

OBSERVER:

A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES



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CRIMINALIZATIONS OF HUMAN RIGHTS ACTIVISTS

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EDITORIAL

Being a human rights defender in the Philippines means to lead a dangerous life and to be threatened constantly. The number of political killings and the disappearance of human rights defenders (HRD) has constantly increased since President Arroyo assumed office. Many of the victims are members of political left organizations, journalists, labour unionists and local farmer leaders. Usually the culprits are unknown and often masked men who escape on motorbikes. So far there have been no relevant criminal investigations or consequences in these cases.

Besides the threats of violence HRD have to suffer, they are often additionally criminalized by jurisdiction. The Commission on Human Rights in the Philippines came to the conclusion that the scope of criminalization through the legislation increased significantly nation-wide. Politically motivated prosecution and arbitrary arrests are consequences HRD have had to face as a result of their work.

Although HRD have different aims – some are fighting against the expropriation of their land and the following environmental pollution caused by mining firms, others struggle for a piece of land, which was granted to them by law – they still have in common the commitment to a peaceful fight and the appeal to human rights.

The United Nations acknowledged, in their resolution in 1998, the need for a special protection of HRD and decided: “Everyone has the right, individually and in association with others,

to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” (Art.1). With the acceptance of this declaration the Government of the Philippines commits itself to guaranty the safety of human rights defenders.

To support HRD in exercising their rights, volunteers around the globe accompany HRD during their work. The presence and accompaniment and the documentation of possible human rights violations by international groups shall give space to the HRD to follow their way. This journal wants to accommodate the importance of HRD and address the described instrument of human rights observation as well as the prosecution of HRD in the Philippines.

The emphasis in this edition is put on the criminalisation of the peasant group Kilusang Magbubukid ng Bondoc Peninsula (KMBP) who are HRD coming from the economic emergent region Calabarzon, 200 km south of the capital, Manila. The activists of KMBP fight for their own piece of land, for which they are eligible under the Government’s agrarian reform.

The articles present structures, which favour politically motivated prosecution of HRD by courts as well as by public prosecutors. In the article by Susann Weitzel the criminalization of HRD is exemplary shown in a case study, in which 68 human rights activists from a small coastal village are prosecuted for lapidary reasons i.e. coconut theft. A analysis by Janina Dannenberg, Anne Lanfer and Johannes Richter underlines the systematic ap-

proach by the perpetrators, which the responsible state authorities ignore. Two articles analyse the role of the courts by Jan Pingel and the prosecutors in the criminalization of the HRD by Patrick Seeger and David Werdermann. Only through the state authorities can HRD become criminalized, as they accept political motivated cases filed against them. Both institutions seem to close their eyes in favour of the landed elite, who file cases against the HRD in order to dissuade them from claiming their own land. Even though the state introduced instruments to avoid political motivated cases related to agrarian reform issues, these instruments are either not implemented or they are diluted. One example is the establishment of an agrarian jurisdiction, which sets out to examine all agrarian-related cases. However, this does not happen. Sarah Potthoff discusses in her article the impact of criminalisation on human rights defenders.

CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS IN AGRARIAN CONFLICT – STRUCTURAL CONSIDERATIONS



Janina Dannenberg, 28 years, is studying environmental science at the University Lüneburg in Germany. Environmentalist in northern Germany. She is a founding member of IPON.



Anne Lanfer, 28 years, Master of Science in Nutrition and Household Economics, has worked on Philippine agrarian issues since 2002 using both political and scientific approaches. She is a founding member of IPON.



Johannes Richter, 38 years, Diploma in Biology, studies social anthropology and political science at Hamburg University in Germany. Environmentalist in northern Germany, founding member of IPON.

Criminalization of human rights defenders (HRD) has been an issue on international level that is increasingly discussed in connection with the UN- Declaration on Human Rights Defenders. The discourse has also been raised in the Philippines, where HRD report to be offended and criminalized (see www.karapatan.org; Amnesty International 2009).

The following article focuses on the criminalization of HRD with a farming background in the rural Philippines. The figures provide evidence that criminalization affects activists of peoples organizations¹ in rural areas and not only actors of civil society that take centre stage in the Philippine national human rights discourse. It is further shown that criminalization is based on a close entanglement of private actors and particular key players within the state administration.

The Municipalities of Mulanay, San Narciso, San Andres and San Francisco, located on Bondoc Peninsula on the southern tip of the largest Philippine island, Luzon, and the human rights defending Peoples Organization KMBP (Kilusang Magbubukid ng Bondoc Peninsula) serve as case study for this article. The said area is dominated by a “deeply inequitable socioeconomic structure based on ownership or control of land” (Franco 2003:2). As a means to ensure their economic, social and cultural human rights, KMBP is demanding the implementation of the state-led Program for Agrarian Reform². The organization is a locally organised People’s Organization of HRD, that works together closely with a provincial operating NGO³, but which holds no significant stake in the human rights discourse on national level. Since the 1990s, the right-based⁴ non violent activities of the organization were responded with different forms of violent repression mainly by the Landlords and their allies (see IPON 2007, IFFM 2006:19).

The political power relationships in Bondoc Peninsula are dominated by a close interrelationship of landholding elites with local politics and administration (see IFFM 2006:18–19). In the following we analyse how the different actors contribute to the criminalization of HRD. It becomes clear that private actors, such as landlords file

charges whereas state actors legitimize and put the proposed criminalization into practice. As a party directly involved in the agrarian conflict, landlords are not just applying different forms of physical threats (see IPON 2007), but tend to file cases against HRD with Land- Reform- Petitioner background. As of 2008, 295 cases against members of the KMBP are pending (Table 1), most of them since many years⁵. The majority of these are qualified theft. The matter of qualified theft in Philippine law applies, among others, to the stealing of coconut and its derivatives. Given the fact that the whole conflict takes place on coconut plantations, this is a crime that is easy to presume. This also applies as well to most of the

Table 1: Nature of filed cases in Bondoc Peninsula against HRD of KMBP

Type of criminal case	Frequency	%
Qualified Theft	179	60,7
Estafa	104	35,3
Libel	3	1
Grave Threat	1	0,3
Malicious mischief	1	0,3
Attempted homicide	1	0,3
Different forms of trespassing	4	1,4
Frustrated murder	1	0,3
Unlawful detainer	1	0,3
Total	295	

Source: QUARDDS 2008

1) In the Philippine context, peoples organizations are to be seen as local, mainly community based organizations (in opposite to NGOs that work with a national scope and under official registration).

2) Namely CARP (Comprehensive Agrarian Reform Program), that was set into law in 1988.

3) QUARDDS (Quezon Association for Rural Development and Democratization Services).

4) Right-based in this context means that the activities of the organisation refer to the

legal framework of agrarian reform.

5) All figures derive from QUARDDS 2008.

6) Estafa (span.) in Philippine law is a criminal act of fraud/deceit.

7) The same information are gathered in many Interviews conducted by IPON.

8) In 2007 QUARDDS Reported a number of 349 accused Persons, in 2008 the number already went down to 223.

Table 2: Filed cases in Bondoc Peninsula against HRDs of KMBP in the different municipalities

Type of criminal case	San Francisco	San Andres	San Narciso	Mulanay
Qualified Theft	3	170	6	–
Defraud (estafa)	2	–	–	102
Others	10	1	1	–
Total	15	171	7	102

Source: QUARDDS 2008

other types of accusation, such as estafa⁶ and libel.

Table 2 displays the cases by municipality. While qualified theft is the main criminal case filed in San Andres, the HRD in Mulanay are confronted with the accusation of estafa by one single landowner: Aquino. QUARDDS (2008) investigates the geographic distribution of cases in detail and stresses the link between the type of cases and the landowner involved.

The types and the origin of the cases clearly show political motivation. This is underlined by the high number of cases filed: From 295 cases, 223 Persons are affected, which comprises nearly 10% of the KMBP members. Thus, the chances to be accused for a crime is much higher for HRD of KMBP than for the rest of the population of the province (see www.pnp.gov.ph).

In many of the cases, not just single persons but groups of up to 68 HRD are accused. Many members of KMBP are involved in more than one case, a few in up to 10. Farmers with leading position within the KMBP are confronted with the highest number of cases (QUARDDS 2008). This shows the positive association of the intensity of accusation and the human rights defending activities. Further-

more, many HRD describe a strong chronological connection between political activities they made and criminal cases that followed. They also report to have no criminal records prior to their petition for land reform (QUARDDS 2008)⁷.

The given figures refer to cases that were pending in 2008, cases that were already dismissed by then, are not included⁸. None of the trials against the HRD in KMBP has resulted in a final judgement against the accused. This proven innocence gives another strong hint to the political background of the complex process of criminalization.

All figures given so far only refer to cases that ended up in court. Moreover, there is a considerable number of new charges that are in process to be handed over to the court, according to IPON's investigation.

With human rights dimension in mind, it should be stressed that cases reach the court despite the obvious political motivated accusation and despite the Existence of Department Circular NO. 23 of the Department of Justice that establishes a quasi judicial body for agrarian related disputes (see box Department Circular NO. 23, this volume). Based on good practice, the private actors that are filing the charges ought to be iden-

tified as politically driven and their charges should be handled with appropriate caution (see article on The Role of the Prosecutors, this volume). Private actors encourage criminalization of HRD through the filing of charges, but the process of criminalization is boosted through the handing over of politically motivated charges to court and in some cases the treatment of the accused HRD in different agencies (see article Proceedings on fair jurisdiction in rural areas in the Philippines, this volume).

Politically motivated charges identified as those by the relevant state actors would diminish the harm they cause for the affected HRD (for information on the impact of criminalization on affected individuals, see article of Sarah Potthoff, this volume). In order to ensure human rights, the given facts strongly recommend to adequately consider the political motivation and the agrarian context of the said accusation.

As shown, locally working human rights defenders in rural areas are victims of criminalization and should be given the necessary protection in accordance with the UN- Declaration on Human Rights Defenders.

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POLITICALLY MOTIVATED ACCUSATIONS – THE ROLE OF THE PROSECUTORS



Patrick Seeger,
30 years, MA in indology and
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Criminalization is a way of harassing human rights defenders (HRD) and hindering them in their work. In the process of criminalization in the Philippines the public prosecution offices play an important role. After a complaint is filed they decide whether a case is sent to court or dismissed. A guideline issued by the Department of Justice of the Philippines is supposed to prevent the criminalization of farmers who fight for their right to own land.

This article focuses on describing and characterizing this role and the responsibility of the prosecutors in the process of criminalization. Additionally it analyses the efficiency of the guideline of the Department of Justice in preventing criminalisations. The data used is mainly based on the observations of IPON in Bondoc Peninsula and interviews with members of KMBP, prosecutors on provincial and regional level, members of the National Task Force on Agrarian Cases (NTFAC) and local NGOs.



David Werdermann,
David Werdermann, 20 years,
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in 2009.

In Bondoc Peninsula, recently there was a shift of harassments against HRD of the local farmers organization KMBP (Kilusang Magbubukid ng Bondoc Peninsula) from physical violence and direct threats to the abuse of the legal apparatus for criminalizations. More than one hundred cases against HRD are in process at present. Most of them are accusations of qualified theft and trespassing filed by landlords or their employees. It is obvious that many of these cases have only been filed to harass farmers who claim land. No HRD of KMBP has ever been convicted by the court but once the case is at court the process will continue for many years (see article Proceedings on Fair Jurisdiction in Rural Areas in the Philippines, this volume). The negative consequences of a pending criminal case for a farmer are multiple. So the legal apparatus is systematically used by the landlords to intimidate farmers who fight for their rights.

In the Philippine legal system, when a complaint is filed the first institution involved is a local or provincial police station. After a first investigation the case is either dismissed or – and this is usually done – it is passed on to the Office of the Provincial Prosecutor. After the so called preliminary investigation the prosecutor concerned issues a resolution in which he or she determines whether there is probable cause or not. So the case is either dismissed or passed on to the responsible court. This system is abused to harass and put pressure on HRD to hinder them in their fight for the right to own land. In Bondoc Peninsula an increasing number of criminal cases filed against the HRD of KMBP could be obser-

ved (see article Criminalization of Human Rights Defenders in Agrarian Conflict - Structural Consideration, this volume).

The Department of Justice of the Philippines has already realized the problem of criminalization of farmers that applied for landownership according to the Comprehensive Agrarian Reform Program, and thus, are involved in agrarian disputes. This can be seen in the formation of the NTFAC in September 2006 as well as in the issue of the "Guidelines on the preliminary investigation of criminal cases related to agrarian reform", the so called Department Circular NO. 23 (DC23), in June 2007. The Guideline states two important features concerning the handling of criminal offences filed before of the Provincial Prosecutor. The first main statement implies that the Chief of Office or its authorized representative is supposed to assign the case for preliminary investigation to a NTFAC member if he or she has reason to believe that the complaint arises from an agrarian dispute or if one of several listed indicators is given. The list contains so many points that nearly all cases filed against the HRD of Bondoc Peninsula should be handled by the NTFAC (see box: Department Circular NO. 23).

When the NTFAC was formed there was one member who was especially responsible for the cases in Bondoc Peninsula. But after this prosecutor changed office there was nobody left covering her responsibilities. In a case like that the Regional State Prosecutor is obliged to take over the agrarian related cases. Recently the Provincial Prosecutor Dione V. Bustoniera became a mem-

ber of the NTFAC, and thus, he is the prosecutor in charge for this kind of cases. Since all criminal cases of Bondoc Peninsula have to be handled by the Provincial Prosecutor the first demand of Department Circular 23 concerning the complaints against human rights defenders of Bondoc Peninsula is fulfilled.

The second statement of the guideline describes how the NTFAC member has to handle a case that is found to be risen from an agrarian dispute: "If the NTFAC member determines that the complaint is rooted or could be traced to a dispute over the implementation of the agrarian reform program, he/she shall immediately dismiss the complaint for lack of probable cause and/or lack of jurisdiction of the regular courts" (DC23 2007, 5). So far there is not a single case known by IPON that has been dismissed for being rooted in an agrarian dispute. Even though in many cases a connection to a conflict within the agrarian reform is obvious. In an interview the provincial prosecutor called most of the cases filed against HRD of KMBP "agrarian cases". Thus, it is highly questionable if it is even tried to act accordingly to the second part of the guideline of the Department of Justice.

The Provincial Prosecutor has been accused by farmers and NGOs to act in favour of the landowners. This suspicion is encouraged by the fact that one of the great landowners in Bondoc Peninsula is a relative of his (Inquirer 2008).

Another problem the accused HRD have to face is the very long time of treatment of cases in the prosecution offices. It often takes a couple of months until the resolution for a case is issued and therefore decided whether the case will be filed in court or

dismissed. Some of the accused have to stay in jail for the whole time of preliminary investigation which leads to both an economical and psychological damage for the accused and his or her family. The Provincial Prosecutor justified the long waiting times through a lack of financial and personnel resources as well as a defective internal mail system.

The office of the Provincial Prosecutor is responsible for the decision whether a criminal case is dismissed or filed in court. According to the guideline of the Department of Justice cases that are clearly related to an agrarian dispute are supposed to be dismissed. But still there has not been any case in Bondoc Peninsula dismissed for these reasons. The demand of the guideline concerning the treat-

ment of cases that are probably related to agrarian disputes by a member of NTFAC may be fulfilled. But as its most important implication, the dismissing of cases that are rooted in agrarian related conflicts, is not implemented one can say that the attempt of the Department of Justice to stop the criminalization of HRD by issuing a guideline has failed.

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DEPARTMENT CIRCULAR NO. 23

On June 14, 2007 the Department of Justice of the Philippines issued the so called Department Circular NO. 23 (DC 23).

It is a guideline concerning the preliminary investigation of criminal cases that are related to the agrarian reform. In its preface it states that there is an increasing number of criminal cases that are filed by landowners against farmers who are actual or potential beneficiaries of the Comprehensive Agrarian Reform Program (CARP). As it is clear that many of these cases are rooted in a dispute over the implementation of CARP they belong to the jurisdiction of the Special Agrarian Courts, the Department of Agrarian Reform Adjudication Board or the Department of Agrarian Reform, rather than to the regular courts.

When there is a criminal offense filed before the Office of the Provincial Prosecutor and there is reason to believe that the complaint arises from an agrarian dispute, then the concerned prosecutor is supposed to assign the case for preliminary investigation to a member of the National Task Force on Agrarian Cases (NTFAC). The guideline lists elements whose presence might index an agrarian dispute, e.g. the case involves landowners and tenants or an alleged crime that took place in an agricultural landholding or the case filed is estafa, qualified theft, trespassing, grave threat, malicious mischief or robbery. If the investigating prosecutor of the NTFAC finds sufficient basis to determine that the offence charged is rooted in an agrarian dispute he or she is supposed to dismiss the complaint immediately for lack of probable cause or lack of jurisdiction of the regular courts. There is no case that has been dismissed because it was related to an agrarian dispute reported to IPON.



WHO HAS STOLEN HOW MANY COCONUTS OF WHOM? IMPRESSIONS OF A HUMAN RIGHTS OBSERVER



Susann Weitzel,
23 years, Environmental Scientist, graduated from Leuphana University Lüneburg in Germany, human rights observer with IPON in 2009.

Have 68 peasants stolen 68 coconuts? Or have all 68 peasants stolen one coconut? While the decision-makers are sitting at their desks in an air-conditioned room the truth gets washed away. And it would still be the same if it was not for Maribel, a human rights defender who belongs to a

Her voice was trembling with emotions. She was looking around, sometimes pausing for a moment of silence while thinking about how to express the accumulated anger. The audience was listening attentively and seemed to be concerned. One judge stood up, showed her anger about the story and said that she would have dismissed the case of the 68 farmers if she had been the public prosecutor. The audience was acclaiming the judge's opinion. Except one man – the prosecutor, who usually has the last word regarding the decision whether a case should be filed

people's organization in Bondoc Peninsula, Quezon Province in the Philippines. For many years, Maribel – as a local leader of the farmers' group and tenant of a contract with one of the biggest landowner in Quezon Province – has been fighting for her and her community's rights. The group wants the landowner to cover his land by CARP, so that they can farm their own land in the near future. However, since she started fighting for land Maribel is facing harassments, especially by the employees of the landowner. These harassments are not only of the physical kind, but have turned towards criminalization.

motivated. The 68 farmers from Nilantangan, including Maribel, were and still are accused of having stolen coconuts. 68 peasants have stolen 68 coconuts? Or have 68 peasants, all together, stolen one coconut? The distinction does not matter. Farmers who harvest coconuts which were planted by themselves or their parents many years ago can be jailed as criminal offenders according to Philippine law, even if only one coconut is the object of desire. At the seminar Maribel as a representative of the 68 farmers involved gave the attending prosecutors, judges, lawyers, and policemen a chance to listen to the problems and ideas of someone who lives in the rural area, far away from any of their desks. If they had never met each other on such a seminar most of the actors would never know Maribel's and the other farmers' case, because they have never visited the blue and blitheful place of Nilantangan.

Writing this, I, as a human rights observer, am reminiscing about my visits in Nilantangan. The village is placed by the blue sea, with wooden huts built on white sand and dotted along the beach. All over the place, one can smell the fresh and salty air and sometimes fish that is drying under roofs stacked with palm tree leaves. Fishermen are going out to the sea in their Philippine fishing boats to catch *mga isda* (fish) which is later sold on the market. In Nilantangan fishing is the main source of income.

Walking along the sandy beach, foreigners are usually watched by the children. "Are you collecting shells?", little girls asked me in Tagalog while I was searching in the sand. "Oo." (Tagalog: Yes) I answered with a nod and asked them to join my mission. Some time later we discovered an old brown shoe washed ashore. Within



© Jeanalen Roth | Human rights defenders Maribel and her husband Jeffrey

in court or not - who was sleeping in his chair.

Maribel, a farmer leader from the small coastal village Nilantangan in Bondoc Peninsula, brought forward her concern about the procedure in the specific case of 68 farmers during a seminar on agrarian justice. She said, proceeding was filed in court by the prosecutor, even if the accusation by the landowner seemed to be politically

a blink of the eye we felt like stranded pirates searching for happiness and harmony, which they might find in the mountains and woodlands of the desert island. Neither the girls nor I were thinking about the challenges of our lives in Nilantangan or elsewhere, but enjoying our imaginations which took us far away from poverty and inequity.

Anybody who has ever visited this place has enjoyed it, but at the same time has had to face the problems which the inhabitants have to deal with.

Maribel as well as many other farmers were witnesses when the owner of the large estate was putting up a fence around Nilantangan. Many times the farmers could not enter their village through the main entrance, but had to take a *bangka* (boat) and, thus, tried to arrive on the sandy beach, even on a windy day when the waves are big and dangerous. Not only was the fence making the life of the farmers difficult, but also the provisions by the owner of the land that they are farming. Raising animals? Growing plants man needs for a balanced nutrition? Ap-

plying for a land title within the provisions of the governmental Agrarian Reform Program for reasons of farming their own land one day? – Forbidden! If the farmers from Nilantangan do not stick with it and, instead, fight for their rights, the landowner will harass them by filing at least complaints against them.

The case of Maribel and the 67 other farmers is already filed in court. So, it happens that 68 farmers pack their traps and leave Nilantangan by boat. They do not know whether their case, today, will be resolved by the judge or be postponed until the next month. Maybe they do not want to listen to the judgement. What if the judge convicts all 68 farmers of qualified theft? What if the judge does not convict them? Being jailed would increase their poverty, because nobody would be able to farm the land or go out fishing or send their children to school. If they are not found guilty, the landowner, for example, might show his anger by filing new complaints to exclude his land from being covered by the Agrarian Reform Program and from being handed over to the farmers. Otherwise,



© Jeanalen Roth | Children from Nilantangan

if the judge postpones the decision then 68 farmers will make the boat trip again and again, not for fishing, but to face long-term proceedings in court. Long-term proceedings that could demoralize them in fighting for their rights, and which also might lead them into an economically disadvantaged livelihood.

Whatever the outcome of the procedure is, the brown shoe of the pirates, resting in the sand in Nilantangan and surrounded by the sea water, will always wait for the farmers' return and for the moment when they can live without being accused of stealing one, or 68 coconuts, or more.



© Jeanalen Roth | Bankas from Aurora – 2nd possibility to reach Nilantangan

HUMAN RIGHTS DEFENDERS BY UN DEFINITION

According to “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” all individuals, groups and associations can be human rights defenders may they be professionals, volunteers, activists, personally affected or not. Consequently most important is not the person's title or the name of the organisation the person works for, but the character of the work. The work must have a human rights character and three key issues must be followed:

First of all human rights defenders must accept the universality of human rights as defined in the “Universal Declaration of Human Rights”. For example, it would not be acceptable to defend the human rights of rich people but to deny that poor people have equal rights. The second key issue is whether or not human rights defenders' concerns fall within the scope of human rights. It is not essential whether their arguments are correct in order to be a genuine human rights defender. Finally, the actions taken by human rights defenders must be peaceful in order to comply with the „Declaration on Human Rights Defenders“.

THE IMPACT OF CRIMINALIZATION ON HUMAN RIGHTS DEFENDERS



Sarah Potthoff,
30 years, Magister in sociology and literature with an emphasis on sociology of development and gender studies. Human rights observer with ipon in 2007.

In the Philippines there are many cases of criminalisation of human rights defenders (HRD). Beside critical journalists, indigenous activists and NGO members there is another group that suffers from criminalization: tenants who struggle for the implementation of the Comprehensive Agrarian Reform Law (CARL). Usually this is initiated by powerful local landlords filing criminal cases against them.

As of March 2008, members of the local farmers movement in Bondoc Peninsula (KMBP) are facing around 300 criminal cases that include qualified theft, estafa, trespassing, murder, attempted murder, libel, grave coercion, malicious mischief, etc.. KMBP has about 3.800 members. The number of criminal cases is still increasing as human rights organisations' analysis shows. e.g. data from the IPON, the Philippine Commission on Human Rights and some local NGOs. The consequences of criminalisation are various. The HRD have to travel four to six hours from their homes to reach the regional court in Gumaca. In many cases the hearings are postponed several times so the persons concerned have to travel repeatedly to court. On days like that they have extra costs for transportation and food and additionally they are not able to work to gain income. This even increases their poverty. In many cases they and their families suffer from hunger and have no proper access to the health and educational system. Often their income is too little to keep their houses in good condition. Usually there are no sanitary facilities and no access to drinking water or electricity.

Some HRD lose their freedom because of fighting for their rights. They are imprisoned from a period of some days up to several months. The main consequences are fear, psychological stress and economical damage. To get free they have to pay a bail. The price of bail e.g. for qualified theft is about 30.000 Peso (around 500 Euro). This is usually far too much to pay for landless farmers. So the imprisoned have to stay in jail when they are not able to get financial support or credit. Furthermore every day in prison is a day they cannot work on their land and for the income of

their families. Moreover, the imprisonment disrupts the economic activities of the entire family. Family members have to visit the imprisoned to give him or her psychological and moral support. As one can imagine this is like a vortex. The criminalisation of HRD by filing criminal cases is leading to deeper poverty and also to psychological stress. Because of these circumstances some of the farmers have already stopped fighting for their land. They continue to be tenants. The impact is to pay 60 to 75% of the harvest to the landlord. Given these consequences filing cases against the HRD of the KMBP seems to be a strategy of the local landlords and not a coincidence.

Regarding human rights the important question is where one can locate the role of the state in the process of criminalisation. The state is responsible to respect, protect and guarantee human rights. This analysis is essential for understanding the situation of HRD like the KMBP farmers in Bondoc Peninsula and also in the aspects of conflict transformation.

Who is responsible?

In the following I will have a look at the behaviour of the public prosecution and courts responsible in Bondoc Peninsula as an exemplary case for the situation in the Philippines. The prosecutor generally opens proceedings in all cases of qualified theft, estafa, trespassing, murder, attempted murder, libel, grave coercion, malicious mischief, etc.. It seems very unlikely that such things could happen so frequently. Especially when the persons who have several cases are the ones most relevant for the struggle for land. Usually they are leaders. So obviously there is a connection be-

tween the number of criminal cases a person has and her or his activities within the struggle for land.

Another relevant question is where the trial takes place because the Philippines have special courts for agrarian related cases. The prosecution has to decide whether a case is agrarian related or a common criminal case. In Bondoc Peninsula nearly all cases are negotiated at the normal court and not at the special court for agrarian related cases even though the involved are landlords and tenants who fight for their land. So there is an agrarian related conflict in the area but nearly no agrarian related cases. It seems likely that there is some kind of alliance between the prosecution and the powerful local landlords.

Regarding the court it seems to be likewise. According to IPON the responsible judge generally does not doubt the prosecutor's decision. He hears a case at the normal court although it seems to be an agrarian related case. In addition IPON recognized that cases filed against HRD are executed usually faster than cases filed from HRD against landlords. These coherences harden the suspicion that filing cases against the KMBP farmers seems to be a strategy of local landlords in cooperation with the prosecution and the judge and not a coincidence. Accordingly IPON assumed that the HRD of KMBP are victims of strategical criminalisation with a very high impact. In addition to the socio-economical consequences the HRD do not have equal access to justice. Furthermore IPON assume that the KMBP farmers are criminalised because they fight for their right to own land.

HRD worldwide are criminalised and harassed very often and extremely hard.

"They have been the target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment and defamation, as well as restrictions on their freedoms of movement, expression, association and assembly. Defenders have been the victims of false accusations and unfair trial and conviction" (United Nations 2004: 10).

State authorities are the most common perpetrators of violations against HRD yet they are primary responsible for assuring their protection. Police and other security forces are the most visible but not the only perpetrators. Others are state authorities pushing HRD into administrative "illegality" to use this as the basis for arrest and conviction. It can be difficult to identify the perpetrator of acts committed against HRD, e.g. in cases of anonymous death threats. In these situations the concerned State authorities bear responsibility for investigating the acts committed. Respectively when non state actors commit acts against HRD and the state authorities bear responsibility as well. Those could be armed groups, transnational corporations or individuals and their actions can be both with and without state complicity.

Recognising the important and vulnerable role of HRD the United Nations understood that human rights defenders and their work needed a special protection. The declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms was adopted

by the United Nation's General Assembly resolution 53/144 in December 1998. In April 2000 the second step was taken, when the United Nations Commission on Human Rights asked the Secretary-General to appoint a special representative on human rights defenders to monitor and support the implementation of the declaration.

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PROCEEDINGS ON FAIR JURISDICTION IN RURAL AREAS IN THE PHILIPPINES



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Fair, impartial, independent and equal. Measures of an effective working judicial system. On Bondoc Peninsula these international standards seem to be far away. Like a local example shows.

„Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.“, respectively: „All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...].“

These are articles of the „Universal Declaration of Human Rights“ and the „International Covenant on Civil and Political Rights“, which were signed by the Republic of the Philippines in 1966. By signing these international human rights treaties the Philippines assume obligations and duties to respect, to protect and to fulfil human rights. The obligation to respect means that the state must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires the state to protect individuals and groups against human right violations. The obligation to fulfil means that the state must take positive action to facilitate the enjoyment of human rights. Through ratification of international human right treaties, the government undertakes to put in place domestic measures and legislation compatible with their treaty obligations and duties. This is the theoretic background, but, unfortunately, often domestic legal proceedings fail to address human rights abuses (Goodhart 2009). The above demonstrated international articles are concerned with so called „judicial human rights“. They deal with the standards of proceedings and the duty of a fair trial, an adequate duration of the process and an impartial judge handling the case. The articles want to make sure, that there is equality before the law and there are international comparable standards. On Bondoc Peninsula, these standards are not totally implemented yet.

This article looks into the guarantee of a fair and effective judicial system in a rural and poor part of the Philippines. The data is based on IPON observations since 2006 (see IPON 2007, 2008), interviews with human rights defenders (HRD), the entrusted judge, lawyers and Philippine non-governmental organizations.

One example of the lack of judicial human rights implementation is the conduct of the Municipal Trial Court (MTC) of San Francisco, Quezon Province. Because there is no autarkic local court in San Andres, cases from this municipality are also given to the MTC of San Francisco. There are two main problems concerning the work of the local Trial Court, specifically with the judge representing the court, accounted from a human rights perspective. The first problem is the risk of protraction of cases, respectively the long duration of the proceedings. The second problem is the unsecured fair trial. Both circumstances are part of the following examination.

It is a fact, that most of the proceedings at the MTC take an incredibly long time until a decision is made by the judge.

The long duration of the proceedings tend to result in psychological problems and economic disadvantages for the HRD concerned. Formally, there should be a hearing every month but in practice, due to the lack of availability of the plaintiff or the judge, hearings are regularly cancelled. The result is that some hearings are only conducted every two or three month and last often over a total period of three years or even longer, the maximum duration reported by IPON are twelve years. The proceedings are connected with financial expenses for the latter. They have to pay for the travel, the food and the legal expenses. The day a hearing take place, the accused is not able to work and earn money for the family. It is stated in the „International Covenant on Civil and Political Rights“ that there should be a decision „[...] without undue delay.“

Some cases handled by the MTC San Francisco, respectively by the judge, are ongoing since several years. Every two or three month the accused have

to appear at the court. In this manner they are kept on the go. In the end most of the accused farmers are cleared of any charges. An ongoing process for several years is alienating the farmers to apply, for example, for own land.

In 2005 the Agrarian Justice Foundation Inc., had to pay the bail for only one farmer of the province Quezon II. one year later, in 2006, the number rised up to 108 farmers (Interview Conrado S. Navarro). Since 1996 more than 300 farmers of the KMBP (Kilusang Magbubukid ng Bondoc Peninsula), the farmers organisation on Bondoc Peninsula, were arrested and had to pay a huge bail (Carranza 2007: 21). This circumstances, that are demoralizing the farmers and which are countenanced by the local judi-

ciary, may underline the assumption that the filed cases are more a systematic harassment by the local landowner than a real legal concern.

Fair jurisdiction is not only about the adequate duration of the process, there are some international standards concerning the term of fair trial, that are not satisfactorily implemented on the local level on Bondoc Peninsula, specifically within the municipalities the MTC San Francisco is entrusted with. IPON-members could observe the judge's conduct during several hearings. There were obvious violations of international juristic human rights standards within these hearings. Not all the accused could attend adequately. Some had to stand because of insufficient seats within the court, others even had to stand

outside at the corridor. The judge, representing the local state authority, was writing text messages during the interrogation of a witness and was smoking during the hearing, which is illegal, regarding the national law (RA9211).

Based on the IPON observations there is a risk to a no equality before the law. The judge did not take the accused seriously and even made fun of them. Efforts of the accused side to show connections between cases and the situation with big landowners had been blocked totally by the judge. Therefore you can say, that the observed hearings were not a fair trial according to national and international guidelines.

„[... next page]“



BRINGING JUSTICE TO THE GRASSROOTS

MOBILE COURT BUSES TRY TO IMPROVE THE UNSUSTAINABLE SITUATION OF THE JUDICIAL SYSTEM. A TRUE EFFORT OR A DROP IN A BUCKET?

Inspired from a Mobil Court System in Guatemala the Supreme Court of the Philippines created the project „Justice on Wheels“ in 2004 (more information: Supreme Court of the Philippines). The project was launched as part of a Judicial Reform Support Project, a countrywide World Bank-supported initiative. The Mobile Court is provided with a full personnel complement: a Presiding Judge, a Clerk of Court, a Prosecutor, a Public Attorney, a Court Stenographer, a Docket Clerk, a Process Server, a Driver, and a Security Guard.

Established as a means to bring justice closer to the province and the poor by providing a fast and free resolution of conflicts through conciliation, mediation or adjudication and to help depleting the country's jails and court dockets it was faced big challenges since the beginning. Overcrowded jails all over the country, a huge lack of resources – financially and labourly – and a hard access to justice for the poor, especially in the province. The long delay in the resolution of cases is due principally to the large number of vacancies in the judiciary, the laziness of some judges and the dilatory tactics of lawyers. Pending court cases, as of 2006, totaled 800,000 (Asian Human Rights Commission 2008b). The regional trial courts had the biggest backlog of 353,026 cases. A lot of the detained inside the Philippine jails are persons charged with crimes that give them the right to be temporarily released on bail while the cases against them are still being heard in court. But because of poverty, they often cannot post the necessary bail and obtain their freedom while their guilt has not yet been proven beyond reasonable doubt. Four Mobile Courts rolled out since 2004. Related to the mentioned circumstances a really small contribution. Sure, „Justice on Wheels“ is a effort to improve this unsustainable situation, but even if Mobile Courts resolve cases, it can neither be an alternative nor a replacement to what should be an effective, competent and an independent judiciary. If the regular courts were functioning efficiently, there would have been no need for buses converted into mobile courts. More (impartial) judges, more prosecutors, more public attorneys, more money for the judiciary and – what is the most important – more justified trust in the judicial system is needed.

There are voices of the local farmers saying that the judge is being paid by the landowners to act in their favor, which is definitely hard to proof. The accused, the local HRD and IPON, after observing several hearings, are afraid that the MTC San Francisco is neither independent nor impartial. Sometimes "day-time judges in the local courts worked in the evenings as lawyers for landlord families" (Putzel 1992: 162, 204).

Until now, there is no effort to investigate in this direction by the superior authority. This would encourage the credibility of the state institutes.

This conduct of the MTC San Francisco and the concerned judge must be seen within the whole situation on Bondoc Peninsula. The criminalization respectively the harassment against HRD are not actively enforced by the state actors, nevertheless they are playing an important role by countenancing or not avoiding the human rights violations on their entrusted level. The landlords, trying to stop the land reform process, obtain injunctions at the local courts to block the redistribution (GTZ 2006: 70).

There is a lack of resources within the Philippine Judiciary (Asian Human Rights Commission 2008a). There is only one judge on Bondoc Peninsula responsible for nine MTCs (Franco 2005: 23). Thousands of accused are waiting in jail for the starting of their processes. But there is not enough money and there is a lack of human resources. Therefore the Supreme Court created "Justice on Wheels", a kind of rolling trial courts, specifically to support the provincial judiciary

and to improve the accessibility to justice by the poor. But even with this lack of resources - financially and labourly - the local Trial Court of San Francisco nor San Andres has an excuse of tolerating human rights abuses, neither an excuse of not avoiding them. They have to respect, protect and fulfil human rights, just like it is stated in the signed treaties.

IPON observation and local voices showed a faulty functioning within the local judiciary. The Philippine state assumed obligations and duties to respect, protect and fulfil human rights. This includes judicial human rights like a fair and independent process. In the rural area the access to justice for the HRD is hard and expensive. The criminalization of them and elite structures of the local authorities lead to an unsustainable human rights situation. The big landowners abuse the judicial system to maintain their own territory of law - "the hacienda law" (see Hoffmann 2007:13), without being bared by the local authorities.

And even with efforts like the "Justice on Wheels" project there is no real improvement of the judicial system - especially in the province. Maybe the EU financed "Access to justice for the poor" reform program, will create a way to reform effectively the paralysed judicial sector. It will be a task for the international community to look of the development how the judiciary structure deal with the situation of human rights defenders in the Philippines.

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IPON AND THE INSTRUMENT OF HUMAN RIGHTS OBSERVATION

The International Peace Observers Network (IPON) is a German independent non-intervening and non-profit organization which aims for improving the human rights situation in the Philippines by sending observers to conflict areas.

The Instrument of human rights observation is based on the idea that, if a country has ratified the UN "Universal Declaration of Human Rights" (and/or other relevant international declarations on human rights), it is therefore responsible to enhance, respect, and implement human rights. If a country does not follow these responsibilities independent international observers will document these violations of human rights and bring it to public attention. IPON follows this legalistic approach to human rights. Since 2006 IPON accompanies organizations of human rights defenders (HRD) in the Philippines, starting with the request of the farmers organization KMBP (Kilusang Magbubukid ng Bondoc Peninsula) in Bondoc Peninsula, Quezon Province. Since 2008 IPON observers are present in

Negros Occidental accompanying the HRD of TFM (Task Force Mapalad). IPON will not intervene in any internal conflict and will not interfere in the strategies of the accompanied HRD. The organization will only go into a conflict area after a request from a human rights defender organization and after preliminary studies which include an examination whether the instrument of human rights observation is suitable for the present situation.

The work of IPON is based on four pillars:

Presence: The IPON observers will be present at the side of HRD who are exposed to human rights violations because of their work. Their presence is supposed to prevent assaults and enable the unhindered work of the HRD. The presence of international observers is believed to rise the inhibition threshold for encroachments.

Accompanying: HRD are accompanied to different ventures like political actions, meetings with governmental institutions, or conferences. In some cases individuals who are especially endangered get company by IPON members.

Observation: It can be difficult to get unfiltered information from conflict areas. The possibility to document events in situation makes the reports of the IPON observers very valuable. The documentations always take place in regard of human rights. Because of the legalistic approach the role of the state actors is essential in the critical analysis of the human rights situation.

Informing action: The information that has been gathered directly in the conflict area and has been analyzed by the observers are brought to the attention of an international public. IPON is in touch with different institutions of the Philippine state and points out their responsibility of implementing human rights. In Germany the reports are handed over to the public. They serve as a basis for the work of organizations, pressure groups and politicians. This way the international pressure on the Philippines to guarantee human rights rises. IPON is convinced that the publication of human rights violations will finally lead to their decrease and prevention.



Partnergroups in the Philippines:

KMBP	(Kilusang Magbubukid ng Bondoc Peninsula)
TFM	(Task Force Mapalad)
QUARDDS	(Quezon Association for Rural Development and Democratization Services)



AIMS AND SCOPE

OBSERVER: offers a forum for analysis, strategies and debates regarding human rights observation in the Philippines with a focus on human rights defenders. How does the implementation of the UN Human Rights Charter is performed by Philippine Institutions? Which are the elemental dangers human rights defenders in the Philippines are exposed to? These are some of the possible topics. Comparisons with other countries will expand the handling and perspectives of human rights observation. Each publication has its own thematic emphasis. Guest articles from different disciplines and organisations are welcome.

