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PERSPECTIVES

Will an agreement on respect for human rights and international humanitarian law forged between governments and nonstate actors promote human security?

Soliman Santos Jr.
Founding Core Group Member
South-South Network for Nonstate Armed Group Engagement
Manila, Philippines

Nonstate armed groups (NSAGs) refer mainly to rebel or insurgent groups, i.e., groups that are armed and autonomous from the state and use force to achieve their political/quasi-political objectives. They usually have a basic command structure, which–though not a hard and fast rule–can be a criterion for priority engagement. As used here, NSAGs do not refer to state-controlled militias or paramilitaries, civil defense units, mercenaries, private military and security companies, proxy armed forces and the like. As often happens, a number of NSAGs enter into a peace agreement for a political settlement and undergo a postconflict transition toward the assumption of state powers. In this case, they are no longer rebel or insurgent groups engaged in armed struggle but are somewhere midway between nonstate and state status.

The term NSAG is purposely used, in view of the loose use of the term "nonstate actors" (NSAs) in general to include such entities as nongovernment organizations and multinational corporations. It is only in the antilandmines campaign that NSAs connote armed (opposition) groups. Alternative terms that are used in some of the

related literature would be simply "armed groups," "armed opposition groups," "dissident armed forces," or "organized armed groups." There is a disparate range of different types of NSAGs; they are not all the same and often share little in common. There would be no substitute for concrete analysis of NSAGs along such features as the following: aims and ideology (or shared vision), leadership (including command and control over rank-and-file), composition, organizational structure, armed strength, constituencies (including mass base), allies, sponsors, sustenance, conduct of struggle, strategy and tactics, policy positions, territorial reach, communications and access, openness, and capacity for serious negotiations and implementation of agreements.

In international humanitarian law (IHL), NSAGs are categorized from highest to lowest level (with corresponding applicable rules of the Geneva Conventions) as: national liberation movements (under Protocol I); dissident armed forces or other organized armed groups, which, under responsible command, exercise such control over a part of the state's territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol (under Protocol II); and all other organized armed groups below the said threshold of Protocol II (covered at least by Common Article 3).

Banditry, unorganized and short-lived insurrections, or terroristic activities are considered outside the scope of armed conflict and are, therefore, not subject to international humanitarian law. There is a growing range of NSAGs below the thresholds set by international humanitarian law. From the perspective of humanitarianism, which is the principal rationale for engaging NSAGs, there are no "pariahs." It just becomes a matter of priority depending on the particular conflict situation.

Since World War II, there has been a significant increase in the incidence of internal armed conflict and a corresponding decrease in international armed conflicts. The former is characterized by the involvement of irregular armed forces. NSAGs have become the dominant face of modern warfare and now have a central role in contemporary armed conflict. In fine, there have been corresponding shifts in international engagement of NSAGs over three periods: Cold War, post-Cold War to pre-9/11, and post-9/11.

During the Cold War, particularly from the late 1940s up to the 1970s, the main form of NSAGs was the classic revolutionary guerrilla groups. These groups were mostly ideological (e.g., Marxist-Leninist), class-based movements aimed at seizing national/central political

power and instituting a radical social program (e.g., socialism). Other groups were secessionist movements of ethnic and/or religious minorities.

The post-Cold War period ushered in the "new wars" of the 1980s and 1990s—civil wars primarily through guerrilla warfare which constitute "the war of a third kind" and differ from interstate conventional wars and the two world wars. Since then, there have been a proliferation of many insurgent movements that are less ideological, less disciplined, less trained in combat, less formal, but more pragmatic, resembling "social bandits." These groups are highly decentralized but make use of advances in lighter weapons and modern communications and, more importantly, may even have access to weapons of mass destruction.

The post-9/11 period is a new stage of escalation of international violence by the international terrorism of mainly Islamist NSAGs and the countervailing United States (US)-led "global war on terror." This has brought NSAGs to the attention of global leaders, in particular international terrorist networks that rely on highly dispersed and autonomous but somehow well-coordinated and -resourced small unit cells. But this has also brought global tightening of security at the expense of human rights and civil liberties. And the "war on terror" has come to be perceived by people in the Muslim world as a war on Islam or against Muslims. The broader context and greatest threat is the danger of a 21st-century war stretching from Morocco to Mindanao, but principally based in Asia, arising from the possibility of protracted and new conflicts to become linked and spiral out of control.

Thus, the current rationale and difficulties for engaging NSAGs could be summed up to the following: the greater the threat of NSAGs to the security of innocent civilians, the greater the need for humanitarian norms in the engagement of these NSAGs. The current environment is such that it is particularly difficult to engage with NSAGs at a time when there is a desperate need to do so. Whatever the illegitimacy of NSAGs should not detract from the legitimacy of efforts to engage them constructively in the interest of human security. Yet, in the overall scheme of things there is understandably not as much understanding, analytical tools, frameworks, approaches, and mechanisms for dealing with and influencing NSAGs as there is/are for states in the state-oriented global order, even as there is a new world disorder.

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Cate Buchanan
Project Manager
Mireille Widmer
Project Officer
Human Security and Small Arms
Centre for Humanitarian Dialogue
Geneva, Switzerland

It is important to clarify what is meant by "nonstate actors." When it comes to guns, the term is generally used to refer to armed rebel groups, but other "nonstate actors" also pose challenges in terms of human security, including various types of armed civilians, private military and security companies, militias, civil defense units, and proxy armed forces, to name a few. Each category poses distinct problems in terms of stemming the misuse of guns, and many of them have proved adept at taking advantage of loopholes in laws at all levels to gain access to weapons.

Armed groups are those that use military force to achieve their objectives and are not under state control. They usually seek political power and/or autonomy from the state, though their political objectives may often be mixed with criminal activity. This category does not include paramilitary bodies controlled by the state, unless these forces have some real autonomy (International Council for Human Rights Policy 2000).

1. Militias or paramilitaries are forces generally raised from among the civil population, which supplement the regular army in case of emergency. They are generally armed by the state.
2. Civil defense units are armed by the state and can be distinguished from other armed groups by their attachment to a geographic community.
3. Mercenaries are individuals who fight for financial gain in foreign wars; they are primarily used by armed groups and occasionally by governments (Makki et al. 2001).
4. Private Military Companies are corporate entities providing services designed to have a military impact in a given situation. They are generally contracted by governments (Makki et al. 2001).

5. Private Security Companies are corporate entities providing defensive services to protect individuals and property. They are frequently used by multinational companies in the extractive sector, humanitarian agencies, and individuals in various situations of violence or instability (Makki et al. 2001; Mthembu-Salter 2004).

Use and misuse of weapons pose a significant threat to human security, particularly in the hands of nonstate armed groups. A surprisingly small proportion of the global stockpile of some 640 millions small arms and light weapons are in the hands of nonstate armed groups; according to the Small Arms Survey, their share is limited to a mere 1 percent and evidence suggests that this proportion is declining further (Small Arms Survey 2002, 103). Yet the documentation of the carnage and human rights transgressions caused by guns in the ill-disciplined hands of armed groups is voluminous: "Measured by their results, even small rebel arsenals are of disproportionate importance" (Small Arms Survey 2002, 83).

This fact warrants a serious examination of the possibility of inviting nonstate actors to join agreements on human rights and international humanitarian law. From a human-security perspective, the key focus is not so much the *user* but ending the *misuse*. State forces too are to blame in this regard; indeed, they are often the cause of violent responses from nonstate entities, hence they must also take action to stop the proliferation and misuse of weapons.

While there are existing international standards, albeit weakly implemented and poorly understood, that provide governments with a starting point for assessing the behavior of state forces, the unclear international legal responsibilities of rebel groups as well as the fractious international climate since September 11 for "engaging with terrorists" present a challenge.

The legal accountability of armed groups is a hotly debated issue. States will be wary of granting any sort of legitimacy to substate entities by attributing to them obligations under international law at par with states. Yet nonstate armed groups need to be held accountable for their respect for and violations of human rights and humanitarian law, if only because the geographical control and the authority such groups often exert warrant such a discussion. At the least, armed groups are subject to Common Article 3 of the 1949 Geneva Conventions, as well as, where applicable, the provisions contained in Protocol II of 1977. Enforcement of these provisions is problematic, though now

the International Criminal Court can prosecute violations of the laws of war in internal conflicts, including by armed groups.

In the small-arms community, the debate to date has been largely confined to the question of banning arms transfers to nonstate actors. Ironically, while some states resist the adoption of international instruments dealing with armed groups for fear of granting them legitimacy, others are equally opposed to restrictions on arms transfers to armed groups on the grounds of the legitimacy of fighting oppressive regimes. The international community indeed accepts as legitimate the aims of "movements of national liberation" (see for example United Nations General Assembly Resolution 2625 [XXV] of October 24, 1970), albeit without specifying the criteria for identifying such groups. As "one man's terrorist is another man's freedom fighter," this margin of appreciation is in itself problematic. Furthermore, there's the question of whether the legitimacy of the struggle would also legitimize arms transfers and the use of force. Some states argue that international law already prevents such transfers without the consent of the recipient state government (Lumpe 2000, 70).[1]

More important, however, a human-security perspective brings to light that the restriction of legal arms transfers to nonstate armed groups is but one of several entry points for reducing the devastation caused by guns in the hands of insurgents. The question of how armed groups get their weapons is important, but more often than not, the answer is to be found in poorly secured government stockpiles, and a review of safe-storage procedures and facilities will therefore go a long way in preventing weapons from falling into the wrong hands. Furthermore, if our end goal truly is to reduce the human insecurity caused by these guns, then we should also question how the armed groups' motivation to acquire weapons can be reduced, and why and how such groups misuse their weapons. Lack of awareness of human rights and humanitarian norms, as well as the lack of accountability, will be a large part of the response to this last question.

The table below presents a framework for strategies to address the issue of armed groups and small-arms control, and elements could be used at a local/national level to establish agreements on the use of weapons between fighting forces.

Innovative mechanisms can be devised to enable nonstate actors to agree to humanitarian principles without signing or acceding to formal treaties. As an example, the Geneva Call is an international humanitarian organization seeking to engage armed nonstate actors to respect and adhere to humanitarian norms, starting with the ban on antipersonnel

Table 1. Entry points for action on armed groups and small-arms control

Problem		Possible responses
"Supply" How do armed groups get weapons?	Legal/grey market transfers	Adopt human rights and IHL criteria for arms transfers Ban transfers to groups known to commit egregious human rights violations
	Through arms brokers	Introduce robust legislation on brokering and ensure prosecution of unscrupulous arms brokers and shipping agents
	Embargo busting	Better equip the UN to monitor and enforce arms embargoes; establish a UN embargoes unit
	Trafficking	Ratify and implement the UN Firearms Protocol Tighten border controls
	Weak stockpile management (e.g., looting of armories)	Review the procedures and facilities for safe storage and registration of guns and ammunition
"Misuse" How/why do armed groups misuse weapons?	Lack of respect for human rights and IHL norms	Engage with groups to increase awareness of and respect for international law, especially standards for civilian protection, for example, by facilitating training programs and information exchange Publicize abuses to bring pressure to bear on the armed group
	Lack of accountability	Encourage agreement on respect for instruments on human rights and IHL; child soldiers protocol; landmines treaty Bring the leaders of groups responsible for gross abuses of human rights and IHL to justice where appropriate and feasible through special tribunals and the International Criminal Court
	Due or in response to abuses committed by government or opposing forces	Ensure impartiality in approach, by giving sufficient weight and attention to government abuses; UN Special Rapporteurs, independent commissions, or ombudsmen can play a useful role in identifying issues and options for action
"Demand" How can the demand for weapons be reduced?	Addressing inequality and insecurity	Manifestations of inequality and insecurity need to be identified and addressed on a case-to-case basis (for example, unequal distribution of resources, access to power, trafficking in conflict goods)
	Disarmament	Effective disarmament that goes beyond weapons collection related to cease-fires and peace agreements and includes "weapons for development" projects, long-term arms-control initiatives, regulation of all civilian users, and detailed reintegration strategies

mines. By signing the "Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action," nonstate actors are able to express adherence to the norms embodied in the 1997 antipersonnel mine ban treaty. To date, twenty-eight armed groups in Burma, Burundi, India, Iraq, the Philippines, Somalia, Sudan, and Western Sahara have agreed to ban antipersonnel mines through this mechanism. The Deed of Commitment could well provide a model for nonstate armed groups to subscribe to similar principles on the use of force and guns.

Local agreements between armed groups, states and civilian representatives are another way to protect civilians caught in the crossfire. In Sulu, the Center for Humanitarian Dialogue is facilitating a process between the Government of the Philippines and the Moro National Liberation Front (MNLF). One outcome of this process has been the establishment of the Sulu Peace Working Group. This includes representatives from the MNLF and the government working together to mitigate the causes and effects of violent conflict in Sulu. In addition to addressing immediate outbreaks of violence, the group will develop a longer-term security plan with representatives from the two parties, the local government, and civil society. The plan will identify how conflict among all armed groups in Sulu may be ended and how human rights abuses and humanitarian impact occur and can be addressed. This structure bears promise not only in increasing the human security of the people of Sulu, but as it may identify programs aimed at building a sustainable peace.

In both cases, the success of these initiatives will have to be measured not only by the commitments taken on paper, but through the difference they make on the ground–to the security and well-being of ordinary people. The success of agreements between governments and nonstate armed groups appears predicated on three ingredients: will and commitment, unambiguous rules, and the existence of an enforcement and monitoring mechanism. The Geneva Call monitors compliance by requiring that signatories report on measures put in place to implement the Deed of Commitment and by ensuring ongoing communication with independent local and international organizations working on the ground. In cases of alleged noncompliance, Geneva Call may chose to conduct on-site verification mission, as it did in Central Mindanao in the Philippines in 2002.

However, despite the difficulty in demonstrating the human-security impact of such agreements, in internal conflicts where a military solution appears impossible–and arguably this is the case of

most internal conflicts–engaging nonstate armed groups in a constructive dialogue on human rights and humanitarian issues appears to be an option worth exploring seriously.

NOTE

1. This is, for example, Switzerland's position. International humanitarian law requires all states to "respect and ensure respect" for the provisions of the Geneva Conventions, which can imply that weapons must not be transferred to any party violating humanitarian law; see also the statement by Switzerland to the 2005 Biennial Meeting of States, http://www.un.org/events/smallarms2005/member-states-pdf/Switzerland%20(E).pdf.

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Pablo Policzer

Director, Armed Groups Project
Canada Research Chair in Latin American Politics
University of Calgary
Alberta, Canada

Nonstate armed groups are increasingly understood to be central actors in building human security. Even a narrow definition of human security as "freedom from fear" (e.g., Human Security Centre 2005) encompasses armed groups as well as states. From the perspective of the victims of violence–the perspective that human security seeks to represent–it does not matter whether the perpetrators of violence are

states or nonstate actors. Both are capable of causing the fear and suffering that human security aims to eradicate. Hence, recent calls for nonstate actors to respect the same human rights and humanitarian standard as states are entirely consistent with core human-security principles (e.g., International Council on Human Rights Policy 2001; United Nations 2004; United Nations Secretary-General 2005). The world is a less fearsome place when those with the power to harm others agree to restrain their behavior and to abide by commonly accepted standards. Consequently, any time an armed group agrees to respect human rights or humanitarian law, human security is clearly strengthened. This much, at least, we can take as given.

A key problem that remains unresolved, however, is how to bring such an agreement about. The challenge is that in a world where the state is the fundamental legal and political unit, the resulting asymmetries make any sort of engagement with armed groups, for human-security purposes or otherwise, highly contentious at best, and often next to impossible.

First, while there are many tools to pressure states when they do not respect human rights and humanitarian norms–from diplomatic pressure to legal and economic sanctions and, ultimately, war–there are fewer recognized tools to pressure armed groups. With few exceptions, armed groups do not belong to the United Nations, do not take out World Bank loans, cannot sign international treaties, and do not have formal diplomatic relations with states.

Second, many states are unwilling to recognize any sort of engagement with armed groups, for fear of providing them with legitimacy and thereby undermining the principle of sovereignty, which is at the heart of the state-centric international system. Consequently, any sort of engagement with armed groups, particularly when it requires either tacit or explicit cooperation by states (for example, to grant right of access to rebel-controlled areas), is often difficult.

Last, many armed groups themselves are also unwilling to recognize core human rights or humanitarian standards on the grounds that these are state instruments which they have had no part in developing, and that consequently do not apply to them. There is far less consensus among armed groups than among states over which standards apply to them.[1]

The question is how, in such a context, might it be possible to bring about any sort of agreement by armed groups to respect basic human rights and humanitarian principles? In the rest of this essay I

want to briefly sketch some of the work of the Armed Groups Project, which is in a volume entitled *After Leviathan: Restraining Violence by Non-State Armed Groups* (Capie and Policzer, forthcoming). The book is neither a manual for engaging armed groups nor by any means the final word on this complex and challenging problem. Instead, it aims simply to provide some analytical tools to frame what we take to be core issues.

The book makes two claims. First, it calls for unpacking the "black box" of armed groups as a category, and distinguishing among different kinds of groups. We do not aim to provide a comprehensive catalogue of all differences among armed groups, but rather to suggest some critical ones. Armed groups differ in how they are organized. Some have clear hierarchies and others operate as loosely connected (but often highly effective) networks. Groups also provide different sorts of motivations and incentives for their cadres. Jeremy Weinstein's chapter argues that some are driven by strong ideology, while others provide strictly material incentives for those who join. Will Reno's chapter suggests that some groups also seek to represent a particular constituency, and provide them with clear "public" goods (such as security and well-being) while others are much more predatory, with little if any representative capabilities. Stathis Kalyvas, by contrast, suggests that warfare is also an important variable, which is too often ignored by human rights and humanitarian nongovernment organizations (NGOs). Some groups are engaged in highly conventional warfare, with front lines and set-piece battles, while others engage in much more unconventional guerrilla warfare, with "hit-and-run" tactics, no front lines, and often very ambiguous distinctions between combatants and civilians. All of these differences, among others, have profound consequences on how groups operate, and on how it may be possible to engage them.

The book's second claim is that international and domestic actors have a "tool box" at their disposal to engage armed groups. This claim runs contrary to the common wisdom—at least in some circles—which holds that armed groups are beyond human rights or humanitarian engagement. We argue, by contrast, that a variety of different policy instruments is available to engage or pressure armed groups for the purpose of improving human rights and humanitarian standards. These range from "soft" instruments such as direct engagement or persuasion, to "harder" instruments such as legal or economic sanctions. Chandra Sriram's chapter, for example, discusses the use of the Alien Torts Claim Act in US and other courts vis-à-vis armed groups. George

Andreopoulos provides a broad overview of the status of armed groups in international law, and Marco Sassòli discusses the extent to which international law might incorporate armed groups' own practices and precedents.

While it is possible to engage armed groups using a range of instruments, many of these remain poorly understood. For example, the basic tool of the human rights community is "naming and shaming": publicizing abuses committed by different actors. But David Petrasek's chapter argues that human rights NGOs such as Amnesty International or Human Rights Watch have perhaps been too cautious in "naming and shaming" armed groups, fearful of sacrificing their capacity to engage them on other issues. (By contrast, such NGOs are normally forceful in how they report on states.) In other words, the fear of losing the ability to "engage" armed groups may result in somewhat more tepid reporting on their activities, as compared to states.

The book suggests that the core challenge for the future—where we should direct our collective attention—will be to match the "black box" of armed groups with the "tool box" of different instruments. Some instruments may work vis-à-vis some groups, but not others. For example, naming and shaming may be more effective against groups that have clear constituencies to whom they aim to provide public goods, than against more predatory groups for whom reputation is less important. Some types of legal sanctions may be more effective against groups that have clear hierarchies—through which it is possible to establish direct chains of command and control—than against groups that operate as looser networks. Calibrating instruments to groups will require knowing much more about different groups and about the instruments at our disposal than we do at the moment.

The larger goal of bringing armed groups into the human-security framework—of improving their respect of human rights and international humanitarian law—will also require addressing at least three fundamental political dilemmas.[2] First, are armed groups pariahs or legitimate political actors? Armed groups are clearly "legitimate" political actors from the human-security perspective. This does not refer to any political or legal status, but rather to the notion that human security seeks to engage whichever group has control over populations at risk. Whether such control is de facto or de jure is not important from the perspective of the victims, the view that human security represents. But this is by no means the consensus view. Many states hold armed groups

to be pariahs, and this view has arguably gained increasing importance internationally since the recent so-called war on terror.

Second, why should armed groups abide by norms they have had no part in developing? From the human-security perspective it may be obvious why armed groups should abide by core human rights and humanitarian norms: to protect the victims of violence. Yet many armed groups reject this notion, on the grounds that these are state-based instruments that simply do not apply to them. Not all groups hold this view, to be sure, but it is common enough to pose a significant dilemma for those who expect that the most serious obstacles to engaging armed groups are likely to come from states. In many cases, armed groups themselves are likely to resist the very premise of engagement.

The third dilemma is what, if anything in this politically challenging context, is the international community prepared to give armed groups in exchange for engagement? If the world were made up of fully sovereign states–able to exercise a complete monopoly of coercive control within their legal boundaries–there would be no armed groups. Armed groups operate, by definition, where sovereignty and legal authority are limited or fragmented. Engaging armed groups consequently requires a different framework than, for example, policing criminal activity.[3]

These dilemmas remain, for moment, unresolved. It is not possible in a brief essay to provide any more than a few suggestions about how to approach them. What is beyond doubt, however, is that if the welfare of those who are victimized by violence matters, we have no choice but to begin to address the fundamental analytical and political challenges armed groups pose.

NOTES

1. Despite some outstanding issues (such as the United States support for the International Criminal Court [ICC]), there is a fairly high degree of consensus over the basic "package" of human rights and humanitarian standards that bind states. For human rights, this roughly includes the body of international treaties and conventions including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention Against Torture, the Convention on the Elimination of Racial Discrimination, and the Convention for the Elimination of Discrimination Against Women. For international humanitarian law (formerly called the laws of war), the list includes the body of international law codified in the Geneva Conventions, as well as in associated treaties and conventions including the

Hague Conventions, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, European Convention on the Compensation of Victims of Violent Crimes, the Standard Minimum Rules for the Treatment of Prisoners, the United Nations (UN) Convention on Conventional Weapons, the Ottawa Convention against Anti-Personnel Mines, and the Optional Protocol on the Rights of the Child, among others.

2. See also International Council on Human Rights Policy (2001).
3. I am *not* suggesting that armed groups (or, indeed, states) are or are not criminals. The point, rather, is an analytical one: that the tools that they can be engaged with are by definition different than those available to states that exercise a full coercive monopoly. Holding criminals accountable requires strict enforcement of the law. Holding armed groups accountable requires some degree of political engagement. In many cases there will no doubt be an overlap, and the tools of criminal law will also apply to armed groups. (The recent ICC indictment against the Lord's Resistance Army in Northern Uganda is an example of the emerging application of international criminal law vis-à-vis armed groups.) In many cases, if not most, however, armed groups are likely to remain quite literally outside the law.

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Robert Francis Garcia
Secretary General
Peace Advocates for Truth, Justice and Healing
Manila, Philippines

The first problem I have with the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law or CARHRIHL is its name. It is way too long; every time I try to write it I always end up missing an R or an H or mixing up the sequence. Is the

confusing and overextended acronym, if I be allowed a stretch of the imagination, indicative of its very nature?

The CARHRIHL, is the *first* substantive agreement in the ongoing peace talks between the Government of the Republic of the Philippines and the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF) (Office of the Presidential Adviser on the Peace Process 2004). It is the first of *four stages* that has not really gone far. In short: we have a long, long way to go.

Let me state at the outset where I am coming from. I was a guerrilla of the NPA who promoted "war" during the prime of my youth: a former lion who hunted with pride, so to speak, but who now thinks that the way of the dove, while somewhat less romantic, covers more ground and is less bloody. I helped bring together a group called Peace Advocates for Truth, Healing and Justice (PATH). We at PATH are a motley crop of people who are trying to tease out a rather unpopular and peculiar issue: the series of operations carried out by the CPP-NPA-NDF supposed to ferret out suspected "infiltrators" within their ranks that resulted in unimaginable atrocities. We were the victims. Among us are former comrades who survived the torture, families who lost a member or two, and compatriots who believe that the thousands of comrades who fell in the wake of these anti-infiltration campaigns must find their due.

All of our members are involved in various other advocacies and campaigns, but find this particular one far harder and, as Hau (2004) describes it, "fraught." Many of us are human-rights workers who never tire of hollering against the state's abuses–work that is by no means easy, but pretty much cut and dried. It enjoys the luxury of certitude and political correctness. The issue of the communist purges, on the other hand, is much more complex and uncertain. It takes to task supposed "agents for social change," ostensibly the "good guys." Few advocates would thus touch it with a ten-foot pole. For one, we are hard-put to carry this issue of "nonstate-perpetrated" violation to a government audience, knowing full well that the latter has to equally answer for much.

At which table do we bring this matter then? The military's dismal human-rights record blotches the screen, the laws of the land have not yet caught up with the phenomenon of "nonstate" violations of human rights and international humanitarian law, and civil society is not exactly paying attention.

We thus automatically welcome developments that could offer some promise or possibility of an official, widely recognized probe. Could the CARHRIHL be the avenue we are looking for?

Sadly, CARHRIHL gives little indication in that direction. The negotiating parties (the GRP and the CPP-NPA-NDF) have set up the Joint Monitoring Committee (JMC) on April 14, 2004, purportedly to monitor each other's compliance with the stated agreements on human rights and international humanitarian law. But it covers only cases that happened "on or after August 7, 1998," the official date of the pact. That effectively leaves out the bloodiest and most far-reaching crimes that resulted from the anti-infiltration purges because they happened more than a decade back. To our chagrin, it does not retroact.

Take the case of Maximiano "Tata Mianong" Paner. He was one of the forty-six persons killed by the CPP-NPA during the purge operation in Southern Tagalog called Oplan Missing Link (OPML). That was in 1988, at which time Tata Mianong was sixty-two years old. His family was relatively well off, with small but thriving businesses while his entire family supported the national democratic revolution in various ways (like serving as makeshift hospital for wounded guerrillas). The Paner family's economic health plummeted after Tata Mianong was made to disappear forever.

The CPP-NPA informed the Paner family in the mid-'90s that Tata Mianong was erroneously killed during the OPML. When the family asked for the remains, the Party refused, because of certain "considerations." The family was indignant, but to which body should they bring their case? The JMC "covers only cases that happened on or after August 7, 1998."

It may be argued that the JMC can still take up this case, like other similar cases of *desaparecido*s (the disappeared), because it constitutes "a continuing violation." Tata Mianong's right to life was violated in 1988. The revolutionary movement continues to violate international humanitarian law by depriving his family the right to recover his remains to this day. That could be a sliver of hope. Theoretically, they *can* file their complaint.

But what powers does the JMC actually wield? A University of the Philippines College of Law paper expresses that the "most disconcerting" feature of the agreement is "the failure of the CARHRIHL to vest the JMC with executory power" (dela Cruz and Sibugan 2005). Indeed, all the JMC can do is deliberate on a filed complaint, try to

reach a consensus, and then throw it to the "party concerned" for further investigation. What if the party concerned is not concerned? What if they are not particularly interested in investigating? Nothing in the agreement indicates that either party can be compelled. So now we are back to square one.

Indeed, till this day, not one of the cases filed with the JMC, whether against government or the CPP-NPA-NDF, has moved an inch beyond their respective filing cabinets. What force in the world would compel them to act?

We all have our own conceptions of peace. That is the trouble–its utter relativity. Some believe that peace is possible only with the removal of any challenge to authority. Others believe that peace can be achieved only after installing a Maoist state. Recently, I had my second viewing of the film *The Killing Fields*, and I cannot imagine that anyone in his or her proper state of mind would wish such a murderous, Orwellian State to replace the rotten one we have at the moment. Talk about proportions of evil.

Peace may be a problematic notion; but that is a good starting point as well. The state's conception of peace is a simple bottom line: to quash the enemy and get on with its business without threat. To "preserve the status quo" as it were. That would have been fine as it is, except that we get stuck with what we have right now: variously described as elitist, oligarchic, patrimonial, and undemocratic; a retrogressively feudal, reactionary, fascistic, corrupt, self-perpetuating engine of oppression. I will have have to concede that they are not way off the mark. But the state is not a monolithic machine. A minuscule part of it sincerely believes in peace and has healthy notions of justice and democracy, while another, more powerful part continues to hammer down on its enemies.

Meanwhile, it is hard to swallow the idea that the CPP-NPA-NDF (a monolith) genuinely wants to get into a peaceful settlement with the government unless it abandons its fundamental strategy altogether: to seize state power via a protracted people's war that covers all fronts, from tactical military offensives and diplomatic offensives to charm offensives.

Peace, in short, seems to be farthest from the minds of the opposing camps. Neither of them is agreeable as well. If it were a boxing match, it is not a Paquiao-Morales fight, but more like Navarrete-Tyson–you root for neither. Navarrete may be the underdog, but he is

a convicted rapist. Tyson, well, he bites off the ear of his opponent when he is losing. In such a bout, you place your bets on the referee.

Which is why de la Cruz and Sibugan (2005) suggest that all this talk on human rights and humanitarian law should be disengaged "from the discourse of peace," stating further that "if full benefit is to be derived from the CARHRIHL then it is imperative that it be viewed independent[ly] of the peace agenda."

They have a point, at least at this point. If peace is nowhere within our grasp, then there is some sense in trying to make the war at least more "humane." Should the parties in conflict decide to continue fighting, as they do now, then they should spare us noncombatants from the crossfire, treat their prisoners well, assist the aggrieved in finding justice, never practice torture, respect due process, and altogether pay attention to each and every individual right bulleted in the Universal Declaration of Human Rights, the Geneva Conventions, and all those Protocols thereafter. After all, the Philippine government signed and ratified most of them; the CPP-NPA-NDF promised to the world they would abide by them, and both parties shook hands on August 7, 1998.

Not that it changed things one bit.

Some observers say that the CARHRIHL was merely used by the CPP-NPA-NDF to the hilt in their diplomatic offensive, with the end in view of achieving a "status of belligerency." I think that observation has some merit. With CARHRIHL, the CPP-NPA-NDF somehow managed to be on equal footing with government: with equal number of representatives to the JMC, with coequal functions, and with a foreign government acting as mediator. They have maximized its propaganda potential as well, throwing statements left and right and piling up case after case after case in the name of CARHRIHL.

The CPP-NPA-NDF had it so good with CARHRIHL; that seems to be the situation. The question is: is that a good thing or a bad thing for the rest of us? This now becomes a question of perspective. If you believe in the Party's cause, then tactics and instrumentalities that serve it would be a welcome thing for you, and vice versa.

Most of us, however, position ourselves somewhere in the broad middle, some a little to the left and some to the right. The left and right categories, however, had seen too many shifts through time that they have become almost moot. At present, military rebels are linking arms

with sundry left factions, bringing together and mixing up their slogans and programs of government.

But we can all at least agree to principles of human rights and international humanitarian law, for who would argue against the right to life and freedom from torture? When warring parties agree to respect these things, then there must be something to cheer for.

However, we have seen enough history to know that having an agreement does not guarantee compliance. The best it can do is to serve as a gauge by which practices can be measured. Now how do the parties to the agreement measure up so far?

The present government seems to have reinvented the concept of killing. The escalating body count of activists and journalists suggests that some people up there are trying to solve our population problem in the quickest possible way.

The CPP-NPA, meanwhile, has closed the book on the purge issue. They say it had already been resolved; the perpetrators had either escaped the Party or stayed and endured Party punishment. They say the families of the dead have been informed. Our extensive research at PATH points to the contrary–very few families have been informed of the death of their kin, much less of the circumstances behind the killing. On the matter of returning the remains, the Party remains dead silent.

It also maintains political executions as a matter of policy, the most recent and high profile victims of which were former Party leaders Romulo Kintanar and Arturo Tabara.

In short, we have an official "agreement" to respect human rights and international humanitarian law, with a body to "monitor" compliance, but no teeth to enforce it. All we have is their word, which, going by experience, does not amount to much.

But as we said, "Blessed are the peacemakers" for they have a lot of work to do. Beyond beauty pageant contestants praying for world peace, there are people among us who take the peace project to heart. There is, for example, Sulong (Push Forward) CARHRIHL: Karapatang Pantao tungo sa Kalinaw (Human Rights toward Peace). They have gone way past spelling the acronym correctly. They police the protagonists, treating the agreement not as a piece of paper signed for expediency but as a covenant. Try to ignore it and they can raise hell.

We at PATH count ourselves within the ambit of these incorrigible peace types. Most of our members witnessed and went through the

horrors of war to ever want it continuing indefinitely. Wherever we could find a package tour toward it, we would readily sign up.

We accept the notion of peace as a journey, and know that perilous journeys entail tripping along the way. When we stumble, we pick ourselves up. When we slip and slide, we castigate the ones who deliberately throw banana peelings in our path. We tell them, with diplomacy and charm, that they are slowing us down. "If you are not traveling with us, then we do not want your fruit. So please, kindly take that banana and shove it."

The trip is hard enough as it is; it would not hurt to travel with our tongue in our cheek. If we can still manage that, then there is hope yet indeed, so long as we do not bite our tongue the next time we slip again.

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