

Be that as it may, the parties somehow were able to agree on a *joint framework for the talks* by way of the *Hague Joint Declaration*. This provided for mutually acceptable principles such as national sovereignty, democracy and social justice, although it became clear later that the parties interpreted these differently. More important was agreement on a four-point substantive agenda: (1) human rights and international humanitarian law (IHL), (2) socio-economic reforms, (3) political and constitutional reforms, and (4) end of hostilities and disposition of forces. On its sixth year (1998), the talks produced its first substantive comprehensive agreement on human rights and IHL, the "CARHRIHL." But some of the remaining reform agenda may pose problems from the perspective of the NDF.

Electoral and military reforms in particular *clash with key NDF orthodoxies* or doctrines which are at the very heart of the national-democratic revolution. Elections clash with the NDF view of armed struggle as the main form of struggle for social and political change, and so might confuse or deceive the people. The military in the NDF's view is the main coercive instrument of the state which is to be smashed, not reformed or improved as such. As for good governance, the question from the NDF is which government are we referring to because two governments exist in the Philippines, the reactionary Government of the Republic of the Philippines and the revolutionary People's Democratic Government.

Yet, in the *NDF's 1990 agenda for the peace talks* (though this was before the 1992 split in the CPP, after which the "reaffirmed" line became harder),

there were in fact talking points for electoral and military reforms. These included *electoral reforms* allowing a fair chance for parties of the lower and middle classes, and also mechanisms to ensure fair and free elections. For *military reforms*, there were removal of U.S. control over the AFP, and the reorganization, reorientation, and reduction of the AFP.

Off-hand, there appear to be more mismatches than matches between the NDF and GRP sides of the reform agenda. In the *GRP 2003 Draft Final Peace Accord*, among the listed *electoral reforms* are: amended party-list, local sectoral representation, anti-dynasty, anti-turncoatism, strengthened multi-party system, political finance regulation, full automation, and Comelec reform. While the *security sector reforms* include: civilian supremacy measures like civil society participation in national security policy making; and a compact, efficient, responsive, and modern AFP engaged in non-combat roles for nation-building.

Given the foregoing, *what might be done or worked on* to push both the peace process and the reform agenda? We can outline some of the possibilities: (1) Multi-partisan support for the peace process; (2) Peace agenda in political party platforms; (3) Direct engagement of both sides; (4) Reform inputs for the peace talks agenda; and (5) Reform work outside the peace talks.

Undertaking Political Reforms Towards a Sustainable Peace Regime

by Ramon Casiple
Executive Director, Institute for Political and Electoral Reform (IPER) (2004 Paper)

Basic position: GRP

- The **Government of the Republic of the Philippines** has the basic position of adherence to the Philippine constitution which states in Article II, Section 1: *The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.*

Basic position: CPP

- The **Communist Party of the Philippines**, as the political leadership and dominant member of the **National Democratic Front**, has the basic position of establishing a "people's democratic state."'
- This is stated in its Program for A People's Democratic Revolution which states in its second section: *The ultimate goal of the people's democratic revolution is the establishment of a people's democratic state and a coalition or united front government*. The same section also speaks of the creation of an "armed independent regime" before the establishment of a nationwide coalition government.

Common elements

- Common acceptance and adherence to democracy and democratic principles.
- Common acceptance of the concept of the republican state.
- Common acceptance of the principle and concept of the people's sovereignty.

Differing elements (1)

- The GRP concept of democracy does not make distinction between rich and poor, educated and uneducated, differences in religious and other beliefs—it is based fundamentally on recognition of human rights, including the right of suffrage. The CPP concept recognizes class divides in society and specifies graduated recognition of political rights based on these class divides.

Differing elements (2)

- The GRP concept of people's sovereignty, likewise, does not make distinction but asserts the principle of "one person, one vote." The CPP concept favors a preferential treatment in favor of the "masses" of workers, peasants and other allied classes.

Differing elements (3)

- The GRP concept supports an open, pluralist political system where opportunity is open to all political parties, except those espousing violence or are not church or religious groups. The CPP concept automatically assigns leadership to the "proletariat" represented by the communist party within the framework of a united front or coalition.

Differing elements (4)

- The GRP insists on the constitutional framework while the CPP does not recognize the present constitution.

Democracy as peace framework

- There is a common recognition of the basic elements of democracy, to wit:
  - Recognition of people's sovereignty, expressed through regular elections;
  - Recognition of a multiparty, pluralist political system;
  - Recognition of all human rights inherent to a democratic political system particularly the civil and political rights;
  - Toleration of minorities, diverging views and opposition political forces; and
  - Rejection of anti-democratic practices.

Constitutional reform and peace

- Constitutional reform is also a meeting point by the two sides, participated in by genuine representatives of the people. Political and electoral reforms aimed at broadening participation by marginalized and unrepresented or underrepresented sectors and ensuring the real will of the people are also a meeting point.

Stepping back for peace (1)

- Both sides will have to be prepared to adjust their present positions, to wit:
  - The GRP will have to step back from its demand for the CPP-NDF to first adhere to the present constitution and take up the more flexible framework of constitutional and political reform.
  - The CPP will have to step back from its insistence for a belligerency status and its position of an "independent regime" and espouse an openness to participate in the constitutional and political reform process.

Stepping back for peace (2)

- Both will have to recognize that the whole reform process needs a peaceful and non-conflict environment to prosper—that is, at the very least, there should be a cessation of hostilities or a permanent ceasefire. At the maximum, there may be even be a political settlement already in place while the reform process is incorporated into the political and governance processes of the state. The crucial factor here is the level of trust and sincerity and political will to pursue reforms on both sides.

Accommodating Rebel Agenda

- As long as the basic reforms of 1987 constitution and by subsequent practice are pursued and instituted.
- The major elements are the following:
  - The shift to a parliamentary system, with party-list system;
  - Decentralization, even the creation of a federal state;
  - A strong multiparty system;
  - Exercise of the right of suffrage by a mature and critical electorate;
  - Elimination of the undue advantage of political dynasties;
  - Credible and effective electoral system and electoral management;
  - Guarantee of civil and political rights;
  - People's participation in governance;
  - Effective judiciary and rule of law; and

- An effective policy on campaign finance and against corruption.

Goals of political reforms (1)

- Reforms should strive towards the common goal of a broadened democracy, particularly from the point of view of the rebel groups and other forces on the political margins
- Open up the democratic processes to permit opportunities for substantive and credible participation (and contention for power) by marginalized, unrepresented and underrepresented sectors.
- Realize equality, fairness, and honesty in electoral contests.
- Banning and vigorous crackdown on undemocratic, violent and illegal means in undertaking electoral contests.
- Restrictions on campaign financing.

Goals of political reforms (2)

- Effective prevention of use of government and its resources in partisan activities during elections.
- Depoliticization of the military and the police forces.
- Regulating media access and use for partisan political campaigns.
- Developing the political maturity of citizen-voters.
- Promoting the effective role of political parties, programs and platforms.
- Effective ban on political dynasties.

Goals of political reforms (3)

- This assumes both sides recognize the basic democratic nature of the post-Marcos political system and agree on further reforms to enhance the system. Non-recognition of these two points will effectively scuttle progress on the peace table.

Reform implementation (1)

- The basic instrument is to convene the **Constitutional Convention** to undertake a comprehensive review of the 1987 constitution, make the necessary amendments to reflect the people's will and the current realities, and stand as a fundamental bedrock for the unification of the whole nation and people.

Reform implementation (2)

- Measures should be taken by the GRP to ensure the most democratic participation in the Concon, even including representatives of political forces in the margins.
- Additionally, specific political and electoral reforms that can already be implemented within the framework of the 1987 constitution should be implemented by the GRP.

Reform implementation (3)

- Measures should also be undertaken by the CPP-NDF to support these reforms and to participate in the reform process.

Reform implementation (4)

- Third-party initiatives, particularly by civil society, should also be undertaken to monitor, support and advocate for reforms within the reform process.

Other Security Sector Reform Agenda for the Peace Process

(8 & 16 December 2004)

These are some key reform proposals taken from several rebel, opposition and peace process-related sources [indicated below], *apart from* the recommendations of the 1990 Davide Commission and the 2003 Feliciano Commission which investigated military coup attempts in 1989 and 2003, respectively, *and apart from* other anti-corruption proposals and measures.

On Restructuring

1. **Integration of the DND, AFP GHQ and the major services (PA, PN, PAF) HQs into a single command entity,** including the physical transfer to Camp Aguinaldo. The various staffs will be consolidated into two main divisions. The major service commanders shall be responsible for administration (personnel, training) and logistics. GHQ shall be responsible for operations (including intelligence and civil-military). *No other change will have a greater impact.* [Morales] Alternatively, the AFP J-Staff should be abolished and replaced by a Joint Strategic Staff composed of the Chief of Staff as chair and the major service commanders as members, with its primary function being strategic planning. [NRP] Or adopt the system of a joint Chiefs of Staff, with the present functions of GHQ offices to be transferred to the major services. [ALTAS]

One *reservation* though expressed about this tack is that it could be dangerous for the government if there are no "checks and balances" to a single command entity within the AFP.

2. Maintain a **smaller but better equipped, trained and paid military force** while continuing to train a larger mobilizable force (e.g. along the citizens army concept). [ALTAS, GRP]

3. Further institutionalize and maximize the principle of **supremacy of civilian authority** over the military beyond the civilian President as commander-in-chief of the AFP **through certain measures**:

a. consultative mechanisms for civil society participation in defining national security policies [GRP]

b. ensuring civilian sector predominance in bodies and institutions which define and implement national policies [GRP]

c. community policing programs to institutionalize community participation in crime prevention [GRP]

d. exposure of military and police personnel in exchange programs with civilian educational and other institutions [GRP]

e. enhancement of the *role of the civil sector in security sector reform* to create a "community of conscience" (or "dictates of the public conscience") [Jarque]

On Modernization and Operations

1. **Review the AFP Modernization Program**. Prioritize expenditure according to its contribution to mission accomplishment. Basic requirements of troop equipment, mobility and communications should be satisfied first before embarking on more ambitious projects. [NRP, Morales] There should be less emphasis on acquisitions, and more resources invested in operations and equipment maintenance, including contracting the latter out to the private sector. [PDR]

2. **Operations should be oriented not only to combat but also to other aspects of nation-building** like socio-economic programs; rural infrastructure building; disaster preparedness and response; rescue, relief and rehabilitation; environmental and natural resources protection; prevention of transnational crime; and ceasefire peacekeeping. AFP Engineering Construction Battalions should be increased for this purpose. [GRP, ALTAS, NRP]

One *reservation* though expressed about this tack is that, other than calamity-related rescue, relief and rehabilitation and ceasefire peacekeeping, the other areas may be too long-term for military involvement, leading to possible militarization or military domination of nation-building and

essentially civilian functions of government.

3. **Doctrine development**. Continual review and updating of the military and police doctrines, including fashioning a coherent military and police strategy. [GRP, Jarque]

4. **PNP modernization**. Provide for the logistical, technological, scientific and technical upgrading of the PNP to enhance its capability in combating crime and in criminal investigation. [GRP]

On Reorientation

1. **Removal of U.S. control (in so many ways) over the AFP**, such as to make it practically a U.S.-oriented or –dependent rather than a self-reliant and independent AFP. [NDF, YOU] (*For example, why should the defense assessment or review for purposes of AFP reform be undertaken jointly with the U.S.?*)

2. **Review of military-related treaties, agreements and arrangements with the U.S**. in the light of the mutually acceptable principle of national sovereignty. [NDF]

3. **Reorientation of the AFP away from being an "instrument of the ruling classes" to one which truly serves the people**, such that it becomes people-oriented as in a people's army, an armed forces of the people, or soldiers of the Filipino people. [CPP-NPA-NDF, RAM-SFP-YOU]

On Professionalization

1. All AFP/PNP officers with the rank of Brigadier General/ Commodore/Chief Superintendent and up should be **retired**. [NRP]

2. The **tenure** of major commanders, especially the Chief of Staff, should be stabilized and fixed, generally at 3 years. [NRP, Morales]

3. Establishment of the **Inspector General Service and the Judge Advocate General Service as separate branches of service** under the direct operational control of the Commander-in-Chief (i.e. the President). [NRP]

4. **Improvement of the curricula of PMA/PNPA/PPSC and other**

military/police training institutes to include proper attention to leadership training, character development, values formation, professionalism, honesty and integrity, patriotic spirit and nationalist consciousness, respect for human rights and international humanitarian law, and the national peace policy. [NRP, Constitution, GRP] **Special attention must be given to the junior officers** like lieutenants and captains, *wherein the hope for reform lies.* [Jarque]

5. Prohibit by law the assignment of military personnel to the offices of politicians, political intervention in assignments and promotions, and extracting personal services from soldiers, among others, to **ensure insulation from partisan politics**. [ALTAS, Jarque, Constitution]

On Morale and Welfare

1. **On salaries and other pay**:
   a. Salaries of AFP should be standardized with those of PNP. [NRP]
   b. AFP/PNP combat pay should be upgraded to 25% of base pay. [NRP]
   c. Increase of the subsistence allowance to at least P100 per day. [NRP]

   It may be best though to peg this to the cost-of-living rather than have a fixed amount.
2. **Mass housing** for all AFP/PNP personnel. [NRP, ALTAS]
   a. Improvement of **medical facilities and health services** for AFP/PNP personnel and dependents. [NRP, ALTAS]
3. **Operational support** for those in the field (messing, hospitalization, etc.). [ALTAS]
4. Study the possible adoption of a **single lineal list for all officers** from whatever source (PMA, ROTC, direct commission, etc.). [ALTAS]
5. **Prohibit demoralizing unprofessional practices** like favoritism and nepotism, and promotions and appointments not based on merit but on *palakasan* and *bata-bata*. [Jarque]

References:

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CPP-NPA-NDF - Communist Party of the Philippines-New People's Army-National Democratic Front, "Program for a People's Democratic Revolution" (1968), "An Overview of the NDF's Agenda for the Peace Talks" (1990)

GRP - Government of the Republic of the Philippines, Draft Final Peace Accord with NDF (2003)

Jarque - Rene Jarque, "Reforming the Armed Forces" (2004)

Morales - Col. Ricardo Morales, "Transforming, Not Reforming, the AFP" (2004)

NRP - "The National Recovery Program" (2003) of Gregorio "Gringo" Honasan

PDR - "Philippine Defense Review" (formerly "Joint Defense Assessment") of RP-US

RAM-SFP-YOU - Rebolusyonaryong Alyansang Makabansa-Soldiers of the Filipino People-Young Officers Union, "Talking Points" (1995)

Some Key Points for a National Peace Policy

(2 July 2004)

An important life-and-death matter for the people such as the policy on peace should be brought to the level of law. This will give the policy stability, coherence, consistency and continuity within and beyond each presidential administration. Some key points for a national peace policy are as follows:

1. The constitutional principles renouncing war as an instrument of national policy and upholding civilian supremacy over the military are reaffirmed. This shall mean the primacy of peace negotiations over military action in addressing the various rebellions, and also the primacy of civilian authority in the peace process.

2. The problem of rebellion should be distinguished from the problem of terrorism, so that there shall be a distinction too in their respective solutions. The war on terrorism shall not prejudice the peace talks.

3. In matters of security, including counter-terrorism, especially in so far as this may impinge on peace, human rights, and development, the people-centered human security approach shall be preferred over the state-centered national security approach.

4. The peace process shall seek a just, lasting, and comprehensive peace. It shall address both the roots of the conflict and the deep political, social, cultural and religious cleavages. It shall consist not only of peace negotiations with rebel groups but also people-to-people peace processes and public participation in peacemaking in order to build the constituency for peace.

5. Peace and development shall go hand in hand. More particularly, peace negotiations and processes shall go hand in hand with relief, rehabilitation and development efforts, especially in areas affected by

internal armed conflict.

6. Peace processes shall build on the accumulated gains of previous and current peace negotiations and agreements, complement existing solutions, surface new ideas and open new formulas that permanently solve the problem, including fundamental changes in the existing legal and constitutional order.

7. The peace process should be insulated from partisan politics. Stated otherwise, it should enjoy multi-partisan support in whichever presidential administration.

Having a CARHRIHL and Implementing It Too

(14 December 2004)

In the current conjuncture of the war and peace process between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP), **a number of propositions** might be made:

1. It is better that there is a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) of 16 March 1998 rather than if there were none.
2. It is better to focus on and monitor its implementation rather than its violations.
3. It is better that there be implementation rather than none.
4. It is better that it be implemented jointly and separately rather than just separately.
5. It is better that it be implemented separately rather than not at all.

Corollary to the first proposition is that **the hard-earned CARHRIHL should be saved and maximized regardless of the fate and progress (or lack of it) of the GRP-NDFP peace negotiations**. In fact, with more reason if the negotiations remain suspended or are terminated for whatever reason or eventuality. *Bona fide* (good faith) implementation of the CARHRIHL can only help the process in whatever situation it is. Such **implementation might be likened to "measures of goodwill and confidence-building to create a favorable climate for peace negotiations,"**[13] to use the wording and spirit of the *Hague Joint Declaration* of September 1, 1992, the main framework document for the negotiations.

The **CARHRIHL actually adds to the "mutually acceptable principles that the holding of the peace negotiations must be in**

13 Hague Joint Declaration, paragraph 5.a.

accordance with,"[14] pursuant to the Hague Joint Declaration. Aside from "national sovereignty, democracy and social justice"[15] mentioned therein *non-exclusively* ("including…"), there are now mutually acceptable principles and standards of human rights (HR) and international humanitarian law (IHL) referred to in the CARHRIHL which can also buttress the hoped for comprehensive agreements on the other substantive agenda areas of socio-economic reforms, political and constitutional reforms, end of hostilities and disposition of forces.

The **CARHRIHL may be likened to the special agreements encouraged by common Article 3 of the Geneva Conventions** of August 12, 1949: "The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention." Agreements, like contracts, are the law between the parties and supplement applicable treaty law (e.g. "the U.N. Covenant on Civil and Political Rights and the 1984 U.N. Convention Against Torture"[16]) and customary law (e.g. "generally accepted principles and standards of international humanitarian law"[17]). The CARHRIHL is therefore already to be valued in itself apart from its being the first of four envisioned comprehensive substantive agreements in a peace process.

In the current conjuncture of the process, **the breakthrough formation of a Joint Monitoring Committee (JMC) to monitor the implementation of the CARHRIHL should not be subject to the vagaries like suspension of the peace negotiations**. At the same time, it should be clear that the JMC is a monitoring body, *not* an implementing body. **A little more attention, therefore, should be given to clarifying the implementing bodies, structures and mechanisms on both sides**, following the concept of "separate duties and responsibilities"[18] in CARHRIHL. Like where do people go for implementation, *not* for monitoring of implementation or violations, of certain provisions of CARHRIHL? Of course, this may be easier on the GRP side because its implementing agencies operate openly and legally and are of general public knowledge, though often this bureaucracy has to be clarified to the common *tao*. It is understandably

[14] *Ibid.*, paragraph 4.
[15] *Ibid.*
[16] CARHRIHL, Part III, Article 5.
[17] *Ibid.*, Part IV, Article 1.
[18] *Ibid.*, Part I, Article 2, and Part VI, Article 1.

harder on the NDFP side because its implementing bodies, structures and mechanisms operate clandestinely and illegally from the GRP perspective and naturally are not of general public knowledge, except within the guerrilla base areas. But there should be at least some fair idea of NDFP implementing mechanisms without prejudicing its security.

This **need for a fair idea may be even greater when it comes to the NDFP side of investigation, prosecution, and trial of persons liable for violations of HR and IHL.**[19] This means having a better idea of the judicial system (both its substantive and procedural aspects) of the NDFP or what it calls the "people's democratic government" so that complainant victims of HR or IHL violations would know how to lodge, monitor, and follow up their cases in that system, if they prefer. Since the NDFP binds itself through the CARHRIHL to be accountable for HR and IHL violations by its forces, the people or at least concerned people have the right to know the NDFP's accountability mechanisms beyond the JMC.

The JMC as a monitoring body for the CARHRIHL would, however, tend to focus more on violations rather than implementation because of the more specific but limited mandate of the GRP and NDFP co-chairpersons: "shall receive complaints of violations of human rights and international humanitarian law and all pertinent information and shall initiate requests or recommendations for the implementation of this Agreement."[20] The JMC could get bogged down processing complaints under the reactive first specific mandate, to the neglect of the more proactive second specific mandate looking at implementation. The premise or basis for being able to initiate requests or recommendations for implementation is having monitored such implementation, short of engaging in the experience of implementation. The **JMC should pay more attention to its general mandate to "monitor the implementation of this Agreement,"**[21] rather than monitoring violations. In the *Operational Guidelines for the Joint Monitoring Committee* dated February 14, 2004 (Annex "B" of *The Oslo Joint Statement* of February 14, 2004), however, the JMC mandate to receive complaints was elaborated to "include(e) complaints on the non-

[19] *Ibid.*, Part III, Article 4, and Part IV, Article 6.
[20] *Ibid.*, Part V, Article 3.
[21] *Ibid.*, Article 1.

implementation of any provisions thereof [i.e. CARHRIHL]."[22] This is one way to monitor implementation albeit in a still reactive mode. Like implementation of the CARHRIHL, **complaints of violations and non-implementation of its provisions should be *bona fide*,** i.e. sincere, meritorious, and substantiated by evidence. Otherwise, the use (or abuse) of complaints to deliberately pile up or score points against the other side would backfire and be counter-productive, even make a mockery of and render ineffectual this hard-earned complaints' mechanism. *Complaints of violations of HR and IHL* best come from the victims themselves or their survivors. One cannot fake this without the truth eventually coming out. *Complaints of non-implementation of certain CARHRIHL provisions* may best come not necessarily from the parties themselves but from independent civil society entities like HR and IHL groups/institutes, issue-based and sectoral organizations which have an interest in HR and IHL in general or in particular HR and IHL concerns (including economic, social and cultural rights like gainful employment, universal and free elementary and secondary education, access to basic services and health care, free engagement in scientific research and literary-artistic creations).

One problem though with the JMC is its consensus rule[23] which has been described as a formula for deadlock. This is one reason, among others, why there is **a sense that the monitoring of the implementation and violations of the CARHRIHL cannot be left to the JMC alone. Thus, the idea and efforts of independent civil society peace advocacy and monitoring** of the CARHRIHL such as that of "Sulong CARHRIHL" (Advance CARHRIHL); i.e., **advance it, not just watch it**, though this has been admittedly inspired by the continuing and successful grassroots-led "Bantay Ceasefire" (Ceasefire Watch) to monitor the ceasefire between the Philippine government and Moro rebels in Central Mindanao. **Independent civil society peace initiatives should be appreciated, rather than snubbed**, because of the importance they give to the particular peace process or agreement being monitored, the contributions they can make especially when the official mechanisms bog down, and the public interest and support they can generate for the particular peace process that needs sustainability.Any agreement is only as good as its implementation. In a situation where there is no consensus on mode of implementation, including

22 Operational Guidelines for the JMC, V., 5.1.
23 CARHRIHL, Part V, Article 3.

joint implementation, of the CARHRIHL, **it is better than nothing that both parties implement it separately, even if unilaterally, as long as done faithfully "in accordance with the letter and intent of this Agreement."**[24] A perusal of the CARHRIHL will show that some of the "separate duties and responsibilities" pertain to both parties, while others pertain to the GRP only but none pertain to the NDFP only. It would be good to be aware of these for purposes of exacting accountability.

Separate Duties and Responsibilities *for Both Parties*

Under "Part III: Respect for Human Rights"

1. adherence to the principles and standards embodied in international instruments on HR (Article 1)
2. upholding at least *25 specific human rights and fundamental freedoms* (Article 2, the most substantive article under Part III)
3. investigation, prosecution and trial of persons liable for HR violations and abuses; indemnification of victims; and rendering justice to them (Article 4)
4. support the rights of victims of HR violations during the Marcos regime, particularly their claims against his estate per U.S. and Swiss court rulings (Article 5)
5. concrete steps to protect the lives, livelihood, and properties of the people against incursions from mining, real estate, logging, tourism, or other similar projects (Article 9)
6. promote the basic collective and individual rights of workers, peasants, fisherfolk, urban poor, migrant workers, ethnic minorities, women, youth, children, etc. (Article 10)
7. carry out campaigns of HR education, land reform, higher production, health and sanitation, and others that are of social benefit to the people (Article 13)

Under "Part IV: Respect for International Humanitarian Law"

1. adherence to the generally accepted principles and standards of IHL (Article 1)
2. prohibition of *nine specific acts* with respect to certain protected

24 *Ibid.*, Part I, Article 2.

persons, mainly civilians, non-combatants, and members of armed forces who have surrendered or been placed *hors de combat* (out of combat) (Article 3)

3. protection of the rights of persons, entities or objects involved or affected in *nine specific cases or situations* (Article 4, together with Article 3, are the most substantive articles under Part IV)
4. investigation, prosecution and trial of persons liable for violations of the principles of IHL; indemnification of victims; and rendering justice to them (Article 6)
5. right of internally displaced families and communities to return to their places of abode and livelihood, to demand all possible assistance, and to be indemnified (Article 9)
6. special attention to women and children; the latter not to be allowed to take part in hostilities (Article 10)
7. non-compulsion of medical, religious, and other humanitarian organizations and their personnel to carry out tasks which are not compatible with their humanitarian tasks (Article 11)
8. carry out campaigns of IHL education, especially among the people involved in the armed conflict and in areas affected by such conflict (Article 14)

Separate Duties and Responsibilities *for the GRP Only*

Under "Part III: Respect for Human Rights"

1. execute with the duly authorized representatives of the victims of HR violations during the Marcos regime a written instrument towards the satisfaction of their claims against his estate (Article 5)
2. abide by the *Hernandez* case political offense doctrine, forthwith review the cases of prisoners who may have been charged contrary to this doctrine, and immediately release them (Article 6)
3. work for the immediate repeal of any subsisting repressive laws, decrees, or other executive issuances and, for this purpose, forthwith review these measures, and not continue to invoke them (Article 7)
4. review certain of its jurisprudence on HR issues such as warrantless arrests and searches, checkpoints, saturation drives, criminalization of political offenses, etc., immediately move for the adoption of appropriate remedies, and not continue to invoke them (Article 8)
5. respect the basic rights guaranteed by the International Labor

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Convention on Freedom of Association and Protection of the Right to Organize and the standards set by the International Labor Organization, including the rights of migrant workers (Article 11)

6. respect the rights of peasants to land tenure and to own through land reform the land that they till, the ancestral rights of the indigenous peoples, the right of the poor fisherfolk to fish in the waters of the Philippines, etc.; forthwith review its laws or other issuances pertinent to the rights mentioned in this and the immediately preceding article, and move for the immediate repeal of those found violative of such rights (Article 12)

Under "Part IV: Respect for International Humanitarian Law"

1. review and undertake to change policies, laws, programs, projects, campaigns, and practices that cause or allow internal displacement (Article 7)
2. review its policy and practice of creating, maintaining, supporting, or allowing paramilitary forces like CAFGUs and CVOs (Article 8)
3. right of the civilian population to be protected against the risks and dangers posed by the presence of military camps in urban centers and other populated areas (Article 12)
4. right of the people to demand the reduction of military expenditures and the rechanneling of savings to social, economic, and cultural development (Article 13)

All told, there is much that should and can be done *as already agreed* by both parties, even under "separate duties and responsibilities," which would benefit the people. At the same time, HR, IHL and peace are too important to be just left to the parties. **The people through their independent people's organizations and support groups should take part *and be encouraged or allowed to take part* in this peace process of implementing agreed HR and IHL measures to their benefit.** Not only will this help get things implemented, but this will also give them a stake in the process.

Maximizing the GRP-NDFP CARHRIHL through its Treaty Connection

(16 November 2004)

Main Terms of Reference (MTOR)

1. **GRP-NDFP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), Part II, Article 4: "It is understood that the universally applicable *principles and standards* of human rights and of international humanitarian law contemplated in this agreement *include those embodied in the instruments signed by the Philippines* and *deemed to be mutually applicable to and acceptable by both parties*."** (italics supplied)

2. CARHRIHL, Part VI, Article 3: "Nothing in the provisions of this Agreement nor in its application shall affect the political and legal status of the Parties in accordance with the Hague Joint Declaration… Any reference to the treaties signed by the GRP and to its laws and legal processes in this Agreement shall not in any manner prejudice the political and organizational integrity of the NDFP."

3. CARHRIHL, Part V, Article 3: "The co-chairpersons [of the Joint Monitoring Committee] shall receive complaints of violations of human rights and international humanitarian law and all pertinent information and shall *initiate requests or recommendations for the implementation of this Agreement…*" (italics supplied)

4. CARHRIHL, Part VI, Article 4: "The Parties may from time to time review the provisions of this Agreement to determine the need to adopt a supplemental agreement or to modify the provisions hereof as circumstances require."

Secondary Terms of Reference (STOR)

5. CARHRIHL, Part I, Article 4: "The parties recognize that fundamental individual and collective freedoms and *human rights in the political, social, economic and cultural spheres* can only be realized and flourish under conditions of national and social freedoms of the people." (italics supplied)

6. CARHRIHL, Part I, Article 5: "The Parties affirm the need to promote, *expand* and guarantee the people's democratic rights and freedoms, especially of the toiling masses of workers and peasants." (italics supplied)

7. CARHRIHL, Part II, Article 2. "The objectives of this Agreement are: … and (d) to *pave the way for comprehensive agreements on economic, social and political reforms* that will ensure the attainment of a just and lasting peace." (italics supplied)

8. CARHRIHL, Part II, Article 3: "The Parties shall uphold, protect and promote the *full scope of human rights, including civil, political, economic, social and cultural rights*. In complying with such obligation due consideration shall be accorded to the respective political principles and circumstances of the Parties." (italics supplied)

9. CARHRIHL, Part III, Article 2: This Agreement seeks to confront, remedy and prevent the most serious human rights violations in terms of civil and political rights, *as well as to uphold, protect and promote the full scope of human rights…*

Maximizing CARHRIHL's Potential

It is clear from the foregoing terms of reference, that the CARHRIHL has a potential for achieving respect, protection, and fulfillment of human rights (HR) and international humanitarian law (IHL) *beyond or supplemental* to certain specific HR and IHL provisions therein (e.g. Part III, Article 2, and Part IV, Articles 3 & 4, respectively). This potential can be maximized through the CARHRIHL's connection with international treaties and instruments on HR and IHL, referred to in MTOR 1 above.

Respect, protection and fulfillment of HR under CARHRIHL can be expanded in scope specially to cover economic, social, and cultural (ESC)

rights as part of the full scope of HR under STORs 5, 6, 8 & 9 above. This should help pave the way for a comprehensive agreement on socio-economic reforms (CASER), the next major substantive agenda item, pursuant to STOR 7 above. Or, in the absence of a CASER for whatever reason, delay, or eventuality, the Parties can already agree on measures for the realization of ESC rights which concretely benefit the people, especially the toiling masses of workers and peasants. In many cases, these ESC rights are just as critical, if not more so, than the most serious HR violations in terms of civil and political (CP) rights.

In the case of respect for IHL, the CARHRIHL's treaty connection can strengthen its clearly weak area of limiting the means and methods of warfare ("Hague Law") which would rightly protect even the combatants from superfluous injury and unnecessary suffering. The CARHRIHL is relatively strong on protection of civilians and non-combatants ("Geneva Law") but this is only one of the two major aspects of IHL.

The Process for CARHRIHL's Treaty Connection

MTOR 1 above provides a *three-step process* for operationalizing CARHRIHL's treaty connection: (1) listing the HR and IHL instruments, including treaties, *signed* by the Philippines (this is an *objective* step, a simple matter of checking with the UN, DFA, or the proper websites for the information); (2) culling the HR and IHL *principles and standards* embodied in these instruments (again, a relatively *objective* step, aided by perusal of the instruments themselves and their related literature); and (3) determination by the Parties which of these HR and IHL principles and standards are *mutually applicable and acceptable* (a *subjective* step, dependent on the will of the Parties who must accept that the principles and standards are applicable to them).

Regarding the *first step*, note that MTOR 1 refers to "instruments *signed* by the Philippines" (italics supplied). Technically, this would include *both ratified and unratified* instruments. The list of signed instruments (both ratified and unratified) is usually longer than the list of signed *and* ratified instruments. Technically again, a signed instrument is not fully binding on the Philippines while a ratified instrument is (i.e. upon Senate concurrence with the President's ratification). A signed instrument, however, at least obliges the Philippines to refrain from acts which would defeat the object

and purpose of that instrument. CARHRIHL uses "signed" so we go by this. Be that as it may, we shall list below the relevant HR and IHL instruments signed by the Philippines by segregating those ratified and unratified, in case this may become an issue. The listing below will also make it easier to see the potential of CARHRIHL's treaty connection.

Incidentally, CARHRIHL already specifically mentions four international instruments: the UN Covenant on Civil and Political Rights and the 1984 UN Convention Against Torture (in Part III, Article 5); the International Labor Convention on Freedom of Association and Protection of the Right to Organize, and the International Covenant on the Rights of Migrant Workers and the Members of their Families (in Part III, Article 11).

The *second step* requires some technical work but it is largely a matter of legal research. It may be best though to refer this to groups or individuals who have been focusing on particular treaties or issues and who therefore have some expertise to cull the relevant principles and standards, if not already presented as such in the related literature. Because of the full scope of HR and IHL, this can potentially involve covering a lot of ground. But the upside of this is the opportunity to widen participation from HR and IHL groups or individuals who have an interest and expertise in particular issues and who want to make a contribution to the peace process.

Incidentally, CARHRIHL itself already covers a lot of ground beyond the most serious HR violations in terms of CP rights. For example, under Part III, Article 2, the right to self-determination of the Filipino nation (par. 1); the right to freely engage in scientific research, technological invention, literary and artistic creations (par. 21); the right to form a marital union and to found a family, and to ensure family communications and reunions (par. 22); and the existing rights of the minority communities in the Philippines to autonomy, to their ancestral lands and natural resources in these lands (par. 25).

The *third step* involves negotiation on which HR and IHL principles and standards are "deemed to be mutually applicable to and acceptable by both Parties." This is a matter for the two negotiating panels, the same bodies which negotiated the CARHRIHL, since this could entail a supplemental agreement under MTOR 4 above. The Parties should keep MTOR 2 above

in mind so that political and legal status does not become an unnecessary or extraneous consideration in the negotiation.

The JMC, particularly its co-chairpersons, may initiate recommendations under MTOR 3 above for the implementation of the CARHRIHL along the lines of the proposed maximization through its treaty connection. This is in line with a proactive mode that seeks the implementation and maximization of CARHRIHL, including preventive measures, rather than just reactively waiting for complaints of violations. Or, any entity such as from civil society, including HR and IHL groups/institutes, the academe, issue-based and sectoral organizations, may take the initiative and directly submit a proposal to both panels. This would have the merit of generating more public participation in this process.

Most HR Instruments Signed & Ratified by the Philippines

- 1966 International Covenant on Economic, Social and Cultural Rights (IESCR)
- 1966 International Covenant on Civil and Political Rights (ICCPR)
- 1966 Optional Protocol to the ICCPR (ICCPR-OP1)
- 1926 Slavery Convention as Amended
  Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- 1948 International Labor Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize
- 1950 Convention Relating to the Status of Refugees
- 1966 Protocol Relating to the Status of Refugees
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Optional Protocol to the CEDAW (CEDAW-OP)
- 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- 1989 Convention on the Rights of the Child (CRC)
- 2000 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (CRC-OP-AC)

- 2000 Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Pornography (CRC-OP-SC)
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

IHL Instruments Signed & Ratified by the Philippines

- 1949 Geneva Conventions (GC) I-IV
- 1977 Additional Protocol (AP) II relating to the Protection of Victims of Non-International Armed Conflicts
- 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
- 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)
- 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) and its 1980 Protocols I-III, 1995 Protocol IV on Blinding Laser Weapons and 1996 Amended Protocol II on Mines, Booby-Traps and Other Devices
- 1993 Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction
- 1994 Convention on the Safety of United Nations and Associated Personnel
- 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (“Ottawa Treaty”)

HR Instruments Signed & *Un*ratified by the Philippines

- 1998 Rome Statute of the International Criminal Court (ICC)
- 1998 UN Guiding Principles on Internal Displacement [status to be checked]
- Convention Relating to the Status of Stateless Persons

IHL Instruments Signed & *Un*ratified by the Philippines

- 1977 Additional Protocol (AP) I relating to the Protection of Victims of International Armed Conflicts
- 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its 1954 Protocol and 1999 Second Protocol
- 1976 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques (ENMOD) [status to be checked]
- 2003 Protocol V to the CCW on Explosive Remnants of War (ERW) [status to be checked]

The Particular Case of Landmines

To illustrate the process of operationalizing CARHRIHL's treaty connection, let us take the case of landmines, especially anti-personnel mines (APMs). The author is conversant with this issue as Co-Coordinator of the humanitarian non-governmental organization Philippine Campaign to Ban Landmines (PCBL). It was actually the PCBL which was the first to point out the possibilities of CARHRIHL's treaty connection in a statement entitled "Hail the GRP-NDF Agreement on Human Rights and International Humanitarian Law, Especially its Provisions Against the Use of Landmines" issued on 29 March 1998, just 13 days after the signing of CARHRIHL.

The relevant treaty signed and ratified by the Philippines is the *1997 Ottawa Treaty* on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. A perusal of its Preamble, especially its last paragraph, will show explicit reference to several *IHL principles*: "the right of the parties to an armed conflict to choose methods or means of warfare is not limited" (*the principle of limitation*); "prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" (*an expression of the principle of proportionality*); and "a distinction must be made between civilians and combatants" (*the principle of distinction*). And in the eight preambular paragraph: "the role of public conscience in furthering the principles of humanity" (*the Martens clause* on the dictates of the public conscience). These principles are so well

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established, in fact they are already part of customary (as distinguished from treaty) international law binding on all, that there should be no debate on their mutual applicability and acceptability to both the GRP and NDFP.

As for *IHL standards*, the Ottawa Treaty's main standard, as found in its Article 1 on General Obligations, is a *total ban on APMs*, that is, "never under any circumstances: (a) To use anti-personnel mines; (b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines; (c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention." The total ban applies "under any circumstances," thus whether there is an armed conflict of whatever level or none. Another aspect of the total ban is the general obligation "to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention." In Article 2, an APM is defined as "a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons." It is understood to be victim-activated (thus indiscriminate), not command-detonated (which is allowed, particularly against military targets). It does not include anti-vehicle mines (AVMs) or anti-tank mines (ATMs) designed against such vehicles.

Now, in the envisioned three-step process for operationalizing CARHRIHL's connection to the Ottawa Treaty, the third and most crucial step is the *determination or negotiation by both parties whether the treaty's standard of a total ban on APMs is mutually applicable and acceptable.* The PCBL, hopefully with the support of other humanitarian and HR groups, would advocate and argue that it is or should be deemed mutually applicable and acceptable because it furthers respect for IHL, its aforecited principles and its humanitarian objectives of protecting civilians and of limiting the means and methods of warfare.

If agreed, this would supplement the two landmine-related provisions in the CARHRIHL: "the right not to be subjected to… the use of landmines" (Part III, Article 2, par. 15) and "They (civilians) shall likewise be protected…from the use of explosives as well as the stockpiling near or in their midst" (Part IV, Article 4, par. 4). Both these provisions pertain to protection of only civilians, not also combatants. Under a total ban on APMs (understood to be victim-activated), even combatants should not

be subjected to APMs since in the first place APMs should never be used "under any circumstances."

This is just a preliminary example. In fact, there are more ramifications about landmines, especially regarding AVMs/ATMs, if we bring in another treaty connection of CARHRIHL, the 1996 Amended Protocol II to the CCW on Mines, Booby-Traps and Other Devices. But we need not discuss this here now.

Summation of Argument

The three-step process which we have just illustrated in the case of APMs and the Ottawa Treaty can also be applied with other HR/IHL issues and treaties connected with CARHRIHL. In some cases, the treaty connection would be co-related with a specific CARHRIHL provision on a particular issue like landmines. In other cases, there may be no such co-relation because the full scope of HR and IHL instruments is much wider than the range of CARHRIHL's specific provisions. Off-hand, these would be in some areas of ESC rights, rules of war and weapons regimes. This is the beauty of CARHRIHL's treaty connection; it makes available to the Parties the best that has been created by humanity in terms of HR and IHL.

The potential here is not just to achieve respect for HR and IHL. The dialogue on HR and IHL, on their principles and standards, and on their mutual application and acceptability is bound to develop some common language and common ground to take the Parties' mutual commitment to HR and IHL to a higher level, such as that of *rights-based* socio-economic and political reforms which address the roots of the armed conflict and lay the basis for a just and lasting peace. The other potential is to generate more civil society, if not public, interest, participation in, support for and contributions to the GRP-NDFP peace negotiations.

A Rights-Based Approach to the GRP-MILF & GRP-NDFP Peace Talks

(11 April 2005)

The August 2004 National Defense College of the Philippines (NDCP) Master of National Security Administration (MNSA) thesis of Commission on Human Rights (CHR) Region IX (Western Mindanao) Director Atty. Jose Manuel S. Mamauag entitled "Rights-Based Approach (RBA) as a Tool in Evaluating the Socio-Political Dimensions of the Peace Process with the MILF" [25] gives rise to the idea that the RBA can be used not only as a tool in evaluating the socio-economic dimensions of the peace negotiations between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) but also as a framework for the whole peace process and a peace settlement, including other dimensions (e.g. economic and cultural) and other peace negotiations, particularly that with the National Democratic Front of the Philippines (NDFP).

The RBA has started to be used for development and for governance; why not for peace?

The thesis shows the viability of the RBA as applied to the socio-political dimensions of the peace process with the MILF like security, relief and rehabilitation, development, right of self-determination, and territorial integrity. In particular, the thesis used the RBA to integrate and converge the human rights (HR) normative content, its standards, principles and levels of state obligations as a *"common platform"* for both parties in dealing with these dimensions. Having a common platform presumably enhances the prospects of a negotiated political settlement.

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[25] Atty. Jose Manuel S. Mamauag, "Rights-Based Approach (RBA) as a Tool in Evaluating the Socio-Political Dimensions of the Peace Process with the MILF" (MNSA thesis, National Defense College of the Philippines, August 2004).

The Rights-Based Approach in Brief

One might describe this as an approach-in-progress where there is no single, universally agreed RBA, although there may be an emerging consensus on the basic constituent elements. Essentially, the RBA *integrates the norms, standards, and principles of the international HR system into the plans, policies, and processes of development and governance.* It includes the following elements: express linkage to rights, accountability, empowerment, participation, and non-discrimination and attention to vulnerable groups. [26]

RBA has already been applied in the various aspects of governance and development in the Philippines, e.g. by the CHR, through a *process* that:

- identifies the *issues* and analyzes their root causes
- identifies the *claimholders* and defines how they are specifically affected by the issues in terms of their HR
- defines the *duty holders* and the roles each has played in bringing about the issues and their root causes
- defines the *specific rights* involved
- defines the nature of *state obligations* that are concerned
- defines the *standards* against which performance of the duty holders can be gauged
- defines the *necessary initiatives* that are required to address the issues, and
- establishes the *measures* by which the effectiveness of such initiatives can be evaluated [27]

There are 14 HR principles that guide the substance and process of development, outlined as follows:

1. HR principles that direct the *substance* of development: Attention to vulnerable groups, Indivisibility, Interdependence and Inter-relatedness, and Universality.

[26] "Primer on Rights-Based Approach (RBA)," Multi-Sectoral Forum on the Popularization of the Paris Principles in the Context of the Rights-Based Approach to Governance and Development, 23-24 February 2004, Orchid Garden Suite, Manila, Philippines.

[27] Center for Public Resource Management, Inc., Commission on Human Rights of the Philippines (CHRP) Reengineering Project: Rights-Based Approach (RBA) to Development – Design Report. See also Maria Socorro I. Diokno, Human Rights Centered Development: Theory and Practice (Quezon City: University of the Philippines Press, 2004), esp. Chapter VI on "Human Rights Centered Development Tools of Analysis."

2. HR principles that prescribe the process of development: Accountability, Good Governance, Independence of the Judiciary, Legislative Capacity, People's Participation, and Transparency.

3. HR principles that govern *both process and substance* of development: Empowerment, Equality, Equity, and Non-Discrimination.[28]

The *core* HR instruments which provide the key HR norms and standards are six treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on Elimination of Racial Discrimination (CERD), the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention Against Torture (CAT).[29] Of course, there are many more international HR instruments, and not only on the high level of treaties.

These various instruments provide the normative content (specific standards or actual meaning) of such human rights as the following: Right to life, Equality and Non-Discrimination, Right to Participate in Government, Freedoms of Opinion and Expression, Freedom of Movement, Right of Peaceful Assembly and Association, Right to Social Security, Right to Work, Right to Health, Right to Food, Right to Housing, Right to Education, and Right of Reparation.[30]

As for the levels of state obligations in relation to HR, there are (1) the Obligation to Respect – i.e. not directly violate the HR of its citizens; (2) the Obligation to Protect – its citizens from HR violations committed by others; and (3) the Obligation to Fulfill – i.e. facilitate and promote the full exercise of HR by its citizens, and directly provide such HR in exceptional circumstances.[31]

The value added of the RBA in relation to other approaches to development and governance consists in: Enhanced accountability; Higher

[28] Free Legal Assistance Group, *Fact Sheets on Human Rights in Development* (2004).

[29] Center for Public Resource Management, Inc., *Commission on Human Rights of the Philippines (CHRP) Reengineering Project: Rights-Based Approach (RBA) to Development – Design Report.*

[30] *Ibid.*

[31] *Ibid.*

levels of empowerment, ownership and participation; Greater normative clarity and detail; Easier consensus, increased transparency and less "political baggage;" More complete and rational development framework; Integrated safeguards against unintentional harm by development projects; More effective and complete analysis; and More authoritative basis for advocacy and for claims on resources. [32]

GRP-MILF Peace Talks and RBA

There is fertile ground in these talks for the availment of the RBA to peace. This is because HR is already very much part of the terms of reference (TOR) of these talks, as indicated by the following:

1. *General Framework of Agreement of Intent* dated 27 August 1998, Article II: "The parties affirm their commitment to protect and respect human rights in accordance with the principles set forth in the Charter of the United Nations, and the Universal Declaration of Human Rights."

2. *Tripoli Peace Agreement* dated 22 June 2001, section B, paragraph 1: "The observance of international humanitarian law and respect for internationally recognized human rights instruments and the protection of evacuees and displaced persons in the conduct of their relations reinforce the Bangsamoro people's fundamental right to determine their own future and political status."

3. *Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects* dated 7 May 2002, Article IV, paragraph 1: "This Agreement will safeguard the observance of international humanitarian laws, respect for internationally recognized human rights and fundamental freedoms for all persons within Mindanao. The GRP will secure to all persons within its jurisdiction or territory the highest level of recognized human rights and fundamental freedoms. The GRP shall grant recognized accredited human rights agencies and organizations full access to monitor the human rights situation in conflict-affected areas."

[32] "Primer on Rights-Based Approach (RBA)."

Now, the GRP-MILF peace talks are about to start tackling the first major substantive agenda matter of ancestral domain, after which the talks are expected to tackle "the very political solution to the Moro problem." The former is to be tackled in four components: Concept, Territory, Governance, and Resources. Governance can be seen as already part of the political solution. The latter essentially involves the form and substance of the Bangsamoro people's right of self-determination (RSD).

Crucial for the negotiations on ancestral domain is its very concept because of the parties' divergent frameworks of reference. One "common platform" in bridging these divergent frameworks is international HR law relevant to ancestral domain and its various dimensions, particularly as relates to indigenous peoples' rights. The MILF already includes "international law and conventions" among its TOR for ancestral domain. The GRP tends to hew closely to its own Indigenous Peoples' Rights Act (IPRA) of 1997 as its TOR. But this does not preclude the GRP from referring to international law because this is part of the Philippine legal system under the 1987 Constitution. International law becomes part of the law of the land through treaties ratified by the Philippines and through the incorporation of generally accepted principles of international law. Several international legal instruments which may be particularly helpful in addressing ancestral domain issues are:

- the *Universal Declaration on Indigenous Rights of 1988*,[33] specifically Part III which deals with land and other natural resources
- the *International Labor Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, adopted on 27 June 1989, specifically Part II (Articles 13-19) on Land
- the *Draft United Nations Declaration on the Rights of Indigenous Peoples*, prepared by the Working Group on Indigenous Populations under the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities which adopted it by its resolution 1994/45 on 26 August 1994

In the overall solution of the Bangsamoro problem, we have said that right to self-determination may be a more important framework than ancestral domain. Relevant therefore is some international legal thinking on a *rights-based*

[33] United Nations Document E/CN.4/Sub. 2/ 1988.

approach to right to self-determination. What follows are excerpts from an international law journal article,[34] which might be helpful for the GRP-MILF peace negotiations:

> The ***human rights approach to the right of self-determination*** recognizes that the right is a human right but is not an absolute human right. This approach relies on the general legal rules developed within the international human rights law framework to enable the limitations on the right to be discerned and elaborated. By interpreting the right in the context of current State practice and current international standards, full account can be given to the development of the right over time and to its broad range of possible exercises, in contrast to the restrictive "territorial" approach which limits its exercise to secession or independence. Use can also be made of the broad and flexible rules concerning who is a "victim" able to bring a claim for violation of a human right to give a flexible definition of "peoples," which avoids the barrenness and rigidity of the "peoples" approach.
>
> The approach provides a coherent and consistent body of general legal rules by relying on the framework of international human rights law. The right of self-determination does have limitation, both to protect the rights of others [e.g. "internal minorities"] and to protect the general interests of society [e.g. territorial integrity], especially the need to maintain international peace and security. But those limitations are applicable only in certain circumstances, such as where internal self-determination has already occurred, and where there is a pressing need for the limitations in the society concerned.
>
> Thus the human rights approach to the right of self-determination creates a framework to balance competing rights and interests and seeks to provide legal rules to deal with disputes. Once this legal process has been completed then the relevant political and moral forces will be able to act on a clear and coherent legal position. The legal decisions reached using this international human rights law framework are capable of gaining general moral and political support. This support should enable peaceful resolution of most disputes involving the right of self-determination.

[34] Robert McCorquodale, "Self-Determination: A Human Rights Approach, *International and Comparative Law Quarterly*, Vol. 43 (October 1994), pp. 857-85.

GRP-NDFP Peace Talks and RBA

When it comes to these talks, there is likewise fertile ground for the availment of the RBA to peace. To start with, the parties already have as their first substantive agreement, the *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law* (CARHRIHL) of 16 March 1998. Among its provisions are the following:

1. Part II, Article 2. "The objectives of this Agreement are: … and (d) to *pave the way for comprehensive agreements on economic, social and political reform*s that will ensure the attainment of a just and lasting peace." (italics supplied)

2. Part II, Article 3: "The Parties shall uphold, protect and promote the *full scope of human rights, including civil, political, economic, social and cultural rights*. In complying with such obligation due consideration shall be accorded to the respective political principles and circumstances of the Parties." (italics supplied)

3. Part II, Article 4: "It is understood that the *universally applicable principles and standards* of human rights and of international humanitarian law contemplated in this agreement include those embodied in the instruments signed by the Philippines and deemed to be mutually applicable to and acceptable by both parties." (italics supplied)

4. Part III, Article 1: "In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights." (italics supplied)

CARHRIHL's reference to "principles and standards of human rights" is one basis for the possibility of applying the RBA in this peace process. Note that while Part II, Article 4 makes reference to "the instruments signed by the Philippines and deemed to be mutually applicable to and acceptable by both parties," Part III, Article 1 makes reference to "international instruments on human rights" without such a qualification – and so covers all international HR instruments.

CARHRIHL's reference to the "full scope of human rights, including civil, political, economic, social and cultural rights" is certainly in accordance with the HR principles of Indivisibility, Interdependence and Inter-

relatedness, and Universality. Most interestingly, when co-related with the fourth objective of CARHRIHL to "pave the way for comprehensive agreements on economic, social and political reforms," then we can also speak of a ***rights-based approach to reforms.***

The *main mode* to work for those reforms in the GRP-NDFP peace process is to sequentially negotiate comprehensive agreements on socio-economic reforms and then on political and constitutional reforms, pursuant to the *Hague Joint Declaration* of the parties. A *supplemental mode*, especially in case of prolonged impasses in the peace negotiations such as currently, is to maximize what the parties already have in the CARHRIHL for reforms. Not only does CARHRIHL have a general provision seeking to "uphold, protect and promote the full scope of human rights, including civil, political, economic, social and cultural rights," it also has specific provisions on such rights. For example, specific provisions on socio-economic rights in Part III are on:

1. right to work and related rights (Article 2, para. 19; and Art. 11)
2. right to education (Art. 2, para. 20)
3. right to health (Art. 2, para. 20)
4. equal rights of women (Art. 2, para. 23)
5. rights of children (Art. 2, para. 24)
6. rights of the disabled (Art. 2, para. 24)
7. rights of minority communities (Art. 2, para. 25)
8. rights of migrant workers (Art. 11)
9. rights of peasants to land (Art. 12)
10. ancestral rights of indigenous peoples (Art. 12)
11. rights against racial and ethnic discrimination (Art. 12)
12. rights of poor fisherfolk (Art. 12)

There need not be new agreements or even implementing guidelines on these rights. *They just need to be implemented or enforced. And in this, the RBA can help with its norms, standards and principles to flesh out or support these rights.*

It will be noted too that a number of the provisions pertain to certain disadvantaged sectors. Implementation would be tipped in their favor by the application of the HR principles of Attention to vulnerable groups and Equity. These principles allow for a preferential option for the poor.

Thus far, we have dealt with the substantive agenda of the peace negotiations with the NDFP and with the MILF. We must not forget the *process aspects* of these negotiations. And when it comes to process, this can be enhanced by the conscious application of such HR principles as People's Participation, Transparency, and Accountability.

There must be some merit to this rights-based approach to peace. After all, "human rights are the foundation for peace, security, and development." [35]

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35 Mamauag, 112.

Position Paper on the Independence of the Observers in the Joint Monitoring Committee for the GRP-NDFP CARHRIHL

(7 October 2004)

Terms of Reference

1. GRP-NDFP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), Part V, Article 2: "…Each Party shall nominate two *representatives of human rights organizations and to sit in the committee* [i.e. the Joint Monitoring Committee, JMC] as observers and *to do so at the pleasure of the nominating Party…*" (italics supplied)

2. The Oslo Joint Statement (February 14, 2004), Annex "B," Operational Guidelines for the Joint Monitoring Committee, IV, 4.1 **Composition:** "… In addition, each Party shall also nominate two (2) *representatives of human rights organizations* who will sit in the Committee as Observers… Changes in *the Party's* representatives and *Observers* in the Committee may be made by the Nominating Party…" (italics supplied)

3. The Oslo Joint Statement (February 14, 2004), Annex "B," Operational Guidelines for the Joint Monitoring Committee, IV, 4.2 **Qualification and Role of the Observers:** "The Observers shall be chosen on the basis of their proven experience, probity, *independence*, and commitment to human rights and international humanitarian law. They *may* attend meetings and participate in the discussions and deliberations of the Committee without the right to vote." (italics supplied)

4. The Second Oslo Joint Statement (April 3, 2004), **2. On the Joint Monitoring Committee (JMC)**, third paragraph: "The members were formally introduced to one another, namely, … Sitting as NDFP-nominated *independent* observers were Supreme Bishop Tomas A. Millamena and Marie Hilao-Enriquez. The two GRP-nominated observers namely

Mercedes Contreras Danenberg and Mary Aileen Bacalso were not present." (italics supplied)

Discussion

Based on the foregoing terms of reference, especially in Nos. 3 & 4 above, we submit that both the GRP and NDFP-nominated observers in the JMC are *independent* observers, and should be treated and should function as such. Independence *from the parties* is of the essence to their observer-ship, in fact being one of the qualifications in the choice of the observers in No. 3 above. Independence may be considered part of the inherent character and purpose of the observer-ship. Otherwise, what is the point of having observers if they are not independent? The observers were/are nominated as representatives of human rights organizations in Nos. 1 & 2 above, and these organizations are supposed to be independent of the two parties in armed conflict here. Being nominated by one Party implies its trust and confidence in the nominee but this does not necessarily mean that the latter is beholden to the former.

The phrase "at the pleasure of the nominating Party" in relation to their nominated observers in No. 1 above *refers only to sitting in the JMC*, and not to how they conduct themselves as observers. They are the nominating Party's observers only in this sense—in being *nominated* by that Party and in sitting in the JMC at that Party's pleasure, nothing more. After being nominated by one Party to sit in the JMC, their independent functioning as observers should proceed from thereon (for example, like Presidential appointments to the judiciary and to the constitutional commissions). They are not under that Party's command or organizational discipline. In fact, it is not mandatory for them to attend meetings and participate in the discussions and deliberations of the JMC in No. 3 above.

While in No. 4 above, it is only the NDFP-nominated observers who are described as "independent," the same is deemed to apply to the GRP-nominated observers based on the principle of parity.

Thus, the presentation in page 10 of the GRP Primer on the CARHRIHL and the JMC whereby the independent observers are grouped with either the GRP or the NDFP is misleading, if not mistaken.

Implications

As we said, both the GRP and NDFP-nominated observers in the JMC should be treated and should function as *independent* observers, not under the GRP and NDFP structures for the JMC. They should attend meetings and participate in the discussions and deliberations of the JMC as *independent observers*, not as members of the GRP or NDFP sections. But the necessary financial outlay for such attendance and participation should be ensured.

At the same time, since they were nominated as *representatives of human rights organizations*, they should somehow relate with these organizations, if not the broader human rights community. They could serve as conduits (pardon the term) or focal points for the participation of this particular community of civil society in helping to monitor the implementation of the CARHRIHL, thereby also generating public support for the peace process which this represents.

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Legislative Advisory to Sulong CARHRIHL

(IHL Day, 12 August 2007)

A. Terms of Reference

This briefing paper addresses an expressed need to develop the legislative agenda of Sulong Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), for the newly convened 14th Congress. Sulong CARHRIHL has requested assistance for this matter on the following terms of reference in particular:

1. Identify existing drafts of bills or of bills that have been filed that are related to one or several HR/IHL provisions of the CARHRIHL, with a description on their status, originators, sponsors, merits/demerits and other relevant information.
2. Identify gaps in legislation that are not yet addressed by those covered under (1).
3. Recommend ways and means to advance the legislative agenda.

We proceed now to address these terms of reference according to our best lights on the matter.

B. CARHRIHL Legislative Prescriptions

There are several provisions of CARHRIHL that indicate the need for legislative action, which mainly involves the passage as well as review of certain laws.

Under CARHRIHL's **Part III** on "Respect for **Human Rights**," these are the more significant relevant provisions:

Art. 5 – on settlement of the **claims of the victims of HR violations during the Marcos regime**

Art. 7 – immediate repeal of any subsisting **repressive laws, decrees or other executive issuances** and, for this purpose, the review of the following:

GO 66 & 67 – authorizing checkpoints & warrantless searches
PD 1866 – illegal possession of firearms with respect to political offenses
PD 169 – requiring physicians to report patients with gunshot wounds
BP 880 – restricting right to peaceful assembly
EO 129 – authorizing demolition of urban poor communities
EO264 – legalizing paramilitary CAFGUs
EO 272 – lengthening allowable periods of detention
MC 139 – allowing imposition of food blockades
AO 308 – national identification system

Art. 12 – review and possible repeal of laws and other issuances pertinent to:

> rights of peasants to land tenure & reform
> ancestral rights of **indigenous peoples**
> right of poor homesteaders or settlers to areas of public domain
> right of poor fisherfolk to fish in Philippine waters

Art. 13 – utmost attention to **land reform** as the principal measure for attaining democracy and social justice

Under CARHRIHL's **Part IV** on "Respect for **International Humanitarian Law**," these are the more significant relevant provisions:

Arts. 7 & 9 – review and possible changes in laws, policies, programs, projects and practices that cause or allow **internal displacement**; internally displaced persons shall have the right to return, to assistance & to indemnification

Art. 8 – review of the policy and practice of **paramilitary forces**

Art. 13 – right of the people to demand reduction of **military expenditures** and rechanneling of funds/savings towards social, economic and cultural development which shall be given the highest priority

In addition to the foregoing, we may as well mention as relevant to legislative action (particularly Senate concurrence with the President's ratification of treaties) CARHRIHL, **Part II, Art. 4** which makes reference

to **HR and IHL "instruments signed by the Philippines"** which embody "universally applicable principles and standards of HR and of IHL" adhered to by the Parties in the CARHRIHL.

C. Matching with Bills in the 13th Congress

Since the new 14th Congress is still grappling with internal reorganization, we resort for now to the relevant bills in the defunct 13th Congress. The most relevant Committee for both chambers of Congress is that on Human Rights. And between the two chambers, we take the **House Committee on HR** as the main indicator since it was headed for the most part by a very HR-active chair, longtime HR advocate Rep. Loretta Ann P. Rosales. The Senate Committee on Justice and HR was chaired first by Sen. Joker P. Arroyo, who was not so active with committee work inc. hearings, and then by Sen. Juan Ponce Enrile, who was not keen on HR issues. Incidentally, this says something about how crucial the key committee chairs can be for the progress of bills in their subject matters of jurisdiction.

Anyway, a look at the HR-related laws passed by, as well as the HR-related bills pending **in, the 13th Congress** esp. with the House Committee on HR, will show that **only a few of the CARHRIHL provisions for legislative action have been addressed**, notably:

(1) Re Part III, Art. 5 – providing/allotting **compensation for victims of HR violations during the Marcos regime**

Senate Bill (SB) No. 1745 and House Bill (HB) No. 3315 *almost got passed into law* in the 13th Congress, needing only House ratification of the Bicameral Conference Committee Report of 07 Feb 2007. So, this long-overdue measure is sure to be refiled (if not yet so) and passed in the 14th Congress. There is already some multi-partisan consensus on this though the matter has been marred by the basically RA (Selda)-RJ (Claimants 1081) factional dynamics among the HR claimants. The RA or "Re-affirmists" refer to those who stayed with the Left of the National Democratic tradition while the RJ or "Rejectionists" declared themselves as "democratic opposition" outside the hegemony of traditional Left structures.[36]

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[36] Alecks Pabico gives a succinct description of this schism in "The Great Left Divide," i*The*

(2) Re Part III, Art. 7 – repeal or amendment of **BP 880 restricting public assembly**

The constitutionality of this law, in connection with a new government policy of "Calibrated Preemptive Response" (CPR) issued in September 2005 to deal with anti-government mass actions, was challenged in but subsequently upheld (BP 880, but not CPR) by the Supreme Court in the case of *Bayan vs. Executive Secretary Ermita*, G.R. No. 169838, April 25, 2006. As early as the second half of 2005 when there were a number of violent dispersals of anti-government mass actions, three bills relevant to BP 880, inc. its repeal, were already separately filed by, well, the "usual suspects" in the House of Representatives of the 13th Congress, Bayan Muna (HB 1555), Akbayan (HB 4802) and Partido ng Manggagawa (HB 4837) party-list representatives. After the SC ruling upholding BP 880, Bayan Muna again filed a new bill to repeal it, taking the ruling into account. (Bayan Muna is likely to refile this (if not yet) early in the 14th Congress. As of 2017, House Bills 3023 and House Bill 3789 were still pending in Congress.)

(3) Re Part IV, Arts. 7 & 9 – providing HR guidelines and measures for **internal displacement**

There were HB 3334 of Akbayan and SB 2548 of Sen. Aquilino Q. Pimentel, Jr. for an "Internal Displacement Act" in the 13th Congress. This is based on the 1998 *UN Guiding Principles on Internal Displacement* (UNGPID) which has been signed by the Philippines. This also has the benefit of the support of a 1st National Multi-Stakeholders' Forum on the Human Rights of Internally Displaced Persons (IDPs) held in December 2005 resulting in a "Kawit Declaration." The main GO and NGO advocates of this measure are the Commission on Human Rights (CHR) and Balay Rehabilitation Center (BALAY), respectively. This measure has a good chance of getting passed into law in the 14th Congress.

What might be noteworthy to point out regarding the above three legislative measures is that the proponents' advocacy for their respective

Investigative Reporting Magazine, Vol. V No. 2, April–June 1999. See https://www.marxists.org/history/philippines/ra-rj/pabico/great-left-divide.htm.

bills hardly, if at all, made any reference to the CARHRIHL, e.g., as one reason supporting their passage. And then, of course, you have the obvious gaps in terms of response to CARHRIHL provisions calling for legislative action. One law passed in the 13th Congress which, however, has some relevance particularly to children in armed conflict (CIAC) is Republic Act (RA) No. 9344, the "Juvenile Justice Law." CARHRIHL, Part IV, Art. 10 does call for special attention to children, inc. disallowing their participation in hostilities.

D. On Some Gaps in Legislative Action for CARHRIHL

The big gaps in terms of response to CARHRIHL provisions calling for legislative action might be explained by a number of factors. One is the waning of general public interest and support, in other words a peace constituency, for the problematic, more off then on, GRP-NDF peace process over the years. Another is the lack, weakness, or inconsistency of a national peace policy, which should include a coherent legislative agenda for peace. And then, of course, some of the CARHRIHL-indicated issues have become stale or been overtaken by developments and events.

(1) For example, with regards to CARHRIHL, Part III, Art. 7's list of **repressive laws, decrees or other executive issuances** for review and repeal, some of these are covered by jurisprudence of the Supreme Court which the political (i.e. legislative and executive) branches of government would tend to largely treat with deference (rather than difference). And some of these jurisprudential issues are in fact cited for review in the immediately following Art. 8, thus on:

- warrantless arrests (*Umil vs. Ramos*)
- checkpoints (*Valmonte vs. De Villa*)
- saturation drives (*Guazon vs. De Villa*
- warrantless searches (*Posadas vs. Court of Appeals*)
- criminalization of political offenses (*Baylosis vs. Chavez*)
- rendering habeas corpus moot by filing charges (*Ilagan vs. Enrile*)

In addition, there is the already above-mentioned jurisprudence upholding the constitutionality of BP 880 on public assembly, as well as the jurisprudence on the national identification system, first declaring the Ramos executive issuance AO 308 unconstitutional (*Ople vs. Torres*, 293 SCRA 141) and then upholding the constitutionality of the Arroyo

executive issuance EO 420 (*KMU vs. Director-General*, G.R. No. 167798, April 19, 2006).

(2) On the matter of **indigenous peoples' rights** mentioned in CARHRIHL, Part III, Art. 12, there is already RA 8371, the "Indigenous Peoples' Rights Act" (IPRA), the constitutionality of which has also been upheld by the Supreme Court (*Cruz vs. Secretary*, 347 SCRA 148). By all indications, most indigenous peoples (IP) groups are satisfied with this breakthrough law, and would like to safeguard it as well as get it fully implemented. It is doubtful that any move to repeal this law would prosper. However, an overall oversight-type review by Congress is always possible, considering also that this law is now on its 10th anniversary. But the ball for this, if ever, is or should be in the hands of the IPs, their organizations and support networks. What could be a particularly relevant point of focus for Sulong CARHRIHL, in cooperation with the concerned groups, is a **review of the implementation of the IPRA, Sec. 22 provision on "Rights During Armed Conflict"** which, among others, specifically invokes the Fourth Geneva Convention of 1949.

(3) Then, we come to **land reform** "as the principal measure for attaining democracy and social justice" deserving "utmost attention" per CARHRIHL, Part III, Sec. 13 and also touched in Sec. 12. The principal legislative measure for this has been RA 6657, the Comprehensive Agrarian Reform Program (CARP) law. Early in the new 14th Congress, there is already talk about reextending the CARP beyond its scheduled program end in 2008. The principal advocates of this are certain peasant and agrarian reform (AR) advocates now represented in Congress through the Alliance for Rural Concerns (ARC) party-list group, supported in this CARP extension advocacy by the powerful Catholic Bishops Conference of the Philippines (CBCP). Likewise powerful opposition to CARP extension can be expected from two different directions: vested landowner interests on the far right and radical peasant groups on the far left. As far as the latter is relevant to the communist insurgency, there is an underlying issue here of agrarian revolution vs. agrarian reform. In fact, this is supposed to be a principal part of the next major substantive agenda, which is socio-economic reforms, in the GRP-NDF peace negotiations. We go back to this later in the context of economic, social and cultural rights as part of "the full scope of human rights" per CARHRIHL, Part II, Sec. 3.

SOME BACKGROUND AND EARLIER REFORM AGENDA ON THE WAR AND PEACE FRONT

(4) And then, we come to the review of the policy and practice of **paramilitary forces** per CARHRIHL, Part IV, Art. 8, also referred to in Part III, Art. 7. If memory serves, this kind of review has been done over the years, if not every year when the military budget is tackled in Congress. This, of course, brings us to the reduction of **military expenditures** and rechanneling of funds/savings towards social, economic and cultural development "which shall be given the highest priority" per CARHRIHL, Part IV, Art. 13. The budgetary deliberations in Congress can be a useful venue for important policy debates. **One policy issue which would tie most of these CARHRIHL-indicated matters—paramilitary forces, military expenditures, and socio-economic development—together is the question of counter-insurgency strategy**. This has become particularly topical because no less than the UN Special Rapporteur on Extra-Judicial Executions (EJEs), Prof. Philip Alston, raised it in his Press Statement at the end of his Philippine mission on 21 February 2007. Beyond EJEs, there is much to raise about the government's counter-insurgency strategy, including its impingement into the peace processes with the major rebel groups. Sulong CARHRIHL and allied peace organizations/networks could be a material force for debating counter-insurgency policy and strategy on the basis of, say, a human security prism like that of the *Philippine Human Development Report 2005: Peace, Human Security and Human Development in the Philippines*. This policy study, in its recommendations or prescriptions, has the merit of addressing both government and rebel sides of the armed conflict. It isn't adequate to address counter-insurgency strategy without also addressing insurgency strategy.

E. Significant Bills for Carry-Over into the 14th Congress

Though not specifically mandated by the CARHRIHL, there were a number of bills and other legislative measures in the 13th Congress which were/are significant to the overall HR and IHL context of CARHRIHL and the GRP-NDF dynamic of war and peace. These are relevant for a legislative agenda of, as well as legislative monitoring by, Sulong CARHRIHL in the 14th Congress, in addition to those discussed above.

(1) In the House Committee on HR in the 13th Congress, the subject matter with the most legislative measures (not bills, but 48 resolutions of inquiry and four privilege speeches) was **EJEs or political killings**. Most of

these measures called for congressional investigations which are supposed to be in aid of legislation but invariably without any specific legislation in mind. This must now be co-related with the Supreme Court-initiated and multi-stakeholder represented "National Consultative Summit on Extrajudicial Killings and Enforced Disappearances" held on 16-17 July 2007, resulting in a number of recommendations including for legislation. One main recommendation for Congress was to define and punish a new crime involving the extrajudicial killing or enforced disappearance of political activists, media persons and judges. Another recommendation was for the enactment of a law defining command responsibility.

In the matter of EJEs, as in fact with enforced disappearances and torture, the conventional wisdom of bills tends to limit the crime to perpetration by state agents. But there have been, and continue to be, just as heinous and inhuman cases of EJEs, enforced disappearances, and torture perpetrated by non-state actors e.g. rebel groups. One major cluster of cases in point was the CPP-NPA "purges" of suspected deep penetration agents (DPAs) from among its ranks in the 1980s, characterized by a combination of all those three forms of grave violations of HR and IHL. This is apart from the longtime continuing practice of CPP-NPA liquidation of certain civilians outside of combat. These two types of EJEs deserve some attention or addressing too, if not also some measure of justice. The victims and survivors of the CPP-NPA purges of the 1980s, as well as their relatives and friends, at least have an independent NGO called Peace Advocates for Truth, Justice and Healing (PATH). This has been supported in recent times by the Filipino-led international NGO called South-South Network (SSN) for Non-State Armed Group Engagement in some **policy advocacy efforts to call for some balancing attention to the non-state part of political violence in the Philippines**. Sulong CARHRIHL has also been doing this but can consider engaging in this more purposively (with CARHRIHL as a starting point) as well as more concertedly with other like-minded HR/IHL/peace advocates.

(2) Speaking of **enforced disappearances**, there was a bill on this that went far in the legislative mill of the 13th Congress, at least in the House of Representatives. This was HB 4959 which had as its lead author Rep. Edcel Lagman and as lead NGO advocate the Families of Victims of Involuntary Disappearance (FIND). The bill is patterned after so as to implement the 2005 *International Convention for the Protection of All Persons from Enforced*

Disappearances [not yet ratified by the Philippines], including its definition limiting enforced disappearance to that committed by state agents. It should be noted that the Convention itself, in its Art. 43, provides that it is "without prejudice to the provisions of IHL," and in its Art. 37, provides that it shall not "affect any provisions which are more conducive to the protection of all persons from enforced disappearances and which may be contained in: a) the law of a State party; b) International law in force for that State." Well, there is an IHL regime which governs the matter of missing/unaccounted persons and their families as a result of armed conflict or internal violence, and this covers enforced disappearances committed by all parties to an armed conflict, including non-state armed groups. The International Committee of the Red Cross (ICRC) has legal advisory material on this, particularly a 2003 one entitled *The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families*, which includes recommendations and a checklist for drafting national legislation. It may be advisable though to make a special effort to lobby for the use of this reference material with the main advocates/proponents of the Anti-Enforced or Involuntary Disappearance Bill, and also to gauge/engage ICRC-Manila Delegation support for this effort.

(3) As for **torture**, there was also a bill on this that went far in the legislative mill of the 13th Congress, at least in the House of Representatives. This was HB 5846 with Bayan Muna Rep. Satur Ocampo as lead author, which had as its counterpart SB 350 introduced by Sen. Sergio Osmena III. There is also an NGO support network called United Against Torture Coalition (UATC) with BALAY as its current point organization. This bill is patterned after so as to implement the 1984 *UN Convention Against Torture* (UNCAT) [long ratified by the Philippines], including its definition limiting torture to that committed by state agents. It should be noted that the Convention itself, in its Art. 1(2), provides that this definition is "without prejudice to any international instrument or national legislation which does or may contain provisions of wider application." The particular matter of widening application to cover non-state perpetrators would again best be taken up with the main advocates/proponents. The international NGO Redress Trust-London published a major policy study *Not Only the State: Torture by Non-State Actors – Towards Enhanced Protection, Accountability and Effective Remedies* in May 2006, which acknowledged the Philippine inputs from PATH and SSN.

(4) Aside from the bill on compensation for victims of HR violations during the Marcos regime, there was in the 13th Congress another **compensation bill for civilian or non-combatant victims in the course of military/police operations or caught in the crossfire of military-rebel encounters**. This was HB 636 of Akbayan Rep. Loretta Ann Rosales, which had its counterparts SB 64 introduced by Sen. Luisa Ejercito Estrada and SB 1210 of Sen. Ramon Revilla, Jr. Thus, HB 636 seeks to declare and implement a State policy of providing compensation to and rehabilitation of non-combatant individuals caught in the crossfire of operations of the military, police and/or other law enforcement agencies, and their families for damage to property, physical injuries, or death. It would create a Board of Compensation and Rehabilitation under the CHR. Where the operation is deemed unlawful, the agency involved shall pay jointly and severally the compensation awarded by the Board.

(5) Speaking of the CHR, there was in the 13th Congress a **cluster of bills for the strengthening of the CHR**, mainly through the grant of additional powers. One lead bill for this was HB 3176 of the Akbayan party-list representatives. More recently, the "Summit on Extrajudicial Killings and Enforced Disappearances" recommended for Congress to give more powers to the CHR, particularly prosecutorial and contempt powers as well as fiscal autonomy to ensure its independence. Since we are on matter of powers and functions of the CHR, what might be most relevant to Sulong CARHRIHL's advocacy to advance CARHRIHL is a question posed by GRP peace panel member Atty. Sedfrey M. Candelaria in his prepared reaction (paper) during SSN-sponsored Philippine launching-forum on the 2006 policy research report *Negotiating Justice? Human Rights and Peace Agreements* by the International Council on Human Rights Policy (ICHRP)-Geneva in November 2006: "Would CHR, as an independent body, yield to a proactive stance by considering the HR and IHL commitments of the CPP-NPA-NDF in order to provide a venue for victims of alleged NPA violations of CARHRIHL?"

In an immediate follow-up private meeting after that forum where CHR was represented by Commissioner Dominador Calamba, SSN broached to a group of CHR commissioners and officials led by Comm. Calamba for CHR to consider a similar/related idea of serving as an **alternative venue or mechanism for addressing complaints of violations of CARHRIHL by both sides**, given what Atty. Candelaria refers to

as the inherent "impasse prone" provisions of CARHRIHL on its Joint Monitoring Committee mechanism. Comm. Calamba said they were open to any studied formal proposal along this line which SSN indicated it may submit (but has not yet gotten down to it). Sulong CARHRIHL may want to consider exploring this too. On one hand, there is a question of whether this has to pass through the problematic peace negotiations, or whether this alternative complaints processing mechanism can be developed in a "de facto" manner through satisfactory practice. On the other hand, there is a question of whether this needs legislation for CHR, or whether such a mechanism can be accommodated by the present mandate, capability, and structure of CHR (which, incidentally, now has an IHL Office).

(6) **"IHL Bill"** - This is a longstanding bill which, in its latest (third) version or draft as the "Philippine Act on Crimes Against IHL and Other Serious International Crimes," mainly **defines and penalizes war crimes, genocide, and crimes against humanity**, as well as **operationalizes the principle of universal jurisdiction** for these crimes. In addition, also there but not highlighted before, is a provision **defining command responsibility**. To repeat, the "Summit on Extrajudicial Killings and Enforced Disappearances" recommended for Congress to enact a law defining command responsibility. The main advocates/proponents of this bill have been the Philippine National Red Cross (PNRC) and its IHL National Committee (of which Sulong CARHRIHL is a member), with much support from the ICRC. In the Senate of the 13th Congress, the authors were two still incumbent senators, Sen. Miriam Defensor-Santiago (SB 2135, second version), and Sen. Richard Gordon (SB 2511, third version), who is PNRC Chair. In the House of Representatives, the authors were Rep. Roseller Barinaga, Jr. (HB 1624, first version), Antonio Cuenco (HB 2557, first version), and Akbayan Rep. Mario Joyo Aguja (HB 4998, second version). The third version is what PNRC and ICRC are currently pushing because it is the result of a House Justice Committee-mandated inter-agency technical working group process, and because it is the version most "dissociated" from the 1998 *Rome Statute of the International Criminal Court*. The latter was actually the original model for the bill but various levels of discussions have shown *Rome Statute* association to be some kind of a "red herring" as far as Malacañang and the Cabinet security cluster is concerned. There is a need to find an administration champion for the bill in the House, and one prospective one is Rep. Lagman because of his track

record in championing HR bills.

(7) **Comprehensive Landmines Bill** - This is another long-standing bill which has the merit of combining and reconciling the implementation of two landmines-related treaties already ratified by the Philippines: the 1997 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction* (or the "Ottawa Treaty"), and the 1996 Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (or "Amended Protocol II") annexed to the 1980 *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects*. The bill resolves whatever conflict in the implementation and application of both treaties in favor of a total ban on anti-personnel mines, as represented by the Ottawa Treaty, which is improved on in several ways (like redefinition of anti-personnel mines based on impact or effect, not just design). But it also adopts important aspects of Amended Protocol II (like coverage of and rules for anti-vehicle mines) not found in the Ottawa Treaty. The main NGO advocate/proponent of the bill is the Philippine Campaign to Ban Landmines (PCBL). The corresponding bills in the 13th Congress were HB 2675 of Akbayan Rep. Aguja and SB 1861 of Sen. Juan Flavier. With the retirement of Sen. Flavier from the Senate, the bill is expected to be refiled there this 14th Congress by comebacking Sen. Gregorio Honasan II, who was its author in the 12th Congress. And while Akbayan is expected to likewise refile the bill in the House, there is a need to find a good administration stalwart co-author for it. It must be noted that Sulong CARHRIHL has addressed the issue of NPA use of landmines, particularly when in violation of CARHRIHL, Part III, Art. 2 (15) on the right of civilians not to be subjected to the use of landmines.

(8) **National Peace Policy Bill** - Finally, there is the similarly longstanding national peace policy bill which goes even farther back to the 10th Congress and has undergone several versions. The latest version is HB 5767 of Akbayan Rep. Risa Hontiveros-Baraquel in the 13th Congress. This is likely to be refiled in the House. The same can be expected in the Senate with the return of its first author there, Sen. Honasan, who once chaired the Senate Committee on Peace, Unification and Reconciliation. Incidentally, the new Chair of that Senate Committee in the 14th Congress is opposition Sen. Jamby Madrigal who, together with opposition Sen.

Loren Legarda, have been the senators most keen in promoting the GRP-NDF peace negotiations, if not also in developing good ties with the NDF. Her counterpart new Chair of the House Special Committee on Peace, Rep. Yusop Jikiri, is one who is, however, more concerned with the Mindanao Peace Process. The main advocates/proponents of a national peace policy are the main peace organizations, formations, and networks. And this matter can be co-related with our earlier point above (D.4) on possible congressional review of counter-insurgency policy and strategy.

F. Important HR & IHL Treaties Left for Ratification in the 14th Congress

This matter is brought up in relation to CARHRIHL, Part II, Art. 4 which makes reference to HR and IHL "instruments signed by the Philippines" which embody "universally applicable principles and standards of HR and of IHL" adhered to by the Parties in the CARHRIHL. The cause of HR and IHL, and of CARHRIHL itself, would be advanced by Philippine signing and, better still, ratification of important HR and IHL treaties not yet so signed and/or ratified. This basically involves first Presidential ratification and then Senate concurrence in this, as far as the GRP is concerned. As for the NDF, it may also unilaterally declare its adherence to certain HR or IHL treaties, as in fact it has already done so as regards the Geneva Conventions and Protocols, among others.

We shall just outline here what might be more precisely referred to as a **treaty ratification agenda**, reflective of priorities expressed by certain concerned government agencies (e.g. CHR and the Department of Foreign Affairs [DFA]), as well as several national consultative conferences (e.g. the 1st IHL National Consultative Conference in November 2005, and the recent "Summit on Extrajudicial Killings and Enforced Disappearances"). We also indicate below in brackets the corresponding main local/ locally-based organizations or networks advocating the relevant treaties:

(1) **HR Treaties for Ratification**:

- 2005 *International Convention on Enforced Disappearances*
- [FIND]
- 2002 *Optional Protocol to the 1984 UN Convention Against Torture*
- [UATC c/o BALAY]

(2) **IHL Treaties for Ratification**:

- - 1977 *Additional Protocol I to the 1949 Geneva Conventions*
- [PNRC and ICRC-Manila]
- - 1954 *Hague Cultural Property Convention* and its 1954 and 1999 *Protocols*

[UNESCO-Manila?]

(3) **Combined HR-IHL Treaties for Ratification**:

- 1998 *Rome Statute of the International Criminal Court* [Philippine Coalition for the International Criminal Court (PCICC)]

G. The Question of Economic, Social & Cultural *Rights Towards Reforms*

This matter is likewise brought up in relation to CARHRIHL, Part III, Art. 12 on the economic and social (human) rights of the poorest basic sectors, as well as Part II, Sec. 3's reference to economic, social and cultural rights as part of "the full scope of human rights." Now, this matter is not necessarily only a legislative agenda, as much of it might be covered by an executive or action agenda. We also already mentioned the relevance of this matter to the next major substantive agenda, which is socio-economic reforms, in the GRP-NDF peace negotiations. The point or question is, in a situation of an entrenched impasse and suspension of the (formal) peace talks, *can work on the economic, social and cultural rights aspects of CARHRIHL help cover some ground for socio-economic reforms even before formal talks and a comprehensive agreement on this?*

To again quote Atty. Candelaria in his reaction at the SSN-sponsored forum on HR and Peace Agreements: "… it has also been advanced that accountability for civil and political rights alone at the risk of marginalizing socio-economic, cultural and development rights could lead to a dichotomy of rights. From the perspective of the non-state armed groups, socio-economic rights could be given emphasis to avoid a situation wherein these groups will resort to organized crime in a cycle of self-sustainability…. Finally, there is a need to pay attention to the economics of implementing CARHRIHL… The existing approach to the GRP-MILF peace negotiations wherein donor groups and other Islamic states have committed to sponsor a comprehensive economic package simultaneous with the negotiations may

be studied and explored for the CPP-NPA-NDF negotiation process." In fact, there is already an initiative along this line in its early stage on the part of UN's International Labor Organization (ILO) Manila office which has as prospective pilot area the Bondoc Peninsula, itself an area of crucial agrarian reform contention with both Right and Left.

H. Summation

It goes without saying, but we will say it, that Sulong CARHRIHL will have to determine its priorities and where a legislative agenda fits into this. To start with, legislative work, even if mandated by CARHRIHL, is not the main arena of work for Sulong CARHRIHL. Priorities partly depend on the objective situation of the armed conflict and of the peace process. They also partly depend on the subjective forces starting with Sulong CARHRIHL itself, its mission and capabilities, and then the other players in the field. As indicated above, many, if not most, of the legislative measures of (probable or presumable) concern to Sulong CARHRIHL already have their main advocates/proponents esp. among NGOs, some of which are affiliated or networked with Sulong CARHRIHL.

It simply is not feasible or advisable for Sulong CARHRIHL to take on "all of the above." It is better for it to adopt a "Calibrated Proactive Response" (a different CPR) that puts a premium on where Sulong CARHRIHL can make a value-added contribution to the advancement of CARHRIHL and the peace process, and that can also be tactically or conjuncturally flexible. Given the above survey, the **legislative (and non-legislative) agenda of Sulong CARHRIHL** might prioritize the following: (not necessarily in this order)

(1) HR & IHL bills for advocacy & lobbying

- "Internal Displacement Act"
- "IHL Bill"
- Comprehensive Landmines Bill

(2) review of the implementation of the Indigenous Peoples' Rights Act, Sec. 22 provision on "Rights During Armed Conflict"

(3) policy debate on counter-insurgency policy and strategy, which would together some CARHRIHL-indicated matters—paramilitary forces, military expenditures, and socio-economic development—as well

as a national peace policy

(4) policy advocacy efforts to call for some balancing attention to the non-state part of political violence in the Philippines, esp. when it comes to extrajudicial killings, enforced disappearances and torture, and the necessary new legislation on these crimes

(5) CHR as an alternative venue or mechanism for addressing complaints of violations of CARHRIHL by both sides

(6) secondary support for the above (F.) treaty ratification agenda

(7) work on the economic, social and cultural rights aspects of CARHRIHL to help cover some ground for socio-economic reforms even before formal talks and a comprehensive agreement on this next major substantive agenda item, with some special attention to agrarian reform.

Note: Sulong CARHRIHL was renamed Sulong Peace in 2020 to broaden its mandate for peacebuilding work.

Some Notes on the CPP 40th Anniversary Statement: Retrospect, Prospects, & Respect for Human Rights

(22 January 2009, 22nd Anniversary of the Mendiola Massacre)

26 December 2008 marked the 40th anniversary of the "reestablishment" of the Communist Party of the Philippines (CPP) on 26 December 1968, not coincidentally itself the 75th birth anniversary of Mao Zedong. "Reestablishment" in order to indicate ideological, political, and organizational discontinuity from the old, already defeated but still existing *Partido Komunista ng Pilipinas* (PKP) of the same name in the Filipino language and which was founded in 1930.[37] Nearly four decades had passed since then, from 1930 to 1968. And now, another four decades have just passed, from 1968 to 2008.

From the perspective of eight decades, the Communist-led struggle in the Philippines turns out to be even more protracted than the so far four-decade protracted people's war (PPW) counted from the founding of the CPP's New People's Army (NPA) on 29 March 1969, not coincidentally the 27th founding anniversary of the PKP's *Hukbo ng Bayan Laban sa Hapon* (*Hukbalahap*, Anti-Japanese People's Army) on 29 March 1942. The highest annual policy statements of the CPP pertaining mainly to itself and to its NPA are issued publicly on their respective said anniversary days, and for the most part are written by CPP founder and ideologue Jose

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37 A good, if sympathetic, recent historical book on the PKP from 1930 to the mid-1950s is Ken Fuller, *Forcing the Pace: The Partido Komunista ng Pilipinas: From Foundation to Armed Struggle* (Quezon City: University of the Philippines Press, 2007). As for the CPP, one good, if critical, still recent historical book is Kathleen Weekly, *The Communist Party of the Philippines 1968-1993: A Story of its Theory and Practice* (Quezon City: University of the Philippines Press, 2001). Expected to be published as the most comprehensive independent book on CPP history is Dominique Caouette, *Perservering Revolutionaries: Armed Struggle in the 21st Century, Exploring the Revolution of the Communist Party of the Philippines* (Ph.D. dissertation, Cornell University, 2004).

Maria Sison—who himself turns 70 on 8 February 2009. There is therefore now occasion to start speaking of a "septuagenarian" leadership of the CPP.

It is perhaps, therefore, most significant that the latest, the 40th anniversary statement of the CPP speaks of a plan for a "qualitative leap" of the armed revolution, that involves the NPA advancing "from the stage of strategic defensive to that of strategic stalemate" in its PPW.[38] But before going into some key ramifications of this plan, it is interesting to note certain assessments and even revelations made by the CPP in this statement. The CPP says that "all attempts to destroy the armed revolution have failed," the PPW "has endured," quite an achievement, it says, in a major country base of the United States. It takes pride in the NPA as the "largest revolutionary army ever built" in the Philippines, "far larger" than the *Hukbalahap* and the PKP's post-anti-Japanese army, the *Hukbong Mapagpalaya ng Ba*yan (HMB, People's Liberation Army). In this, it does not seem to consider the far larger Moro liberation armed forces as revolutionary armies, which they consider(ed) themselves to be.

The CPP reveals that the NPA "never reached the level of 25,000 riflemen in the 1980s" (as was commonly believed, based on military intelligence estimates or figures made public), and that "its peak strength in that decade was only 6,100." At the end of 2008, the CPP says that it has a membership which "runs into several tens of thousands" while it leads "the thousands of fighters" of the NPA (the military intelligence estimates are 4,941 NPA fighters in late 2008).[39] The CPP says it also has a countryside mass base of "millions of organised peasants"[40] in "120 to 130 guerrilla fronts" (the military intelligence estimates are 63 NPA guerrilla fronts) in "70 provinces, more than 800 municipalities and more than 10,000 barangays" (the military intelligence estimates are 1,442 NPA-affected barangays). But for the planned "great leap forward," the CPP says it needs

38 Central Committee, Communist Party of the Philippines, "Strengthen the Party and intensify the people's struggle in celebrating the 40th founding anniversary," 26 December 2008 (released 24 December 2008 in the CPP-NPA-NDF website www.philippinerevolution.net).

39 Compare this to the usual five-figure estimates, ranging from 10 to 15,000, of Moro Islamic Liberation Front (MILF) strength in recent years but which is concentrated in Central Mindanao, while the NPA is spread nationwide.

40 Compare this to the registered mobilization of 3,934,065 people in the MILF people's consultation in May 2005. (This figure even beats the estimated one to two million people at the Obama inaugural.)

"tens of thousands of Party cadres and hundreds of thousands and then millions of Party members."

Cadres are the leading members of the CPP, its quality backbone force which leads its day-to-day revolutionary work on various fronts, mainly but not only in the NPA guerrilla fronts.[41] Most of the CPP cadres during its earlier decades came from the student sector, aided by their education and related skills, while later decades have seen more CPP cadres coming from the peasant class due to the emphasis on building the revolutionary mass movement in the countryside. But recent years have also seen increasing CPP underground recruitment from the student sector in schools and universities, such that the military says the CPP's armed struggle still relies on these campuses as a fertile source of "quality cadres." They "become political officers of the armed movement" and "have a big impact among farmers and youth in the countryside." But an increasing number of them, still in the flower of their youth, have been killed or captured in armed encounters with the military.[42]

It remains very much to be seen whether the CPP can achieve the required critical mass of cadres and other force factors for its planned "qualitative leap" to the strategic stalemate stage of the PPW. It is notable that there is no more mention, like in past CPP/NPA anniversary statements, of certain sub-stages—whether early, middle, or advanced—of the strategic defensive stage. The impression one gets is of literally *forcing the issue or the pace*. The announced "overriding objective" of this new push includes "approach(ing) the goal of destroying the ruling system and replacing it with the people's democratic state." The plan, among others, includes a key call to "Develop the guerrilla fronts toward becoming relatively stable base areas." Quantitatively, the NPA guerrilla fronts "must be increased to the level of 168" which "means having a guerrilla front in every congressional district in all the provinces" (note no exception even made for Moro provinces). Qualitatively, it goes "for the emergence of relatively stable base areas from the increase, merger, integration or expansion of existing guerrilla fronts under a base area command, capable of launching company-size tactical

41 On the role of cadres, see Rosanne Rutten (ed.), *Brokering a Revolution: Cadres in a Philippine Insurgency* (Quezon City: Ateneo de Manila University Press, 2008).

42 Jocelyn R. Uy, "Red Revolution at 40 – Campuses fertile source of CPP 'quality cadres' (Second of two parts)" *Philippine Daily Inquirer*, 27 December 2008, p. A1 & A6.

offensives on the scale of a province or several provinces, if based on an inter-provincial border area."

Now, "to build the relatively stable base area," the CPP "must lead the NPA in suppressing and driving away the oppressors and exploiters and dismantling the reactionary organs of political power over extensive areas." Note that the latter directive is not just to "shadow" and compete with but no less than "dismantle"—so that they can be effectively replaced by revolutionary organs of political power. The local ruling classes like the big landlords are to be "suppressed" and "driven away" by the NPA. This is also supposed to allow raising revolutionary land reform "towards the maximum level" whereby the CPP/NPA-organized peasants can "take over the land."

The latest CPP call to "intensify the revolutionary armed struggle" includes a specific directive to the NPA to "dismantle the land grabbing operations of foreign and local agri-corporations, mining companies, logging companies for export, real estate companies and similar enterprises that reduce the land for agriculture and land reform and that result in the destruction of the environment." The CPP also notably directs the NPA to "deal with the impunity of high bureaucrats and military officials in perpetrating treason, plunder and human rights violations. Those who commit these grave crimes are subject to summons for investigation and arrest, and if armed and dangerous or protected by armed personnel are subject to battle by the NPA arresting unit. Retirement from reactionary government service does not free the suspects from criminal liabilities, arrest or battle. Close relatives and friends who benefit from the criminal offenses or fruits thereof must be treated as accomplices in crime."

These CPP directives to the NPA raise not only questions of possible violations of human rights and international humanitarian law (IHL) but also questions about the NPA's combined or confused military and police functions, as well as about the "revolutionary" code of crimes, criminal procedure, and justice system being implemented by the CPP through its main coercive instrument, the NPA.

All told, one sees an "intensified," "heightened" and "accelerated" CPP-NPA-National Democratic Front (NDF) drive to assert what it perceives as its "status of belligerency," with consequent use of force and counter-

force, violence and counter-violence, in a different kind of "two-state"[43] dynamic. As has been noted elsewhere, this is a source of a lot of violence or coercion being committed in its name. The government itself already predicts or expects an "escalation of violence" by or from the NPA.[44] But the dynamic is indeed two-sided. The Armed Forces of the Philippines (AFP) is still going by President Arroyo's deadline to reduce the NPA to an "inconsequential" or "insignificant" level of a "common police problem," no longer a "national security problem," by 2010, or just next year.[45] This also remains very much to be seen, given four decades of the NPA's persistence, resilience, or simply staying alive. At any rate, shortly after New Year 2009, the talk on this front was about the RP-US Balikatan military exercises going in April to Bicol, which happens to be the second strongest region (after Southern Mindanao) of the NPA. And so, the CPP has specifically instructed NPA units in Bicol to attack RP-US Balikatan forces in Bicol. The AFP has in turn said that it is ready to repel the NPA during the Balikatan.

An escalation of revolutionary and counter-revolutionary violence can thus be expected in the immediate or near future, certainly in 2009, including in preparation for the election period for crucial national elections in the first half of 2010, with its own kind of politics and violence. The two main protagonists seem to want it this way. With the likely continuing impasse of more than four years in the formal peace talks between the Government of the Republic of the Philippines (GRP) and the NDF (which expectedly blames the Arroyo regime for this as a matter of course), even the more effective implementation of their more than ten-year old Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) has been prejudiced at a time when it is most needed.

A weak civil society peace constituency has been trying to do what it can on this front,[46] unfortunately without much impact felt in terms of

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43 The reference or allusion here is to the Israeli-Palestinian "two-state solution."

44 TJ Burgonio, "Gov't predicts 'escalation of violence' by NPA rebs," *Philippine Daily Inquirer*, 10 January 2009, p. A2.

45 According to Lt. Gen. Cardozo Luna, AFP Vice Chief of Staff, as cited by Jocelyn R. Uy, "Red Revolution at 40 – Sison now croons to keep cause alive (First of two parts)" *Philippine Daily Inquirer*, 26 December 2008, p. A1 & A6

46 The only sustained current civil society effort of promoting the GRP-NDF peace process through respect for human rights and IHL is the independent citizen network called "Sulong CARHRIHL" (Advance CARHRIHL), with website at www.sulongnetwork.ph.

changes in the belligerent behavior of the protagonists toward each other. This will need a substantially better human security effort by all concerned if there is to be a chance of even just reducing the level of violence, since ending the revolutionary and counter-revolutionary violence is not yet in sight.

As has been rightly pointed out elsewhere, *humanizing the war is as crucial at this stage as finding the solution to the root causes of the rebellions*.[47] Unfortunately, not only are these root causes of the armed conflict not being addressed because of dormant peace negotiations but the war is also being dehumanized by continuing serious violations of human rights and IHL. But these violations, which partake of oppression, injustice, and indignity, are actually also part of the root causes. And so, the vicious cycle of conflict-insecurity-further conflict goes on—protractedly—unless certain paradigms or mindsets change for the better on both sides.[48]

[47] This insight is attributed to Protestant Bishop Constante Claro of the United Churches of Christ in the Philippines (UCCP), as mentioned by Carlos Isagani T. Zarate, "Mirage," *Philippine Daily Inquirer*, 12 January 2009, p. A15.

[48] See Human Development Network (HDN), *Philippine Human Development Report 2005: Peace, Human Security and Human Development in the Philippines* (Quezon City: HDN, 2005), esp. 32-34, 51 & 96.

KONSULT MINDANAW! Study Paper

Interrelationship of the Mindanao Peace Process and the Communist Front of War and Peace: Initial Notes and Thoughts

(12 & 14 July 2009)

In the KONSULT MINDANAW! Concept Paper, the scope of the consultation is envisioned as follows: "The consultation will reach the whole of Mindanao… While the BUC [Bishops-Ulama Conference] realizes that the areas directly affected by conflict are on high priority, it also acknowledges the fact that the problem goes beyond those covered by the proposed Bangsamoro Juridical Entity. For the sake of focus, however, the consultation will not directly tackle the conflict related to the National Democratic Front and the New People's Army." That focus is well taken. At the same time, we must also start thinking of the interrelation of what we often refer to as the Mindanao Conflict and the corresponding Mindanao Peace Process, on one hand, and what we might call the Communist front of war and peace, on the other. These are initial notes and thoughts on the matter that may also provide some basis for further and deeper research and analysis.

The Mindanao Conflict and A Tale of Two Insurgencies

When we speak of the Mindanao Conflict, we usually refer to the conflict on the Moro front; i.e. the vertical-structural conflict between the Moro people (through their liberation fronts) and the central government of the Philippines, as well as the horizontal-relational conflict between the Moro people and the two other major peoples who share the island region of Mindanao, namely the majority mainstream Christian settlers/migrants/descendants and the indigenous highlander tribes collectively referred to as the Lumad. This Mindanao Conflict has been most directly felt through armed hostilities in Muslim Mindanao and nearby provinces, basically Central and Western Mindanao, including the island provinces of

Basilan and Sulu, having gone on intermittently in those regions for nearly four decades. This conflict is felt in the whole of Mindanao, though to a less direct extent in the mainly Christian regions Northern, Eastern and Southern Mindanao. It is also felt, though to the least direct extent, in the rest of the Philippines north of Mindanao, namely the two other island regions of the Visayas and Luzon, where the capital "Imperial Manila" is located—but still directly enough by the families of soldier casualties who are from the Visayas and Luzon.

But if we take the whole Philippines, it is really a tale of two insurgencies: the nationwide (except for strongly Muslim areas) communist insurgency mainly of the CPP-NPA-NDF and the Moro insurgency in Muslim Mindanao. The latter insurgency is represented by the MNLF and the groups it spawned—principally the MILF which has since surpassed it as main standard bearer of Moro rebellion, and the ASG which represents a mutation in the combination of rebellion, banditry and terrorism.

The CPP-NPA conflict is the longest-running Maoist insurgency in the world. Its "protracted people's war" is aimed at overthrowing the government and replacing it with a socialist-oriented 'national-democratic' system. For the past four decades the CPP-NPA has been building up its mass bases in rural areas, while simultaneously setting up organizational support structures in the city. It has yet to achieve the critical mass of support it needs to move beyond the first of its envisaged three phases of war, the strategic defensive.

In contrast to the nationwide communist conflict, the Moro rebels seek control only over a portion of Mindanao, in the southern Philippines. In broad terms, this conflict can be viewed as a clash between two imagined nations, Filipino and Moro, each with their own narratives of war. The Moro insurgents talk of regaining sovereignty over their historic homelands, while for the Philippine government they represent a threat to territorial integrity in an area where they are no longer the majority population. The conflict is currently unfolding along three concurrent tracks: the MNLF signed a peace agreement in 1996 which is being implemented, inadequately the group would say; the MILF has been in peace talks with the government since 1997; and the ASG is waging a terror campaign that has made it a target of the post-11 September 2001 US-led "global war on terror."

Though different in aims, strategy, ideology, and geography, there is much to link the two conflicts. First, the signal year for both is 1968, when President Ferdinand Marcos was three years into his 20-year despotic rule. This was the year when the CPP was reestablished as a Maoist party, just a few months before its armed force, the NPA, initiated its war; and when the precursor to the MNLF, the Muslim (later Mindanao) Independence Movement, was formed, after the "Jabidah Massacre" of Muslim trainees by their Filipino officers earlier that year. In other words, both insurgencies have already reached the 40-year or four-decade mark in 2008, almost in tandem, with all their ups and downs. This provides a formidable backdrop as we enter their fifth decade which could well be the period of resolution, one way or the other.

Second, both insurgencies derive power and legitimacy from the poverty and disenfranchisement that besets much of the Philippine and Moro population. More than one-third of the country's 81 million people live under the national poverty line, with Muslim Mindanao as the poorest of the poor, and the country now lags behind its neighbors Thailand and Malaysia in terms of human development and living standards. The NPA strongholds tend to be in rural areas bereft of government presence and services, principally in Luzon, Visayas, and non-Muslim (mainly northern and eastern) Mindanao. For the armed groups in Muslim (mainly central and southwestern) Mindanao, poverty and poor governance is compounded by the historic marginalization of Islamized ethno-linguistic groups in their own homeland, with roots dating back to Spanish colonization in the 16th Century.

Though recognized by all, the root problems of poverty, poor governance, and injustice have been insufficiently addressed by the authoritarian Marcos regime and the debt-ridden governments that succeeded him, some of which have, like Marcos, been accused of corruption. This fuels the anti-government fervor that leads some people to join insurgencies. And at the most basic level of motivation, when poverty strips areas of livelihood opportunities, rebel groups represent a source of food and education. Indeed, some analysts have found a correlation between the Asian financial crisis of the 1990s and a resurgence of recruits to the NPA.

A third similarity between the conflicts is their common enemy, the Philippine state. Successive administrations have employed similar tactics

on both the communist and Moro fronts. There have been attempts to defeat the rebels militarily, most notably Marcos under his brutal martial law regime (1972–81), but also the "all-out" wars against the MILF under Joseph Estrada and currently against the Communist insurgents under President Gloria Arroyo who in June 2006 pledged at least P1 billion to the effort. Despite their superior strength—which has been bolstered by a 50,000-strong civilian militia and, more recently, with technical support offered by the United States under the rubric of fighting terrorism—military victory has eluded the security forces and is unlikely in the near future.

Economic and psychological tactics have been used in tandem to weaken and divide the insurgents, for instance by buying off or co-opting individual rebel leaders, or by funding development projects that offer alternative livelihoods to combatants. This lower intensity war has won some successes, though not without costs. The lack of places on reintegration programs for the MNLF and of funding for development projects pledged as part of a peace process with the MILF are experiences that weigh heavy on ongoing and future peace processes.

Rethinking the Mindanao Conflict

As if the conflict on the Moro front with its three concurrent tracks represented by the MNLF, MILF and ASG were not already more than a handful to reckon with in Mindanao, one must also reckon with the conflict on the Communist front which is now not only, though still mainly, represented by the CPP-NPA-NDF as there are several of its breakaway factions operating in Mindanao. In fact, **the conflict on the Communist front for some time already has covered a much bigger portion of the territory and population of Mindanao than that covered by the conflict on the Moro front**. In a manner of speaking, we might say that this somewhat reflects the historical and systematic marginalization and minoritization of the Moros in their own original homeland of Mindanao, Sulu and Palawan (Minsupala), or more precisely Mindanao, Sulu, Basilan,Tawi-Tawi and Palawan (MinSuBaTaPa).

Of course, the big reduction of Moro territory over the decades does not have a one-is-to-one correspondence with any reduction of the impact of the Moro conflict on the rest of Mindanao. On the contrary, it has had the cumulative effect of heightening Moro grievances, particularly a

sense of injustice to the territorial integrity of their ancestral homeland, aside from feelings of injustice to their identity, political sovereignty and integral development in terms of a Moro Islamic way of life.[49] Exploding in the form of Moro armed resistance led by the MNLF against the Marcos martial law dictatorship in the early 1970s, it has become the *most critical expression or cutting edge* of the Mindanao Problem—a problem of relationships among three main peoples there and their relationships with the central Philippine government. One might therefore say that, as far as Mindanao is concerned, the conflict on the Moro front is *more qualitative than quantitative*. It has volatile elements of communal and religious conflict, e.g. Moros/Muslims vs. Filipinos/Christians, that one does not see in the less visceral social class conflict of poor vs. rich Filipinos on the Communist front. Thus, while the corresponding peace processes on the Moro and Communist fronts both speak of addressing the root causes of the conflict, it is in the Mindanao Peace Process as we know it now that we speak also of healing deep, social, cultural, and religious cleavages.[50]

The qualitative difference between the Moro and Communist conflicts are also seen in their sharpest expression of armed conflict. It is the Moro conflict that has seen the biggest, bloodiest, and most brutal battles over the years as well as the most barbaric, horrific, and heinous acts of war and terror from both sides. The difference is due not only to the more visceral character (as in *mujahideen* vs. crusader mode) of the Moro conflict but also to the generally different military strategy and tactics in the two armed conflicts. The (semi-)conventional or (semi-)positional warfare on the Moro front for a large part in the past—as in attacks on and defense of towns or of large rebel camps—resulted in higher casualties and displacement among civilians, as compared to the generally sporadic encounters on the Communist front. The pattern on the Moro front has often involved periodic major military campaigns with aerial and artillery bombardment which exact a heavy toll among civilians, both because of their often-indiscriminate effect and because of their causing massive internal displacement, spilling the conflict over into neighboring localities. The communist insurgency has been less willing or able to engage in

[49] See Archbishop Orlando B. Quevedo, O.M.I., "Injustice: The Root of Conflict in Mindanao" (Paper delivered before the Catholic Bishops' Conference of the Philippines in 2004).
[50] Formulation of Fr. Eliseo R. Mercado, Jr., O.M.I., on the two basic concerns of the Mindanao Peace Process.

positional warfare, or to maintain large fixed camps, deliberately choosing a more mobile guerrilla mode. The "collateral" loss of civilian lives from the fighting has not been as great. AFP bombardment of NPA camps in the vicinity of populated areas have also occurred but these are less frequent.[51]

But **the AFP-NPA war, including in Mindanao, could be catching up with its own kind of intensity, on top of its already wider spread there. For one thing, there is no ceasefire in the AFP-NPA war—unlike the official ceasefire on the Moro front** with the MNLF (already with a final peace agreement) and the MILF (with unfinished peace negotiations) but not with so-called breakaway or lawless groups of both liberation fronts as well as not with the ASG. The CPP's 40th Anniversary Statement on 26 December 2008 speaks of a plan for a "qualitative leap" of the armed revolution, that involves the NPA advancing "from the stage of strategic defensive to that of strategic stalemate" in its three-stage protracted people's war (PPW).[52] The announced "overriding objective" of this new push includes "approach(ing) the goal of destroying the ruling system and replacing it with the people's democratic state." The plan, among others, includes a key call to "Develop the guerrilla fronts toward becoming relatively stable base areas." Quantitatively, the NPA guerrilla fronts "must be increased to the level of 168" which "means having a guerrilla front in every congressional district in all the provinces" (note no exception even made for Moro provinces). Qualitatively, it goes "for the emergence of relatively stable base areas from the increase, merger, integration or expansion of existing guerrilla fronts under a base area command, capable of launching company-size tactical offensives on the scale of a province or several provinces, if based on an inter-provincial border area."

The government itself already predicts or expects an "escalation of violence" by or from the NPA.[53] But the dynamic is indeed two-sided. The AFP is still going by President Arroyo's deadline to reduce the NPA to

[51] *Philippine Human Development Report 2005: Peace, Human Security and Human Development in the Philippines* (Quezon City: Human Development Network, 2005) 6.

[52] Central Committee, Communist Party of the Philippines, "Strengthen the Party and intensify the people's struggle in celebrating the 40th founding anniversary," 26 December 2008 (released 24 December 2008 in the CPP-NPA-NDF website www.philippinerevolution.net).

[53] TJ Burgonio, "Gov't predicts 'escalation of violence' by NPA rebs," *Philippine Daily Inquirer*, 10 January 2009, p. A2.

an "inconsequential" or "insignificant" level of a "common police problem," no longer a "national security problem," by 2010, or just next year.[54] This remains very much to be seen, given four decades of the NPA's persistence, resilience or simply staying alive.

The CPP-NPA's nationwide politico-military presence, in terms of guerrilla fronts, is most felt in Mindanao. In the AFP's assessment of CPP-NPA guerrilla fronts as of Yearend 2008 with a nationwide total of 62 (the CPP-NPA says that it's about twice more), 30 are in Mindanao, 21 are in Luzon, and 11 are in the Visayas (inc. Palawan).[55] **And so, on top of hosting the whole Moro front, Mindanao also currently hosts nearly half of the CPP-NPA guerrilla fronts nationwide**. This fact should cause us some pause to rethink what we call the Mindanao Conflict. This rethinking perhaps pertains first of all to the advocates of the Mindanao Peace Process as the main way to solve the Mindanao Conflict.

Special Significance of Mindanao to the Communist Front

Such rethinking might start with noting the special significance of Mindanao to the Communist front. CPP Founding Chairman Amado Guerrero (Jose Ma. Sison), in his classic 1974 tract "Specific Characteristics of Our People's War," stated that "The long-term task of our Mindanao forces is to draw enemy forces from Luzon and destroy them. We can cooperate very well with the Moro National Liberation Front and the Bangsa Moro Army in this regard. Our forces in the Visayas can take advantage of our gains in Luzon and Mindanao and contribute their own share in the task of forcing the enemy to split his forces."[56] After listing the country's 11 major islands in order of land area, with Luzon and Mindanao as Nos. 1 and 2, respectively, both in terms of land area and population, the tract then indicated a policy of "a few major islands first, then the other islands later." It noted that "we have the widest possible space for the development of regular mobile forces in Luzon and Mindanao." It also

[54] According to Lt. Gen. Cardozo Luna, AFP Vice Chief of Staff, as cited by Jocelyn R. Uy, "Red Revolution at 40 – Sison now croons to keep cause alive (First of two parts)," *Philippine Daily Inquirer*, 26 December 2008, p. A1 & A6

[55] Intelligence data from the Armed Forces of the Philippines (AFP).

[56] Amado Guerrero, "Specific Characteristics of Our People's War" in Amado Guerrero, *Philippine Society and Revolution* (Oakland, CA, U.S.A: International Association of Filipino Patriots, 4th edition, 1979) 191.

noted that "Mindanao is an even more mountainous and more forested island than Luzon. At the center of Mindanao are the mountainous provinces of Bukidnon and Cotabato. These are as well-populated as the mountain provinces of Northern Luzon. These are linked up with almost all of the Mindanao provinces."

On hindsight after 35 years, things turned out not exactly as envisioned. Mindanao has become No. 1, relegating Luzon to No. 2, for the CPP-NPA-NDF in terms of guerrilla fronts nationwide. Most of the guerrilla fronts in Mindanao are not in the Bukidnon and Cotabato areas but in the Southern Mindanao (the Davao and Compostela Valley provinces) and Northeastern Mindanao (the Surigao and Agusan provinces) regions. CPP-NPA-NDF cooperation with the MNLF-BMA has been at most tactical, often coincidental, in the form of drawing enemy forces away from each other at different periods, that allowed the benefitted revolutionary force some respite and strengthening. But this cooperation did not develop to a higher form because the MNLF Chairman Nur Misuari was from the beginning most wary about association with the communist ideology and forces which are anathema to the OIC to which the MNLF depended on for diplomatic support. CPP leader Sison would later criticize Misuari for capitulating through the MNLF's peace agreements with the GRP first in 1976 and then finally in 1996. **The CPP no longer considers the MNLF as a revolutionary force, and there been no cooperation at all between the two forces for some time now.**

Since then, the CPP-NPA-NDF has been able to develop better cooperation, in the form so far of a formal tactical alliance in 1999, with the MILF-BIAF which the former considers as a revolutionary force. Pursuant to this alliance, the CPP has reiterated its long-time policy position which has been to recognize the right to self-determination of the Bangsamoro people, including to secession *from a state of national oppression*. But the MILF would probably have reservations about the latter qualification since, in case of a future CPP-led "People's Democratic Republic of the Philippines," it will by definition never be "a state of national oppression" and therefore there should or would be no occasion to secede from it, contrary to MILF long-term aspirations of independence or independent Islamic statehood. **Moro nationalism of a revolutionary kind would then have to reckon with Filipino nationalism of a revolutionary kind**, no longer with Filipino nationalism of a counter-revolutionary kind.

To make a long story short, the CPP's first attempts to set up guerrilla units and underground cells in Mindanao in the early 1970s actually ended up in fatal failure but was initially saved by two political developments: the Moro armed resistance led by the MNLF against the Marcos dictatorship and the radicalization of the Mindanao Catholic Church.[57] **In five years (1975-80), the CPP in Mindanao had recovered to become its fastest growing organization.** So much so, that by 1980, the CPP Central Committee's Eight Plenum established the Mindanao Commission (Mindacom) to supervise island-wide revolutionary activities (actually envisioned in "Specific Characteristics"). **Mindacom grew in importance as the new and vital cog in the revolutionary wheel.** Its top leaders were promoted to important CPP organs. The central leadership gave Mindacom considerable latitude to experiment with strategy. This was partly in compliance with the "Specific Characteristics" policy of "centralized leadership and decentralized operations" and partly the center's acknowledgment of **Mindacom's extraordinary mobilizing capacities**. **But also, the very fluidity and social context of Mindanao itself as the Philippines' land frontier "filling up" made it ripe for radical expansion and experimentation.**[58]

In the 1980s, the CPP-NPA-NDF in Mindanao hit both its highest and lowest points. Mindanao was able to experiment with and develop more militant and effective forms of mass struggles and mobilizations, culminating in the *welgang bayan* or people's strikes, which were replicated elsewhere in the Philippines. Using this as a model and inspiration, Mindacom started contemplating, articulating and experimenting with an alteration, modification or even replacement of the existing PPW strategy with what it called a "politico-military framework" ("pol-mil"), which gave a bigger role to urban uprisings in an insurrectionary strategy. On the military front, there was increased use of NPA "armed city partisans" (urban guerrillas) in assassination and arms-gathering operations in city

[57] Patricio N. Abinales, "When a Revolution Devours its Children Before Victory: *Operasyon Kampanyang Ahos* and the Tragedy of Mindanao Communism" in Patricio N. Abinales (ed.), *The Revolution Falters: The Left in Philippine Politics After 1986* (Ithaca, NY, U.S.A.: Southeast Asia Program Publications, 1996) 164, citing Kit Collier, "The Theoretical Problems of Insurgency in Mindanao: Why Theory? Why Mindanao?" in Mark Turner, R.J. May and Lulu Respall Turner (eds.), *Mindanao: Land of Unfulfilled Promise* (Quezon City: New Day Publishers, 1992) 197-212.
[58] Abinales, 165, 168.

and town centers, and also increased "regularization" of NPA units in the countryside into "larger mobile formations" of up to battalion size to engage the AFP in bigger battles. All these forms of mass struggles and military offensives were gaining in tempo and intensity all over Mindanao—"Then Kahos erupted and changed everything."[59]

"Kahos" was short for "Kampanyang Ahos" (literally "Garlic Campaign"), the biggest and worst of the CPP-NPA anti-infiltration/deep penetration agent (DPA) campaigns of the 1980s, resulting in the extra-judicial killing, torture, and enforced disappearance of at least a thousand mostly innocent cadres, guerrillas and activists who were mostly wrongly suspected as military spies and informers. The resulting dislocation was massive—in nine months, CPP membership declined from 9,000 to 3,000 due to resignation, surrender, or AWOL; the NPA was reduced from 15 or 16 companies to two, supported by 17 platoons; and the CPP-NPA lost over 50% of its mass base.[60] As the CPP-NPA "purges" happened not only in Mindanao but also in other regions nationwide albeit on a much lesser scale, they revealed certain internal weaknesses.

The CPP-NPA "purges" of the 1980s, the CPP central leadership's erroneous decision to boycott the 1986 "snap" presidential election resulting in political marginalization during the EDSA I "People Power" Revolution, then its seeming disarticulation starting with its discernment of the character of the popular new Aquino administration, the start in 1988 of a big and sudden decline of the revolutionary forces in the whole country after reaching their peak armed strength in 1987, and the crisis of socialism of 1989-91, among others, were all part of the backdrop for the big split or "Great Schism" in the CPP between "reaffirmists" (RA) and "rejectionists" (RJ) of the original party line centered on the PPW strategy, which came out in the open in late 1992. The RJ factions broke away and went their own paths, some still in armed struggle, others no longer. The RAs led by Sison launched what he called the "Second Great Rectification Movement" (SGRM), especially against "urban insurrectionism" and "military adventurism" as the main deviations from the established strategy. The "reaffirmist" CPP redeployed the NPA mainly for mass work to recover the mass base. They have since been reaffirmed in this, such that from 1996

59 *Ibid.*, 168-70, 177.
60 *Ibid.*, 156-57, citing *Ang Bayan* (the CPP official publication), March 1989, p. 6.

SOME BACKGROUND AND EARLIER REFORM AGENDA ON THE WAR AND PEACE FRONT

onward, the NPA strength, high-powered firearms, and guerrilla fronts steadily increased, and in 1998 the CPP was confident enough to conclude its SGRM.[61] So, it is interesting to note that, **from the "reaffirmist" CPP perspective, it was in Mindanao where the main deviations originated and manifested themselves, but it was/is also in Mindanao where the main recovery and steady increase has been made**. **It can be assumed that the current central leadership of the CPP must be ensuring and exercising a closer hold over its Mindanao forces.**

One of the RJ factions which broke away from the CPP was its former Central Mindanao Region (CMR) which eventually took its current form as the *Rebolusyonaryong Partido ng Manggagawa ng Mindanao* (RPM-M). Actually, at least two other communist breakaway factions, but with non-Mindanao roots, also currently operate in Mindanao, namely the *Rebolusyonaryong Partido ng Manggagawa ng Pilipinas* (RPM-P) and the *Marxista-Leninistang Partido ng Pilipinas* (MLPP). The CPP has been antagonistic to all of its breakaway factions, whether in or from Mindanao or elsewhere. But **the RPM-M is of particular interest to Mindanao war and peace because of its Mindanao roots. Precisely because of these roots, it has developed an indigenous tri-people analysis of and approach to Mindanao in combination with Marxist-Leninist class analysis and class basis of strategy and tactics**. This may be considered a natural or logical development as it was the former CMR which was the CPP region closest in proximity to the Moro front as well as to certain Lumad tribes.

The *tri-people framework*, which has since become widely-accepted in Mindanao, including by the GRP but not (yet) by the MILF and the CPP-NPA-NDF, emphasizes the co-existence of the three peoples which have to share Mindanao, the ideal of their equality and unity, and Mindanao itself as the basis of a new or additional entity as Mindanaoan or *Mindanawon*. On the basis of the closely intertwined history and development of the three peoples in Mindanao, this framework would tend to seek a political solution of co-existence and shared sovereignty among the three peoples rather than of separation from each other.

RPM-M underscores the *"democratic and class contents" of the struggle*

61 See Chapter 3, "Evolution of the Armed Conflict on the Communist Front," *Philippine Human Development Report 2005*.

for the right to self-determination (RSD) in Mindanao, with the end in view of the "elimination of the national oppression and all other oppressions." National oppression here refers mainly to oppression by the majority nationality (Christian settlers) of the minority nationalities (Bangsamoro and Lumad). But there are also other oppressions, mainly of the oppressed sections of both majority and minority nationalities by their respective ruling elites. These ruling elites are actually often in collaboration with each other in maintaining their respective oppressions, notably that of the Christian majority over the Bangsamoro minority and that of the Bangsamoro ruling elite over the Bangsamoro masses. The oppressed sections of both majority and minority nationalities are often pitted against each other, when in fact they have more interests in common as fellow oppressed. "Genuine and all-sided liberation" is "not just a change of one oppressor (external) to the other (internal) within the national minorities," and should include "the liberation…also of the oppressed section of the majority nationality." "The democratic aspirations of all nationalities (the three peoples in Mindanao) should ensure that the genuine right to self-determination of the Bangsamoro should be sustainable and can be (an) effective method and assurance that the ruling elites of all nationalities cannot use the former to perpetuate the national oppression and other forms of exploitation."[62]

The RPM-M may be a small armed group compared to the CPP, MILF and MNLF, but its big ideas of an indigenous tri-people framework and of the "democratic and class contents" of the struggle for the RSD in Mindanao can be a significant contribution for the enhancement of the Mindanao Peace Process. Again, quality can be more important than quantity.

Peace Processes on the Communist Front

The Mindanao Peace Process has to take note of, if not somehow relate to, the several peace processes on the Communist front, esp. where Mindanao forces are involved. There are currently several ongoing peace processes at various stages with the CPP-NPA-NDF, the RPM-P and the RPM-M, but none with the MLPP. There are ceasefires with the

62 Ike de los Reyes, "The Bangsamoro Question [and the Bangsamoro Juridical Entity] in the Current Situation" (manuscript, November 2008).

RPM-P and the RPM-M, but none with the CPP-NPA-NDF and the MLPP. Of these peace processes, the most significant for purposes of this discussion are those with the CPP-NPA-NDF and with the RPM-M.

In the case of the **GRP-NDF peace process** (where the NDF represents the CPP-NPA), the nearly five-year impasse in formal peace talks since August 2004 is likely to continue till the expected mid-2010 end of term of the Arroyo administration. For the most part, this **has actually been more of a war front than a peace front**. The two protagonists seem to want it this way, starting with their consensus on no ceasefire, for fear of the other side taking advantage in their own respective ways. Since the GRP has ceasefire agreements with the RPM-P and the RPM-M as well as with the MILF and the MNLF, then the absence of a ceasefire with the NDF must mainly come from the latter's impetus. Aside from tactical considerations of the disadvantages of a ceasefire, *there is for the NDF the strategic consideration of its PPW strategy with armed struggle as the principal and main form of struggle—to which other forms of struggle, inc. peace negotiations, are subordinate*. There has been no strategic decision (unlike the cases of the MNLF and MILF) to give peace negotiations a real chance for a negotiated political settlement. There are only tactical objectives: international diplomatic recognition of belligerency status; propaganda; prisoner releases; and more recently to help secure the legitimacy of the CPP, NPA, and Sison internationally in view of their "terrorist" listing.[63] Some critics, from the Left at that, even say that CPP leader Sison, as chief political consultant of the NDF for the talks, is *fashioning protracted peace talks to be a form of struggle within the PPW.*

Be that as it may, the GRP-NDF peace negotiations on its sixth year (1998) produced its first (and so far only) substantive comprehensive agreement on human rights and international humanitarian law called the CARHRIHL[64] (an agreement consistent with no ceasefire), and continues to hold the promise of socio-economic, political and constitutional

63 Jose Maria Sison with Ninotchka Rosca, *Jose Maria Sison: At Home in the World: Portrait of a Revolutionary* (Greensboro, North Carolina: Open Hand Publishing, LLC, 2004) 97, 101, 140, 177, 204-06.

64 *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines* dated 16 March 1998, popularly known as the CARHRIHL.

reforms next on the agenda[65]—which reforms are also supposed to address the root causes of the conflict under the first of "The Six Paths to Peace" framework.[66] On the other hand, the reform agenda in the peace negotiations may not progress much further without a framework or paradigm shift at the strategic level on both sides. Otherwise, **maximizing the CARHRIHL through implementation, or the framework of human rights and IHL, might be the best we can hope for in the meantime—especially in a scenario of intensified armed conflict—until there is some kind of breakthrough**, aside also from pursuing the reform agenda on its own merits *outside* the peace negotiations but which can still be seen as part of a broader peace process.

As has been rightly pointed out elsewhere, *humanizing the war is as crucial at this stage as finding the solution to the root causes of the rebellions*.[67] **"Addressing concerns arising from the continuing armed hostilities" is, after all, the fifth of "The Six Paths to Peace."** Unfortunately, not only are the root causes of the armed conflict not being addressed because of dormant peace negotiations but the war is also being dehumanized by continuing serious violations of human rights and IHL—actually on both the Communist and Moro fronts. But these violations, which partake of oppression, injustice and indignity, are actually also part of the root causes. And so, the vicious cycle of conflict-insecurity-further conflict goes on—protractedly—unless certain paradigms or mindsets change for the better on both sides.[68]

"The other peace process" with the RPM-M, though small, deserves due attention as a source of hope. It has been called "the other peace process" because it represents a small rebel group and peace process compared to the big or major rebel groups and peace processes like with

[65] Government of the Republic of the Philippines and National Democratic Front of the Philippines, *Joint Declaration*, 1 September 1992, The Hague, The Netherlands., particularly paragraph 5(b).

[66] As institutionalized in Executive Order (EO) No. 125 of President Ramos dated 15 September 1993 and EO No. 3 of President Arroyo dated 28 February 2001, which both deal with the approach/policy and (administrative) structure for government's comprehensive peace process/efforts.

[67] This insight is attributed to Protestant Bishop Constante Claro of the United Churches of Christ in the Philippines (UCCP), as mentioned by Davao lawyer Carlos Isagani T. Zarate, "Mirage," *Philippine Daily Inquirer*, 12 January 2009, p. A15.

[68] See *Philippine Human Development Report*, esp. pp. 32-34, 51 & 96.

the NDF, MILF and MNLF, and because of its *radically different approach from that of the big top-level peace negotiations* in most cases. It does not (so far) involve complex peace negotiations. Rather, a local peace and development agenda that will have an immediate impact on the ground will be formulated by the concerned communities and tribes in Mindanao through participatory local consultations to identify problems and needs as well as responses there which could take the form of projects. Such empowered and sustainable communities are the real foundation of peace. The process itself will allow these communities to win small victories and build peace by themselves. The final political settlement is important but the communities need not wait for this. Building peace for them is here and now. This community-level process continues to be pursued independent of the panel-level talks and despite the latter's delay. Still, the RPM-M peace process is also getting back on the latter track which is still needed for a final resolution to the conflict.[69]

If there is a need for models of authentic dialogue with the communities, here is one in Mindanao which also has the merit of upholding the equal importance of peace negotiations with rebel groups. There is a potential here for developing an effective combination of public consultations and peace negotiations, pursuant to the relatively new strategy of public participation in peacemaking. The RPM-M articulates this in this way: "A community-based and people-centered peace negotiation among revolutionary groups with the government should be an insurance for achieving a sustained and genuine political settlement… The people should be seen as active participants and the principal stakeholders in any political settlement between the revolutionary groups and the government…. And hence, the participation of the masses and the corresponding development of the political consciousness in all levels (and in all stages) of the peace process would ensure the substantive democratic content…"[70]

Active and even direct participation of the people and communities

[69] Kaloy Manlupig, "GRP-RPM-M: The Other Peace Process," accessible at www.balaymindanaw.org/ bmfi/essays/2004/grp-rpmm.html. Manlupig heads the NGO Balay Mindanaw which serves as the independent secretariat for the talks, another unconventional feature of this process.

[70] Ike de los Reyes, "The Bangsamoro Question [and the Bangsamoro Juridical Entity] in the Current Situation" (manuscript, November 2008).

in the peace process does not make the rebel/revolutionary groups superfluous because the latter, as the RPM-M says, are also "included as among the legitimate stakeholders" and should not be isolated from their respective mass bases or constituencies.[71] In addition, there is the pertinent analysis and approaches that these groups may contribute to the mutual problem-solving that is of the essence of peace negotiations. In the case of the RPM-M, it has adopted a multi-form struggle but gives paramount importance to peace-building and development work at this time because of the adverse effect of the war situation on the tri-peoples of Mindanao. **At some point too, a convergence must be found among the several peace processes relevant to Mindanao, starting of course with those involving the MILF and the MNLF, but eventually co-relating on common aspects with the peace processes on the Communist front**—whether on the minimum matter of "addressing concerns arising from the continuing armed hostilities" or on more substantive issues like the Lumad Question.

Tug of War for the Lumad

As the most marginalized and minoritized among the three peoples in Mindanao, the Lumad are the ones most caught in the middle (sometimes crossfire) of this or that tug of war. There is, on one hand, what the MOA-AD controversy brought out as the ***political* tug of war between the GRP and the MILF for the allegiance of the Lumad**. This involved no less than the very identity of the Lumad whom the MILF (and the MNLF before them) claimed as part of the Bangsamoro but which most Lumad refused to be subsumed into. To the Lumad, this was a matter of *political* life-and-death. Then, there is also, on the other hand, the often *real* life-and-death matter of the ***military* tug of war between the AFP and the NPA for able-bodied recruits from the Lumad**—with the worst case scenario of Lumad killing Lumad. **This too has become part of the Mindanao Conflict.**

In the 2003 Mission to the Philippines Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of the indigenous people,[72] there is a section on "Militarization and Human

[71] RPMM Peace Committee, "Position Paper of the RPMM-RPA on the Demobilization, Disarmament, Reintegration/Rehabilitation Framework of the Government of the Republic of the Philippines vis-à-vis Peace Talks" (6 September 2008).

[72] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of the indigenous people, submitted in accordance with Commission on Human

Rights" (paras. 44-53). It states that some indigenous regions have suffered the impact of the communist insurgency as well as governmental counter-insurgency measures. The Special Rapporteur received reports of arbitrary detentions, persecution and even killings of community representatives, of mass evacuations, hostage-taking, destruction of property, summary executions, forced disappearances, coercion, and also of rape by armed forces, the police or so-called paramilitaries. Special mention was made of CAFGUs set up by the army in numerous indigenous municipalities, whose semi-military activities often tend to divide local communities and set one group against another. The practice of "hamletting" whereby the military force indigenous peoples to congregate in specified locations against their will and restrict their free movement by imposing a curfew, constitutes another serious human rights, (and IHL) violation. The highest government authorities and the communities themselves assured the Special Rapporteur that indigenous peoples are essentially peaceful and not involved in any kind of subversive or insurgent activities. And yet, they may stand accused of terrorism or rebellion. Human rights (and IHL) violations against indigenous communities are also committed at times by rebel groups and private armies. The Special Rapporteur called on all parties to the conflict, particularly the government, to fully respect the provisions of IHL concerning the rights of civilians in armed conflict. Among his recommendations were that CAFGUs be withdrawn from indigenous areas altogether, within the framework of a national program to demilitarize indigenous peoples' territories, and that the government take maximum caution to protect indigenous peoples' rights during its military operations, in accordance with international humanitarian standards.

For the most part, the Lumad have not resorted to armed struggle for self-determination, as have the Bangsamoro, but there have been some recent exceptions such as the Indigenous People's Federal Army (IPFA) and the Bungkatol Liberation Army (BLA). Such Lumad armed groups have not, however, reached the scale and lifespan of the Cordillera People's Liberation Army (CPLA) of the Cordillera ethnic region in Northern Philippines, the prime example of an indigenous highlander rebel group in the Philippines and actually the first major breakaway from the CPP-NPA

Rights resolution 2002/65, Addendum: MISSION TO THE PHILIPPINES (5 March 2003).

as early as 1986, well before the big split.

Other Lumad armed groups, both pro-state and anti-state, are thought to exist, but these have generally remained obscure. One pro-state (unlike the anti-state IPFA and BLA) Lumad armed group which has caught the notice of a UN Special Rapporteur on Indigenous Peoples is the LUPACA-Bagani Warriors set up by the Philippine military in the Caraga (Northeastern Mindanao) region to fight the NPA there. The group has staged fake NPA "surrenders" in an effort to gain public support.[73] Recently, a Lumad militia belonging to the Dibabawon tribe was reported to have accompanied elements of the Philippine Army's 28th Infantry Battalion during raids on houses in a tribal village near the site of an NPA ambush in Compostela Valley province in Mindanao.[74]

In the greater Davao area or Southern Mindanao region, the majority of NPA rebels are said to be Lumad. In Davao City, three NPA front committees and an NPA mobile regional guerrilla unit have about 70-80% Lumad belonging to the Ata and Matigsalog tribes. By late 2001, a state-inspired counter-force called "Lihuk Lumad (Alsa Lumad) Movement" with its own "Bahani Warriors" emerged, aside from the formation of Lumad CAFGU companies. This Movement has involved setting up effective village defense systems on strategic Lumad communities to deny the NPA freedom of movement, thereby blocking their operations. In effect, there has been an almost literal tug of war between pro-state and anti-state forces for the Lumad mass base. There is also an attempt by both forces to tap into the strong warrior rank and culture among Lumad in the area.[75]

The overall trend is still towards the recruitment of Lumad warriors into the various state and non-state armed forces operating in Mindanao, not always in the service of Lumad interests. But in recent years, there has been the formation of separate, autonomous Lumad armed groups that are non-aligned with either the AFP or the NPA. In some cases, they

73 *Ibid*., p. 21.
74 Tupas, Jeffrey M., "Tribal tillers fear being in military's enemies list," *Philippine Daily Inquirer*, 29 January 2007, p. A4.
75 Emmanuel A. Mahipus, Empowerment of the Lumads in Critical Areas of Southern Mindanao and its Effects on Insurgency (Master in National Security Administration thesis, National Defense College of the Philippines, 2003) 51-54.

have taken the form of Lumad "territorial defense forces" to preempt any recruitment of their warriors by the AFP and the NPA. **One wonders though whether a time will come when such indigenous and tradition-based armed strength will be needed also to assert the Lumad's own right to self-determination or to have a louder voice in the peace process. Before it gets to that, effective vehicles, forums or mechanisms for the Lumad agenda have to be developed, whether within or parallel to the already existing and ongoing peace processes on both the Communist and Moro fronts.**

Peace Advocacy and Constituency-Building on Two Fronts

Finally, we come to the motive forces, the peace movements on the two fronts.

These movements have admittedly lost some ground in peace constituency-building because of past and current failures or loss of momentum in peace negotiations, agreements and implementation, more so on the Communist front than on the Moro front. Public interest in and support for the GRP-NDF peace negotiations have been much on the wane for quite some time already because of perceived lack of sincerity and of long suspensions. The peace constituency for the Mindanao peace process is in somewhat better shape but the Mindanao peace movement still has its weaknesses, as shown by the MOA-AD controversy.

Be that as it may, **the various groups, individuals and networks of Mindanao peace advocates and their activities are one of the bright spots and sources of hope for the Mindanao peace process**.[76] **The Mindanao peace movement is actually showing the way for the national peace**

76 There is growing related literature on this Mindanao peace work. There is at least one book, just on Mindanao peace advocacy: Karl M. Gaspar CSsR, Elpidio A. Lapad, and Ailynne J. Maravillas, Mapagpakalinawon: A Reader for the Mindanawon Peace Advocate (Davao City: Alternate Forum for Research in Mindanao, Inc. and Catholic Relief Services/Philippines, 2002). See also Steven Rood, "Civil Society and Conflict Management" (Paper prepared for the "The Dynamics and Management of Internal Conflicts in Asia" Third Study Group Meeting, February 27-March 3, 2004, Washington, D.C.); Carolyn O. Arguillas, "Enlarging spaces and strengthening voices for peace: civil society initiatives in Mindanao" in Accord Update Issue 6 (2003), The Mindanao peace process, A supplement to Compromising on autonomy, 12-16; and Initiatives for International Dialogue, Peacebuilder's Kit for Mindanao: Working for a Peaceful Mindanao (Davao City: Initiatives for International Dialogue, 2002).

movement. Below the relatively quiet surface of the peace constituency are the increasingly active efforts at peace advocacy, peace education, peace research, relief for evacuees, rehabilitation and development, interfaith dialogue, reconciliation and healing, women in peace-building, culture of peace, peace zone-building and other community-based peace initiatives.[77] Peace workers have indeed acted locally, and usually more effective at that than when acting nationally. Their separate but interrelated and collective efforts at various levels, in various peace fronts, are **a source of hope that eventually a critical mass consolidated into a strengthened peace movement will turn the tide in favor of peace**. By 2003, seven peace networks came together to form a coalition called Mindanao Peaceweavers: the Agung Network, Bishops-Ulama Forum (BUF), Consortium of Bangsamoro Civil Society (CBCS), Mindanao Peace Advocates' Conference (MPAC), Mindanao Peoples' Caucus (MPC), Mindanao People's Peace Movement (MPPM), Mindanao Solidarity Network (MSN), and Peace Advocates Zamboanga (PAZ).

The work of the MPC and its "Bantay Ceasefire" in engaging or "accompanying" the GRP-MILF peace negotiations and the ceasefire has also served as a model for similar initiatives on the Communist front which includes Mindanao. In particular, it inspired the independent citizen network called "Sulong CARHRIHL" to monitor and promote that human rights and IHL agreement in support of the broader GRP-NDF peace process. "Sulong CARHRIHL" is currently the only sustained civil society effort of promoting this peace process and which has local partners nationwide, inc. in Mindanao. But it needs so much more partners for peace work on the Communist front where the peace constituency is still very weak.

I would therefore now pose the challenge to the Mindanao peace movement and advocates, esp. in the majority Christian areas, to take up the cause of the peace process also on the Communist front since this affects an already bigger part of Mindanao. In this way, the Mindanao peace movement would greatly help build the much-needed

[77] One good, more recent survey, with case studies, as well as discussion of the obstacles and opportunities of civil society peacebuilding work in Mindanao is Ayesah Uy Abubakar, "Challenges of Peacebuilding in the GRP-MILF Peace Process" in Kamarulzaman Askandar (ed.), Building Peace: Reflections from Southeast Asia (Penang, Malaysia: Southeast Asia Conflict Studies Network, 2007) 205-30.

peace movement and constituency on that other front. Perhaps, there can be analogy here with the special significance and main contribution of Mindanao and Mindanao forces to the Communist front of war. But this time, let it be on the peace front. It is conventional wisdom not to wage war on two fronts. As it is, the AFP has long been waging war on two fronts in Mindanao. But it was only two years ago, that its Southern Command divided itself into two new commands to each focus on those two fronts of Western Mindanao and Eastern Mindanao. Might the Mindanao peace movement not also have its Western and Eastern Mindanao "commands"? Peace must be waged on all fronts where it is needed. Might that not be too much to handle? Maybe, but *if anybody can do it, Mindanao can, with its proven dynamism*.

All-told, there is need for a strategy of peace constituency/movement building at the Mindanao and national levels. UNDP peace consultant Dr. Paul Oquist once spoke in 2002 of the need for a "broad-based alliance for peace, human rights and democracy in Mindanao" but also a "national movement that provides the social base and political support necessary to construct peace in the short, medium and long terms" and a "vigorous civil society presence in the form of a peace movement that articulates the consolidation of various citizens' peace initiatives."[78] He described this task as "probably medium-term." Incidentally, in his UNDP Fifth Mission Assessment Report of 2002, he also started to note that "The peace process with the CPP-NPA-NDF must also be factored into the construction of peace [in Mindanao]." Though, as we had discussed, it actually may be the armed conflict with the CPP-NPA-NDF that should be factored in even more.

"Probably medium-term" is a good time frame of mind for the peace movement to be guided by a *strategic orientation and its own road map* to enable it to be more proactive. This strategic peace movement, with a "high-level Peace Council of notable citizens" as possible rallying point, is basically the critical mass needed to make the institutional peace-building

[78] Dr. Paul Oquist, "Mindanao and Beyond: Competing Policies, Protracted Peace Process and Human Security" (23 October 2002) 12-13. He has been UNDP Senior Regional Governance Adviser for Asia and Coordinator, UNDP Paragon Regional Governance Programme for Asia. A major part of his analysis on the Mindanao Peace Process is a result of a series of assessment missions undertaken jointly with Alma R. Evangelista, UNDP Philippines Peace and Development Advisor.

policy position politically and operationally feasible. The Mindanao peace movement *cannot be insular*; it too must link to a national movement and have allies in "Imperial Manila" because "the powers to decide on war rests in Metro Manila with people who have not, and will not feel the consequences of their decisions."[79] In fact, the whole Philippine peace movement *cannot be insular*. It must relate to international and regional (Southeast Asian) developments and initiatives in the spirit of learning from and helping one another.

[79] Carolyn O. Arguillas, "Enlarging spaces and strengthening voices for peace: civil society initiatives in Mindanao" in Accord Update Issue 6 (2003), The Mindanao peace process, A supplement to Compromising on autonomy, 16.

KONSULT MINDANAW! Study Paper

Interrelationships of Peace Negotiations, Public Consultations, and D.D.R.

(13 June 2009)

The question of proper interrelationships among peace negotiations, public consultations and DDR [Disarmament, Demobilization, and Reintegration] has been posed because of the "new peace paradigm" laid down by President Arroyo in August 2008 at the height of the MOA-AD controversy and relevant hostilities that broke out then in Central Mindanao. This study paper seeks to address this question not only in general terms, but also with a particular mind to the concerns of the community consultation and dialogue for peace in Mindanao being undertaken by KONSULT MINDANAW! which has ensued from that situation.

The "New Peace Paradigm"

The President's or the Palace's policy guidance or statements on a "new peace paradigm" are quoted, thus:

> "Henceforth, the focus of peace processes will not only be on negotiating with armed groups but more importantly, on authentic dialogues with the people in the communities…. By talking directly with the people, we aim to generate a national consensus against armed struggle as a means of achieving political and social change…. In this regard, disarmament, demobilization and rehabilitation (DDR) will be the overall framework governing our engagements with armed groups in peace talks…. DDR as espoused by the communities, will be a notice to armed groups of their rejection of armed struggle; and a way of showing that the force of arms does not entitle them to representing our people…. In effect, our people—together with government—will be the primary force in defining the shape and direction of societal

> change, not the force of arms." (19 August 2008)
> "… the President has refocused all peace talks from one that is centered on dialogues with rebels to one of authentic dialogues with the communities, with DDR as the context of our engagements with all armed groups." (28 August 2008)

From these policy guidance and statements, one can glean the President's or the **government's framing of the interrelationships among peace negotiations, public consultations and DDR**:

1. Peace negotiations with rebel groups are now secondary to authentic direct dialogues with the communities and the people (one form of which is public consultations).
2. The aim of community dialogue is to generate a national consensus against armed struggle and for DDR of rebel groups.
3. The overall framework or context of peace negotiations with rebel groups is DDR.

While this "new peace paradigm" has the **merit** of accentuating what could be public participation in and ownership of (or popular sovereignty in) the peace process, its **more significant demerits** are: serious doubts about the authenticity of the envisioned community dialogues because of a pre-set outcome; the downgrading of peace negotiations with rebel groups; and the sidelining of the "root causes" agenda in favor of a DDR agenda. The latter gives this paradigm a decidedly counter-insurgency flavor. Worse is its retrogression in terms of already well-developed government peace frameworks, as we shall show shortly below.

Part of the afore-quoted "new peace paradigm" also includes these: "The parameters governing our negotiations, particularly in defining societal change, will be a balance between constitutionality and public sentiment." (19 August 2008); and "Moving forward, we are committed to securing an arrangement that is constitutional and equitable because that is the only way that long-lasting peace can be assured." (28 August 2008). More recently, PAPP Sec. Avelino I. Razon, Jr. said, "… the GRP is now guided by the Supreme Court decision [on the unconstitutionality of the MOA-AD] and the outcome of our continuing consultations on the ground, in resolving the substantive issues at the negotiating table." (16 March 2009)

SC Decision on the MOA-AD

So, one cannot avoid looking at the SC Decision of 14 October 2008 on the unconstitutionality of the MOA-AD in so far as this has become **part of the guidance to the GRP as to the interrelationships among peace negotiations, public consultations, and DDR**. The clearest guidance here is on what is viewed as the primordial role of public consultations vis-à-vis the peace negotiations. The SC Decision affirmed "the people's right to be consulted on relevant matters relating to the peace agenda," citing at least three pertinent laws on consultation, namely Executive Order No. 3, the Local Government Code of 1991 and the Indigenous Peoples' Rights Act (IPRA) of 1997 [see SC Decision, pp. 85-86]. The Decision stated relevantly that "**In fine, E.O. No. 3 establishes petitioners' right to be consulted on the peace agenda, as a corollary to the constitutional right to information and disclosure.**" [p. 43]

The SC Decision [in p. 42] quite significantly cited at least **three relevant passages from E.O. No. 3**:

- its last preambulatory clause: "WHEREAS, there is a need to further enhance the contribution of civil society to the comprehensive peace process by institutionalizing the people's participation;"
- its Section 3(a): "A comprehensive peace process should be community-based, reflecting the sentiments, values and principles important to all Filipinos. Thus, it shall be defined not by government alone, nor by the different contending groups only, but by all Filipinos as one community;"
- its Section 4(b): "CONSENSUS-BUILDING AND EMPOWERMENT FOR PEACE. This component includes continuing consultations on both national and local levels to build consensus for a peace agenda and process, and the mobilization and facilitation of people's participation in the peace process." [as the second of "The Six Paths to Peace"]

In more general governance terms, the SC Decision said: "Indeed, ours is an open society, with all acts of the government subject to public scrutiny and available always to public cognizance. This has to be so if the country is to remain democratic, with sovereignty residing in the people and all government authority emanating from them." [p. 46]

The MOA-AD was struck down by the SC Decision as unconstitutional, even if wrongly so, partly because of the finding that "The **PAPP committed grave abuse of discretion** when he **failed** to carry out the pertinent consultation." [p. 43] At the same time, the Decision stated: "The Court may not, of course, require the PAPP to conduct the consultation *in a particular way or manner*." [p. 43] That pertains, as the SC Decision does, to ***government-led* consultations**. With more reason should there be freedom in way or manner as well as in objectives when it comes to ***independent civil society-led* consultations** like those of KONSULT MINDANAW!

There is one **brief but significant passage in the SC Decision which touches in passing on the interrelationship between peace negotiations and DDR**. We quote: "In the same vein, Professor Christine Bell, in her article on the nature and legal status of peace agreements, observed that the typical way that peace agreements establish or confirm mechanisms for demilitarization and demobilization is by linking them to **new constitutional structures** addressing governance, elections, and legal and human rights institutions." [p. 69] From this it is clear that DDR in peace negotiations and agreements should be framed in the context of a broader peace agenda than that essayed in the government's "new peace paradigm" quoted above.

E.O. No. 3 and "The Six Paths to Peace"

Government actually has an existing broader peace framework than the "new peace paradigm" but the former has unfortunately been "superseded" by the latter. That "superseding" is questionable because the existing broader peace framework is E.O. No. 3 ("Defining Policy and Administrative Structure for Government's Comprehensive Peace Efforts") dated 28 February 2001 which was **affirmed in the SC Decision as the "marching orders" to the GRP Peace Panels and the PAPP** [p. 42]. E.O. No. 3 has its origins or antecedent in E.O. No. 125 ("Defining the Approach and Administrative Structure for Government's Comprehensive Peace Efforts") dated 15 September 1993. This was in turn the result of the recommendations of the National Unification Commission (NUC) after conducting nationwide consultations in 1992-93. **This for one shows how a major public consultation process can result in new major policy directions**. The KONSULT MINDANAW! consultations also have this

potential. Thus, **the NUC consultations of 1992-93 might be seen as the Philippine "baseline" of sorts for the KONSULT MINDANAW! consultations of 2009**.

One of the main policy legacies of the NUC was the formulation of "**The Six Paths to Peace**" or components of the comprehensive peace process:

1. Pursuit of Social, Economic, and Political Reforms.
2. Consensus-Building and Empowerment for Peace. [fully quoted above as E.O. No. 3, Section 4(B)]
3. Peaceful, Negotiated Settlement with the Different Rebel Groups.
4. Programs for Reconciliation, Reintegration into Mainstream Society, and Rehabilitation.
5. Addressing Concerns Arising from Continuing Armed Hostilities.
6. Building and Nurturing a Climate Conducive to Peace.

One readily sees Paths 2 and 3 as pertaining to public consultations and to peace negotiations, respectively. Path 4 seems related to DDR, esp. the Reintegration or Rehabilitation aspects, the difference being that DDR is a mainly "post-conflict" program while Path 4 is a "during-conflict" program. This is in fact one of the innovative features among "The Six Paths to Peace."

As for interrelationships among "The Six Paths to Peace," E.O. No. 3, Section 4 on this itself provides that "These components are interrelated and not mutually exclusive, and must therefore be pursued simultaneously in a coordinated and integrated fashion. They shall include, but may not be limited, to the following [six components]." Former NUC and OPAPP Executive Director Maria Lorenza "Binky" Palm-Dalupan, who was instrumental in the NUC consultations and recommendations as well as the drafting of E.O. No. 125 under the Ramos administration, describes "The Six Paths to Peace" as "a comprehensive, multi-track and holistic approach" where **the paths "are equally important** and necessary." She elaborates:

> … Therefore, the government peace process is much more than just peace negotiations, or livelihood for ex-combatants, or amnesty, which is itself only one element of the reconciliation path. Furthermore, these paths are not mutually exclusive but are interrelated and complement, support and reinforce each

> other. For example, major reforms are powerful confidence-building measures and may significantly improve the chances of a positive outcome of peace negotiations. Therefore, specific peace initiatives or programs may include elements of several paths or contribute to specific objectives of more than one path.
>
> … the approach recognizes the dynamism of the peace process, that it evolves and shapes situations, even as it must respond to changing situations and contexts of peace and conflict. Thus, it accepts the possibility of new initiatives within the Six Paths, or even developing other paths.[80]

The above-mentioned point that the paths "are equally important" does not seem to be upheld in the "new peace paradigm" which makes peace negotiations with rebel groups (Path 3) secondary to authentic dialogues with the communities (Path 2). That the "new peace paradigm" makes DDR as the overall framework or context of peace negotiations also goes against the grain of "addressing the root causes of internal armed conflicts and social unrest" (an aspect of Path 1). Besides, DDR as a valid "post-conflict" program is being front-loaded even before negotiations to resolve the armed conflict (Path 3), much like the cart being put before the horse.

Further Light on Paths 2 and 3

Binky sheds further light on Paths 2 and 3, as may be instructive for KONSULT MINDANAW! **On Path 2**: "This path seeks to actualize the principle of a community-based peace process [already fully quoted above as E.O. No. 3, Section 3(a)]. On one level, carrying out this path means ensuring that people's participation, consultation and consensus-building are an **integral part of all peace efforts**. On the other hand, it means providing **support for community peace initiatives** on both national and local levels. In these ways, this path seeks to make people's participation and **responsive consultation a regular part of governance**, give people and communities a voice and a choice on matters that affect their lives,

80 Maria Lorenza Palm-Dalupan, *"The Development of the Government's Comprehensive Peace Program"* in The Media and Peace Reporting: Perspectives on Media and Peace Reportage (Pasig City: Office of the Presidential Adviser on the Peace Process in cooperation with the Center for Media, Freedom and Responsibility, 2000) 25.

thereby contributing to their empowerment."[81] (bold face type mine)

She then cites several examples during the Ramos administration. A notable one is the process on consultations on the Indigenous Peoples Sectoral Agenda eventually leading to the IPRA in 1997. This is an example of Path 2 contributing to Path 1. We have to note more currently how **Lumad concerns** were among those involved in the MOA-AD controversy and how IPRA figured prominently in the SC Decision, even as it was a stated term of reference for the MOA-AD.

A second example is how one regional endeavor, the Mindanao Peace and Development Initiative (MPDI), and an ensuing summit process, led to the promotion of a **Mindanao Agenda for Peace and Development** (MAPD). In other words, there are these Mindanao agendas for peace and development (generic) of the recent past **that can be built and improved on**. No need to reinvent (or repeat) the wheel.

A third example is how **Mindanao peace advocates were also consulted** and made **significant contributions to the compromise formula** that led to the 1996 GRP-MNLF *Final Peace Agreement*. This and the previous example are those of Path 2 contributing to both Paths 1 and 3, respectively. "Thereafter, efforts also focused on addressing public sentiments and concerns about the provisions of the agreement and the emerging political order in the region, on the participation or support for the successful implementation of the peace agreement [which, however, didn't happen but that's another story – this writer], and on propagating a culture of peace in Mindanao through peace education and advocacy (see Path 6)."[82]

On Path 3, Binky says: "This path firmly establishes **peaceful negotiations as the government's primary approach toward the armed rebel movements**. Government's specific objectives in this endeavor are the attainment of a peace settlement that would address the major issues of conflict and contribute to societal reform, end the armed hostilities, facilitate the rebel groups' shift to legal parliamentary struggle within the parameters of the rule of law and democratic processes, and their honorable

81 *Ibid.*, 29.
82 *Ibid.*, 30-31.

integration into and participation in civil and political life."[83] (bold face type mine) Note how this latter part shows **how peace negotiations properly segue into DDR**, with the latter as part of a broader framework that addresses the major issues of conflict.

This is unfortunately **not reflected in the "new peace paradigm."** Worse, the latter indicates that it is **no longer peace negotiations but military action that is now the government's primary approach toward the armed rebel movements**, at least toward the CPP-NPA-NDFP, if not also to some extent toward the MILF.

All told, **"The Six Paths to Peace" is a fairly good framework** for dealing with the question of the interrelationships among peace negotiations, public consultations and DDR. This is supposed to be the government's peace framework, even if it is not being followed sometimes. **Civil society initiatives like KONSULT MINDANAW! can adopt, build on and improve on it, without being necessarily limited by it**.

Lessons from the NUC Consultations

Since the NUC consultations might be considered a "baseline" of sorts for the KONSULT MINDANAW! consultations, it would be good for the latter to be mindful of some lessons from the former. Binky for her part noted some problems in the implementation of the government's peace program during the Ramos administration that appear to be still around under the current Arroyo administration. These problems are relevant to KONSULT MINDANAW! in so far as it may still have to deal with government functionaries during the conduct of consultations, especially in view of the "new peace paradigm:"

- "… there is a lack of appreciation and understanding of the broader perspective and approach of EO 125, with some still equating peace only with the end of armed conflict."[84]
- "… for some quarters in government, consultation means getting people over to an already established agency position on an issue, rather than a process of gathering information and consensus-building wherein various concerned parties can work toward just, mutually

83 *Ibid.*, 31.
84 *Ibid.*, 55.

acceptable resolutions for the common good."[85]
- "… the reality of continuing hostilities always has a negative impact on a peace effort… causes some peace efforts to be misconstrued as serving COIN [counter-insurgency] objectives, and may adversely affect the climate for peace…"[86]

The latter problem indicates the **need for some consultation guide questions to be addressed to *what may be done about the reality of continuing hostilities*** since this (e.g. the "law enforcement" operations against the three so-called "rogue" commanders of the MILF) is actually one of the current stumbling blocks in the GRP-MILF peace process.

Long-time peace advocate, researcher and educator Prof. Miriam Coronel-Ferrer of UP has noted some relevant issues and controversies regarding the NUC consultations in the process of making an overall assessment of them:[87]

- Some local government officials were alienated by the civil society-driven process. The NUC had to issue a memorandum in December 1992 requiring city mayors' inclusion in the Provincial Convenor Groups (PCGs). Because some local governments did not own the outcome, they did not have much commitment to its implementation.
- Some found the multi-tiered structure of consultations repetitive and tedious or dismissed the exercise as a reiteration of grievances and demands expressed in previous forums and earlier negotiations. Sometimes the discussion lost focus and participants raised seemingly unrelated concerns, such as pornography and family values.

Overall, Coronel-Ferrer assesses the NUC consultations positively in terms of having raised public awareness of the issues and mobilized active support for the peace process; put political negotiations back on track; and stimulated the emergence of a national network of peace convenors, advocates and groups. Her concluding observations are most relevant today, whether for KONSULT MINDANAW! or other consultation processes:

85 *Ibid.*, 56.
86 *Ibid.*
87 The points herein are from Miriam Coronel-Ferrer, "Philippines National Unification Commission: national consultation and the 'Six Paths to Peace'," *Accord* (of Conciliation Resources-London), Issue 13, 2002, pp. 82-85.

> … Consultations that enable direct interface with government have generated more pressure to deliver results. **But consultations alone are not enough. If held repeatedly but without substantial outcomes, participants become cynical about the purpose and the sincerity of those engaged**. This soon overrides the usefulness of the process as a mechanism for building consensus. **Instead, consultations should be cumulative** and be seen as such—building from the outcome of previous ones—rather than merely repetitive. Government and society **must consistently follow through with the changes identified** through these processes if a just and sustainable peace is to emerge, even if only block by block. (bold face type mine)

And the best test of the pudding, as far as follow-through to Path 2 public consultations are concerned, are in results in Path 1 societal reforms and Path 3 negotiated settlements. The ultimate value of a consultation process may largely depend on how it links with and contributes to the reform and negotiation processes.

International Perspectives on Public Consultations for Peace Negotiations

In the related international literature on peace initiatives, public consultations come **under the rubric of people's participation in peacemaking**. Conciliation Resources (C-R)-London for one has given some attention to this erstwhile "little documented approach to peacemaking practice." C-R put out *Accord*'s first theme issue, Issue 13 in 2000 on "Owning the process: Public participation in peacemaking," from which we shall mainly refer to in this section of this paper. That *Accord* Issue 13's Foreword by a veteran Filipino peace advocate Ed Garcia[88] highlights what might be considered the philosophical or conceptual basis for popular participation in peace processes:

- If people **own the process**, they will work hard to ensure viable outcomes for a peace agreement and for its subsequent implementation. Their participation early on is a large part of building the **social infrastructure of peace**.
- **Process and outcome walk hand in hand**. Effective participation mechanisms **made a difference both in the quality of agreements reached and the legitimacy with which these agreements were viewed** by the public.

[88] Ed Garcia, "Foreword," *Accord*, Issue 13, 2002, p. 5.

The last point actually comes from the said *Accord* Issue 13's lead article on "Democratizing peacemaking processes: strategies and dilemmas for public participation" by peace processes specialist Catherine Barnes.[89] She sees this within the wider context of **the right to effective participation in governance**. Indeed, it has already been noted how our own NUC consultations helped institutionalize public consultations as a regular part of governance (at least during the Ramos administration). Barnes notes how in most cases the peace process was **entwined with moves toward democratization**. This has changed the previously prevalent strategy for peace negotiations with rebel groups which may be described as "elite pact-making" or a deal between two political (government and rebel) elites – where there is hardly a voice outside the combatant parties in shaping the agreements or endorsing them.

Barnes synthesizes the whole *Accord* Issue 13 in this way, which also shows **in general terms the value of public consultations to peace negotiations** (as in fact already noted by KONSULT MINDANAW! from another Barnes article):

> … It documents and analyzes a range of experiences where non-combatant activists asserted the right of the wider public to participate in the negotiated processes to shape their country's future. In so doing, to varying degrees they were able to **influence the shape** of the process, **the agenda** of issues addressed, **the substantive agreements** reached and **their implementation**. In most cases they brought the talks process into the public sphere, enabling a wider range of people to **contribute suggestions** and **follow the negotiations**. With greater transparency, the public was better able **to understand** – and potentially accept – the reasons for **the compromises reached**. (bold face type mine)
>
> In addition to this, Barnes draws out more of the value or potential value of public participation processes in peacemaking:

- increasing the **transparency and accountability** of peace processes

[89] Catherine Barnes, "Democratizing peacemaking processes: strategies and dilemmas for public participation," *Accord*, Issue 13, 2002, pp. 6-12.

- taking the political debate out of the national capital and into places **accessible to ordinary people**
- **important symbolic value**: people felt that they were being included in politics
- offering the **best hope for a durable peace** because **no party could dominate unilaterally**
- becoming a ***de facto* forum for** some degree of **power-sharing**
- providing opportunities for **social and political reconciliation** through the act of making and keeping agreements
- helping to promote **transformation of relationships** impaired by conflict

The last two points here are particularly important in the context of the Mindanao Peace Process where the two basic concerns are to address the root causes of the conflict (structural - vertical dimension) AND to heal deep social, cultural, and religious cleavages (relational - horizontal dimension).[90]

Barnes points out **three modes of public participation in peace processes**, as emerged from the six country cases: (1) *representative participation* through political parties (South Africa and Northern Ireland); (2) *consultative mechanisms* where civil society has an opportunity to voice views and formulate recommendations (Guatemala and the Philippines); and (3) *direct participation*, where all interested individuals engage in a process of developing and implementing agreements to address the conflict, usually more viable at local or sub-national levels (Mali, Colombia and South Africa). [The Philippine case studied was in fact that of the NUC consultations.] The mechanisms range from "maximalist" such as a deliberative body whose agreements have binding legal force, to "minimalist" where bodies are primarily consultative with outcomes treated as non-binding recommendations. **It is best that whatever such mandate there is per mechanism is clear to all concerned so that there are no undue expectations**.

Barnes concludes from the Guatemalan and Philippine cases that consultation processes may be weaker forms of participation than the "representative" model. She said, "At worst, they can be a superficial public

90 The concepts here have been most notably articulated by Mindanao peace advocates Fr. Eliseo R. Mercado, Jr., OMI, and Yasmin Busran-Lao.

exercise; at best, they can be an opportunity to contribute ideas to the political debate while strengthening the legitimacy of different elements of civil society to have voice in policy-making." The last point is also important, i.e. to have **legitimacy of civil society peace initiatives** and not only legitimacy of the peace negotiations and agreements.

Relevant to the **legitimacy, credibility and quality of the public participation process** (e.g. consultation) itself are such questions as:

- how the spaces for public participation were created and whether the origins of a mechanism shape the quality of participation that occurs through it
- *how the interests, aspirations and values of different constituents of a society can inform the political negotiations*
- whether the participants truly represented the diversity of public interest and opinion (like were leaders able to engage or communicate effectively with their members and the wider public)
- whether they were able to generate a broad social consensus in support of the process and agreements reached

Two Paths, Two Tensions, Two Objectives, Two Concerns

At this point, I wish to bring in some of my own reflections on the interrelationship of peace negotiations and public consultations in dealing with two particular relevant tensions**: the tension between those who took up arms and those who did not**; and **the tension between confidentiality and transparency**. These two tensions have bedeviled the GRP-MILF peace process in particular. On one hand, some in government and even in civil society ask why "reward" those who took up arms, while neglecting those who did not, just because they are not a threat. The "new peace paradigm" reflects this trend of thought such as when saying that "The force of arms does not entitle any armed group to represent the people." On the other hand, the MILF for one says it was they who dared to take up arms for a cause, to wage an armed struggle; it is they who have to be talked with to resolve the armed conflict. And then we all know the tension between confidentiality and transparency that was a big part of the MOA-AD controversy.

Without oversimplifying the matter, we might posit that:

1. Peace negotiations address the concerns of mainly those who took up arms, while public consultations address the concerns of mainly those who did not.
2. Public consultations address the transparency concern regarding peace negotiations which generally require a high degree of confidentiality.

The first point also relates to one of the usual or normal **objectives of peace negotiations** which is "**to resolve the armed conflict**" (relevant to the concept of *negative peace*). But this is not the only objective of peace negotiations, as there is also the objective of "**attainment of a just and lasting peace**" (relevant to the concept of *positive peace*).[91] This in turn depends on the substance of the peace agreement or negotiated political settlement (Path 3), particularly in terms of agreed social, economic, and political reforms (Path 1).

A peace researcher has pointed out that "If armed conflict could be addressed by simply talking to communities, there would be no need for political negotiations anywhere in the world."[92] But while negotiations with the armed groups may suffice to resolve the armed conflict, it will take more than that to attain a just and lasting peace. The latter also requires the participation and support of those who did not take up arms. In fine, both community dialogues and peace negotiations have their respective functions.

The purpose or objective of peace negotiations can also be gleaned from the definition of "international negotiation" in the literature of international dispute resolution: "a process aimed at **mutual problem solving** and reaching a **joint settlement acceptable to all parties**."[93] (bold face type mine) One sees clearly these two highlighted elements in the following passage from one of the framework agreements in the second phase of the GRP-MILF peace negotiations, this time with Malaysian third-party

[91] See, for example, these two objectives as stated in paragraphs 1 and 2, respectively, of the GRP-NDFP *Hague Joint Declaration* of 1 September 1992.

[92] Kristian Herbolzheimer, "DDR?" (Paper as Research Fellow, Initiatives for International Dialogue, Davao City, 4 September 2008).

[93] Christine Chinkin, "Chapter 12, Peaceful Settlement of Disputes," in H. Reicher (ed.), *Australian International Law Cases and Materials* (1996) 964.

facilitation:

> *Recognizing* the need to resume their stalled peace talks in order to end the armed hostilities between them and achieve a **negotiated political settlement** of the conflict in Mindanao and **of the Bangsamoro problem**, thereby promoting peace and stability in this part of the world;[94] (bold face type mine)

To mutually "solve the Bangsamoro problem" (the MILF's original single talking point) requires not only a negotiated political settlement (Path 3) but also the corresponding structural reforms (Path 1) AND a national consensus and peace constituency in support of these (Path 2).

The Bangsamoro problem is the cutting edge or key link of the Mindanao problem which, however, has a tri-people dimension. KONSULT MINDANAW! is well aware of this, and this is reflected in its four basic questions for its consultations, particularly on recommendations for the GRP-MILF peace talks and for the broader peace process. This also tallies with what we referred to earlier as the **two basic concerns** of the Mindanao peace process: to address the root causes of the conflict AND to heal deep social, cultural, and religious cleavages. **Not only the consultation questions but also *the way the consultation is conducted* should address the second concern**.

Two Fronts in Two Senses: MILF and MNLF, Moro and Communist

But **the Bangsamoro dimension of the Mindanao Peace Process** cannot be reduced to just the GRP-MILF peace process. There is also at least the GRP-MNLF peace process and one might even add the ARMM track currently not under the helm of either of the **two Moro liberation fronts**. So, one might even say that there is more relative disunity on the Moro front than there is on the Lumad and Christian settler/migrant fronts as to what political solutions there might be. There is much potential for divide-and-rule that must be guarded against. **The Moro front**, therefore,

[94] *Agreement on the General Framework for the Resumption of Peace Talks Between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front*, 24 March 2001, Kuala Lumpur, Malaysia, second prefatory paragraph (Annex 26). This was the third among the Terms of Reference of the draft MOA-AD.

deserves a certain special and careful attention and handling in whatever consultation processes like that of KONSULT MINDANAW!. As it is, the MILF had already made an early warning against any partisanship on the part of the convenor Bishops-Ulama Forum (BUF).

It is good that KONSULT MINDANAW! has consciously framed its consultation guiding principles to include Islamic terms of reference, particularly the principle of ***shura*** (consultation)—which incidentally the late MILF *Imam* (religio-political leader) Salamat Hashim gave much weight to.[95] *Shura* is then supposed to lead to ***ijma*** (consensus). In the case of the GRP-MNLF peace negotiations of 1992-96, President Ramos said "The ASEAN approach of *Musjawarah* (consultation) and *Mufakat* (consensus) proved to be most productive."[96]

Can *consultation* help achieve at least MILF-MNLF *consensus* or a unified position on the Mindanao peace process? In the case of KONSULT MINDANAW!, it should perhaps be made clear that its **first responsibility is to ascertain the true wishes and views of the people, inc. on the Moro front.** It would be *only a secondary concern, if ever, to help achieve a Moro consensus*. If it somehow achieves that, then that would be a bonus. But that is really more the concern or responsibility of *another intra-Moro or inter-MILF-MNLF consultation process*.

Carrying out consultation effectively and legitimately within the Moro sector with its own tribal and political configurations is quite a challenge. This writer does not pretend to know the specific dynamics and mechanics for this. KONSULT MINDANAW! will have to **blaze its own trail** here with much sensitivity, knowledge (inc. local knowledge), flexibility, creativity and determination (inc. self-determination, pun intended). This is where some wise words from Barnes might come in: "… there are no uniform formulas that can be transplanted elsewhere because the impetus for activating genuine participation is deeply rooted in the fabric of each society."

Before closing this discussion on peace negotiations and public

[95] See e.g. Abhoud Syed Mansur Lingga, *The Political Thought of Salamat Hashim* (M.A. Islamic Studies thesis, Institute of Islamic Studies, University of the Philippines, 1995).
[96] Fidel V. Ramos, *Break Not The Peace: The Story of the GRP-MNLF Peace Negotiations 1992-1996* (Philippines: Friends of Steady Eddie, 1996) 98.

consultations in the context of the Mindanao Peace Process, "the other peace process" there involving a communist rebel faction has to be mentioned because there are really **two fronts of war and peace in Mindanao**, the Moro front and the Communist front (the interrelationship of this with the Mindanao Peace Process should be dealt with in another study paper). These are also relevant to "the broader peace process" for which KONSULT MINDANAW! seeks recommendations. "The other peace process" we are referring to is that with the relatively little-known *Rebolusyonaryong Partido ng Manggagawa ng Mindanao* (RPM-M). What is significant about the small GRP-RPM-M peace process is its effective combination of peace negotiations and public consultations:

> It has a radically different approach from that of the big top-level peace negotiations in that it does not involve complex peace negotiations. Rather, a local peace and development agenda that will have an immediate impact on the ground will be formulated by the concerned communities and tribes in Mindanao through participatory local consultations to identify problems and needs as well as responses there which could take the form of projects. Such empowered and sustainable communities are the real foundation of peace. The process itself will allow these communities to win small victories and build peace by themselves. The final political settlement is important but the communities need not wait for this. Building peace for them is here and now. This community-level process continues to be pursued independent of the panel-level talks and despite the latter's delay. Still, the RPM-M peace process is also getting back on the latter track which is still needed for a final resolution to the conflict.[97]

If there is a need for models of authentic dialogue with the communities, here is one in Mindanao which also has the merit of upholding the equal importance of peace negotiations with rebel groups.

Peace Negotiations and DDR

After extensively discussing the interrelationship of peace negotiations and public consultations, we finally come to post-conflict DDR. The best synthesis literature on this says:

[97] See Kaloy Manlupig, "GRP-RPM-M: The Other Peace Process," accessible at www.balaymindanaw.org/ bmfi/essays/2004/grp-rpmm.html. Manlupig heads the NGO Balay Mindanaw which serves as the independent secretariat for the talks, another unconventional feature of this process.

> All peace processes after an armed conflict have to go through a final stage in which, once agreements have been signed, the combatants give up their weapons and reintegrate into civil life. This complex stage is known as DDR…The DDR must therefore be one component of a broader peace building strategy. The DDR must always be the result of a political agreement, a consensus; either the result of a peace process or of other commitments. In any case, it cannot be the result of an imposition, although it may be induced by means of incentives…. the DDR takes part of wider commitments negotiated in the peace process (justice reform, reform of the police system, changes in the Armed Forces, elections, political changes, etc.)….The DDR must never signify capitulation, de-politicization, demonization, marginalization, bribery, subordination or especially, humiliation. Just the opposite, it has to be a process that dignifies the people involved in it, since they have to give up their weapons voluntarily and as a result of a negotiation and an agreement.[98]

One cannot help but note how the "new peace paradigm" on DDR goes against the grain of that international synthesis. It goes against the common political sense that "Rebel groups take up arms to challenge a given political situation, not to negotiate how and when to hand them over," as peace researcher Kristian Herbolzheimer puts it.[99]

But the above-quoted international wisdom on DDR should **not be really new to the Philippines because at least three of its peace agreements with different rebel groups** provided explicitly for "disposition of forces and weapons" which is equivalent to DDR, at least the disarmament and demobilization aspects and in some cases also the reintegration aspect (e.g. "Livelihood, Material and Technical Assistance"):

1. the GRP-NDFP *Hague Joint Declaration* of 1 September 1992 [which is an interim framework agreement for the peace negotiations]
2. the GRP-ALTAS [Marcos loyalist military rebels] *Agreement in the Matter of Disposition of ALTAS Forces* of 29 May 1995
3. the GRP-RAM/SFP/YOU [anti-Aquino military rebels] *General Agreement for Peace* of 13 October 1995

98 Albert Carames, Vicenc Fisas and Eneko Sanz, *Analysis of the Disarmament, Demobilisation and Reintegration (DDR) Programs Existing in the World During 2006* (Barcelona: Ecola de Cultura de Pau, March 2007) 6, 9.

99 Herbolzheimer, "DDR?"

The 1996 GRP-MNLF *Final Peace Agreement* deliberately, for certain reasons, did not provide for DDR. What it provides for is the joining (integration) of a quota of MNLF forces into the AFP and PNP, as well as the establishment of the Special Regional Security Forces (SRSF) [actually the PNP Regional Command] composed partly of MNLF elements who may be recruited into the force. The Agreement also speaks of "a special socio-economic, cultural and educational program to cater to MNLF forces not absorbed into the AFP, PNP and the SRSF." There are pending issues on all these that the MNLF has for some time raised against the GRP regarding its implementation of the Agreement. The current forum for this is an ongoing **GRP-MNLF-OIC tripartite review process**—in which there is little public participation.

On the other hand, though none of the existing GRP-MILF interim and framework agreements provide for DDR, the **MILF** has already officially issued a **press statement "Peace Path still the best way forward"** through its Vice-Chairman for Political Affairs Ghazali Jaafar stating on 5 September 2008 that:

> The **DDR** approach as the government's "new road map to peace" is part of successful conflict resolutions in many parts of the world. **It forms part of the comprehensive peace settlement, but it is the last item in the talks.** But when DDR is taken up ahead of the comprehensive peace settlement, it is interpreted to be a military approach, not part of a political approach… (bold face type mine)

Aside from the inclusion of DDR in peace agreements, Kristian has also pointed out that it is "**actually a confidence-building measure**" both for the parties to the agreement and for the concerned public **during the implementation stage**.[100]

In view of all these, KONSULT MINDANAW! should thus **address some consultation guide questions *on DDR relevant to the MNLF and MILF situation***—perhaps not so much on whether "yes" or "no" but more on "when" and "how," at least the broad strokes of it.

100 Kristian Herbolzheimer, "Suggestions, not conditions" (Paper as Research Fellow, Initiatives for International Dialogue, Davao City, 14 November 2008).

Public Consultations and DDR

DDR actually has a **community aspect** which is **thus all the more reason for public, particularly community, consultations on it**. The same afore-cited DDR analysis study recommends that, as regards its planning, "all the needs of the groups to be demobilized need to be identified and harmonized with those of the host communities," and that as regards implementation, "the host communities should feel as if they are participants in a process in which the way it is carried out ("how") is considered as high a priority as its objectives ("what")."[101]

The authoritative UNDP *Practice Note* on DDR[102] states that "While much of a DDR programme is focused on ex-combatants, the **main beneficiaries of the programme should ultimately be the wider community.**" Indeed, while disarmament and demobilization deal mainly with ex-combatants, reintegration primarily takes place in communities at the local level. The best practice has been to move from ex-combatant focused reintegration to community-based reintegration. Communities play a central role in the reintegration of ex-combatants as they are the main agent of its success. Ultimately it is communities that will, or will not, reintegrate ex-combatants. The DDR programme should be a means to support communities in their efforts to reintegrate some of their members. Both ex-combatants and communities need to be fully involved in planning and decision-making from the earliest stages. This involves creating **participative consultative forums** for all local stakeholders. Local traditions regarding arms possession and the evolving security situation have to be factored in.

DDR will require specialized kinds of community consultations and needs assessments but general peace consultations like that of KONSULT MINDANAW! would do well to factor in DDR into "the broader peace process." The UNDP *Practice Note* itself notes that "DDR alone, however, cannot be expected to prevent further conflict and restore stability. It must be accompanied by other economic, political, and social reforms."

101 Carames, *et al.*, *Analysis of the DDR Programs Existing in the World During 2006*, p. 10.

102 United Nations Development Programme, *Practice Note: Disarmament, Demobilization and Reintegration of Ex-combatants* (New York: UNDP, n.d.).

IN SHORT CONCLUSION, therefore, it is clear that DDR, peace negotiations and public consultations **each alone are not enough** for a just and lasting peace. Each component or path has a unique and equally important role to play; there are things which one component can do which another cannot, and vice-versa. They have to **come together**, also with other components like societal reforms, community reconciliation, economic rehabilitation, protection of non-combatants, and a culture of peace. These are all interrelated holistically, and **their specific proper interrelationships must be grasped**. **With this grasp, the work of each component can be done much better**.

Expert Analysis Note

Insights from "Small" Peace Processes for the Big GPH-NDFP Peace Process: The Role, Value and, Prospects of Community-Based Approaches

(30 November 2015)

This Expert Analysis Note deals with the "small" peace processes in the Philippines and how they could provide interesting **insights/entry points on how to approach the big peace process**, including peace negotiations, between the Government of Philippines (GPH) and the National Democratic Front (NDFP) differently, **perhaps by focusing more on community-based approaches**. The exploration of different approaches is largely impelled by the long-time stagnation of the top-level GPH-NDFP peace negotiations. One such small but notable community-based peace process is that with the NDFP-breakaway group *Rebolusyonaryong Partido ng Manggagawa ng Mindanao* (RPMM, Revolutionary Workers Party of Mindanao). In addition, there are actually other small community-based processes in the context of the two big peace processes in the Philippines: that with the Moro Islamic Liberation Front (MILF) and that itself with the NDFP. In the process, we cite some related literature and resource persons.

The "Other Peace Process" with the RPMM

The account below with passages in **boldface type** for emphasis, comes from Kaloy Manlupig, Chairperson of Balay Mindanaw (www.balaymindanaw.org), a Mindanao-based, Mindanao-directed and Mindanaoan-led NGO with a core peace-building program and which served as the independent secretariat for the GPH-RPMM peace process.

> The core of our core program is community-based and barangay (village)-focused work for equity, development, resiliency

SOME BACKGROUND AND EARLIER REFORM AGENDA ON THE WAR AND PEACE FRONT

> and peace. We have teams composed of **fulltime community organizers and peacebuilders who live and work with the communities directly affected by violent conflicts**.
>
> The GPH-RPMM peace process which is also called "The Other Peace Process" has these features:
>
> 1. Formal talks are held in the country (usually in the Balay Mindanaw Peace Center)
> 2. The mediator is an NGO, and not a foreign government,
> 3. And most importantly, its inclusiveness through the participation of the broad stakeholders is institutionalized through a formal agreement called "Rules for the Conduct of Local Consultations as Integral Part of the Peace Process."
>
> The process that is used for this peace negotiation does not involve complex political negotiations. Rather, a **local peace and development agenda that will have an immediate impact on the ground** will be pursued. The parties, after conducting local peace consultations in 100 villages, signed the Agreement on the Cessation of Hostilities in 2005, without any reported ceasefire violation until today.
>
> **The formal negotiation component of this process has been put on hold since July 2010** when the current Aquino Government through its Presidential Peace Adviser decided to focus all its attention and resources on the peace negotiations with the MILF. **However, since this peace process has a parallel component of local peace consultations involving villages and tribes**, it **continues to be alive in the more than one hundred villages** that have gone through the local consultations, and are now implementing the agreements and plans they have formulated.
> The communities that came together for the local consultations were those that were directly affected and displaced by the violent conflicts. Their coming together was in a sense their own way of "giving peace a chance." Their coming together has somehow created an irreversible momentum in local peacebuilding as local issues are resolved and local needs addressed. This is a testament to the **critical importance of the principle of local stakeholders' participation and local ownership. A peace process should not rely solely on the top-level negotiations** where the success or failure depends only on the negotiators. **Institutionalizing**

> **people's participation in the process will give it a chance of surviving changes and transitions in government regimes, and even insulate it from negotiation deadlocks and other seemingly insurmountable obstacles.**
>
> It has a **radically different approach from that of the big top-level peace negotiations** in that it does not involve complex peace negotiations… **Such empowered and sustainable communities are the real foundation of peace.** The process itself will allow these communities to win small victories and build peace by themselves. **The final political settlement is important but the communities need not wait for this. Building peace for them is here and now.** This community-level process continues to be pursued **independent of the panel-level talks and despite the latter's delay**. Still, the RPMM peace process **[should be] getting back on the latter track which is still needed for a final resolution to the conflict**.

There is already much from the highlighted points in the above-quoted account from which to draw insights for needed new or different approaches for the big peace processes like that with the NDFP and even with the MILF. It is clear how "The Other Peace Process" with the RPMM has shown the importance of a parallel local community-level component. What appears to be **a major weakness though of the RPMM peace process is the neglect of the formal negotiation component**—a neglect mainly attributable to erroneous policy decision of the incumbent Office of the Presidential Adviser on the Peace Process (OPAPP) to in effect disengage from this particular negotiation. On the other hand, the RPMM leadership must also do its part in getting things back on the panel-level talks track "which is still needed for a final resolution to the conflict." Otherwise, there is a danger of its also going the way of the other small peace processes with the Cordillera People's Liberation Army (CPLA) and the *Rebolusyonaryong Partido ng Manggagawa ng Pilipinas* (RPMP) with closure programs of socio-economic projects in exchange for disarmament and demobilization even without any really substantive agreements on the causes these several rebel groups respectively articulate or represent. Without the panel-level talks to thresh out issues which can be resolved only at the national level, there would be nothing that the parallel local community-level component could link up with and feed into at the national or top level of the peace process.

Another Mindanao NGO, the Sustainable Alternatives for the Advancement of Mindanao (SALAM), has produced a pamphlet *Building Positive and Just Peace: A Community's Perspective (In the Context of the GRP-RPMM Peace Process)*, which features this process and in particular local peace consultations as **the "process within the process" and community participation as the "heart of the process. "** At a certain point in that peace process, 100 barangays were identified to undertake impact peace projects, 89 of these had conducted local peace consultations, and 78 of these had been assisted and implemented livelihood projects found in a total of 15 municipalities in the four provinces of Zamboanga del Norte, Agusan del Norte, Lanao del Norte and Maguindanao.

The above-said pamphlet features five particular community- or tribe-based and NGO-assisted peace processes that each have **specific lessons such as/in** the following:

1. the importance of strong cohesiveness and team-building among the people and with the implementing NGO for the success and sustainability of socio-economic projects that address local problems and needs, as identified by the consultations;

2. effectively handling disruptive factions within the organization or tribe;

3. astutely dealing with security problems like harassments and threats posed by rival rebel groups notably the CPP-NPA-NDFP in the vicinity;

4. addressing external problems arising from the MILF peace process like ramifications for tribal ancestral domains; and

5. involving the local government units especially at the barangay level and particularly for assistance in resolving problems and disputes.

From some of those community- and tribe-based peace processes with the GPH-RPMM peace process, it is also clear that all peace processes with rebel groups in the country are actually inter-related in varying extents. Thus, **each peace process with a rebel group is best approached with a view to what has happened and is happening in the peace processes with other rebel groups. This should be done not only for the learning of lessons but also for coherence in the resolution of various issues especially of a related or similar nature**.

SALAM's *Building Positive and Just Peace* pamphlet in fact has these parting words of **lessons learned from the GPH-NDFP peace negotiations**: "… failure emanated from the failure of both sides to take into account the necessary elements of a successful peace process and that is to shy away from a tactical approach in winning the negotiations… beyond the existing political agenda and put the agenda of the people first and meet halfway, and on the other hand uplift the economic situation of the people which for more than four decades already since the start of the armed conflict, their quality of living has gradually declined." (slightly edited by us)

We proceed now to some insights from small community-based processes in the context of the two big peace processes with the MILF and with the NDFP.

Ground Feedback for the GPH-MILF Peace Talks

One particularly significant community-based peace approach experience in the context of the big peace process with the MILF is documented in the booklet *Embedding Feedback Mechanisms: Bringing Voices from the Ground to the GPH-MILF Peace Talks* by Elizabeth M. Padilla, Executive Director of SALAM, and published by the Siem Reap-based Centre for Peace and Conflict Studies (CPCS, www.centrepeaceconflictsstudies.org). This action research involved three cycles:

1. Meetings with the SALAM staff and Board;

2. Dialogue with the residents of one conflict-affected barangay (Tacub, Kauswagan, Lanao del Norte); and

3. Consultation with the MILF Peace Panel.

We shall focus here on the second and third cycles.

Regarding the *second cycle* which is dialogue with the conflict-affected community, Padilla realized early on that people with suppressed feelings about their traumatic past experiences cannot integrate well with other people and had difficulty moving on. And so, aside from some earlier emotional recovery and trauma healing activities, she created some dialogue

space for them and encouraged them to freely voice out their feelings and thoughts that were bottled up so long regarding the issues of the conflict. The result was a deeply-felt, lively and fruitful sharing by the participants with the discussion becoming more practical as well as challenging as it progressed. Some questions and comments that called to be addressed were "Can we ask justice for what happened to our lives?," "Who should be responsible and held liable?," and "I hope that the incident won't happen again…"

Padilla thus observed that **where people are given and afforded full recognition of being significant players and stakeholders in the peace process, they felt truly important and the results were astounding. While the issues were not really new, the courage and optimism to seek a better way of resolving them was incredible**. For those who long felt voiceless, being able to finally and freely communicate one's perceived needs, fears, aspirations and dreams was a liberating experience of restoring self-respect. It also increased the plausibility of finding mutually acceptable solutions to the conflict, as the parties became more self-confident and thus more willing to negotiate. Here is her relevant research journal reflection at that point in time of her action research:

> The people, being at the grassroots level must be involved. **The talks must be transformed and should be a tripartite talk – the government, the MILF and the community people**… And certainly, this is a big, daring, challenging issue. **People's direct participation can clarify and support the formal peace negotiations. It also strengthens the negotiations and gives it legitimacy.** Meanwhile, still the challenge is there for me: How to create an opportunity where all these articulated issues can be brought out in the open right before the concerned negotiating panel?"

Which brings us to the *third cycle* of consultation with the MILF Peace Panel. To its credit, the Panel happened to initiate about a month later a consultation with non-Moro NGOs, CSOs, POs, Church groups and Indigenous tribes in Mindanao. Padilla took the opportunity of this occasion to raise quite a few questions that came out of the above-said second cycle dialogue with community residents: justice for the residents who were killed in the August 2008 attack; governance, territory, rights

and ownership over the resources therein; security issues, especially after one base command broke away from the MILF; and the role of the people and communities affected by the conflict in a peace process where much of the negotiations was concealed, said to be a normal enough feature. She admittedly was a bit emotional when raising the issue of justice, and one MILF panel member responded also emotionally "Justice? Who have been denied of justice here?... Speaking of justice? We just want to take back what has been taken from us, long, long time ago." After this, the whole consultation group was dumbfounded, and Padilla felt that it wasn't advisable to pursue the discussion that had taken an emotional tone. She believed that this particular consultation for clarifying issues was not the proper venue to argue viewpoints. **Its structure or design also did not warrant the pouring out of emotions and feelings – but precisely this was to her one of the aspects that was most lacking in the ongoing peace process.**

Padilla summed up this close encounter with the MILF Peace Panel this way:

> While everyone… claims to work for and on behalf of the people, **it is apparent the people have not been given adequate opportunity to provide input, to be listened to and be heard**. While this fact was acknowledged by the Peace Panel, I felt extremely happy to have carried out just what the community wanted me to do. From this experience, I felt that in some little way I put meaning to the challenges they posed to me; however, I also acknowledge the fact that this surely is not enough. I also believe that **only if constituents are properly informed, handled, and mobilized behind the peace negotiation, there would be a very effective and powerful base of support for our journey to peace. Ultimately, this would help reach a just settlement of the conflict in Mindanao**."

Padilla's personal micro-experience in carrying the dialogue sentiments of the Tacub community to the MILF Peace Panel is obviously just a first small step towards developing, institutionalizing and "embedding" more effective "feedback mechanisms" that "bring the voices from the ground" of conflict-affected communities to the top-level peace talks. But **it really starts with a paradigm shift** in the peace process and even negotiations that truly puts the people and communities on the ground at the center of

the process, not only as supposed ultimate beneficiaries but also as active and meaningful participants, with space not only for the issues but also the emotions of the conflict. To repeat, this should be seen as **central and not just additional or augmentative** to the panel-to-panel negotiations. While such public participation may in some ways slow down an already slow peace process, it **will ultimately give it the needed quality and sustainability**. This experience further show that there is **much room for improvement** even in the relatively successful GPH-MILF peace process, and more so in the largely problematic GPH-NDFP peace process.

Sulong CARHRIHL and the GPH-NDFP Peace Talks

When it comes to small community-based processes in the context of the big peace process with the NDFP, the best insights come from the experience of Sulong CARHRIHL, the leading independent civil society network of peace advocacy for the GPH-NDFP peace negotiations and its Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL). For the most part of its existence since 2004, Sulong CARHRIHL has prioritized community-based work with its 59 partner organizations in various regions (especially those of the Cordillera, Bicol and Southern Mindanao, including indigenous tribes therein), while more recently engaging purposively in national-level peace alliance work (especially in initiating the Citizens' Alliance for a Just Peace). Sulong CARHRIHL Executive Director Joeven Reyes observes that one problem with the long-stalled peace negotiations is that these are so high level and not reflective of the local situations and concerns. There is a big gap between the top and bottom, and thus no solid foundation for the top-level talks. Overall, local communities, even in conflict-affected areas, are alienated from those talks, as it is already more off than on. In the long meantime, there being no general ceasefire (unlike with the MILF, MNLF, RPMP, RPMM and CPLA), there has lately been a significant increase in HR-IHL violations arising from continuing armed hostilities, highlighted by a spate of Lumad (Mindanao indigenous people) killings.

Reyes believes that **local-level work can help the top-level talks by linking the local issues to the national issues, as these are really not isolated from each other**. While there are no formal mechanisms for this,

Sulong CARHRIHL strives to provide spaces for such linking such as through regional and sectoral conversations and a recent national peace summit. A **common enough feedback from these peace consultations is one favoring "localized peace talks." This concept should be teased out** because the CPP-NPA-NDFP (or CNN for short) leadership automatically rejects "localized peace talks" which it perceives as an undermining of the peace negotiations and of the unity of the CNN rank and file. With some basis and logic, the CNN views the peace negotiations as necessarily a unified process at the national level, particularly at the top decision-making level of both parties. National issues have to be resolved at the national level. Local leading committees of the CNN are in no position to negotiate on these national issues.

On the other hand, many local issues, problems and concerns can and should be addressed at the concerned local level. This is precisely the **good governance principle of subsidiarity**. It is thus proper to refer to local peace processes rather than "localized peace talks." Whether on the local or the national level, peace processes are much broader than peace talks or negotiations, whereby the latter are only one form of the former. From peace theory and practice in the Philippines and globally, we are already aware that there are **multiple paths to peace**. The absence of a general ceasefire between the GPH and the NDFP is actual most felt at the local level in the form of HR-IHL violations like the current trend of Lumad killings by both sides. Although not the only local issue relevant to the armed conflict, human security concerns arising from continuing armed hostilities is still the main and most urgent local concern in conflict-affected areas. There is **no reason why the local politico-military leaderships of both sides cannot or should not address these urgent local human security concerns at their level**. It would be simply stupid or irresponsible for them not to do so and to leave it to the top/national-level peace talks.

The local leaderships of both sides, particularly at the provincial level, should be able/allowed to even declare **local ceasefires** of a limited duration and of a limited coverage of territory for various urgent humanitarian considerations, of course in coordination with and/or under general guidelines from their national leaderships. The CPP Central Committee is known to still regularly consult its 16 Regional Committees, more so when

it involves matters affecting or bearing on the momentum of the armed struggle. We are speaking here of local ceasefires arranged by the two sides. These are **different from local community declarations of "peace zones,"** even as these usually involve a call for a local ceasefire addressed to both sides. It is interesting to note that, **in the wake of the Lumad killings**, no less than the Philippine Catholic Church leader, Manila Archbishop Luis Antonio Tagle, recently urged both sides to declare and respect the ancestral homelands of the Lumads as "peace zones." The idea is for the military and the NPA to both avoid armed hostilities, if not pull out from, there. Both the matter of peace zones and especially the matter of the Lumad killings, with the Lumad issue being very complex, however require separate treatment in other papers.

One particular activity of community-based work by Sulong CARHRIHL with its local partner organizations in various regions is its **Capacities for Peace (C4P) project**, particularly capacity-building workshops for these local partners. The two key factors for Sulong CARHRIHL's relative success as a peace advocacy network are its recognition as a neutral entity and its good base of local partners. C4P capacity-building workshops has so far mainly involved **Psycho-social Investigation and Community Analysis (PSICA)**, an assessment of local needs as well as conflict analysis carried out by and for the community. People have testified that this process has prevented violence, reduced recruitment into armed groups, and improved accountability. The violence prevented is both within the community and that involving the military and the NPA. The **impact of the C4P project** indicates the following overview of five outcomes:

1. The C4P workshops contributed to concrete examples of local conflict prevention.

2. Participants feel empowered and more skilled to carry out analysis and use it to inform their work.

3. Activities have contributed to improving relations between communities and the military.

4. The project strengthened connections between local, national and

international civil society.

5. The project has supported advocacy efforts for the resumption of peace negotiations.

One concrete example of local conflict prevention arising from a C4P workshop was a peace pact based on tribal customary law that called on the armed groups to respect the Dibabawon tribe's ancestral domain, not carry out any military operations here, and uphold free prior and informed consent of the tribe. The parties to the peace pact included the tribal leaders, the local government, the NPA, and legal organizations of the political Left. This led to a de facto ceasefire between the tribe and the NPA which has held since then.

The C4P workshops **helped participants to think about their work more strategically and in terms of its contribution to peace-building**, and not just the previous strong human rights advocacy approach (Sulong CARHRIHL was originally oriented to that HR-IHL agreement and only in 2011 broadened its advocacy to the peace process itself). Sulong CARHRIHL's **extensive network of local partners in various regions has militated the building of their capacities** to improve peace-building work. The workshops also led to the formation of territorial clusters for this purpose.

Just as the above-presented Balay Mindanaw and SALAM/Padilla-published experiences have shown, **it is the fulltime community organizers and peacebuilders who live and work, it can be said dangerously enough, with the communities directly affected by violent conflicts that is most crucial**. For this, "an extraordinary level of determination and perseverance is required." The commitment, passion and dedication to peace of these community organizers on the ground thus deserve the best possible support, including with training.

C4P activities in Bicol involving **community representatives and military officers jointly analyzing the conflict resulted in an improved relationship**. It eradicated military biases about "pro-Left" communities and CSOs. In one province, a joint military-civilian monitoring mechanism was set up, and this led to a specific follow-up collaboration, including

SOME BACKGROUND AND EARLIER REFORM AGENDA ON THE WAR AND PEACE FRONT

Sulong CARHRIHL, to investigate a case of abduction and extra-judicial killing of a civilian. There has been observed far fewer military abuses committed against the civilian population. This workshop experience underscores **the importance of personal encounters**.

The caveat always with joint community/CSO-military activities is being coopted, even unwittingly, into a counter-insurgency drift away from a peace-building orientation. So, it helps when the facilitator organization like Sulong CARHRIHL is decidedly independent/neutral/impartial and recognized as such, and is firm in its peace-building/HR-IHL orientation. On the other hand, well-designed joint activities such as those appear to have a positive effect in terms of getting rid of mutual biases and of re-orienting to the military leadership policy of upholding the primacy of the peace process. And to really "balance" things, there can perhaps also be some appropriate and secure form of joint/CSO-NPA activities along similar lines.

All told, a **local capacity-building for peace approach** such as the C4P project of Sulong CARHRIHL with its local partners **hits several birds, not just the bird of capacity-building, with one stone**, with one workshop achieving several outcomes with impact. This approach certainly deserves more peace investments that would also allow for its further development and expansion into more conflict-affected regions of the country.

For a More Community-Based Strategic Approach to the GPH-NDFP Peace Process

The foregoing admittedly limited, but hopefully sufficient for now, discussion of several small peace processes at the local or community level gives us the main insight that **it is time** for a more community-based **strategic** approach to the stagnated big GPH-NDFP peace process. One keyword here, aside from "community-based," is "strategic." As mentioned earlier, the local community-based approach in a particular peace process should be seen as central and not just additional or augmentative to the panel-to-panel negotiations.

The local community-based peace processes in such an approach, as shown in the case of the GPH-RPMM peace process, would **already have**

as value in themselves whether or not the top-level peace negotiations move. But of course, better if these would move, and if they move, they can move better with a linking through "embedded feedback mechanisms" that "bring voices from the ground" to the peace talks. And also, a critical mass of local community-based peace constituencies – in other words, a local mass base for peace – should also be able to help push the talks to move, along of course with other favorable national and international factors.

Speaking of local communities and mass base, one challenge for the proposed community-based strategic approach to the GPH-NDFP peace process is that these localities are often and precisely the places of contention between both sides for the hearts and minds of the people there. As Padilla had put it, although in the GPH-MILF peace process context: "How to have direct participation by groups who neither are pro-MILF nor pro-government is going to be a challenge as it is in the nature of conflict to make sure that people are polarized to be part of one party or the other. But it can be done and needs to be done." One indispensable imperative for community-based approaches is to ensure the physical security of those involved like the frontline NGO field workers and community organizers.

To be sure, **further study, brainstorming and even experimentation for this strategic approach** is called for. Padilla for her part posited that "The talks must be transformed and should be a tripartite talk – the government, the MILF and community people." **In any case, independent/neutral/impartial interlocutors** like Sulong CARHRIHL, the Church (in this particular time of Pope Francis) and of course respected international entities like the very helpful International Contact Group (ICG) in the GPH-MILF peace process **would be good to have in any needed redesigning of the architecture or superstructure of the sagging GPH-NDFP peace process**.

A more cynical view of that process is from a well-informed senior Negros peace advocate and social activist who "does not believe in wasting our time in dealing with Joma, his cohorts, and his band of political opportunists" whom he views as merely instrumentalizing that process to serve the CNN's unbending Maoist strategy of protracted people's war (PPW). He says "If we want to attain meaningful and real social change, it would be better for us to work directly with the people. Immerse ourselves in

their day-to-day struggles. Join them in winning their legal and legislative battles. Support truly progressive parties and candidates. Empower the people from their communities up to their towns and municipalities... so they could cause and pursue concrete socio-economic changes. And render the obsolete PPW irrelevant." It may come to that should the CNN remain intransigently hardline. Of course, the government has its own part in this asymmetrical internal armed conflict as the more powerful side.

Unfortunately, **unless there is some breakthrough or paradigm/ strategy shift** that necessarily involves both sides, it is the people in the middle, especially in the conflict-affected local communities, who will continue to suffer, including with the loss of precious lives. If only because of this continuing **spectre**, it behooves us to seek and consider new or different approaches for the resolution, including transformation, of this conflict. Because "**the writing's on the wall**."

RZ Dumagat Remontado women in an organizational meeting

THE WAR AND PEACE FRONT UNDER DUTERTE

ANG IMPROVISED EXPLOSIVE DEVICE O IED AY IPINAGBABAWAL!

Ang isang **Improvised Explosive Device o IED** na puwedeng sumabog kapag nilapitan, nagalaw, o naapakan ng kambing, bata, o kahit sinong tao sibilyan man, sundalo, o miyembro ng armadong grupo ay pinagbabawal ng **1997 Mine Ban Treaty** na parte ng **International Humanitarian Law.**

ANO ANG DAPAT GAWIN KAPAG NAKAKITA NITO?

Huwag lalapitan o hahawakan ang nakitang pampasabog.

Lagyan ng marka o palatandaan malayo sa IED upang hindi na ito daanan o lapitan ng iba pang tao.

Umiwas agad sa lugar. Lumakad nang pabalik gamit ang mga bakas ng dating pinagdaanan dahil maaaring may iba pang bomba sa lugar.

I-report agad sa pulis o sa inyong barangay captain ang natagpuang pampasabog.

TANDAAN ANG IED AY LUBHANG MAPANGANIB AT NAKAMAMATAY. HUWAG ITONG HAWAKAN AT LAPITAN.

Poster of the Philippine Campaign to Ban Landmines

Caveat Amnestor; Pax et Justitia

(13 November 2016)

AMNESTY GRANTOR BEWARE. We write this in the context of an expected presidential proclamation for certain persons for legally punishable acts committed "in pursuit of political beliefs or in connection with the rebellion waged by the New People's Army (NPA) under the direction of the Communist Party of the Philippines (CPP)," which amnesty proclamation has been agreed in principle (not yet the actual proclamation) in the ongoing peace talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP). This is intended "to promote an atmosphere conducive to the attainment of a just, comprehensive and enduring peace and in line with the Government's peace and reconciliation initiatives."

That is all well and good. Perhaps the only concern is that the amnesty should not cover those undeserving of it under generally or internationally accepted standards of non-coverage. Thus, the *caveat* in this article's title. We understand that a draft of the expected proclamation provides "that amnesty shall not cover crimes against chastity and other crimes for personal ends." This exclusion is justifiably warranted but it is **not enough**.

Interestingly, there is also, among others, House Bill (HB) No. 490 for an Act Granting Amnesty to Members of the CPP-NPA-NDFP "and other individuals and groups involved in past political conflicts who shall apply under this Act." This is interesting on several levels. Firstly, amnesty is by concept an act of executive, not legislative, clemency. But unlike other forms of executive clemency such as pardon, reprieve and commutation of sentence, a presidential proclamation of amnesty is subject to a Congressional resolution (not bill) of concurrence. Secondly, the bill author is Representative and former President Gloria Macapagal Arroyo of the former "U.S.-Arroyo regime" with which the CPP-NPA-NDFP were mortal enemies. Indeed, what a difference a new regime, "anti-U.S." at that, makes?

Thirdly, the amnesty coverage per HB 490 is broadened – as should usually be – to cover "other individuals and groups involved in past political conflicts," i.e. other than the CPP-NPA-NDFP, presumably like its rejectionist breakaway groups, the Moro liberation fronts, and even military rebel groups. And fourthly, the Arroyo amnesty bill, to its credit, excludes from coverage "the crimes against chastity, rape, torture, kidnapping for ransom, use and trafficking of illegal drugs, and violations of international law or conventions and protocols, *even if alleged to have committed in pursuit of political beliefs* or if the individual or group [Note: group] was accused of political [the] political conflict." (italics supplied)

There are crimes even for political ends or in pursuit of political beliefs that should indeed be excluded from amnesty under generally or internationally accepted standards of non-coverage. The most familiar standard is found in what is considered as a rule of customary international humanitarian law (IHL) that itself sanctions or mandates amnesty: "At the end of hostilities, the authorities in power must endeavor to *grant the broadest amnesty* to persons who have participated in non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, *with the exception of persons suspected of, accused of or sentenced for war crimes*." (italics supplied, from Rule 159 in the authoritative 2005 two-volume study of the International Committee on the Red Cross on *Customary International Humanitarian Law*)

Customary international law is certainly part of "the generally accepted principles of international law" and, as such, are "adopted" by no less than the Philippine Constitution "as part of the law of the land." If **war crimes** are the most familiar standard for exclusion from the coverage of amnesty in the context of an internal armed conflict, the exclusion may be said to also apply to other crimes on the same or similar level of unacceptability as war crimes. In the widely accepted Rome Statute of the International Criminal Court (ICC), of which the Philippines is a State-Party, war crimes together with **genocide and crimes against humanity** are characterized as "the most serious crimes of concern to the international community as a whole." There is therefore good reason to also exclude genocide and crimes against humanity from amnesty coverage.

In addition, the same may be said of certain specific acts under the broad categories of war crimes, genocide and crimes against humanity

such as particularly **extra-judicial killings (EJKs), torture and enforced disappearances**. These crimes are covered not only by international law and conventions but also by recent Philippine special laws which implement them like Republic Act (RA) No. 9851 (for war crimes, genocide and crimes against humanity), RA 9745 (for torture) and RA 10353 (for enforced disappearances), while there is the current Senate Bill (SB) No. 1197 of Senator Leila de Lima to cover EJKs. It might be noted though that while the Rome Statute of the ICC, the Convention Against Torture (CAT), the *International Convention* for the Protection of All Persons from *Enforced Disappearance (ICPPED)*, and RA 9851 cover both state and non-state perpetrators, it is unfortunate that RA 9745, RA10353 and SB 1197 are presently limited to only state perpetrators.

But experience globally and locally has shown that what amount to EJKs, torture and enforced disappearances from the point of view of the victims have been perpetrated also by non-state armed groups or actors like rebel groups and rebels. There is most notably in recent Philippine history the CPP-NPA internal purges of the 1980s which were characterized by all three said crimes, "three-in-one," as it were.

And if we are to add one more crime to the six internationally-proscribed crimes we have pointed out with a view to their exclusion from amnesty coverage, aside also from those other crimes specified (rape, kidnapping for ransom, use and trafficking of illegal drugs) for that purpose in Rep. Arroyo's HB 490, it would have to be **terrorism** which is also proscribed by international conventions and our domestic RA 9372 (Human Security Act of 2007), albeit not the best kind of anti-terrorism legislation because of some objectionable features. But at least, as far as the international and domestic law against terrorism is concerned, both state and non-state perpetrators definitely can be called to account.

Relevant to our discussion about warranted exclusions from amnesty coverage is some recent jurisprudence in several cases arising from one particular CPP-NPA purge that occurred in Inopacan, Leyte in 1985. The most prominent corresponding case is that against some 52 CPP-NPA-NDFP leaders and personalities led by Jose Maria Sison which was actually for multiple murders (15 counts). Some of the detained or bailed accused sought the dismissal by two trial courts concerned of the murder charges under the long-time political offense doctrine, whereby common crimes

like murder perpetrated in furtherance of a political offense like rebellion are absorbed into the latter which is the proper offense, not murder. Upon elevation to the Supreme Court (SC), it ruled in 2014 in the elevated cases there, with the lead case known as *Ocampo vs. Abando*, that no such dismissal can be made prior to a determination by the trial court that the murders were committed in furtherance of rebellion (OR for that matter, whether the murders turn out to be more in the nature of violations of RA 9851).

The separate Concurring Opinion of Justice Marvic Mario Victor F. Leonen in that SC case is most instructive on the political offense doctrine and the exceptions thereto, which can be said to parallel those to amnesty coverage. He extensively discuss the bearing of RA 9851 on that doctrine, which again can be said to parallel that on amnesty. He ultimately discusses a "nuanced interpretation of what will constitute rebellion," even demanding of it a high moral ground, as should be demanded of true rebels with a cause, thus:

> It is not our intention to wipe out the history of and the policy behind the political offense doctrine. What this separate opinion seeks to accomplish is to qualify the conditions for the application of the doctrine and remove any blanket application whenever political objectives are alleged. The remnants of armed conflict continue. Sooner or later, with a victor that emerges or even with the success of peace negotiations with insurgent groups, some form of transitional justice may need to reckon with different types of crimes committed on the occasion of these armed uprisings. Certainly, crimes that run afoul the basic human dignity of persons must not be tolerated. This is in line with the recent developments in national and international law.
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> x x x
>
> Concomitantly, persons committing crimes against humanity or serious violations of international humanitarian law, international human rights laws, and Rep. Act No. 9851 must not be allowed to hide behind a doctrine crafted to recognize the different nature of armed uprisings as a result of political dissent. The contemporary view is that these can never be considered as acts in furtherance of armed conflict no matter what the motive. Incidentally, this is

> the view also apparently shared by the CPP/NPA/NDF and major insurgent groups that are part of the present government's peace process.
>
> We, therefore, should nuance our interpretation of what will constitute rebellion.
>
> The rebel, in his or her effort to assert a better view of humanity, cannot negate himself or herself. Torture and summary execution of enemies or allies are never acts of courage. They demean those who sacrificed and those who gave their lives so that others may live justly and enjoy the blessings of more meaningful freedoms.
>
> Torture and summary execution - in any context - are shameful, naked brutal acts of those who may have simply been transformed into desperate cowards. Those who may have suffered or may have died because of these acts deserve better than to be told that they did so in the hands of a rebel.

In fine, the qualification against "any blanket application [of the political offense doctrine] whenever political objectives are alleged" in defense of common crimes charged for acts in furtherance of rebellion should also apply (meaning the qualification) against any blanket grant of amnesty for rebellion and other crimes in furtherance thereof or in pursuit of political beliefs. Incidentally, it is in this SC case that the first batch of 11 NDFP claimed consultants, who had been arrested and detained due to the trial court cases, were granted conditional provisional liberty by the SC itself last August for their attendance and participation as consultants in the Oslo peace talks that month and subsequently – at the intervention motion of the GRP peace panel (again, what a difference a new regime makes).

While we are at it, including with SC jurisprudence, as for the Oslo peace talks agreement for releases of some 434 "political prisoners" (more precisely, "detained prisoners listed by the NDFP," actually by Karapatan), it is interesting to note that both the GRP and NDFP lawyers have "been exploring all legal means to secure the release of the prisoners." These include allowing the prisoners to post bail, pardon from President Duterte, and withdrawal of cases filed by the government. The second batch of about 50 prisoners are said to be released "because of humanitarian reasons – many of them will be women, the sick, the elderly and those who have been detained for more than 10 years." Indeed, when there is political will,

there is a way.

Possibly relevant to this is what might be called the reaffirmed "Enrile bail doctrine" based on a recent SC decision which gave bail consideration due to "the fragile health and advanced age of Enrile," apart from his apparently not being a flight risk for required appearances during the trial, in his Sandiganbayan plunder case, thus: "Bail for the provisional liberty of the accused, *regardless of the crime charged*, should be allowed *independently of the merits of the charge*, provided his continued incarceration is clearly shown to be injurious to his health or endanger is life. Indeed, denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during the trial." Constitutional equal protection of the law dictates the application of the "Enrile bail doctrine," while it stands, to others similarly situated. But note that this doctrine emphasizes "the objective of bail to ensure the appearance of the accused during the trial," thus apparently making flight risk a major consideration in its application.

Be that as it may, being a peace consultant or panel member, or being a woman, sick, elderly or long-detained, or other humanitarian considerations, does not or should not by itself absolve anyone from war crimes, crimes against humanity, genocide, EJKs, torture, enforced disappearances, terrorism and the like that he or she may have committed, as it does not or should not absolve one who committed plunder.

PEACE AND JUSTICE. It should be noted that there are also the still pending criminal cases, this time for violation of RA 9851, among others, against Moro National Liberation Front (MNLF) commanders and fighters led by its Chairman Nur Misuari for the Zamboanga City siege of 2013. This has come to the spotlight again with his historic meeting with President Rodrigo Duterte in Malacañang last November 3 that was said to bring the Mindanao peace process back "on track." Notably, while the Zamboanga City community led by Mayor Maria Isabelle Salazar was supportive of this particular peace effort to being the MNLF main faction of Misuari "on board," she nevertheless expressed her community's sentiment that he "has to be made accountable" for his MNLF forces' transgressions in that siege, saying "we trust that justice will eventually be served." Presidential spokesperson Ernesto Abella has replied that those concerns would be addressed at the "right time." This is an excellent illustration of the classic

tension between peace and justice in peace processes.

Don't look now but the 1976 Tripoli Agreement (40th anniversary this year!) —**but not** the 1996 Final Peace Agreement (20th anniversary this year!) —with the MNLF also provided for amnesty and release of political prisoners. And for that matter, the 2014 Comprehensive Agreement on the Bangsamoro (CAB), particularly its Annex on Normalization, with the Moro Islamic Liberation Front (MILF) provides for "amnesty, pardon and other available processes towards the resolution of cases of persons charged with or convicted of crimes and offenses connected to the armed conflict in Mindanao."

Philippine Daily Inquirer commentator Raul J. Palabrica surmises that to get around the Zamboanga City siege cases against Misuari and his MNLF forces involved therein, the government may have to reduce the criminal cases to simple rebellion and drop the "crimes against humanity" (RA 9851) portion. Rebellion being a political offense, it can therefore be forgiven or absolved by way of a grant of amnesty. In which case, Palabrica says "the victims of the Zamboanga siege may wind up as collateral damage" of the Mindanao peace process. The amendment of the charges against Misuari *et al.* from violation of RA 9851 to rebellion, if ever, would have to be justified by the evidence in the cases. And if ever, it may have to pass through Justice Leonen again—to repeat what he said, "persons committing crimes against humanity or serious violations of international humanitarian law, international human rights laws, and Rep. Act No. 9851 must not be allowed to hide behind a doctrine crafted to recognize the different nature of armed uprisings as a result of political dissent. The contemporary view is that these can never be considered as acts in furtherance of armed conflict no matter what the motive."

Presidential peace adviser Jesus Dureza was reported as saying that, in the Mindanao peace process (if we may add, and for that matter, in the peace process on the Communist front), he did not want a situation similar to Colombia where citizens rejected a hard-earned peace agreement with communist rebels in a plebiscite last October, just before Colombian President Juan Manuel Santos won this year's Nobel Peace Prize for that peace agreement. What appears to be the most oft-cited reason for the rejection of the Colombian peace agreement with the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) -- aside from the lack of bipartisan

support and significant public distrust of the FARC -- was a public perception that the peace deal was too lenient justice-wise to the rebel commanders and fighters, particularly those responsible for many kidnappings, killings, rapes, forcible use of children as soldiers, and internal displacement.

Under the Colombian peace agreement, rank-and-file fighters were expected to be granted amnesty, while those involved in war crimes would be judged in special tribunals with reduced sentences, many of which involve years of community service work like removing land mines once planted by the FARC. But the political opposition leader, a former President himself who maintained wide-ranging influence, argued that the rebels should serve jail sentences and never be permitted to enter politics. The problem with the latter demand is that it would remove an essential incentive for the rebel group's leadership to conclude a political settlement of the armed conflict, leaving only military options, thus precluding transformation of an armed militant organization into an unarmed political group and thus defeating the purpose of peace negotiations.

In fairness, the Colombian peace agreement did try to balance peace with justice, even if many found it to be wanting. The peace institute Conciliation Resources article "Colombia Brings Hope" reported that the Colombian peace process grappled with the question "How to avoid impunity for past crimes and at the same time reach a peace agreement to prevent new crimes from happening?" (and for that matter the question "How can Colombia hold human rights abusers accountable for their crimes, without imposing penalties so severe that they encourage guerrilla leaders to keep fighting?") because "No guerrilla leader in the world would lay down arms voluntarily and go straight to prison for acts committed during the revolutionary struggle."

And this is the balancing of peace and justice which the Colombia peace process came up with, as reported by Conciliation Resources: "The parties have agreed that only political crimes will be amnestied. Amnesty will not extend to serious war crimes, hostage taking, torture, forced disappearance, extrajudicial executions or sexual violence. These crimes will be subject to investigation and trial by a *Special Jurisdiction for Peace*. Those perpetrators who confess their acts will still face restriction of liberties and rights, but with a focus on reparative and restorative functions towards the victims instead of sitting behind bars. Similar to the South African case, those who

deny responsibilities but are found guilty will go to prison."

That balancing of peace and justice appears fair enough. But the public perception or misperception of this as too lenient is a lesson learned by the continuing Colombian peace process. And so, it now appears to be headed to a renegotiation of more stringent terms with the rebels, but this time with bipartisan participation. President Santos is still optimistic: "With the will for peace from all sides, I am sure we can reach satisfactory solutions for everyone soon. The country will come out winning and the process will be strengthened." The continuing Philippine peace processes must also learn from these lessons **and other aspects** of the Colombian peace process.

One exemplary feature of the Colombian peace process was the strong voices in it of the victims of the armed conflict, even placing them at the center of the talks. So much so that an agreement on justice for the victims of violence—to ensure their rights to truth, justice, reparations and guarantees of non-repetition—closed the fourth of five substantive items on the Colombian government-FARC negotiating agenda. Unfortunately, in the Philippine peace processes, the voices of the victims on all sides of the armed conflicts have generally, or for the most part, been weak, unheard or unsolicited, so far. There should be more victim voices in the talks. In the meantime, even without victims to speak up, there is international and domestic law which somehow speaks for them.

Urgent Motion for Reconsideration of the Ceasefire Termination

(5 February 2017)

This Urgent Motion for Reconsideration (UMR) pertains to the mutual terminations of the respective unilateral ceasefires first by the Communist Party of the Philippines (CPP) and New People's Army (NPA) effective 11 February 2017, on one hand, and followed by the Government of the Republic of the Philippines (GRP) and Armed Forces of the Philippines (AFP). This UMR is personally occasioned by haunting visions of coming sad homecomings of fallen rebels and soldiers returning for the *ultimong last* time to Naga City, and other hometowns in Camarines Sur and the Bicol region. This UMR is addressed to both sides, but mainly the CPP-NPA leadership for initiating the ceasefire termination, with the GRP only reluctantly following suit as it is the side clearly more keen about the ceasefire but of course cannot allow its troops to be just on the defensive receiving end of NPA tactical offensives.

In a manner of speaking, the main ground for this UMR is "**prematurity**"—if we may adopt this term which was the ground used by the Supreme Court in recently dismissing the petitions of PHILCONSA and others relevant to another peace process, that between the GRP and the Moro Islamic Liberation Front (MILF). The petitions questioning the constitutionality of the 2012 Framework Agreement on the Bangsamoro and the 2014 Comprehensive Agreement on the Bangsamoro were deemed "premature" without the implementing Bangsamoro Basic Law. But that is another story.

It is in our view premature or **too early** to terminate the reciprocal unilateral ceasefires of the CPP-NPA and GRP-AFP. First of all, "it does not compute," so to speak, in relation to the recently concluded "successful" third round of formal peace talks between the GRP and the National Democratic Front of the Philippines (NDFP) in Rome last January 19 to 25 where the parties achieved advances on six major issues listed on their January 18 common agenda. In their Joint Statement, the parties noted that

their unilateral indefinite ceasefires "remain in place" although "there are issues and concerns related thereto." And so, the two ceasefire committees (CFCs) were to meet again on February 22-27 to tackle an interim bilateral ceasefire, for which the GRP CFC had already submitted a draft Agreement to the NDFP CFC which "said that it will seriously study the proposal, submit comments and may provide its own updated version of its proposed draft agreement for an interim bilateral ceasefire."

It is such an interim bilateral ceasefire—with clear definitions and parameters—that precisely would address what the CPP-NPA cited as its loaded second reason for terminating its unilateral ceasefire: "The GRP has treacherously taken advantage of the unilateral declaration of interim ceasefire to encroach on the territory of the people's democratic government." As GRP Panel Chairperson Sec. Silvestre H. Bello III said, without clear definitions and parameters, "you won't know the violations." Both sides have however submitted to each other documented complaints of ceasefire violations, the NDFP typically submitting more complaints than the GRP.

But despite all of those complaints, it is fair to say that **the reciprocal unilateral ceasefires have held** since last August. At least between the AFP and NPA, there have been no notable armed hostilities and consequent casualties. Ironically, these have happened only since the time of the Rome talks, starting with the January 21 Makilala, North Cotabato clash where one rebel was killed (with the NPA claiming eight soldiers killed) and leading up to encounters after the CPP-NPA declaration terminating the unilateral interim ceasefire and where at least six soldiers were killed. That looks just like a morbid preview that the worst is yet to come. And if it is the AFP that the NPA says has "waged offensive operations," why are there disproportionately more soldier casualties? (Of course, we know that that does not always follow, as most notably shown in the Mamasapano encounter.)

Such encounters that may violate the ceasefire can be sorted out and reduced by a good ceasefire agreement (which is necessarily bilateral) but will also need more trust and confidence-building, or as Art. 19 of the Civil Code provides, "observ[ance] of honesty and good faith." The CPP-NPA's framing of the second reason for its ceasefire termination shows the strong residual lack of trust in the GRP by saying that it "has treacherously taken

advantage." It also speaks of GRP "encroach[ment] on the territory of the people's democratic government…. at least 500 barrios [the present term for this is barangays] within the authority of the revolutionary government." The NDFP or the CPP-NPA cannot expect the GRP to take sitting down or let pass that assertion of another government in the country. But the experience in the peace process with the MILF shows that there are mutually acceptable ways to get around such assertions without the rebel side necessarily dropping them, as well as ways to build trust between two erstwhile mortal combat enemies of different religions at that.

The first reason for the CPP-NPA's ceasefire termination—that "The GRP has not complied with its obligation to amnesty and release all political prisoners" —strikes us not only as premature but also not enough reason to terminate the ceasefire. The matter of amnesty and releases was in fact covered by the Rome Talks Joint Statement with certain specific measures. Notably, both "Parties agreed to continue to study the issuance of an amnesty proclamation consequent to the substantial progress of the peace negotiations" (underscoring supplied). Actually, in the normal course of armed conflicts and under international humanitarian law (IHL), amnesty is granted "at the end of hostilities." In this concept, the termination of the unilateral interim ceasefire in fact tends to make any grant of amnesty **premature**, if we may use this word again.

The negotiations are not yet at the stage where the fate of the envisioned comprehensive agreements on socio-economic reforms (CASER) and political and constitutional reforms (CAPCR) is clear, one way or the other, and that may take about two years yet, according to remarks by some NDFP personalities. But the Rome talks achieved a breakthrough in the discussion of socio-economic reforms, achieving understanding on its first four items, including the most crucial item of agrarian reform. The initial exchange of drafts and initial discussions on political and constitutional reforms were said to "have advanced ahead of schedule." So, what gives? If the ceasefire were to be terminated, let it be mainly due to failure to achieve the CASER and CAPCR, and **not non-substantive agenda matters** like amnesty and releases.

Various NDFP personalities have remarked that the release of all political prisoners should not be tied or held hostage (used as "aces" or bargaining chips) to the forging of an interim bilateral ceasefire but it is

the NDFP and the CPP-NPA that appear on the other hand to have tied or held hostage a ceasefire (even its unilateral one) to the release of all political prisoners. The latter do represent about 400 lives who seek to regain their lost freedom. On the other hand—and we are not counter-posing different lives that matter—how about the thousands who will likely lose no less than their very lives with the resumption of armed hostilities?

Is the GRP's not (yet) complying with its obligation to amnesty and release all political prisoners reason enough to terminate the ceasefire with all the morbid consequences of that? As it is, the Rome Talks Joint Statement indicated at least three commitments of the GRP relevant to the release of political prisoners: first, facilitating the release of three remaining NDFP consultants; second, expeditiously processing the release of all the political prisoners listed by the NDFP starting with the 200 qualified prisoners; and third, filing immediately the necessary manifestations in support of the motions for temporary liberty of the NDFP consultants and staff granted bail and released last August. These all need reasonable time to do. Surely, that time has not yet lapsed so soon after the Rome Talks. So again, what gives? But President Duterte for his part should not also prejudge the matter by saying that the rebel demands "are too huge that it is impossible to meet, or even work out a compromise." Try hard first.

The matter of amnesty and releases—and for that matter ceasefire—can and should be addressed parallel to but separately from the substantive agenda of the formal peace negotiations. The latter are or should be the main concern of the two Negotiating Panels and the Reciprocal Working Committees (RWCs), while there are already the two CFCs to focus on the ceasefire where violations may be also dealt with by the Joint Monitoring Committee (JMC)—for which Supplemental Guidelines are among the achievements of the "successful" Rome talks. The JMC or better still some other special lawyer-heavy joint committee can focus on amnesty and releases.

Following the framework of the 1992 Hague Joint Declaration, amnesty, releases, and ceasefire can be treated as "specific measures of goodwill and confidence-building to create a favorable climate for peace negotiations" as distinguished from "the [four-item] substantive agenda of the formal peace negotiations." Goodwill and confidence-building are crucially important for the substantive negotiations to prosper. The **premature** termination of the unilateral interim ceasefire has already cast **a dark pall (or is it a dark**

spell?) over the peace negotiations. Witness President Duterte's pessimistic remark that "I guess that peace with the communists cannot be realized during our generation."

The CPP-NPA and a number of personalities associated with it—and strangely, in fact, some AFP spokespersons—say, **as if to console us**, that "it is possible to negotiate while fighting." But the mode of "talking while fighting" has been tried for decades without much progress beyond the first substantive agenda item on human rights and IHL (with the CARHRIHL) often because substantive talks are sidetracked by certain hostile acts, notably by arrests of NDFP-claimed consultants, on the ground. It will be the same old dynamic again where the revival of the JMC will only reprise a deluge of complaints for violations of human rights and the subsequent investigations that partake of a propaganda war that matches the intensity of the fighting on the ground. We might as well throw goodwill and confidence-building out of the window. This is in stark contrast to the trust between the MILF and then President Aquino which was acknowledged to be the key factor that carried to completion the substantive negotiations on that Moro front.

The CPP-NPA says that "We oppose the use of interim ceasefires as basis for a protracted or indefinite ceasefire without substantial benefit for the people and their revolutionary forces and for laying aside peace negotiations on substantive issues such as social, economic, political reforms. Such is tantamount to the capitulation and pacification of the revolutionary people and forces." Again, it is **too early** to pronounce that this has come to pass. The Rome Talks Joint Statement certainly does not lay aside, but on the contrary advances peace negotiations on substantive issues such as social, economic, political reforms. Surely, substantial benefit for the people in terms of those reforms will take some more time, at least to make a definitive pronouncement either way.

NDFP Panel Chairperson Fidel V. Agcaoili himself was cited in the media in the build-up (or build-down?) to the Rome Talks as saying that a peace pact was unlikely before 2019. NDFP Chief Political Consultant Jose Maria Sison for his part envisioned a CASER and CAPCR approved within the first two years of the Duterte government so that these agreements can be implemented for at least two years before the end of his term. This for Sison would "lay the full basis" of the last substantive agenda item agreement on the end of hostilities and disposition of forces (CAEHDF) "as

early as 2020-21." All these also in the context of a CPP policy of alliance and struggle with the Duterte regime. So, finally, what gives?

Given how the CPP-NPA Declaration terminating the unilateral interim ceasefire does not seem to square with the "successful" Rome Talks and the remarks of certain NDFP Panel personalities, perhaps the answer can be gleaned from a media report of Agcaoili saying that the decision to continue the unilateral ceasefire **did not rest with the NDFP Panel alone but with the leadership of the revolutionary movement**, a.k.a. the CPP Central Committee and the NPA National Operations Command, whose spokesperson at least in the person of Jorge "Ka Oris" Madlos who announced the Declaration is based in Mindanao, also the President's home region where he admittedly had good relations with them.

Only last December 26, on the 48th anniversary of the CPP, its Central Committee stated among others that

> The Party must further strengthen its leadership of the people's war by firmly directing the New People's Army in waging revolutionary armed struggle…. The Party continues to support the peace talks and other means for possible agreement with the Duterte government on cooperation to realize basic patriotic and social reforms…. The unilateral ceasefire of the CPP and NPA has become increasingly untenable…. Thus, the termination of the CPP's unilateral ceasefire declaration becomes inevitable…. Nonetheless, the Party and the NDFP remain open to forging a bilateral ceasefire that would take effect simultaneously with the release of all political prisoners…. The revolutionary forces estimate that negotiations on socio-economic reforms and political and constitutional reforms can be completed in one or two years. This will give the Duterte government and the NDFP at least four more years to implement the agreements and help improve the situation of the people.

While alliance and struggle can indeed go together, it is hard to imagine the viability of armed struggle against one's ally. It appears that, for the CPP-NPA leadership especially in-country, a protracted or indefinite ceasefire of even just five to six months is untenable for the primacy of waging the revolutionary armed struggle of the protracted people's war (PPW). For this strategy, a return to arms must be called even at the risk of jeopardizing the peace negotiations and its envisioned reforms, even at the additional costs in terms of more thousands of lives lost (and they

will no longer be around to benefit from the substantial reforms in case the negotiations succeed after all), AND even if Sison himself as well as especially the MILF experience has pointed out or shown that ceasefires do not necessarily blunt armed capacity and readiness in case it is needed. Apparently, there is still no CPP-NPA paradigm shift about armed struggle and people's war—in a subjective sense, as distinguished from an objective sense, this might be said to also be among "the roots of the armed conflict." It is of course understandable for the CPP-NPA to keep reaffirming its long-time PPW strategy which is responsible for its revolutionary gains and degree of its politico-military strength. Short of a paradigm shift, surely two years or so of giving ceasefire a chance to accompany substantive peace talks is a manageable revolutionary calculated risk compared to possible political, military and human losses due to a **premature** return to arms. Please reconsider urgently and well your terminating the unilateral interim ceasefire. *Dios mabalos.*

Resume peace talks, resume interim ceasefires

(11 February 2017)

The call to resume the peace talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP) is only right and just, because their scrapping by President Duterte was premature, even as the NDFP Panel Chief Political Consultant and Communist Party of the Philippines (CPP) guru Jose Maria Sison says he understands him. But this call should be accompanied by another call to resume the unilateral interim ceasefires that were also prematurely terminated first by the CPP and New People's Army (NPA) leadership for the NDFP (not the other way around) and then soon after followed suit by President Duterte for the GRP. This was the *casus belli*, as it were, or what triggered the downward spiral of this whole peace process. This prematurity we had already discussed last weekend in an article "Urgent Motion for Reconsideration of the Ceasefire Termination," forgive the court case terminology of a Motion for Reconsideration (MR).

To save and bring the whole peace process back on track should entail, to use court case terms again, a return to the *status quo ante*—the situation before the breakdown in the process. That *status quo ante* was clearly one of peace talks accompanied by unilateral interim ceasefires up to the Rome Talks of last January 19 to 25. The "Joint Statement on the Successful Third Round of Formal Talks between the GRP and NDFP in Rome, Italy" is the best evidence of the prematurity that we are talking about. It is not the interim, repeat interim only, ceasefire that was premature but rather its termination. In the Joint Statement, it was in fact stated particularly that "The Parties note that their unilateral indefinite ceasefires remain in place."

If only the peace process breakdown could be subject to a court injunction (like U.S. President Trump's travel ban), the injunction would be to restore that *status quo ante* of unilateral interim ceasefires. This is what would avoid a deterioration of the situation now that the dogs of war

on both sides have been unleashed. This is what is needed as "a measure of restraint" (Sison's words, akin to a court temporary restraining order or TRO) before it is too late—before there can no longer be any holding back of the fighting which creates its own negative dynamic for the whole process, as experience has shown.

Some peace advocates no less, ironically say that "the absence of reciprocal, unilateral ceasefires should not unhinge our efforts for building peace." But it has unhinged this process under President Duterte, if not himself also. Others say "Keep on talking even when there is fighting. But keep on listening as well." But that's very hard "amid the din and drone" of gunfire and explosions, whether from NPA landmines or Armed Forces of the Philippines (AFP) artillery shelling and aerial bombardment. These disrupt not just listening but the very business of living in the conflict-affected areas of the countryside.

Sison *et al.* cite at least ten major agreements that have been sealed since the Ramos administration of 1992-98 despite the continued fighting. But only one of those is considered a substantive agreement, the Comprehensive Agreement on Respect for Human Rights and Humanitarian Law (CARHRIHL). That is only the first of four major substantive agenda items under the framework of the Hague Joint Declaration of 1992. Just one substantive agreement in nearly 25 years or one generation! That is already "untenable," to use the CPP-NPA's description of the unilateral interim ceasefires. Compare that to the two years from the 2012 Framework Agreement on the Bangsamoro to the 2014 Comprehensive Agreement on the Bangsamoro in the peace talks cum ceasefire with the Moro Islamic Liberation Front (MILF) during the Aquino administration.

We have precisely "been there, done that" already with fighting while talking for the most part of several decades of the GRP-NDFP peace process since 1992, more so if we count from the first round in 1986-87. It's about time that we try *talking and listening without fighting* where the latter is understood to be for a reasonable interim period only of an estimated (by the CPP leadership and the NDFP Panel) two years or so to possibly work out comprehensive agreements on socio-economic and politico-constitutional reforms. The Rome Joint Statement indicated fair, if not good, advances on this. Indeed, as an NDFP partisan said, "the aim of the talks is not just to end the fighting but also to address the roots of the armed conflict." But in

the meantime, for a reasonable period, can the fighting (just this, not other forms of struggle) not be put on hold as a "specific measure of goodwill and confidence-building to create a favorable climate for peace negotiations"? This is not yet for the "end of hostilities and disposition of forces." A mere interim ceasefire in this context is not "tantamount to the capitulation and pacification of the revolutionary people and forces." AND at the end of that reasonable period, IF good faith negotiations still fail to achieve substantive reform agreements, THEN a return to armed struggle would be understandable or even justified, depending also on the circumstances.

It is fair, not only by the GRP but also by all peace-loving Filipinos, to raise a privileged question of sincerity about talking peace while fighting a war. As we had written a number of years back, why continue to fight a war if the peace talks are "successful" so far, especially in working towards comprehensive agreements on substantive reforms to address the roots of the armed conflict? Why suffer the loss of precious lives, including of thy comrades, in the meantime if these are going to be achieved? Or does the desire to continue armed struggle indicate an expectation or worse, an intention, that the peace talks will ultimately fail?

By the CPP-NPA's termination of its unilateral interim ceasefire (followed suit by the GRP), it has in effect (or as intended?) preempted an interim bilateral ceasefire already scheduled for another meeting of the two ceasefire committees. One relevant simple question that nobody seems to be asking is: **are both sides willing to reinstate the prematurely terminated unilateral ceasefires as an important "compelling reason," or "key link," or key gesture (as far as President Duterte is concerned), to reverse the premature announcement of an "all-out war" and the premature scrapping of the peace talks?** The simple proposition is that it is only right that all that have been prematurely done should be undone before it can no longer be undone.

Waging Peace When There are **No Peace Talks and Ceasefire**

(12 March 2017)

Can there be a peace process when there are no peace talks and ceasefire? There can, and this is the recurrent challenge that has faced the Philippine peace process on the Maoist Communist insurgency front, as distinguished from the Moro Islamic insurgency front.[1] Since the democratic restoration with the peaceful people power revolution which ousted the Marcos dictatorship in 1986, the peace negotiations between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP) have been more off than on. Even during the stretches when there were peace talks, there was for the most part no ceasefire.

Both sides had grown accustomed to a mode of "talking while fighting." And when it would recurrently go from bad to worse, it would become the worst-case scenario of "fighting without talking." This was demonstrated when, under the new Duterte administration, this peace process went very quickly from a most promising start of "talking without fighting" (with unilateral interim ceasefires) to "fighting without talking" and the government's "all-out war" in a matter of just six months. Even if the peace talks resume anew sooner or later,[2] the historical pattern underscores the need for a more pro-active approach or strategy for waging peace[3] when

[1] For an overview of these two Philippine fronts of war and peace, Soliman M. Santos, Jr. and Paz Verdades M. Santos, *Primed and Purposeful: Armed Groups and Human Security Efforts in the Philippines* (Geneva: South-South Network for Non-State Armed Group Engagement and the Small Arms Survey, 2010). This book is available at the Smalls Arms Survey-Geneva website www.smallarmssurvey.org.

[2] To demonstrate the fluidity of the situation, while this was being written, peace panel representatives of the GRP and NDFP issued the Utrecht Joint Statement dated 11 March 2017 for the resumption of formal peace talks and the reinstallation of their respective unilateral ceasefires, among other agreements for the resumption in April.

[3] "Waging Peace" alludes to the theme name "Waging Peace in the Philippines" of annual conferences for shared analysis, updates and policy recommendations for peace processes in the Philippines, starting with the 1988 International Conference on Conflict Resolution in the Philippines. A number

there are no peace talks and ceasefire.

Part of the context is that the NDFP is an underground revolutionary umbrella formation which includes its leading organizations, the Communist Party of the Philippines (CPP) and its New People's Army (NPA) that have been waging a classic Maoist protracted people's war (PPW) since 1969 or nearly 50 years. The longevity of this PPW is a testament both to the ideology-based determination of the CPP-NPA rank and file, and to the continuing socio-economic and political conditions which provide a social basis for revolution in the vast countryside from North to South of the Philippine archipelago except in the Moro areas of southwestern and Central Mindanao. For the CPP-NPA, peace negotiations are of only tertiary tactical value in its PPW strategy where there is the primacy of armed struggle rather than of the peace process. There are only tactical objectives: propaganda; prisoner releases; international diplomatic recognition of belligerency status; and dropping of the post-9/11 "terrorist" listing of the CPP-NPA and its founder-ideologue Jose Maria Sison.[4] Some critics, notably from the non-CPP Left, have said that CPP leader Sison, as chief political consultant of the NDFP, is fashioning "protracted peace talks" as a form of struggle within the PPW,[5] conceivably a contribution to the further development of Maoism, with the CPP-NPA as its current international vanguard.

On the other hand, the Philippine government has for the most part tended to subsume the peace process under a national internal security plan and strategy to overcome insurgency nationwide.[6] There is a strong

of publications have resulted from these conferences which have had for the most part as lead convenor the veteran "three-in-one" peace advocate, researcher and educator Prof. Edmundo G. Garcia, a long-time senior advisor of International Alert-London. The civil society peace advocates network revolving around these conferences is named "Waging Peace Philippines" which is coordinated by the Gaston Z. Ortigas Peace Institute, named after a late senior Filipino peace advocate.

[4] See Jose Maria Sison with Ninotchka Rosca, *Jose Maria Sison: At Home in the World: Portrait of a Revolutionary* (Greensboro, North Carolina: Open Hand Publishing, LLC, 2004), particularly pp. 97, 101, 140, 177, 204-06.

[5] See Nathan Gilbert Quimpo, "The Use of Human Rights for the Protraction of War," *Kasarinlan* (Third World Studies Center, University of the Philippines), Vol. 21 No. 1 (2006), pp. 34-54; and "CPP-NDF Members in Western Europe: Travails in Pursuing International Relations Work" in Rosanne Rutten (ed.), *Brokering a Revolution: Cadres in a Philippine Insurgency* (Quezon City: Ateneo de Manila University Press, 2008) pp. 348-85.

[6] See e.g. "Strategic Precepts of the National Peace and Development Plan," Annex D of Office of the President, *National Peace & Development Plan*, under

policy position towards "pacification and demobilization" of, if not "military victory," over the NPA. The "pacification and demobilization" position consists of negotiating concessions (maximum from adversary, minimum from one's side) necessary to achieve the cessation of hostilities and demobilization of rebel combatants, basically to end the insurgency. The "military victory" position seeks the military defeat of the adversary without concessions.[7] Thus, the reversion to "all-out war" when peace talks collapse in a major way.

Unless there are paradigm shifts on both sides, there is only going to be more of the same historical pattern with this peace process. And so, given the respective instrumentalist orientations of both sides towards peace negotiations which make it a charade, is this still a worthwhile engagement for the peace stakeholders and constituency in the country whose enthusiasm for it has understandably waned? It is a "must" engagement if only because of what is at stake for the people and the country, AND as long as our eyes are open about where both sides are coming from. There is too much at stake in terms of human and economic costs as persistent armed conflict affects human development through human insecurity.[8] Engagement in the peace process is still better than doing nothing and letting things slide. AND a purposive engagement by peace stakeholders with both sides might yet somehow achieve peace, and in the process also conceivably change them paradigm-wise, depending also on other objective and subjective factors. When there are no peace talks and ceasefire, their resumption should continue to be called for and pushed in a paramount way. AND at the same time, there are other important and urgent tasks to be done for

the Arroyo administration (2001-10).

7 See Dr. Paul Oquist, "Mindanao and Beyond: Competing Policies, Protracted Peace Process and Human Security" (Fifth Assessment Mission Report, Multi-Donor Programme for Peace and Development in Mindanao, UNDP Manila, Philippines, 23 October 2002). See also along similar but more concise and updated lines, Dr. Paul Oquist, "From National Security to Human Security in Mindanao: Protracted Armed Conflict in National and Regional Policy Perspectives" (Paper presented at the 27th General Assembly and Annual Meeting of the Catholic Bishops Conference for Human Development, Taguig, Metro Manila, 8 July 2003). A major part of the analysis on the Philippines is a result of intensive work undertaken jointly with Alma R. Evangelista, UNDP Philippines Peace and Development Advisor.

8 An excellent exposition of the costs of the armed conflict on both the Communist and Moro fronts is found in Human Development Network (HDN), *Philippine Human Development Report 2005: Peace, Human Security and Human Development in the Philippines* (Quezon City: Human Development Network [HDN], 2005) 1-32. This report is available at the HDN website www.hdn.org.ph.

the broader peace process.

Not to reinvent the wheel, there is already one good Philippine government comprehensive peace efforts framework – arising from a nationwide unification consultation process in 1993[9] -- known as **the "Six Paths to Peace"**[10] **that is an excellent guide for waging peace when there are no peace talks and ceasefire**. The "Six Paths" have headings as follows: (1) pursuit of social, economic and political reforms; (2) consensus-building and empowerment for peace; (3) peaceful, negotiated settlement with the different rebel groups; (4) programs for reconciliation, reintegration into mainstream society and rehabilitation; (5) addressing concerns arising from continued armed hostilities; and (6) building and nurturing a climate conducive to peace. **What is needed is to maximize this framework and also go beyond it in terms of specific measures.**

In this framework, it is clear that peace talks are only one path—the third path—to peace, with ceasefires being part of it and/or part of the sixth path which involves various confidence-building measures. Beyond peace talks and ceasefires, the most important of the "Six Paths," because it pertains to substantive peace, is the first path of pursuit of reforms. In fact, both sides acknowledge that it is such reforms that would best address the roots of the armed conflict—such as poverty and economic inequity, poor governance, injustice, political inequities, and indigenous communities' marginalization. The pursuit of such reforms is already being done outside the peace talks. **But when there are no peace talks as a special forum to pursue such reforms, peace-purposive reform work can continue to be done outside the peace talks but more consciously informed by it.**

Reform work outside the peace talks can benefit from inputs that

9 National Unification Commission, *NUC Report to PRES. FIDEL V. RAMOS on the Pursuit of a Comprehensive Peace Process* (Quezon City, 1 July 1993). See also Miriam Coronel-Ferrer, "Philippines National Unification Commission: national consultation and the 'Six Paths to Peace'," *Accord* (Conciliation Resources-London), Issue 13, 2002, pp. 82-85.

10 As institutionalized in Executive Order (EO) No. 125 of President Ramos dated 15 September 1993 and EO 3 of President Arroyo dated 28 February 2001, which both deal with the approach/policy and (administrative) structure for government's comprehensive peace process/efforts. For a deeper and historical understanding, see Maria Lorenza Palm-Dalupan, "The Development of the Government's Comprehensive Peace Program" in *The Media and Peace Reporting: Perspectives on Media and Peace Reportage* (Pasig City: Office of the Presidential Adviser on the Peace Process in cooperation with the Center for Media, Freedom and Responsibility, 2000).

may be drawn from its own accumulated work and documents. Take the recent "successful" Rome Formal Talks which saw, among others, the "reaffirmation" of the exchange of "complete drafts" of a Comprehensive Agreement on Social and Economic Reforms (CASER) and of the exchange of "full drafts of the tentative" Comprehensive Agreement on Political and Constitutional Reforms" (CAPCR).[11] These are rich reference materials for reform-oriented policy studies. Rather than go to waste when there are no peace talks, these might as well be consciously studied by the legislative and executive departments of government as well as by the academe and civil society organizations which can make the best policy study use of them with a view to recommendations for reforms.

When there is no ceasefire, there is no recourse but to focus on human rights and humanitarian concerns arising from intensified armed hostilities. This corresponds to the fifth of the "Six Paths to Peace," which means "to ensure the protection of non-combatants and reduce the impact of the armed conflict on communities found in conflict areas." This concern, compared to the pursuit of reforms, is a felt need of more urgent character because it is a life-and-death matter. It is of common ground to both parties as best shown by their 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) -- their first and only substantive agreement so far. The problem is that when peace talks have been scrapped, like by the GRP most recently, the related mechanisms like the Joint Monitoring Committee (JMC) to monitor the implementation of the CARHRIHL are effectively suspended, and NDFP negotiators, consultants and related personnel are practically forced to go underground.

In such a situation, addressing concerns arising from continued armed hostilities has to be done outside the scrapped talks, and has to be done both at the national and local levels. Unlike the pursuit of reforms, which by their nature are normally instituted at the national level, concerns arising from intensified armed hostilities can be addressed at both the national and local levels, oftentimes more effectively at the local level. In the absence of peace talks and of an operational JMC, both parties can and

11 See the Joint Statement on the Successful Third Round of Formal talks between the GRP and NDFP in Rome, Italy" dated 25 January 2017, particularly pages 4-5.

should each unilaterally implement the CARHRIHL as they respectively interpret it, including by bringing their respective justice systems to bear on human rights and IHL violations. Let it be a contest, if it must be, on which is the more effective government (the NDFP has its underground revolutionary "people's democratic government") in repressing violations of human rights and IHL.

It should be clear that respect for human rights and IHL is not limited by what is specifically provided for by the CARHRIHL, more so that both parties have also made commitments, in their respective modes, to international law and treaties on human rights and especially IHL. Aside from its more immediate value of civilian protection, upholding human rights and IHL has a long-term strategic value and direction of laying better ground (and lowering the costs and antagonism) for a negotiated political settlement when the requisite political will and also paradigm shifts on both sides come about, hopefully sooner rather than later.

Human rights and IHL are too important to be left at the mercy of the stalemated peace mechanisms or of the warring parties themselves. **We have to break out of the stalemated dynamics of the peace negotiations, and all concerned, not just the two warring parties, have to find new and better ways of civilian protection**. In terms of an alternative institutional mechanism for monitoring/investigation of and accountability for IHL violations, we have strongly suggested that the country's Commission on Human Rights (CHR) develop its own complementary or fallback mechanism to that of the JMC. It is good that this independent constitutional commission mandated for human rights concerns, with nationwide offices, and with international links, has started to give attention also to the related but distinct field of IHL and to human rights violations not only of the state armed forces but also of non-state armed groups.

For the most part, it has still been civil society peace groups, like notably Sulong CARHRIHL (Advance CARHRIHL), that have tried to make CARHRIHL work even without the JMC mechanism. Sulong has focused mainly on work at the local community level, where it is most needed. In the locally-focused work of Sulong, one can see the convergence of three of the "Six Paths to Peace:" the fifth path of civilian protection; the sixth path of peace advocacy and education; and the second path of peace constituency-building. **It is already past due for a more community-based strategic approach to the national-level GRP-NDFP peace process,**

not tied to or dependent on the panel-to-panel negotiations. The local community-based approach in the peace process should be seen as central and not just augmentative to the panel-to-panel negotiations. In so far as public participation in peacemaking is essential for their owning the process,[12] this is best done at the local community level.

One problem with the national-level, foreign-venued GRP-NDFP formal peace negotiations, is that these are so high level and not reflective of the local situations and concerns. There is a big gap between the top and bottom, and thus no solid foundation for the top-level talks. Overall, local communities, even in conflict-affected areas, are alienated from those talks. Local-level work can help the top-level talks by linking the local issues to the national issues, as these are really not isolated from each other.[13] A critical mass of local community-based peace constituencies—in other words, a local mass base for peace—should also be able to help push the talks to move, along with other favorable national and international factors.

Interestingly, the recently formed All-Out Peace (AOP) Movement, anchored by the main Mindanao civil society peace formations like the Mindanao Peaceweavers (MPW), voiced its own independent call on the parties for the resumption of the scrapped peace talks and the reinstallation of their terminated unilateral ceasefires. This new engagement by the main Mindanao civil society peace formations with a second peace front, that of the GRP-NDFP, after their long-time and impactful peace engagement in the Mindanao peace process front, is a most significant development. It is warranted because the Communist front of war and peace affects an actually bigger and more populous part of Mindanao than the Moro front does. The main Mindanao civil society peace formations, with their proven dynamism that has shown the way for a national peace movement, would provide a much-needed boost to independent civil society peace advocacy on the Communist front.

The linking and reinforcement among peace advocates on the two fronts can lead to a more purposive linking of the peace processes themselves on the two fronts. **At some point, a convergence must be found among the several peace processes relevant to Mindanao, starting of course with**

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[12] See *Accord* (Conciliation Resources-London), Issue 13, 2002, its first theme issue which was on "Owning the process: Public participation in peacemaking."
[13] Insights from exchanging notes with Sulong CARHRIHL Executive Director Joeven Reyes.

those involving the two main Moro liberation fronts, but eventually co-relating on common aspects with the peace processes on the Communist front—whether on the minimum matter of civilian protection or on more substantive common issues like the *Lumad* (Mindanao's indigenous highlander tribes) Question. The time available when there are no peace talks to prepare for and attend to can in the meantime be put to good use waging peace in other ways—including brainstorming, reflection, and study sessions. After all, it has been said that "Peace begins in the minds of men"[14] and women. Indeed, as does ideology-based armed conflict.[15]

Summary

PEACE can and must be waged even when there are no peace talks and ceasefire as is often the case with the 30-year more-off-than-on Philippine peace process with the Communist insurgency going on 50 years of protracted people's war. Although there is the Philippine government comprehensive peace efforts framework of the "Six Paths to Peace" that is an excellent guide for waging peace, what is needed is to maximize this framework and also go beyond it in terms of specific practical measures that are bold and innovative. Among those presented are: reform work that purposively addresses the roots of the armed conflict by being more consciously informed by inputs drawn from the peace talks; focus on human rights and humanitarian concerns arising from intensified armed hostilities, with the country's independent constitutional Commission on Human Rights as a suggested alternative institutional mechanism; a more local community-based strategic approach that should be seen as central and not just augmentative to the national-level panel-to-panel negotiations, but which gives it the needed critical mass base or constituency that can relate to and be heard by the top-level process; and linkage with the main Mindanao civil society peace formations and the Mindanao peace process itself.

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[14] Attributed to the first Filipino peace commissioner Health Secretary Dr. Alfred R.A. Bengzon during the first Aquino administration (1986-92).
[15] This refers to those internal armed conflicts that derive from espousal of alternative state visions.

On the GRP-NDFP Interim Joint Ceasefire Agreement (Part 1)

(13 April 2017, Maundy Thursday)

Allow me this Holy Week *penitencia* of commenting on the "Agreement on an Interim Joint Ceasefire" (AIJC) between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (GRP) signed on 5 April 2017 in Noordwijk aan Zee, The Netherlands, in relation also to the "Joint Statement on the Successful Fourth Round of Formal Talks…" signed on 6 April 2017. Well, that Fourth Round has been billed and hailed as "successful" with the AIJC as among several achievements. But the AIJC for one, if not also other developments in or aspects of the Fourth Round and its Joint Statement, deserve the seriousness of a closer reading.

The April 7 newspaper headline "**No ceasefire yet** – Dureza," referring to GRP presidential peace process adviser Jesus G. Dureza, is already a cautionary note. In fact, NDFP Panel Chairperson Fidel V. Agcaoili said in his April 5 Press Statement **"This is not yet a ceasefire agreement."** Indeed, the fine print of the AIJC indicates that the interim ceasefire has yet to be "put into effect" and that this shall be "upon approval and signing of the guidelines and ground rules for the implementation of the agreement" to be "finalized" by the respective Ceasefire Committees of the two Negotiating Panels. The two Committees are directed "to meet even in between formal talks," with the Fifth Round already scheduled for May 26 to June 2, 2007 in the same Dutch venue. But there is no clear time frame "to put into effect the ceasefire," it depends "upon approval and signing of the guidelines and ground rules."

At the same time, NDFP Media Office Press Statements on April 5 and NDFP Chief Political Consultant Prof. Jose Maria Sison's Closing Remarks on April 6, as well as the above-said Joint Statement itself, articulate or reflect the NDFP view that securing the approval of the Comprehensive Agreement on Social and Economic Reforms (CASER), the second substantive agreement (out of four envisioned), "should be a step ahead

of the joint ceasefire agreement, unless these agreements can be signed at the same time by the Panels and then by the principals." This assertion is however <u>not born out by the AIJC itself</u>, nor by the section "On Ceasefire" in the Joint Statement. It is like one team moving the goal posts in the middle of a football game.

The closest in the AIJC co-relating it to the CASER is the third listed objective of the AIJC which is "To provide an enabling environment for eventual and early signing of the CASER." In fact, the connotation of this objective is that a ceasefire should already be put into effect <u>ahead of the CASER</u> precisely "to provide an enabling environment" for achieving the CASER. It is absurd to posit that merely negotiating the ceasefire guidelines and ground rules would suffice "to provide an enabling environment." On the contrary, the absence of a ceasefire—even of the unilateral interim type like from August 2016 to January 2017—<u>defeats the said objective</u> and is susceptible to <u>an instead disenabling environment</u> of continuing, if not also intensified, armed hostilities, <u>as has been happening</u> since the February reciprocal terminations of the said unilateral interim ceasefires.

The two sides say that their current non-reinstatement of their respective unilateral ceasefires, despite their agreement already in the Utrecht Joint Statement of 11 March 2017 to reinstate them before the scheduled Fourth Round, is in line with the AIJC second objective of "forging a more stable and comprehensive Joint Ceasefire Agreement," in short, a bilateral ceasefire. That is well and good, <u>but what happens in the meantime</u> to address continuing armed hostilities and their likely disenabling impact on the peace talks <u>based on long and bitter experience</u>? Statements from the NDFP side say that the "CASER is expected to be finished within the year."

But lest expectations be unduly raised, the experience, nay history, would indicate the likelihood of longer, indeed prolonged or protracted, negotiations on complex and contentious substantive agenda items which are much more than catch-words or headings like Agrarian Reform and Rural Development (ARRD) and National Industrialization and Economic Development (NIED). It took most of the six years of the Ramos Administration (1992-98) to achieve the first and so far only substantive agreement in 25 years, the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL)—a subject where there is much more commonality between the parties than

there is on socio-economic reforms and politico-constitutional reforms.

What happens if the negotiations on the CASER are not finished within the year? Does this mean that a ceasefire cannot yet be put into effect even if the two Ceasefire Committees have finalized the guidelines and ground rules for approval and signing? Will that be signed only after the signing of the CASER as the NDFP asserts? What if, "for any reason we cannot foresee now," no CASER is signed? *Abangan*.

On the GRP-NDFP Interim Joint Ceasefire Agreement (Part 2)

(14 April 2017, Good Friday)

By the terms of the GRP-NDFP Agreement on an Interim Joint Ceasefire (AIJC), it should be "put into effect upon approval and signing of the guidelines and ground rules" to be "finalized" by the respective Ceasefire Committees of the two Negotiating Panels. There is nothing in its terms about awaiting the signing of the Comprehensive Agreement on Social and Economic Reforms (CASER) as is being asserted by the NDFP. If the "eventual and early signing of the CASER" is an objective as well as expectation, then why hold in abeyance the putting into effect of the ceasefire which would even "provide an enabling environment" for an earlier successful completion of that CASER negotiation? If that is the expectation, why allow the expected loss of precious lives from continuing armed hostilities in the meantime? Would those irretrievably lost lives not be in the nature of "unnecessary sacrifices" which "we should do our best to avoid"?

This is **unfortunately one simple but important objective which the AIJC missed stating**, even if it naturally follows from the nature of a ceasefire as a temporary cessation of armed hostilities: **to avoid the loss of life**, aside of course from other losses of an economic nature. This **speaks to how much or how little we value fellow human life,** which involves the most basic human right to life. NDFP Chief Political Consultant Prof. Jose Maria Sison in his Closing Remarks at the Fourth Round of Formal Talks said: "The ceasefire agreement is necessary and of high importance. But far more important and decisive in realizing a just and lasting peace is the adoption and implementation of basic social, economic, and political reforms that are needed and demanded by the Filipino people." NDFP Panel Chairperson Fidel V. Agcaoili for his part said that "the issue of ceasefire should not be pursued as an end in itself and that ceasefires, whether unilateral or bilateral or joint, are just a means to an end. Their

main purpose is to create conditions conducive to reaching agreements on basic reforms that are satisfactory to both sides."

While there is truth, especially at the conceptual level, in those statements, it should not be as if ceasefires and substantive reforms are being counter-posed to each other, instead of being seen and treated as integral parts of one process or continuum. There is a palpable downgrading of and hesitance for ceasefires on the part of NDFP partisans when they make such above-quoted remarks or other ones such as "The aim of the talks is not just to end the fighting but also to address the roots of the armed conflict… a premature ceasefire… won't help" and "it is not decisive in the continuation of the peace talks… it may provide a conducive environment for peace talks, but it can be used by the militarist elements in government to sabotage the peace process."

Indeed, peace is more than the absence of war, but it definitely includes the absence of war aside from the presence or institutionalization of a sufficient measure of social justice. In terms of process, as distinguished from outcome, peace is preferably achieved by peaceful means such as political negotiations. The means are just as important as the ends because the means often shape the contours or content of the ends. As for "the serious concerns that have been raised in relation to the previous six-month unilateral ceasefires," **the AIJC should have at least provided in all seriousness for a good though relatively quick review of the previous unilateral interim ceasefires**, ideally with the assistance of independent experts and civil society peace advocates. The sudden reciprocal terminations of the latter despite "the Successful Third Round of Formal Talks" in Rome last January were to us what were premature, not the ceasefires. From our distance, as well as the observation of many others, those reciprocal unilateral interim ceasefires appear to have been basically holding. At least between the Armed Forces of the Philippines (AFP) and the New People's Army (NPA), there were no notable armed hostilities and consequent casualties during that six-month ceasefire.

That the unilateral interim ceasefires were not unduly problematic for the peace process is perhaps further shown by the agreement by panel representatives to reinstate them before the scheduled fourth round of talks in April 2017 per the Utrecht Joint Statement of 11 March 2017. To the credit of the NDFP, they announced that they were ready to declare such

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a ceasefire not later than March 31. But when the GRP side did not follow suit in what NDFP Panel Chairperson Agcaoili described as "constituting an unexpected departure from the March 11 backchannel agreement" in a March 31 press statement, the NDFP seemed only too "willing to be flexible regarding interim ceasefire." There was no NDFP resistance to this unexpected departure from a most recent agreement, unlike when it came to other unexpected departures in the past like President Duterte's scrapping of the peace talks last February.

Again to the NDFP's credit, Agcaoili then proposed "that simultaneous and reciprocal declarations of unilateral ceasefire can be agreed upon and bound by the Joint Statement at the end of the fourth round of formal talks." But no ceasefire declarations ensued therefrom. In the absence thereof and pending the putting into effect of the AIJC, **the parties should have at least incorporated this missing clause into the AIJC**, adapted from the 1969 Vienna Convention on the Law of Treaties: "T**he parties are obliged to refrain from acts which would defeat the object and purpose of this interim joint ceasefire agreement prior to its being put into effect.**"

On the GRP-NDFP Interim Joint Ceasefire Agreement (Part 3)

(15 April 2017, Holy Saturday)

In this final part of our Holy Week commentary on the GRP-NDFP Agreement on an Interim Joint Ceasefire (AIJC), it is interesting to note how this relates to some specific concerns as well as broader objectives of both parties. In the first part commentary, we pointed out that there is actually no ceasefire yet until its guidelines and ground rules are approved and signed presumably by the two Negotiating Panels—but which NDFP Chief Political Consultant Prof. Jose Maria Sison says also "by the principals" and, more significantly, only "immediately after the signing of the Comprehensive Agreement on Social and Economic Reforms (CASER)." The latter time frame is not provided for by the AIJC, but if the NDFP had its way with that time frame, then at least for the CASER, the negotiations would partake of their preferred familiar mode of "talking while fighting." This mode was actually in effect by the time of the resumption of the Fourth Round of Formal Talks. The NDFP says that the "CASER is expected to be finished within the year." But experience would indicate the likelihood of longer, indeed prolonged or protracted, negotiations on its complex and contentious substantive agenda items.

The NDFP has thus deftly dealt with one of the four so-called "pre-conditions" of President Duterte for the resumption of the peace talks, namely a bilateral ceasefire. The fourth round formal talks proceeded even without one. In lieu of an actual bilateral ceasefire, there was only an agreement to negotiate still the guidelines and ground rules of an interim joint ceasefire. We humbly suggest that this be "put into effect" ASAP, without waiting for the signing of the CASER, but already "provide an enabling environment" for its "early signing." IF, "for any reason we cannot foresee now," no CASER signing is forthcoming despite the best efforts, THEN that may be justifiable ground and a reasonable time to terminate the interim joint ceasefire.

Two other "pre-conditions" of President Duterte, which were supposed to have been covered by a bilateral ceasefire agreement, namely an end to the collection of revolutionary tax and for the NDFP to quit claiming territories, were also deftly side-stepped by the NDFP by shunting those two items away from the ceasefire agenda and onto the politico-constitutional reforms agenda. As dealt with in the AIJC: "Matters regarding a single governmental authority and taxation shall be discussed and resolved in forging the Comprehensive Agreement on Political and Constitutional Reforms (CAPCR) within the framework of the proposed Federal Republic of the Philippines."

We digress or pause a bit here to take in the significance of that last quoted point of agreement between the parties. The NDFP has thereby, although only a ceasefire-related agreement, accepted the overarching framework of President Duterte's sponsored Federal Republic of the Philippines, to the point that the CAPCR is to come within this framework. Sison said that "Such matters can be finally resolved by the GRP and NDFP co-founding the Federal Republic of the Philippines. Thus, the NDFP will not be capitulating to a pre-existing government but can assume responsibilities in the new government." The obvious NDFP positioning here is to be a presumptive co-equal part of a new coalition government, the federal form being just incidental to the power-sharing. Sison had expressed opposition to the above-said two "pre-conditions" in that they "amount to demanding the capitulation, pacification and self-destruction of the people's (i.e. the NDFP's) government and all revolutionary forces." Ceasefires also tend to be semi-automatically treated by the NDFP in those terms, thus its conceptual hesitance towards ceasefires, even though there is other contrary revolutionary experience.

What remains of President Duterte's four "pre-conditions" for the resumption of the peace talks is only the release of all soldiers and policemen held by the New People's Army (NPA). It appears that this is the only "pre-condition" that will be actually met by the NDFP in the immediate period or coming days or weeks at most. It is the easiest to meet among the four "pre-conditions" but, even then, the absence of a ceasefire has caused some delays in its safe and secure implementation. The problem is that the continuing absence of a ceasefire, and instead the intensification of armed hostilities, will likely result in more soldiers, policemen and rebels captured, killed or wounded in the conflict-affected areas in a vicious cycle

that creates its own negative dynamic and disenabling environment for the peace talks. This would defeat the AIJC first objective "to generate goodwill and trust in the GRP-NDFP peace negotiations."

Military commanders have said that military operations will continue against the NPA despite the signing of an agreement to forge a joint interim ceasefire, unless ordered to stop by President Duterte. The Communist Party of the Philippines (CPP) for its part, on the occasion of the 48th anniversary of the NPA last March 29, and on the eve of the Fourth Round of Formal Talks, issued a deliberately delayed Communique on the CPP Second Congress held several months earlier in the fourth quarter of 2016. It reaffirmed, among others, in an elaborated preamble of no less than its Constitution, "its strategy and tactics for advancing protracted people's war and waging armed struggle as principal form of struggle." Is this really the *Via Crucis*, as it were, that addresses the roots of the armed conflict, or is it the peace negotiations, or both? This has to be co-related with the current course of the "talking while fighting" mode that appears to have deftly reasserted itself in the GRP-NDFP front of war and peace—regarding which we cannot yet say *Consummatum Est*.

Don't put the CASER "cart" before the ceasefire "horse"

(2 July 2017)

President Duterte most recently publicly asked the Communist Party of the Philippines-New People's Army-National Democratic Front of the Philippines (CPP-NPA-NDFP, further abbreviated as CNN): "**Can we stop fighting for a while?**" Yes, indeed, can you two (i.e. the Philippine government and the CNN) stop fighting for a while? And corollary to that, can you two proceed with your peace talks? In other words, can you two just do it, **do what you already agreed to do—reinstate a reciprocal or mutual ceasefire and resume the peace talks**?

The agreements we refer to mainly are the "Agreement on an Interim Joint Ceasefire" (AIJC) of 5 April 2017 and the "Joint Statement on the Successful Fourth Round of Formal Talks" dated April 6, 2017. Less than a month earlier, there was the "Utrecht Joint Statement" of 11 March 2017 where "the Parties agree[d] to reinstate their respective unilateral ceasefires which shall take effect before the scheduled fourth round of talks in April 2017…" It never happened. For some reason, the parties backtracked (there have notably been several backtrackings this year). Ostensibly, they concurred in going instead straight to a bilateral ceasefire which they deemed "more stable and comprehensive." Thus, the AIJC. But this was **not itself a ceasefire agreement**, it was only an agreement "to put into effect the [joint or bilateral] ceasefire upon the approval and signing of the guidelines and ground rules." Contrary to the CPP position, **a bilateral ceasefire is not "premature" but rather it is overdue**. It treats the bilateral ceasefire as a "demand" by the other side when in fact it is an agreement in principle and in writing, signed by both sides.

Nearly three months after—which in the meantime saw most notably the Marawi siege and Mindanao martial law—there is still no ceasefire, no bilateral ceasefire agreement, and even no Mindanao ceasefire between the NPA and the Armed Forces of the Philippines (AFP) despite a back-

channel agreement in mid-June to have one. The back-channel agreement for a Mindanao ceasefire was meant to (and believed to) bring the peace talks back on track after the Government of the Republic of the Philippines (GRP) side refused to proceed with the fifth round of formal talks scheduled for May 26-June 2. The GRP demanded that the CPP rescind first its May 24 "calls on the NPA to plan and carry out more tactical offensives across Mindanao and the entire archipelago" made right after the May 23 Marawi siege and Mindanao martial law declaration. The rescission of that call has so far not come, despite the NDFP peace panel's avowed weighty recommendation of it to the CPP leadership.

Neither has the supposedly agreed Mindanao ceasefire come, at least on the part of the CPP which contends that there is the "prejudicial question" of whether President Duterte has actually ordered the AFP to refrain from carrying out offensives against the NPA since the June 18 statement of GRP Negotiating Panel Chief Silvestre H. Bello III declaring "not undertaking offensive operations" against the NPA. The CPP contends that "the recommendation of the NDF for the CPP to order the NPA to refrain from carrying out offensives in Mindanao rests on the critical precondition that the AFP will likewise refrain as well from attacking the NPA and the people in the revolutionary base areas in Mindanao. Presently, such conditions do not exist concretely." So, there is this buck-passing of sorts from the NDFP to the CPP to the NPA, there is a demand for proof of specific presidential orders, and there is "the critical precondition" that no AFP attacks "exist concretely." *Kung gusto, may paraan; kung ayaw, maraming dahilan* [Roughly, "If there's a will, there's a way; if one refuses, there will be all sorts of reasons."]

Lest we get sidetracked (there is a pattern of side-tracking in this process) by the issue of a side-ceasefire between the NPA and AFP in Mindanao, let us go back to main track of the GRP-NDFP peace process. In the latest CPP statement of 30 June 2017 on the first anniversary of the Duterte administration, it contends that the early April 2017 fourth round of formal talks "proceeded only after both sides agreed to forge a bilateral ceasefire agreement which the NDFP declared unequivocally will be signed after an agreement on socio-economic reforms is forged." **That is the NDFP's unilateral declaration, but not what was agreed** in the AIJC and in the Joint Statement of the fourth round. In fact, such declaration is contrary to the spirit and letter of the AIJC, particularly its stated third objective: "**To provide an enabling environment for eventual and early signing of the Comprehensive Agreement on Social and Economic Reforms** [CASER]." It is clear that the ceasefire "horse" should come ahead of the CASER "cart" so as to help pull it forward. But the CPP would have us put the cart ahead of the horse—and what is this if not a "disruption" (to use CPP words) of the agreed process?

Ceasefire seems to be the hardest word again for the CNN. It cannot seem to appreciate it as a possible, even normal, "specific measure of goodwill and confidence-building to create a favorable climate for peace negotiations," to quote the 1992 Hague Joint Declaration framework agreement for the peace talks. It misrepresents ceasefire as "end of hostilities and disposition of forces." Worse, it labels ceasefire as "pacification," "cooptation," "capitulation," and "surrender." It is obviously and understandably wary of a ceasefire's possible adverse or undermining effect on the momentum of the armed struggle as its main form of struggle and on the will to fight of the NPA and its Red fighters. But as President Duterte asks them, "Can we stop fighting for a while?" **The point is to give the peace talks a better chance** by providing an enabling environment, **on the premise that there is still a desire and chance for peace**—yes one that is based on justice, yes one that addresses the root causes of the armed conflict. If we believe that there is still a desire and chance for peace, then **another point is to avoid unnecessary sacrifices** or loss of life, and also destruction or dissipation of resources. For all these, can you two not stop fighting for a while?

The key phrase here may be "for a while." A ceasefire is **normally only interim or temporary, up to a reasonable time of reckoning** whether or not a sufficient level of substantive (to start with, socio-economic) reforms have been agreed. In other words, stop fighting while talking. Not anymore the "talking while fighting" modality which has historically proven to be fraught with disruptions and impasses because of side-issues arising from continuing armed hostilities or fighting—as has been happening since the early February breakdown. Contrast this with the fast and major progress in the peace talks from the first to third round during the effectivity and effectiveness of the reciprocal unilateral interim ceasefires from August to January. The terminations, initiated by the CPP-NPA, in early February of those unilateral interim ceasefires were the clear proximate cause of the generally downward spiral of the peace talks since then.

Still, the parties were somehow able to agree in early April and again in mid-June (for the Marawi/Mindanao situation) on measures to arrest that downward spiral and get the peace talks back on track. Among others, their respective Ceasefire Committees were supposed "to meet even in-between formal talks, to discuss, formulate, and finalize the guidelines and ground rules" for the bilateral ceasefire before this can be "put into effect," unfortunately with no agreed schedules or time frame. The parties however agreed on schedules with specific dates even for meetings in April and May of Bilateral Teams under the Reciprocal Working Committees on Social and Economic Reforms (RWCs-SER). By all accounts, these meetings of the Ceasefire Committees and the CASER-related Bilateral Teams never pushed through. More recently, the parties agreed on a Mindanao ceasefire in general terms but it turns out that even this has not been put into effect, at least on the CPP-NPA side which has most recently (on June 30) even reiterated (or reaffirmed, if you prefer): "In the face of the Duterte regime's all-out war, the NPA must continue to seize the initiative and carry out more and more tactical offensives nationwide in order to derail and blunt the all-out attacks of the AFP, punish the most notorious human rights abusers, defend the interests against the people [sic] and bring forward the people's war."

The CPP admits that "Since February, the Party has ordered the NPA to carry out widespread tactical offensives nationwide in order to defend the people and counter AFP abuses. The NPA has launched tactical offensives against armed personnel of the reactionary state as well as armed security of local despots and mining companies. It has seized at least 250 firearms, enough for a new battalion of NPA Red fighters." It does not mention how many have been killed. The CPP will have to decide now what is more important to it at this juncture—to "bring forward the people's war" or to engage in meaningful peace negotiations for substantive reforms that address the root causes of the armed conflict? It cannot have its cake and eat it too by "talking while fighting." What it considers "revolutionary dual tactics" is not a license for duplicity that is contrary to the basic tenet of negotiating in good faith.

What might be done now to arrest the downward spiral and get the peace talks back on track, on the premise that parties still want it? The most immediate measure they can take is to go back to the *status quo ante* of reciprocal unilateral interim ceasefires before the early February

breakdown arising from their terminations. After all, they had already agreed to that modality at least twice—in August 2016 to jump-start the peace talks under the new Duterte administration and in March 2016 with the Utrecht Joint Statement. And most recently, on June 1, NDFP Negotiating Panel Chairperson Fidel V. Agcaoili issued a statement of the panel presaging a contemplated Mindanao ceasefire: "In specific areas of cooperation and coordination, the armed forces of the GRP and NDFP shall be bound by a ceasefire agreement between them, <u>pending the issuance of ceasefire declarations that are unilateral but simultaneous and reciprocal.</u>" (underscoring supplied) Earlier, before the fourth round of formal talks in April, Agcaoili already proposed "that simultaneous and reciprocal declarations of unilateral ceasefire can be agreed upon and bound by the Joint Statement at the end of the fourth round of formal talks."

This is **without prejudice to the Ceasefire Committees soonest holding several intensive meetings to discuss, formulate, and finalize the guidelines and ground rules for the agreed bilateral ceasefire, this time with a time frame that may be reasonably fixed at one to two months.** The final draft guidelines should be ready by the time the fifth round of formal talks finally pushes through, expectedly in August or September. It should not take that much time. As early as the third round of formal talks in January, both Ceasefire Committees had provided each other with their respective draft agreements for an interim bilateral ceasefire. In fact, the independent civil society peace advocacy group Sulong CARHRIHL Network (SCN) has also provided them with its draft bilateral ceasefire agreement. There should be no excuses for delay. This is unlike the much more complex substantive agenda of socio-economic reforms.

A bilateral ceasefire can be expected to address what the CPP refers to as "unabated all-out war" against the NPA, the forward deployment and occupation of at least 500 barangays by AFP troops, the release of "political prisoners," and other issues and concerns which led to the termination of the unilateral interim ceasefires. And if there would still be no unilateral interim ceasefires before a bilateral ceasefire is put into effect, then the parties should consider an addendum clause to the AIJC, adapted from the 1969 Vienna Convention on the Law of Treaties, to this effect: "The parties are obliged to refrain from acts which would defeat the object and purpose of this interim joint ceasefire agreement prior to its being put into effect." If followed, this could amount to undeclared or de facto reciprocal unilateral

interim ceasefires.

The envisioned bilateral ceasefire agreement is supposed to include **ceasefire monitoring and verification mechanisms**. Based on experience in this peace process and in the Mindanao peace process, **these mechanisms should not be limited to the parties themselves or their allied organizations** like in the current set-up with the Joint Monitoring Committee (JMC) for the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL). Rather, **these mechanisms should provide a significant role for independent civil society organizations with demonstrated competence, neutrality and impartiality** in monitoring, verifying and reporting violations of ceasefires, human rights and IHL. This will help ensure that ceasefire monitoring will not be used for a propaganda war by either or both sides. Excessive propaganda statements, just like the use of excessive force in the field, also tend to disrupt the peace talks.

The peace talks should resume, with the work and meetings of the Bilateral Teams under the RWCs-SER on various sections of the CASER re-starting at about the same time as the Ceasefire Committees, and also time-bound. As we said, the work on the complex CASER can be expected to take longer than the work on the bilateral ceasefire guidelines and ground rules. NDFP Chief Political Consultant Prof. Jose Maria Sison has envisioned a CASER and a Comprehensive Agreement on Political and Constitutional Reforms (CAPCR) approved within the first two years of the Duterte administration so that these agreements can be implemented for at least two years before the end of his term. This for Sison would "lay the full basis" of the last substantive agenda item agreement on the end of hostilities and disposition of forces (CAEHDF) "as early as 2020-21."

Well, one year of the Duterte administration has gone. **Would one more year (till mid-2018) be a fair reckoning time on whether or not the negotiations on the CASER are satisfactory? How about two years, till mid-2019 with its mid-term elections? Would one or two years be a reasonable period "for a while" which President Duterte is asking the CNN for a stop to their fighting?** AND at the end of that reasonable period, IF good faith negotiations still fail to achieve substantive reform agreements, THEN it can be granted to the CNN that a return to armed struggle would be understandable or even justified since substantive

reforms apparently or ostensibly cannot be achieved peacefully, depending also on the circumstances.

Assuming that the CNN finally agrees to a definite time-bound "for a while" to stop its fighting, agrees to put into effect an interim joint ceasefire, what does or can the NPA do in the meantime? Well, Prof. Sison had already answered that this way to a Davao media forum one year ago:

> The people's army will not be idle even if it is in a mode of self-defense and does not actively carry out offensive military campaigns and operations against the AFP and PNP. It can continue to engage in mass work, land reform, production, health care, cultural work, politico-military training, defense and protection of the environment and natural resources against illegal mining, logging and land-grabbing and it can continue to suppress drug dealing, cattle rustling, robbery, kidnapping and other criminal acts as well as despotic acts of local tyrants.

So, who's afraid of a ceasefire? And who's afraid of peace talks? Just do it, as you've already agreed. And then let's see if it will work. Trying is at least better than the current downward spiral – which some say could be "towards the abyss."

War and Law: Shooting-To-Kill Armed Rebels

(3 December 2017)

The lawyer President and Commander-in-Chief's verbal order for soldiers (AFP) to shoot armed rebels (NPA) on sight makes for interesting legal discourse, including for academic purposes, were it not more importantly a real life-and-death matter. The lawyer Vice-President has weighed in that the shoot-to-kill (STK) order is illegal, contrary to the Constitution, presumably its due process clause, as well as criminal procedure that allows a citizen's (warrantless) arrest as the mode of suppression when a person when has committed, is actually committing, or is attempting to commit a crime in one's presence.

The lawyer Presidential Spokesperson (and Presidential Adviser on Human Rights) has replied on two levels of law. On the level of international humanitarian law (IHL), he said that armed rebels in a non-international armed conflict like that between the NPA and the AFP are legitimate military targets. On the level of criminal law, he said that armed rebels are committing the crime of rebellion which involves taking arms against the government. But he *threads on dangerous ground when he conflates those two levels of law* by (reportedly) saying that communists who took up arms against the government are legitimate military targets since they are committing a crime. He was later quoted as saying "I assure you, no armed NPA will surrender to authorities. The options are to shoot them or [allow] our men in uniform to be shot by them… If there's a war, all those involved [presumably referring to combatants] can be fired at…"

IHL does allow, during armed conflict, attacks directed against military targets, including combatants of both the state armed forces and anti-state organized armed groups, but this is *not absolute and has certain limits*. Among these are the fundamental IHL principles of military necessity and humanity as applicable under the circumstances, as pointed out in various guidance materials of the International Committee of the Red Cross (ICRC). It may be possible to neutralize the military threat posed through

capture or *other non-lethal means or options* without additional risk to the operating forces or the surrounding civilian population. The armed rebel, or for that matter armed soldier, must be given the opportunity to surrender, depending on the circumstances. It cannot be presumed *a priori* that "no armed NPA will surrender to authorities," because *it has in fact happened*. And any lethal self-defense can be justified only in the face of armed resistance.

On the level of criminal law and procedure, particularly where there is no armed encounter involved, perpetrators (like a rebel merely bearing arms) of the crime of rebellion are *not to be treated as legitimate military targets but as suspects*—in which case, they may not be deprived of life or liberty without due process of law, which due process is mainly the function of criminal procedure. This procedure does not contemplate the abuse of the worn-out excuse of *nanlaban* (fought back). This level of law is largely (at least conceptually) one of law enforcement or a police matter, as they say, not a military matter. It is dangerous to conflate these two matters, *as the NPA is unfortunately doing* under the CPP's "People's Democratic Government."

Given those two levels of law brought out (and we haven't even dealt with the potentially complicating special criminal law on anti-terrorism), and some possible conflict of laws situations in the President's foreseen coming (actually already arrived) "virulent" AFP-NPA encounters, *it is time for all concerned to think through this legal situation*. We have hardly scratched the surface of this in this limited space, and there is more work yet to do in preparing for the worst.

Unless, hoping against hope, we can still somehow rise from the "virulent" abyss we have just fallen into. If there are to be no more lost loved ones like Josephine Anne Lapiras and PO1 Joeffel Odon (how many times have we said this sort of hope over the years), the leaders of both sides will have to find it in their hearts and minds to see the need to at least try to stop that fall by way of *a reasonable ceasefire accompanying reasonable peace talks*. With more sincerity.

Interim peace proposal
for the 3-month wait on the GRP-NDFP front

(24 June 2018)

The GRP-NDFP front of war and peace has just taken its most recent twist and turn: the suspension of peace, including back-channel, talks for an announced period of three months so that President Duterte, according to him or his spokesman, whichever it is, can "personally review" all signed peace agreements and also hold related stakeholder consultations. Those agreements would date from the 1992 framework Hague Joint Declaration and would presumably include the latest set of at least initialed, if not signed, agreements, like an Interim Peace Agreement, that were supposed to usher the scheduled (but aborted) resumption of formal peace talks this June 28.

In the meantime, NDFP Chief Political Consultant and CPP founder Prof. Jose Maria Sison, in what do not appear to be official NDFP or CPP statements, has called attention to the situation that there would be "no ceasefire in the next three months" because President Duterte wanted "to launch his military offensives first and find out the results." But this is also because the CPP, per its official statements, has also been calling for intensified tactical offensives against the "U.S.-Duterte fascist regime." Sison predicted more bloodshed. Indeed, clashes between government troops and communist rebels have flared up anew.

What is to be done? We humbly make an interim peace proposal consisting of two main measures or courses of action. First, I would call on fellow independent civil society peace advocates and groups like the Sulong CARHRIHL Network, Waging Peace Philippines and the All-Out Peace Movement, not aligned with either the GRP or the NDFP, to soonest **initiate an alternative review of all the key peace agreements to parallel, counterpart and even contribute to President Duterte's announced three-month review**, including on the matter of foreign venue and third-party facilitator for the peace negotiations. This can take the modest form of quickly engaging a feasibly-sized expert panel of selected independent

peace advocates and scholars to come up with a timely review report for this purpose, if not also public-type consultations and focused group discussions culminating in a presentation of the said panel's report.

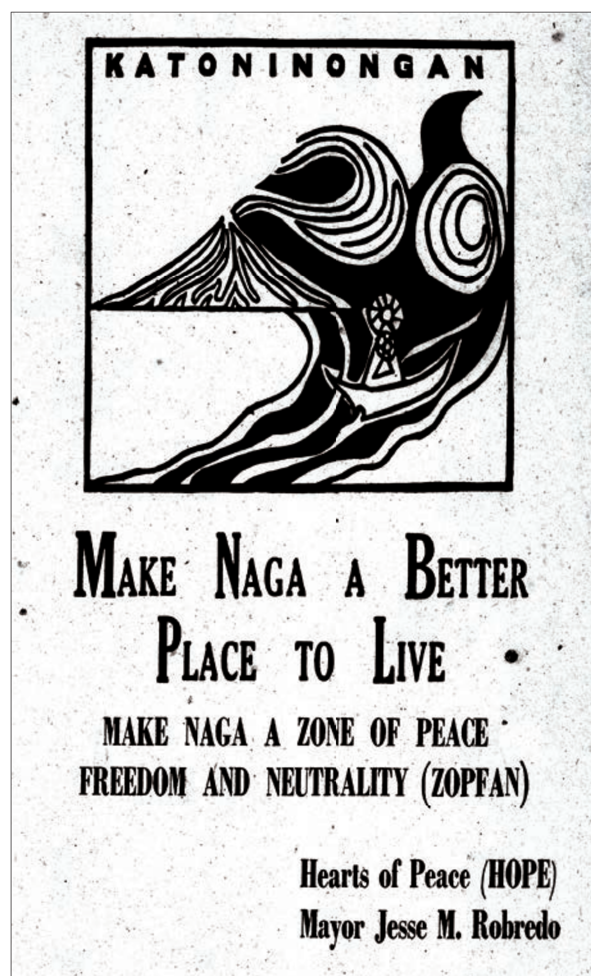
To repeat, it is important that this alternative review be independent or non-aligned, as it were, and not one tailored or pre-ordained to suit GRP or NDFP positions. And it is important to consciously employ this alternative review as also a mechanism to generate more and better public understanding and participation, which is a long-time weakness, in this peace process—unlike in the Mindanao peace process. Like the positive international actors there, the Royal Norwegian Government (of Norway, not "Norwegia") should give more material support to independent civil society peace advocacy and constituency-building, including that which is local community-based. Civil society peace advocacy on the GRP-NDFP front has in recent times tended to be dominated by aligned groups, which can also be counter-productive to public support for the peace process because of concomitant public perceptions that the process supports the political and military agenda of one side. Whether a peace group or formation is independent or is aligned also has a bearing on credibility when the concerned group or formation engages in monitoring of violations of human rights and international humanitarian law or of any ceasefire.

Which brings us to our proposed second interim measure for the "waiting period" of three months. Let there be arranged **a simultaneously declared Interim Stand-Down during this period**. IF the idea is that the peace negotiations still continue but that formal peace talks have only been postponed, THEN why continue killing each other in the meantime? You can wait for the peace talks to resume, but you cannot wait to wage war against each other? What kind of sincerity is that in terms of commitment to the peace process? To borrow from the fully signed but aborted Stand-Down Agreement of 8 June 2018, "Stand-Down shall be understood to mean temporary cessation of hostilities in which the contending armed units and personnel of the Parties stay where they are ('as is where is'), take an active defense mode, and shall not commit any offensive action or operation against combatants and civilians." Is three months of this asking too much, given what is at stake, including in terms of Filipino lives that should matter?

The avowed objective of the said Stand-Down is "in order to provide

through goodwill and confidence-building measures, the positive atmosphere conducive to moving forward and completing the peace negotiations…" Does this objective not hold too for the three-month period of reviewing all signed peace agreements? On the other hand, a negative atmosphere due to intensified armed hostilities may itself sabotage the desired resumption of peace talks. Why risk a negative atmosphere or, should we rather say, a further negative atmosphere, that may sour the review and altogether kill the peace talks?

Stand down now!



On the peace zones review

(31 July 2019)

National Security Adviser Hermogenes C. Esperon, Jr. was reported to have said that peace zones like those in Sagada, Mountain Province, and in Mindanao would be reviewed basically in so far as these have barred the entry and presence of police and military personnel but not rebels particularly of the New People's Army (NPA) who have taken advantage of some peace zones for sanctuary, recruitment, and training ground. He told this to reporters on the sidelines of a summit of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) in Baguio City last July 25 ("Esperon, peace zones up for review," PDI, 7/26/19, p. A16).

Despite their misgivings about rebel infiltration of peace zones, it is notable that security officials like Esperon and the Army's 5th Infantry Division Commander Maj. Gen. Pablo Lorenzo still speak of "honoring" and "continuing to recognize" these peace zones. Both Esperon and Lorenzo, however, speak of setting new rules or mechanisms in place for the efficient and effective delivery of government services to improve the lives of people in these peace zones, including for the military's engineering brigades to build roads or bridges near or within peace zones.

The most immediate or urgent concern, however, in this time of escalated armed conflict and insurgency-related killings like currently in Negros Island, is for civilian protection from continuing armed hostilities. Among other measures of civilian protection, including better respect for human rights and international humanitarian law (the rules of war), local communities like those in Sagada and elsewhere, should be allowed and respected in their autonomous decisions to declare or maintain their localities as **peace zones which are, at the minimum, off-limits to armed conflict or hostilities**, and not necessarily off-limits to soldiers and rebels, armed or unarmed.

At this juncture, it might be good to go back to a definition and other

policy formulations in the once 13th Congress House Bill No. 1867 of then Anak Mindanao Party-List Rep. Mujiv S. Hataman for "The Peace Zones Policy Act of 2004." Here **a peace zone is defined** as "a people-initiated, community-based arrangement in a local geographic area which residents themselves declare to be off-limits to armed conflict primarily to protect the civilians, livelihood and property there and to contribute to the more comprehensive peace process." The **proposed basic policy** on peace zones "shall be one of openness, respect, recognition, consultation, appropriate support, **and ensuring their integrity and autonomy**." **Five specific policies** on peace zones are proposed, and it would be educative to all concerned, including for the above-mentioned peace zones review, to present these now:

1. Peace zone proponents will undertake direct negotiations separately with each armed party. Any agreement reached with a combatant group constitutes a bilateral pact, autonomous of any agreement that may be reached with other armed parties.

2. Peace zone shall, as much as possible, be demilitarized of both government and dissident armed forces, including paramilitary forces and private armies. This does not preclude the community from agreeing to the deployment of peace-keeping or law enforcement units for protection from criminal elements as the situation warrants.

3. Peace zones shall be oriented to the peace process, and **not be used for counter-insurgency or for rebel base-building**.

4. Special development assistance to a peace zone shall be subject to community-based decision-making and implementation. Development programs and projects should be identified, requested or agreed on by the community.

5. Peace zones shall not be subjected to any blockade of food, vital services, and development projects approved of by the local community.

The above-said proposed Peace Zones Policy Act also contains sections on Characteristics of Peace Zones, on Official and Formal Agreement with Government, and on Sanctions, but there is no space here to present these. But **what is important for one**, given the "whole-of-nation approach" institutionalized by Executive Order No. 70 of 4 December 2018

as "a government policy for the attainment of inclusive and sustainable peace" and being implemented by the above-said NTF-ELCAC, **is for the government not to coopt the peace zones into that "whole-of-nation approach,"** such as for counter-insurgency. That will only defeat the purpose and even integrity of peace zones as autonomous local community initiatives to protect themselves from continuing armed hostilities of which they want no part in. **Let them be, leave them be.** As we said, it is notable that security officials like Esperon and Lorenzo speak of "honoring" and "continuing to recognize" these peace zones.

Unfortunately, on the other side of the armed conflict, the NPA through the Communist Party of the Philippines (CPP) and the National Democratic Front of the Philippines (NDFP), has long adopted a hardline negative policy against peace zones especially "in areas where the NDFP is already governing or present" and which they view as characterized by "one-sidedness in favor of the Government of the Republic of the Philippines (GRP) authority." CPP founder Jose Ma. Sison has characterized peace zones as "seek(ing) to mobilize the local respectables (especially reactionary politicians, businessmen, landlords and conservative clergy) and create public opinion against the revolutionary movement and 'restore trust and confidence' in the GRP, including the perpetuation of violence of oppression and exploitation…" **This should dispel any security establishment thought that peace zones are one-sided in favor of the NPA.** On the contrary, it is a bigger challenge for the peace zone communities to get the CPP-NPA-NDFP to honor, recognize and respect peace zones declarations than it is to get the GRP side, both local and national, to do so. **Recognition and respect are important but still more important is local community assertion for its autonomous self-protection.**

In ending for now, aside from keeping peace zones off-limits to armed hostilities, allow us what may appear to be a naïve proposal: **let peace zones be also safe spaces for peaceful competition between the GRP and the NDFP in the delivery of basic services there, in the best interests of the local communities**, certainly a win-win solution for them.

Lex talionis and IHL in a time of a shooting war

(7 August 2019)

President Duterte's order to *his* Armed Forces of the Philippines (AFP) to give the New People's Army (NPA) "tit for tat" is notable on several levels. It is perhaps the first time in the Philippines, since the time American Gen. Jacob Smith and Japanese Gen. Masaharu Homma were here, that a commander-in-chief or a military commander has ordered "tit for tat," "Do it to them also" and "give them what they deserve" against the enemy. Whatever way this is interpreted and implemented by the military, and counter-attacked by the NPA, the result can only be an unfortunate further escalation of the armed conflict and (counter-)insurgency-related killings.

It actually conjures something the President wants to avoid per his last State of the Nation Address, although said in a different context: "A shooting war is grief and misery multiplier. War leaves widows and orphans in its wake. I am not ready or inclined to accept the occurrence of more destruction, more widows and more orphans, should war, even on a limited scale, break out." The thing is, the NPA probably feels the same way as him when he also spoke of, but again in a different context: "It is also exasperating that there are times when I think that perhaps it is blood that we need to cleanse and rinse away the dirt and the muck that stick to the flesh like leeches."

The sad reality is that both sides of our shooting war have already made a decision in late 2018 to primarily pursue such kind of a war. The Duterte administration has decided on what it calls a "paradigm shift," embodied in Executive Order No. 70, not to negotiate with the Communist Party of the Philippines (CPP)-NPA-National Democratic Front of the Philippines (NDFP) [or CNN, for short] top leadership but to instead defeat or neutralize it politically and militarily at sub-national levels—ironically, based on the security establishment's assessment of the CNN's strategy with the peace negotiations "not to pursue real peace but to meet their objective of overthrowing the legitimate government."

Given what it considers to be the "U.S.-Duterte fascist regime," the CNN strategy under his remaining term is to reprise the largely successful CNN armed resistance against the "U.S.-Marcos dictatorship." CPP founder and NDFP Chief Political Consultant Jose Ma. Sison said last April: "There can be no genuine peace negotiations… while Duterte remains in power… It is obvious to the Filipino people and their revolutionary forces that they have no choice but to concentrate on intensifying the people's war for a people's democratic revolution." So, a shooting war it will be for at least three more years. **But even war has its limits**—believe it or not, though easier said than done.

President Duterte appears to recognize this, even with his order to the AFP to give the NPA "tit for tat." This is reflected in his statement to the NPA referring to its apparent torture and summary execution of four captured police intelligence operatives last July 18 in Ayungon, Negros Oriental, which has become his *casus belli* or an event justifying war: "You have gone too far… You cannot do it unrestrained, unbridled, uncontrolled… I will not allow it." Neither should he allow, much less order, it to be done by *his* security forces. And with more reason for any legitimate government with professional military and police forces. The President seems to have caught himself in time by also saying "Maybe we wanted [to] as a revenge. But since we are government and you have to have morals to prop us up. Otherwise, we are no different from the barbarians like them."

Well, President Duterte is not a "barbarian" but a fratman (some say, the real barbarians), a member of *Lex Talionis Fraternitas, Inc. Sodalitas Ducum Futurorum* of the San Beda College of Law (today's politically correct law school). It is uncanny because ***Lex Talionis*** happens to be "the law of retaliation" developed in early Babylonian law, particularly the Code of King Hammurabi (1792-1750 B.C.), and present in both biblical and early Roman law that punishment should resemble the offense committed in kind and degree. It is referred to in the Bible's Old Testament three times as "**An eye for an eye, and a tooth for a tooth**," but is repudiated by Jesus in the New Testament. It is so obviously morally wrong because **you cannot right a wrong by committing another wrong**. It is also **morally and legally wrong to follow illegal orders**—like an order to torture and summarily execute (extra-judicially kill, or "salvage") captured enemy combatants. There is an arguable right for soldiers or even rebels to refuse to obey illegal military orders of their commanders.

There is no place for *Lex Talionis* or "tit for tat" in the modern world. What we already have instead is **international humanitarian law** (IHL) or the law of armed conflict or war, the core of which is the **1949** (A.D.) ***Geneva Conventions***, and the **70th anniversary** of which, we commemorate this **August 12**. The President is aware of this, as shown when he referred again to the NPA: "They are not fighting a conventional war. They are not obeying the Geneva Convention." While the NPA is not fighting a conventional but instead a guerrilla war, it is still bound by IHL, particularly on non-international armed conflict, just like the AFP is in its counter-guerrilla war. As it is, both sides are on record to be adhering to IHL and human rights in general and to the Geneva Conventions in particular. **Let your continuing shooting war then be also a contest, if you will, in adherence in both word and deed, in both letter and spirit, to the Geneva Conventions**, in the best interests of the civilian population caught in your crossfire AND of your respective causes.

Stated otherwise, real adherence to IHL serves not only civilian protection but also enhances your military discipline and popular support. Your shooting war is ultimately not about body counts but rather about winning hearts and minds. Take to heart and mind this first among ***The Soldier's Rules***: "Be a disciplined soldier. Disobedience of the laws of war dishonors your army and yourself, and causes unnecessary suffering; far from weakening the enemy's will to fight, it often strengthens it." Barbaric, including "tit for tat," behavior in war is counter-productive and self-defeating.

On the other hand, the renowned IHL scholar Hans-Peter Gasser teaches us: "… humanity in time of war… respect for IHL helps lay the foundations on which a peaceful settlement can be built… The chances for a lasting peace are much better if a feeling of mutual trust can be maintained between the belligerents during war. By respecting the basic rights and dignity of [fellow humans], the belligerents help maintain that trust… IHL helps pave the road to peace." **Ironic though it may seem, following the rules of war is one of the paths to peace.**

Ceasefire in a time of coronavirus

(14 March 2020)

Love in a time of coronavirus, just like love in a time of cholera, has already happened and will likely continue to happen. How about a ceasefire on the war front between the Philippine government/armed forces and the communist-led rebels in this time of coronavirus? It has happened before, on a temporary and short-term basis, during some particularly destructive natural calamities, although mostly on a regional level. Well, this current natural calamity of COVID-19 is now a global pandemic. The Philippines for one is now under a public health emergency, to be clear, according to President Duterte, not martial law – although the military and police are being mobilized to backstop (employ reasonable force, if necessary) the new national emergency response under a civilian-led COVID-19 Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-EID).

Given that new priority for the military (Armed Forces of the Philippines, AFP) and police (Philippine National Police, PNP), it should be in their interest that there be a temporary ceasefire (or at least a mutual suspension of military offensives) between them and the communist-led rebels (New People's Army, NPA) until the COVID-19 threat has been contained. On the other hand, the coronavirus emergency re-focusing and redeployment (if substantial) of the AFP-PNP is also a tempting scenario for the NPA to further intensify its tactical offensives, as it has long called for since the collapse of the peace talks in 2018. Any redeployment of big units of the AFP from the countryside to the National Capital Region of Metro-Manila (maybe the AFP version of "surrounding the cities from the countryside") will leave some vacuum in the countryside that the NPA would normally take advantage of, such as by all the more attacking "softer" targets like the PNP and para-military units (Citizens Armed Forces Geographical Unit, CAFGU), which could no longer rely on immediate AFP reinforcements.

But perhaps the military calculus—for both sides—should not be the

only or main determinant of policy decisions and courses of action in this military matter. Humanitarian considerations can sometimes trump (pun intended) military considerations. This looks like one of those times. There are also—to be *realpolitik* about it—political (including political correctness) and propaganda considerations. What action—continuing armed hostilities or a ceasefire—will win the hearts and minds of the people? Which army is the one helping them deal with this coronavirus threat to their health and their very lives? What is the point in saving people's lives from COVID-19 but killing perhaps just as many persons in armed hostilities?

A ceasefire in a time of coronavirus would be in accordance with the spirit, if not the letter, of international humanitarian law. For example, spirit-wise, there is Article 56 on hygiene and public health in occupied territories under the 1949 *Geneva Convention No. IV on Protection of Civilian Persons in Time of War* that is an international armed conflict: "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of prophylactic and preventive measures necessary to **combat the spread of contagious diseases and epidemics**…. In adopting measures of health and hygiene and in their implementation, the Occupying Power shall **take into consideration the moral and ethical susceptibilities of the population** of the occupied territory." (boldface emphasis supplied) Interestingly, both the Philippine government and the National Democratic Front of the Philippines (NDFP), including its ruling Communist Party of the Philippines (CPP) and its main armed force NPA, are on record as adhering to the 1949 Geneva Conventions. And so, in this time of coronavirus, they should be combating the spread of COVID-19, rather than combating their enemy combatants.

On a higher philosophical plane or perspective of Maoist dialectics, there comes a time when the contradiction between man and nature takes precedence over the contradiction between man and man (forgive the use of this term rather than the gender-neutral humankind). The long-time principal contradictions between the people of the world and U.S. imperialism globally, and between the Filipino people and the Philippine state now under the "U.S.-Duterte fascist regime" locally, becomes

secondary to the new current principal contradiction between the people of the world and coronavirus (if not yet between the people of the world and climate change). U.S. imperialism, Chinese imperialism, the Duterte administration and the CPP-NPA-NDFP can become tactical allies, even if strange bedfellows, against COVID-19. Resolve this new current principal contradiction first, then go back to the erstwhile principal contradictions, to your protracted people's war, to your E.O. No. 70 whole-of-nation approach to end the local communist armed conflict, business as usual.

Finally, if all else rationalization fails, just have some consideration for the advanced ages (and stages) and pre-existing state of health (classified information that has been occasionally subjected to fake news) of the current acknowledged leaders of your two sides—President Rodrigo Roa Duterte, nearing 75, and his Professor Jose Maria Sison, 81. They are among the elderly most vulnerable to COVID-19. Perhaps, good old Pinoy cultural deference to and care for our elders can be reason enough for a ceasefire in a time of coronavirus. Coronabonus: this might help build some badly-needed confidence for the so far *urong-sulong* (advance-retreat) resumption of the peace talks.

Stop the Shooting War Madness amid the Pandemic

(1 May 2020, Labor Day)

As the extended unilateral ceasefire of the Communist Party of the Philippines (CPP)-New People's Army (NPA) expired at midnight of April 30 without an extension—just like the earlier non-extension by the Philippine government of its initial unilateral ceasefire from March 19 to April 15 to accompany its declared national public health emergency addressing the COVID-19 pandemic (with the CPP-NPA following with its own initial unilateral ceasefire from March 26 to April 15)—we are looking instead at the madness of an all-out or total war amidst this pandemic. More so, with President Duterte's pronouncement, for the *nth* but apparently *ultimong last* time, of "no more talks" with the National Democratic Front of the Philippines (NDFP).

It is too bad that both sides have regressed from the already progressive step that they separately took with their respective unilateral ceasefires last March. The Philippine government deserves credit for being ahead in this on March 16, no matter what the CPP-NPA-NDFP says. The government was even ahead of the UN Secretary-General Antonio Guterres' March 23 call for a global ceasefire in armed conflicts around the world which is facing this existential common enemy COVID-19. Citing this call, the CPP thereafter issued its first unilateral Ceasefire Order on March 24. The UN Secretary-General then reiterated his appeal on April 3, in fact, in the process acknowledging a substantial number of parties to conflict in several countries, including the Philippines, for having expressed their acceptance for the call.

The UN Secretary-General himself gave **the best possible rationale for and elucidation of this call in clear, simple and common-sense terms**:

> The fury of the virus illustrates the folly of war… It is time to put armed conflict on lockdown and focus together on the true fight of our lives… Pull back from hostilities. Put aside mistrust and

> animosity. Silence the guns, stop the artillery, end the airstrikes… This is crucial — to help create corridors for life-saving aid. To open precious windows for diplomacy. To bring hope to places among the most vulnerable to COVID-19… End the sickness of war and fight the disease that is ravaging our world. It starts by stopping the fighting everywhere. Now…. There should be only one fight in our world today, our shared battle against COVID-19.

The wisdom of those words of the UN Secretary-General still holds beyond April 30. We therefore believe that **the government and CPP-NPA ceasefires should be reinstated beyond April 30 until strategic victory in the common fight against COVID-19**. And that may take **up to one to one-and-a-half years more, by the best estimates**, of buying time to develop and administer the vaccine/s to cure and prevent it. Give it an allowance of two years, that would still be within the closing term of President Duterte. **Even just unilateral but effective ceasefires by the government and by the CPP-NPA within that period to defeat COVID-19 in the Philippines would be considered major legacies of the retiring President Duterte and of the ageing but untiring CPP leadership**. For one thing, effective unilateral ceasefires by both sides would free up, at least on the government side, as President Duterte has candidly pointed out himself, much needed financial and personnel resources from counter-insurgency for use instead in "our shared battle against COVID-19."

And both sides can achieve even more for the people's war against COVID-19 **if the two sides can only "Put aside mistrust and animosity."** Beyond just the cessation of armed hostilities, the government might consider taking up the NDFP on its publicized statement that it is ready to talk on cooperation in facing the COVID-19 crisis, especially in far-flung areas which the CPP says it has more access to than the government. To quote one such publicized statement, "Kahit DSWD at mga local government, handang makipagtulungan ang NPA." (The NPA is willing to help even the DSWD and the local governments.) **Let there be talks, but honest and sincere talks, on just the "small" agenda of cooperation on the public health and socio-economic alleviation fronts of the crisis.** Never mind for now Agrarian Reform and Rural Development (ARRD), National Industrialization and Economic Development (NIED), the rest of a Comprehensive Agreement on Social and Economic Reforms (CASER), and Amnesty Proclamation for all NDFP-listed Political Prisoners. That big agenda will follow, realistically, when honest-to-goodness peace talks

resume under a new presidential administration in 2022.

Though veteran peace advocates like myself defiantly hope against hope, we are also realistic about the current peace process (or more precisely, lack of it) between the "U.S.-Duterte fascist regime" and the "Communist Terrorist Groups (CTGs)," given their proven fundamental obstacles of diametrically opposed peace paradigms and of extreme mistrust and animosity. Our most urgent task now of fighting COVID-19, however, provides a unique common ground and opportunity for both sides to avowedly serve the people in this shared battle by reinstating and achieving effective unilateral ceasefires, and exploring even small but strategically significant cooperation in public health care and socio-economic alleviation. In the process, as long as both sides are in good faith and restrain their usual animosities, some indispensable mutual trust and confidence can be restored or gained, and built on. And who knows what further good or bigger things can come from this?

The Law on Landmines and the Masbate Incident

(11 June 2021)

The tragic killing of young scholar-athlete Kieth Absalon and his cousin Nolven Absalon who were riding on bicycles when hit by a landmine blast last June 6 in Purok 4, Barangay Anas, Masbate City, already since admitted by the perpetrator New People's Army (NPA), is most condemnable. We condole with the family and friends of the victims and join them in calling for justice. The righteous indignation about this landmine incident has invariably included references to violation of the international humanitarian law (IHL) on landmines and similarly functioning improvised explosive devices (IEDs). Allow us to shed some light on this special field of legal familiarity to us in so far as this is relevant to the search for justice, giving everyone his/her due.

At this point, it does not appear that to have been established by any reported recovered material evidence, whether the landmine or IED used by the NPA unit was victim-activated (like if the "bike's front tire hit the trip wire that detonated the deadly device") OR command-detonated (by remote control, usually through a detonating cord, from a safe distance) by waiting ambushers. That there were waiting NPA ambushers is established by evidence of gunshot wounds on the victims, apparently to finish them off after the initiating landmine blast. This scenario is consistent with long-time NPA ambush tactics practice usually involving the initiating command-detonation of a landmine, often of the anti-vehicle kind, by the waiting ambushers.

Given the established propaganda hyper-drive by both sides of the armed conflict (truth, it is said, being the first casualty of war), we call for a competent independent investigation with the full and honest cooperation of both sides, referring to the NPA and the Philippine National Police (PNP) which are both reportedly conducting their own investigations. A competent independent investigation can be conducted by the Commission

on Human Rights (CHR) with technical assistance from the civil society humanitarian organization Philippine Campaign to Ban Landmines (PCBL). So can such an investigation be conducted by the International Committee of the Red Cross (ICRC) Manila Delegation which, by its parameters, would however be of a discreet and even confidential nature, not necessarily for publication.

In the meantime, even though pending sufficient determination of the kind of landmine or IED used, we can safely say that the NPA definitely committed violations of the IHL on landmines which are punishable as war crimes under Philippine law, R.A. No. 9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity), but for different war crime specifications.

At the IHL level, IF the landmine used was a victim-activated anti-personnel mine (APM), then what was violated is the **1997 Ottawa Treaty** which totally bans such APMs defined as "a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons," that is, one activated by a person (not a vehicle) usually through pressure, weight, or tripwire. These are inherently indiscriminate and directly impact on a person's body, thus were totally banned for humanitarian reasons. IF the landmine used was a command-detonated (presumably discriminate against a legitimate military target) APM or any kind of anti-vehicle mine (AVM), then what was violated is the **1996 Amended Protocol II** on Mines, Booby-Traps and Other Devices of the 1980 Conventional Weapons Convention, particularly this: "It is prohibited in all circumstances to direct weapons to which this Article applies,… against the civilian population as such or against individual civilians."

At the **R.A. 9851** level, IF the landmine used was a victim-activated APM, the corresponding **Section 4** war crime is that of "**(c) (25)** Employing means of warfare which are prohibited under international law, such as:… **(iv)** Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict." IF the landmine used was a command-detonated APM, the corresponding **Section 4** war crime is that of "**(c) (1)** Intentionally directing attacks against the civilian population as such or against individual

civilians not taking part in hostilities." Either way, the NPA ambushers in the Masbate incident would be liable for such war crimes, IF brought to court under R.A. 9851. The problem is that the NPA does not recognize, much less subsume itself, to the Philippine legal and justice system.

The NPA however recognizes, among others, the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (**CARHRIHL**). This includes relevant provisions such as the following: [1] Part II, Article 4: "It is understood that the universally applicable principles and standards of human rights and international humanitarian law contemplated in this agreement include those embodied in the instruments signed by the Philippines and deemed to be mutually applicable to and acceptable by both parties." This should include the 1997 Ottawa Treaty and the 1996 Amended Protocol II. [2] Part III, Article 2, par. 15: "The right not to be subjected to forced evacuations, food and other forms of economic blockades and indiscriminate bombings, shellings, strafing, gunfire and the use of landmines." This right of the civilian cousins Absalon was definitely violated, whatever kind was the landmine admittedly used by the NPA.

It behooves, and we challenge, the NPA to show, to prove, that it can render justice for, and commensurate to, the horrendous willful killing of the Absalons by a NPA Masbate unit. Do not wait for the defunct Joint Monitoring Committee (JMC) under the CARHRIHL to act on this. What is at stake now is not only primarily the justice that the Absalon family cries for, but also the consequential credibility of the NPA and its so-called revolutionary justice system.

Justice for the Absalons, Two Investigations: *Quo Vadis*?

(4 August 2021)

On the occasion of International Humanitarian Law (IHL) Month this August and of the second month "anniversary" of the Masbate Incident of 6 June 2021 that saw the tragic killings of 21-year old scholar-athlete Kieth Absalon and his 40-year old cousin union leader Nolven Absalon who were riding on bicycles when hit by a landmine blast admittedly caused by a New People's Army (NPA) unit in the Masbate City coastal outskirts, we take pause to ask where the calls for justice, especially by the aggrieved Absalon family, are going. The Masbate Incident was initially admitted by the Communist Party of the Philippines (CPP) chief information officer Marco Valbuena last June 8 as "errors in the military action mounted by an NPA unit… The entire CPP and NPA take full responsibility for the tragedy. There is no justification for the aggravation this has caused the Absalon family." Needless to say, reactions to this initial CPP acknowledgment of responsibility have been mixed—whether genuinely felt or propaganda-motivated. One has to constantly separate the chaff from the grain in this time of propaganda hyper-drive by both sides.

The quest for justice is often premised on investigations to ferret out the facts, the evidence and the truth about subject incidents. In the case of the Masbate Incident, there appear to be at least two significant tracks of investigation, if not also prosecution and trial towards judgment: [1] that of the Philippine government; and [2] that of the National Democratic Front of the Philippines (NDFP) which includes the CPP and NPA as its leading organizations.

The Philippine Government Investigation

Last June 24 came the news report that "24 face murder raps over Masbate land mine blast," referring to the charges filed by the Masbate City Police Station last June 21 with the City Prosecution Office naming

24 suspected local NPA rebels led by Eddie Rosero @ Ka Star. In fact, one of them, Mariel Suson, was arrested last June 22 although for a separate murder case. It turns out that what were filed, based on reliable sources, were not only charges of **Murder** and **Frustrated Murder** (the latter pertaining to Nolven's 16-year old son Chrysvine Daniel Absalon who was not killed but was wounded in the blast) under the Revised Penal Code (Article 248) but also charges for violations of the following special criminal laws:

1. **RA 10591** - Comprehensive Firearms and Ammunition Regulation Act, including illegal possession thereof

2. **RA 9516** - on *Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession of an Explosive or Incendiary Device*

3. **RA 9581** ("The IHL Law"), Section 4 (c) (25) (iv) - **war crime** of "**(c) (25)** Employing means of warfare which are prohibited under international law, such as:… **(iv)** Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict." [Note: This applies to victim-activated or contact-detonated anti-personnel landmines, the kind totally banned by the 1997 Ottawa Treaty.]

4. **RA 9581** ("The IHL Law"), Section 6 (a) - **crime against humanity** of «(a) Willful killing»

5. **RA 11479** (Anti-Terrorism Act) - particularly where the perpetrator "uses… explosives… when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear…"

Unfortunately, despite the reliable information that these were the charges filed, we have not seen the supporting papers and evidence for these charges. These have been turned over to the Masbate City Prosecution Office which formed a panel for the preliminary investigation of the charges. Except for the arrested respondent Mariel Suson, it is doubtful whether the usual subpoenas to the other respondents—all suspected NPA rebels with "No Permanent Addresses"—could be actually served upon them, so as for them to submit counter-affidavits within 10 days from receipt of the subpoenas with the accompanying Complaints and their supporting

evidence. In which case of non-service or of non-comment after the opportunity given, the investigating prosecutors panel would resolve the preliminary investigation based on the submissions before it, even if only coming from the complainant police. It would issue its (Joint) Resolution either finding probable cause to file the corresponding Informations (prosecution office formal charges) in Court OR finding no probable cause and consequently dismiss the Complaints. As of this writing, those Informations have not yet been filed before the Regional Trial Court (RTC) of Masbate City.

Interestingly, no rebellion charges were filed by the police. We surmise that this was done to preclude the absorption of the murder charges in any rebellion charge pursuant to the Supreme Court Decision in *People vs. Hernandez* (1956) which espoused the political offense doctrine, whereby rebellion absorbs common crimes like murder, kidnapping and arson when committed in furtherance of the rebellion. *Misolas vs. Panga* (1990), however, appeared to in effect rule that rebellion (and also subversion then) does not absorb illegal possession of firearms (even if committed in furtherance of rebellion or subversion) as these were treated as separate and distinct offenses. In *Ocampo vs. Abando* (2014), the Concurring Opinion of Justice Leonen deemed that war crimes, genocide, and crimes against humanity in violation of RA 9851 cannot be considered to be in furtherance of and absorbed in rebellion. And most recently, *Lagman vs. Medialdia* (2017) ruled that "terrorism neither negates nor absorbs rebellion" and vice-versa. They can co-exist together, they are not mutually exclusive of each other, "one cannot absorb the other as they have different elements." All told, it would be interesting to see how the above-listed several charges for the Masbate Incident interplay with each other come the prosecution and court trial, if it ever comes to this.

Of course, in all this legal discourse, we ought not to lose sight of the prime objective of justice for the Absalons. Let this justice be based on a fair and informed appreciation of the evidence as well as a fair and informed application and interpretation of the applicable law, jurisprudence and rules. Let the quest for justice not be made to bend to instead serve the cause of propaganda for one or the other side of the local communist armed conflict. This brings us now to the other side, to the other significant track of investigation.

The CPP-NPA-NDFP Investigation

The initial June 8 statement of CPP spokesperson Valbuena that "The entire CPP and NPA take full responsibility for the [June 6 Masbate Incident] tragedy" also included this point: "We are aware that an investigation is already being carried out by the Party's Bicol Regional Committee and Masbate Provincial Committee of the Party and the higher commands of the NPA to identify the errors and weaknesses that led to this tragedy." That same day (June 8), NPA Bicol Regional Operational Command (Romulo Jallores Command) spokesperson Raymundo Buenfuerza had issued a statement saying, among others, that "Titiyakin ng RJC at JRC ang kagyat na makatarungang paglutas sa naging pagkakamali ng BHB-Bikol." [Translation: The Romulo Jallores Command and the Jose Rapsing Command (NPA-Masbate) will ensure the immediate just solution of the error committed by the NPA-Bicol.]

However, last June 11, the NDFP through no less than its Chief International Representative Luis Jalandoni and its Negotiating Panel Interim Chairperson Julieta de Lima issued the statement "NDFP expresses condolences to the Absalon family, asserts its authority and duty to investigate the case." This included the following significant passage relevant to this NDFP assertion, that appears however to push back or back track from the above-said initial statements of CPP spokesperson Valbuena and NPA-Bicol spokesperson Buenfuerza:

> It is correct for the people and all other entities to expect the investigation of the Masbate incident within the NPA command structure and within frameworks of the CPP, NDFP and the People's Democratic Government.
>
> Under the responsibility and direction of the NDFP and within the legal system of the People's Democratic Government, the investigation must be started and completed within the NPA command structure to fully and completely establish the facts and prepare any appropriate charges before any procedure to prosecute and try the case before the military court of the NPA or people's court.
>
> There must be no rush to judgment against the entire revolutionary mass movement and such revolutionary forces as the CPP, NPA and others…

> The NDFP will make sure that certain questions are answered by a thoroughgoing investigation. The questions include the following: 1) If true, which NPA unit and personnel are involved?; 2) Is there no case of the enemy committing the crime and falsely ascribing it to the NPA?; and 3) Is there no local feud involved?
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> xxx
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> There should be no rush to judgment, presumption or insinuation to the effect that the entire revolutionary movement and entire revolutionary forces are guilty of a criminal offense, negligence, or error for which certain individuals may be liable on the basis of a full and complete investigation. Crimes or errors of individuals cannot be taken against the whole organization or movement.

Given the reality that the CPP-NPA-NDFP will not surrender its concerned personnel to the Philippine justice system which it considers a coercive instrument of the ruling state and its on-the-record undertaking to conduct its own "thoroughgoing" investigation of the Masbate incident "within the NPA command structure… and within the legal system of the People's Democratic Government," then let it to prove that it can render justice for the Absalons and for the responsible NPA individuals, which may also include a reasonable degree of command responsibility.

Let it not be a Red-wash in the same way that we say let there be no government whitewashes of its investigations of its own erring soldiers and policemen for gross violations of human rights and IHL. Let there be justice for the Absalons as well as for the responsible NPA individuals but let whatever justice process be characterized as "affording all the judicial guaranties which are recognized as indispensable by civilized peoples"—at least by the minimum judicial standards applicable to the prosecution and punishment of criminal offenses related to the armed conflict per the 1977 Protocol II of the 1949 Geneva Conventions. By these standards, the CPP-NPA-NDFP so-called revolutionary justice system will also be judged.

A Role for Independent Investigations and Observers

The problems with both the Philippine and the CPP-NPA-NDFP justice systems, in the context of a highly-charged and highly partisan local communist armed conflict, occasion some consideration of a salutary role for independent, competent, and credible investigations and

observers. Although part of the Philippine government, in fact no less than an independent constitutional commission thereunder, the Philippine Commission on Human Rights (CHR) has proven its independence in investigating human rights and IHL violations by both sides. It was in fact reported last June 9 that the CHR would look into the deaths of the Absalon cousins, including the use of land mines leading to that. In this connection, the independent civil society humanitarian organization Philippine Campaign to Ban Landmines (PCBL) has offered to provide the CHR with technical assistance on investigating the landmine aspect of the Masbate Incident and for that matter other landmine incidents especially those resulting in civilian casualties.

It would also be ideal if whatever prosecution and trial of the concerned NPA personnel "before the military court of the NPA or people's court" could be attended by independent observers subject to the necessary security arrangements. Would both sides allow this in the interest of justice? On the other hand, any prosecution and trial of the accused NPA personnel before the RTC of Masbate City would as a rule be open to the public and even the media with reasonable regulation. On the second month-anniversary this August 6 of the Masbate Incident, and before we forget as usual about these things, it is about time that we ask those who have the answers: How are the two tracks of the Philippine and the CPP-NPA-NDFP investigations of the same coming along? What is needed to enhance them in terms of reliable evidence, procedural fairness and rendering justice?

IHL and respect for the elderly, disabled, and infirm

(8 August 2021)

On the occasion of International Humanitarian Law (IHL) Month this August and IHL Day this August 12, we call particular attention to an authoritative 2005 study on customary IHL by the International Committee of the Red Cross (ICRC) which found that State practice establishes Rule 138 **("The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection.")** as a norm of customary IHL applicable in both international and non-international armed conflicts.

Respect for the elderly is also ingrained in Filipino values and culture. This has been bolstered by the Expanded Senior Citizens Act of 2010. In fact, in the current anti-Covid vaccination program to save lives, the second and third priority sectors are senior citizens (A2) and those with co-morbidities (A3). Even in the previous dealing of the death penalty, it was not imposed when the guilty person was more than 70 years old (Revised Penal Code, Art. 47).

We recall the foregoing rules of customary IHL and of Philippine good customs and public policy because of certain incidents in the past two years in the context of the local communist armed conflict whereby certain "high-value" leaders and personalities associated with the Communist Party of the Philippines (CPP)-New People's Army (NPA)-National Democratic Front of the Philippines (NDFP) **of senior age and reportedly frail health** have been killed in late night or early morning raids at their places of lodging either by definitely police/military units or by still unknown perpetrators though largely suspected to be state-inspired. In the former case, the killings were invariably justified by the concerned police/military commanders to be due to the armed resistance ("*nanlaban*") of those who were subjects of warrants of arrest being served. We refer to the following incident dates, places and **killed "Red" personalities**:

1. March 13, 2020, Baguio City – CPP Vice-Chair **Julius Giron, 67**, and reportedly ailing, in fact killed along with him was his personal doctor Lourdes Tan Torres
2. August 10, 2020, Novaliches, Quezon City – Anakpawis Party-list Chair and NDFP peace consultant **Randall Echanis, 72**
3. November 25, 2020, Angono, Rizal – CPP Central Committee-level leaders and **spouses Eugenia Magpantay and Agaton Topacio, both 68** and reportedly ailing
4. December 26, 2020, Oton, Iloilo – CPP Executive Committee-level leader **Antonio Cabanatan, 74,** a hunchback, **and his wife Florenda Yap, 65**, both reportedly ailing
5. May 28, 2021, Pavia, Iloilo – CPP-Panay leader **Reynaldo Bocala, 74**
6. May 28, 2021, Camotes Island, Cebu – Claimed NDFP peace consultant **Rustico Tan, 80**, reportedly shot dead while sleeping on a hammock at home

At least where police/military units are involved in serving warrants of arrest, and where the subjects are elderly, disabled, and infirm (something which good police/military intelligence should have updated information on), and do not put up armed resistance (which is highly unlikely from such persons, especially when made aware of being surrounded by an overwhelming armed force), can the concerned police/military commanders not, as a matter of policy and practice, exhaust options for the voluntary surrender of such persons and avoidance of unnecessary loss of life in the spirit of the above-cited IHL customary rule and Philippine good customs and public policy on special respect and protection for the elderly? Or can we rely for this only on the use of body-worn cameras in the execution of warrants?

The CPP is on record for holding President **Rodrigo Duterte (76)**, National Security Adviser **Hermogenes Esperon, Jr. (69)**, Defense Secretary **Delfin Lorenzana (72)** and Local Governments Secretary **Eduardo Año (59 going on 60)** as command-responsible for the above-said killings of "Red" personalities, and for thus ordering the NPA to undertake punitive

action against them and the directly responsible police/military officers. Would it be too much to also ask the CPP-NPA to accord special respect and protection for the elderly when it comes to its punitive actions? After all, CPP leader **Jose Maria Sison** is already **82**.

Shoot the NPA… with vaccines; Kill, kill, kill… Covid-19

(5 September 2021)

Believe it or not, the global fight against this pandemic, and especially the counter-measure of vaccination, is actual a rare common ground between the "Communist Terrorist Groups" and the "U.S.-Duterte fascist regime." Stated otherwise, between the Communist Party of the Philippines (CPP)-New People's Army (NPA)-National Democratic Front of the Philippines (NDFP) and the Duterte administration of the Government of the Republic of the Philippines (GRP). Both sides actually have called on the Filipino people to get Covid-19 vaccination. The NPA has also "ensure[d] that transportation of Covid-19 vaccines will be provided a humanitarian corridor for safe and unimpeded passage in guerrilla bases and zones."

That is the least that might be done. Like in 15 other conflict-affected countries around the world where the International Committee of the Red Cross (ICRC) is working with Red Cross and Red Crescent partners to support Covid-19 vaccination "to ensure no one is left behind." Excluding people living in conflict zones, in far-flung areas not under government control, "presents a clear risk since no one will be safe until everyone is safe."

The least that might be done by both sides is reflected in this customary international humanitarian law (IHL) rule 55: "The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control." There is of course much more than can and should be done in the context of IHL, of the human right to health, and of the Philippine constitutional right to health of the people.

It is unfortunate that there was an "underwhelming collective reaction," as Nobel Peace Prize laureate and former Colombian President Juan Manuel

Santos puts it, to the March 2020 call by UN Secretary-General Antonio Guterres for a "global ceasefire" in response to Covid-19. In the Philippines, the GRP and the NDFP had their respective unilateral ceasefires good only up to April 2020. And then after that, back to ***Bang! Bang! Boom! Boom!*** Desperate times, as they say, call for desperate measures.

At some point, shooting the NPA itself—as distinguished from its mass base in the countryside—not with bullets and bombs but instead with Covid-19 vaccines has to be considered.

The NDFP leaders based in Utrecht, The Netherlands are presumably fully vaccinated by now. Surely, they would want the same for their own NPA Red Commanders and fighters. As Filipino citizens, not to mention fellow human beings, they presumably would not be begrudged vaccination by the GRP as a government for all Filipinos, including Filipino Communists.

Even from the point of view of the National Task Force to End the Local Communist Armed Conflict (NTF-ELCAC), the indispensable and good faith cooperation of the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) in allowing NPA vaccination would be an excellent conciliatory gesture that would go a long way in ending not the local Communists but the armed conflict with them. You might call it a strategy of "Killing Me [or Them] Softly…" A bit like the NPA Maoist strategy of lenient (including medical) treatment of captive soldiers who are often won over to at least view the hated enemy differently. And what is the point of vaccinating a person to save life if he/she would just be later shot dead in armed hostilities?

On the premise of sufficient vaccine supplies, ideally single-dose Janssen or Sputnik Light vaccine shots can be provided to NPA units in the field on a pilot basis, with whatever necessary security safeguards for all concerned, such as if presumably conducted with ICRC assistance. This would also be an occasion for pilot confidence-building for the larger peace process such as through a local ceasefire or at least a humanitarian corridor. It would "shoot two birds" with a single-dose: health and peace.

Masbate Incident investigation reports: **2 done, 1 awaited**

(5 December 2021)

It has been six months this December 6 since the Masbate Incident of 6 June 2021 that saw the tragic killings of 21-year-old scholar-athlete Kieth (not Keith) Absalon and his 40-year old cousin union leader Nolven Absalon who were riding on bicycles when hit by a landmine or improvised explosive device (IED) blast admittedly caused by a New People's Army (NPA) unit in the Masbate City coastal outskirts. We took pause on its second-month anniversary last August 6 to ask where the calls for justice, especially by the aggrieved Absalon family, are going. I wrote mainly in article titled "Justice for the Absalons, Two Investigations: *Quo Vadis?*" about two then underway investigations, that of the government through the Masbate City Prosecution Office (CPO) and that of the NPA. But towards the end of my article, I also advocated for a role of independent investigation and observers, citing particularly the Philippine Commission on Human Rights (CHR) that has proven its independence in investigating human rights and IHL violations by both sides.

Well, as it turns out, it has been the CHR through its Region 5 (Bicol) Office in the form of three separate Resolutions dated 7 July 2021 and the Masbate CPO in the form of a Joint Resolution dated July 30, 2021, which have already issued their investigation or preliminary investigation reports, while none has been forthcoming from the NPA, whether from its operational commands for Bicol (Romulo Jallores Command) or for Masbate (Jose Rapsing Command). The said CHR Region 5 Resolutions and the Masbate CPO Joint Resolution can be instructive in the search for justice for the Absalon family and the NPA perpetrators. Allow us to report on and proffer a few comments on these Resolutions, especially from the prism of human rights and international humanitarian law (IHL), in the spirit of continuing legal education and learning. As such, this partakes of an academic discussion, with some attention to the landmine use issue, that is no way meant to influence the already ongoing court cases proceedings before the Regional Trial Court (RTC) of Masbate City.

The said RTC proceedings are however limited so far to only three accused who are lady public elementary school teachers and sisters Suslon, whose father is a wanted NPA element but is not among the 24 named accused, 21 of whom are still at large, as far as I know as of this writing. These 24 accused appear to be the same respondents in our subject CHR Region 5 and Masbate CPO investigations where the complaints were filed by Absalon next of kin and the Masbate City Central Police Station which prepared, gathered and submitted the supporting sworn statements, including crucially that of surviving victim Chrysvine, and forensic evidence, both on the explosion remnants and on the medico-legal examination on the bodies of the victims.

CHR Region 5's Three Resolutions of 7 July 2021

These three Resolutions in **CHR-V-2021-0268 to 0280** correspond to the three victims of the Masbate Incident: the two fatalities Kieth and Nolven, and the one injured survivor minor 16-year old Chrysvine Daniel. The contents of the three Resolutions are basically the same, but with added legal and human rights aspects for the minority or child status of Chrysvine. The issue for the CHR in all three cases was whether respondents 24 alleged NPA members led by Eddie "Ka Star" Rosero committed human rights violations against the three victims. For the CHR Region 5 (CHR for short), the applicable human rights (HR) instruments consisted of both international and domestic instruments. For the international instruments, the CHR cited four of these:

1. *Universal Declaration of Human Rights*, Article 3 on the right to life and security of person
2. *International Covenant on Civil and Political Rights*, Article 6(1) on the inherent right to life.
3. *Geneva Conventions of 1949*, Common Article 3(1)(a) prohibition on violence to life and person, in particular murder of all kinds
4. *Additional Protocol II of the Geneva Conventions*, Article13 on protection of the civilian population, particularly par. (2) that civilians shall not be the object of attack

For the domestic instruments, the CHR cited three of these:

1. *1987 Philippine Constitution*, Article III, Section 1 on non-deprivation of life without due process
2. *Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity* (Republic Act No. 9851), several provisions including on the war crime of directing attacks against civilians not taking direct part in hostilities [this is Section 4(c)(1)]
3. *Revised Penal Code*, Article 248 on Murder

In the case of the surviving injured minor victim Chrysvine who had a traumatic amputation of the second or point finger of his right hand, the CHR added as a domestic instrument of reference the *Special Protection on Children in Situations of Armed Conflict Act* (R.A. No. 11188), Section 9(a) prohibiting grave child rights violations, including (3) intentional maiming of children, as well as the Section 7(f) right to be protected from maiming.

Actually and significantly, another domestic instrument cited by the CHR was the GRP-NDFP *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law* (CARHRIHL), several provisions including Part III, Article 2(3) on the right of the victims and their families to seek justice for violations of human rights, including adequate compensation or indemnification, restitution and rehabilitation, and effective sanctions and guarantees against repetition and impunity. The CHR most significantly posits that "**The CARHRIHL** is not only an agreement between the Government of the [Republic of the] Philippines and the CPP/NPA/NDF [Not just the NPA but also the Communist Party of the Philippines and the National Democratic Front] but it **is also recognized as a human rights instrument**." (emphasis mine)

For this, the CHR cites the Concurring Opinion of Justice Leonen in the 2014 Decision of the Supreme Court in the case of *Ocampo vs. Abando*: "This agreement establishes the recognition of the existence, protection, and application of human rights and principles of international humanitarian law as well as provides the following rights and protections to individuals by the CPP/NPA/NDF." **Stated otherwise, this non-state armed group is recognized as also a duty-bearer for human rights (not just IHL), and consequently can be held accountable for human rights violations (not just IHL violations) just like states or governments and the security forces.**

On the basis of the above-quoted *Ocampo* case pronouncement of Justice Leonen, the CHR "measures the CPP-NPA's undertaking, based on the provisions contained in the CARHRIHL. Thus, the undersigned [CHR Region 5 Attorney IV Atty. Xaviera Marie V. Revereza, approved

by Regional Human Rights Director Atty. Arlene Q. Alangco] rules that the NPA committed not just a plain human rights violation but a grave one." Earlier, the CHR had noted the separate CPP-NPA statements of NPA Bicol Regional Operational (Romulo Jallores) Command spokesperson Raymundo Buenferza and of CPP Chief Information Officer Marco Valbuena, both on 8 June 2021, taking full responsibility for the "June 6 Masbate tragedy."

The CHR ruling elaborates: "The claim of the CPP-NPA that the killing of KIETH (and NOLVEN) was done unintentionally appeared to be misled. As positively witnessed by CHRYSVINE, KIETH (and NOLVEN) was still alive after the blast. Had it not [been] for the series of gunshots fired by the respondents, he could have been rescued and given timely medical attention that could have saved his [life]. The respondents targeted the victim and fired gunshots deliberately inflicting severe damage and impunity. The two (2) IED blasts and seventy-nine (79) fired cartridges recovered in the scene of the explosions were proof of disproportionate force tossed to victims who could not afford to counter the attack…. With the death of KIETH (and NOLVEN), respondents' acts were willful disregard of the victim's rights to life and security as embodied under [the above cited international and domestic instruments]."

The three CHR Resolutions all conclude that the subject victim "suffered human rights violation/abuse, thus granting of financial assistance to him (or his heirs)… is hereby RECOMMENDED…. The subject matter of this complaint for human rights violation is also the subject of a criminal complaint before the Office of the City Prosecutor of Masbate City… hence, let this complaint be CLOSED/TERMINATED." With this conclusion, the CHR considers the human rights violation matter before it to be completed and leaves the rest of the way for the quest for justice to the criminal proceedings. This brings to the second completed investigation.

Masbate City Prosecutor's Office Joint Resolution of July 31, 2021

This Joint Resolution in **NPS No. V-04-INV-21F-00106 to 00108, 00111 to 000114** pertains to seven (7) separate police charges of Murder (2), Frustrated Murder, Violations of Sec. 6(a) [crime against humanity] and of Sec. 4(25)(iv) [war crime] of R.A. 9851, Violation of RA 10591 (illegal possession of firearms), and Violation of RA 9561 (unlawful possession of

explosives) involved in the Masbate Incident. There was no police charge of Violation of RA 11479 (terrorism), as initially believed there would be. The Joint Resolution of regular preliminary investigation was prepared by a Panel of Prosecutors with Deputy City Prosecutor Apolinario M. Macabe, Jr. as Chairperson and Associate City Prosecutor Darwin P. Dimen and Assistant City Prosecutor Aris R. Montilla as Members, and approved by City Prosecutor Ernesto M. Sulat, Jr. Of the 24 respondents charged by the Masbate City Central Police Station under PLTCOL Steve N. Dela Rosa, only the three respondent lady public elementary school teachers and sisters Suson were successfully served with subpoenas and they filed their counter-affidavits and supporting papers with the assistance of their private defense counsel Atty. Ricar N. Vasquez.

Like the CHR, the Masbate CPO "took notice of CPP's admission that an NPA unit is responsible for the untimely demise of cousins Kieth and Nolven. Rebel returnees Randy [Gonzaga] and his brother Arnel identified the members of the NPA unit involved… They [the Gonzaga brothers] are former members of CPP/NPA under Larangan 1, KP4 BRPC, headed by Eddie Rosero y Dela Peña a.k.a *Ka Star*." The Joint Resolution also interestingly "took notice of Anti-Terrorism Council (ATC) Resolution No. 12 dated 09 December 2020 designating the CPP-NPA as a terrorist group… [and] On June 23, 2021, the Anti-Terrorism Council designated the National Democratic Front (NDF) as a terrorist organization over its link to the communist rebels."

What may be considered the Joint Resolution's summary of the key factual situation is this: "The pieces of evidence on record show that the roadside explosion was followed by successive gunshots. Not yet contented, the armed group approached Kieth and Nolven and finished them [off]. The account of the eyewitnesses that Kieth was still alive even after the explosion and the ensuing gunshots was corroborated by Dr. Victoria P. Manalo, who testified during clarificatory hearing that the proximate cause of death of Kieth was the gunshot wound on his face. Dr. Manalo likewise clarified that Kieth would have survived had it not [been] for the gunshot wound on his face as the blast injuries that he sustained were not fatal."

It was easy enough for the Joint Resolution to find probable cause for the twin charges of Murder (willful killings of Keith and Nolven) and the single charge of Frustrated Murder (of surviving victim Chrysvine), including the qualifying (from homicide to murder) circumstances of treachery,

evident premeditation, taking advantage of superior strength, with the aid of armed men, and by means of explosion, as well as conspiracy among all the respondents. But the Frustrated Murder charge was downgraded to Attempted Murder because the gunshot wound suffered by Chrysvine was not shown to be sufficient to cause his death without timely medical intervention. The three respondent Suson sisters, daughters of an alleged NPA father though not among the respondents, were implicated as "spotters" of the group of Ka Star, despite their vehement denial that they are not CPP/NPA members and their certifications-supported alibi that they were at Cabungahan Elementary School in Cawayan, Masbate at the time of the subject incident.

The charges for violations of RA 10591 and RA 9561 were dismissed by the Joint Resolution because the use of loose firearms and of IEDs were considered as necessary means (and as an aggravating circumstance in the case of the firearms) for committing Murder, Attempted Murder, and Violation of RA 9851.

We come now to the last two charges both for violation of RA 9851, one for a crime against humanity (under Sec. 6) and another for a war crime (under Sec. 4). The former charge refers to the crime against humanity of willful killing. The latter as in murder is clear. But a crime against humanity requires that such an act be "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." In this regard, the Joint Resolution made this finding: "This bombing incident in Masbate isn't new as this is the signature of the Communist Terrorist Group (CTG)/NPA to inflict casualt[ies], damage and death not only to government troops but also to innocent civilians…. The killings of Kieth and Nolven are willful acts committed by the respondents as part of their widespread or systematic attack directed against any civilian population." It is interesting to see how this would pan out in the RTC Masbate City case trial and in any elevation of its ruling thereon to the higher courts. Incidentally, crimes against humanity is the crime that is considered closest in nature to terrorism in terms of spreading terror among the civilian population.

The RA 9851 Sec. 6 war crime charge has specifically to do with employing means of warfare which are prohibited under international law such as weapons which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation

of the international law of armed conflict. The Joint Resolution states that "PLT Barry B Cano of PNP Explosives and Ordnance Disposal (EOD) testified during clarificatory hearing that the IED used by the respondents is considered as Anti-Personnel Mine (APM) which is prohibited under the 1997 UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,"

To be clear, the APM that is totally banned by that (not UN) Convention known as the Ottawa Treaty is **an APM that is victim-activated or contact-detonated** usually by way of tripping a tripwire or stepping on a pressure-of-weight mechanism (**thus making it inherently indiscriminate** because it can be activated even by an unknowing child or animal), **not an APM that is command-detonated** usually by remote control via an electric wire with a triggering device (manual switch) or via other electronic means like a cellphone text message (**thus presumably discriminate in targeting** of legitimate military targets). The mention in the Joint Resolution that among the explosion remnants recovered by the EOD was a "32 meters firing wire color black" tends to indicate that the two IEDs used in the Masbate Incident were in the nature of command-detonated APMs which are not the kind banned by the Ottawa Treaty. In which case, the weapon used is not one prohibited under international law, the employment of which would constitute a war crime. The IEDs used therefore, at the very least, need closer scrutiny, ideally with the assistance of an independent landmine expert.

In the end, the Joint Resolution recommended, and has resulted in, the filing of five (5) cases, two (2) for Murder, one (1) Frustrated Murder, one (1) Crime Against Humanity and one (1) War Crime against all 24 respondents-accused before the RTC of Masbate City. The ball, as they say, is now in that Court. That is as far as the government is concerned. How about on the part of the CPP-NPA-NDFP?

NPA Bicol and/or Masbate Investigation: *Quo Vadis*?

It will be recalled that last June 11, the NDFP through no less than its Chief International Representative Luis Jalandoni and its Negotiating Panel Interim Chairperson Julieta de Lima issued the statement that "The NDFP hereby expresses its sincere condolences to the [Absalon] family… and asserts its authority and duty to investigate the case…. It is correct for the people and all other entities to expect the investigation of the Masbate

incident within the NPA command structure and within frameworks of the CPP, NDFP and the People's Democratic Government…. Under the responsibility and direction of the NDFP and within the legal system of the People's Democratic Government, the investigation must be started and completed within the NPA command structure to fully and completely establish the facts and prepare any appropriate charges before any procedure to prosecute and try the case before the military court of the NPA or people's court." Well, **six months after the Masbate Incident, it is certainly reasonably to ask the CPP-NPA-NDFP what has happened with that avowed NPA investigation in terms of both process and outcome, not to mention even prosecution and trial "before the military court of the NPA or people's court"?** In short, *quo vadis*? To be clear, these questions, to quote Common Article 3 of the *Geneva Conventions*, "shall not affect the legal status of the Parties to the conflict." It is certainly not a grant of belligerency status, if that is the obsession or paranoia, as the case may be, of the Parties.

As I had previously written, what is at stake now is not only primarily the justice that the Absalon family cries for, but also the consequential credibility of the NPA and its so-called revolutionary justice system. This system will also be judged by at least the minimum judicial standards applicable to the prosecution and punishment of criminal offenses related to the armed conflict per the 1977 *Protocol II* of the *Geneva Conventions*. Will this system allow independent competent observers such as human rights lawyers and peace advocates? It is correct for the people to expect knowing more about this system being the harbinger of an offered alternative future. Can this system render justice? Can it be trusted to render justice?

Whether or not the CPP-NPA-NDFP can be forthcoming on all these questions regarding the Masbate Incident, not only in words but more importantly in deeds, I feel will somehow also have a bearing on the viability of and public support for a renewed peace process, including formal peace talks, that it ostensibly seeks with a new presidential administration come mid-2022. As its partisans often advocate: peace based on justice, there can be no peace without justice. **But for both sides really, let it begin or re-start with rendering true and honest justice for the Masbate Incident.**

Ceasefire Na, Pwede Ba!

(19 December 2021)

OMICRON. ODETTE. CHRISTMAS. NEW YEAR. ELECTION SEASON. Still no ceasefire on the local communist armed conflict front! What does it have to take for a ceasefire to happen? What more humanitarian considerations are needed? As Bob Dylan put it, "Yes, and **how many deaths will it take 'til [w]e know That too many people have died? The answer, my friend, is blowin' in the wind**. The answer is blowin' in the wind." The last blowing wind was that of super-Typhoon ODETTE, and there will be many more natural and man-made calamities. "**For the times** [and the climate -- natural and political] **they are a-changin'**."

Early in the current pandemic, now in its fifth (?) major mutation or iteration, the UN Secretary-General Antonio Guterres' in March 2020 called for a global ceasefire in armed conflicts around the world which is facing this existential common enemy COVID-19: "The fury of the virus illustrates the folly of war… It is time to put armed conflict on lockdown and focus together on the true fight of our lives… Pull back from hostilities. Put aside mistrust and animosity. Silence the guns, stop the artillery, end the airstrikes… This is crucial—to help create corridors for life-saving aid. To open precious windows for diplomacy. To bring hope to places among the most vulnerable to COVID-19… End the sickness of war and fight the disease that is ravaging our world. It starts by stopping the fighting everywhere. Now…. There should be only one fight in our world today, our shared battle against COVID-19."

Can we at least in the Philippines—with more reason after ODETTE, in the advent of this traditionally most joyous season of grace and giving, and in the build-up to what is expected to be a most hotly contested election particularly at the presidential level—can we not reconsider the wisdom, or even just the sanity, of the UN Sec-Gen's ceasefire call when it comes to the bloody local communist armed conflict front? Imagine AFP-PNP and NPA

resources and energies better diverted and used for cooperative or parallel efforts in public health especially vaccination and in typhoon relief and rehabilitation, especially in far-flung and isolated areas, including those in NPA guerrilla zones? Aren't NPA guerrillas also part of the Filipino people who ought to be vaccinated in the best interest of our people and our country? The matter of principle involved here is "to ensure no one is left behind" because "no one will be safe until everyone is safe."

It takes two to do this tango; selfie tiktok dancing simply will not do. So, who has the better Christmas spirit? Who can show it by declaring a Christmas season cum humanitarian anti-Covid and typhoon relief ceasefire? Even unilaterally if it has to be. This may seem like a small matter, compared to the oft-repeated (or reaffirmed) big picture of "addressing the root causes of armed conflict" or grand narrative of "national and social liberation." But any respite from the crossfire is a big matter of life-and-death for our rural folk in the countryside. For the armed protagonists, any ceasefire is also a crucial matter of building much needed trust or a "specific measure of goodwill and confidence-building to create a favorable climate for peace negotiations." The coming presidential elections are particularly crucial for the resumption of peace talks -- which would best be honest to goodness, and best be accompanied by an honest to goodness ceasefire.

The "little steps" of a ceasefire and humanitarian cooperation where possible, with consequent trust-building, should pave the ground for the big step of *renewed* peace talks towards a negotiated political settlement. To quote Michael Jackson: **"We may not change the world in one day, But we still can change some things today, In our small way."** Stated otherwise for a ceasefire, **"Give love on Christmas Day."** How about it, guys?

CONCLUSION

Paradigm Shifts Needed All the More

Photo credit: Philippine Revolution Web Central <https://cpp.ph/wp-content/uploads/2022/04/peace-process-5.png>. Retrieved on 28 April 2022.

Rethinking and renewing the GRP-NDFP peace talks in 2022

(19 March 2022)

Every advent of a new presidential administration in the Philippines, including for its election campaign prelude period, it has become fashionable to call for the resumption of peace talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP), but strangely forgetting (unwittingly or wittingly) any call for a ceasefire. **While such peace talks can be said to be in the best interests of the country, it has become increasingly clear that they cannot viably (or even should not) be conducted *in the old way***—perhaps just like what is said about revolutionary situations arising when the ruling class can no longer rule *in the old way* (but also perhaps something ought to be said too about when revolutions can or should no longer be conducted *in the old way*).

What then is the old and unviable way of the GRP-NDFP peace talks that has to be rethought and renewed so that its resumption does not become another exercise in futility? The most fundamental aspect of the old and unviable way are their respective overarching or operative frameworks. The avowed protracted people's war (PPW) strategy and armed struggle primacy of the NDFP with its leading organizations the Communist Party of the Philippines (CPP) and the New People's Army (NPA) subsumes the peace talks to only of tertiary, and consequently only tactical not strategic, importance (their authoritative issuances show this). If the real value of the peace talks for one side is only or mainly to draw certain tactical concessions that ultimately support the overall PPW strategy, then the sincerity of that side in the peace talks can be questioned, and it would be reasonable or understandable to do so.

On the other hand, the GRP's operative framework to end the local communist armed conflict, at least under the outgoing Duterte administration, appears to be to end the local communists PERIOD. It is in effect a "military victory" policy position, and also partly or secondarily

a "pacification and demobilization" policy position, but not at all an "institutional peace-building" policy position. Its proponents outrightly reject some election campaign calls for resumption of the peace talks, but referring to the existing or old way these have been conducted. Such rejection of "more of the same" is not without reason based on experience in the peace talks whereby the GRP perceives their merely tactical use by the CPP-NPA-NDFP to advance its PPW strategy—to the GRP, therefore, the CPP-NPA-NDFP "has failed to show sincerity and commitment in pursuing genuine and meaningful peace negotiations."

There can really be no genuine and meaningful peace negotiations until there is a paradigm shift on both sides. This is of course easier said than done. It will likely take more needed time **for each side to honestly, thoroughly and creatively review and rethink their respective war and peace strategies**. Surely, 53 years of armed conflict since 1969 still unresolved either way ought to be more than enough impetus for such a review and rethinking. This will entail much internal and closed-door discussions but there is also a need to have room or space for more public discussions with stakeholders, concerned sectors, and resource persons. These two levels of discussion, internal and public, would be **best pursued and facilitated in a purposive, proactive, and even programmatic manner**, with the necessary infrastructure for such discussions. Of course, paradigm shifts can also come about due to certain relevant developments on each side and in the overall situation, including in the balance of forces. **Leadership changes on both sides can be a factor but this will not be enough** without the aforementioned efforts toward rethinking and renewal of the peace talks, and the necessary trust and confidence building.

Even a mutual, if at all, reaffirmation of the existing framework and related agreements for the peace talks—e.g. the 1992 Hague Joint Declaration, the 1995 Joint Agreement on Safety and Immunity Guarantees and its 1998 Additional implementing Rules, the 1995 Agreement on the Ground Rules of the Formal Meetings, the 1995 Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees and its 1997 Supplemental Agreement—**will not be enough for genuine, meaningful and viable peace negotiations without the aforesaid paradigm shifts and the necessary trust in each other side's sincerity** for a negotiated political settlement rather than "sincerity" for a politico-military victory over the other side with the peace process merely instrumentalized

for this. The latter orientation would only negate the inherent character and purpose of the peace negotiations, and is tantamount to negotiating in bad faith. The above-mentioned honest review and rethinking should thus also cover the said existing framework and related agreements for the peace talks. This could or even should lead to any necessary improvement of the same as well as any **necessary additional new agreements that rectify the extreme protraction of the peace negotiation**—as there have in fact been attempts at this by both sides but gone to naught.

In the necessary review and rethinking that should be done by both sides of their respective war and peace strategies as well as of the existing framework and related agreements for the peace talks, **they cannot and should not avoid problematizing what some consider "the elephant in the room" —the role or bearing of the Philippine Constitution** that is the ultimate framework of the GRP. This underlying reality and the counterpart assertion by the NDFP of its own constitutional framework is indeed a challenge in constitutional problem-solving in the process of seeking creative constitutional solutions and making good, if not the best, constitutional choices. Many successful peace processes abroad, but also here with the two Moro liberation fronts (the MNLF in 1996 and the MILF in 2014), show that this "elephant in the room" problem can be creatively surmounted, including by deferring final political determinations, such as by a later referendum like for the Northern Ireland peace process.

But there may still be **another "elephant in the room" brought in by the NDFP—its related assertion of a status of "co-belligerency in civil war."** Apart from the questionable currency of this old international law concept considered obsolete by many modern international law authorities, there may be application by analogy here of a standard provision in the 1949 Geneva Conventions and their 1977 Additional Protocol I, avowedly adhered to by both sides, that their application "shall not affect the legal status of the Parties to the conflict." Instead, there might be adoption of the principle of "parity of esteem" from the Northern Ireland peace process which was in fact adopted for the MILF peace process.

On the other hand**, the GRP side has also brought in its own "elephant in the room" in the form of the several successive "terrorist" designations** of the CPP, NPA, and NDFP as well as certain related "front organizations" and personalities, such designations now governed by the

new *Anti-Terrorism Act* (ATA) of 2020, the overall constitutionality of which was upheld by the Supreme Court in a Decision in December 2021. And the NDFP through its Chief Political Consultant Prof. Jose Maria Sison has posed apparent preconditions for the resumption of the peace negotiations (but which the outgoing Duterte administration does not want): the withdrawal of the said "terrorist" designations, the nullification of the ATA, and the dissolution of the rabid anti-communist National Task Force to End Local Communist Armed Conflict (NTF-ELCAC). The next presidential administration which would be the one to resume the peace talks, if ever, would likely have to grapple with these apparent preconditions of the NDFP.

In theory, the conventional wisdom is that "we do not negotiate with terrorists." But in practice, it happens. It happened in the MILF peace process. And it happened more recently in the 2020 *Agreement for Bringing Peace to Afghanistan* between the U.S. and its designated "foreign terrorist organization" the Afghan Taliban, but with the designation withdrawn upon the signing of that peace agreement, "Terrorist" designation in itself is not a decisive counter-factor against peace negotiations. There are other, more decisive factors, like lack of trust and confidence and the politico-military situation. The problem is that both sides here, the GRP and the NDFP, believe (or would like to believe) that they are winning the war, so no need to negotiate peace, without regard to those caught in the crossfire of continuing armed hostilities.

At this point, we may as well state that the above-mentioned honest review and rethinking by both sides on their respective war and peace strategies should **include a "last resort" discussion on a Plan B, if there can be one, for the peace process (note, not just the peace talks) IF there are still no forthcoming paradigm shifts by one or both sides**. **In other words, given the latter and thus likely no genuine and meaningful peace negotiations, what kind and form of peace effort should and can be made?** A menu of options for this can be found among the so-called "***Six Paths to Peace***" under old Ramos and Arroyo Executive Orders for government's comprehensive peace efforts. It is not only "3. *Peaceful Negotiated Settlement with the Different Rebel Groups*;" it is also "1. *Pursuit of Social, Economic and Political Reforms*," "2. *Consensus-Building and Empowerment for Peace*," "4. *Programs for Reconciliation, Reintegration into Mainstream Society and Rehabilitation*, "5. *Addressing Concerns Arising from Continuing Armed Hostilities*," and "6. *Building and Nurturing a Climate Conducive to Peace*." There is also more to learn from other country peace processes, whether for Plan A or Plan B.

A crucial question might be, IF there are still no forthcoming paradigm shifts and no genuine and meaningful peace negotiations, can there be in the meantime some necessary trust and confidence building, at least something to start with that can be built on? We cannot overemphasize enough the importance of this aspect. With or without peace negotiations, there is merit to working out and having specific measures of goodwill and confidence building. **A ceasefire can be seen in this regard, especially to create a favorable climate for peace negotiations**. Much of the problematic peace talks conducted *in the old way* was to hold them without ceasefires in the spoiler-prone mode of "talking and fighting" at the same time. But **the more fundamental sincerity and humanity question here is: if we are going to have a peace settlement anyway, why in the meantime waste irreplaceable lives arising from continuing armed hostilities?** Is the common goal of the attainment of a just and lasting peace not also for those lives? Stated otherwise in the vernacular, *a'anhin pa ang damo kung patay na ang kabayo?* (What's the grass for if the horse is dead?)

If there will be no peace talks and no ceasefire, the minimum trust and confidence building measure ought to be along the "fifth path to peace" of addressing concerns arising from continuing armed hostilities by better respect for human rights and international humanitarian law (IHL) by both sides, for which they already have a comprehensive agreement (the 1998 CARHRIHL) but whose implementation is impeded by an inherently stalemated Joint Monitoring Committee (JMC) mechanism. As this was operationalized *in the old way*, propaganda became more important than truth, and belligerency meant not only a subject of status obsession but also a hyper-adversarial mode of language. What ever happened to specific measures of goodwill and confidence building to create a favorable climate for peace negotiations? A better mechanism is one that includes the constitutionally independent Commission on Human Rights (CHR) as well as independent and competent civil society peace, human rights and IHL advocacy organizations, guided not only by the CARHRIHL but also by other available national and international terms of reference, most of the latter also mutually agreed or adhered to by both sides.

In fact, **the matter of addressing concerns arising from continuing**

armed hostilities would be best addressed in both preventive and quick reaction terms at the local level, following the principle of subsidiarity, used again in the Northern Ireland peace process. These could very well be viable mechanisms of addressing such local concerns that are of course not matters of political negotiations and settlement at the necessary national level. The point is not to await or be dependent on the latter kind of peace process before being able to act quickly and effectively on humanitarian concerns arising from continuing armed hostilities affecting local communities. **Honest-to-goodness local-level peace processes to address such humanitarian concerns are not of the same kind as the "localized peace talks" with a counter-insurgency "divide and rule" orientation**, that by their nature cannot substitute for political negotiations necessarily undertaken at the national level. It goes without saying that honest-to-goodness local-level peace processes to address humanitarian as well as even public health (e.g. anti-Covid vaccination) and socio-economic (e.g. food security) concerns should **entail the necessary safety and security safeguards for local CPP-NPA-NDFP representatives** who may have to deal with local government and military officials, with the assistance of independent local civil society peace and humanitarian workers. **There ought to be utmost good faith on both sides, if there is to be a starting point for trust and confidence building**. And this simply has to start somewhere.

Related to local socio-economic concerns, after some necessary initial trust and confidence built, **the honest-to-goodness local-level peace processes may consider, with some national level authorization on both sides, and with the necessary technical expertise and support, the piloting or experimentation of the possible recognition and legitimization of whatever applicable revolutionary land reform** effected by the local CPP-NPA-NDFP. Whatever positive results from this piloting may serve as inputs for the national-level peace talks when ready and/or into agrarian reform legislation that would address the land problem root cause of the armed rebellion and conflict. In this way, **some due recognition would be given to what may be considered a just cause or a legitimate social grievance**. This approximates what is mentioned in the aforesaid old Ramos and Arroyo Executive Orders on a third principle of the comprehensive peace process that "seeks a principled and peaceful resolution to the internal armed conflicts, **with neither blame nor surrender, but with dignity for all concerned**."

The idea of piloting or experimentation relates to at least two other ideas or concepts for a rethought and renewed peace process. One is the idea of testing first certain arrangements or compliance with interim agreements, including for a ceasefire, before adopting them on a wider scale and for a longer or more permanent duration. **Another concept, applied in the MILF peace process, is incrementalism.** A good international peace advocate friend, who was once involved in that peace process, points out that the understanding of what a peace agreement can and cannot achieve has also developed. Peace agreements are fundamental but insufficient in themselves to fully address structural problems of social injustice. They brought major change to South Africa in 1993, Northern Ireland in 1998, and Nepal in 2006. But deep problems remain in all these countries, even where former combatants eventually accessed government.

What is important, to again use wording from the aforesaid old Ramos and Arroyo Executive Orders on the second principle of the comprehensive peace process, is for peace agreements to AT LEAST "**establish a genuinely pluralistic society, where all individuals and groups are free to engage in peaceful competition for predominance of their political programs without fear, through the exercise of rights and liberties guaranteed by the Constitution, and where they may compete for political power through an electoral system that is free, fair and honest**." The lessons from the coming May 2022 national and local elections should be perhaps the last country experience-based input into that long-overdue process of political, electoral, and even constitutional reforms. Such hopefully game-changing societal reforms exemplify the "first path to peace" that should be pursued through administrative action, new legislation, or even constitutional amendments. The corresponding institutionalization of societal reforms may in turn help cause the necessary paradigm shifts in the war and peace strategies of both sides. Otherwise, as John F. Kennedy said, "Those who make peaceful revolution impossible, make violent revolution inevitable." There are thus those who are "rabid," Sison says, who "unwittingly help the armed revolution of the Filipino people." But there are also those who are rabid who wittingly help the armed revolution. Both rabid paradigms have to change.

ABOUT THE AUTHOR

SOLIMAN "SOL" M. SANTOS, JR. is presently a Judge of the Regional Trial Court (RTC) of Naga City in the Bicol region of the Philippines. He has an A.B. in History *cum laude* from the University of the Philippines, a LL.B. from the University of Nueva Caceres in Naga City, and a LL.M. from the University of Melbourne. He is a long-time human rights and international humanitarian lawyer; legislative consultant and legal scholar; peace advocate, researcher and writer; and author of a number of books. He is one of the few Filipino lawyers with an expertise in international humanitarian law (IHL) and is a leading contributor to a new field here of peace lawyering and *lex pacificatoria* or 'law of the peace makers.' It is both as a human rights-IHL lawyer and as a peace advocate that he had developed familiarity with war and peace on the Communist front in the Philippines. His initial engagement with the peace process on this front was with the first GRP-NDFP nationwide ceasefire in 1986 in his home region of Bicol, a long-time rural hotbed of the communist-led insurgency. His major written works on this war and peace front are found as co-author of *Philippine Human Development Report 2005: Peace, Human Security and Human Development in the Philippines* (National Academy of Science and Technology 2007 Outstanding Book Award for Social Sciences) and of the 2010 book *Primed and Purposeful: Armed Groups and Human Security Efforts in the Philippines* (Small Arms Survey, Geneva), and as author of the 2016 book *How Do You Solve a Problem Like the GPH-NDFP Peace Process? Paradigm Shifts for 2016 and Beyond* (The Centre for Peace and Conflict Studies, Siem Reap, Cambodia), which is the prequel to this book.

SOL was the founding and long-time coordinator (now Chair Emeritus) of the Philippine Campaign to Ban Landmines (PCBL), a member organization of the International Campaign to Ban Landmines (ICBL), the 1997 Nobel Peace Prize laureate. He was among the pioneers in 1997 of the global work of engaging non-state actors (rebel groups) in a landmine ban and in 2006 of the global South work of constructively engaging non-state armed groups beyond the landmines issue. He was the founding Regional Focal Point for Asia of the South-South Network (SSN) for Non-State Armed Group Engagement. He is now a member of the first Expert Advisory Group of the Institute for Integrated Transitions (IFIT) Peace Treaty Initiative, and a member of the new Editorial Board of the prestigious *International Review of the Red Cross*, journal of the International Committee of the Red Cross (ICRC).

How do you solve a problem like the GRP-NDFP Peace Process?

"THERE CAN REALLY BE NO GENUINE and meaningful peace negotiations until there is a paradigm shift on both sides. This is of course easier said than done. It will likely take more needed time for each side to honestly, thoroughly and creatively review and rethink their respective war and peace strategies. Surely, 53 years of armed conflict since 1969 still unresolved either way ought to be more than enough impetus for such a review and rethinking." - *Soliman M. Santos, Jr.*, the author

"BUILDING PEACE requires stepping out of one's comfort zone. For anyone willing and able to take such steps, this publication provides insights and guidance for ways to bring lasting peace to the Philippines." - *Kristian Herbolzheimer*, Director of the International Catalan Institute of Peace

SULONG PEACE, INC.
Website: https://sulongpeace.com/
E-mail: contact@sulongpeace.com
Telephone: 63 2 8296 9099