

Conference Paper

The Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law: Perspectives from the Philippine Government, the National Democratic Front of the Philippines and Human Rights Organizations

Rolando M. Covero Jr.

Faculty, College of Social Sciences and Development Polytechnic University of the Philippines

Abstract

The study is an explication of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), the first of the four-item substantive agenda in the peace negotiations between the Philippine Government (GRP) and the Marxist armed movement represented by the National Democratic Front of the Philippines (NDFP). Signed in 1998, the CARHRIHL was a product of the peace process that aims to end the decades-long armed conflict via negotiated political settlement.

The research objective is to provide an evaluation of the importance of the CARHRIHL in the entire peace process, and in the protection of the human rights of civilians amidst the armed conflict, while providing recommendations to strengthen the CARHRIHL's implementing mechanism.

The study identified the three main factors causing the violations in the CARHRIHL – (1) the Parties' differences in the framework and operationalization of the CARHRIHL; (2) the not fully functioning Joint Monitoring Committee (JMC); and (3) the militarist counter-insurgency campaigns by the GRP security forces. These have undermined the peace initiatives of various stakeholders and the future of the peace process.

Among the research work's recommendations were the following:

1. Effect procedures that protect human rights and repeal those that violate it and rehabilitate the victims.
2. The GRP and the NDFP should honor the previously signed agreements that laid down the objectives and guiding principles for the conduct of the peace talks.
3. The GRP and the NDFP must implement mechanisms of public consultations with human rights organizations concerning human rights and the peace talks.

Keywords: human rights, international humanitarian law, peace process, negotiated political settlement, counter-insurgency campaigns

Corresponding Author:

Rolando M. Covero Jr.
junsy169@gmail.com

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1. Introduction

Contemporary Philippine society is fragmented by and mired in various armed conflicts which for several decades now had claimed the lives of thousands of Filipinos and impinged on the country's economic prosperity, socio-cultural development and overall progress.

The armed dissidence waged by the Marxist Communist Party of the Philippines-New People's Army-National Democratic Front of the Philippines (CPP-NPA-NDFP) is considered by Philippine government security and defense agencies to be the most serious threat to the country's internal security and stability as the group operates in and influences various localities in majority of the provinces of Luzon, Visayas and Mindanao. The armed struggle being waged by this group for over four decades now is considered as the longest-running armed rebellion in Asia. Since 1969 up to now, this had already resulted in more than 30,000 lives lost as a result of armed confrontations between the armed forces of the two parties.

In 1986, the popular government of President Corazon C. Aquino had stepped up peace efforts by initiating the process of peace negotiations with the NDFP, the umbrella organization of various groups belonging to the underground Left including the CPP and the NPA. Peace talks between the GRP and the armed revolutionary movement represented in the negotiating table by the NDFP were first conducted from August to December 1986, but collapsed shortly after the massacre of landless peasants rallying in front of the Presidential Palace in Manila in January 1987.

In 1992 President Fidel V. Ramos called for the resumption of the peace negotiations with the CPP/NPA/NDFP. This effort gave birth to both parties' adoption of The Hague Joint Declaration which stipulates the substantive agenda of human rights and international humanitarian law, socio-economic reforms, political and constitutional reforms and end of hostilities and disposition of forces. It is the framework agreement, declaring that principles of national sovereignty, democracy and social justice shall guide the two Parties. Subsequently, the Joint Agreement on Safety and Immunity Guarantees (JASIG) was signed in 1995. This is vitally important because it guarantees safety and immunity to all participants in the peace process from both parties. The guarantees include safe and unhindered passage of peace talks participants in all areas in the Philippines and immunity from surveillance, arrest, detention and other punitive actions (Casambre, 2006).

As a result of the vigorous effort by both parties to pursue peace and because of the strong momentum gained by the peace negotiations at the time, an historic agreement

called the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) was completed and signed in March 16, 1998 by the GRP and the NDFP Peace Panels in the Hague, the Netherlands. The CARHRIHL was the first of the four substantive agenda in the peace negotiations. It requires both Parties to observe the highest standards of human rights and International Humanitarian Law, such as those contained in the Geneva Conventions.

The signing of the CARHRIHL is meant to meet the needs arising from the concrete conditions of the Filipino people concerning violations of human rights and principles of International Humanitarian Law, and to find principled ways and means of rendering justice to all the victims of such violations. It represents as the bilateral binding agreement embodying the human rights instruments plus the four Geneva Conventions and their Protocols translated into the current Philippine setup, the first of its kind in the world.

Moreover, the CARHRIHL obligates the GRP to work for the immediate repeal of any subsisting repressive laws, decrees, or other executive issuances. Under the Agreement, the GRP is obliged to conduct a review of its jurisprudence on warrantless arrests, checkpoints, saturation drives, warrantless searches, criminalization of political offenses, and other similar cases.

But while the protagonists from the opposite side of the negotiating table consider the CARHRIHL as a breakthrough, they view it from different perspectives.

For the GRP, signing the CARHRIHL serves the purpose of confidence-building with regard to its sincerity and commitment to the expeditious resolution of the protracted peace negotiations, while at the same time remaining steadfast in its claim of continued possession of the Filipino people's sovereign mandate. Thus, when President Joseph Ejercito Estrada signed the CARHRIHL, its implementation should be "in accordance with the Constitution and legal processes of the Republic of the Philippines" (Chronology of the GRP-NDFP Peace Negotiations: 1988-2006, Philippine Peace Center, 2006).

For the NDFP, forging the CARHRIHL with the GRP is a clear evidence of parity between them. The NDFP regards the signing of the agreement as a result of GRP's tacit recognition of the status of belligerency of the revolutionary forces. Although the NDFP welcomed Estrada's approval, it "directed all the NPA forces to implement the Agreement in accordance with the constitutional framework and judicial processes of the revolutionary forces and the NDFP in their respective areas of political authority" (Casambre, 2003).

While the GRP asserted its sole authority to arrest, prosecute and punish human rights violators in the implementation of the Agreement, the NDFP, on the other hand, demanded that its judicial and legal processes be allowed to co-exist with that of the GRP.

Thus, not long after the signing of the CARHRIHL, serious obstacles once again threatened the continuation of the peace process as both parties failed to agree on and approve of the modality for the joint implementation of the CARHRIHL.

Nevertheless, after more than two decades of on-and-off peace talks between the GRP and the NDFP, the signing of the CARHRIHL can already be considered as a great stride towards the pursuit of peace. As the first of the four major substantive agenda in the peace negotiations, the CARHRIHL plays a key role in the continuance of the entire peace process as its sincere implementation not only builds trust and confidence among the warring parties involved. It likewise provides legal and moral protection for the people as well, in so far as upholding and promoting their basic rights is concerned, amidst the raging armed conflict.

But for what purpose does the CARHRIHL serve if the people's basic rights continue to be trampled upon? What is the sense of continuing the volatile peace talks and the tedious work of forging subsequent agreements if the first agreement continue to be violated and unenforced?

It is in this context that this study is undertaken to provide a thorough and deep-going understanding of the importance of continuing on the initial albeit substantive gains the peace talks had achieved in the signing of the CARHRIHL. The study's relevance hinges on its evaluation of the hindrances and difficulties encountered in the course of effecting the CARHRIHL and on its recommendations toward strengthening the agreement's implementing mechanisms.

The critical review and evaluation of the implementation of the CARHRIHL will generate an objective understanding of the substantive achievement made so far in the peace negotiations which shall be presented from three different perspectives coming from the GRP, the NDFP and human rights organizations.

It would be relevant to analyze this undertaking and the value of the CARHRIHL in the peace talks in light of the concrete current realities obtaining in the Philippines, i.e., the continuing prevalence of violations of human rights and the protracted armed conflict. In the short run, this study should help both parties in strictly and consistently effecting the principles of human rights and international humanitarian law in their conduct of war, while in the long run, strengthening the CARHRIHL to help realize its

objectives and role in the Filipino people's pursuit of a just and lasting peace in the Philippines.

While it is undeniably true that up to now the roadmap to peace is still being forged by the GRP and the NDFP in the negotiating table, the Filipino people remains optimistic that despite enormous obstacles, just and lasting peace shall someday see the light of day. Among the majority of the Filipino people, there still is an undying hope to bring into full fruition the strategic goal of the peace process – to bring about lasting peace and national unity by rooting out the social and systemic causes of the armed conflict.

2. Objectives of the Study

The main objective of this study is to provide an objective evaluation of the importance of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) in the continuance of the peace negotiations between the Philippine Government and the National Democratic Front of the Philippines, and in the protection of the human rights of civilians or non-combatants amidst the ongoing armed conflict. Likewise, this research work has endeavored to provide concrete recommendations to strengthen the CARHRIHL's implementing mechanism.

Specifically, this study answered the following questions:

1. What is the importance of the signing of the CARHRIHL in the peace negotiations between the GRP and the NDFP, and in the protection of the human rights of civilians or non-combatants amidst the ongoing armed conflict between the armed forces of the two Parties?
2. What are the specific problems encountered in the implementation of the CARHRIHL?
3. What are the concrete measures undertaken by the GRP and the NDFP to address the violations in the CARHRIHL?
4. What can be done to strengthen the mechanism for the implementation of the CARHRIHL?

3. Methodology

The researcher embarked on a qualitative approach to this study. As such, the writer created this work primarily from analyzing the main texts of the CARHRIHL and other

substantial agreements forged by the Philippine Government and the National Democratic Front of the Philippines during the entire course of the peace negotiations from 1986 up to the present.

The data and information on the CARHRIHL and the peace negotiations were sourced from published (books, official documents, media releases) and on-line materials issued by the GRP and NDFP peace panels and their consultants, and human rights organizations.

As supplemental source of information and for data verification, questionnaires for interviews were distributed to selected informants who were selected based on their direct participation in the peace negotiations and expertise and long experience as field workers in human rights movement.

Key informants selected to answer the questionnaire distributed by the researcher were composed of the following:

1. Member of the GRP Negotiating Panel who is a lawyer by profession and has long served in the local government unit in Davao City;
2. Member of the NDFP Negotiating Panel who has served the NDFP side since 1991;
3. Leader of an alliance of human rights organizations in the Philippines who serves as an independent observer to the peace talks and as the resource person on human rights; a political prisoner and victim of human rights violations during the Martial Law era;
4. Political prisoner and representative of a national peasant organization in the peace process; former journalist and member of the academe;
5. Parish priest who works for the Campaign for Human Rights in the Philippines; and
6. Organizer of the International Coalition for Human Rights in the Philippines that acted as one of the host organizations of the Third Round of Peace Talks held in Rome, Italy in January 2017; her organization, the Italy-Philippines Friendship Association collaborated with the Royal Norwegian Government as the Third Party Facilitator in the GRP-NDFP Peace Negotiations.

Additional information, such as testimonies of former political prisoners and other victims of human rights violations, were gathered from peace fora, seminars and other discussions held or sponsored jointly or separately by the GRP, the NDFP and human rights organizations.

Moreover, the video coverage and live streaming on the internet of the proceedings of the Third Round of the Formal Negotiations held in Rome, Italy in January 2017 provided updated information on the peace negotiations.

Data and information obtained from the volumes of books, statements and other literature issued by the GRP, the NDFP and human rights organizations were collected, processed and analyzed towards the determination of the answers to questions raised in the statement of the problem. Processed data and information were validated via correspondences with selected participants in the peace negotiations.

Documented cases involving violations of the CARHRIHL were also gathered for analysis. To arrive at a factual data analysis, the researcher examined the actual contents of selected complaint forms filed against the armed forces of the GRP and the NDFP for alleged violations of human rights. These complaint forms were filed with the Joint Monitoring Committee (JMC) of the CARHRIHL.

The researcher juxtaposed the selected GRP and NDFP complaint forms against each other comparing their respective data with respect to the following:

- (a) personal circumstances of the victims;
- (b) description of the incidents, if any; and
- (c) allegations, evidence, supporting documents, possible motives, if any.

In this manner, the researcher distinguished the differences between the two complaint forms.

Likewise, the researcher tabulated the incidents of violations recorded by the JMC and categorized them according to year, region, and alleged perpetrator. In so doing, the researcher was able to make a comparative study of the complaint submissions coming from the GRP and the NDF and draw the study's findings and conclusions as to the causes of violations to the CARHRIHL. To validate these, the findings and conclusions culled from the comparative study of the complaint submissions were then compared with the responses to the interview questions by the key informants.

4. Results and Discussion

The study, through the perspectives of the Philippine Government, the National Democratic Front of the Philippines and selected human rights organizations, revealed and identified the following:

1. The importance of the CARHRIHL in the peace negotiations and in the protection of human rights of civilians or non-combatants amidst the on-going armed conflict between the armed forces of the GRP and the NDFP;
2. The problems encountered in the implementation of the CARHRIHL, the causes of violations, the measures undertaken by the GRP and the NDFP to address the violations; and
3. The steps that can be done to improve the mechanism for the implementation of the CARHRIHL.

1. The study revealed that the implementation of the CARHRIHL, it being the first of the four substantive agenda in the peace talks, is of crucial importance to the forging of the succeeding agreements on socio-economic reforms (second agenda), political and constitutional reforms (third agenda), and end of hostilities and disposition of forces (fourth and final agenda). The study likewise identified the importance of the CARHRIHL in protecting the rights not only of those directly involved in the armed conflict but moreso of the rights of the civilians or non-combatants while the armed conflict is still on-going.

For the GRP, signing the CARHRIHL serves the purpose of confidence-building with regard to its sincerity and commitment to the expeditious resolution of the protracted peace negotiations, while at the same time remaining steadfast in its claim of continued possession of the Filipino people's sovereign mandate. Thus, when President Joseph Ejercito Estrada signed the CARHRIHL, he ordered that its implementation should be "in accordance with the Constitution and legal processes of the Republic of the Philippines" (Chronology of the GRP-NDFP Peace Negotiations: 1988-2006, Philippine Peace Center, 2006). Moreover, signing the CARHRIHL's Joint Monitoring Committee Supplemental Guidelines during the latest round of the peace talks in January 2017 was an indication of the GRP's commitment to human rights.

According to the head of the GRP peace panel Secretary Silvestre Bello III, "the full operation of the JMC with its Supplemental Guidelines in place should not be difficult under our legal regime, that includes new and bold laws and statutes upholding human rights and international humanitarian law such as the law against enforced disappearances, Anti-Torture Act, International Humanitarian Law Act, Human Security Act, the Writ of Amparo and the Writ of Kalikasan among others" (Office of the Presidential Adviser on the Peace Process, 2017).

Bello said that the signing of the Supplemental Guidelines does not only affirm the Duterte administration's commitment to human rights protection and adherence to international humanitarian law, but likewise provides for a complete dividend of the latest round of talks.

For the NDFP, forging the CARHRIHL with the GRP is a clear evidence of parity between them. The NDFP regards the signing of the agreement as a result of GRP's tacit recognition of the status of belligerency of the revolutionary forces. Although the NDFP welcomed the GRP's approval, it "directed all the NPA forces to implement the Agreement in accordance with the constitutional framework and judicial processes of the revolutionary forces and the NDFP in their respective areas of political authority" (Casambre, 2003).

According to one of the NDFP Peace Panel members who was interviewed by the researcher, the strict implementation of the CARHRIHL is of prime importance for the peace process to move forward especially because it is the first major item in the substantive agenda in the peace negotiations. The CARHRIHL is deemed to serve as preparation for the final truce at the end of the peace process, or as the rules of war and protection of human rights for as long as the war has not yet ended.

The NDFP representative in the peace negotiations averred that "mutual trust and confidence are essential if the peace negotiations are to succeed. He added, "non-compliance is bound to erode mutual trust and confidence."

"The first big test of the seriousness of the GRP in these negotiations is compliance with the CARHRIHL. For if the GRP cannot fulfill its obligations in an agreement already signed, what is our guarantee with regard to future agreements?" (Agcaoili, 2017).

As a matter of fact, the first major item of the agenda taken up by the GRP and NDFP panels in the Third Round of formal talks held in Rome, Italy in January 2017 was the review of the implementation of the CARHRIHL as the NDFP had registered its disappointment over the failure of the GRP to fulfill many of its obligations stipulated under the said agreement.

From the perspective of the human rights sector, the key informant interviewed by the researcher agreed that CARHRIHL protects and guarantees the basic rights of the civilian population or non-combatants in the internecine strife between the armed forces of the GRP and the NDFP. It created the mechanisms for promoting and protecting human rights, trying and investigating human rights violations of both sides and indemnifying the victims and their families.

The human rights sector believed that amidst the armed conflict raging for almost 50 years now, the CARHRIHL is beneficial to the Filipino people, particularly for the non-combatants or non-armed civilians who are not party to the attritive engagements between the armed forces of the GRP and the NDFP.

The researcher found out that all the key informants' views on the important role the CARHRIHL plays in the peace process and in the protection of the rights of civilians amidst the armed conflict, were almost identical by saying that "even if the two parties are still at war, the people's basic rights remain inviolable and should be protected. Their basic human rights, safety and security of their homes and livelihood, and mobility should be guaranteed." These human rights included civil and political rights that protect a person's liberty, safety, privacy, and freedoms of thought, speech, religion, press, assembly and movement.

Both warring parties' commitment to these is manifested by the signing of the CARHRIHL which is applicable not only to persons, families and groups affiliated with either party but also to all civilians and persons not directly taking part in the hostilities, including persons deprived of their liberty for reasons related to the armed conflict (CARHRIHL Preamble; Part I: Declaration of Principles; Part II: Bases, Scope and Applicability, 1998).

Equally important, the researcher analyzed that the Agreement has set forth the rules of war and the parties' compliance to international humanitarian law. This means that both parties are compelled to abide by and comply with international instruments and conventions such as the United Nations Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Geneva Conventions and its Protocols.

International Humanitarian Law (IHL), also known as "rules of war" or "laws governing armed conflict", embodies the universal principles and standards contained in international treaties or conventions signed by states of the world and upheld by some parties and organizations involved in armed conflict. Among these treaties or conventions are the Geneva Conventions of 1949 and its Additional Protocols of 1977.

The researcher has analyzed that the CARHRIHL serves the need to apply international humanitarian law (IHL) to the specific conditions of the Philippines especially because there are particular situations which may not be directly covered by IHL such as the GRP's use of paramilitary units like the Citizen's Armed Force Geographical Units (CAFGU), Civilian Volunteer Organizations (CVO) and armed fanatical groups (Alsa Masa and the like), in the AFP's counter-insurgency programs and operations.

The CARHRIHL clearly stipulates that the principles and standards of IHL shall be applied to protect the rights of persons, entities or objects involved or affected in any of the following cases or situations:

- a. Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives, dignity, human rights, political convictions and their moral and physical integrity and shall be protected in all circumstances and treated humanely.
- b. The wounded and the sick shall be collected and cared for by the party to the armed conflict which has them in its custody or responsibility.
- c. Neutral person or entities and medical personnel, including persons of humanitarian and/or medical organizations like the International Committee of the Red Cross (ICRC), shall be protected and respected.
- d. The civilian population and civilians shall be treated as such and shall be distinguished from combatants and, together with their property, shall not be the object of attack.
- e. Civilians shall have the right to demand appropriate disciplinary actions against abuses arising from the failure of the Parties to the armed conflict to observe the principles and standards of IHL.
- f. The ICRC and other humanitarian and/or medical entities shall be granted facilitation and assistance to enable them to care for the sick and the wounded and to undertake their humanitarian mission and activities (CARHRIHL Part IV: Respect for International Humanitarian Law; Article 4, 1998).

From the careful scrutiny of the foregoing provisions of the CARHRIHL, the researcher found that the Agreement can likewise serve as a legal and moral weapon or instrument in the hands of the people to fight for, promote and broaden the exercise of their human rights. It seeks to empower the people to confront, remedy and prevent the most serious violations of human rights in terms of civil and political rights, to uphold, protect and promote the full scope of human rights and fundamental freedoms with respect to the specific conditions of the country, and to demand justice and due punishment of those responsible for violations of such.

2. The problems encountered in the implementation of the CARHRIHL, the causes of violations, and the measures undertaken by the GRP and the NDFP to address the violations

2.1. The documented cases of violations in the CARHRIHL compiled by the Joint Monitoring Committee (JMC) from June 2004 to December 2007 clearly reflected the problems encountered in the implementation of the Agreement.

To provide for a more detailed and verified data regarding incidents of violations in the CARHRIHL, the researcher sought the incident reports compiled by the Joint Monitoring Committee from 2004 to 2007, the years when the JMC was created and became operational.

According to the JMC Report, in the 43-month period from June 2004 to December 2007, it received 3,018 submissions of complaint forms. The GRP-nominated section received 1,227 submissions against the forces of the GRP while the NDFP-nominated section received 1,791 submissions against the forces of the NDFP.

The JMC Report revealed that the submissions against the GRP were filed at the average rate of 28.53 per month. On the other hand, for 29 months, there were only 123 submissions against the NDFP.

The JMC Report also revealed that complaints filed against the forces of the GRP during the period from June 2004 to December 2007 number 1,227. Most of these were filed by human rights and people's organizations and 168 by the victims and relatives of victims.

However, careful scrutiny of the filed complaints showed that forty-five (45) of the submissions or complaint forms were duplicates or refer to incidents which had been the subject of previously filed complaints. Thus, the researcher realized that there were only 1,182 complaints against the GRP.

Further, the document revealed that of these 1,182 complaints, 246 (20.81%) involve incidents of summary executions with 277 victims, 25 (2.12%) cases of massacres with 123 victims and 65 (5.50%) cases of enforced disappearances with 101 victims.

In terms of the nature of violations, the JMC Report highlighted that around 71.57% or 846 complaints involve incidents of other violations of human rights including torture, illegal arrest, forced evacuation, violation of the rights of hors de combat, fake surrender, etc.

Table 1 shows the number of complaints per region. The three regions with the most number of complaints comprising more than 56% are Southern Tagalog, Central Visayas and Central Luzon.

According to key informants from the human rights organizations interviewed by the researcher, the Southern Tagalog, Central Visayas and Central Luzon regions registered the highest number of complaints of human rights violations because these were the

TABLE 1: Complaints Filed Against the GRP Per Region.

Region	Incidents	Percent
Southern Tagalog	319	26.94
Central Visayas	181	15.31
Central Luzon	169	14.3
Eastern Visayas	86	7.28
Bicol	75	6.35
National Capital Region (NCR)	74	6.26
Caraga Region	72	6.09
Cordillera Administrative Region (CAR)	45	3.81
Davao	36	3.05
Western Visayas	35	2.96
South Cotabato, Cotabato, Sultan Kudarat, Sarangani, and General Santos (SOCCSKSARGEN)	21	1.78
Ilocos	19	1.61
Northern Mindanao	18	1.52
Cagayan Valley	16	1.35
Autonomous Region of Muslim Mindanao (ARMM)	8	0.67
Western Mindanao	5	0.42
Zamboanga Peninsula	2	0.17
Overseas Filipino Workers	1	0.08
TOTAL	1,182	100.00

Source: Joint Monitoring Committee (June 2004-December 2007)

areas prioritized by the implementation of the counter-insurgency Operational Plans Bantay Laya I and II. The informants were of the singular view that the GRP's armed forces focused its massive military operations in these areas primarily because the AFP perceived that the armed component of the NDFP which is the NPA gathers its biggest political, financial and logistical support from the rural and urban areas situated in the provinces within these regions.

The data also revealed that the three years with the most number of complaints comprising more than 61% are 2005, 2006 and 2004, respectively.

Table 2 shows the number of complaints filed against the GRP per year of incident. The data, particularly for the years 2004-2006, suggest that the surge in the number of human rights violations during these years can be attributed to the intrinsic component of the counter-insurgency program of the GRP which was driven by the tactical military approach that eliminating the legal/political structure of the dissidents weakens and consequently destroys the entire armed movement. This analysis was corroborated by

TABLE 2: Complaints Filed Against the GRP Per Year of Incident.

Year	Incidents	Percent
2005	323	27.33
2006	241	20.39
2004	157	13.28
2003	122	10.32
2002	114	9.64
2001	85	7.20
2000	19	1.61
1999	7	0.59
1998	1	0.08
1994-1997	13	1.10
undated	1	0.08
TOTAL	1,182	100

Source: Joint Monitoring Committee (June 2004-December 2007)

various independent local and international human rights fact-finding investigations and field reports conducted during that time, notably by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Prof. Philip Alston who himself had concluded in his November 2007 report that this counterinsurgency strategy, as an approach within the global context of the so-called war on terror, “focuses on dismantling civil society organizations that were purported to be CPP front groups” (Alston, 2007).

TABLE 3: Complaints Filed Against GRP Per Alleged Perpetrator.

Perpetrator	Incidents
Armed Forces of the Philippines (AFP)	752
Philippine National Police (PNP)	267
Unidentified military units	113
Paramilitary (CAFGU, etc.)	103
Civilian National Unit (Metropolitan Manila Development Authority, Department of Interior and Local Government, etc.)	62
Private security agency	50
Local Government Unit (LGU)	42
Landlord/caretaker/management	41
Civilian agents	40
Goons, private army, etc.	27
Unclassifiable	21
American soldier	1

Source: Joint Monitoring Committee (June 2004-December 2007)

Table 3 shows the different types of perpetrators and the number of complaints in which they were involved.

As to the alleged perpetrators of human rights violations, the study revealed that in 752 complaints, the AFP was the identified perpetrator, followed by the PNP (267) and by unidentified military units (113).

TABLE 4: Classifications of Complaints Filed Against the NDFP.

	Number	Percent
Duplicates	152	8.49
Defective	1,349	75.32
Outside coverage	42	2.35
Falsely attributed	41	2.29
Reported		
Legitimate military operation	138	7.70
Implementation of revolutionary justice and legal system	32	1.79
Implementation of movement's revolutionary policies on taxation, environment and promotion of rights of workers and farmworkers	31	1.73
For further study	6	0.33
TOTAL	1,791	100.00

Source: Joint Monitoring Committee (June 2004-December 2007)

Table 4 shows the different classifications of complaints filed against the NDFP.

Gathered data revealed that, as of December 31, 2007, the JMC received 1,791 submissions or complaint forms against the forces of the NDFP, almost all submitted by the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). Of these, 1,373 (76.67%) were submitted wholesale on November 8, 2006 by the Judge Advocate General's Service (JAGS) office of the AFP.

Of the 1,791 complaint forms, 152 were either duplicates of previously submitted complaints or were multiple submissions for a single incident. Thus, there were actually only 1,639 submissions against the forces of the NDFP.

Two hundred one (201) submissions concerned incidents which were reported in publications or public statements of the NDFP forces. After analyzing the submissions, the researcher had further broken these down into the following:

1. 138 concerned incidents involving legitimate military operations (ambushes, raids, firefights and encounters between the armed forces of the GRP and the NDFP) or attacks on legitimate military targets by forces of the NDFP;

2. 32 concerned incidents in connection with the implementation of the NDFP forces' justice and legal system (which conforms and abides by internationally accepted standards on due process, fair trial, judgement and punishment); and
3. 31 concerned incidents in connection with the implementation of the NDFP forces' policies on taxation, on protection of the environment and on the promotion of the rights of workers and farmworkers to unionize and for fair wages and better working and living conditions.

According to the informant from the NDFP Panel, these 201 incidents did not constitute violations of the CARHRIHL because most (138) involved actual armed hostilities between the two parties in the civil war, while the rest (64) were in connection with the exercise of political authority by the NDFP forces. However, the NDFP had previously said that it may look further into the 64 incidents in accordance with the guidelines of the NDFP Negotiating Panel and subject to the principles, policies, rules and circumstances of the revolutionary movement.

2.2. The study identified the following causes of violations in the CARHRIHL:

- (a) the opposing parties' differences in the framework and interpretation of the operationalization of the CARHRIHL;
- (b) the not fully functioning Joint Monitoring Committee (JMC); and
- (c) the militarist counter-insurgency paradigm and approaches by the GRP security forces.

(a) The Philippine Government and the NDFP have diametrically opposed perspectives regarding the framework and interpretation of the operationalization of the CARHRIHL.

For the GRP, the Office of the Presidential Adviser on the Peace Process (OPAPP) explained:

"The CARHRIHL states that until the parties have reached a final resolution of the armed conflict, the GRP and the NDFP will assume separate duties and responsibilities for upholding, protecting and promoting human rights and international humanitarian law (IHL) principles according to their own political principles, organizations and circumstances. The full implementation of the CARHRIHL is, therefore, dependent on the agreements on political and constitutional reforms, and on end of hostilities and disposition of forces, which have yet to be negotiated.

“Since it cannot be fully implemented without these agreements, CARHRIHL’s implementation has focused mainly on each side’s Monitoring Committee receiving and investigating complaints of human rights and IHL violations by both the NPA rebels and the government’s security forces.

The NDFP’s perspective of the operationalization of the CARHRIHL as explained by a former political prisoner who was one of the key informants interviewed for the study: “Since the CARHRIHL’s signing in 1998, Philippine administration after administration had low regard for or had cursory approval of the Agreement, to say the least. The document was finished in March 1998 but President Ramos did not sign it before his term ended in June. It took another president, Joseph Ejercito Estrada, to sign it. And that was it for the CARHRIHL after the signing, an agreement in paper only.”

The NDFP Panelist informant lamented that, “With the long impasse from the Arroyo government up to the Aquino administration, the mechanism that is JMC had been reduced to a mere desk receiving complaints from victims of human rights violations. What to do with the complaints and how to jointly tackle them, have had yet to be realized. Worse, under the Aquino presidency, the GRP viewed the CARHRIHL as the NDF’s ‘propaganda tool’. The GRP then had this derisive notion that the NDF was using human rights violations and the CARHRIHL as a ploy to achieve a belligerent status under international law.”

For the human rights sector, the CARHRIHL was a big step forward towards a peaceful country. Twenty five years after the first peace talks and seventeen years after the document was signed, the CARHRIHL, for them, is still the only substantive agreement to ever have come out of this peace negotiations. But violence is still happening on the ground and civilians are still continually affected by the conflict. The CARHRIHL as an agreement should help mitigate and prevent further devastation to civilians, yet more and more lives are being injured and lost as this armed conflict continues to surge. They said that CARHRIHL violations – allegedly perpetrated by government forces and the NPA – continue to occur.

It can be surmised from the diametrically opposed standpoint and adversarial declarations taken previously by the GRP and NDFP negotiating panels, that it would be really impossible for the peace talks to have taken off, given the surrounding circumstances and atmosphere of distrust prevailing at the time. This only shows the quintessential need for both the GRP and NDFP to honor, abide by and reaffirm their commitment to the bilateral agreements previously signed by both parties, such as the Hague Joint Declaration and the JASIG. These agreements had already laid down

the fundamental framework, agenda, objectives and guiding principles for the entire peace process to succeed.

(b) The not fully functioning Joint Monitoring Committee (JMC)

Part V of the CARHRIHL stipulates that a Joint Monitoring Committee (JMC) will be formed to monitor compliance with the Agreement by both the GRP and the NDFP. The JMC is composed of three representatives each from the GRP and the NDFP, with both parties nominating two independent observers each to sit in all meetings but without the right to vote. The JMC is supposed to meet every three months or as often as necessary in the Philippines or elsewhere upon the agreement of the JMC co-chairmen.

Unfortunately, since it was convened on February 14, 2004 in Oslo, Norway, the JMC had not had the opportunity to meet to perform its task. The reason is because the GRP and the NDFP clearly did not see eye to eye on how the JMC should work especially during times of impasse in the peace negotiations.

For the GRP, the JMC cannot meet while the formal talks in the peace negotiations were suspended. Moreover, the GRP Panel insisted on its interpretation that the joint operations of the JMC depend upon the status of the peace process between the GRP and the NDFP. It cited Part VI, Article 3 of the CARHRIHL, which states that “the CARHRIHL shall be subject to the Comprehensive Agreements on Political and Constitutional Reforms and on End of Hostilities and Disposition of Forces.”

Fidel Agcaoili, chairperson of the NDFP Human Rights Committee and of the NDFP Monitoring Committee, in his letter to the GRP Monitoring Committee in August 25, 2004, reiterated the NDFP position that “the JMC, as a joint mechanism of the Parties created under the CARHRIHL to monitor its implementation, has a life of its own separate from what is happening across the negotiating table. In fact, the JMC has its own terms of existence and termination under the CARHRIHL.”

The NDFP maintained that “the work of the JMC as provided for in the CARHRIHL is not dependent on the holding of the formal talks. The JMC takes its mandate from the CARHRIHL which remains binding and in full force and effect on the two parties whatever may be the situation in the formal talks. Thus, there is no reason why the JMC cannot meet regularly or as often as agreed upon to discuss and plan joint investigations on complaints of alleged human rights and international humanitarian law violations even in the present situation where the formal talks have practically remained indefinitely postponed” (Agcaoili, 2006).

Comparing and analyzing the basic stand and interpretation of both sides regarding the work and operationalization of the JMC, the researcher realized that there should be a clear implementing guidelines drawn and agreed upon by the GRP and the NDFP that shall stipulate in detail the joint responsibility, accountability and activities to be undertaken by both parties, jointly or separately, in the course of implementing the provisions of the CARHRIHL.

(c) The militarist counter-insurgency paradigm and approaches by the GRP security forces

Based on the analysis of data presented by the JMC, specifically on the documented incidents alleging the perpetrators of violations in the CARHRIHL during the period 2004-2007, it is highly suggestive that the implementation of the GRP's counterinsurgency programs Oplan Bantay Laya I and II during the Arroyo administration had been one of the main aggravating factors in the violations in the CARHRIHL.

This observation had been corroborated by separate and independent local and international fact-finding missions conducted by the UN Human Rights Council, Amnesty International, Human Rights Watch, World Council of Churches, US Methodist Church and Karapatan, to name a few.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Prof. Philip Alston, concluded in his November 2007 report that this COIN strategy, as an approach within the global context of the so-called war on terror, "focuses on dismantling civil society organizations that are purported to be 'CPP front groups.'" Likewise, Alston noted that "the campaign was a deliberate strategy in keeping with the overall trajectory of COIN thinking at the national level" (Alston, 2007).

In its August 2006 report on the Philippines, Amnesty International stated: "The common features in the methodology of the attacks, leftist profile of the victims, and an apparent culture of impunity shielding the perpetrators, has led Amnesty International to believe that the killings are not an unconnected series of criminal murders, armed robberies or other unlawful killings. Rather, they constitute a pattern of politically targeted extrajudicial executions taking place within the broader context of a continuing counterinsurgency campaign" (Amnesty International Report, 2006).

As a COIN measure, OBL's focus on the "political component" and "white area operations" was described by veteran reporter and columnist Amando Doronila in the Philippine Daily Inquirer in June 21, 2006:

“The blueprint of war outlined in ‘the orders of battle’ of OBL envisages decimation of non-military segments of the communist movement. It is not designed to engage the NPA in armed conflict in field warfare. It is designated to butcher and massacre defenseless non-combatants. It is therefore a sinister plan for civilian butchery, a strategy which exposes the military and police to fewer risks and casualties than they would face in armed fighting with the communist guerillas.

“The emphasis of this strategy on “neutralizing” front/legal organizations helps explain why most of the victims of the past five years have been non-combatants and defenseless members of the Left. During that period the number of murdered aboveground members of the Left has far exceeded fatalities of the NPA in armed encounters with security forces.”

From the analysis of data, the researcher revealed that most of the victims of violations of human rights and international humanitarian law were persons associated with Leftist organizations, church people, community leaders, farmers, journalists, lawyers, members of party list groups or parliamentary opposition, human rights activists, or witnesses to extrajudicial killings. Most of the killings had taken place in those regions of the country that were identified as ‘priority areas’ in the implementation of the AFP’s counter-insurgency campaigns, as shown in Table 1 in the previous discussion.

2.3. Measures undertaken by the GRP and the NDFP to address the violations in the CARHRIHL

Both the GRP and the NDFP had undertaken various steps for the spirit and intent of the CARHRIHL – to make the armed conflict more humane and to protect civilians – be realized.

The GRP panel declared that the GRP-Monitoring Committee (GRP-MC) had tried to spread awareness and understanding of the CARHRIHL among stakeholders. The GRP-MC offered orientation seminars, including workshops, on the HR/IHL-related laws to various members of the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) across the country. It added that the PNP has participated in several GPH-MC Basic Orientation Seminars (BOS) on the CARHRIHL, while the PNP has included the CARHRIHL in human rights & IHL seminars for police personnel.

As part of the GRP’s effort in the implementation of the CARHRIHL, punitive laws such as the Anti-Enforced Disappearance (RA 10353), Anti-Torture (RA 9745) and IHL

Law (RA 9851) had been enacted to hold perpetrators accountable for any committed human rights and international humanitarian law violations.

The GRP Peace Panel reported the creation of the Inter-Agency Committee under Administrative Order No. 35 to fast track the resolution of cases of extra-legal killings, enforced disappearances, torture and other grave human rights violations.

Information provided by the Office of the Presidential Adviser on the Peace Process (OPAPP) declared that the GRP had ratified the Geneva Conventions of 1949 in 1952 and Protocol II in 1986 during the Corazon Aquino presidency.

According to the key informant from the GRP Panel, the Philippine Government thru its Peace Panel acknowledged having signed the CARHRIHL and assured the NDFP of its commitment to comply with its obligations under the said Agreement.

For its part, the NDFP reported that "the CARHRIHL has become part of the legal and judicial system of the revolutionary movement in accordance with the NDFP Declaration of Approval of the CARHRIHL signed by the Chairperson on the NDFP National Council on April 10, 1998. Moreover, the Agreement had been incorporated in the basic study course of the NPA and is imbibed by the NDFP's local organs of political power."

The NDFP declared that even before the CARHRIHL its forces had already been upholding, respecting and promoting human rights and international humanitarian law in accordance with its basic principles as reflected in the following list of guidelines and policies:

- a. Guide for Establishing the People's Democratic Government which contains provisions on the Fundamental Rights and Duties of Citizens (Part III) and the People's Court (Chapter III of Part II);
- b. The Revolutionary Guide to Land Reform;
- c. The Basic Rules of the New People's Army (NPA) which contain the Three Main Rules of Discipline and the Eight Points of Attention for officials and members of the NPA;
- d. Memorandum on the Minimum Age Requirement for NPA Fighters from the Executive Committee of the Central Committee of the Communist Party of the Philippines (CPP);
- e. Rules in the Investigation and Prosecution of Suspected Enemy Spies released by the Political Bureau of the Central Committee of the CPP;
- f. Policies and processes on arrest, treatment, trial, punishment or release of prisoners of war (POWs); violators of human rights, etc.

The NDFP also reported in its publications that it had launched educational campaigns on the CARHRIHL among its forces. The CARHRIHL had become a basic study material in the CPP, NPA and other mass organizations.

As part of its commitment to uphold international humanitarian law, the NDFP on July 5, 1996 unilaterally declared its undertaking to apply the Geneva Conventions of 1949 and Protocol I of 1977. Previously, on August 15, 1991, the NDFP unilaterally declared its adherence to Protocol II by means of the Declaration of Adherence to International Humanitarian Law.

Aside from educational campaigns, the NDFP also reported that it had investigated human rights violations and rendered justice to the victims.

According to the informant representing the NDFP Panel, "In battle, the NPA had always treated its prisoners of war humanely and with utmost respect for their rights. The NPA guerrillas had treated enemies wounded in the battlefield and had avoided armed encounters in communities, desisted from setting up camps among civilian houses, among others."

The NDFP informant added that, "On many occasions, the NDFP had released prisoners of war on humanitarian grounds and acted to ensure their proper and safe release. It had coordinated with the International Committee of the Red Cross (ICRC) on this matter. The NDFP had complied with international conventions on the minimum age requirement for recruitment to the NPA, on the proper use of landmines, and on the treatment of medical, religious and humanitarian organizations."

3. Steps that can be done by the GRP, the NDFP and human rights organizations to improve the mechanism for the implementation of the CARHRIHL

The key informant from the GRP intimated that the pillars of the State's criminal justice system that include the courts, law enforcement agencies, and corrections and penal institutions should all be invited to work together in CARHRIHL education and in strengthening its monitoring, and in improving the human rights situation in the country. The government must strengthen coordination, collaboration and cooperation among said government agencies towards this end.

The informant added that a law to protect human rights defenders must be enacted while the full implementation of the existing human rights laws such as the Anti-Torture Act must be realized. It should allocate more budget for the Government's Witness Protection Program in order to encourage more victims to come out and report CARHRIHL violations.

The informant added that the government should develop a CARHRIHL Case Database that is credible, updated, and acceptable to all parties which can be independently developed and maintained.

Likewise, the government should foster wider public support and create more opportunities for multi-sectoral initiatives about CARHRIHL to develop a peace constituency. Human rights concepts and issues should be promoted through fora and trainings. It should recommend the inclusion of the study of human rights and international humanitarian law in the curriculum of schools while requiring teachers and other government employees to undergo intensive human rights training.

According to the interviewed informant from the NDFP, appropriate disciplinary measures should be meted out to the erring units and individuals, and reparations should be made to the victims of such violations where the NDFP has verified complaints of violations to have actually occurred.

The informant also reported that the NDFP forces, particularly the NPA, must strictly abide by the war protocols such as the minimum age requirements in the recruitment (18 years of age) of its combatants, the proper use of (command-detonated) landmines as mandated by the Ottawa Treaty, and the proper treatment of medical, religious and humanitarian organizations.

Representatives of human rights groups' responses were to intensify people's awareness of the provisions of the CARHRIHL by means of launching massive grass-roots education campaign among the members of the community and the government, as well.

They also reported that crucial to the strengthening of the implementation of the CARHRIHL is to increase the role of the community through sustained human rights education in the communities.

5. Conclusions and Recommendations

Based on the foregoing findings of the study, the following conclusions were drawn:

1. The CARHRIHL is of vital importance for the continuance and advancement of the entire peace process. It is key to the forging of succeeding agreements based on the sequence of tackling the remaining three substantive items in the agenda.

Its strict and sincere implementation builds stronger mutual trust for both sides of the negotiating table, thereby creating a non-adversarial atmosphere and more conducive environment for continuing the peace talks and for the further advance

of the entire peace process until it finally opens the door for a possibility of peaceful political settlement of the armed conflict in the country.

2. There are three main factors causing the violations or non-implementation of the CARHRIHL – (1) the Parties' differences in the framework and interpretation of the operationalization of the CARHRIHL; (2) not fully functioning Joint Monitoring Committee; and (3) continuing militarist counter-insurgency paradigm and approaches by the GRP security forces.
3. The strict and full compliance with the CARHRIHL can be realized only if both parties exercise political will and are sincere in attaining the ultimate goal of the peace negotiations – to bring just and lasting peace in Philippine society. This can be achieved by honoring and adhering to previously signed agreements such as the 1992 The Hague Joint Declaration, 1995 Joint Agreement on Safety and Immunity Guarantees, among others, that laid down the framework and fundamental principles in the conduct of the peace negotiations.
4. The active and informed participation of the citizenry in the peace process is of crucial importance for the successful conduct of the peace talks and in ensuring that both parties' commitments are honored and complied with. People's awareness should be bolstered and they should be involved and informed every step of the way, in whatever manner and capacity they can.

Based on the foregoing conclusions, the following recommendations are offered:

1. The GRP and the NDFP should honor and abide by the previously signed agreements such as the Hague Joint Agreement and the Joint Agreement on Safety and Immunity Guarantees (JASIG) that laid down the framework, objectives and guiding principles for the conduct of the peace talks. This should provide a safe and conducive environment for the negotiations and provide the correct and mutually-accepted framework for compliance with past and future agreements. Both parties must immediately implement the Supplemental Guidelines for the JMC.
2. The GRP, the NDFP and other stakeholders should initiate in Congress the immediate repeal of the Human Security Act of 2007 and other existing repressive laws and issuances and reversal of jurisprudence engendering or providing sanction or impunity for human rights violations.
3. Put an end to the criminalization of political offenses and actions in pursuit of one's political beliefs, illegal arrest and detention, and the practice of filing

trumped-up criminal charges against activists and human rights defenders by enacting the Human Rights Defenders Bill. This should also provide for the immediate, speedy, meaningful and effective justice to all victims of human rights violations including adequate compensation, indemnification, restitution and rehabilitation and establishing mechanisms for this purpose.

4. The implementation of purely militarist counter-insurgency campaigns and programs that target civilians and human rights defenders should be discontinued and carefully evaluated. The GRP should decisively push for the review and update existing human rights training for police and security forces with the assistance of independent non-governmental organizations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
5. The GRP and the NDFP must implement transparent and inclusive mechanisms of public consultations with human rights organizations and peace advocates on all issues mentioned above and enable their more effective involvement in the preparation of law and policy by holding periodical comprehensive consultations with them. Extensive and intensive information and education campaign down to the grassroots level should be regularly conducted to achieve firm and deep understanding of the full scope of human rights and international humanitarian law.

Author's Note

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