

OBSERVER

A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES

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POLITICAL CHANGES IN THE PHILIPPINES - CHANGES IN HUMAN RIGHTS?

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IN THE PHILIPPINES

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EDITORIAL

After the election victory of Benigno Aquino, who had been supported by the “yellow army”, the new president appointed his “rainbow cabinet”. At that time, little attention was paid to the human rights policy of extrajudicial killings (EJK) and enforced disappearances (ED). During the presidency of Arroyo, human rights were treated with contempt, and EJK and ED increased tremendously, comparable to the (terror) regime of dictator Marcos. During the election campaign, the new president Aquino promised substantial improvements in the respect of human rights, and announced that he would follow in his mother’s footsteps, who had brought the dictatorship, a dark chapter for human rights, to an end. One year in office, the president now has to prove that his actions are according to the promises made. Is he really willing to put an end to the horrible time of Arroyo? Resuming peace negotiations with the communist guerrilla, and replacing the “counter-insurgency programme” with a new programme more peaceful in wording, is simply not enough. More serious steps are necessary to improve the judicial system: How will he prevent criminalisation of human rights defenders (HRDs) (cf. Observer vol. 1 no. 1) and impunity? Will there be any repercussions for Jovito Palparan, general under Arroyo, and will his alleged EJK and ED ever be addressed with a lawsuit? How will the Aquino administration ensure that human rights are complied with throughout all state institutions at all administrative levels – particularly within the police, military and the judicial system?

This volume will illustrate the change of power to a newly elected national administration and reflect on political changes in human rights at the macro as well as the micro-level. In the introductory article,



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the authors address human rights injustices on the national level. The German Federal Government Commissioner for Human Rights Markus Löning states his impressions of the judicial system when he visited the Philippines early this year. The subsequent article discusses the condition of the judicial system with an emphasis on impunity. It avails itself of an example of an actual murder case of a representative of the civil society. The German Friedrich Naumann Foundation compares the Aquino administration with its previous government. Within the Philippine domestic security policy, the nonviolent peace force for the peace process in Mindanao will be discussed. The following three articles specialise on the micro level, namely, the specific shortcomings of the protection

programme for witnesses and their family members to avoid EJK. Not only the local needs and concerns with regards to the new presidency will be expressed and elaborated in an interview with a HRD, but also the hopes for improving the human rights situation. The basis of this will be the constructive interaction of national, regional and local authorities as a means to solve human rights related problems of local HRD groups in Negros Oriental in conflict with recalcitrant landowners. Carranza presents the expectations and possibilities of a truth commission, as an important tool to rehabilitate the human rights violations under the Arroyo regime. To enhance this volume, the article by Hammann highlights the election pledges of the presidential candidates for human rights during the previous election campaign. In the next issue one particular aspect of criminalisation of HRD will be discussed – the so called red-baiting – that is constantly committed by state authorities. ■



CALL FOR ARTICLES

Call for articles until the 15th October 2011 (editorial deadline). Welcome are articles with a systematic analysis on the national and local level.

POLITICAL CHANGES – CHANGES IN HUMAN RIGHTS POLICIES? A RECORD



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In May 2010 “Noynoy” Aquino III succeeded Gloria Macapagal Arroyo (GMA) as President of the Republic of the Philippines. He is the son of Benigno “Ninoy” Aquino, who was the leading figure of the opposition against Marcos and was killed in August 1983, and Corazon Aquino, who was the first democratic president (1986–1992) after Marcos. His highly esteemed parents made him a beacon of hope for changes in contemporary Philippine constitutional legality. What has he achieved, one year after being elected? To answer this question, Philippine constitutionality, its legislative framework and actors therein have to be analysed. The measures undertaken by the new Aquino administration have to be carved out and be questioned for their effect on the oppressive climate of impunity in the country.

In 2008, when still chairing the Senate Committee on Local Government and being the vice-chairperson of the Committee on Justice and Human Rights, Senator Benigno S. “Noynoy” Aquino III presented a bill in the 14th Congress addressing the ‘Superior Responsibility Act of 2008’. He announced that “there are quarters in our political system that succumb to the temptation of using their power and in the process undermine the system of justice and accountability just to remain in power and position. It has also been observed lately that many killings and disappearances of human rights activists and members of the media are still unsolved up to this time and allegations of military and police involvement in the crimes are being pointed out by many victims and witnesses.” He therefore calls for action “to prevent any possibility of a state turning against its own citizens by abusing its power using violence, intimidation and impunity” (Philippine Senate 2008).

Aquino's period in office by now has last for one year and Philippine Civil Society as well as the international community starts itemizing the political situation looking for legal and political changes which potentially took place.

“You had a knack regarding the choice of your parents”, Nelson Mandela allegedly said once to Noynoy Aquino. It remains to be seen if his knack regarding the advancement of righteousness will meet the implicit hopes.

Legislative framework – the gap between ratification and implementation

Taking the international level, the Philippines set a good example regarding the number of

signed and ratified human rights mechanisms. On paper, the country illustrates democracy – but what reveals a critical look behind? International Non-Governmental Organisations as well as the relevant UN Committees attest defaults and even violations of international human rights obligations. This has to be seen as the result of a missing implementation of international standards into national legislative power.

One turning point in the claims of national and international human rights organisations is the signing of the Rome Statute. The treaty of the International Criminal Court (ICC) is seen as a basic approach towards a solution of continuity of existing impunity. President Aquino signed the treaty on March 8th 2011 during a visit of the president of the ICC, Sang-Hyun Son, and passed it on to the senate. The ratification shall be concluded by the chair of the Senate Committee on Foreign Relations, Loren Legarda, in June 2011. But besides ratification, the Philippine Government is also under obligation to review national law to ensure that commitments coming up by the Rome Statute can be fulfilled.

During his election campaign, Aquino only made two promises regarding an advancement of the human rights situation. First he announced the abolishment of the executive order 546 (EO 546) and second he avowed for a holistic reform of the judicial system. But already by now, he refrained from his first announcement arguing that it would be behind the time and even counterproductive to change the possibilities the EO 546 offers. The EO 546 implies a legalisation of private armed forces. The order – released in 2006 by GMA – has an uncontrollable outcome

that could be seen in the Maguindanao Massacre on November 23rd 2009. The fact that the force levels of the Armed Forces of the Philippines (AFP) is one of the smallest worldwide still does not justify to rely on the current 50,000 civil security forces – especially if control and neutrality cannot be secured.

To ensure controllable administration of justice the judicial system needs to be reformed. But even though promised, the national budget therefore was cut from 27.1 million Pesos to 14.3 million Pesos for 2011. It is a controversial point how a comprehensive reform can take place under this condition.

In December 2009 two bills have been signed on national level: the Anti Torture Bill as well as the Crimes against International Humanitarian Law, Genocide and Other Crimes against Humanity Act (Republic Act 9851). The latter defines war crime as a punishable offense based on international standards. But both bills will symbolize only good will instead of real change if their realization does not turn into reality. It took more than a year to draft the Implementing Rules and Regulations (IRR) of the Anti Torture Bill. And still, after becoming law, striking weak points label the fruition of this new law.

Regarding legislative realization, the catch lies in the societal sustaining pillars – the executive entities.

The human rights politics of Malacanang, headquarter of Philippine state power, leave a lot to be desired, seen that the 16 point agenda of the president does not in one point face human rights violations. 23 priority bills have been admeasured by Aquino and only two of them refer to human rights. The Witness Protection, Security and Benefit Program (WPSB) shall be invigorated and a bill for ensuring security and support for 'Whistle-Blowers', witnesses of revelation shall be passed.

The existence of witnesses supply a much more solid state of evidence and would ensure a reduction of

delaying processes. The protection and strengthening of witnesses potentially brings about faith in state institutions and encourages insisting in ones legal claim. In average, a penal procedure regarding extrajudicial killings (EJK) takes about five years, two months and eleven days to pass all instances. Beside abundance of patience and a lot of staying power, there are much financial resources needed to face such a procedure. In addition, fear of potential loss of life, family insecurity and an outcome without legal cause increase the risk of human rights defenders (HRDs) to retreat from insisting.

Justitia and her stooges

To come to one's right in the Philippines heavily depends on having the appropriate resources. Money, Relations, Power – three variables push the given right to effectiveness and needless to say that violations denying democracy as well as violating human rights go ahead with that said.

Neither the Philippine National Police (PNP) nor the prosecution have a reputation of neutrality. On the contrary, the Philippine Commission on Human Rights (CHR) announced that between 2005 and July 2009 2,408 accusations had been counted against policemen concerning human rights violations. 90% of all arrests go ahead with human rights violations and an exploitation of power can be ascribed to most policemen and -women on duty. Actions to be undertaken are planned as for example the strengthening of human rights offices in all PNP stations, together with corresponding trainings and equipment of a manual for human rights based conducts. Further campaigns for strengthening the trustworthiness of the PNP image are supposed to restore the faith in the National Police. But beside knowledge about human rights standards, there is a need of knowledge in the form of standardised know-how

of adequate investigation techniques as proper forensics, security of witnesses and drafting reports for securing standardized neutrality.

National regulations leading to an end of impunity, clientelism and criminalization can only be established if execution reaches the local level. As long as accusations do not get to the point of judicial treatment because of corruption or intimidation, there is no functioning state of law but rather a network of personalized jurisdiction. Judges defying local clientelism structures and relying on the principle of incorruptibility have to fear for their own security. Since 1999 more than 20 judges have been killed in the Philippines.

Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, estimated the total amount of extrajudicial executions from 2002 – 2008 between 100 and 800 (Alston 2008: 2) depending on who is counting and how. This already outlines the gap of effective control and the loopholes provided by it for those who have powerful resources. Affected by EJKs are civil society leaders, HRDs, trade unionists, journalists, local politicians and land reform advocates – those who claim abidance by the laws and implement standards of democratic statehood.

EJKs label killings due to political affiliation of the victims where the motive for the killing is to gain a political advantage by silencing the opposition. EJKs also contain enforced disappearances and abductions and therewith create space for a huge potential of human rights violations (Parreño 2010: 39, 40). Karapatan scrutinizes advertised changes and cast doubt about Noynoy Aquino's will and capability to act. In its Year End Report Karapatan counts 20 victims of EJK, two victims of enforced disappearance, 16 of torture, 23 of arbitrary arrest and detention and almost 900 who had to leave their houses and land due

to forced evictions because of militarization in the countryside. The numbers are in summary indiscriminate regarding the number of victims under GMA (Karapatan Online: 2010).

Three requirements have to be fulfilled to prosecute a killing: namely to prove that a person was killed, that the accused killed the victim and that the killing was bound by premeditation. All three remain difficult in a climate of personalized jurisdiction and all three require for witnesses to provide positive identification either of the killed person, the perpetrator, the relation towards the accused or the circumstances of murder. But the availability of witnesses who agree on cooperation is poor and their reason to fear well-grounded. Most of them get death threats (Parreño 2010: 44). Therefore the reformation of the witness program towards more legal influence in prosecution on local level should remain one of the chief to-do-points.

Noynoy Aquino was 23 years old the time his father was killed. He personally faced the fact of political, extrajudicial killing and conducted his candidature with promises about changes and justice. He appointed Leila de Lila, former head of office of the Commission on Human Rights as Justice Secretary and therewith pointed the way towards fulfilment of his pledges. This was about one year ago. By now, critics raise and impeach the missing reforms and the lack of political will to resolve previous and current cases of EJKs and to bring the perpetrators and possible influential masterminds to justice.

Between disenchantment and cautious optimism

But there have been some positive signs. Aquino restarted the shelved Peace Talks between the National Democratic Front and the Moro Islamic Liberation Front. Referring to Philip Alston, internal conflicts and especially corresponding counterinsurgency strategies are the main causes for EJKs. Until January 2011 a strongly criticized program, Oplan Bantay Laya II ('Operation for Liberation'), had been in force. Its main targets were civil society actors comprising HRDs, who were listed in the so called 'Order of Battle'. Since January 2011, a new order, the 'Operation of Collective Effort', Oplan Bayanihan or 'Internal Peace and Security

Plan' (ISP) came into force. According to the AFP itself the recognition of human rights standards is inherent in this new counterinsurgency plan. However, critical voices doubt that the new internal security plan will improve the human rights situation in the country.

The biggest doubt regarding 'Oplan Bayanihan' stems from the refusal of the AFP to take responsibility for previous human rights violations. There has been no remorse, not even acknowledgement of these abuses. Renato Reyes Jr., from the leftist group Bayan, also claimed that the new ISP was inspired by the latest US Counter-Insurgency (COIN) guide. "'Oplan Bayanihan' appears aimed at sugar-coating the same counter-insurgency thrusts of the AFP. They say they are adopting a people-centered approach, but it seems the ultimate objective is still to control the population right down to the communities," Reyes added. (Philippine STAR 2010).

Of course President Aquino should not be condemned too hasty. Underlying structures of political violence are entrenched deeply in the country's society and changes could not take place from now to then. But still: The real benchmark for an estimation of sustainable reforms on the judicial level as well as the security sector will be the number of cases filed in court and the conviction of the perpetrators as well as of the powerful wirepullers of extrajudicial killings and other cruel human rights violations. No new law or any other written institutional reform could be considered successful as long as the measures undertaken do not positively affect and secure the human rights of the people on the ground. ■

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KEEPING UP THE MOMENTUM: HUMAN RIGHTS POLICY IN THE PHILIPPINES

One of my key experiences in my time as Germany's human rights commissioner is that change can never come from the outside. You cannot change the situation of human rights in a country without the people that are concerned by these changes – in other words changes have to come from within a country. A good and maybe successful human rights policy means to support those efforts made by countries in question both politically and technically.

From my perspective, the development that took place in the Philippines in the last year is a good example. When President Aquino came into office in Juli 2010, it was clear that things were about to change: being the son of Cory and Ninoy Aquino and having experienced personally what dictatorship and repression means, expectations were high that he would change the human rights situation in the country.

Since then, the picture is mixed: When I was in Manila in January, the essence of nearly all the political talks I had was that significant changes were taking place and important steps were being made. The former President of the Human Rights Commission Leila de Lima was appointed Minister of Justice. Another important point to mention is that human rights education takes place in the Armed Forces. Human Rights Commissioners were installed in the army and the National Police, human rights desks were founded in every police station in the whole country. The Philippines were one of the first countries in the region to become member of the Rome Statute and thus the International Criminal Court. More than ever the Philippines see themselves as a human rights champion in the region, taking up responsibility also within the ASEAN framework.

On the other hand, human rights activists underlined that President Aquino's efforts did not quite meet their expectations. The ratification of the Rome Statute is still lacking, so does the ratification of the Optional Protocol of the Convention against Torture (OPCAT). The fact that President Aquino told his ambassador not to take part in the Nobel Peace Prize award last December was a deception for all that

work for human rights in the Philippines. It was also a roll back in the Philippine's role in the international arena.

One of the key indicators of the human rights efforts the Aquino administration makes is the fight against impunity in the field of extrajudicial killings. An important number (probably more than 1,000) of journalists and political activists have been killed during the last decade(s). Until today only a few of the perpetrators have been officially charged, in only one of the cases the accused was convicted. Still, it is especially frustrating for many human rights activists to see the involvement of armed forces in those crimes and them not being taken to justice at all. This remains one of the main tasks of the present administration as it also goes to the very heart of the Philippine society: in many regions the fight against terrorist groups is still not over, and the armed forces see themselves as being both: the guarantor of Philippine national integrity and freedom. To fight impunity one thing is key: an independent but at the same time powerful system that brings perpetrators to court. Apart from the judges, two institution are involved in this fight: the prosecutor's offices but also (of course) the national police. It is about gathering information, interrogating witnesses and being able to take measures even against those who might have plenty of power at first sight. In order to support Philippine authorities in their struggle for justice, the EU established the EU-Philippines Justice Support Programme (EPJUST), which was led by the German Chief Public Prosecutor Detlef Mehlis and which brought together people working on the ground from both

sides: prosecutors as well as policemen and forensic doctors.

One of the aims of my trip to the Philippines was to continue on this successful path. Unfortunately, the EU is not able to sponsor this programme any longer, but parts of it are replaced by some EU member states, amongst them Germany.

Is it worth it? Will this programme or will the visit of a Human Rights Commissioner really change the life of the people on the ground?

The answer is: honestly, I don't know. But: there is hope, and the Philippine Government officially asked Germany to help prolonging the programme. They seem to feel committed to the improvement of the situation of their people – which we certainly cannot take for granted on the international level. This is a situation where the political will to change the situation for better comes from within the country. And we should support them in their efforts and help them keeping up the dynamics that still exist. ■



Markus Löning

1960 (Meppen/Germany), Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Federal Foreign Office in Berlin. Studied at Heidelberg University and University of Kent at Canterbury. In 1989 he joined the German Liberal Party (FDP). Member of Parliament from 2002 to 2009. From 2005 up to 2007 he was elected President of the German Group of Liberal International (DGLI), followed by the Vice-Presidency of the European Liberal Democrats (ELDR). In April 2010 he was appointed to his current position.

TOWARDS ENDING IMPUNITY IN THE PHILIPPINES: THE ROLE OF CIVIC ACTION & JUDICIAL PROCESSES



Randy Lim

For security reasons the authors' real name cannot be published, his identity must remain confidential.

Focusing particularly on extrajudicial killings, the article aims at adding explanation to the socio-economic and political rationale behind excessive human rights violations and the role of the military therein. It highlights the contribution of civic action to the, in terms of prosecution, advanced stage of the Bayles murder case (EJK), and furthermore, discusses power structure distortions that limit the reach of the judicial system.

During the last decade, a spate of extrajudicial killings (EJKs) and enforced disappearances (EDs) has shaken Philippine civic society. The masterminds of the same crimes and several other forms of massive human rights (HR) violations are particularly zeroing in on civic structures and groups, and their key leaders. At the same time, the victims and groups are publicly portrayed and denounced by military and military-controlled circles as communist fronts or are otherwise directly or vaguely accused of maintaining links to, or associating with the armed underground movement. Large segments of Philippine society are ideologically available to this victim blaming.

Both national and international experts conclusively are pointing to military circles as the culprits and/or backers in EJK and ED cases. However, the military yet is in complete denial of any involvement.

Rule of law not toothless

Viewed from the general perspective of the judicial system, isolated incidents of HR violations do not necessarily threaten a society. The rule of law principle provides ample defense mechanisms and instruments for dealing even with such crimes. In the Philippine setting, however, something seems to go badly wrong on the very level of state response.

We want to take a look at underlying structures in order to find an understanding. HR violations per se are not at the core of the matter. The true problem rather is the twin issue of massive HR violations alongside systemic impunity. Questions revolving around the potential impact of the judicial system towards simultaneously solving this twin problem necessarily need to identify and review possible factors contributing to systemic structural distortions.

Structural distortions

It is helpful to consider two additional contextual backgrounds:

1. In the Philippines, different forms of violence are

endemic instruments of (abusing) power. On the one hand, violence is employed horizontally in power contests with an almost folkloristic intonation along intra-elite conflict lines. The assassination of former Senator Benigno Aquino, Jr. back in 1983 and the 2009 Maguindanao massacre are spectacular examples for this type of violence. On the other hand, violence is used in a top-down manner with the main impact of fusing exclusive elite access to political office and resources.

2. Violence is not the only benchmark for unconstitutional misuse of power in Philippine politics. Graft, corruption and plunder are systemic and round out the picture of a political elite that is basically driven by uninhibited greed. Public office is an accepted gateway to wealth and enrichment.

EJKs and EDs are unconstitutional acts and punishable crimes under the Penal Code. The same holds for graft, corruption and plunder, as well as for resorting to non-legitimate force and violence as means towards political and economic ends which, more often than not, are congruent.

Violence & militarization towards economic ends

In the Philippines, rural poor are denied police protection vis-à-vis warlord assaults. Likewise, numerous cases are documented where military force is being unlawfully applied and aligned towards personal, clan and/or corporate interests under the cloak of counterinsurgency. Such incidents are embedded in an ongoing militarization process that practically is suspending democratic rights and civic procedures. Two distinct patterns are visible.

Firstly, the military intrudes and aims at controlling social and political structures especially in those communities where civic self-sustaining organizations are emerging or are already comparatively strong. Furthermore, it is particularly noticeable that military intrusion and warlords' mischief typically occur when target communities succeeded or are about to succeed in gaining land access through the government's agrarian reform program. Militarization is further

pronounced during election campaigns. Thus, the overall picture resembles both the politicization of the military and, moreover, the instrumentalization of the Armed Forces towards particular political and/or economic group interest. This is unconstitutional altogether.

Secondly, mining sites and areas covered by mining applications emerge to be militarization hot spots with the Armed Forces of the Philippines seen as practically taking over mining plant security functions. About one-third of Negros' rural population is directly affected by mining activities in different project stages. On the ground, communities experience a lack of participation and involvement in democratic decision-making processes. This neglect is conjuring up resistance. Experts in development studies are in accord with the World Bank when suggesting generally not to pursue mining projects in conflict-ridden areas.

Populations within areas that are opened to large scale plantation projects dedicated, for example, to bio fuel production are experiencing similar pressure and violations of their rights – including EJKs.

Philippine judicial system aims at ending impunity

Actually, the Philippine Constitution is unambiguous regarding HR and the Philippine judiciary is not short of sharp legal concepts in order to impose sanctions on infringements of whatever law or HR standard. Aiming at ending impunity, the Writ of Amparo, as well as Habeas Data, was introduced to the Philippine judicial system under the office of former Supreme Court Chief Justice Reynato Puno in 2007. The same legal means were modeled with the intention of providing adjuvant remedies particularly with respect to solving the twin problem of EJKs and EDs, on the one hand, and impunity, on the other hand. In fact, several courts meanwhile had issued Writs of Amparo. Following a PDG-initiated petition¹, the Regional Trial Court, Branch LXI, Kabankalan

City in September 2008, for example, issued a Writ of Amparo and consequently forced the military to set free two women, who had been abducted in the hinterland of Sipalay City and held captive without legal grounds. They had been tortured. It is noteworthy that the military accompanied this legal act with a choreographed smear campaign against Atty. Benjamin T. Ramos, Jr., legal counsel of the victims, Fred Caña of KARAPATAN-Negros and other HR advocates.

The introduction of the aforementioned remedies shows that the judicial system aims at solving the yet sorry HR situation in the Philippines. Nevertheless, there still is the sad fact that not a single EJK case had been solved so far. Also, graft and corruption cases, as well as the problem of violence as explicit means in Philippine power contests, yet wait for appropriate legal attention.

Ongoing impunity not a problem of lack of judicial capacity

It may expand explanation if the aforementioned constraints are not viewed isolated but rather taken into consideration together. So far, efforts towards stopping EJKs and ending impunity, such as the establishment of the EU-Philippines Justice Support Programme (EPJUST), focus on the parties involved in the judicial process. This includes law enforcement and investigative agencies. Particularly in the Benjamin Bayles



© PDG | Fact finding team listening to militarization victims in Himamaylan mountains.

murder (EJK) case, EPJUST had a crucial role in increasing the visibility of the case in the Philippines and internationally. EPJUST's work critically contributed to increasing the

safety of key persons who had been put under aggressive military surveillance or are receiving case-related threats on their lives.

Analytically speaking, it is too short to break down EJKs to a series of criminal acts committed and/or masterminded by members of the Armed Forces and, in a second step, to approach the same problem by professional capacity building. EPJUST's mandate formally was narrowly focused precisely on this – i.e., capacity increasing with regards to judicial and investigative processes. In the Bayles case, however, considerable impact was felt on the ground when international pressure and fall-out effects of EPJUST's efforts influenced, or intervened in the power structure. This is the very impact level where the work of EPJUST was most valuable.

Civic concepts fundamentally distorted

The country's true power centers are aligned along kinship links. Families, clans and shifting alliances of clans dominate this system and maintain a solid network of nepotism with regional strongholds. Being the key source for personal enrichment, political office is passed on within families. Even presidential tickets are no exemption as they are discussed under the same family perspectives, too.

On two levels, this unconstitutional configuration distorts the civic concept of separation of powers: 1) The police formally is put under the command of city and municipal governments. Given the role of the traditional landed gentry and their practical claim on dominating regional and national politics at their own discretion, this structurally opens the possibility of aligning law enforcement along individual and group interests. Thus, both investigations and employment of police force are performed selectively. 2) Moreover, the Philippine Army developed an organizational life of its own and aligns military operations along the interests of local political elites and/or business entities such as mining corporations.

1) PDG or „Paghida-et sa Kauswagan“ Development Group, Inc. is a rural development NGO founded in 1987 and located in Kabankalan City, Negros Occidental.

Diverted loyalty

Hence, civic groups have to deal with government bodies characterized by diverted professional and organizational loyalty. This is the institutional breeding ground for impunity. On the one hand, we do have the element of fear. Witnesses tend of not stepping forward because of sheer fear for their lives. For the same reason, government employees may abandon standards of professional ethics. On the other hand, it is not really rare to mistake EJKs as (legitimate) acts in the wake of counterinsurgency. In fact, large segments of Philippine society show a deranged perception with regards to civic exercise of democratic rights.

HR violations counter civic aspirations: Bayles murder case (EJK)

In and off government bodies, we observe pronounced tendencies of mistaking lawful and constitutional claims on resources, and towards democratic inclusion and participation in decision-making processes as subversive aspirations. In Negros, the same legitimate claims of course are touching economic interests of mining corporations, plantation industry entities, and, last but not the least, the very power base of the political elite. Vocally fighting against forced evictions, militarization and HR violations, Benjamin Bayles was vilified by the military. He was marked and eventually killed in an incident that is typical of EJKs in the Philippines. However, his case is unique in the sense that usual cover-up and whitewash mechanisms failed. Literally carrying their smoking guns, the suspected perpetrators had been caught by the police less than an hour after the killing. They were riding on board the motorcycle seen in the incident and, initially introduced themselves as members of the Philippine Army to the arresting policemen. An eyewitness of the killing positively identified them as the two hitmen in the Bayles killing.

The role of civic formations

From the very beginning, civic groups raised concerns that evidences may be manipulated, leads may not be followed, and that the lives of witnesses and other key persons involved in the case may be at stake. Thus, the strategy towards justice for Bayles relies on three pillars.

1. Legal Work: That includes counseling of the victim's family, developing a legal strategy and integrating and coordinating it with major HR advocacy networks on the national and international level, and gaining

private prosecutor status.

2. People-led Civic Society Support: That includes witness protection measures and extensive investigative work.

3. Information Campaign: That includes bringing the Bayles case to the attention of the general public, HR advocacy groups, and national and international decision makers in order to raise support of those government structures in the Philippines that adhere to, and work towards the restoration of, the principle of the rule of law, respectively.

Centrally organized and coordinated by Negros civic groups and networks, this three-pillar strategy



© PDG | Ronald Caponia vocally advocates community interests vis-à-vis a large scale open pit mining project that threatens his hometown at the outskirts of Sipalay City. On February 23, 2010 he survived and EJK attempt.

contributed to the now advanced stage of the Bayles case in terms of prosecution. EJKs and other grave HR violations can be stopped only by ending impunity based on clean judicial processes. However, there are strong attempts of obstructing the due course of justice. On the other hand, state parties involved in the judicial process show a sort of inertia and reluctance to pull out all stops in order to solve the case. Thus, the team of prosecuting lawyers sees reasons for doubting the negative results of the ballistic examination and question the validity of the paraffin tests that had been conducted on the accused and returned negative results too.

Reluctance and inertia

Alarmed by the aforementioned developments and, furthermore, fearing ongoing military interference and threats on lives of key persons involved in the Bayles case, HR advocates brought these disturbing developments to the attention of, among others, Atty. Leila M. De Lima, Secretary of Justice, Cecilia R.V. Quisumbing, then OIC of the Commission on HR of the Philippines, and President Benigno C. Aquino, III. To no avail, the Secretary of Justice particularly was appealed

to tap both Philippine and foreign expertise pooled in the EPJUST towards a pro-active case-related counseling process in order to solve the Bayles case.

For the further judicial process, it became critically important to prove the military background of the accused. Although having themselves initially identified as members of the Philippine Army, the accused still give false names and professions. Based on information collected by PDG-network POs and confirmed through information leaking from military circles, the true identities of the accused, however, had been revealed and made public in an open letter signed by Bishop Ang. Cornered by Congressman Neri Colmenares of Bayan Muna Partylist Group in October 2010, the Department of Defense was forced to acknowledge the enlisted status of the accused.

Civic activists continue to receive death threats

The Bayles murder case could be the turning point in ending impunity. The success of the trial also depends on establishing in the courtroom both the military background of the accused and the military link of the killing. Army circles are aware of this and exert pressure. Several persons are receiving case-related death threats or are put under aggressive surveillance. Such scenarios typically are preceding an eventual EJK and, thus, must be taken most seriously.

Col. Edilberto L. Suratos, Adjutant General, Philippine Army General HQ, Fort Bonifacio, Taguig City; and Lt. Col. Ricardo B. Bayhon, 3rd ID, Jambindan, Capiz had been summoned by the court twice – to no avail so far. The fact that military personnel repeatedly neglect subpoenas nurtures the apprehension that the military is without political control and aims at continuously placing itself off judicial reach. At this point it becomes clear that the issues of EJKs and impunity cannot be solved solely on basis of judicial mechanisms and procedures. Political determination is required to end impunity. Due course of justice presumes the political will to enforce the lawful interplay of constitutional bodies.

President Aquino needs to restore nothing less than the primacy of political leadership and to end diverted loyalty on different levels of the military as well as law enforcement and investigative authorities.

Military seen in power struggle

Decidedly, solutions are well off the reach of capacity building. The military yet is strong and confident and, maybe, desperate enough of continuously threatening the lives of material witnesses and other key persons in the Bayles case. These are bold attempts of obstructing the course of justice. There is not much hope for the better if the state does not put itself into the position

constitutional bodies, and government departments and agencies.

At the Bottom Line: Civic Society

In the Philippines, professional ethics and constitutional/legal standards are much too easily abandoned and subjected to group interests. However, this does not reflect an anomic breakdown. The aforementioned perception of diverted loyalties is applicable from the constitutional perspective only. Embedded in power structures that are without constitutional mandate, public servants and state branches of power tend to align along the system rather than the constitution. And within this system, loyalties



© PDG | Landlord's goons seized land from small farmers in Himamaylan, Negros Occidental, September 2009.

of defending the lives and rights of the population on the ground. Not an option but a question of duty, constitutional bodies are required of lawfully claiming their due constitutional powers and, moreover, to enforce them. The key is not with the judicial system (alone) but, in the first place, with the president's office and, following the line of command, cabinet members, and departments and authorities that are involved in the judicial process.

Clearly, there is no alternative to justice – there is no solution that foregoes the rule of law. The problem of ongoing EJKs and continuing impunity also reflects a persisting power struggle within and across several

are not distorted! The logic and rationale of policy and decision-making processes in the Philippines are set against the background of power centers that root back to, and reflect, colonial structures. The Philippine legal, political and social systems did not evolve internally. Unlike in Europe, there was no history of civic emancipation that was carried and defended by the population. In the long run, the twin problem of grave HR violations and impunity needs to be addressed through strengthening of civic structures, which eventually could lead towards civic society formation. The notion of a fortified democracy may be a feasible goal but it is not yet to be defended in the Philippines. ■

AQUINO ADMINISTRATION'S HUMAN RIGHTS DIRECTION: TRAVERSING A STRAIGHT PATH?



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On May 2010, the Filipino people saw a brink of hope in the persona of Benigno Aquino III, who was elected President of the Republic of the Philippines, after 9 long years of the deeply-tainted Arroyo government. The heroic legacy of his parents, Ninoy Aquino Jr. and Corazon Aquino, earned him and his government the moral ascendancy that was lost and forgotten during the Arroyo administration.

Is the struggle still far from over?

Across administrations, there has been a conscious and conscientious effort to uphold and protect human rights in the country. The fact that the Philippines subscribed to eight core international treaties as early as 1967, is a testament of its determination to uphold and promote the rights of the Filipino people.

"Human rights has always become a focus of the past administrations post Martial law," says Mr. Nonoy Catura, Presidential Human Rights Committee Executive Director. "Understandably because the Philippines came from a dictatorial regime," he continues. Since 1988, Mr. Catura has been part of the Executive Branch's human rights arm. He has worked with past administrations, assessing and monitoring Philippine human rights situation on a continuing basis.

Last December 20, 2010 on the 62nd anniversary celebration of the Universal Declaration of Human Rights (UDHR), President Aquino declared in his speech how his administration tries to

reaffirm and uphold these treaties. "We are now making certain that our commitments to these treaties do not remain paper promises because for the first time in nearly a decade, we have a government that is indeed serious about human rights," the President announced.

"Now, we have a President who has experienced firsthand the horrors of human rights violations," says Catura. "Having witnessed how his family was put on the receiving end of it during the dark years of Martial Law, the President personally vowed that human rights violations in the country shall be effectively addressed by way of applying full strength and force of the law against the violators," he continues.

A review on the human rights situation under the Arroyo Administration

It has been said that the Aquino administration has inherited a gamut of human rights violations cases, either by commission or omission, from the previous administration. The audacious Maguindanao Massacre and the case of Morong 43¹ were just a couple of the high-profile human rights cases that happened and remained unresolved during the Arroyo Administration. Having been installed in the country's highest position through Filipino people's valiant exercise of their rights and freedom, President Gloria Arroyo appallingly failed to live up to the people's high expectation on the improvement of human rights situation in the country after ousting President Joseph Estrada for graft. Instead, according to various human rights reports, the

© INQUIRER.NET | Anti-Torture Law signed by CHR Chair Rosales and DOJ Secretary de Lima, December 2010.



1) The case of Morong 43 involved 43 health workers who were accused of being members of the New People's Army (NPA). On February 2010, they were illegally arrested and detained by the military, and were believed to have undergone physical and psychological trauma while in military custody. This was definitely a consequence of the aggressive counter-insurgency operations of the military under Arroyo Administration.

number of violations such as cases of extrajudicial killings, arbitrary arrest and detention, involuntary disappearance and torture grew higher and more intensely.

Task Force Detainees of the Philippines' (TFDP) explained that this unfortunate situation could be attributed to the "unanswered questions regarding the legitimacy of the rule of Mrs. Arroyo and her administration's strengthened campaign against insurgency." Throughout the leadership of Arroyo, conviction rates were low and the quality of the rule of law was very poor (Asian Development Bank 2009).

Philippine Alliance of Human Rights Advocate (PAHRA) described the underpinnings of President Arroyo's human rights direction as having "entrenched a culture of fear and impunity while campaigning against insurgencies and terrorism." The Anti-Terrorism law, Calibrated Pre-emptive Response (CPR), Executive Order 464 and Presidential Proclamation 1017 were some of the controversial directives by the former President which sprouted numerous protests from civil society and government officials. Not to mention her overall counter-insurgency policies which caused grave human rights violations in the country and further implanted the culture of terror and impunity among the operations of the military.

The passage of the Anti-terrorism Law was an assertion of support of the Arroyo Administration to United States' global war on terror under President George Bush's administration. In line with the Arroyo government's all out war on terror, the military instigated an offensive operation against the MILF, displacing about 400,000 civilians and causing trauma to many individuals and families. "Arroyo vowed to crush all terrorists in the country," TFDP straightforwardly said in its report.

The report further conveyed that, "The war against terrorism has resulted to outright violations of human rights and shortcuts in due process. It has led to further bias against and discrimination of Muslims."

Based on an extensive study in 2009 conducted by UN Special Rapporteur Philip Alston, it was found out that "security forces and government authorities have often failed to distinguish between peaceful activists and armed insurgents or terrorists, resulting in the vilification, unlawful arrest, detention, and killings or disappearances of human rights activists, union leaders, farmers and other individuals belonging to leftist organizations." These vulnerable groups were being classified as "fronts" of the leftists and then as "enemies of the State", that hastily become "legitimate targets" of the military. This practice has allowed or encouraged the extrajudicial killings of activists and other by state security forces and government-supported paramilitary units.

Aquino Administration's Human Rights Direction

"There was an atmosphere of hope," said PAHRA representative on the new administration under President Benigno Aquino III.

Anchored on the platform of the administration or more commonly known as the social contract with the Filipino people, President Aquino's pledge of good governance and elimination of corruption, "Kung walang corrupt, walang mahirap" ("If no one is corrupt, no one will be poor."), are considered "foundations of the strong culture of human rights in the country"².

According to PHRC's Executive Director, the human rights agenda of the Aquino

leadership "defines the State as duty-bearers and the Filipino people as claim holders, and shall be made to evolve through consensus-building."

CHR Chairperson Etta Rosales affirmed this by articulating, "human rights is at the center piece of the President's socio-political agenda." The President's people-centered platform steers the human rights policy direction of the administration that cut across all sectors and levels of governance, developing a rights-based approach to Philippine development. Human rights is now at the core of development efforts especially in the spheres of economy and governance, internal peace and security, law enforcement, military intelligence and education.

There was a change in the overall culture of governance - from a culture of fear, impunity and distrust that concealed the truth and tolerated extrajudicial acts - to a culture and atmosphere of hope, trust and confidence that protects and nurture the dignity of individuals.



© Yahoo! Philippines | President „Nonoy“ Aquino and his predecessor Gloria Macapagal Arroyo.

2) Interview with Mr. Marc Cebreros, Chief of Staff, Office of the Chairperson, Commission on Human Rights of the Philippines.

On the economy

Interwoven in all development efforts, the protection and promotion of human rights is integrated in economic planning. There is a paradigm shift on how economic development is perceived. Now with human rights face, the National Economic Development Authority (NEDA) adapts a human rights based approach to development policy and program formulation and implementation, as it came up with toolkit on a Human Rights Based Approach Development (HRBA), in collaboration with the CHR and United Nations Country Team. The CHR emphasizes that this toolkit will serve as a “guide for all development programming actors in ensuring that human rights standards and the Millennium Development Goals (MDGs) are translated into concrete programs in the national expenditure and investment plans.”

On military operations

“As a long-term solution to the killings, torture and disappearances that spiked in the previous administration, the President ordered careful efforts to achieve a paradigm shift from a militarist/hawkish approach to internal peace and security to one that is 90% political and only 10% military-oriented,” Chairperson Rosales explained.

Human rights advocates have been very critical about Arroyo government’s counter-insurgency plan known as Oplan Bantay Laya (Operation Guard Freedom), which had been linked to numerous extrajudicial killings. This strategy adapted by the previous government led to targeting and execution of unarmed activists or civilians connected with civil society organizations (GMA News 2011). The United Nations Special Rapporteur on extrajudicial killings Philip Alston had recommended the Arroyo administration to remove the counter-insurgency scheme that had precariously increased human rights violations in the country.

As a response to Alston’s recommendation, a series of workshops were conducted to develop a new military strategy that has a human rights dimension. Participated in by all stakeholders within and outside the defense establishment, including the CHR, Office of the Presidential

Adviser on Peace Process (OPAPP) and civil society/academe, the Department of Defense and the Armed Forces of the Philippines (AFP) came up with Oplan Bayanihan (Working Together) in lieu of the discredited Oplan Bantay Laya. Oplan Bayanihan is replete with references to human rights and the corresponding duties of the armed services under international human rights and humanitarian law. This actually drives home the point in the mindset of the soldiers that observance of human rights standards and principles is a legal obligation, and that human rights is not a leftist tool but part and parcel of the rule of law (Philippine Online Chronicles 2010).

This new counterinsurgency program essentially focuses on “building communities rather than hunting rebels”, by “focus[ing] on the needs of citizens and the effects of military operations on the communities rather than pursuing armed rebels,” commented President Aquino (Ibid.).

According to PHRC Exec. Dir. Catura, the current administration considers civil society as the backbone of human rights initiatives. “For instance, the human rights defenders such as PAHRA, Task Force Detainees and Alternative Law Groups partner with the government’s initiatives by acting as its conscience as they help reorient the military’s operational schemes,” he said.

The National Monitoring Mechanism

A significant development in human rights program of Aquino leadership is the Comprehensive Monitoring (CM). Chaired by the CHR, this monitoring mechanism “is an evolving system of determining government compliance with human rights treaties in the execution of executive, legislative, judicial and other government functions, systems and processes with the end in view of harmonizing them with the standards and principles of human rights and recommending appropriate measures and actions” (CHR 2011).

CM hopes to address the chronic problem of aging human rights cases filed in courts and quasi-judicial bodies. Periodic monitoring and provision of regular advisories to courts and quasi judicial agencies are done to ensure that acting on human rights cases are expedited.

Another role of CM is tracking State's compliance with human rights treaties. This monitoring involves checking of processes to ensure the presence of safeguards against the abuse of power in the discharge of duties and development of indicators that assess the human rights based projects' effectiveness.

Philippine Human Rights Action Plan

The mainstreaming of human rights in the plans and programs of government bodies is the main goal of the Philippine Human Rights Action Plan. The national HR plan is a product of collaborative effort by almost all government entities in the executive branch, with the support of the Commission on Human Rights, as well as in consultation with various non-government and civil society stakeholders throughout the country³.

This is where the concretization of the human rights dimension in the social contract of President Aquino with the Filipino people is clearly stipulated. "The President's human rights framework and mindset, including his initial issuances, directives and instructions to various agencies that bear on human rights promotion and protection, are articulated in this plan," PHRC Executive Director said.

"This is a treaty-driven plan," says Catura. "We identified the 8 core international treaties that the Philippine government subscribed to, and integrated the appropriate government sectors and

civil society organizations that will act as lead clusters in implementing and monitoring of the human rights programs."

The final National HR Plan of the Philippines will be reviewed by the president on the 3rd quarter of the year.

The struggle lives on

As the new plans and policy direction of human rights is laid upon the Aquino government's *daang matuwid* (straight path), one can only surmise how the planning to implementation gap can be lessened or better yet, be closed.

Released on May 13, Amnesty International's 2011 report on the state of the world's human rights stated that there was no significant improvement in the human rights situation under the Aquino Administration. Nearly a year in the post, President Aquino's human rights directives have yet to be actualized. Aurora Parong, AI Philippines Director pointed out that there "had been a 'disconnect,' noting that Mr. Aquino had made good pronouncements when it came to human rights issues but these had yet to be implemented" (Inquirer 2011).

The annual report identified at least 200 cases of enforced disappearances and 305 cases of extrajudicial killings in the last ten years were remained unresolved (Amnesty International 2011).

Among AI's recommendations included the pursuance of peace talks between the Philippine government and the armed rebels to put an end to killings

involving civilians, indigenous people and the military. In line with this is dismantling private armed troops who have been responsible for a number of human rights abuses. The organization also emphasized the need for President Aquino to include the protection of reproductive and sexual rights in its agenda.

Parong expressed the organization's appreciation on the new administration's fight against corruption; however, she emphasized the need of the government to be keener on human rights issues that have not been appropriately attended. Nevertheless, she also conceded that the Aquino administration "was only on its first year and still evolving" (Inquirer 2011).

Conclusion

The past administrations had their shares of good-in-paper human rights plans but had never been completely actualized and felt by the Filipino people. It is in the utmost hope of the Filipinos that the Aquino government will become more aggressive in responding to human rights problems in the country. But then again, the strength of the Aquino government is on the people. As what President Noynoy said, "Kayo ang aking lakas" (You are my strength). At the end of the day, it is truly a synergy between a willful government and a vigilant Filipino people that can uphold and improve the human rights situation in the country. ■

3) Interview with Mr. Severo Catura, Executive Director of Presidential Human rights Committee.

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CIVILIAN PROTECTION COMPONENT OF THE INTERNATIONAL MONITORING TEAM



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The Civilian Protection Component is globally unique as it embeds international and national nongovernmental actors in an actual peace process. As members of the Civilian Protection Component (CPC) of the Malaysian-led International Monitoring Team (IMT), all four member nongovernmental organizations are an integral part of the official peace structure tasked to ensure the safety and security of communities.

Three CPC members are local nongovernmental organizations¹. The other member is an international nongovernmental organization, Nonviolent Peaceforce (NP), which makes it unique.

Having had a sustained field presence in Mindanao since May 2007, NP secured recognition and acceptance from almost all of the stakeholders in the Mindanao peace processes because of its nonpartisanship. As such, it was invited by both the government and the Moro Islamic Liberation Front (MILF) Peace Panels in October 2009 to be the only international NGO of the CPC.

Abdulbasit R. Benito, Executive Director, Bangsamoro Center for JustPeace, a local organization operating in Mindanao said: "Due to their acceptance by the community, support of local civil society and engagement with the Armed Forces of the Philippines and all of the recognized armed groups at various levels, I believe that no organization is better suited to be the only international NGO in the CPC."

Civil society has played a prominent role in the CPC from the start. At the request of both the government and the MILF, NP produced the first draft of the CPC terms of reference. A unique feature of the final terms of reference is the Component will continue to perform its functions should the IMT cease to operate.

On May 5th 2010, in Kuala Lumpur, Malaysia, those efforts paid off with the official signing into effect of the CPC Terms of Reference. By doing so, both the government and the MILF on that day in Kuala Lumpur, effectively reaffirmed their commitments to protect civilians.

The objective of the CPC is to establish a functional system and effective mechanisms for monitoring, verifying and reporting of the compliance and non-compliance of the Parties to their commitments under international and national humanitarian laws and human rights

to take constant care to protect the civilian population and civilian properties against the dangers arising in armed conflict areas (CPC TOR Article IV).

Under International Humanitarian Law all noncombatants are protected from the dangers of armed conflict. Civilian property including schools, hospitals, mosques, and churches are also protected. The law also maintains that fighting forces must distinguish between civilians and combatants at all times.

Civilian Protection Component members are tasked to monitor, verify and report on the compliance and non-compliance of the government and rebel forces in their duty to protect civilians during conflict.

A good example of the kind of work this entails revolves around an incident that took place on a secluded island village wherein 9 people were killed, 13 houses burned and 4,000 civilians displaced on April 7th, 2011. NP sent a team for a verification mission where they met a monitor from one of the local CPC member organizations. The subsequent detailed report, complete with recommendations, was shared with the IMT and both the government and rebel peace panels. The contents therein were discussed at the most recent round of exploratory peace talks held in Malaysia in late April 2011. Furthermore, had NP's international monitors not been there, the local monitor would not have been granted access to the site. This underscores the importance of having an international organization in Mindanao to complement the efforts local CPC member organizations (see picture CPC field mission).

Without national civilian protection monitors, on the other hand, NP's work would not be possible. Knowledge of local culture, language and a deep understanding of the conflict and the internal displacement crisis lays within the local CPC member organizations. Further, they help NP gain the acceptance vital to the trust they

1) Specifically, the other three local nongovernmental organizations are: the Mindanao Peoples Caucus (MPC), the Mindanao Human Rights Action Centre (MinHRAC), and the Moslem Organization for Government Officials and Professionals (MOGOP).

must command in the communities where monitors live and work. Such trust is primary to the monitors' security and their capacity to protect civilians and being outsiders is not easily gained.

The three local members of the CPC have specified geographical areas in which to operate. NP on the other hand covers all conflict-affected areas and works in partnership with each area's respective CPC partner. All together, there have been 13 critical geographical areas identified as hotspots where CPC structures are, or will be, set-up. These areas are prone to outbreaks of violence.

Major General Dato Mahdi bin Yusof of the Malaysian Armed Forces, Head of Mission, International Monitoring Team, said: "CPC monitors have been crucial in providing early warning in the conflict in Mindanao. Its roles include identifying the root causes of conflict and supporting peace-building efforts in pursuit of a sustainable and lasting peace between the Government of the Philippines and the Moro Islamic Liberation Front."

Living and working in conflict-affected communities allows CPC monitors to assess changes in the overall protection situation in a specific community, a village, or a region. The CPC's work may include gathering information about specific incidents and affected individuals. They also monitor and try to understand trends and patterns in violence that impact civilian protection issues and report this to the Head of Mission of the IMT.

The local CPC members have volunteer monitors living throughout the conflict-affected areas of Mindanao. As a complement to this, NP has 8 field offices in conflict-affected communities bringing an international element to the CPC.

In the long run the CPC proposes to have over 250 protection monitors. There are currently some 100 national civilian protection monitors and 16 international civilian protection monitors, who come from all over the world including Sri Lanka, Nepal, Pakistan, Canada, Germany, Ireland, Belgium, China, Kenya, Uganda, Sierra Leone, Ghana and Sudan.

Over the years, hostilities in Mindanao have forced thousands of people to evacuate their homes and endure severe hardship. In 2004, the International Monitoring Team was deployed to monitor the implementation of the ceasefire and the peace process between the government and the MILF. The IMT structure is largely viewed as a key factor in the prevention of renewed hostilities between the Armed Forces of the Philippines (AFP) and the



© Nonviolent Peaceforce | CPC field mission verifying 9 deaths, 13 houses burned and 4000 civilian displacements. Zamboanga Sibugay, 10 April 2011.

Bangsamoro Islamic Armed Forces (BIAF) – the armed wing of the MILF rebels.

Prior to October 2009, the IMT consisted of two active components: Security; and Socio-economic assistance. Responding to the civilian crisis, the government and the rebel forces signed an agreement in October 2009 to expand the International Monitoring Team's mandate to include civilian protection and humanitarian rehabilitation and development, thereby giving rise to the Civilian Protection Component. Two months later, at the invitation of the government and the MILF, NP became the sole international organization appointed to the CPC, along with three local nongovernmental organizations.

The purpose of the four-components of the International Monitoring Team is to ensure that the ceasefire between the government and rebel forces is maintained and to create an environment in which the two parties can negotiate a sound and lasting peace.

Noteworthy, the new internal peace and security plan (IPSP) to be implemented, effective 01 January 2011, to the end of President Benigno Aquino's term in 2016 was made public for the first time and

takes a "people centered approach." This is a positive first step in encouraging more participation of all stakeholders. The IPSP deals with national security threats by means of a four-pronged approach, specifically through peace talks, focused military operations, development efforts, and security sector reform. The IPSP emphasizes that the primary focus in conducting military operations is "winning the peace rather than simply defeating the enemy". In the context of Mindanao, the AFP shall observe the primacy of the peace process while carrying out operations to help the government achieve its goal: a negotiated political settlement. To do so, soldiers are to be more conscious of Human Rights and International Humanitarian Law. ■

HIGH EXPECTATIONS OF PRESIDENT AQUINO – THE VIEW OF LOCAL HRDs



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Due to his work as the head coordinator for the Regions of Negros Occidental and Negros Oriental, Nante Lasay has observed many cases of human rights abuses related to the land conflict under the former president Arroyo. He is the coordinator for the whole island of Negros, the heartland of TFM-activities. TFM has faced local landowner resistance specifically on the Negros based haciendas owned by the Teves and Aquino families, both families highly influential in politics and regional economics. In the following interview Mr. Lasay gives an inside of TFM's view on the 2010 Philippine presidential elections and the performance so far of the new president's administration regarding the implementation of human rights policies.

IPON: Could you please explain the political sentiment within the Philippines before the national elections in May 2010.

Nante Lasay: I think during the last years the Arroyo government was in power, a lot of movement to topple the government or to pursue structural reforms in the government were made, but did not prosper. There was also an attempt to have another EDSA¹ revolution but it did not materialize. In 2007 Filipinos already voted for the opposition. It was a national election that involved the senate but not the president. In those elections, most of the opposition senators won seats in the Senate. That already indicated that the Filipinos were not content with the Arroyo administration and that trend also showed in the 2010 elections.

Before the Philippine national elections in 2010, TFM specifically advised its members to vote for Benigno Aquino III from the Liberal Party. What were your reasons to do so?

Nante Lasay: TFM advised its members to vote for Noytoy Aquino for the reason that we were

not happy about the outcome of the GMA² administration. We analysed the presidential bets during that time and President Arroyo was very wise to deploy at least three candidates, who were very close to her. We knew out of the nine presidential candidates, Benigno Aquino was one of the strongest competitors for the presidential race. Aquino was very popular for the Filipinos, also because of his mother. We felt that voting for someone like him would balance the monopoly of the GMA administration over the Philippine government. So we can say it was a tactical move for our part to consider Noytoy Aquino.

After the EDSA Revolution, Corazon Aquino - as did her son last year - promised a better human rights policy in the Philippines. However, can you say in retrospect that human rights abuses have increased during her nine year presidential term. Did you fear the same developments could take place under Noytoy Aquino?

Nante Lasay: Right now human rights violations are still ongoing, but I cannot say exactly the

1) The first EDSA revolution took place in 1986 and led to the end of the Marcos Regime.

2) Gloria Macapagal Arroyo. President of the Philippines from 2001 till June 2010.

Task Force Mapalad (TFM) is a non-governmental organisation, working nationwide on the active implementation of the state-led agrarian reform introduced in 1988 under the mother of current President Noytoy Aquino. TFM's mission is to improve the quality of life of farmers and farm workers by supporting their initiatives for access to land resources and productivity development. TFM members belong to the „poorest of the poor“ - workers on private agricultural lands still owned and controlled by elite families. These workers do not have access to land and basic social services and work under exploitative conditions on the farms. TFM has 25,000 members in nine provinces, its membership has multiplied from a mere 500 workers on back then 16 haciendas (sugar estates) in September 2001. By virtue of their struggle for their rights, such as the right to life, to food and to a decent standard of living, without being subject to unfair or even violent oppression, IPON conceives members of TFM as human rights defenders (HRDs).

difference between the two presidential terms since the Aquino government just started. Regarding human rights violations related to TFM, especially extrajudicial killings, yet we didn't have those during the time of Aquino. But it is for sure, that the trend of human rights violations is still gaining. There are still a lot of human rights violations and killings that are subject to investigation, especially hostage takings and cases that involve the PNP³. I have attended some seminars of human rights activists. What I learned was that cases of enforced disappearances, tortures and warrantless arrests are still ongoing. In fact another farmer organization that was present during those seminars told us that some of their farmers were apprehended even without warrant. The policemen just told the farmers that they wanted to invite them. Actually, it was an arrest. However we expect that after GMA we will experience good governance under the leadership of Noynoy Aquino. Not only talking about land reform, also talking about other issues that concern the poor for example.

In the course of the interview you mentioned the presidential landholding Hacienda Luisita, a topic that came up quite often during the presidential election campaign. Could you go more into detail about the issue of this hacienda?

Nante Lasay: Hacienda Luisita is owned by the family of President Aquino. We expect that it will be finally distributed to the farmer beneficiaries during his presidential term. He promised that during his election campaign. But apparently we cannot see that the distribution will happen, because there is a change in President Aquino's position towards this issue. Instead of fulfilling his promise during election campaign, he let the Supreme Court decide on the case.

The mode of acquisition which was used in Hacienda Luisita is a stock distribution option. We question this type of acquisition, because it does not involve actual land transfer. It defeats the purpose of the land reform, which is the actual transfer of land to the farmers. In stock distribution options farmers can only get some portion of stocks or stocks that make them part of the corporation. The farmers have no knowledge about whether the corporation is gaining or not. They will just receive dividends or shares after the corporation declared its profit for a year.

What is the current status on Hacienda Luisita according to CARP⁴?

Nante Lasay: Well, the case of Hacienda Luisita is now at the Supreme Court. The judges have issued a temporary restraining order (TRO) on land distribution. That is why we are having difficulties with President Aquino's

son as president. He now wants to wait for the Supreme Court decision, if the high court will decide to distribute the property or not. But this is not what we expect, because as the president, he has the highest position in our government. He can do away with that legal decision if he wants to. He can ask the DAR⁵ to continue the distribution without waiting for the Supreme Court decision, if he really wants to. Since he is not doing that, we feel that his promise to distribute the land of Hacienda Luisita to the farmer beneficiaries, during his election campaign, is not true and not going to happen.

What might be the political consequences if he doesn't distribute Hacienda Luisita during his presidential term?

Nante Lasay: We expect that in his term most of the landowners will do the same, if he continues to have no clear direction or clear policy on agrarian



© IPON | National vision at the local level. Interviewing Nate Lasay in Negros.

performance right now. He has to have a firm policy on land reform and the CARP, also because his mother Cory Aquino used the program as a centerpiece of her government during her reign. We expect more from her

reform. If he is not distributing his hacienda, these resisting landowners will definitely follow his example. They also will not distribute their lands citing his hacienda. In that respect, we expect that more agrarian related human

3) Philippine National Police. 4) Comprehensive Agrarian Reform Program. 5) Department of Agrarian Reform.

rights violations will happen in this term of President Aquino.

Have there been human rights abuses on the president's hacienda before or during his presidential term?

Nante Lasay: Before his term, there was the so-called Hacienda Luisita Massacre. Right now there are no reported human rights violations. I'm not really sure, because we don't have memberships in this hacienda. But we have some allied organizations that would tell us about human rights related violence there.

Has TFM tried to get in touch with the new president or his administration to talk about their issues and to inform them about occurring human rights abuses related to TFM?

Nante Lasay: We haven't had the opportunity to discuss the details of our work, our engagement in the DAR and also our worries that human rights related violence will heighten again, due to the resistance of landowners, especially as we are on the extension of the CARP. But we are still working this out with the Office of the President. So, right now our engagement is only on the level of the DAR. But since the secretary of agrarian reform is the alter ego of the president we hope the issues on landholdings, particularly contentious landholdings, that we have, will be tackled. Examples are the Teves⁶ issue in Negros Oriental and the Arroyo landholding here in Negros Occidental. The DAR has a commitment to those cases, but we are still waiting for that to materialize. I can say that at present we are on the negotiation level.

Going back to the Arroyo administration, what kind of human rights violations did occur during her presidential term?

Nante Lasay: We experienced a lot of human rights violations during the time of GMA, because after all she enjoyed nine years of office. She started in 2001. In 2002 cases of harassment started to occur, especially ejectments of farmers from their houses in the haciendas, because they were identified as petitioners for CARP. Most of the farmers were also dismissed from work, because they were identified as petitioners. Next to these forms of harassments, there were extrajudicial killings from 2002 to 2007. At least we counted twelve extrajudicial killings of TFM members.

Nine of them were in Negros Occidental. The other three were in other provinces in Negros Oriental and some parts of Mindanao.

Of these nine cases how many have been investigated properly by the Philippine National Police (PNP)? And how many have not been investigated so far?

Nante Lasay: The PNP have done their investigations. Then the cases were turned over to the courts. But the problem is that in some cases, the PNP has no thorough investigations or reports that can be used as material in court. So most of the cases filed at the level of the prosecutor and in the courts are not prospering. There is no movement, so justice is not yet served for those families who were victims of extrajudicial killings. The only positive thing is that these farmers today have their own lands that they are enjoying. But they are still pursuing justice for their families that were victims of killings related to the agrarian reform.

Now under Aquino, do you see any chance that these pending cases will be investigated properly?

Nante Lasay: I think that depends on how TFM and other allies in the human rights circle will pursue them, because I don't think that the government of President Aquino will pursue these cases even without our engagement or asking for his attention to look at these cases. In particular we will still have to campaign or heighten attention to these cases so they will be reviewed by this new government. Of course we hope, especially the families are hoping that justice will be served. Of course they voted for Noyon Aquino and they have high hopes that he will be different from the former president.

Elections do not only mean a new president, but also changes in different departments of government. Talking about the Department of Justice (DOJ), the Commission on Human Rights (CHR) or the DAR. Do you see any positive changes within these institutions?

Nante Lasay: Yes. Right now in this particular conjunction, when Aquino stepped in as president, he really chose to have cabinet members that are popular and at the same time used to be part of civil society groups. Let me give you some examples: In particular the CHR

6) See also Article ,Fruitless Actions – how state-agencies protect HRD in areas with "landlord resistance"" in this issue.

was given to Etta Rosales. Etta Rosales is known as an activist and she is also a former congresswoman for a party list that is also considered as progressive. He also chose Corazon “Dinky” Soliman, who was also part of the civil society and who was also vocal in criticizing GMA. She is now the head of the DSWD⁷ and the former CHR commissioner Leila De Lima is now the Secretary of the DOJ. During these times there are some indications that the government is very willing to install changes that we want. **What do you judge as the current administration's biggest challenge to the implementation of a better human rights policy?**

Nante Lasay: The thing is that the 2012 election is coming up soon. So right now, President Aquino is busy in strengthening his political base. In particular his party is negotiating with the local elites and local structures to be a part of the majority party so that they could have a majority of seats after the election. If he fails with that, we could see the same pattern as before during the GMA administration. The president has no choice but to deal with the elites and because he is dealing with these elites he will also favour some of their interests, particularly business interests. That is one thing we worry about.

If I may relate that to our work, especially to the agrarian reform, that would become a problem, because the government would still pursue the opening of agricultural lands to foreign investments and would look for lands that would suit for this interest. And that of course will affect the farmer beneficiaries, those who have a “Certificate of Landownership Award” and those who are still struggling to get one. Landowners who are not giving up their land will see that there is a business opportunity for them and they will hold on to their land. So they will not participate or cooperate in the implementation of the agrarian reform, which will be a problem and can lead

to more resistance, provoking further human rights violations.

I think to minimize the violation on civil and political human rights that is still going, the new government should really address the social and economic rights of the people – especially the right to food where land rights of poor farmers are based. In rural areas, access to food mainly depends on access to land by peasants and farmworkers because we are basically an agricultural country. Our present constitution which was enacted in 1987 clearly stipulated the rights of the farmers and the role of state to enforce land reform as our blueprint for industrialization. Addressing the poverty situation in the rural areas by providing peasants of access to land and capital will definitely bring progress to the Philippines. Sad to say, the government after the first EDSA revolution failed to deliver the obligation of the State to the rural poor due to influence of big landlords and comprador in the government to protect their economic interest. That's why CARP is still not finished and still being implemented for more than 20 years, instead of the original ten year target. We now have another five year extension for CARP and yet we are afraid that the remaining one million hectares backlog will not be finished in 2014 at the rate that the new Aquino government is performing.

Many see corruption as a deep lying cause for human rights violations. President Aquino explicitly put a focus on the fight against corruption during his election campaign. Have you noticed any actions of his administration that are specifically targeting that issue?

Nante Lasay: I stated earlier that president Aquino chose some of his cabinet members from prominent parts of the civil society. That's a good one. In terms of his program for the poor, he adopted the subsidy of the capital from Brazil. It is called “Pantawid Pamilya”: They are giving subsidies to

the poorest of the poor families for health and education. I think it's a good move of the government to adopt that measure. It was introduced during the GMA administration, but it was used for political purposes only.

What the DSWD did during the Aquino term is that they asked the congress to allocate the budget for that at the department solely, so it would not be channelled through the local government units. That way, political interests would not be involved, because the DSWD will be the one directly implementing it and not the local governments. I think that is a good indication that he is doing some reforms. But this kind of subsidy will not guarantee that significant change in the lives of the poor Filipinos will happen. The program has only a target of 4.6 Million poor families up to year 2015. Our present population is 90 Million plus. Majority is considered to be poor. The Aquino government should devise a converging strategy that will maximize the use of budget and other foreign aid in delivering basic social services in the rural areas.

Right now they are also doing anti-corruption investigations on people formerly connected to GMA, in the Senate and national investigations particularly concerning the corruption in PNP and AFP⁸. We heard that some cases for the corruption of certain persons attached to GMA will be charged with plunder. But it is not going well, because they are not yet filing enough cases. Without cases, these are considered a show off for the government. These will not guarantee that corruption will be prevented in his term. Corruption will still continue if the government cannot prosecute the violators especially the big ones.

Mr Lasay, thank you for this interview.■

7) Department of Social Welfare and Development.

8) Armed Forces of the Philippines.

FRUITLESS ACTIONS – HOW STATE-AGENCIES PROTECT HRDs IN AREAS WITH “LANDLORD RESISTANCE”



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Human rights defenders at the former landholding of an influential political clan in Negros Oriental are facing ongoing threats by a landlord resisting the agrarian reform. On the international perspective, the duties of the state authorities on all institutional levels are to protect the defenders on human rights. However, either a lack of political will or the missing potential of the state to fully enforce the law against influential political clans can be witnessed.

The island of Negros has been the center of the Philippine land conflict for decades. It is known for its high number of land owners that resist the agrarian reform. On the one hand those landowners oppose, because owning land is still a symbol of wealth, prestige and power. On the other hand sugar cane, which is the prominent cultivated crop in Negros, still yields relatively high profits in comparison to other crops. In the course of the land dispute, human rights defenders (HRDs) are exceptionally targets of human rights abuses and violations. This article aims to illustrate the ongoing land-conflict at “Hacienda Teves”, an estate located in the southern part of Negros¹.

To stand up for their rights, the farm-workers at the aforementioned sugar estate have organized themselves and have joined the NGO “Task Force Mapalad” (TFM)². It is the non-violent struggle for basic human rights such as the right to food security, legitimates TFM members as HRDs. The conflict initially arose in 1988, when these farmers petitioned for land through the Comprehensive Agrarian Reform Program (CARP)³. Land-titles were officially transferred to them in 1997 and 1999, but access to their land has been prevented by security guards hired by the former landowner. The latter belongs to an extremely influential clan and consistently neglect the farmers the access to their rightful acquired land. The TFM farmers and new owners of the property were systematically impeded from taking possession of their land. The conflict has already entailed two murders, displacements, demolition of houses,

countless intimidations, threats as well as legal harassments (IPON 2010).

The Teveses are a highly influential family clan and have been politically, economically and socially active at the national, provincial and local level in Negros Oriental for generations. The family clan is headed by Herminio Teves, former Governor and congressman and former landowner of the property. Today, Henry Pride Teves, congressman of the corresponding district, and Arnie Teves, administrator of the family-owned sugar mill⁴ and member of the Association



© Jimmy Domingo | Shaved heads - HRDs from Negros demonstrate in Manila.

1) For a chronic of the land-conflict cf. Bauer (2010) and the interview with an involved HRD the same issue.

2) TFM's mission is “to improve the quality of life of farmers and farm workers by supporting their initiatives for access to land resources and productivity development” (www.tfmnational.org).

3) It was initiated in 1988 under the Presidency of Corazon Aquino, mother of the current President Benigno Aquino III, with the intention to redistribute land to the landless. Due to outstanding redistributions and a high degree of political pressure, CARP has been extended several times, most recently until 2014.

4) Sugarcane is the prominent cultivated crop in Negros with relatively high yields per hectare. The Herminio Teves & Co. Inc. sugar mill, with a provincial production share of around 50 percent, illustrates the social and economic position of power of the Teves-clan.

of Barangay Councils⁵ of Negros Oriental – both grandsons of Herminio – continue the landlord resistance. Within the scope of their possibilities the clan applied any legal and illegal methods to delay the implementation of the state-led agrarian reform. Their behaviour evoked violence and insecurity among the farmers targeting the new owners of the land. The Teves clan challenged the legitimacy of the land titles, but nevertheless the Supreme Court confirmed its legitimacy in 2004. The court's decision however did not stop them from continuing to harass the HRDs. Their tactic is to delay the actual redistribution of the land or at least the distribution to farmers which are dependent on them. They also aim to pit groups of farmers against each other. Therefore, the former landowner encouraged a group of farmers to petition for the inclusion to the land title and exclusion of the former beneficiaries, who are the legitimate property owners (Bauer 2010). Consequently, in 2009, the former Secretary of the Department of Agrarian Reform (DAR) excluded 15 out of the 30 beneficiaries. The contentious property is nowadays divided into two parcels of land and belongs to different administrative units. One parcel belongs to Barangay Caranoche, a commune of the town of Santa Catalina. At this parcel 15 out of 19 beneficiaries have been excluded from the land-title. The second parcel belongs to Barangay Villareal, a part of Bayawan City. Although none of the 11 beneficiaries have been excluded here, they – like those in Villareal – were displaced from their land and exposed to threats at a regular basis by armed security guards and by the dubious Barangay Captain, who is affiliated with the Teves clan. Due to a high degree of patrimonialism (cf.

Pingel 2010 last issue), causing a lack of separation of private and public sphere, the clan was able to develop a strategy that enabled them to pursue direct as well as indirect human rights abuses without ever facing legal consequences.

Peaceful struggle for human rights

The HRDs and rightful landowners continued claiming their legal rights in order to take possession of their land. They have been actively and

Developments since the new administration

In the light of the court decision, the case of disqualifications of some HRDs as rightful owners is highly controversial, and was referred to the Office of the President (OP). However, in November 2010 the case was referred to the DAR again with the calling for a meditative resolution and re-examined, but remained unsettled. It seemed that the president had no intention to deal with this critical issue.



© Jimmy Domingo | Justice seem to be within grasp - Protest Camp in Manila.

constructively involved in dialogues with state and non-state actors on the local, regional and national level. To enforce their claim, they organised twice protest-camps in front of the DAR central office in Manila and held hunger-strikes in 2009 and 2011. In October 2010, Henry Teves was appointed to be the chairperson of the Committee on Agrarian Reform at the House of Representatives. With its 40 members, the committee has broad power regarding the appropriation of funds for the implementation of the reform and beneficiaries' financial support. Fearing a conflict of interest, a widespread civil society association requested the resignation of Henry Teves⁶.

The DAR appealed to the OP again, so fruitless time had elapsed. After a year of presidency, a more active approach would be desirable. After all, in his election campaign, Noynoy Aquino promised improvements in human rights' protection (cf. Hamman 2011 this issue).

Lately, the OP initiated the attendance of a mediation organisation to elaborate a compromise between HRDs and their Teves-dependent counterparts. Since April 2011, an agreement between the conflicting parties has been worked out under the supervision of the NGO "Mediators Network for Sustainable Peace Inc."

5) The provincial Barangay council, or provincial board is the representation of all communities in the province with widespread responsibilities.

6) Henry Teves rejected the claim to resign pronounced by three influential bishops (Herrera 2010). The three bishops, as well as 138 other personalities, 22 NGOs and 96 People Organisations (POs) (including 14 from Negros Oriental) signed a letter to the speaker of the House of Representatives, claiming a conflict of interests (Archbishop Ledesma et al. 2010).

focusing on dispute management processes in conflicts on land tenure. A Memorandum of Agreement (MOA) provides a quitclaim deed of 30 out of the original 62 hectares in favour of Teves-dependent farmers.⁷

Weak compromise instead of law enforcement

The MOA, which includes the dismantling of an illegally constructed piggery of the Teves clan at the mentioned property, has not yet been signed by one single representative of the Teves-clan until present. Either there is a lack of political will or weakness of state power to fully enforce the law against influential political clans. At least the latter may be the case here.

The prevailing willingness of the rightful landowners to waive almost half of their land in order to peacefully settle the conflict shows again their qualification as HRDs. The HRDs reported new warning shots by hired security-guards in 2011.

Fruitless actions of the DAR

In reaction to protest camps, hunger-strikes and other activities, the DAR signalled several times to tackle the reclamation of displaced HRDs. An official ceremonial handover of the property, organised by the DAR and accompanied by the national police and military forces, took place in September 2008. Nonetheless, the rightful owners have been illegally displaced from their land by security guards, Teves-dependent farmers

and the local police headed by Arnie Teves in April 2009. The actual implementation of the “repossession” has regularly been adjourned sine die and on short notice. Due to the threats that are uttered against them, DAR officials at the local level never act at their own initiative. Furthermore, the administrative bisection of “Hacienda Teves” enables responsibility shifts at the local level already. Whereas the former DAR Secretary had close relationships with Herminio Teves (cf. *Negros Daily Buletin* 2010), the new Secretary Virgilio de los Reyes still needs to prove his assertiveness against clans like the Teveses. Reyes is one of the founding members of an association of lawyers, focussing on human rights and judicial reform (Kreuzer 2010).

Early in 2010, a report edited by IPON disclosing the situation of HRDs in the area, attracted the attention of the Commission on Human Rights (CHR) (IPON 2010). IPON welcomed the CHR’s advice to prepare an own report with the intention to have an official evaluation of the situation and, most importantly, to give clear recommendations on the topic. Unfortunately, the results are disillusioning. Until present, the release of an official report is still a long way to go⁸, providing a good excuse for other state agencies not to take further action. The Department of Justice (DOJ), for instance, adapts its action on clear recommendations of the CHR. In September 2010, the IPON report has been confirmed by a report of a fact-finding mission organised and released by the “Philippine Alliance of Human Rights Advocates” (PAHRA) (PAHRA 2010).

7) The 30 hectares affect the parcel of land in Barangay Caranoche, where the 15 beneficiaries have been excluded on questionable manner.

8) The delay may be due to internal problems. The CHR compiles a second report due to a lack of confidence and impartiality of their own internal report.

© IPON | HRDs from Negros in hunger strike, Manila 2011.



The authority of the CHR only relies on the announcement of non-binding recommendations. Still, as public authority directly subordinated to the OP, the CHR could contribute to conciliate the conflict and to improve

the security of HRDs. Insofar, state-authorities like OP, DOJ, CHR, but also national police forces and others are responsible for the improvement of the security of HRDs, and for the complete enforcement of the law. In

this perspective, the Republic of the Philippines has two options: Either the state manages to implement applicable law, or the state might get stuck in an oligarchic instead of a democratic setting. ■

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STATEMENT OF ASSETS, LIABILITIES, AND NET WORTH CUTTING DOWN CORRUPTION IN PUBLIC OFFICE?

Last year, Benigno Simeon Aquino won the presidential elections and promised to improve governance to be more transparent, participative, and accountable. The public now expects transparency and anti corruption measures. The Statement of Assets, Liabilities, and Net Worth (SALN) targeted at public officials could be helpful in that task. The law stipulates that requires „every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, [...] a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year“¹. These documents should be open to the public. The roots of SALN date back to the year 1955, in which the Republic Act 1379 was signed into law. It allows the government to seize any property found to have been unlawfully acquired by any public officer or employee. This refers to

property acquired by any public officer or employee during his/her incumbency which is manifestly out of proportion to his/her salary. In order to effectively implement Republic Act 1379, several legislative measures were subsequently installed; one of them requiring asset declaration which is a primary and effective tool to find evidence of illegal enrichment. SALN could therefore serve as an effective strategy to combat corruption and promote ethical conduct in public service.

Half a century later, the SALN law lies moribund. There has been no mechanism implemented to verify SALN or to punish violations of the law. Worse even, several requests of journalists of the Philippine Center for Investigative Journalism about SALN directed at employees of the Office of the Ombudsman were not answered. First, in response the responsible office answered denied the existence of some documents. Later, a written answer stated that “one cannot favorably act on your request because the Department

is bound to observe the integrity and confidentiality of our employee’s 201 records, the disclosure of which would constitute an invasion of their privacy”². Certainly, President Aquino will have to prepare an executive order designating officials in each agency of government to compile SALN data. NGOs could set up a website to post the findings and invite the public to contribute compiling data. The handling of this topic will definitely serve as a test case for the will of Aquino to back up his words to fight for transparency and against corruption with concrete measures. ■



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WITNESS PROTECTION – REMAINING CHALLENGE OR UNMET PROMISE?



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Criminal prosecution in the Philippines relies predominantly on witnesses' testimonies. However, the state of the national witness protection program remains poor, lacking financial and human resources. The former government's failure to strengthen and expand the program poses a challenge for the Aquino administration. Still, after one year in office little progress is shown.

When Florencio Dogomeo, a local farmer¹ in the province of Negros, was shot and killed in June 2010, at least three people witnessed the crime. Although they could clearly identify the perpetrators, they immediately went into hiding, fearing for their lives. "Without the witnesses' testimonies, our hands are tied" the local chief of police told members of IPON back then. Asked for possibilities to place the witnesses under the national witness protection program, he smiled indulgently, stating there was no chance. "This is going to take months until they decide – if at all."

The Philippine national witness protection program has been subject to criticism from human rights organizations and advocates for a long time. In its 2007 report the Melo Commission stated that the "program is suffering from lack of funds and necessary manpower" (Melo Commission 2007:75), calling on the Arroyo (-led) government to give highest priority to improvement and funding of the program. In many Asian countries, the issue of failing witness protection systems allows impunity for state agents accused of severe human rights violations. In the worldwide Impunity Index of the Committee to Protect Journalists (CPJ), the Philippines rank third, representing one of the deadliest countries for journalists with a very low conviction rate (CPJ 2011). Especially in a country like the Philippines, where the adoption of forensic methods remains deficient and plays little to no importance in criminal proceedings, witnesses' testimonies are a crucial element.

The Asian Human Rights Commission pointed in a statement of 2006 to the lack of effective witness protection in the Philippines, which it said undermines the country's entire judicial system (AHRC 2006).

Established in 1991, the "Witness Protection, Security and Benefit Act" (WPSB) specifies that any person with information about a crime who is testifying before a judicial body may be eligible for witness protection. To qualify for the program, the offence about which the witness has information must be a grave felony, the witness'



IPON | The widow of the killed farmer leader Empas has to wait for a strong protection of her family.

testimony has to be substantially corroborated, and the witness (or close family members) must be facing a threat of serious harm².

1) Dogomeo was HRD and local farmerleader of the farmers' organization TFM.

2) Witness Protection, Security and Benefit Act, Sec. 3.

According to the law, the Department of Justice (DOJ) is solely responsible for the screening, approval and implementation of the witness protection program. Decisions can take a long time since no limit is set for the DOJ to resolve applications. Additionally, a potential witness will not be admitted to the program as long as no case is filed in court (ALRC 2010). It is obvious that a long waiting period without any interim protection mechanism may end deadly for many witnesses.

The murder of a key witness of the Maguindanao massacre in 2010 raised nationwide awareness of the poor state of witness protection. Suwaib Upham, former member of the Ampatuan's private army, had agreed to testify against members of the powerful Ampatuan family if guaranteed witness protection³. Private prosecutor Harry Roque, who represents a majority of the 57 victims of the massacre, called him a "strong witness", while former DOJ Secretary Alberto Agra referred to him as "killer". This may be the reason why the DOJ rejected his application after a long delay without further explanation. "Massacre witnesses are dying while the government sits on its hands", Elaine Pearson, Asia director of Human Rights Watch, (HRW) criticized. „Suwaib Upham took enormous personal risks by agreeing to testify against Ampatuan family members, yet the government, knowing full well he was in danger, did nothing. This sends the worst possible message to other witnesses thinking of coming forward" she said (HRW 2010b).

However, shortly before he got killed, Upham planned to re-apply for witness protection when former Commission on Human Rights (CHR) chairperson Leila De Lima was

announced as new DOJ secretary. De Lima has gained high reputation as head of the CHR, viewed by public opinion as one of the most

the program (ALRC 2010). Unless the budget increase is accompanied by amendments of the law, it cannot be shielded from political interference



© IPON | Teamleader Detlef Mehlis of the EU-Philippines Justice Support Programme (left) receives the report about criminalisation from IPON-team (right).

incorruptible and highly respected politicians. Due to the failure of the WPSB, the CHR under De Lima had developed its own witness protection program, notably to deal with cases involving human rights violations by state agents.

Under public pressure former DOJ Secretary Agra had increased the budget of the WPSB from 84 million Pesos to 114 million in the aftermath of Upham's murder. Also, President Aquino proposed an 80 percent increase of the WPSB's budget, which starts to properly fund the program – a step that was long overdue. However, it's not all about money. In order to encourage witnesses to come forward and improve the country's poor conviction rate, overall reforms of the program are much needed. Philip Alston, UN Special Rapporteur on extrajudicial killings, summary or arbitrary executions called the WPSB "deeply flawed" and recommended reforms and full implementation of

and control, the Asian Human Rights Commission stated in 2010. Reforms must include interim protection mechanisms as well as independent bodies to effectively protect witnesses in highly political cases involving high-ranking government officials. Furthermore, the weak support system, particularly the financial support given to witnesses' families, needs to be enhanced (ibid.).

The Maguindanao massacre trial, which began in September last year, involves only 19 of 195 persons accused, 127 others remain at large and another 49 have not yet been arraigned. According to HRW, even though at least five persons with knowledge about abuses by those involved in the massacre have been killed, the government had done little to improve witness protection (HRW 2010a). In the case of HRD and farmer leader Florencio Dogomeo, the witnesses decided three weeks after the murder to testify –

3) See for more information of the Maguindanao massacre and the role of key witness Upham: „Violence and Nullum Ius in the Philippines" previous issue „Observer" Vol. 2, No. 2, pp.22-23.

knowing well after receiving dead threats that a testimony would put their lives at risk. IPON has documented several cases in which witnesses are reluctant to come forward, distrusting the state's protection⁴. The same was found out by Human Rights Watch researchers investigating extrajudicial killings, saying that "citizens would rather attempt to ensure their own protection than rely on the government's witness protection program" (UNHCR 2008). Although current

DOJ Secretary De Lima, who has recently been ranked by a Pulse Asia survey as number 1 member of the Aquino cabinet, is a high respected person, much more is needed to gain people's trust in government protection. Besides proper funding, systematic and extensive reforms are required – until now, the Aquino administration has shown little political will to tackle those profound changes. ■

4) That includes the killing of Arnaldo Hoyohoy in 2008 on Negros, when many people witnessed the murder, yet out of fear of the influential Teves family, none of them testified (for more information see „Fruitless Actions – how state-agencies protect HRD in areas with ‚landlord resistance‘“ this issue). Also in the aftermath of farmerleader Deolito Empas' murder on Bondoc Peninsula, many family members were forced to hide, Empas widow had to wait several month until being affiliated into the witness protection program (for more information see: "Political Killings in San Narciso", previous issue 'Observer', Vol. 2, No. 2, pp. 15-17).

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IPON EVALUATES RED-BAITING

IPON is currently conducting a pre-study on red-baiting in the Philippines jointly in its two offices in Bacolod City, Negros and Malaybalay, Mindanao. This project is funded by the German Federal Foreign Office. In the first phase, information is gathered about the current state of red-baiting from scientific and alternative NGO related literature in order to compile a report about the topic. IPON shall create a deeper understanding about the current structures and developments of red-baiting. Based on the findings, NGOs and other organisations that are either victims of red-baiting or in another way involved with the topic shall be identified. In the second phase of the project these groups will be contacted.

From the data of meetings and interviews with these Philippine-based NGOs, IPON will evaluate whether IPON's instruments such as showing presence, accompanying human rights advocates, performing human rights observations, providing information and publicity will improve the situation of NGO victims of red-baiting. Simultaneously, during the third phase of the project, IPON will raise public awareness on the issue in the Philippines, as it plans to organise a conference with all parties involved in the problem. Actors range from state parties to NGOs and include also other public interest groups.

This pre-study shall reveal whether a development into the direction of protecting red-baiting victims could be fruitful for IPON.

Holger Stoltenberg-Lerche

THE QUESTION OF RED-BAITING IN THE PHILIPPINES: MORE THAN OBSTRUCTION OF NGO WORK

Red-baiting in the Philippines is a political strategy of state institutions such as the AFP and the Philippine National Police to accuse, denounce and persecute individuals and NGOs as members of outlawed communist organisations like the NDF-CPP-NPA in order to obstruct their work (Claude 1996: 42). The term 'red-baiting' is historically linked to the McCarthy era in the USA in the 1950s when anticommunist political repression resulted in the identification of supposedly communist adherents by state authorities and their suspension from jobs combined with serious violations of due process if such cases were adjudicated upon (Schrecker 2004: 1043-1045). In a larger context the state deeply entrenches a state of fear in society - be it the fear of communism or of radical Islamist fundamentalism in the "global war on terrorism". This threat to national security or rather to the existence of the state legitimises the confinement of civil liberties and human rights by law. A state of national emergency - regardless whether the threat is real or partly constructed by state discourse - guarantees the further existence of the state. Under the administration of Gloria Macapagal Arroyo the Anti Terrorism Act of 2005 and the Human Security Act of 2007 are legal instruments that were used to "fight legitimate political opposition and dissent" (PhilRights 2006: 28). They violate the freedom of speech and expression (ibid: 29-30; Balderama 2007-2008: 40), the guarantee that protects citizens from unreasonable invasion of their privacy (ibid: 34) and allow indefinite detention beyond three days (ibid: 29; Pereire 2007: 3) among other violations of Philippine constitutional and human rights. From

a formalistic point of view, besides these "legal" measures of the state to control and obstruct the work of committed NGO members, enforced disappearances and extralegal killings are the most forceful and extreme examples of violations of human rights not covered by applicable law, either tolerated by the state or even secretly commissioned by state authorities (Oude Breuil and Rozema 2009: 416).

Due to the AFP's protracted armed struggle against the NPA since the 1970s in the context of national security and the "global war on terrorism" considerations, the general fear of terrorism in the Philippine population legitimises nearly any means of the state to bring an end to this threat. Anyone identified with sympathy for or ties to the NDF-CPP-NPA, irrespective whether they are fabricated or real accusations, will have to fear harsh consequences ranging from surveillance by state authorities to violence administered by non-state actors such as death squads or hired killers (ibid: 407-408). Once socially established as "unwanted [...] human waste" (Douglas 1931: 353 in Oude Breuil and Rozema 2009: 409), anyone in alleged connection with communist organisations will have to anticipate the denial of mercy from the state as well as from the vast majority of society.

A recent example illustrates the question of red-baiting and its consequences for political activists in the Philippines. Melissa Roxas, a political activist, claims that she has been abducted by the AFP, detained on a military base, interrogated, tortured, forced to admit that she was a member of the NPA and ordered to swear allegiance

to the Philippine government (Philippine Daily Inquirer 2011: A5). The Philippine Commission on Human Rights, however, does not find any evidence of her accusation of having been abducted by the AFP, but rather points to the NPA to be the alleged perpetrator of the crime (ibid). Regardless of the actual perpetrator, the example clearly shows which hardships political activists and NGO workers have to endure because of their commitment. Task Force USIG claims in a recent report that since 2001, 123 activists and 39 media practitioners have been killed due to their political commitment (TF USIG 2011: 1). By failing to prevent these crimes connected to red-baiting, the state violates basic civil and political human rights and consequently must be held accountable for its behaviour. ■

Holger Stoltenberg-Lerche

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1) Armed Forces of the Philippines.

2) National Democratic Front - Communist Party of the Philippines - New People's Army.

3) Republic Act No. 4839.

4) Republic Act No. 9372.

IKAW NA BA, GINOONG AQUINO¹? – ARE YOU THE MAN, MR. AQUINO?

by Dominik Hammann

During Gloria Macapagal Arroyo's (GMA) two terms, human rights violations such as extrajudicial killings and enforced disappearances raised serious concerns within civil society and the international community. The 2010 presidential election was therefore strongly influenced by pre-electoral pledges concerning human rights policies by the presidential candidates. Hopes and demands for the new presidency increased in equal measure.

Elections and human rights

The right to be a part of government, the right to vote and the right to be elected - these are the three essential human rights regarding internationally standardized principles for elections (United Nations 1994: 4). The Universal Declaration of Human Rights (UDHR) mentions, that "the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures" (Art. 21 (3) UDHR). While the UDHR is only accredited by United Nations members, those rights have legal binding character for parties of the International Covenant on Civil and Political Rights (ICCPR). Additionally, the right to suffrage is protected by domestic law. In fact Art. 5 of the Philippine Constitution states "that suffrage shall be exercised by all citizens of the Philippines". Not only the proper conduct of a democratic election is protected by human rights principles, but human rights policies regarding their implementation play a crucial role in pre-electoral campaigns of parties and candidates. It is one of many topics, commonly used to canvass voters. A general rule says that a rise in human rights related conflicts is usually followed by an increase in public awareness on this topic. Human rights are rarely disputed by officials and consequently pledges for better human rights policies are popular among presidential candidates.

The Elections of 15th President of the Republic

After nine years of Arroyo administration, the Commission on Elections (COMELEC), chaired by Jose Armando Melo, organized and ran elections to vote for the 15th president of the republic. During a two-year period of campaigning several candidates announced and then withdrew their presidential bids and candidacies again. Eventually a list of ten presidential candidates emerged, amongst which the population was to choose. Pre-electoral polls by the two primary opinion polling companies "Social Weather Stations" and "Pulse Asia" already indicated, that these elections would be dominated by three key players: Benigno "Noynoy" Aquino III (Liberal Party), Manuel "Manny" Villar, Jr. (The Nacionalista Party) and Joseph "Erap" Estrada (Pwersa ng Masang Pilipino). Liberal Party's standard-bearer Aquino won the race by far with a total of 42.1% of valid votes, giving him the highest percentage of votes since 1986. He was followed by Estrada with a share of 26.3% and Villar with a share of 15.4%. The president of the Philippines was elected with a relative majority without runoff. With a turnout of approximately 74%, the 2010 presidential elections enjoyed broad support and participation of the population.

Although their impact on the final result was not decisive, several other candidates filed certificates of candidacy at COMELEC. Among those were Gilberto "Gibo" Teodoro Jr., Brother Eduardo "Eddie" Villanueva, John Carlos "JC" de los Reyes, Richard "Dick" Gordon, independent Maria "Jamby" Madrigal and Vetellano Acosta.

1) From February to March 2010 GMA Network's AM Radio Station DZBB launched the show "Ikaw na ba" interviewing the presidential candidates.

2) See also for more on the overthrow of Estrada: Sandoval, Raymond Vincent G. 2001.

Joseph Estrada rose to fame as an actor over several decades. His popularity led to his presidency from 1998 to 2001. It was then GMA who tripped him up with the so-called “People Power II”² half way through his term. Though Estrada turned out to become Aquino’s most serious opponent with a percentage of about 26%, many people saw property tycoon Manny Villar in an advantageous position. The self-made man from Manila was not only the candidate with “scandalously” high expenditures during the election campaign (Inquirer 2010), but also the chosen candidate who enjoyed Arroyo’s support. He was – to his disadvantage – Aquino’s biggest opponent and unpopular amongst other candidates as well. Worse even, he was accused of trying to buy two candidates out of the presidential race. While Richard Gordon openly accused him of doing so, Estrada just indicated, that there was an offer for his withdrawal from candidacy³ (GMA News 2010e, 2010a). The winner Benigno “Noy” Aquino III, son of Benigno “Ninoy” and former president Corazon “Cory”, started the presidential race as top candidate for the Liberal Party. He was one of the last to announce the presidential bids and it was rumored that he was pushed into his candidacy by his surroundings after the death of his mother on 1st August 2009. His political career began with his election to the House of Representatives in 1998, followed by his election to the Senate in 2001. He was “said to be short on charisma and [...] on achievement during his past 12 years as a legislator. But he is loved for his honesty and for his heritage” (BBC News 2010).

Candidates’ human rights agendas

The following information about the human rights agendas are based on debates, interviews and the presidential

candidates’ platforms⁴. Surprisingly, only four candidates mentioned human rights in their platforms: Teodoro, Villar, Villanueva and Aquino. Others addressed questions concerning economic, social and cultural rights, but did not classify them as human rights. In most cases human rights issues dealt with Indigenous Peoples’ rights, the death penalty and extrajudicial killings as well as enforced disappearances.

On economic, social and cultural rights

Just a few candidates mentioned economic, social and cultural rights such as health, work and education. The Reproductive Health Bill (RH Bill) clearly dominated health-related discussions. Villanueva opposed plans to implement the RH Bill, arguing that the state has no right to interfere with the individual’s choice of birth control measure (Andag/Icayan 2010). Ang Kapatiran candidate de los Reyes joined him in this opposition while the other candidates avoided clear statements on this highly controversial bill. Villar as well as Madrigal stressed the rights of workers whereby the latter also advocates the inclusion of union

rights. Teodoro further mentioned the protection of migrant workers, whereas Perlas had a six-pillar-platform referring to various programmes, which bore upon economic social and cultural rights. Education played a major role in his programme and Gordon supported him by naming education as one of the top three human rights issues. He demanded equal and equitable access to qualitative education (Philippine Human Rights Information Center 2009). As the only female presidential candidate in 2010, Senator Madrigal was one of the few to mention women’s equality in her platform. She demanded genuine equality, participation and protection of women in all areas of life. Discrimination in work and payment as well as abuse of spouses, sexual harassment and rape were also addressed in her programme. Perlas simply mentioned “true gender sensitivity” and Villanueva thought that women’s right had great importance as long as “the morality of a family” was not violated (Andag/Icayan 2010). Asked about women’s rights, de los Reyes replied that all Filipinos were entitled to the fullness of life.

“The right of all people to participate in the political life of their country” is



© Jimmy Domingo | The force for landreform of HRDs during elections, Department of Agrarian Reform 2010.

3) However, senatorial candidate Bautista said, that Villar was the Person to most likely do so (GMA News 2010e).

4) The presented list of human rights issues mentioned during the pre-electoral campaigning period doesn't claim to be complete. See also for a detailed overview of human rights agendas: Andag/Icayan 2010.

enshrined in the UDHR as well as in the ICCPR (United Nations Centre for Human Rights 1994: 4). Elections as such, manifest that these rights are already ensured to a certain degree. Different candidates also presented concepts on what political participation would look like in the Philippine democracy if they were elected president. The spectrum ranged from Aquino's and Madrigal's participatory democracy and Teodoro's and Perlas' support for non-governmental organizations to watch-dog democracies as presented by Villar (Andag/Icayan 2010).

Not all candidates stressed the importance of matters concerning Indigenous Peoples' rights. Teodoro proposed that cultural minorities should be particularly protected by law. The delineation of ancestral land should be hastened, so Indigenous Peoples would "be able to advance their economic and cultural interests through tourism ventures, agricultural projects, and partnerships with investors". In addition, Perlas pronounced the implementation of a new mining law, which specifically addressed Indigenous Peoples' rights, since they respected the environment as a crucial factor for development (ibid). Unfortunately, further statements regarding this issue were missing.

On the death penalty

Villanueva was the firmest advocate of restoring the death penalty (GMA News 2010c). This was not to be a general punishment for serious crimes, but especially a countermeasure to condemn plunder as well as syndicated warlordism and drug trafficking (Philippine Human Rights Information Center 2010). Others disagreed with those candidates planning to reestablish the death penalty. In particular Aquino wanted to defend, respect and preserve the human rights of all citizens, such as the right to life and security of person and therefore, he wanted to abolish the capital punishment. Singing with the same hymn book, Gordon specifically promised to protect basic human rights to life, liberty and property (ibid). Finally, it was de los Reyes, who demanded

the end of the death penalty in a survey on the presidential candidates' human rights policies (Andag/Icayan 2010).

On extrajudicial killings and enforced disappearances

Due to the shatteringly high numbers of extrajudicial killings and enforced disappearances under the Arroyo administration⁵, concepts on how to politically counteract that problem could be found in almost all party platforms. Human Rights Watch emphasized the importance of this matter in the run-up of the election and uttered, that all "presidential candidates should explain how they will put an end to the scourge of killings that has so discredited the Arroyo Government. Bare condemnation of killings is not enough - the country needs to see a commitment to action" (HRW 2010). As a result, it was not surprising that all candidates vowed to end extrajudicial killings and enforced disappearances. Within the group of candidates Aquino had a special standing regarding this drawback. He was himself accused of being responsible for killings that happened on the family-owned landholding Hacienda Luisita⁶. However, he was removed from the line of fire by affirming that only two of the seven killed farmers belonged to his hacienda (Bulatlat 2010). In contrast, Acosta addressed this issue in respect to conflicts in Mindanao. Although he was not able to present a political concept on how to decrease the number of extrajudicial killings and enforced disappearances, he stated that the eradication of private armies would lead to a new development (GMA News 2010d). Perlas demanded the re-opening of investigation and Madrigal supported him, saying that human rights violators, such as masterminds and perpetrators of extrajudicial killings and enforced disappearances of activists and journalists should be prosecuted (Andag/Icayan 2010). Surprisingly, Villar turned out to be the only candidate to specifically mention the implementation of the recommendations of Philip Alston, United Nations Special Rapporteur on extrajudicial killings and enforced disappearances, who published his final report⁷ in 2007 (HRW

5) Numbers vary within different reports of non-governmental organizations as well as the government's Melo Commission and the UN Alston report.

6) For more information on the Hacienda Luisita Massacre see Bulatlat 2004.

7) For the complete report on extra-judicial, summary or arbitrary execution, see also: Alston 2007.

2010). In contrast, Gordon specified those plans by emphasizing that these defects should be eradicated and that “the perpetrators of the crime are meted out the appropriate penalty” (Andag/Icayan 2010). To achieve this, he demanded a strong police and military as well as principled prosecutors and judges. Candidate Teodoro stressed the role of the Commission on Human Rights (CHR), saying that he would cooperate more closely with it to follow and investigate the Maguindanao massacre (ibid).

Are you the man, Mr. Aquino?

During the 2010 presidential election campaign, almost all candidates specifically addressed human rights. Topics varied from key human rights subjects such as participation on subjects on economic, social and cultural rights. Especially health, education and work, as well as women’s rights and Indigenous Peoples’ rights were mentioned. Due to huge grievances in the government, a special focus was placed upon extrajudicial killings and enforced disappearances. Not only candidates focused on this topic, but also public demands were brought to the new president (HRW

2010). It emerged that there were qualitative differences among the big three candidates. Particularly striking was the observation that Estrada did not have a specific human rights agenda. Being asked about the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, which he signed during his presidency, he was not able to say what this treaty consisted of, or whether he actually signed it or not (Bulatlat 2010). Villar mentioned several human rights topics, but it was Aquino, who provided the broadest approach to human rights policies (Andag/Icayan 2010). The issues he raised ranged from human rights and their protection, over the abolition of the death penalty to economic, social and cultural rights. In the latter the focus was placed upon a working judiciary for proper investigations and a renewed cooperation between the Office of the President and the CHR.

Although, almost all candidates more or less addressed human rights - it is nonetheless a cause for concern, that some candidates not only failed to provide a comprehensive human rights policy but also contravened human rights standards. Pledges to re-impose

the death penalty, to reject the RH Bill or to restore criminal liability to minors are incompatible with essential human rights.

Regarding the conduction of proper democratic elections it is worth mentioning that the election procedure itself raised concerns about election-related human rights standards⁸. The CHR published a summarized analysis of the 2010 election on 14th May. The commission complained about “scores of qualified voters who were disenfranchised during the election” (CHR 2010). Names could not be found on voters’ lists, long lines forced people to wait for several hours and the newly introduced automated counting machines rejected ballots for different reasons. Although the number of incidences decreased in comparison to the past, election-related violence remained prevalent. The National Police logged at least 82 cases including 27 deaths and 42 persons injured (ibid). Hence civil society hopes, “that the incoming administration will be one which meaningfully prioritizes the human rights and human dignity of all, not just on paper, but in reality” (ibid). ■

8) See also for a comprehensive analysis of the legality and regularity of the 2010 presidential elections: CHR 2010.

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SLUM FIRES IN MANILA – EVOLVING CONFLICT BETWEEN URBAN POOR AND PRIVATE PROPERTY OWNERS

by Nina Johnen

On April 11, 2011 a disastrous fire in an informal slum settlement in Quezon City, Manila, broke out. Injuring 15 people, leaving 10.000 homeless and causing open violence between slum inhabitants and city officials, this fire has been only one out of numerous, but in the extent of human tragedy the most dramatic in recent years. This article gives an outline of the political conflict that has been evolving around these mostly illegal slum settlements, and attempts to show how the basic lack of housing in the Philippine capital can become a source of human rights violations.

After the official definition of UN-HABITAT, the United Nations Human Settlements Program, a slum is a neighborhood whose households lack access to clean water and sanitation, security of tenure, durability of housing and sufficient living area (UN HABITAT 2006/7). In a report from 2010, the Philippine Institute for Development Studies said that 37% of the 12 million inhabitants of Manila live in slums (Ballesteros 2010).

The reality is that most of those settlements affected by fires are illegal. The official term for the practices of people illegally inhabiting those areas is “squatting”, hence the government refers to these people as “squatters”. In Manila one out of four families are squatters, which adds up to an amount of 560.000 families (Inquirer 2008). Another reality is that the slum areas, although not officially utilized, belong to somebody. These may be private landowners, real estate agencies or even the state itself. Those actors have a big interest in revitalizing those areas economically and so they apply any method within their means to expel squatters from their land. At the same time those areas are home to thousands of people who have the right to residence within their country’s borders, but as poor people at the same time belong to the most vulnerable parts of society. Usually the Philippine national housing authority asks the inhabitants of those illegal settlements to leave within a specific period of time because the land is going to be used for new construction projects. Although Philippine Lina Law (Inquirer 2008) requires a consultation between property owners and illegal occupants, with a 30-day notice of eviction and the duty for land developers to offer appropriate housing alternatives for people who have to leave the area concerned, the alternatives offered by government programs do very often not meet the needs of the

people. New housing settlements are built at the city’s outskirts so that people have trouble finding a job because they are too far out and cannot afford to pay for the transfer to the city center. The only government initiated program targeting the problem of those displaced people is called Balik Pobinsya (Inquirer 2011a). It requires them to leave the city but only pays for their transfer back to the provinces they came from.

On top of that, the proceeding of ejecting people from their houses very often lack the required conflict management expertise from the state officials’ side. Police and the cities demolition squads themselves get actively involved in the evolving conflict and use open violence to keep people from the areas (Reuters 2010). After fire has driven the inhabitants away, the property owners usually appear claiming their territory and ask the former inhabitants to leave the area as quickly as possible. Remains of the settlements are swiftly removed by the city’s clearing teams, so that the owners can sell their property or start using it for their own benefit. At the same time, former slum inhabitants are prohibited by the police from entering the area in order to deter them from rebuilding their houses. Through those practices described, a number of human rights, such as the right to life, liberty and security of person (Art. 3), the right to freedom of movement and residence (Art.13) or the right on a decent standard of living adequate for the health and well-being of oneself and one’s family (Art. 25), are violated on a regular basis.

Conflicts between slum inhabitants and landowners are therefore not a new phenomenon. Violent excesses between former slum inhabitants and city clearing teams have occurred on a regular basis during the last years (Reuters 2010), leaving

many people injured. What's new is the illegal strategy of landowners to arson the area they claim. The amount of slum fires in Manila in recent years has created suspicion among the population concerned, the social and NGO sector. The question to be asked is whether those fires are true accidents or set strategically by landowners and land developers to gain quick access to land formerly illegally inhabited by the slum population.

In the earlier mentioned slum, the fire on April 11 was the fifth within a period of a few months. Those fires are officially caused by faulty electric cookers, open fires or illegal power lines set up by the slums inhabitants. However experts like urban sociologist Erhard Berner from the International Institute of Social Studies (Davis 2006) or Carl Marx Carumba from the NGO IDEALS¹ express their concern by exposing another truth. Private landowners and real estate agencies seem to have found their very own

strategy of taking possession of their lands. Rather than to file cases against illegal settlements in front of a court or to endure the wait for official demolition orders, they choose another, even more effective way. They arson, following the logic that after the demolition of the squatted areas it is usually easier to remove the people. To arson, they hire people who chase cats or rats with a kerosene-burning-cloth on their tails through the slums. Those animals unwillingly have plenty of opportunities to set fire, while they panically run all over the slum, hitting anything from people to trash to houses with their burning tail.

Of course the above-mentioned strategies are not the causes of all fires that had erupted in Manila's slums within the last years, but those incidences described above have been repeatedly reported by urban poor. In February 2011 only, 30.000 people lost their homes in slum fires all over Manila (Inquirer 2011b).

In its impact on human rights violations affecting thousands of people, those illegal practices reach dimensions that are usually only met in cases of war crimes.

The new government faces big challenges. There is a lack of new housing stalks in Manila, there is a need for emergency programs that offer temporary evacuation homes and lifesaving infrastructure such as access to clean water or medical help in case of fires, there is a need to put the landowners who can be held responsible for arson on trial, and foremost there is a need to provide efficient and sustainable anti-poverty programs that target big cities as well as the countryside. All actions described would prevent probable causes of human rights violations to a great extent. So far, the urban poor are being punished twice: first by the landowners, dispelling them from their homes, and second by the government that allows this extreme urban poverty to persist. ■

1) The Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS), see for more information: <http://ideals.org.ph>.

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IPON STARTS ITS PRESENCE IN NORTHERN MINDANAO

Having conducted a pre-study in Northern Mindanao, IPON is glad to open its office in the Philippines south. The farmer's organisation "Don Carlos Bukidnon United Farmers Association Inc." (DCBUFAI) requested IPON in May 2011 to observe the human rights situation. Human rights defenders associated with DCBUFAI are struggling to achieve a fair distribution of land ownership granted through the "Certificate of Land Ownership Award" for land they have tilled for more than two decades and which is now awarded legally through the state-led agrarian reform act. Meanwhile Southern Fruits Products Inc. intends to expand their pineapple fields in the area of Don Carlos. The land conflict is therefore less defined as a struggle between landowner and farmers but as a toilsome struggle between farmers and a multinational business group that is politically influential. In order to create an atmosphere of eye-level cooperation as a pre-condition for the work of the human rights defenders of DCBUFAI, IPON is dedicated to establish its presence in Bukidnon and thereby facilitate and enable human rights observations to take place and hopefully contribute to achieving sustainable peace.

Martin Bollmann

FROM MARCOS TO ANOTHER AQUINO: IMPUNITY, ACCOUNTABILITY AND TRANSITIONAL JUSTICE

edited by Steffen Rudolph



Ruben Carranza

(Philippines) Director of the Reparative Justice Program at the International Center for Transitional Justice (ICTJ), where he works with victims' communities and reparations policymakers in different post-conflict and post-dictatorship countries. From 2001–2004, he was the Commissioner in charge of recovering ill-gotten wealth from the Ferdinand Marcos family. From 1998–2000, he was an Assistant Secretary of National Defense in the Philippines, where he developed his expertise in security, peace-building and conflict issues.

Carranza discusses the notable progress in resolving the problems of extrajudicial killings (EJKs) and enforced disappearances (EDs). The paper provides information on past and present attempts on transitional justice-seeking efforts in the Philippines and other countries. The author illustrates the options for a future national monitoring mechanism through transitional justice lens. He comes to the result, that success will only be achieved once a multi-stakeholder owned national monitoring process has determined that these crimes have been eradicated in the Philippines. This is an abridged version of a September 2010 paper written for the European Union-Philippines Justice Project (EPJUST).

The Opportunity of President Aquino

In many countries in which state and non-state armed groups have committed human rights violations, confronting impunity and pursuing accountability for those violations is challenging. Due to local activism or to international pressure, governments sometimes react, - but these efforts will fall short if they do not include the elements of transitional justice in their approach. Transitional justice is not an alternative to seeking redress through the criminal justice system; rather, it offers mechanisms that can be combined with or may sometimes be more feasible or appropriate than relying on prosecutions and courts. These mechanisms include truth commissions, administrative reparations programs, the vetting of officials involved in abuse and other institutional reforms. These mechanisms have been used in post-conflict and post-dictatorship settings. In some cases, timing and sequencing considerations may require that the persons responsible for human rights violations and other abuses are no longer able to ensure impunity for themselves or for their subordinates; that may be when the opportunity to hold them accountable will arise. That is the kind of opportunity that is now available to President Benigno Aquino III.

Impunity under the Arroyo Presidency

During the Arroyo-Presidency „the number of politically motivated killings in the Philippines rose significantly¹. Steps undertaken by the government, such as the 'Task Force Against Political Violence' were

inadequate or ineffective. The Melo-Commission-Report and the Alston-Report pointed out that elements of the Armed Forces of the Philippines (AFP) were responsible for a significant number of EJK cases and that the Philippine National Police (PNP) is at best reluctant if not unable to investigate members of the military who might be implicated. President Arroyo ordered the same institutions and agencies implicated in both reports to "actively support and participate in carrying out the mandate of the Task Force". Asking the AFP to be part of an investigation of its own human rights record reinforces impunity and demonstrates that the Arroyo administration's efforts were token at best. Certainly, none of the measures taken by Arroyo resembled any effort at reparations for victims or toward seriously reforming the military.

Lessons in Truth-Seeking from the First Aquino Presidency

In his first State of the Nation Address, Aquino said he would establish a truth commission to deal with the legacy of past abuse by the former president. This is not the first time, such an attempt has been made in the Philippines. His mother, then President Corazon Aquino created the Presidential Commission on Good Government (PCGG) to recover the ill-gotten wealth of the Marcoses and the Presidential Committee on Human Rights (PCHR) to investigate and prosecute human rights violations under the dictatorship. The PCHR had the investigative and recommendatory powers of a truth commission for past human rights violations; but it never fulfilled expectations because it operated in a fragile, post-dictatorship environment.

1) U.N. General Assembly. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Alston Addendum Mission to (the) Philippines, (A/HRC/8/3/Add.2, p. 2) 16 April 2008.

President Corazon Aquino found herself in a position of weakness vis-à-vis the perpetrators of human rights violations. Unlike the PCHR, the PCGG continued to function, but was hobbled by the fact that those it investigated controlled and influenced the dictatorship's human rights violators who were now the sources of instability for Mrs. Aquino's government. Still, the transitional justice architecture developed by the first Aquino government was, at least in design, both logical and comprehensive. It saw the mutually-reinforcing character of impunity for economic crimes and impunity for human rights violations.

Truth-Seeking under President Benigno Aquino

President Benigno Aquino's first executive order is an echo of his mother's own first act as President. President Aquino's Executive Order No. 1 created "the Philippine Truth Commission"². The commission has a limited mandate to investigate reports of graft and corruption. It does not have any mandate to investigate violations of human rights, particularly EJKs and EDs that took place under the Arroyo administration. This shortcoming is a missed opportunity; however, - the experiences elsewhere³ show, the opportunity to address these violations isn't completely lost. In many cases the possibility to prosecute perpetrators of human rights violations weakens over time due to the loss of evidence and the unwillingness of witnesses to come forward.

What Can Be Done: Truth-Seeking, Reparations and Prosecutions

The experience of the Philippines and other countries show that large-scale corruption and human rights abuses go hand-in-hand under a dictatorship. The impunity for one

kind of abuse reinforces the impunity for the other kind. For a transitional justice to be effective, it may be necessary to address these abuses simultaneously. The corruption-only mandate of the Philippine truth commission – whose legality is still pending at the Supreme Court as of this writing – is inadequate as a truth-seeking process. What is it meant to investigate and where is that meant to lead? Is the new commission meant primarily to conduct investigations that can sustain criminal prosecution? Or is it meant to draw a broader narrative about what happened in the last nine years under the Arroyo administration? At the risk of over-generalization, truth commissions are probably more useful when used to challenge official versions (or denials) of the past instead of being used primarily to assemble evidence for criminal prosecutions.

A truth-seeking process challenging official versions of past violations would have been of decisive importance in challenging the Arroyo administration's narrative about EJKs and EDs. The Arroyo Task Force against political violence⁴ tended not only to excuse and rationalize the acts of individual perpetrators in the military but to exonerate the State and its security institutions from the responsibility to protect and prevent anyone from EJKs and EDs. The underlying flaw of the Arroyo administration's approach to these violations was never premised on acknowledging State responsibility.

With respect to reparations for victims of EJKs and EDs, no step was ever taken during the Arroyo administration. The right to reparations consists of material and symbolic forms of acknowledgement. The Aquino government is in a position to take steps to provide reparations but it has not done so. An approach that combines reparations, prosecutions and truth-seeking would ensure a more integrated

approach to justice than the halting, ad-hoc efforts that the Aquino administration has taken so far.

What could be the solution?

With respect to EJKs and EDs in particular, the recommendations of the Melo Commission and the Alston report would be meaningless unless they are implemented and monitored. A national monitoring mechanism (NMM) for these human rights violations is one step toward making remedies available to victims and their families as well as ensuring that impunity is addressed. In terms of investigation and prosecution, the NMM can monitor the progress of specific cases and provide the kind of information needed to push a criminal case involving an EJK or ED to its resolution. By systematically identifying victims, reparations can be considered, designed and implemented, regardless of the pace in which prosecutions move forward. But while a case-based monitoring mechanism can help identify the obstacles to pursuing accountability through the criminal justice system, it will not by itself identify and suggest ways to deal with the underlying causes of the violations and the institutional forces that maintain impunity. The Commission on Human Rights (CHR) with its broad constitutional mandate has been suggested as the appropriate monitoring institution, but it is questionable if the CHR has enough capacity to take on all the cases of the Arroyo-period. It may be not only useful but necessary to build into this monitoring function a substantive role for civil society and a significant degree of victim participation in the monitoring process. Lessons from Cambodia or Peru suggest that local rather than national organizations may be the practicable way to integrate civil society in the process. Another approach rests on confronting impunity not only at the level of the

2) EO No. 1, Creating the Philippine Truth Commission of 2010, Section 1 (2010).

3) The experiences in Chile, Peru, Indonesia and South Africa suggest that addressing impunity for human rights violations and corruption work best when they are done simultaneously.

4) See http://www.epjst.org/downloads/MONOGRAPH/From%20Marcos%20to%20Another%20Aquino_Impunity,%20Accountability%20and%20Transitional%20Justice%20in%20the%20Philippines.pdf

individual perpetrator, but at the level of the State and its institutions. In other countries the truth commission has taken on a monitoring function, but in a way that spans longer periods, a wider range of violations and recommendations that not only include prosecution, but also reparations, the vetting of officials linked to violations and institutional reforms. These commissions concentrate more on the truth about the use of EJKs and EDs as instruments of repression, intimidation or warfare rather than to establish a *prima facie* case for prosecution. By assigning institutional responsibility where warranted and recommending individual prosecution if enough oral and documentary basis came to the commission's possession, these truth commissions opened up a wider public discussion about human rights and the right of victims to reparations for the violations that took place.

Conclusion: The Road Taken by the Aquinos

In the absence of a truth commission, it may make more sense to create a commission vested not only with the function of monitoring cases of EJKs and EDs that have been acknowledged by the State, but also with the function of acknowledging cases that have been denied by the State, or disputed by suspected perpetrators and excluded from previous investigative efforts.

At the same time, because truth-seeking should call for public engagement, the situation of victims

of EJKs and EDs as well as of other human rights violations might cease to be seen as merely an offshoot of armed conflict between the military and non-State political groups. It might even draw greater attention to their root causes, such as unimplemented land reform, urban poverty and other economic and social rights violations. From the perspective of the victims of unresolved human rights violations the new Aquino administration represents the second chance of having human rights violations examined by a political leadership unencumbered by complicity in those abuses.

Problematically from the perspective of those advising President Aquino, the context is merely of transitioning from one administration to another. Within this narrow perspective, Aquino has an even narrower approach, focusing only on Mrs. Arroyo's corruption instead of casting a wider net of justice.

Nonetheless, by creating a truth commission as his first exercise of executive power, President Aquino has also demonstrated his awareness of the value of truth-seeking as a transitional justice mechanism. The second Aquino administration can draw inspiration from the first Aquino administration, and recognize that truth-seeking and the pursuit of accountability cannot be confined to one regime and to a narrow set of abuses. If it does so, then it is more than likely that the Aquino administration can still take the right road, the one the President's mother had started to take, and which the son should not find difficult to follow. ■



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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 organisation 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 organisations of human rights defenders (HRD) in the Philippines, starting with the request of the farmers organisation 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 organisation will only go into a conflict area after a request from a human rights defender organisation 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 analysed 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 organisations, 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:
 DCBUFAI/ MAKABAYAN-Pilipinas (in process)
 TFM (Task Force Mapalad)

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 Charta 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.



