

Some notes on Human Rights violations/abuses by non-state actors and possible courses of action

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A. Human Rights Violations/Abuses by Non-State Actors

Non-State Actors (NSAs) — a very broad category of those other than sovereign independent nation-states (basically those recognized by the UN) and their agents. Includes non-governmental organizations, business/multinational/transnational corporations, international organizations, some sub-national ethnic entities, private individuals, landlords, and non-state armed groups.

Non-State Armed Groups (NSAGs) - groups that are armed, use force to achieve their political or quasi-political objectives, and are opposed to or autonomous from the state. Refer mainly to rebel or insurgent groups, for example the following:

- New People's Army (NPA, though the CPP-NPA-NDFP contests the application of the term "NSA" or qualification "non-state" to it, because of its own "two state" notion of the present Philippine polity - and this has its own implications)
- Revolutionary Proletarian Army-Alex Boncayao Brigade (RPA-ABB)
- Moro Islamic Liberation Front (MILF, by contrast wants the term "non-state actor" applied to it)
- Abu Sayyaf Group (ASG)

Human Rights Violations (HRVs) by the State - is the established traditional notion based on the origin or rationale for the emergence of the international HR regime as for the protection of the individual from possible abuses by the powerful State which is supposed to have a monopoly of legitimate armed forces.

HRVs by NSA(G)s - is the emerging notion that not only States but also NSA(G)s have certain HR obligations and consequently may also commit HRVs. For example, capitalists in relation to workers rights, and landlords in relation to peasant rights.

Don't forget IHL Violations by NSAGs —

International Humanitarian Law (IHL), which is the law of armed conflict (or the rules of war), is

binding on all parties to an armed conflict, whether state or non-state, subject to certain requisites. There is thus no issue about IHL obligations, unlike about HR obligations, of NSAGs. In practice, esp. during internal armed conflicts or in situations of “non-peace, non-war,” IHL and HR often overlap.

Some Common HR Abuses by NSAGs Globally -

(“HR abuses” = HR & IHL violations, per the International Council on Human Rights Policy in its seminal 2000 report *Ends & means: human rights approaches to armed groups*)

- Arbitrary deprivation of the right to life (e.g. extra-judicial killings)
- Arbitrary deprivation of due process (e.g. “kangaroo courts”)
- Arbitrary deprivation of liberty (e.g. enforced disappearance, hostage-taking, kidnapping for ransom)
- Torture, ill-treatment (of captives)
- Interference with freedom of expression, assembly and association (e.g. preventing or intimidating independent organizations from operating in an area)
- Interference with freedom of movement and of abode (e.g. internal displacement)
- Disregard to the protection owed to civilians caught up in conflict (e.g. use of anti-personnel landmines, use of human shields)
- Abuses against children (e.g. use of child soldiers)
- Abuses against women (e.g. wartime sexual slavery, rape as a war tactic)
- Extortion (e.g. coercively-enforced “revolutionary taxation”)
- Terrorism (e.g. bombings of civilian-populated public places or transport)

Some Philippine Examples (just a few out of many)

- CPP-NPA anti-infiltration campaigns or “purges” of the 1980s which saw a combination of extra-judicial killings, enforced disappearance, torture sometimes worse than that committed by state agents, and very questionable “people’s court” proceedings, if any at all
- RPA-ABB extortion, threats and attacks against some development NGOs
- MILF attacks against Christian civilian communities in Central Mindanao in August 2008 after the aborted signing of the MOA-AD
- SG kidnappings for ransom and terrorist bombings

Conceptual Rationale or Basis for the Notion of HRVs by NSAGs —

1. HR pertains to the holder of these rights which, when violated, become victims of HRVs. A victim-centered view focuses on the victim whose rights are violated, regardless of whether the perpetrator is state or non-state.
2. Not only political power but also HR abuses can “grow out of the barrel of a gun.” Thus, the particular need to also protect the individual from possible abuses by NSAGs, which have some power derived from having “illegitimate” armed forces.
3. There is a legal doctrine that treaties (e.g. international HR treaties) bind the State as a whole, not just the government, but also its citizens and even the rebel community.
4. Under the International Law Commission’s Draft Articles on State Responsibility, “The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.” (Art. 10.1) “The conduct of a movement, insurrectional or

other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.” (Art. 10.2)

5. Better to check HR abuses of rebel groups now, including as part of a revolutionary reform effort, so that “the slaves of today do not become the tyrants of tomorrow.”

Some Relevant Developments in International Law and Peace Processes —

1. At least one international HR treaty, the 2000 Optional Protocol of the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, directly addresses NSAGs, thus: “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” (Art. 4.1).

2. The 1998 Rome Statute of the International Criminal Court provides for individual criminal responsibility (e.g. whether the individual is an agent of a State or a NSAG) for the most serious HR violations like genocide and crimes against humanity, but also indicates group criminal responsibility where the group acts with a common purpose or intention (Art. 25.1, 25.2, 25.3.d). In the case of crimes against humanity, a general specification makes reference to “organizational policy” (Art. 7.2.a) while a particular specification for enforced disappearance makes reference to a “political organization” (Art. 7.2.i). And the very first case being currently prosecuted in the ICC is against leaders of a NSAG, the Lord’s Resistance Army (LRA) of Northern Uganda.

3. An increasing number of international “soft law” (like UN-related resolutions) in the HR field, pronouncements of international and non-governmental bodies, some judicial decisions and a growing part of scholarly writings consider that NSAs, esp. NSAGs, have HR obligations. International law has moved beyond recognition of insurgency during armed conflict to a new type of recognition for HR purposes, which go beyond situations of armed conflict and rules of war. Much of these have been noted and synthesized in the book by International Law Professor Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2005).

4. In the particular traditionally HR matter of torture, the international NGO Redress Trust-London published a major policy study *Not Only the State: Torture by Non-State Actors – Towards Enhanced Protection, Accountability and Effective Remedies* in May 2006, which acknowledged the Philippine inputs, particularly from the case of the CPP-NPA purges.

5. Peace agreements between a State and a NSAG with provisions on HR have become the norm. This has already been the subject of another International Council on Human Rights Policy (ICHRP) report in 2006 on *Negotiating Justice: Human Rights and Peace Agreements*. In the Philippines, we have the following important examples:

- the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the GRP and NDF (esp. Part III)
- the 2002 Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001 (esp. Art. IV).

B. Possible Courses of Action in General

A range of actions to change the HR behavior of a NSAG (per the afore-mentioned ICHRP 2000 report *Ends & means: human rights approaches to armed groups*):

1. Punishment

- Criminal Prosecutions (domestic and international)
- Sanctions

2. Shaming and Persuasion

- Fact-finding and Denunciation
- Use of Media
- Dialogue

3. Working with the NSAG

- Finding Entry Points
- Engaging Constituencies and Sources of Support
- (Technical) Assistance to Internal Reform Efforts
- Developing Codes of Conduct
- Direct Substitution of Services

Key Contextual Factors —

(in determining the choice of actions and how these are carried out)

1. Character of the NSAG
2. Role of the State (and also Foreign Governments)
3. Capacity of Civil Society

Co-relating HR Work with Peace Work

- HR work to stop HR abuses helps pave the way for peace
- Peace work to resolve the conflict ends this source of HR abuses
- Need for exchanging notes, understanding and coordination between HR and peace workers, to at least avoid working at cross-purposes

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