A Breed of its Own: Characterizing the CARHRIHL as a Legal Document

Roselle C. Tenefrancia[*]

I. INTRODUCTION

What is peace?

Peace is not just the absence of armed conflict. It is an environment where individuals and communities are able to fully develop their potentials

[*] '97 J.D., Ateneo de Manila University School of Law. The author is currently the Head of the GRP-MC Secretariat, Government of the Republic of the Philippines – Monitoring Committee (GRP-MC) on the CARHRIHL (Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law) between the GRP and the NDFP (National Democratic Front of the Philippines). Her previous work published in the *Journal* include *Refueling the Alternative Fuel: A Review of the Philippine Biofuels Act,* 53 ATENEO L.J. 999 (2009), co-authored with Ma. Perpetua B. Unico. This Article does not necessarily reflect the views of the GRP-MC.

Cite as 54 ATENEO. L.J. 149 (2009).

and progress freely, exercising their rights with due regard for the rights of others, and equally mindful of their responsibilities.

This is the ultimate goal of every human being because peace is a human right. Armed conflicts often, if not always, lead to violations of human rights and hinder economic growth and development.

The Philippine government, in pursuit of peace with all rebel groups, has adopted the "Six Paths to Peace,"[1] which are indivisible and interdependent. One of these paths is a principled settlement with different rebel groups.

Due to the protracted armed conflict with the communist rebels, the Government of the Republic of the Philippines (GRP) has engaged in peace negotiations and has moved into forging a final peace agreement, albeit riddled with many hindrances, caused by political factors or otherwise, with the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP/NPA/NDF). As a consequence of this, one concrete output of the peace negotiations is a document that embodies the first of the four substantive agenda pertaining to protection and promotion of the principles of human rights and the principles of international humanitarian law. This document is known as the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).[2]

This Article, however, will not discuss the peace process between the GRP and the CPP/NPA/NDF and its status. It will not attempt to delve into the issues being encountered in the course of the formal peace talks. Instead, the discussion shall be focused on confirming the theory that CARHRIHL is a document that has a unique characteristic and that it cannot be categorized simply as a particular legal document based on existing standards in international law. Further, in the light of recent developments affecting the peace negotiations between the parties, a discussion on how CARHRIHL can be used to benefit the parties in dealing particularly with the issue of extralegal killings[3] and enforced disappearances shall be included.

---

1. Office of the President, Defining Policy and Administrative Structure for Government's Comprehensive Peace Efforts, Executive Order No. 3 (Feb. 28, 2001).

2. Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law Between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, Mar. 16, 1998 [hereinafter CARHRIHL].

3. This has been the term used by the Supreme Court of the Philippines to refer to the "unexplained killings" of persons allegedly affiliated with activist groups. The former term used was "extrajudicial killings," which has been replaced by "extralegal killings." *See* Supreme Court, Rule on the Writ of Amparo, [Writ of

Despite the limitations of CARHRIHL as a legal document under international standards, the political character of the peace process and the agreement can help in resolving the current issue confronting the parties.

II. BRIEF HISTORY OF CARHRIHL[4]

The exploratory talks between the GRP and the CPP/NPA/NDF commenced shortly after the Ramos Government was installed into power in June 1992. A series of informal talks was conducted by the GRP to convince the CPP/NPA/NDF to engage in peace talks for the attainment of just and lasting peace in the country.

Within the Ramos term, the negotiation process began immediately after the President's State of the Nation Address in July 1992. A two and half year period of exploratory talks, covering the period from August 1992 to February 1995, involved four face-to-face meetings between the parties in the Netherlands.

The exploratory talks resulted in the attainment of five procedural agreements which paved the way for the opening of the first round of formal negotiations held on 26 June 1995 in Brussels. The talks were suspended because of the failure of the CPP/NPA/NDF to appear in the session.[5] After almost a year of suspension, the Brussels talks were followed by 15 rounds of talks, both formal and backroom meetings, held within the period from March 1996 to March 1998, resulting in the completion of five more agreements.

The two negotiating panels have signed a total of 10 agreements from 1 September 1992 to 16 March 1998. The first one of these agreements, which serves as the basis of CARHRIHL, is the Hague Joint Declaration (Hague Declaration) signed by the parties on 1 September 1992.

It is in the Hague Declaration the parties have agreed to hold peace negotiations in accordance with "mutually acceptable principles of national sovereignty, democracy and social justice."[6] The Hague Declaration

---

Amparo], A.M. No. 07-09-12-SC (Oct. 24, 2007); *See also* Rule on the Writ of Habeas Data, [Writ of Habeas Data], A.M. No. 08-01-16-SC (Feb. 2, 2008).

4. This section is wholly culled from the Preface of the Compilation of Documents Signed In the Peace Negotiations Between the Government of the Republic of the Philippines (GRP) and the National Democratic Front (NDF), published by the Office of the Presidential Adviser on the Peace Process (July 2004) [hereinafter Primer on the Peace Negotiations].

5. The CPP/NPA/NDF Panel demanded for the physical presence of Mr. Sotero Llamas in Brussels before any substantive discussions can proceed.

6. Primer on the Peace Negotiations, *supra* note 4. The Hague Declaration did not define these principles to govern the talks but must be discussed in the course of the negotiations to determine whether or not the parties could reach a mutually

enumerated the four substantive agenda that shall be included in the peace negotiations, namely: (1) human rights and international humanitarian law; (2) socio-economic reforms; (3) political and constitutional reforms; and (4) end of hostilities and disposition of forces. CARHRIHL was a product of this declaration, and, thus far, the only substantive agenda item completed by the two panels.

It is in this context that CARHRIHL as a document will be discussed in this Article.

III. CONSTITUTIONAL BASIS

A. Role of the Executive — Negotiation

The GRP's authority to enter into a peace negotiation process with a non-state party comes from the Constitution. Particularly, this authority is lodged with the Executive, that is, with the President of the Philippines being vested with the executive power.[7] In the negotiation process, the President has the power to appoint members of the negotiating panel who hold office in an advisory capacity, subject to the direction of the President.[8]

In entering into the CARHRIHL, the GRP does so through the executive powers of the President. Under the Philippine Constitution, the President has the power to negotiate treaties and international agreements.[9] Necessarily, the power to negotiate international agreements implies the power to negotiate agreements with domestic non-state entities, such as the CPP/NPA/NDF in the case of CARHRIHL.

The entry into agreement with the CPP/NPA/NDF, a non-state entity, as regards the CARHRIHL, compromises neither the sovereignty of the GRP nor the power of the State to implement the provisions of the CARHRIHL based on the Philippine constitutional and legal frameworks.

---

acceptable definition of such principles. It evaded the issues relating to the political character or legal status of the parties, to give peace negotiations headway. The terms remain undefined by both parties as of the date of this Article.

7. PHIL. CONST. art. VII, § 1. ("The executive power shall be vested in the president of the Philippines.").

8. *See* Villena v. Secretary of Interior, 67 Phil. 451 (1939).

> The President is the Executive of the Government of the Philippines and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence," and, in the language of Attorney General Cushing, "are subject to the direction of the President."

9. PHIL. CONST. art. VII, § 21.

The very competence of the GRP negotiating panel hinges on these same constitutional and legal systems.[10]

Although the Hague Declaration mentions that the parties to the CARHRIHL shall hold the peace negotiations in accordance with mutually acceptable principles, including national sovereignty, democracy, and social justice, the parties have not agreed on a definition of each of these three principles.[11] Without the parties deciding on these definitions, the respective understanding of these principles shall remain the basis of the parties in the implementation of any agreement as a consequence of the peace negotiations. Thus, it is logical for the government to interpret the provisions and their eventual implementation using the constitutional and legal frameworks of the Republic of the Philippines.

B. Role of the Legislature — Implications of Intervention

Negotiations for peace agreements rest solely in the President of the Philippines.[12] This necessarily means that the Legislative Department has no role in the negotiation process. However, it may be a different matter when it comes to approval of agreements entered into by the President.

Under the Philippine Constitution, any treaty entered into by the President shall be subject to the approval of Congress.[13] It needs no emphasis that the President negotiates treaties and international agreements, but when necessary, Congress shall approve. During the negotiation phase of treaty-making, however, the executive may completely exclude Congress.[14]

Since CARHRIHL is neither a treaty nor an international agreement, as will be discussed in the next section of this Article, the concurrence requirement is not applicable. The role of the Senate in the peace process may only be recognized when government binds itself, for example, to enact a law in any agreement entered into with the other party.[15] Thus, since

10. Department of Justice, Re: Legal interpretation of the Joint Declaration signed between the representatives of the GRP and the CPP/NPA/NDF on September 1, 1992 at The Hague, Netherlands, DOJ Opinion No. 37, Series of 1997 (May 28, 1997).

11. *Id.*

12. PHIL. CONST. art. VII, § 1.

13. PHIL. CONST. art. VII, § 21. ("No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.").

14. JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 326 (2006).

15. An example is the Final Peace Agreement between the GRP and the Moro National Liberation Front, which required a law to be enacted.

CARHRIHL is not a final and binding agreement between the parties, there can be nothing in the process that the Senate can participate in.

The CARHRIHL is only one of the substantive agenda in order to reach a final peace agreement between the two parties. CARHRIHL is merely a temporary agreement that needs no concurrence by the Senate.[16] Therefore, any intervention by the legislature will result to a usurpation of executive powers, which is a violation of the rule on separation of powers of the three branches of government.

C. Role of the Judiciary — Lack of Justiciable Issue in Relation to Enforcement

It is unnecessary to discuss whether the judiciary has a role in the negotiation process as it has already been shown that only the Executive can enter into negotiations. What entails discussion is whether the Philippine courts can have jurisdiction over any controversy involving CARHRIHL.

To begin with, judicial power is a power vested in the Supreme Court and lower courts in the Philippines.[17] It is the power of the courts to settle controversies involving legally demandable and enforceable rights, and the power to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction by any government agency or instrumentality.

With reference to such acts by government agencies and instrumentalities, the political question doctrine applies in the discussion on the characterization of CARHRIHL, since the power to enter into negotiations with the CPP/NPA/NDF has been fully delegated to the Executive Department. In one Supreme Court decision, political questions have been defined as

> those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. But the difficult question which the Court is frequently called upon to answer is whether a question is one "in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government." Lengthily argued majority opinions, concurrences, and dissents characterize the cases where the political questions doctrine has been invoked.[18]

16. *See* BERNAS, S.J., *supra* note 14, at 327. In general, it can be said that agreements that are permanent and original should be embodied in a treaty and need Senate concurrence. Agreements, however, which are temporary or are merely implementation of treaties or statutes do not need concurrence.

17. PHIL. CONST. art. VII, § 1.

18. Tanada v. Cuenco, 103 Phil. 1051, 1067 (1965).

Hence, applying the political questions doctrine, any matter involving CARHRIHL provisions and their implementation remains within the ambit of the Executive Power being a part of an ongoing political negotiation.

Further, as will be discussed in the next section, CARHRIHL has not achieved the character of an enforceable agreement where either party can file a case in court. In essence, the CARHRIHL is a temporary document, being merely the first of the four substantive agenda for the final peace agreement. The provisions of CARHRIHL which affect the rights and obligations of the parties have not achieved the status of enforceability, as the parties have not reached a final agreement. Thus, any controversy which may arise in the interpretation of the provisions of CARHRIHL cannot be a valid subject of judicial review, and does not fall under the powers of the judiciary to settle. At most, questions on definitions and implementation remain the sole responsibility of the Executive Department.

IV. CARHRIHL: A POLITICAL ACT

The source of authority of the GRP to enter into peace negotiations has already been discussed, which necessarily includes the authority to enter into agreements as a consequence of the negotiations. This section is focused on the CARHRIHL as a document. The characterization of this document is a debatable matter because the political context within which it has been brought about entails many issues on basic principles and definitions. Regardless of this matter, however, it is still important to have a discussion on its characterization.

Essentially, CARHRIHL is a major product of the peace negotiations between the GRP and the CPP/NPA/NDF. Being a consequence of the peace talks, CARHRIHL appears to be a singular peace agreement. Although it is only the first of the four agenda for the peace talks, by itself there is a semblance of a complete peace agreement. But is it a complete agreement, enforceable against either party?

There is much room for interpreting what type of a document CARHRIHL is in different contexts and standards. Given the ambiguity in the characterization of CARHRIHL, there are many ways of trying to understand how this agreement affects the peace negotiation itself, and consequently, how it affects the role of the government (or both parties) in enforcing the provisions of the document if, indeed, it is already an enforceable agreement.

There is no question that the CARHRIHL is a consequence of a political act. However, it must be noted that there are several other acts by both parties that preceded the drafting of the CARHRIHL. Its consequence to the obligations and responsibilities of the parties to the peace talks, whether existing prior to CARHRIHL or are prescribed by CARHRIHL, is a matter that needs to be determined.

The crucial issue to be discussed therefore is: Is CARHRIHL an enforceable agreement between the parties?

From the point of view of international law, the discussion should revolve around the law on treaties. In either case, the GRP, being the only state party to this document, enjoys the presumption that it has the authority by its very status of being a sovereign state.

A. Is CARHRIHL a Treaty?

Most, if not all, peace agreements have a legal-looking structure, with preambles, sections, articles and annexes, and share legal-type language, speaking of parties, signatories and binding obligations. However, they do not easily fit within traditional legal categories such as treaty, international agreement, or constitution. Moreover, the presence of non-state signatories tends to take them outside international legal definitions of "treaty" or "international agreements."[19]

A treaty is defined by the Vienna Convention on the Law of Treaties of 1969 as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[20]

The basic premise in a treaty is that the parties are considered States. In the case of the peace negotiations between GRP and CPP/NPA/NDF, only the GRP is a state-party. CPP/NPA/NDF is not. Simply put, any agreement that the GRP and CPP/NPA/NDF enters into cannot be considered as a treaty, by the very fact that it is not an agreement between states.

Being a domestic peace process too, it is worth noting that the peace negotiations between the GRP and the CPP/NPA/NDF have a domestic character. International law is not applicable in this process, except only to serve as a basis or a standard in the conduct of the negotiations and in regard to the basic rights, such as those embodied in CARHRIHL, which international principles impose on states and individuals.[21]

V. IMPLICATIONS ON ENFORCEMENT AND IMPLEMENTATION

What is the consequence of the signing of the CARHRIHL by both parties? By signing the document, it is presumed that both parties have already

19. Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 395 (2006).

20. Vienna Convention on the Law of Treaties, May 29, 1969, art. 2 (1), 1155 U.N.T.S. 331.

21. Bell, *supra* note 19, at 373.

approved its contents. However, there is still the question of enforcement and implementation.

A. Soft Law Theory

It has been discussed that CARHRIHL is not a treaty agreement and, hence, does not fall within the ambit of the Vienna Convention on the Law on Treaties. The next question is what applicable concept or theory then can be applied?

Under the "soft law" theory, the non-treaty agreements may be "enforced" by the creation of control mechanisms to which the parties voluntarily submit and the results of which have a bearing on public opinion. Enforcement may not be exacted from any judicial body, but merely by international and internal political pressure.[22] Further, it would appear that if an agreement is to be considered "soft law," the same document cannot be considered as a source of law effective beyond the system that the parties have created.[23]

Using this principle, the parties to CARHRIHL, who are still in the process of negotiating even the basic principles included in The Hague Declaration, which is the basis of drafting CARHRIHL in the first place, are not bound by any legal enforcement mechanism in order to ensure compliance with the principles agreed upon in the CARHRIHL. If, at most, CARHRIHL is to be considered "soft law," then its enforcement cannot be compelled by either party in any court of law, whether domestic or international.

VI. CARHRIHL AND GRP COMPLIANCE WITH HUMAN RIGHTS LAWS AND INTERNATIONAL HUMANITARIAN LAW

There is no question that the Government of the Republic of the Philippines entered into the CARHRIHL as a sovereign state. The authority of the President to enter into negotiations emanates from the Constitution and does not require the concurrence of Congress.

As a sovereign state, the GRP has already bound itself to comply with its obligations under international treaties and conventions to which it is a signatory. Being a signatory to the various international human rights instruments, the GRP must comply with its obligations and responsibility as a state to protect and promote human rights. The GRP is also bound by international humanitarian law instruments.

In this light, signing CARHRIHL has not changed the obligations of the GRP when it comes to the protection and promotion of human rights

22. Hartmutt Hillgenberg, *A Fresh Look at Soft Law*, 10 EJIL 499, 515 (1999).

23. *Id.*

and international humanitarian law. The GRP is still legally bound to comply, with or without CARHRIHL.

What has the signing of CARHRIHL done to the GRP's obligations under international law to which it is already bound in the first place? At the very least, the GRP merely affirmed its commitments under human rights and international law.

The principles that are embodied in the CARHRIHL are all based on existing international instruments on human rights and international human rights law. For instance, under the Preamble[24] of CARHRIHL, references have been made specifically to the principles of human rights and international humanitarian law as applicable to both parties. The use of the word "principles" is deliberate as both parties acknowledge that only state-parties can be bound by international human rights law and international humanitarian law.

VII. IMPLEMENTATION OF THE PROVISIONS BY PARTIES TO CARHRIHL

It has been discussed and concluded in this Article that CARHRIHL by itself is not a legally enforceable document between the parties, such that a breach of its provisions or failure in its implementation can be brought to any judicial body for enforcement. However, this does not preclude the parties from implementing its provisions separately. The soft law theory may be used in order to create a semblance of compulsion for implementation due to political pressure, whether internal or international.

As far as the GRP implementation of human rights and international humanitarian laws is concerned, it is quite clear that being a signatory to international instruments already provides the legal compulsion to comply with its obligations under international law. However, it still needs to be reiterated that the authority under which the GRP enters into negotiations with the CPP/NPA/NDF emanates from the constitutional and legal

24. CARHRIHL, *supra* note 2, at Preamble.

> The parties ... *affirming* that the principles of human rights and the principles of international humanitarian law are universally applicable ... *acknowledging* that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of international humanitarian law ... *reaffirming* their commitment to the aforesaid principles and their application ... *realizing* the necessity of assuming separate duties and responsibilities for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law ... *fully aware* of the need for effective mechanisms and measures for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law in a comprehensive agreement (emphasis supplied).

framework of the GRP as a sovereign state. Hence, the implementation of its obligations it undertook in CARHRIHL shall be subject to the same constitutional and legal framework.

A. Provisions for Separate Implementation

It is worthy to note that despite the absence of a clear categorization of CARHRIHL as a legal and enforceable document between the parties, there is a clear statement of the parties in the agreement showing that both have bound themselves to abide by the principles enumerated in the agreement. A provision in the Preamble states the following: "The parties … *realizing* the necessity and significance of assuming separate duties and responsibilities for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law."[25] The parties further reiterate this in the Final Provisions of CARHRIHL and bound themselves to "continue to assume separate duties and responsibilities for upholding, protecting and promoting human rights and the principles of international humanitarian law in accordance with their respective political principles, organizations and circumstances until they shall have reached final resolution of the armed conflict."[26]

These provisions imply that until a final peace agreement has been reached, the parties shall have to implement the provisions of the agreement individually. This has the effect of also making the CARHRIHL appear to be a separate undertaking by both parties contained in a single document. Whether it was deliberately phrased or it was an oversight, the provisions referring to assumption of separate duties and responsibilities seem to further negate the enforceability of the CARHRIHL as a legal document.

VIII. IMPLICATIONS ON THE RECENT DEVELOPMENT IN THE PEACE PROCESS

Despite the discussions on the general applicability of the CARHRIHL provisions in terms of enforcement, there may be opportunities to be able to use the CARHRIHL to favor enforcement for the protection of the rights and obligations of both parties. One recent development in the peace talks and in the legal system of the GRP may provide the occasion to use the provisions of CARHRIHL for the benefit of both parties.

The pressing issue that has faced the parties in the recent years, beginning 2005, is the situation involving extralegal killings and enforced disappearances.[27] As a consequence of this pressing concern, the GRP has

25. *Id.* (emphasis supplied).

26. *Id.* art. 1, part VI (emphasis supplied).

27. For further readings on the extralegal killings and enforced disappearances, see Amnesty International, *Political Killings, Human Rights and the Peace Process*,

convened the Melo Commission[28] as one of the steps to investigate the incidents and to determine the factors and aspects involved in the phenomenon.

The GRP further instituted legal measures in order to ensure the security of persons involved in the phenomenon of the killings and disappearances. These two measures are the Supreme Court Rules on the Writ of *Amparo* and on the Writ of *Habeas Data*.

The remedy of the petition for the Writ of *Amparo* is "available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."[29] It covers the extralegal killings and enforced disappearances, or threats of either act. Its distinction from the Writ of *Habeas Corpus* is that it is designed to protect the other fundamental freedoms[30] not covered by the Writ of *Habeas Corpus*.[31] The power of the Supreme Court to promulgate this rule finds its basis in the 1987 Philippine Constitution.[32]

The remedy of the Writ of *Habeas Data* is

> available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering,

---

Amnesty International Report on the Philippines (Jan. 15, 2006) and U.N. Human Rights Council [HRC], *Civil and Political Rights, including the Questions of Disappearances and Summary Executions: Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions*, U.N. Doc. A/HRC/4/20 (July 2, 2007) (prepared by Philip Alston).

28. The Melo Commission was formed in 2006 to investigate media and activist killings. It is composed of a retired Supreme Court justice, the National Bureau of Investigation Director, chief State Prosecutor, University of the Philippines Regent, Civil society and general counsel.

29. Writ of Amparo, § 1.

30. In Latin American countries, it has been adopted to provide for a remedy to protect the whole range of constitutional rights, including socio-economic rights. *See also* Adolfo S. Azcuna, *The Writ of Amparo: A Remedy to Enforce Fundamental Rights*, 37 ATENEO L.J. 15 (1993).

31. The Writ of *Habeas Corpus* is designed to enforce the right of freedom of a person. Hector F. Zamudio, *Latin American Procedures for the Protection of the Individual*, 9 J. INT'L COMM. JURISTS 61, 86 (1968).

32. PHIL. CONST. art. VIII, § 5, ¶ 5. ("The Supreme Court has the power to promulgate rules concerning the protection and enforcement of constitutional rights.").

> collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.[33]

The rights to privacy and to truthful information about persons are the rights being sought to be protected by this remedy. The Writ of *Habeas Data* will enable a person to go to court to modify, remove, or correct any misinformation. It is considered complementary to the Writ of *Amparo* in providing persons with additional remedy that would address the issue on extralegal killings and enforced disappearances.[34]

In both rules, what is particularly relevant to the discussion on the implementation of CARHRIHL is the provision that points out that a "private individual or entity"[35] may be held as a respondent in the petition for either Writ of *Amparo* or Writ of *Habeas Data.*

The rules are very explicit. Public officials or employees may be charged of committing an act or omitting an act that results to a violation, or a threat, to the life, liberty, or security of another. This group covers the members representing the GRP. Private individuals or entities refer to all other persons not representing the GRP. In the context of the peace process, this group thus covers all members representing the CPP/NPA/NDF.

In this respect, the same processes that are applicable under the two rules, including the modes of service of the writs, are to be imposed on the individuals or groups who may be charged of violating the rights covered by the rules, or charged of committing or omitting acts that threaten the same rights.

Generally, States are responsible for any wrongful act when "conduct consisting of an action or omission is attributable to the State under international law" and "that conduct constitutes a breach of an international obligation of the State."[36] However, acts or omissions of entities or persons not acting in behalf of the State "shall not be considered as an act of the State under international law."[37] Nevertheless, the act or omission of an organ of an insurrectional movement within the territory of a State may be attributed to that organ under international law.[38]

---

33. Writ of Habeas Data, § 1.

34. *See* Annotations to the Writ of Habeas Data.

35. Writ of Amparo, § 1; Writ of Habeas Data, § 1.

36. U.N. International Law Commission [ILC]: Draft Articles on State Responsibility with Commentaries thereto, art. 3, U.N. GAOR, 51st Sess., Supp. No. 10, U.N. Doc. A/51/10 (July 26, 1996).

37. *Id.* art. 11.

38. *Id.* art. 14.

The persons representing CPP/NPA/NDF and the persons representing GRP are all extensions of their respective organizations. Any act or omission committed by them that results to a violation, or a threat, to basic human rights (covered under the rules on the Writ of *Amparo* and the Writ of *Habeas Data*, in particular), as embodied in the CARHRIHL, is covered by the provisions of the new Supreme Court rules. The personality of the respondent in the case of an act or omission, albeit unknown or unidentifiable, can be attributed to the entity which it is representing. Thus, for purposes of serving the writ to a respondent who is a member of the CPP/NPA/NDF, it may be done through the mode of substituted service,[39] through the offices of the CPP/NPA/NDF under the CARHRIHL.

In the light of the above arguments, CARHRIHL as an existing document that both GRP and CPP/NPA/NDF entered into freely, can be considered as the basis through which both parties can be covered by the rules on the Writ of *Amparo* and the Writ of *Habeas Data.* Despite the political character of the peace negotiations, the legal mechanisms that seek to protect human rights of all persons involved in the process shall be used to complement the provisions of CARHRIHL, particularly in the responsibilities and obligations that both parties to the document have committed to.

IX. CONCLUSION

A. So What Now is the CARHRIHL?

CARHRIHL is neither a treaty nor an international agreement because it is not an agreement entered into by states under international law. It is not a contract that can be enforced before regular domestic courts because it is a political act which is covered by the "political question" doctrine. It is not clear either whether by itself CARHRIHL is already a peace agreement, as it is considered a substantive agenda item in the peace talks, one of the immediate aims of which is to complete a final peace agreement.

Although there is no clear categorization yet of CARHRIHL as an enforceable legal document,[40] it is a recognized document just the same which the parties to the peace negotiations must respect in light of the peace process. The "soft law" theory should give some pressure, albeit only politically motivated, for both parties to abide by their undertaking to respect principles of human rights and international humanitarian law. The recent developments in the political scene have compelled the GRP to exert efforts to set up mechanisms to ensure that the phenomenon of extralegal killings

39. Writ of Amparo, § 8; Writ of Habeas Data, § 9.

40. For further reading on the difficulties in categorizing peace agreements, *see* Bell, *supra* note 19.

and enforced disappearances are addressed. The legal mechanisms that have been set up seek to protect the fundamental rights to life, liberty, security and privacy of all persons, including those who are representing both parties to the CARHRIHL. Although the legal characterization of CARHRIHL cannot be defined clearly, pending the negotiations for a final peace agreement, the pressing issues that concern basic human rights of persons serve as sufficient basis to consider CARHRIHL as an active document that can be used to fully implement the protection afforded by the rules of the Writ of *Amparo* and the Writ of a *Habeas Data*.

It is understood from a political point of view that the negotiations on principles are being held as confidence-building measures. Legally, there is also an opportunity to utilize the principles that bound the parties to the CARHRIHL in the first place for the purpose of protecting the fundamental rights of the persons involved in the peace process. Ultimately, the end goal of both parties is to create an environment conducive to achieving a just and lasting peace.