

Armed conflicts (Philippines): The Law on Landmines and the Masbate Incident

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The tragic killing of young scholar-athlete Kieth Absalon and his cousin Nolven Absalon who were riding on bicycles when hit by a landmine blast last June 6 in Purok 4, Barangay Anas, Masbate City, already since admitted by the perpetrator New People's Army (NPA), is most condemnable. We condole with the family and friends of the victims and join them in calling for justice. The righteous indignation about this landmine incident has invariably included references to violation of the international humanitarian law (IHL) on landmines and similarly functioning improvised explosive devices (IEDs). Allow us to shed some light on this special field of legal familiarity to us in so far as this is relevant to the search for justice, giving each one his/her due.

At this point, it does not appear that to have been established by any reported recovered material evidence, whether the landmine or IED used by the NPA unit was victim-activated (like if the "bike's front tire hit the trip wire that detonated the deadly device") OR command-detonated (by remote control, usually through a detonating cord, from a safe distance) by waiting ambushers. That there were waiting NPA ambushers is established by evidence of gunshot wounds on the victims, apparently to finish them off after the initiating landmine blast. This scenario is consistent with long-time NPA ambush tactics practice usually involving the initiating command-detonation of a landmine, often of the anti-vehicle kind, by the waiting ambushers.

Given the established propaganda hyper-drive by both sides of the armed conflict (truth, it is said, being the first casualty of war), we call for a competent independent investigation with the full and honest cooperation of both sides, referring to the NPA and the Philippine National Police (PNP) which are both reportedly conducting their own investigations. A competent independent investigation can be conducted by the Commission on Human Rights (CHR) with technical assistance from the civil society humanitarian organization Philippine Campaign to Ban Landmines (PCBL). So can such an investigation be conducted by the International Committee of the Red Cross (ICRC) Manila Delegation which, by its parameters, would however be of a discreet and even confidential nature, not necessarily for publication.

In the meantime, even though pending sufficient determination of the kind of landmine or IED used, we can safely say that the NPA definitely committed violations of the IHL on landmines which are punishable as war crimes under Philippine law, R.A. No. 9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity), but for different war crime specifications.

At the IHL level, IF the landmine used was a victim-activated anti-personnel mine (APM), then what was violated is the **1997 Ottawa Treaty** which totally bans such APMs defined as "a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons," that is, one activated by a person (not a vehicle) usually through pressure, weight, or tripwire. These are inherently indiscriminate and directly impact on a person's body, thus

were totally banned for humanitarian reasons. IF the landmine used was a command-detonated (presumably discriminate against a legitimate military target) APM or any kind of anti-vehicle mine (AVM), then what was violated is the **1996 Amended Protocol II** on Mines, Booby-Traps and Other Devices of the 1980 Conventional Weapons Convention, particularly this: “It is prohibited in all circumstances to direct weapons to which this Article applies,... against the civilian population as such or against individual civilians.”

At the **R.A. 9851** level, IF the landmine used was a victim-activated APM, the corresponding **Section 4** war crime is that of “(c) (25) Employing means of warfare which are prohibited under international law, such as:... (iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.” IF the landmine used was a command-detonated APM, the corresponding Section 4 war crime is that of “(c) (1) Intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities.” Either way, the NPA ambushers in the Masbate incident would be liable for such war crimes, IF brought to court under R.A. 9851. The problem is that the NPA does not recognize, much less subsume itself, to the Philippine legal and justice system.

The NPA however recognizes, among others, the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (**CARHRIHL**). This includes relevant provisions such as the following: [1] Part II, Article 4: “It is understood that the universally applicable principles and standards of human rights and international humanitarian law contemplated in this agreement include those embodied in the instruments signed by the Philippines and deemed to be mutually applicable to and acceptable by both parties.” This should include the 1997 Ottawa Treaty and the 1996 Amended Protocol II. [2] Part III, Article 2, par. 15: “The right not to be subjected to forced evacuations, food and other forms of economic blockades and indiscriminate bombings, shellings, strafing, gunfire and the use of landmines.” This right of the civilian cousins Absalon was definitely violated, whatever kind was the landmine admittedly used by the NPA.

It behooves, and we challenge, the NPA to show, to prove, that it can render justice for, and commensurate to, the horrendous willful killing of the Absalons by a NPA Masbate unit. Do not wait for the defunct Joint Monitoring Committee (JMC) under the CARHRIHL to act on this. What is at stake now is not only primarily the justice that the Absalon family cries for, but also the consequential credibility of the NPA and its so-called revolutionary justice system.

Soliman M. Santos, Jr.

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P.S.

• SOLIMAN M. SANTOS, JR. is a Judge of the RTC Branch 61 Naga City, Chair Emeritus of the Philippine Campaign to Ban Landmines, and Editorial Board member of the *International Review of the Red Cross*.