

*Chief Justice Panganiban Professorial Chairs on Liberty and Prosperity*

**Public Lecture**

**on**

**“Economic, Social and Cultural Rights in the Context of the Peace Process  
with the CPP-NPA-NDFP: Issues and Concerns”**

by

**Prof. Sedfrey M. Candelaria**

*Dean*

*Ateneo de Manila University*

*School of Law*

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Justitia Hall, 4<sup>th</sup> Floor  
Ateneo Professional Schools Building  
Rockwell Drive, Makati City

## **Abstract**

*The peace process between the Government of the Republic of the Philippines (GRP) and the Communist Party of the Philippines-New People's Army-National Democratic Front of the Philippines (CPP-NPA-NDFP) was formally opened in 1995 in Brussels, Belgium. While several agreements have been signed between the GRP and the CPP-NPA-NDFP since then, only one major substantive agreement, i.e., the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) has been accomplished.*

*Under the Hague Declaration of 1992, three (3) more substantive agreements are necessary to achieve a just and lasting peace, namely: (a) Comprehensive Agreement on Socio-Economic Reforms (CASER); (b) Comprehensive Agreement on Political and Constitutional Reforms (PCR); and (c) End of Hostilities (EOH).*

*During the round of negotiations undertaken under the presidency of Rodrigo Roa Duterte, the negotiating panels of both parties to the peace process emphasized the crucial impact of a CASER in the course of the process. Existing drafts on CASER have been intensively discussed with some tentative consensus points which are worth inquiring into.*

*The purpose of this paper is to examine the contentious issues which require public deliberation as the negotiations hopefully progress in the near future. In the course of the present writer's inquiry, the dynamics of negotiations and achieving compromises by both parties will be emphasized. Focus will be made on the following areas of concern: (a) Agrarian and Rural Development; (b) Rural Industrialization; (c) National Industrialization; (d) Environmental Protection; (e) Rights of Various Sectors (e.g. working people, women, children, elderly, disabled, indigenous peoples, etc.); and, (f) Policy on Foreign Economic Relations.*

*As a conclusion, the present writer will offer some strategies, in order to address contentious points identified in the text of the CASER drafts.*

## OUTLINE

- I. A DEVELOPING “LAW OF PEACE” (*Lex Pacificatoria*)
  - A. Understanding the Dynamics of Peace Negotiations and the Making of Peace Agreements
  - B. Features of Peace Agreements
- II. BRIEF HISTORY OF THE PEACE PROCESS WITH THE CPP-NPA-  
NDFP
  - A. Historical Background
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- III. PHILIPPINE REPORT TO ESCR COMMITTEE
  - A. The Doctrine of Incorporation and Human Rights Principles under Philippine Law
  - B. Philippine Response to the Committee on Economic, Social, and Cultural Rights
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- IV. THE NDFP CASER
  - A. Basic Principles and Bases, Scope, Applicability and Outcomes
  - B. Agrarian Reform and Rural Industrialization
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## I. A DEVELOPING “LAW OF PEACE” (*Lex Pacificatoria*)

### A. Understanding the Dynamics of Peace Negotiations and the Making of Peace Agreements

A peace treaty is an “agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace and regulate the manner in which it is to be restored and supported.”<sup>1</sup> Apart from being a source of international obligations, treaties have been utilized at a national level to transfer territory, settle disputes, protect human rights, and regulate commercial relations.<sup>2</sup>

Peace agreements, as presently applied, are often used as a mode to end hostilities between a state and a non-state entity due to secessionist struggles or problems. This is especially so at a time when non-state entities are standing firm in their demands for self-determination as they incessantly fight for independence.

Self-determination is closely intertwined with the right to independence. At present, self-determination has come to mean one of three things:

- (1) independence for new states emerging from the collapse of communism (e.g., Ukraine or Slovenia);
- (2) independence for homogenous sub-units within nation-states (e.g., Quebec or Eritrea); or

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<sup>1</sup> BLACK’S LAW DICTIONARY 1502 (6th ed. 1990).

<sup>2</sup> JOAQUIN G. BERNAS, S.J., *An Introduction to Public International Law* 25 (1<sup>st</sup> ed. 2002) [hereinafter BERNAS, PIL].

(3) greater internal autonomy for smaller identity groups within existing states (e.g., Aaland Islands under Finland or Faeroe Islands under Denmark).<sup>3</sup>

In international law, an entity's right to self-determination covers two important rights:

- (1) the right to freely determine their political status and freely pursue their economic, social and cultural development; and
- (2) the right to freely dispose of the natural wealth and resources for their own ends without prejudice to any obligations arising out of international cooperation.<sup>4</sup>

Self-determination is supported by international law and embodied in international instruments such as the Charter of the United Nations, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The great urge of peoples to determine their own economic, social, and cultural development causes opposition or hostilities within a state or nation. Therefore, peace agreements are relevant, particularly at the national level, in trying to resolve these hostilities.

#### B. Features of Peace Agreement

Most peace agreements have one common feature — they are used as a means to an end, which is to attain peace, by leading towards building a positive momentum for a final and comprehensive settlement. Peace agreements are generally “contracts intended to end a violent conflict, or to significantly

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<sup>3</sup> Michael J. Kelly, *Political Downsizing: The Re-Emergence of Self-Determination, and the Movement Toward Smaller, Ethnically Homogenous States*, 47 *DRAKE L. REV.* 209, 221 (1999).

<sup>4</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171..

transform a conflict, so that it can be more constructively addressed.”<sup>5</sup> There are various types of peace agreements, each with their own distinct purpose.

The United Nations uses the following classifications to differentiate the various types of peace agreements:

*Ceasefire Agreements* – These typically short-lived agreements are “military in nature” and are used to temporarily stop a war or any armed conflict for an “agreed-upon timeframe or within a limited area.”<sup>6</sup>

*Pre-Negotiation Agreements* – These agreements “define how the peace will be negotiated” and serve to “structure negotiations and keep them on track” in order to reach its goal of ending the conflict.<sup>7</sup>

*Interim or Preliminary Agreements* – These agreements are undertaken as an “initial step toward conducting future negotiations,” usually seen as “commitments to reach a negotiated settlement.”<sup>8</sup>

*Comprehensive and Framework Agreements* – Framework Agreements are agreements which “broadly agree upon the principles and agenda upon which the substantive issues will be negotiated” and are usually accompanied by Comprehensive Agreements which “address the substance of the underlying issues of a dispute,” seeking to find the “common ground between the

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<sup>5</sup> Nita Yawanarajah & Julian Ouellet, *Peace Agreements*, available at [http://www.beyondintractability.org/essay/structuring\\_peace\\_agree/](http://www.beyondintractability.org/essay/structuring_peace_agree/) (last accessed April 18, 2018).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

interests and needs of the parties to the conflict, and resolve the substantive issues in dispute.”<sup>9</sup>

*Implementation Agreements* – These agreements “elaborate on the details of a Comprehensive or Framework Agreement” to facilitate the implementation of the comprehensive agreement.<sup>10</sup>

As to its components, most peace agreements address three main concerns: procedure, substance, and organization.<sup>11</sup> The procedural components provide for the methods that establish and maintain peace such that they delineate the *how* of a peace process.<sup>12</sup> These include the setting up of schedules and institutions that “facilitate the implementation of substantive issues such as elections, justice, human rights and disarmament.”<sup>13</sup> The substantive components provide for the changes to be made after the peace agreement is reached such as political, economic, and social structural changes that are needed to “remedy past grievances and provide for a more fair and equitable future.”<sup>14</sup> The organizational or institutional components are mechanisms intended to “promote the peace consolidation efforts”<sup>15</sup> such that they address the *who* aspect of the agreement.<sup>16</sup>

It can be gleaned then that although the main goal of peace agreements is to achieve peace or to end hostilities between or among parties, each and every peace agreement varies as to its procedural and substantive components. Peace agreements adopt various measures in addressing their own respective

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Yawanarajah & Ouellet. *supra* note 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

dilemmas and each has its own distinct way of enabling the parties involved in the agreement to cooperate and comply with the agreed terms to ensure the success of the measures adopted.

The role of civil society as stakeholders in creating an enabling environment for peace talks should be highly credited. Leaving the process of negotiations in secrecy and unmonitored had sometimes led to suspicion of a sell-out among bystanders and critics. In the aftermath of the MOA-AD declaration of unconstitutionality, the succeeding government negotiating panel was under advisement to conduct periodic consultations with stakeholders, especially indigenous peoples, in preparation for the negotiations with MILF.

## II. BRIEF HISTORY OF THE PEACE PROCESS WITH THE CPP-NPA-NDFP

### A. Historical Background

The Communist Party of the Philippines (CPP) was formed on 26 December 1968 in Alaminos, Pangasinan and was founded by Jose Maria Sison. The CPP started as a small core group and gradually increased in number in 1980 when it led a successful campaign against the Marcos government by conducting rallies and mass actions which created doubt in the citizens' mind concerning the effectiveness of the Marcos government in its counter-insurgency operations.”<sup>17</sup>

The CPP is “ideologically Maoist” and has been fighting a “protracted people’s war” through its armed wing, the New People’s Army (NPA) since 1969. It heads the broad revolutionary front organization, the National Democratic Front of the Philippines (NDFP), which was formally established in

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<sup>17</sup>Orlando Buenaventura, The Communist Party of the Philippines/National Democratic Front Network Abroad, available at <http://www.globalsecurity.org/military/library/report/1989/BOG.htm> (last accessed Apr. 21, 2018).

1973. The NPA is CPP's military arm while the NDFP is its politico-diplomatic arm.

The CPP-NPA-NDFP believe that the basic problems in the Philippines are a result of the prevalence of foreign imperialism (particularly the United States), feudalism, and bureaucrat capitalism in the social structure; thus, they aim "to unite the Filipino people against all anti-imperialist forces and to overthrow the government that is influenced by foreigners."<sup>18</sup> These prevailing systems, according to the Party, are the roots of oppression, exploitation, and injustice that characterize Philippine society. Hence, it is the party's belief that genuine reforms can only be achieved if the structure itself is completely changed and the existing government is overthrown by means of a violent revolution.

#### B. The Hague Joint Declaration and Substantive Agreements

NDFP entered into cease-fire negotiations with the Aquino administration, which took effect on 10 December 1986.<sup>19</sup> The exploratory talks between the GRP and the CPP-NPA-NDFP "began shortly after President Ramos' first State of the Nation Address (SONA) in July 1992,"<sup>20</sup> which eventually resulted in the attainment of five procedural agreements,<sup>21</sup> paving the way for the opening of the first round of formal negotiations held on 26

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<sup>18</sup>Edmundo Garcia, Resolution of Internal Armed Conflict in the Philippines, *in* WAGING PEACE IN THE PHILIPPINES 85 (Garcia & Hernandez eds., 1988).

<sup>19</sup> Office of the Presidential Adviser on the Peace Process with the Support of the United Nations Development Programme, Part 1: Overview of the GRP-NDF Peace Negotiations, *in* The GRP-NDF Peace Negotiations (Compendium of Documents) 1 (2006) [hereinafter GRP-NDF].

<sup>20</sup> *Id.* at 2.

<sup>21</sup>*Id.* at 2-3. The five procedural agreements are:

- a. Hague Joint Declaration;
- b. Breukelen Joint Statement;
- c. Joint Agreement on Safety and Immunity Guarantees (JASIG);
- d. Joint Agreement on the Ground Rules of the Formal Meetings; and
- e. Joint Agreement on Reciprocal Working Committees (RWCs).

June 1995 in Brussels.<sup>22</sup> After almost a year of suspension due to the fact that the CPP-NPA-NDFP failed to appear in the June 26 session, the “Brussels talks was followed by 15 rounds of both formal and informal meetings which resulted in the completion of five more agreements<sup>23</sup> from June 1996 to March 1998.”<sup>24</sup> One of the five agreements was the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).<sup>25</sup>

From 1 September 1992 to 16 March 1998, the two negotiating panels had signed a total of ten agreements.<sup>26</sup> The first one of these agreements, which serves as the basis of the CARHRIHL is the Hague Joint Declaration signed by the parties on 1 September 1992.<sup>27</sup> The Hague Declaration enumerated the substantive agenda that shall be included in the peace negotiations, which lists down the following four agenda: (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

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<sup>22</sup>Roselle C. Tenefrancia, *CARHRIHL: A Breed of Its Own 2* (unpublished paper on the characterization of CARHRIHL as a legal document) (on file with author).

<sup>23</sup>GRP-NDF, *supra* note 19, at 3. The five more agreements referred to are:

- a. Additional Implementing Rules Pertaining to the Documents of Identification;
- b. Supplemental Agreement to the Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees (RWCs);
- c. Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL);
- d. Additional Implementing Rules of the Joint Agreement on Safety and Immunity Guarantees (JASIG) Pertaining to the Security of Personnel and Consultation in Furtherance of the Peace Negotiations; and
- e. Joint Agreement in Support of Socioeconomic Projects of Private Development Organizations and Institutes.

<sup>24</sup> GRP-NDF, *supra* note 19, at 3.

<sup>25</sup> 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, *available at* <http://www.philippine-revolution.net/cgi-bin/ndf/ptoks.pl?> (last accessed April 21, 2018).

<sup>26</sup>Revolutionary Communist Party, USA, Nepal Maoists and Government Sign Peace Agreement, *available at* <http://rwor.org/a/072/nepalagree-en.html>.

<sup>27</sup>*Id.* at 3.

product of this declaration, and thus far, the only substantive agenda that has been covered.<sup>28</sup>

### C. Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CAHRIHL)

The GRP negotiated the CARHRIHL through the executive powers of the President. Under the Philippine Constitution, the President has the power to negotiate treaties and international agreements. It follows that “[t]he power to negotiate international agreements necessarily implies the power to negotiate agreements with domestic entities, such as the CPP-NPA-NDFP in the case of CARHRIHL.”<sup>29</sup> However, since the CARHRIHL is neither a treaty nor an international agreement, the provision under the Philippine Constitution that “[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate,”<sup>30</sup> does not apply. Hence, it is not subject to the approval of Congress. This is so because the CARHRIHL is “not a final and binding agreement between the parties,” but rather a temporary agreement.<sup>31</sup> It is only “one of the substantive agenda in order to reach a final peace agreement between the two parties.”<sup>32</sup>

As to the role of the Philippine Judiciary over any controversy involving the CARHRIHL, the political question doctrine becomes relevant. Justice Concepcion in *Tañada v. Cuenco*<sup>33</sup> defined political questions 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

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<sup>28</sup> *Id.*

<sup>29</sup> Tenefrancia, *supra* note 22, at 4.

<sup>30</sup> PHIL. CONST. art. VII, § 21.

<sup>31</sup> Tenefrancia, *supra* note 22, at 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Tañada v. Cuenco*, 103 Phil. 1051 (1965).

delegated to the legislative or executive branch of the government.”<sup>34</sup> Applying the political questions doctrine, the ongoing political negotiation, including any matter involving the CARHRIHL provisions and their implementation, remain within the realm of the Executive Power.<sup>35</sup> The only instance the Supreme Court may inquire into the provisions of CARHRIHL is when there is inconsistency with constitution.

There is no doubt that the CARHRIHL is a major product of the peace negotiations between the GRP and CPP-NPA-NDFP, and thus, a consequence of a political act.<sup>36</sup> However, is the CARHRIHL a treaty or an enforceable agreement as between the parties? It has been the basic premise in a treaty that the parties are considered to be states as can be gleaned from its definition under the Vienna Convention, which defines a treaty as “an international agreement concluded between States in written form and governed by international law.”<sup>37</sup> In the case of the peace negotiations between the GRP and CPP-NPA-NDFP, only the GRP is a state-party while the CPP-NPA-NDFP is not. Thus, the CARHRIL does not fall under the coverage of the Vienna Convention, and “any agreement that the GRP and CPP-NPA-NDFP enters into cannot be considered as a treaty, by the very fact that it is not an agreement between states.”<sup>38</sup>

Being a domestic peace process, international law is not applicable in the peace negotiation between the GRP and CPP-NPA-NDFP, except only to serve as a basis or standard in the conduct of the negotiations and with regard to the basic rights, such as those embodied in the CARHRIHL, which international

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<sup>34</sup> *Id.* at 1067.

<sup>35</sup> Tenefrancia, *supra* note 22, at 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Tenefrancia, *supra* note 22, at 7.

principles impose on states and individuals.<sup>39</sup> All of the parts or sections of the CARHRIHL from the Preamble to its Final Provisions actually include provisions recognizing respect and application of principles of international law, particularly international humanitarian law. Examples of such provisions are: “The Parties are aware that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and principles of international humanitarian law”<sup>40</sup> and “In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights.”<sup>41</sup>

Despite the signing of CARHRIHL by the GRP and CPP-NPA-NDFP which confirms that both parties approved of its contents, implications exist as to the enforcement and implementation of the document itself. 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.”<sup>42</sup> Enforcement is exacted merely by international and internal political pressure<sup>43</sup>. Moreover, 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.”<sup>44</sup> Thus, if, at most, the CARHRIHL is to be considered soft law, its enforcement cannot be compelled by either party in any court of law, whether domestic or international.<sup>45</sup>

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<sup>39</sup> *Id.* (citing Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT’L L. 373 (2006)).

<sup>40</sup> CARHRIHL, *supra* note 25, at Part I, art. 6.

<sup>41</sup> *Id.* at Part III, art. 1.

<sup>42</sup> Tenefrancia, *supra* note 22, at 8 (citing Hartmut Hillgenberg, *A Fresh Look at Soft Law* 10 E.J.I.L. 499, 515 (1999)).

<sup>43</sup> Tenefrancia, *supra* note 22, at 8

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

As far as the GRP implementation of human rights laws and international humanitarian law is concerned, it is clear that it being a signatory to international instruments already provides them 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-NDFP emanates from the constitutional and legal framework of the GRP as a sovereign state. Hence, the implementation of [the] obligations it undertook in CARHRIHL shall be subject to the same constitutional and legal framework.<sup>46</sup>

It is important to note that despite the absence of a clear categorization of the CARHRIHL as a legal and enforceable document between the parties, a provision in the Preamble of the CARHRIHL clearly shows that both parties have committed themselves to stand by the principles emanated in the agreement.<sup>47</sup> The provision states: “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 law ... .”<sup>48</sup> This is without a doubt a step forward for the peace process. It implies that the parties have to individually implement the provisions of the agreement until a final peace agreement is concluded.<sup>49</sup>

From the foregoing, it is clear that the CARHRIHL is a combination of a preliminary agreement and a comprehensive agreement. It is a temporary agreement, one of the immediate aims of which is “to complete a final peace

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<sup>46</sup>*Id.* at 10.

<sup>47</sup>*Id.*

<sup>48</sup>CARHRIHL, *supra* note 25, at Part VI, art. 1 (emphasis supplied).

<sup>49</sup>Tenefrancia, *supra* note 22, at 10.

agreement.”<sup>50</sup> At the same time, it is a document recognized and respected by both parties, with the end goal of achieving just and lasting peace.

### III. PHILIPPINE REPORT TO ESCR COMMITTEE

#### A. The Doctrine of Incorporation and Human Rights Principles under Philippine Law

The Philippines has a consistent record of adhering to international law instruments and conventions, more so in the context of international human rights. This policy is even reinforced by the constitutional principle often referred to as the “doctrine of incorporation.”

Under Article II, Section 2 of the 1987 Philippine Constitution, it is expressed that

“The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”

Judicial interpretation of this provision has applied it in the context of adherence to internationally recognized norms, such as, human rights,<sup>51</sup> humanitarian law,<sup>52</sup> immunity from suit of a foreign state,<sup>53</sup> *pacta sunt servanda*<sup>54</sup> and protection of foreign embassies.<sup>55</sup>

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<sup>50</sup> *Id.* at 11.

<sup>51</sup> *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

<sup>52</sup> *Kuroda v. Jalandoni*, 83 Phil. 171 (1949).

<sup>53</sup> *Raquizza v. Bradford*, 75 Phil. 50 (1945).

<sup>54</sup> *Agustin v. Edu*, 88 SCRA 195 (1979).

<sup>55</sup> *J.B.L. Reyes v. Bagatsing*, G.R. No. 65366, October 25, 1983.

The incorporation doctrine has been traditionally distinguished from the transformation theory which applies to adherence to treaties. Under the Philippine Constitution, this is reflected in Article VII, Section 21 on the process of entry into international agreements subject to concurrence by the Philippine Senate. Special types of international agreements, such as, those pertaining to military bases, troops or facilities, as mentioned in Article XVIII, Section 25, also require concurrence by the Senate and, if Congress so requires, a referendum may be called for such purpose.

While it is true that there is judicial consistency today in applying the incorporation doctrine under Philippine municipal law, a review of case law on the matter reveals that the Court is ready to apply it to principles of self-executing character and not to provisions of international law instrument which may require implementation mechanisms, for example, budgetary allocation or resource-based programs to realize the commitments assumed by a member State.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) to which the Philippines is a State Party poses fundamental challenges in terms of compliance by a developing country like the Philippines. It is arguable that the ICESCR is a mirror image of Article XIII of the Constitution on Social Justice and Human Rights insofar as sectoral rights and concerns are concerned, such as, labor, farmers, indigenous peoples, urban or poor dwellers, women's rights, health standards, elderly care, persons with disability and child protection. Realizing the full implementation of these rights, however, requires creative ways of prioritizing certain programs as can be gleaned from the next section of this paper.

## B. Philippine Response to the Committee on Economic, Social, and Cultural Rights

On 18 August 2016 the Permanent Mission of the Philippines to the United Nations and Other International Organizations in Geneva submitted the Philippines' written response to the list of issues provided by the Committee on Economic, Social and Cultural Rights before the United Nations High Commissioner for Human Rights.<sup>56</sup>

This section of the paper highlights the principal points of the Response.

### (a) General Information

The Response cited measures to ensure direct application of the ICESCR, among which were Supreme Court decisions, rules, proposed laws, training programs for judicial officers, administrative issuances, and monitoring of cases affecting vulnerable sectors. Of particular interest is the update on incidence of extrajudicial killings, enforced or involuntary disappearances as these affect the sectors mentioned.

### (b) Article 1(2) – Right to freely dispose of natural wealth and resources

Indigenous peoples' rights have been given sufficient treatment under this provision, particularly on the impact of environmentally-sensitive operations of mining companies and logging concessionaires on ancestral domains and ancestral lands. An assessment of the effectiveness of the Indigenous Peoples' Rights Act (IPRA) of 1997 showed how the National Commission on

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<sup>56</sup> Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations, Geneva, Switzerland, Response to the Committee on Economic, Social and Cultural Rights, No. 0486-CBR-2016, 18 August 2016 (hereinafter cite as "Response").

Indigenous Peoples had been coping with complaints on alleged violations of indigenous peoples' rights under IPRA in relation to the ICESCR.

(c) Article 2(1) – Maximum available resources

In this portion of the Response, the Philippine government focused on actions taken to combat corruption which extensively undermine the effective use of government funds and resources. Reform measures were cited to cut down on red tape and transparency in the conduct of official transactions with government offices. The allocation of government funds for social services was explained and emphasized the considerable increase on spending in this regard.

(d) Non-discrimination

A survey on anti-discrimination laws and measures affecting the most vulnerable sectors of Philippine society was discussed, assuring the Committee that this policy cuts across a broad-range of individuals and groups in various settings, including LGBT, women, foreign and domestic workers, Filipino-Muslims, indigenous peoples, among others.

(e) Labor Rights

The section on labor rights is the most expansive in scope. It covered the following: increased opportunities for young people and people with disabilities; coverage of the informal economy workers; incentives for business establishments complying with minimum wage requirements; social protection for domestic workers; narrowing the gender pay gap; access to legal and consular assistance for Filipino migrant workers; trade union rights, among others.

(f) Social Security

A relatively unique approach to expand coverage and increase the amount of benefit of the social pension for indigent senior citizens has been implemented through monthly cash grants of PhP500 (US \$10). A similar amount is extended to poor households with children 0-18 years old and/or pregnant or lactating women for the health transfer while the education transfer is at PhP300 (US \$6) per month, for 10 months per year for up to a maximum of three children per family.

Senior citizens now enjoy various benefits and privileges under Republic Act No. 7432.

(g) Article 10 – Protection of the Family, Mothers and Children

The fight against trafficking and its accompanying consequences, such as, violence of any form, child labor, dysfunctional family-setting, corruption, among others, had been the subject of capacity-building measures for agencies of the government who are at the forefront of a collective effort, with domestic and international actors, in eradicating the cycle of trafficking.

(h) Article 11 – Rights to an Adequate Standard of Living

An explanation of the Philippines' episode of boom and bust has been proffered in the Response to provide a background on the state of economic growth in the country. A human rights-based approach to development and governance was proposed for implementation to ensure a trickle down effect of policies to the poor. The allocation of fiscal space to 44 provinces based on

poverty incidence and vulnerability to natural disasters was indicative of a modest goal.

Special measures to expand access to security of tenure of the poor included a Presidential stoppage of all demolition of illegal settlements in the absence of relocation sites and issuances to comply with international human rights standards.

(i) Article 12 – Rights to Physical and Mental Health

Health care coverage for senior citizens, indigents, persons below 21 years of age, married or single but with a child, as well as female spouses from indigent families have been undertaken.

Access to reproductive health services have been assured through the Responsible Parenthood and Reproductive Health Act of 2012.

Various interventions and strategies have been employed and implemented to improve environmental hygiene.

The capacity of local communities to cope with disasters and other emergency situations had been the subject of programs and trainings nationwide.

j) Articles 13 and 14 – Right to Education

The different levels of education (primary to higher education) were the subject of programs and budgeting by the government on an increasing scale. Particular attention was directed to working children and those living in remote

and rural areas and affected by armed conflict. For indigenous children, a culture-based education program has been supported through formal, non-formal and informal modalities.

k) Article 15 – Cultural Rights

In recent years, protection of cultural diversity gained traction. The National Commission for Culture and the Arts had exercised its mandate to protect cultural heritage revealed and expressed in various forms. Important sites and cultural properties have also been preserved or restored with the assistance of international experts on conservation science.

This survey of responses of the Philippines brings to light the concept of margin of appreciation in the implementation of economic, social and cultural rights. It has, in fact, been observed that even in the European setting, economic, social and cultural rights do not enjoy a similar degree of protection as civil and political rights.<sup>57</sup> Thus, in the manner of implementation of the European Social Charter, the European Committee on Social Rights (ECSR) grants States Parties a broad range of appreciation in determining the steps to be taken to ensure compliance with the Charter.<sup>58</sup> And, “when faced with budgetary restrictions, States Parties must demonstrate that they have taken measures to achieve the Charter’s objectives ‘within a reasonable time, with measurable progression and to an extent consistent with the maximum use of available resources’.”<sup>59</sup>

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<sup>57</sup> Peter Leuprecht, Introduction to the Symposium: Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Enforcement?, 8 *Transnational Law and Contemporary Problems* 313, Fall, 1998, p.3.

<sup>58</sup> Samantha Besson, Evolutions in Antidiscrimination Law in Europe and North America: Evolutions in Non-Discrimination Law within ECHR and the ESC Systems: It Takes Two to Tango in the Council of Europe, 60 *American Journal of Comparative Law*, Winter, 2012, p.11.

<sup>59</sup> *Id.*

### C. Philippine Case Law Applying the ICESCR

Two Supreme Court decisions may be cited to demonstrate the extent that the ICESCR principles have shed light on domestic law cases. For advocacy purposes, interest groups may resort to Court pronouncements in advancing causes of marginalized sectors. These could also reinforce laws, rules and policies whenever doubts may be raised on the constitutionality of state actions aimed at promoting economic, social and cultural rights.

(a) *International School Alliance of Educators v. Quisumbing* (G.R. No. 128845, June 1 2000)- on the right to just and favorable conditions of work;

The case arose from the complaint filed by the locally hired teaching staff of the petitioner school who claim to be discriminated against by the school's policy in granting more benefits to foreign hires.

The Supreme Court in finding that the practice of the respondent school of according foreign-hires higher salaries than local-hires to be discriminatory used the ICESCR, as one of the bases for its decision, to wit:

“Notably, the International Covenant on Economic, Social, and Cultural Rights, *supra*, in Article 7 thereof, provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

a. Remuneration which provides all workers, as a minimum, with:

i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

x x x.

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of ‘equal pay for equal work.’ Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School, its ‘international character’ notwithstanding.”

(b) *Central Bank Employees Association v. Bangko Central ng Pilipinas* (446 Supreme Court Reports Annotated 299, 15 December 2004]- on upholding Article 2 of the ICESCR;

Petitioner Central Bank (now BSP) Employees Association, Inc. filed a petition for prohibition against BSP and the Executive Secretary of the Office of the President, to restrain respondents from further implementing the last proviso of Section 15(c), Article II of Republic Act No. 7653 (New Central Bank Act), which makes an unconstitutional cut between two classes of employees in the BSP, viz: (1) the BSP officers or those exempted from the coverage of the Salary Standardization Law (SSL) (exempt class); and, (2) the rank-and-file (Salary Grade [SG] 19 and below), or those not exempted from the coverage of the SSL (non-exempt class). It is contended that this classification is a classic case of class legislation, allegedly not based on substantial distinctions which make real differences, but solely on the SG of the BSP personnel position.

According to petitioner, the last proviso of Section 15(c), Article II of R.A. No. 7653 is violative of the equal protection clause because after it was

enacted, the charters of the GSIS, LBP, DBP and SSS were also amended, but the personnel of the latter were all exempted from the coverage of the SSL. Thus, within the class of rank-and-file personnel of these institutions, the BSP rank-and-file are also discriminated upon.

The Supreme Court in declaring the subject provision as unconstitutional for being discriminatory to the rank and file employees of Central bank, made the following pronouncement:

“The principle of equality has long been recognized under international law. Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes basic principles in the protection of human rights.

Most, if not all, international human rights instruments include some prohibition on discrimination and/or provisions about equality. The general international provisions pertinent to discrimination and/or equality are the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

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In the employment field, basic detailed minimum standards ensuring equality and prevention of discrimination, are laid down in the ICESCR and in a very large number of Conventions administered by the International Labour

Organisation, a United Nations body. Additionally, many of the other international and regional human rights instruments have specific provisions relating to employment.

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Thus, the two-tier analysis made in the case at bar of the challenged provision, and its conclusion of unconstitutionality by subsequent operation, are in cadence and in consonance with the progressive trend of other jurisdictions and in international law. There should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society. Indeed, the social justice imperatives in the Constitution, coupled with the special status and protection afforded to labor, compel this approach.”

#### D. Application to the Peace Process

This rapid assessment of the status of the ICESCR in the Philippine setting must take into account the on-going peace processes on two fronts in the country: (a) Moro Islamic Liberation Front (MILF); and, (b) Communist Party of the Philippines-New People’s Army-National Democratic Front (CPP-NPA-NDFP).

It is instructive to note the weight given by the negotiating panels to an exhaustive treatment of economic, social and cultural rights in the drafting of the peace agreements. The rebel groups have constantly put forward structural economic reforms to address the root causes of the armed conflict. On the other hand, advances in technology and globalization may have added another layer of talking points at the negotiating tables considering the need to re-calibrate the

long drawn out economic, social and cultural concerns which these movements have espoused.

Even in the drafting of peace agreements, international human rights standards have significantly lent guidance to negotiators in shaping their agreements. The ICESCR, in particular, has been a useful tool in this context.

#### IV. THE NDFP DRAFT CASER<sup>60</sup>

In this section the present writer has identified some contentious provisions in the NDFP draft which require serious consideration.

##### A. Basic Principles and Bases, Scope Applicability and Outcomes

1. The need to review and, as necessary, reverse all economic policies, programs, laws, agreements and treaties that negate the objectives of social and economic development and adversely affect the lives of the Filipino people. (Part I, Section 4)

2. The parties realize the need for immediate common and separate unilateral measures to undertake agrarian reform in order to dismantle land monopoly and to distribute land to the tiller for free. (Part I, Section 7)

3. To pursue a policy and program of national industrialization and agricultural development aimed at creating the basic conditions for a comprehensive, well-balanced and nationally self-reliant economic development. (Part I, Section 8)

4. Develop policies to eliminate the practice of using public office for private, individual or collective gain; to control or regulate private domestic and

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<sup>60</sup>NDFP draft CASER as of 12 January 2017.

foreign monopolies; and to prohibit private domestic and foreign monopoly control of strategic sectors of the economy. (Part I, Section 9)

5. To maintain ecological balance and judiciously using non-renewable resources. (Part I, Section 10)

6. To advance and promote rights of various sectors. (Part I, Section 11)

7. To apply universally acceptable principles of international law on social, economic, and cultural rights and the faithful compliance therewith by both parties. (Part I, Section 12)

8. The GRP is guided by its Constitution and the NDFP by the Guide for Establishing the People's Democratic Government and the Program for a People's Democratic revolution of the Communist Party of the Philippines. (Part II, Section 3)

## B. Agrarian Reform and Rural Industrialization

1. Haciendas and plantations remain intact and hectares of distributed lands have reverted back into lands of big landlords and foreign agri-corporations under various schemes as the agribusiness venture arrangements. (Part III. A)

2. Adherence to WTO neoliberal policies of trade liberalization has aggravated the fundamental problems of backwardness and underdevelopment of Philippine Agriculture. (Part III. A)

3. Expropriation or confiscation of all agricultural lands and other agricultural means of production by landlords shall be undertaken and expropriated or confiscated land shall be redistributed for free. (Part III. A, Article I, Sections 1 and 2).

4. The applicability, amount and methods of compensation shall be determined by the relevant or effective organ of political power in the area according to the general guidelines outlined in his agreement or in a new agrarian law. (Part III. A, Article I, Section 4).

5. Landholdings whose landowners have maintained private armed groups and are known to the farmers as having been involved in extrajudicial killings of others against farmers' organizations in connection with agrarian disputes shall be subjected to outright confiscation and abandoned agricultural lands and other lands not put into productive use shall be subject to expropriation without compensation. (Part III. A, Article I, Section 5).

6. On scope and coverage, among others, lands suitable for agriculture in formerly and presently used as military bases and reservations; lands of public or private schools suitable for agriculture but not actually, directly and exclusively used and found to be unnecessary for the practice of religion; lands covered by tourism projects, golf course, and those within special economic zones suitable for agriculture ; and, fish ponds, prawn farms, corporate fish pens and aquaculture farms, including those previously exempted from coverage from the GRP's land reform program. (Part III. A, Article III).

7. Owners of expropriated land shall be provided with just compensation and allowed to retain up to five (5) hectares, provided that such lands shall

continue to be devoted to agricultural production or other uses related to agriculture. (Part III. A, Article V, Section 1).

8. The lease and leaseback arrangements with foreign corporations including vast track of land or plantations shall be immediately terminated and the contracts rescinded while plantations operated on leased public and privately owned land shall be publicly owned or managed by corporations of the farm workers. (Part III. A, Article V, Section 4)

9. Fish pens, fish corals and fish cages not operated by their owners or corporations shall be expropriated and privatized coastal areas shall be reverted to the public domain and be used mainly as communal fishing grounds. (PIII, A. A.6, Section 2). The conversion of agricultural land devoted to food production shall be prohibited and policies or programs allowing conversion of agricultural lands into so-called industrial estates, urban-housing estates and subdivisions, tourist resorts, golf courses or for the cultivation of export and biofuel crops shall be suspended, reviewed, and as necessary, reversed.

10. To achieve rural development, the GRP shall amend, suspend or terminate, as applicable, all bilateral investment treaties and agreements, bilateral and regional free trade agreements (FTAs) and agreements under the multilateral World Trade Organization (WTO). (Part III. A, Article IX, Section 1)

11. Revolutionary mass organizations with the assistance of the New People's Army shall participate in the enforcement and implementation of agrarian reform. (Part III. A, Article XI, Section 3)

## C. National Industrialization

1. National industrialization is about Filipino producers engaged in the large-scale production of capital, intermediate and consumer goods. The country's economic backwardness is particularly evident in the absence of a strong basic and technologically efficient Filipino industries in steel, petrochemicals, capital equipment, electronics, information technology, and others. The so-called industries in the country are actually foreign capital-dominated, low value-added and semi-processing, import-dependent, and export-oriented. (Part III. B)

2. National industrialization entails well-balanced growth with heavy and light technology industry as the leading factor, agriculture as the base of the economy, and light industry as the bridging factor to immediately produce basic consumer goods for the people and produce goods needed by agriculture. (Part III. B, Article I, Section 3)

3. There is economic dominance of foreign monopoly capitalists and the comprador big bourgeoisie. Direct investments and other profit-making assets of U.S., Japanese and other foreign monopoly capitalists in vital and strategic industries shall be expropriated and nationalized. Cartels and commercial operations of big compradors and bureaucrat capitalists shall be dismantled and their assets expropriated. The national bourgeoisie and smaller private owners of the means of production, including micro, small and medium enterprises, shall be given support for their efforts, productivity and creativity. Retail industry shall be exclusively 100% Filipino-owned. Part III.B, Article III, Sections 1, 2 and 6)

4. Working people have a pivotal role in production and, in particular, a central role in national industrialization, while unions and workers' councils are moreover acknowledged as important for ensuring democracy in industrial

enterprises and in forms run along capitalist lines. Working councils shall have representatives sit in the board of directors or trustees and participate in policy-making and management. (Part III. B, Article III, Sections 6 and 7),

5. The Development Bank of the Philippines (DBP) and the land bank of the Philippines (LBP) will be reoriented to fulfill the development function of financing public utilities, services and infrastructure, agrarian reform and rural development, and national industrialization. On the otherhand, commercial banks shall allot at least 50 percent of their loanable funds for priority and key industrial projects, with at least 20 percent earmarked for small and medium enterprise. (Part III. B, Article VI, Sections 2 and 3) (Part III. B, Article III, Sections 6 and 7)

6. The NPA and mass organizations shall contribute their knowledge, skills and labor power in the construction of public infrastructure program in support of industrial development (Part III. B, Article VII, Sections 6 and 7).

#### D. Environmental Protection

1. Destructive environmental activities of big corporations, such as mining, displace indigenous peoples from their ancestral lands and exploit the country's natural wealth. Illegal operations of magnetite (black sand) mining also continue to exploit the country's coastal areas in Zambales, Cagayan, Ilocos and other coastal provinces under such misrepresentations as 'dredging' permits released by the local government units (LGUs) and Industrial Sand and Gravel Permit from the Mines and Geosciences Bureau (MGB). (Part III. C)

2. Existing laws, such as, the Mining Act of 1995, mean the wholesale delivery of the national patrimony to the unbridled exploitation by foreign

investors through the liberalization of the mining industry. They open the door wider to the destruction of the environment and the displacement of the national and ethnic minorities from their ancestral lands. (Part III. C)

3. Democratic consultation, consent, and participation of affected communities, especially in the ancestral lands of the indigenous peoples and territories of the Bangsamoro, in using our natural resources, shall be guaranteed. (Part III. C, Article I, Section 4)

4. Rational planning and zoning for urban and rural areas, with proper environmental planning in the construction of roads, public transport facilities and buildings, to alleviate congestion and pollution in every area and region, shall be undertaken. (Part III. C, Article I, Section 5)

5. Local communities, through community based environmental organizations, shall be mobilized to carry out activities focused on environment protection and management. (Part III. C, Article II, Section 2)

6. Government should compensate people and communities affected by disasters, massive pollution and contamination from mining, logging, energy, agrochemical corporations, military establishments and the like. The individuals, enterprises and corporations responsible shall be held criminally liable and penalized. Immediate action to solve the cases of killings of environmental advocates and payment of compensation to their relatives shall be undertaken. (Part III. C, Article II, Section 9)

7. Companies shall be obliged to post environmental insurance cash bonds as assurance for each and every source of pollution or disaster. (Part III. C, Article II, Section 11)

8. Logging for export shall be prohibited while commercial logging for domestic use shall be regulated. All logging shall be reserved exclusively for Filipino citizens. (Part III. C, Article III, Section 2)

9. US military and forces of other countries shall be prohibited from using the Philippines to base their soldiers and to store their armaments, munitions, supplies and other war materiel whether overtly as forward deployments or under the guise of military exercises, transit, visits, acquisition of supplies and other pretexts. (Part III. C, Article III, Section 7)

10 The US government shall be held accountable for the pollution and destruction of land, water and other resources, and the environment in the former US military bases and elsewhere in the country. (Part III. C, Article III, Section 8)

11. Mineral resources shall be processed domestically up to the secondary and tertiary stages of industrial production instead of exported raw. (Part III. C, Article IV, Section 1)

12. Collective and individual rights over the country's biological and intellectual resources shall be protected. Where allowed, patenting of flora and fauna in Philippine territory shall be the exclusive privilege of Filipino citizens with preference for collective ownership regimes. The patenting of life and the exclusive appropriation of any life form or part or derivative of this shall be prohibited. (Part III. C, Article V, Sections 1, 2 and 3)

#### E. Sectoral Rights

### *General Observations*

1. Labor contractualization is rampant, arising from economic liberalization and privatization, while migrant workers pay exorbitant fees to the national government and private recruiters, while receiving low wages in host countries and suffering various abuses by foreign employers. (Part IV. A)

2. Job creation has overly focused on employment in business process outsourcing (BPO) purely anchored on the needs of foreign economies and corporations. (Part IV. A)

3. The government has historically reneged on its responsibility of providing free healthcare for all. It is currently pursuing a Universal Health Care program that ultimately abandons State responsibilities in providing health services to the populace. This program corporatizes the public hospitals and reduces support for local hospitals, promotes social insurance over direct service provision, and opens up building of health facilities to public-private partnerships. The neglected public health system has increased patients' out-of-pocket expenses to comprise the bulk of personal health spending – even the government's health insurance system covers very little of this spending. Rural health is the clear manifestation of how far the entire health system has been abandoned. (Part IV. A)

4. The country has perennially seen massive rural migration to cities and urban centers, which are otherwise incapable of absorbing the rural migrants with decent jobs and social services. The government pursues a privatized urban development plan that serves the needs of the ruling elite rather than the needs of the working people. It does not have a decent public housing program for the working people, while relocation sites for the urban poor are far from the urban

poor's workplaces or livelihood sources and bereft of social services. (Part IV. A)

5. The social crisis is doubly difficult for women. They are in jobs of poorer quality, lower wages and more oppressive conditions than men. They are more contractualized than their male counterpart. They are more discriminated and sexually harassed in the workplace and elsewhere. This leaves a culture of violence against women, including women's commodification and trafficking. (Part IV. A)

6. The number of out-of-school children of school age has gone up over time, with large number being forced to seek any kind of work to augment low family incomes and for survival. (Part IV. A)

7. The government does not have a comprehensive program for the elderly, especially the poor – for their social protection, welfare and care. (Part IV. A)

8. The socioeconomic situation has made the working people extremely vulnerable to disasters. Government's relief, rehabilitation and reconstruction plan is vulnerable to much corruption and patronage politics, and its build-back-better plan is even dependent on private corporations and thereby worsens the vulnerability of the working people. There is also dependence on foreign aid and foreign military to carry out disaster operations. This has further facilitated the militarization of vulnerable communities and foreign donor intrusion in the countryside, resulting in counter-insurgency operations in the guise of humanitarian assistance. (Part IV. A)

*Rights Of Workers And Private And Public Sector Employees*

9. Workers and private and public sector employees shall be guaranteed a national minimum wage and salary that is indexed to the rising cost of living. This includes but is not limited to ending regionalized wagesetting and the two-tiered wage system as well as removing all burdensome taxes and deductions. (Part IV. A, Article III, Section I)

10. Contractualization shall be terminated and full employment shall be ensured as well as equality of employment opportunities. (Part IV. A, Article III, Section 2)

11. The no-union no-strike policy in enterprises especially in special economic zones, including export processing zones (EPZs), free trade zones, industrial estates (IEs), and other economic enclaves shall be prohibited as well as the Assumption of Jurisdiction of the labor secretary. Public sector unions shall have the right to strike. (Part IV. A, Article III, Sections 3 and 4)

*Rights Of Overseas Workers*

12. There is a need to eliminate the policy and practice of cheap labor export and undertake measures to reintegrate overseas Filipino workers in the country, such as through agrarian reform, rural development and national industrialization. (Part IV. A, Article VI, Section I)

13. The government shall review its foreign policy relating to Filipino migrants and immigrants and work to formalize recognition of the legal status of undocumented Filipinos overseas. (Part IV. A, Article VI, Section 2)

14. Measures should be taken to redress the situation of distressed land-based and seafaring overseas Filipino workers especially, but not limited to, those in jail and on death row. (Part IV. A, Article VI, Section 4)

15. All state exactions and onerous fees imposed on Filipino overseas workers for documentary and other requirements should be eliminated. (Part IV. A, Article VI, Section 6)

### *Women's Rights And Gender Equality*

16. Peasant women's equal access to land ownership through agrarian reform and equal opportunities for membership and assuming leadership roles in rural cooperatives shall be ensured. Women shall have meaningful and effective participation and representation in workers' councils, labor unions and other worker formations within the labor movement and government labor-related agencies. (Part IV. A, Article VII, Sections 2 and 3)

17. Health care services for women shall be comprehensive and the health department's no-home birthing policy shall be revoked. Government shall repeal the reproductive health law and put in place a program ensuring comprehensive women's health care, reproductive health, and sex education for young women. (Part IV. A, Article VII, Sections 5 and 6)

18. Women shall have access to adequate and affordable housing and social services that lighten housework and other family duties, such as, but not limited to, low-cost meals, public laundry services, free day-care centers and nurseries, and milk banks. (Part IV. A, Article VII, Section 7)

19. Female household heads and single parents shall receive all necessary benefits and social services, including, but not restricted to, children's education and health care. (Part IV. A, Article VII, Section 9)

20. Crisis centers shall be established to provide free legal assistance and psycho-social services to victims. Violence against women (VAW) desks shall be operationalized in all barangays. The capacity of Philippine embassies to handle cases of VAW among migrant workers will be strengthened. (Part IV. A, Article VII, Section 10)

21. Discrimination and harassment against gays, lesbians and other gender-discriminated sectors shall be ended. (Part IV. A, Article VII, Section 11)

22. Civil right to marriage regardless of gender preferences and same-sex marriages shall be recognized. (Part IV. A, Article VII, Section 12)

23. Divorce as a way for spouses, especially women, to end unhappy and failed marriages shall be legalized. (Part IV. A, Article VII, Section 13)

#### *Rights Of Children*

24. Free comprehensive childcare, including programs for street children shall be established. Exploitative child labor by capitalists, landlords and other exploiters shall be eliminated. (Part IV. A, Article VIII, Sections 2 and 3)

#### *Rights Of The Elderly*

25. The elderly shall be given the necessary financial and social support and opportunities to continue to be active and productive by providing, among

others, subsidized community-based care facilities and services and a non-contributory tax-financed universal pension system. Pension benefits for all retirees shall be increased and calibrated to the living wage and the cost of living. (Part IV. A, Article VII, Section 13)

*Rights Of The Disabled*

26. Provide specialized education, training and facilities and accessibility of social services shall be ensured even in other areas of public life. (Part IV. A, Article x, Section 1)

F. Social Services and Public Utilities

1. Government shall reverse its policy of privatizing social services and public utilities. (Part IV. A, Article XI, Section 1)

G. Education, Health, Housing, Water, Energy Services, Mass Transport,

1. Telecommunications Services, and Waste Management. (Part IV. A, Article XII, Sections 1, 2 and 4)

*Right To Education*

1. Government shall reverse its policies of privatization, commercialization and other neoliberal measures in education. Free education shall be ensured at the primary, secondary, tertiary and technical-vocational levels. Government shall scrap the K-to-12 program and anti-development and foreign-dictated education programs and policies in education, such as the Education Act of 1982, General Education Reform Program and the like shall likewise be abolished. (Part IV. A, Article X, Section 1)

2. The right of indigenous peoples and the Bangsamoro to education that is responsive to their needs and situations shall be upheld.

#### *Right To Health*

3. Free health services shall be ensured at the primary, secondary, and tertiary health care levels. The Government shall veer away from privatized market-based health insurance schemes, such as, PhilHealth. Sufficient medical facilities, personnel and medicines in long-neglected rural communities shall be ensured. Focus shall be given on preventive medicine with community-based comprehensive primary health care. The problem of drug abuse is a health issue that should be treated as such. (Part IV. A, Article XI, Sections 2-4)

#### *Right To Housing*

4. There shall be a comprehensive nationwide program of mass housing for the working people especially, but not only, for the urban poor and semiworkers. Housing agencies should be reoriented towards regional dispersal and urban zoning and development. Urban poor communities shall not be demolished and urban poor slum dwellers shall not be driven away from their homes if there is no adequate relocation plan for them whether of on-site development or in-city relocation. (Part IV. A, Article IV, Section 2)

#### *Right To Water*

5. Government shall reverse its policy of privatizing water utilities and services and rescind contracts and concession agreements with private water concessionaires. Water utilities shall be under state ownership, management and control. (Article XV, Section I)

#### *Energy Services*

6. Government shall reverse its policy of privatization and deregulation in the energy sector covering generation plants, power grids, transmission lines, distribution units and electric cooperatives. It shall scrap the Electric Power Industry Reform Act (EPIRA). Power generation, transmission and distribution shall be under state ownership, management and control. The use of renewable energy sources shall be promoted. (Part IV. A, Article VI, Section 1)

#### *Mass Transport System*

7. Accessible, efficient and safe mass transport system with affordable fares shall be ensured. Government shall reverse its policy of privatization and deregulation in the transport sector. Mass transport system shall be under state ownership, management and control. Pursue a comprehensive mass land, sea and air transport program. (Part IV. A, Article XVII, Sections 1, 2, 3 and 4)

#### *Telecommunications Service*

8. Reliable telecommunications services with affordable rates for the working people shall be ensured. Government shall take measures to develop telecommunications services as a public service under state ownership, management and control. (Part IV. A, Article XVIII, Section 1)

#### *Waste Management*

9. Waste management system shall be publicly owned, controlled and managed and shall give due consideration to impact on the environment and the health of communities. (Part IV. A, Article XIX, Section 1)

### H. Culture

#### *Promoting Patriotic, Progressive And Pro-People Culture*

1. The current foreign-, comprador- and bureaucrat capitalist-dominated, market-driven, and reactionary system engenders an unscientific and backward,

colonial and anti-nationalist, and elitist and individualistic culture. (Part IV. A, Article XX. B).

2. The mass media is owned and controlled by foreign and big local outfits, which then mirror the political and economic interests of business and advertisers, politicians, and the media outfits themselves. (Part IV. A, Article XX. B)

*Program For Advancing Cultural Development*

3. A nationalist and progressive cultural development program covering the education system, mass media and communications, arts and literature, science and technology, religion, and values as well as language and symbols, sports, and recreation shall be adopted. (Part IV. B, Article I, Section 2)

*Developing Progressive And People-Oriented Media*

4. The law creating the Movie and Television Review and Classification Board (MTRCB) shall be repealed, including other censorship mechanisms. Libel shall be discriminated. (Part IV B, Article III, Section 4)

I. National Minorities, Indigenous Peoples and Bangsamoro

*Recognition Of Ancestral Lands And Territories Of National Minorities*

1. The national minorities collectively refer to more than 100 ethnolinguistic groups of indigenous people (IP) and Moro people and comprise around 16 percent of the population. (Part IV C)

*Recognizing The Right To Self-Determination*

2. The right to self-determination of indigenous peoples and the Bangsamoro of indigenous peoples and the Bangsamoro shall be recognized and upheld. Their ancestral lands and territories shall also be recognized. IPRA shall be amended or, if deemed necessary, repealed. The national minorities' right to free, prior and informed consent (FPIC) shall be upheld. A new law upholding the national minorities' rights to self-determination and to their ancestral lands and territories shall be adopted. The National Commission on Indigenous People (NCIP) shall be dismantled. (Part IV. C, Article I, Sections 1, 3,4,5 and 9)

*Participation In Economic Development*

3. All deceptive, oppressive and discriminatory legislation and economic policies that expedite land grabbing, plunder and destruction of ancestral lands and territories shall be revoked. (Part IV. C, Article II, Section 3)

4. A Review and investigation of all Certificate of Ancestral Land Titles (CALTs), Certificate of Ancestral Domain Titles (CADTs), and Ancestral Domain Sustainable Development Protection Plan (ADSDPP) shall be undertaken to determine their rightfulness on expanse and coverage, location and the like. Bogus and anomalous titles shall be cancelled and ancestral lands that had been fraudulently awarded to false claimants by its agencies shall be reverted. (Part IV. C, Article I, Section 4)

*Protection From All Forms Of Discrimination And Rights Violations*

5. Institutional discrimination against the national minorities in the education system, mass media, arts and literature, and in other cultural and religious institutions shall be removed. Militarization of ancestral lands and territories and their disruption of economic, social and cultural life shall be

ended. Paramilitary recruitment among tribes and communities shall be stopped.  
(Part IV. C, Article III, Sections 1 and 3)

J. International Economic Relations

1. There is a need to adopt an independent foreign trade investment policy that promotes the strategic economic program of self-reliant Philippine development, rural development, and national industrialization. Thus, trade and investment liberalization, privatization and deregulation policies dictated by dominant capitalist countries and by their multilateral agencies like the International Monetary Fund (IMF) , Worldbank (WB), Asian Development Bank (ADB), and World Trade Organization (WTO) shall be rejected. (Part V. A, Article I, Sections 1 and 2)

2. On trade, there is a need to terminate trade and investment policies expressed in free trade agreements and bilateral investment treaties (BITs). Diversification of trade and investment relations is essential to break the economic dependence on the United States and Japan. Economic relations with BRICS countries (Brazil, Russia, India China and South Africa) and Third World countries asserting their sovereignty and independence shall be pursued. (Part V. A, Article I, Sections 3, 4 and 6).

3. Preference shall be given to official development assistance (ODA) that is untied and on the most favorable concessionary terms. Foreign loans and ODA with policy conditions shall be cancelled and multilateral and bilateral programs that intervene in domestic economic policy-making shall be terminated. (Part V A, Article I, Section7).

4. Undemocratic Investor State Dispute Settlement (ISDS) processes that are biased for foreign investors, give foreign monopoly capital rights beyond

Filipino investors and citizens, and restrict governments' regulatory flexibility shall be rejected. (Part V A, Article II, Section 5)

5. Foreign investment shall be regulated to ensure that it contributes to national development in terms of technology transfer and acquisition, access to products or markets, domestic reinvestment, and other such benefits for the country's strategic economic development. In no case shall foreign equity exceed 40 percent (40%) in any enterprise. Export-processing zones and industrial enclaves shall be reoriented towards national industrialization and the self-reliant production of goods to meet domestic needs. (Part V A, Article II, Sections 2, 3 4 and 5).

6. Capital controls will be instituted to promote financial stability and preserve the independence of domestic monetary, exchange rate, financial, and fiscal policy. The banking and financial system needs to direct resources according to investment priorities, agrarian reform, rural development and national industrialization. The Philippine National Bank (PNB) shall be renationalized and reoriented to the objective of promoting overall social and economic development. (Part V B, Article 1, Sections 1, 2, 3, 4, 5 and 6)

7. Foreign investments and assets in financial institutions shall be expropriated and the disposition of these shall be negotiated on the basis of national interest. (Part V B, Article 1, Section 11).

8. Compulsory workers councils' representatives shall sit in the board of directors or trustees and participate in policy making management. (Part V. B, Article 1, Section 2)

9. Income taxation on poor families and small and medium enterprise (SMEs) shall be reduced while those on foreign and comprador corporations, landlords and the wealthy shall be increased. (Part V. B, Article 1, Section 6)

10. Value-added tax (VAT) and excise tax on basic goods and services consumed by the working people shall be abolished, while taxes on luxury goods and services shall be increased. Consumption taxes on alcoholic drinks, tobacco products, gambling and other socially or economically undesirable items shall be increased. Taxes on accumulated or transacted wealth shall be increased through higher property, capital gains, inheritance and estate taxes. Tax rates for transactional corporations (TNCs) shall be rationalized in line with the national interest. (Part V. B, Article III, Sections 7, 8 and 9)

11. Public foreign debts shall be re-examined to determine which are to be cancelled, frozen, renegotiated, or litigated. The law on automatic appropriation for the public portion of the foreign debt service (PD 1177) shall be immediately repealed. (Part V.B, Article III, Sections 13 and 14)

## V. ANALYSIS: LEGAL PROBLEMATIQUE OF BELLIGERENCY

A review of the language and tenor of the NDFP CASER immediately brings to mind the continuing issue of belligerency in the course of the peace negotiations.

The present writer is of the opinion that an understanding of the concept of belligerency will shed light on how to approach the NDFP and adopt a paradigm in crafting a highly contentious draft agreement with clear ideological underpinnings.

Belligerency is the “existence of a state of war between a state’s central government and a portion of that state.”<sup>61</sup> It exists when

a portion of the state’s territory is under the control of an insurgent community seeking to establish a separate state and the insurgents are in de facto control of a portion of the state’s territory and population, have a political organization able to exert such control and maintain some degree of popular support, and conduct themselves to the laws of war.<sup>62</sup>

Such state of waging war has both objective and subjective standards to consider. As to the objective aspect, Sir Hersch Lauterpacht summarizes the conditions for recognition of belligerency in international law:

First, there must exist within the State an armed conflict of a general (as distinguished from a purely local) character; second, the insurgents must occupy and administer a substantial portion of national territory; third, they must conduct the hostilities in accordance with the rules of war and through organized armed forces acting under responsible authority; fourthly, there must exist circumstances which make it necessary for outside States to define their attitude by means of recognition of belligerency.<sup>63</sup>

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<sup>61</sup> Jorge R. Coquia & Miriam Defensor Santiago, *International Law and World Organizations* 63 (4th ed. 2005).

<sup>62</sup> *Id.*

<sup>63</sup> E.H. Riedel, *Recognition of Belligerency*, 4 *E.P.I.L.* 47, 49 (2000).

Traditional international law requires that certain factual conditions be met before outside states may accord recognition of belligerent status to factions challenging the incumbent government.<sup>64</sup> Just as in an inter-state conflict where an outside state is given the option to either join with one of the belligerents against the other or to remain strictly neutral, an internal conflict situation which complies with the objective standards, may also be placed in essentially the same footing as a war between independent foreign states, thus, giving rise to definite rights and obligations under international law.<sup>65</sup>

Although the Law of Nations provides that only full sovereign states possess the legal qualification to become belligerents<sup>66</sup>, whenever a state which lacked the legal qualification to make war actually makes war, it is considered a belligerent, and all the rules of International Law pertaining to warfare apply to it.<sup>67</sup> Thus, there is a significant distinction between legal qualification under the rules of International Law and the actual power to make war. Such distinction explains the fact that insurgents, especially those who persistently fight for independence and autonomy, may become a belligerent power through recognition.<sup>68</sup>

As to the subjective standards of belligerency, it pertains to the concerns and perhaps fears of the negotiating party, such as the government. It has also been suggested to include the existence of a circumstance, which would create an impact beyond its national borders, affecting third states whether in a direct or indirect manner, making it necessary for them to react and define its attitude to the conflict. The subjective standard of belligerency also concerns the equality or inequality in the relations of the parties to a conflict such that the legal status of parties to an inter-state conflict are equal in relation to each other,

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<sup>64</sup> D.P. O'connell, 1 International Law, 161-63 (1965).

<sup>65</sup> *Id.*

<sup>66</sup> L. Oppenheim, 2 International Law: A Treatise, Disputes, War and Neutrality 196 (1944).

<sup>67</sup> *Id.* at 87.

<sup>68</sup> *Id.*

while the legal status of parties to an intrastate conflict are fundamentally unequal.<sup>69</sup> Furthermore,

[i]n the case of a purely internal armed conflict, the authorities in power are the legitimate Government, and their acts are in defense of their legitimacy; their opponents are the insurgents, whose acts will be punishable as rebellion, treason or the like under the municipal law in force. This legal inequality will only disappear to the extent that the insurgents succeed in obtaining from the legitimate Government their recognition as a belligerent party.<sup>70</sup>

The experience in negotiating CAHRIHL from the initial drafts of the GRP and CPP-NPA-NDFP is highly instructive as the CASER is discussed by both parties.

In CAHRIHL, both parties started out with two different world views of the agreement. NDFP presented a draft which outlines the laws of war while the GRP gave the Philippine Bill of Rights. In the end the two were fused to get to a common CAHRIHL.

This is how it really seems with the CASER draft of the CPP-NPA-NDFP which obviously proposes an economic paradigm along Marxist-Leninist-Maoist thought. How do we reconcile this with the GRP draft? Could the two drafts get any closer?

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<sup>69</sup> Mailyn Vallesteros Matamis, *Asserting Belligerent Status under International Law: The Case of the CPP/NPA/NDF and the Moro Islamic Liberation Front (MILF)* (2000) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

<sup>70</sup> *Id.* (citing Frits Kalshoven, *The Law of Warfare* 13 (1973)).

In principle, the developmental goals of the CPP-NPA-NDFP are substantially consistent with the Constitution insofar as an independent and self-reliant economy effectively controlled by Filipinos is concerned. But the mechanisms and socio-economic structures needed to attain these goals definitely differ.

## VI. CONCLUSION

There are four (4) substantive agreements envisioned by the CPP-NPA-NDFP before a final peace agreement is forged. They have often said publicly that the best way to make the movement irrelevant is to simply implement what they envision in the substantive agreements.

A just and lasting peace could be reached if root causes of the armed conflict could be addressed and eliminated. CASER, in the minds of the CPP-NPA-NDFP, is the acid test.

In the recent consultative committee deliberations on the draft of a new constitution it has been suggested from the floor that the Bill of Rights should give equal weight today, in terms of compliance, to both civil and political rights, on one hand, and economic, social and cultural rights, on the other hand. Could this be a first step in addressing the constitutional gap? Perhaps there is enough room to accommodate the CPP-NPA-NDFP CASER draft even as we, in the meantime, suspend our disbelief in the belligerent stance of the CPP-NPA-NDFP.