

OBSERVER

A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES

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RED BAITING: CIVIL SOCIETY UNDER GENERAL SUSPICION

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IN THE PHILIPPINES

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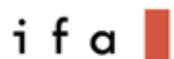
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EDITORIAL

When no distinction is drawn between terrorists and human rights activists, state actors put the whole civil society under general suspicion. Red-Baiting, the practice of state actors to publicly and detractively classify government-critical individuals and organizations as state enemies, communist terrorists or members of communist front organizations has a long tradition in Philippine politics. The security services still fail to differentiate between organisations that bear arms to fight the state and legitimate unarmed organisations that oppose the government within the framework of their guaranteed rights and freedoms.

However, when Benigno Aquino became president of the Philippines and included several men and women to his cabinet, who were active members of civil society, hopes were raised that the problem of Red-Baiting would be tackled as well. It has been more than one and a half years since the new administration assumed office – time to take a closer look at the issue of Red-Baiting.

The introductory article describes the social phenomenon of Red-Baiting from a theoretical, social, historical, political and legal perspective providing insight into its functional logic determined by the interdependence and interaction of these different fields. IPON emphasised the issue in course of a comprehensive project including the implementation of a baseline study, multi-track networking and a Red-Baiting conference in 2011. The “Conference on Red-Baiting in the Philippines” was organised by IPON to enhance exchange between actors representing state

authorities and different civil society organisations.

The tagging and labelling that mark Red-Baiting have serious consequences for those people and groups working in the frontline of defending human rights. In an interview, a representative of the organisation Karapatan provides insights into a victim’s perspective and emphasises the role of the former and present counter-insurgency programs as tools to silence the dissent of the people. In this regard, she points out that “Oplan Bayanihan” as the current government strategy has to be withdrawn immediately to tackle the issue. Dr. Simbulan, Director of the Philippine Human Rights Information Centre, also takes up governmental measures and describes Red-Baiting as a counter-insurgency tool, which has primarily been intended by the state to achieve certain objectives like sowing terror among the civilian population, immobilizing officers and members of branded groups and destroying the progressive people’s movement. For the Commission on Human Rights, tagging members of the civil society as communists still forms an integral part of the military’s internal security operations which is often accompanied by massive human rights violations.

Knappmann describes another version of political labelling that is directly linked to counter-insurgency operations: Abu Sayyaf-Baiting. While in Red-Baiting victims are accused of being communists, here victims are accused of being members of the Moslem group Abu Sayyaf.

Taking the mentioned measures of fighting state enemies into consideration, Nambula focuses on

these Philippine government efforts to root-out armed rebellions in the country, the closely associated human rights violations and the contribution of the European Union to improve the situation with the EU-Philippines Justice Support Program.

Despite these examples, Red-Baiting is not solely a Philippine issue; also in other countries this strategy is used against state enemies: Examples from Peru and Germany reveal historical and recent dimensions of this phenomenon in non-filipino countries in order to provide international perspectives on this matter.

Despite the issue’s focus on Red-Baiting, we also provide an insight into IPON’s current work. Since the Agrarian Reform Program is to expire in 2014, human rights defenders are facing increasing repression within the next years – for example on Negros Island. Also IPON conducts human rights observations in Mindanao and in her article Albers depicts the struggle of indigenous groups for land rights in Central Mindanao. ■



CALL FOR ARTICLES

Preview of the Next Issue: Forms of Peaceful Protest. Call for articles until April 15th, 2012 (editorial deadline). Articles including a systematic analysis on the international, national and local level with an focus on human rights or human rights defenders are most welcome.

RED-BAITING IN THE PHILIPPINES: CIVIL SOCIETY UNDER GENERAL SUSPICION



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Over the past decade extrajudicial killings (EJK) and enforced disappearances (ED) were reported by several national and international institutions and organisations. Amnesty International, Human Rights Watch, the governmental Melo Commission and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, have analyzed the decade of the Arroyo administration and have discovered grave human rights violations. However, their reports lack a comprehensive analysis of the overall strategy that may have contributed to such violations: Red-Baiting. This strategy is commonly known throughout the country, but there haven't been serious efforts to tackle the problem, yet. "When you decide to work for a society-critical NGO, you inevitably face state repression"¹.

What is Red-Baiting?

Red-Baiting describes the practice of state actors to publicly and detractively classify government-critical individuals and organisations as state enemies, communist terrorists or members of communist front organisations with the purpose of overthrowing the democratically legitimized state authority. Furthermore, state actors create an atmosphere of insecurity to indoctrinate the belief in an internal or external threat to national security in order to receive societal legitimation for the implementation of a legal framework that establishes a "state of exception". Finally, state actors take concealed actions against these government-critical individuals and organisations.

The term Red-Baiting stems from the McCarthy era in the USA during the 1950s. The political campaign against communist elements in the American society, identified with the name of Senator Joe McCarthy, reaches into today's politics and has experienced a renaissance during the past decades in the Philippines. After 9/11 President Bush called for support of his "War on Terrorism" and the Philippine government was one of the first to stand by its American friends. The reward for their loyalty was the promise of \$450 million to terminate internal insurgent and terrorist activities (Francia 2003). However, instead of using this support/money to fight the Abu Sayyaf as

intended by the American government, Arroyo used the money for her fight against the Moro Islamic Liberation Front (MILF) in Mindanao (Glassman 2005) and the leftist insurgent New People's Army (NPA) (Francia 2007)².



© IPON | Is it worth to demonstrate?

The State of Exception and La Mano Dura

One may ask how Red-Baiting can be justified in a liberal democratic system. The answer is as simple as the question:

1) Interview with Sister Crescencia Lucero of Task Force Detainees of the Philippines (TFDP) on 2nd August 2011.

2) See also Article "Terrorists or Terrorised? – Abu Sayyaf-Baiting in the Philippines" in this issue.

It enjoys support and acceptance within society.

The state of exception is “a provision whereby the state – in times identified as ‘crisis moments’ that threaten the very continuity of the state itself – is empowered to act outside the constraints of law, permitting the state to adopt extreme measures (including violence against its own citizens) in its own defense” (Goldstein 2007). Hence, state violence against internal “enemies” not only becomes a possible option, but a necessary means to guarantee and safeguard the state’s survival. It is the state’s right to respond to the internal emergence of extraordinary situations and crises.

Furthermore, the belief “that rights may have to be sacrificed for security and that civil and human rights cannot be respected in the context of ‘emergency’ ” (Goldstein 2007: 54) enjoys wide support among members of society, who perceive insecurity as a major internal threat. For this reason, state actors belonging to the executive enjoy a great scope of measures to react to an emergency and to safeguard national security. This phenomenon is called “la mano dura” (ibid.: 58). When people feel the absence of “a reliable authority, operating according to the rule of law, to which [they] can turn to report crimes, resolve conflicts, or seek redress of grievances” (ibid.: 57), it is this “pervasive sense of insecurity” (ibid.) that explains why they advocate an extension of “discretionary powers for police personnel to control crime and other security threats” (ibid.: 51). Thus, the state deeply indoctrinates a state of fear in the society, be it the fear of communism or of radical Islamist fundamentalism. This threat to national security or rather to the existence of the state, regardless whether it is real or partly constructed by official



© IPON | „Sabagay mga komunista naman silá” (they are communist anyway)!

governmental discourse, moves the people to call for “la mano dura” and legitimises the confinement of civil liberties and human rights in order to guarantee the further existence of the state during a state of national emergency. The creation of such an atmosphere of insecurity is a necessary pre-condition to be able to implement a legal framework establishing a state of exception.

Legal Aspects

The Philippine Congress has passed several bills that constitute legal instruments to facilitate the practice of Red-Baiting. The Human Security Act of 2007 (HSA)³ is the most comprehensive law in response to international terrorism in the Philippines. It gives a legal definition of terrorism and defines

its constitutive elements of crime, penalising them, and provides for measures to prevent acts of terrorism. These measures include the surveillance of suspects and the interception and recording of their communications, the outlawing of organisations deemed terrorist by declaration of a Regional Trial Court, the detention of suspects without judicial warrant of arrest and (disregarding) the rights of the detained, travel restrictions and house arrest for terror suspects on bail, and the examination of bank deposits, accounts and records as well as the seizure and sequestration thereof. With regard to the problem of Red-Baiting in the Philippines, the HSA has been criticised in several respects, especially for being imprecise, illegal, ineffective and mostly incoherent and disorganised. Because of its

3) Republic Act No. 9372 of 2007.

imprecise definition of terrorism, the law may be null and void for vagueness following a legal doctrine in past decisions of the Supreme Court



© IPON | International trail company to prevent Red-Baiting.

of the Philippines (Balderama 2007-2008: 14 and 16). Concerning the illegality of the HSA, in practice the suspicion of being a member of the Communist Party of the Philippines (CPP) is sufficient to become a terror suspect and to be held under surveillance (ibid. 15). Thus, political beliefs and not acts are facilitated to become punishable under the HSA. The essential basic right of privacy in communications is withheld from persons under observation by state authorities (ibid. 37 and Diokno 2007a). Adding insult to injury, the law violates due process of citizens under surveillance, since they do not have any legal remedy against their observation by state authorities as arranged by the law (ibid.). Terror suspects can be placed under warrantless arrest for three days without probable cause to be determined by a judge (Balderama 2007-2008: 28-29). Moreover, the law authorises the extension of warrantless detention of terror suspects beyond the regular three days to an indefinite amount of time without trial (ibid.: 28-29; Diokno 2007a; Pereire 2007: 3). Therefore, the HSA violates basic principles of the rule of law,

such as the principle of equal protection under the law and the right to fair trial. Under the HSA terror suspects on bail who are placed under house arrest suffer harsh conditions. Suspects are not allowed to communicate, to follow the media, to be visited by close relatives and friends or to be held in group detention (Balderama 2007-2008: 39; Diokno 2007a). Solitary confinement is prohibited in the Philippines by Art. III Sec. 12 (2) Constitution of the Philippines.

In summary, the legal framework established under the Arroyo administration facilitates the legal implementation of a state of exception, which in turn contributes to the development of a state of fear among the population. It enables state authorities under the protection of the law to pursue citizens who adhere to communism as terrorists and enemies of the state. Although membership of the CPP is legal in the Philippines, the above-mentioned laws provide a basis for the political prosecution of communists.

The Modus Operandi

Red-Baiting in practice may begin with relatively harmless measures: A victim may start receiving threatening text messages on his or her cell phone, e-mail account or by mail (Diokno 2007b). An unidentifiable motorbike driver passes by the house of the victim at the same day and time every week or even every day. Victims are recognisably kept under surveillance at home and at their workplace, either through technological means like wiretapping of the phone lines, or by police informants, who permanently tail after the victims (ibid.). During public events on the Barangay level⁴ the military informs citizens about potential threats of terrorism and threats to the existence of the state, emanating from particular Barangay residents, who are portrayed as communists. In the PowerPoint presentation "Knowing the Enemy" presented by the armed forces, the names of wanted terrorists and leftist activists suspected of terrorism, are announced publicly (ibid.). Further, leaflets with similar contents are distributed in Barangays (ibid.). The names of those citizens considered as enemies of the state also appear on internal military blacklists called "Military Order of Battle"

4) Local administrative unit in the Philippines.

(UN 2008: 9-10). Blacklisted victims are denied due process against the military. There is no opportunity for them to take their names off the lists, since these are kept top secret in order to protect the existence of the state. The worst consequence of Red-Baiting is that victims can fall prey to enforced disappearance or extrajudicial killing. In case of enforced disappearances, victims are dragged into cars by unrecognisable perpetrators. Sometimes victims reappear or escape years later after having been held in captivity, tortured or used as unpaid workforce, which is a type of modern slavery (Amnesty International 2011). However, in most cases victims of enforced disappearances never return. In the Philippines extrajudicial killings are typically executed by teams riding motorbikes, wearing civilian clothing and bonnets as a disguise (Diokno 2007b). While one person drives the motorbike, the other pulls a firearm and shoots the victim. The killings are executed with such a high degree of professionalism and precision that it does not seem to be far-fetched to suspect people with professional training. Typically, in each extrajudicial killing incident only few shots are being fired, killing the victim immediately. In the Philippines only personnel of the military and the police are professionally trained in the use of firearms. Although suspects of enforced disappearances and extrajudicial killings are rarely arrested, there is ample evidence that point to the involvement of state officials who give the orders for such acts to others who commit the crimes. There are virtually no cases of enforced disappearances and extrajudicial killings known in which suspects were legally persecuted to the extent of being convicted for the crimes committed. Lack of thorough police investigations and impunity of perpetrators are typical characteristics of Red-Baiting in the Philippines.

Conclusion and Countermeasures

The social phenomenon of Red-Baiting in the Philippines has been described from theoretical, social, historical, political and legal perspectives providing insight into its functional logic determined by the interconnectedness and interaction of these different fields. In light of the terrorist attacks of 9/11 and the global war on terrorism, a state of exception was established under the Arroyo administration, following the US in fighting Islamist fundamentalist and all other kinds of terrorism. The Philippine government and the media portrayed terrorism within the Philippines as a threat to the existence of the state itself, establishing a state of fear in the society. Out of fear for their lives, large parts of the civilian population demanded stronger and more effective anti-terrorism measures

processes by societal and state actors which are steered by the government. Thereby, it created a vast array of legal measures to intensify its control over the entire population, especially targeting the so-called enemies of the state (Quimpo 2009: 15). With a legalised state of exception and large parts of the population terrified, supporting a strong government, "la mano dura" could have its unimpeded way against those citizens – may they be portrayed as communists, Islamic fundamentalists or any other kind of radical believers – considered as potentially harmful to the governing administration. In this context, Red-Baiting is a strategy by state authorities to classify political activists and civil society organisations as communist while establishing a state of exception, legitimising it with a legal framework, and conducting covert operations ranging from simple



© IPON | „La mano dura“. Your friendly police department.

from the government. In disregard of several basic civil rights and freedoms, the government adopted a legal framework, including most prominently the HSA to implement rigorous anti-terrorism and security measures. Hence, the establishment of the state of fear and the state of exception are reciprocal and mutually reinforcing

harassment to enforced disappearances and extrajudicial killings of activists. Although there has been some improvement, the legal instruments do not suffice to prevent incidents of Red-Baiting, as there are still new cases brought to the public and the root causes are not tackled. In order to deal with the issue of Red-Baiting, the

Philippine state is required to take preventative measures to enforce police investigation and legal prosecution to end impunity and to compensate the victims and their families for the damages they incurred through Red-Baiting. As for the prevention of Red-Baiting, an overarching societal discourse about the issue should be encouraged to raise awareness about the issue among citizens as well as among state authorities. Especially state employees of the executive branch like the police and military officers should be confronted with the topic, be made aware of it and learn ways of peacefully and lawfully addressing it. A positive human rights education for soldiers and police officers as protectors of the basic rights of the citizens could contribute to this objective. Concerning the prosecution of people suspected of having committed Red-Baiting, the government needs

not only to enhance the budget and forensic technology of investigators, but foremost needs to intensify its political will to prosecute suspects. Thus the government will need the unimpaired cooperation of the military and the police to access and trace old evidence and case file materials. Also, an effort should be made to compensate the victims of Red-Baiting and their close relatives financially for the physical and psychological damages that were inflicted upon them by state authorities. Therefore, all relevant state institutions involved, namely the Commission on Human Rights, the Department of Justice, the Department of Interior and Local Government, the Department of National Defense, the Philippine National Police and the Armed Forces of the Philippines should cooperate in and develop a concerted policy to achieve these goals. ■



© Jimmy Domingo | „Noise barrage“. Negros-farmers demonstration in front of the Department of Agrarian Reform.

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“RED-BAITING: A DESPERATE MOVE TO SILENCE THE PEOPLE’S DISSENT” THE VIOLENCE OF RED-BAITING AGAINST CIVIL SOCIETY

The Alliance for the Advancement of People’s Rights (KARAPATAN) is promoting and protecting political, economical and social rights and an important actor of the human rights struggle in the Philippines. At the same time the group and their members are permanently “Red-baited” by the security sector. Hanimay Souza, Secretary General of KARAPATAN-Southern Mindanao Region gives an inside of KARAPATANs perspective on the issue, consequences, recent cases and steps to improve the situation.

IPON: Could you explain the perspective of KARAPATAN on Red-Baiting?

Souza: Red-Baiting is not a new tactic. It is a form of harassment of human rights defenders like KARAPATAN, because our organization is dealing with the promotion and protection and defence of human rights especially of individuals who are actively involved in local organizations. Red-Baiting has been happening since time immemorial. Especially with this kind of government that has very repressive policies. It is implementing anti-people policies which means it really doesn’t listen to what the people demand.

Which kind of human rights defenders are threatened?

Souza: For example the peasants. They are demanding for genuine agrarian reform but right now the government is blind and deaf to the calls of them. Another case is the issue of the workers who, until now, demand for salary increases and security of their jobs. The same it is for all other sectors that demand basic social services for the youth, accessible and affordable education, housing programs for the urban poor communities. Our task is very dangerous and risky because we are in the frontline of defending human rights to these basic sectors.

In your area there are massive human rights violations, how do you consider the military’s role there?

Souza: The Southern Mindanao region is highly militarized. We have here the Eastern Mindanao Command of the Philippine Army directed by the 10th Infantry Division including four infantry brigades. All in all there are 15 infantry battalions employed here in our region. The presence of the military is questionable, especially in the countryside. Although it is a reality that there are insurgencies here in our region the presence of the military does not complement to the reason why they are here that is to combat the insurgents. They are present mainly to facilitate the entry of large scale mining companies and industrial plantations. Southern Mindanao Region is very rich of natural resources. That for us is the reason why the area is highly militarized.

The armed forces are in line with the security plan ...

Souza: In this regard Red-Baiting is one of the strategies in the counter-insurgency program. Just like in “Oplan Banta Laya” which was implemented by the former president Arroyo there is no distinction between combats and non-combats, individuals and organizations. They [the security forces] neutralize organizations by killing the leaders or the members. There have been about 1206 victims of extra-judicial killings and about 206 individual

victims of enforced disappearances under the former president. And right now, even though there is a new administration, the state policy is still the same. And still the culture of impunity, rampant human rights violations and killings continues. Under the new Aquino administration KARAPATAN has documented 55 extrajudicial killings already. The new counter-insurgency plan called “Oplan Bayanihan” is patterned by the counter-insurgency guide of the US department for national defence of 2009. The framework of this strategy is mainly to neutralize the liberation movements of the countries the USA are directly or indirectly involved with politically and economically. Here in the Philippines the US is indirectly involved in the economical and political system. Against this background the counter-insurgency program is to repress the liberation movement in a semi-colonial system. And in order to repress Red-Baiting is one of the best strategies. It has been like this under “Oplan Banta Laya” and it is like that under “Oplan Bayanihan”.

Do you see a paradigm shift over time?

Souza: There is a paradigm shift with the new strategy [but] it is still a notorious program – with a smiling face. The security forces say that they adhere to human rights, to international humanitarian law and the rule of law. They are engaged with different national stakeholders and some civil society actors as their partners for

peace and development. They conducted peace and development programs just to win the hearts and minds of the people in the communities. But they are trying to dismantle organizations like KARAPATAN, peasant movements and labour unions because these organizations are the hindrance to the entry of the military and mining companies into the area. Besides that the security forces coerce the leaders and members of these organizations to organize peace and development volunteers as a shield for the military and the police to fight criminality and insurgency in the areas.

You mentioned that it is dangerous and risky to deal with the promotion and protection of human rights here in the Philippines. How does this threat look like? How would you describe the modus operandi of Red-Baiting?

Souza: First I would like to answer why our work is really dangerous. It is because we are exposing the issues. The clients come to us and we facilitate and document the cases, we do para-legal work, we file legal actions and provide legal services.

[...]

As part of our advocacy we expose the issues, the victims, we go to the media and campaign against human rights violations. In regard to this the military is very defensive to answer these allegations and they try to defend themselves that they did not do such actions. And the security forces expose to the public that they should not go to KARAPATAN because it is a front organization of the New People's Army. Besides that individuals like us, especially the leaders of KARAPATAN are very exposed to the media and involved in campaigns, mobilisations and march rallies. During these activities intelligent units are present and take close up photos and videos and get our cell phone numbers. There are a lot of cases where these members are monitored under surveillance. This is one example why we are at risk. One recent example is the case of Kelly Delgado. He was the Secretary General of KARAPATAN from 2005 to 2011. I replaced him this year. Kelly is a perfect example of Red-Baiting here in our region. He was accused, he was tagged, he was labelled and even a case was filed against him for being a member of the New People's Army. The 10th Infantry Division is still trying to formulate some intrigues about Kelly Delgado saying that he and Rubi Del Mundo, the spokesperson of the NDFP-Southern Mindanao



© KARAPATAN-SMR | Hanimay Suazo of KARAPATAN delivers message at a funeral.

[National Democratic Front of the Philippines], are one and the same person.

Now under the peace and development outreach program of the military they deploy peace and development teams. These teams are conducting forums in the communities to explain "Oplan Bayanihan" and at the same time explain that the people should not be involved or entertain organizations like KARAPATAN, KMP, Bayan Muna, Gabriela or Akbayan because these are front organizations of the CPP-NDF-NPA. This is a common practise of the military in the communities.

You already brought up the case of Kelly Delgado as an example of Red-Baiting. Are there other recent cases in the area?

Souza: For instance there is the case of Rudi Dejos and his son Rudyric in Santa Cruz, Davao del Sur just this February. Rudi Dejos was the vice chair of the local farmer association and very committed in the community. He has been receiving death threats and harassments before from the 39th Infantry Battalion. The organization has been accused of being a front of the CPP-NDF-NPA and he has been labelled as member of the NPA. The military dismantled the organization and coerced the members to be organized with the "Barangay Defence System (BDS)" in order to engage against

criminality and insurgency. In February the military conducted an operation and tortured and killed Rudi and his son in their house. In December 2010 for instance he was harassed in his house by the military and accused of being an NPA member. Besides this case there are many more recent incidents related to Red-Baiting. The consequences for the victims are ranging from harassments and threats, facing legal cases to killings and enforced disappearances.

You mentioned that Red-Baiting is not a new tactic and that it is part of the counter-insurgency program of the government. What do you think can or has to be done to tackle the issue and improve the human right situation?

Souza: The government and the military can not silence the dissent of the people.

They are very desperate and Red-Baiting is a desperate move of the government and the armed forces to silence the people's dissent. It is a big challenge for this government to change this repressive anti-people system because still there is no change at all. The big challenge for the new administration is to end the culture of impunity through prosecution of the perpetrators of human rights violations, including high ranking officers of the armed forces. They should be prosecuted now to give justice to the thousands of victims of human rights violations. Secondly, "Oplan Bayanihan" must be withdrawn. Withdraw any counter-insurgency measures! Counter-insurgency is not a solution to the problem of our country. The people's interests are land, poverty and hunger, security of jobs, education for the youth, home for the homeless, social services, the fight

against corruption and improvement of the political and economical situation. Counter-insurgency is not a solution for these issues at all. In order to address the roots of armed conflicts the government should be sincere to pursue the peace negotiations with the NDFP and the MILF. Rebellion is just a result of the bigger problems of our country, that are landlessness, corruption, discrimination, poverty and all other underlying issues.

Thank you very much for this interview!

Hanimay Souza
(Davao City/Philippines)

Secretary General of KARAPATAN
Southern Mindanao Region



© KARAPATAN-SMR | Widow of murdered Rudyric Dejos at the funeral, assisted by members of KARAPATAN.

RED-BAITING: A TOOL OF REPRESSION, THEN AND NOW



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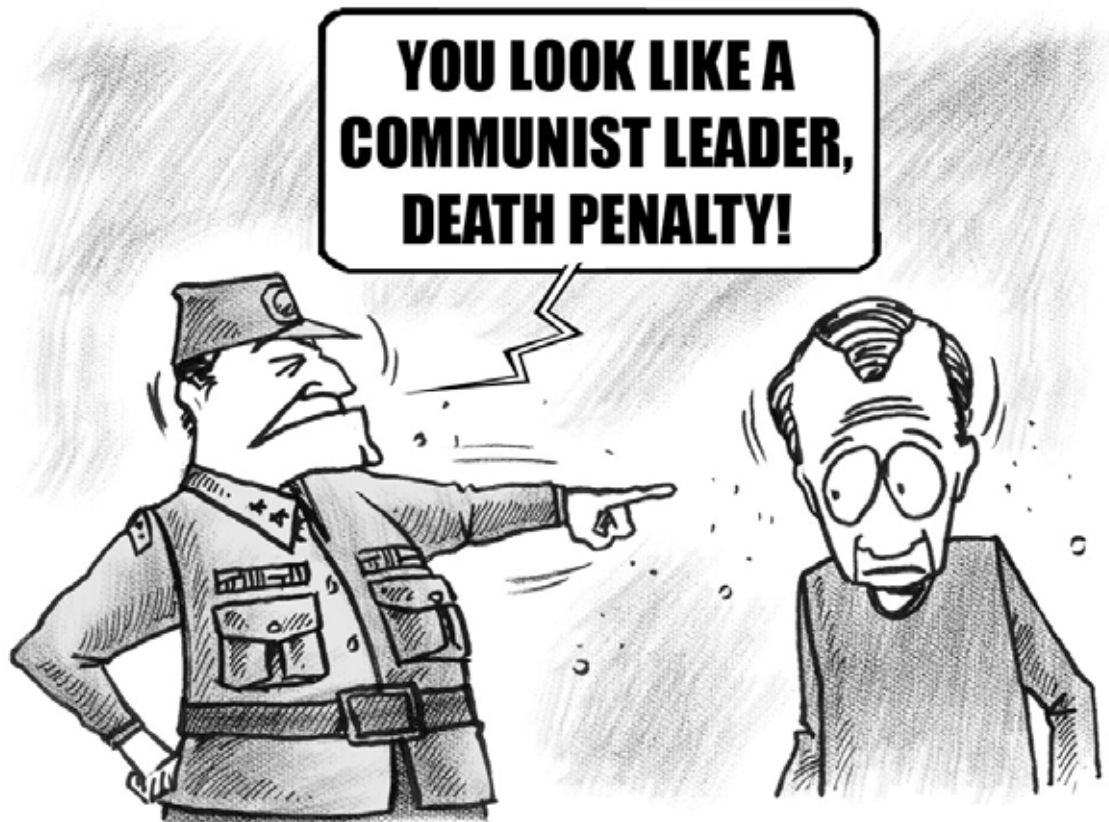
Red-Baiting or labelling by association has long been a tool used by the State in its efforts to protect and preserve itself against individuals and groups perceived to be posing serious problems to its stability and survival. In the Philippines, the security sector, primarily the military, has been the key institution which has consistently resorted to this strategy. Its persistent use of this repressive tool has resulted to human rights violations such as harassment, arbitrary arrest and detention, extrajudicial executions and enforced disappearance of suspected and/or alleged individuals and organizations considered as "enemies of the State".

The political landscape of the Philippines has not significantly changed especially when it comes to the State's dealings and treatment of its critics, both individuals and organizations. Similar to the martial law years, the State has continued to resort to the use of labelling, terror tactics and underhanded methods against those militantly exposing and opposing government policies, programs and system of governance which attack peoples' rights and freedoms.

Red-Baiting or the act of labelling, branding,

naming and accusing individuals and/or organizations of being left-leaning, subversives, communists or terrorists is a strategy used by State agents, particularly law enforcement agencies and the military, against those perceived to be "threats" or "enemies of the State". A key feature of the psychological operations (psyops) component of its counterinsurgency plan, Red-Baiting has primarily been directed against non-government organizations (NGOs), peoples' organization (POs), trade unions, and progressive party list groups, viewed as

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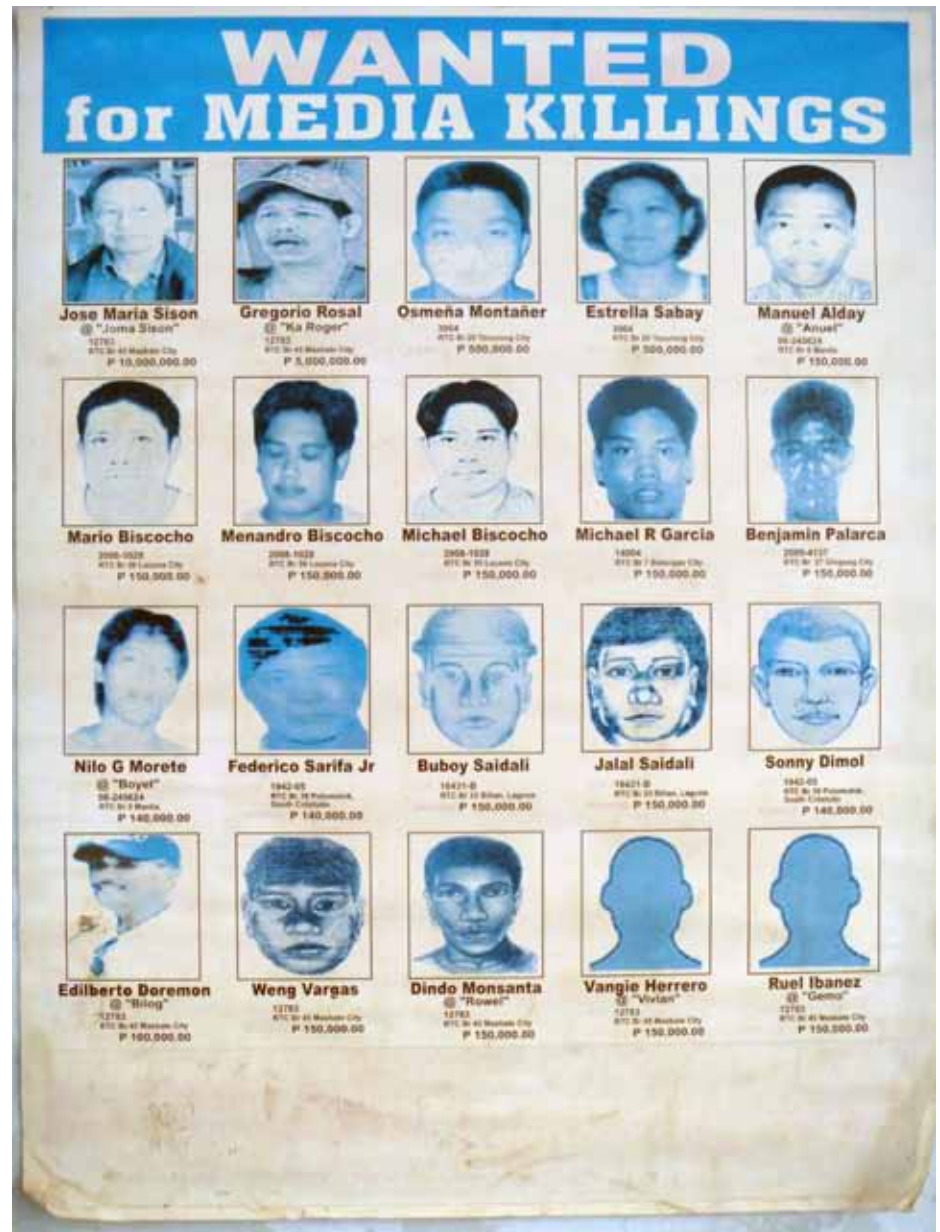
“front organizations” of the Communist Party of the Philippines (CPP), National Democratic Front (NDF) and/or New People’s Army (NPA).

As pointed out by Prof. Philip Alston in his Mission Report to the Philippines, Red-Baiting or the vilification approach used by the military “involves the characterization of most groups on the left of the political spectrum as ‘front organizations’ for armed groups whose aim is to destroy democracy. The result is that a wide range of groups – including human rights advocates, labour union organizers, journalists, teachers unions, women’s groups, indigenous organizations, religious groups, student groups, agrarian reform advocates, and others – are classified as ‘fronts’ and then as ‘enemies of the State’ that are accordingly considered to be legitimate targets” (Alston 2007: 4).

Historically, Red-Baiting in the Philippines has taken such forms as the military’s Order of Battle (OB) list, and the naming of specific “leftist” NGOs, POs, trade unions, party-list groups, and individuals believed to be affiliated with the underground movement in public presentations made by the military in urban and rural poor communities, factories, and mass media, as part of its counterinsurgency activities.

The OB list is “an organizational tool used by military intelligence”(ibid., p.4) identifying top ranking officers and members of the various units/departments of the CPP-NDF-NPA operating in specific areas or territories of the country and usually stipulating the monetary award to be given for the “arrest/capture/neutralization” of the personality (DND 1990).

As a counterinsurgency tool, Red-Baiting has primarily been intended



© IPON | Isn't it the state responsible for massive media killings?

by the State to achieve the following objectives:

1. Sow terror among the civilian population

Classifying individuals and groups into “friends” and “foes”, “supporters” and “destabilizers” of the State creates an environment of suspicion, fear and division in society. To avoid getting into trouble with the authorities, people are warned to distance themselves from individuals and groups considered by the State as “trouble-makers”.

Actions demonstrating agreement, support, familiarity and association with officers, members, activities and programs of these branded NGOs, POs, trade unions, political parties, etc. are often interpreted as being one with these groups and “tantamount to supporting “the enemy”” (Alston 2008:9). Consequently, this become a ground for the military to arrest, detain, torture and even murder activists, trade unionists, human rights defenders, peasant and community organizers, officers and members of progressive party-list groups, media practitioners, etc.



© PhilRights | What are the origins of the violence? The media holds responsibility to tackle Red-Baiting.

Thus, people are encouraged to prevent putting themselves in such predicament by dissociating and reporting immediately to authorities suspicious individuals and activities observed in the community.

2. Immobilize officers and members of branded groups

Red-Baiting is meant to jolt and cause panic within the ranks of individuals and groups perceived as “threats or enemies of the State” to the extent of immobilizing them. The release of an OB list, for instance, is expected to weaken the resolve of the wavering and less committed officers and members of “leftist organizations”. Engulfed with fear and imagining the serious consequences of being arrested and experiencing prolonged detention, these individuals will lay-low and ultimately end their membership and involvement in the organization.

3. Destroy the progressive people’s movement

Red-Baiting, especially if it results to the arrest, collaboration and/or neutralization of those labelled “enemies of the State” can seriously undermine the integrity and cripple the operations of NGOs, POs and other groups legitimately working for peoples’ rights and welfare. Activists, advocates and their supporters may find themselves working in an environment

dominated by fear, distrust and lack of confidence.

Prof. Philip Alston, in his mission report to the Philippines in 2007 has identified Red-Baiting or what he referred to as “vilification, labelling or guilt by association” (Alston 2007: 3 et seq.) as a major factor in the persistence of human rights violations in the country. According to Alston, the practice of the military to accuse a wide range of organizations such human rights NGOs, trade unions, peasants groups, student formations, religious congregations, and professional groups like human rights lawyers, journalists and teachers, as “front organizations” working to destabilise and overthrow the government, has made these groups legitimate targets of the military (ibid., p. 4) Thus, it is not surprising for the leaders, members and individuals affiliated with these organizations to experience various forms of human rights violations ranging from surveillance, harassment, illegal arrest and detention, torture, enforced disappearance and extrajudicial killing.

As a tool of repression, we can expect the use of Red-Baiting by the military to continue and intensify, especially with the Aquino government’s involvement in the war against terror and its deep commitment to protect foreign investments and multinational interests in the country. The recent pronouncements of President Benigno Aquino III endorsing and giving full support to the military’s proposal

to create Special Civilian Active Auxiliaries (SCAA) to beef up the defense forces for mining and logging companies in the country against rebel attacks is a clear illustration of this commitment (Pazzibugan 2011). Following the simultaneous raids launched by the NPA in three mining companies in Surigao del Norte, Mindanao, namely the Taganito Mining Corporation, Taganito HPAL Nickel Corp. and Platinum Group Metals Corp. last October 3, 2011, and resulting to the destruction of P3 billion worth of mining equipment and infrastructure (Conde 2011), the military saw the need to extend support to mining firms operating in the country through the recruitment, training and

supervision of special militias tasked to provide security to mining companies.

Indifferent to the plight of indigenous peoples and rural poor communities whose rights to ancestral domain, livelihood, healthy environment, among others, have been seriously threatened and/or violated due to large scale mining operations, the Aquino government has clearly positioned itself to the side of big business and multinational interests. While human rights violations continue unabated in the country, the culture of impunity, likewise, remains a major stumbling block in the struggle of the Filipino people for truth, justice and lasting peace in the country.

Conclusion

There is no doubt the use of Red-Baiting as a tool of State repression will persist for as long as the military institution continues to approach the insurgency problem in the Philippines from a militarist framework. When the State focuses on the alleged illegal affiliations of its critics rather than on the bases and substance of their criticisms; when the State preoccupies itself with self-preservation at any cost, it is expected that all forms of repressive tools, including Red-Baiting will be resorted to. With the continued use of Red-Baiting, human rights violations follow and consequently peoples' struggles and resistance will surely be expected responses. ■

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LANDREFORM-RELATED HUMAN RIGHTS VIOLATIONS – A PROBLEM BEYOND TASKFORCE MAPALAD

Human rights abuses in the context of the land reform in the Philippines also occur to non-members of IPON's partner organisation Taskforce Mapalad: In 2009, the farmer Gregorio Saldua was awarded a land title for the five hectares of land he used to be tilling. Despite his rightful ownership, the Department of Agrarian Reform (DAR) never officially transferred the land to him. Instead Saldua was portrayed as land grabber. In 2009 Ali Arib, a neighbouring farmer, who had recently moved there, bulldozed a road right through Saldua's land, causing enormous destruction. Consequently, Saldua installed a roadblock on his land to prevent Arib from causing further destruction. Since Arib destroyed the roadblock several times, Saldua had to renew it. The DAR legal officer wrongfully ordered him to remove it from his land. Later Saldua received death threats from Arib. The lock of his house was destroyed, his water supply line chopped and his fishpond emptied. In the beginning of 2011, Arib fired shots in the vicinity of Saldua's house. Arib also sabotaged a close-by lemon grass oil mill and blocked public roads, causing the withdrawal of German volunteers for security reasons from the area. While the local police fail to prevent these crimes or to persecute Arib, the conflict is rooted in the omission of the DAR officials to inform Arib about Saldua's right to install roadblocks on his own land. A local DAR official, Marilou Tubesa, officially complained about the case at the level of DAR Undersecretary Nieto.

REVIEW: CONFERENCE ON RED-BAITING IN THE PHILIPPINES



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The Philippine security services still seem to fail to differentiate between organisations that bear arms to fight the state and legitimate unarmed organisations who oppose the government within the framework of rights and freedoms guaranteed by international human rights covenants as well as the constitution. Over the years, labelling of legal opposition as enemy of the state has been an issue which was either confirmed or denied – according to the political force you range yourself with.

Red-Baiting is not an issue of state authorities and civil society alone. It is a complex issue of Philippine politics and society in general. Tackling the problem means tackling prejudices and mistrust by talking about it, by presenting different views and arguments and by changing perspectives – hence, the IPON conference on Red-Baiting offered a platform to relevant actors.

On the last day of September 2011, IPON held a conference on Red-Baiting in the Philippines – one

frequently held, but never really a dialogue about the issue of Red-Baiting in the Philippines. The dialogue was part of IPON's current project on Red-Baiting, which also included a baseline-study and interviews with all relevant actors on the local, regional and national level. A follow-up process is taking place after the conference.

The aim of the conference was to bring together the relevant stakeholders and to provide a platform for exchange of arguments and perspectives. Civil



© IPON | Podium and guests at the Red-Baiting conference.

of the first conferences confronting specifically this ubiquitous issue¹. Dr. Aurora Parong, Section Director of Amnesty International Philippines, mentioned that human rights forums had been

society actors and state authorities were able to discuss the origins, dimensions and potential solutions at the conference on "Red-Baiting in the Philippines" on September 30th held by

1) "Conference on Red-Baiting in the Philippines", 30th September 2011, Balay Kalinaw Conference Centre, University of the Philippines Campus, Quezon City.

International Peace Observers Network (IPON).

On September 30th 2011, representatives of civil society actors like Atty. Jose Manuel Diokno, Chairperson of the Free Legal Assistance Group (FLAG); Josua Mata, Secretary General of the Alliance of Progressive Labour (APL); Max de Mesa, Chairperson of the Philippine Alliance of Human Rights Advocates (PAHRA); and Dr. Aurora Parong, Section Director of Amnesty International Philippines (AI) as well as representatives of state actors like Undersecretary Severo Catura, Executive Director of the Presidential Human Rights Committee (PHRC); Loretta Ann P. Rosales, Chairperson of the Commission on Human Rights (CHR); Col. Domingo Tutaan Jr., Chief of the Armed Forces of the Philippines Human Rights Office (AFP HRO); and Atty. Gregorio A. Pua, Assistant Chief of the Philippine National Police Human Rights Affairs Office (PNP HRAO) seized this opportunity to express their point of view. The conference was moderated by Atty. Marlon Manuel, National Coordinator of the Alternative Law Groups.

Origins of Red-Baiting

"Red-Baiting is not new in the Philippines but it did not start here." With these words the CHR Chairperson Rosales started her speech. She, as well as Dr. Parong, Atty. Diokno and Undersecretary Catura emphasised the origins of Red-Baiting in the national and international context. Labelling legal opposition as enemies of the state did not start in the Philippines and is still not only an issue in Philippine politics and society. This method emerged as a tactic among the security and intelligence services of the countries of the so-called "Free World" to flush out and go after suspected communists and their supporters.

Red-Baiting is a recent form of an old method of dealing with one's perceived enemies. Demonising enemies as "sub-humans" who do not have any civil

liberties, made it easier to deal with them with extreme measures, including torture and killings. Chairperson Rosales pointed out that Red-Baiting, as it is practiced by



© IPON | Exchanging arguments between civil society and state actors.

the military, forms an integral part of its counter-insurgency operations. Whether it led to disappearances, torture and extralegal killings, or was merely used to intimidate activists and immobilize their organisations, the practice continued. The last few decades have seen the repealing of the anti-subversion act in 1992, the democratic transition after the Marcos dictatorship and the existence of democratic institutions, several government pronouncements of upholding human rights and rerun paradigm shifts of the security sector. Nevertheless, Red-Baiting, with all its consequences, remains a practiced concept in the Philippines, Dr. Parong said.

Dimensions

These consequences have clearly been pointed out during the conference by different actors. The tagging can have different forms and dimensions as Atty. Diokno explained, ranging from simple letters to detailed power point presentations such as "Knowing the Enemy", a presentation by the armed forces branding individuals and organisations, including his NGO the Free Legal Assistance Group.

Max de Mesa, presented recent high-profile Red-Baiting cases of individuals or organisations that have been victims of killings and torture. He commented that

these single cases of extralegal killings, enforced disappearances and torture are never done alone or in isolation; there is always a group respectively a command behind the actions. Having this in mind, he spoke about an evolution within the security sector from a "command responsibility" towards a "command conspiracy".

Speaking from a victim's perspective, Josua Mata, brought out that Red-Baiting can be seen as an effect of the inequality and the injustice in the Philippines. He explained that being a trade unionist in the country is dangerous. On the one hand, they are labelled as communists by the security sector and the media. The military and the police are targeting them while, on the other hand, they are attacked by the armed rebels and indicted of being supporters of the capitalist system.

According to chairperson Rosales tagging organisations as supporters of armed groups and thereby putting their members in harm's way and exposing them to all kinds of possible adverse actions from the military goes against the spirit and intent of Philippine laws. Moreover, the effect of the tagging is more than chilling for the named organisation, but in particular for

the individuals concerned and their families. Their livelihoods are affected, their families forced to live in fear, and their communities intimidated.

Dr. Parong underlined the role and importance of universal human rights declarations. Red-Baiting often goes along with denying rights and



© IPON | Presenting a victim perspective – Josua Mata of APL.

dehumanisation. She explained that basic human rights can't be revoked at any time and that every human being holds rights – from the day it is born to the day it dies. The state has the obligation to respect, protect and fulfil these rights in times of peace and in times of war.

Positive consequences of the paradigm shift?

The attendant representatives of the security sector, Atty. Pua (PNP) and Col. Tutaan Jr. (AFP) explained that Red-Baiting was and still is a matter of serious concern. Both stressed that labelling or tagging of individuals and groups should never govern operations of the security sector. For instance, people should not be arrested because of their ideology, their religion or their race. They should only be arrested if there is evidence for a committed crime.

According to Col. Tutaan Jr., the AFP already took the issue of Red-Baiting into consideration. The new "Internal Peace and Security Plan" or "Oplan Bayanihan" (Operation of Collective Effort)², developed in consultation with other stakeholders from the government and the civil society, copes

with the issue. This current strategy of the AFP follows two main strategic approaches: the "whole of nation approach" and the "people-centred approach". Especially the latter puts primarily concern on the human security framework. Under "Oplan Bayanihan", the soldiers on the ground shall act and operate based on national and international rights. The chief of the AFP Human Rights Office pronounced that there is a zero-tolerance policy in the armed forces regarding human rights violations and that the armed forces will subordinate to human rights, the international humanitarian law and the rule of law. Yet at the same time he emphasised on the fact that investigations and prosecution have to follow due process and that the final jurisdiction lies with the judges.

The paradigm shift of the security sector can be seen as an effort to improve the human rights situation. However, Atty. Diokno underlined the importance of the psychological attitude as the core issue of Red-Baiting. The fundamental belief that communism is evil and that it must be eradicated by hook or by crook still seems to be ever-present in the security sector. Atty. Diokno pointed out that a lot of money has been spent on trainings for the military and police over the last few years without addressing the key issue – the psychological attitude and fundamental beliefs. It's been almost twenty years that the anti-subversion act³ was repealed by congress. Ever since, it is no longer illegal to be a member of the communist party and other organisations – including the New People's Army (NPA). But the military establishment refuses to accept this reality up to now, Atty. Diokno added. As mentioned before, Red-Baiting is not only an issue of state authorities and civil society organisations, it is about fundamental attitudes that are taken up and shaped by society. Dr. Parong stressed the fact that Red-Baiting, with all its extensions, seems to be accepted by society. "He is a communist anyway" (sabagay komunista naman siya) or "he is a criminal anyway", are widely used expressions related to all kind of human rights violations.

How to improve the situation?

The actors also grasped the opportunity to discuss potential ways to handle the issue of Red-Baiting.

2) in: Regarding the new Oplan Bayanihan cf. Grabowski, Ritter (2011): Political Changes – Changes in Human Rights Policies? A Record, In: Observer vol. 3, no. 1, p. 6.

3) Republic Act 1700, "An act to outlaw the communist party of the Philippines and similar associations, penalising membership therein, and for other purposes."

Atty. Diokno said that the situation is not hopeless and that there are aspects which can be improved. On the one hand, he referred to the psychological attitude of the security sector as the core issue of Red-Baiting. In order to address fundamental beliefs, human rights trainings for police and military staff should already start in the academies. The psychological and operational foundations for future actions are laid here. Furthermore, the trainings should not only focus on the schooling and the soldiers on the ground but also include the intelligence units of the security sector. These units are often the ones involved in serious human rights violations.

On the other hand, he presented practical steps to directly address the issue. To begin with, the Secretary of Justice and the national prosecution service should immediately stop all “John Doe”⁴ cases. In order to improve transparency, a congressional supervisory body for intelligence funds and operations should be implemented. Atty. Diokno pointed out that the right of access to information should be finally asserted. The security sector obviously has information about activists and human rights defenders without their knowledge. Against this background, the right of access to information has to be asserted – especially for the vulnerable poor and oppressed.

The current “Oplan Bayanihan” strategy of the armed forces can potentially be an important step to improve the human rights situation. The AFP claims that it is now implementing a change in the conduct of its internal security operations. They also confirm to have a Human Rights Action Officer attached to the office of the Chief of Staff and human rights officers at the battalion level. The military has also come up with trainings and manuals on human rights and international humanitarian law. The impact, however, is doubted and the efforts are probably not sufficient. Hence, CHR Chairperson Rosales added that the armed forces

need to show the Filipino people and the civil society organisations that they are indeed serious about the paradigm shift. The challenge for the security sector is to truly adhere to and comply with human rights and international humanitarian law standards in the implementation of their Internal Peace and Security Plan. They should be able to show that it is possible to carry out internal security operations while adhering to these norms and standards. They should also follow the basic distinction in international humanitarian law between combatants and non-combatants. It is vital to respect the legitimacy of organizations and their leaders and members who are operating within the bounds of the law.

Résumé

Although some relevant actors were missing, the conference brought together important stakeholders of the civil society, the security sector and state authorities.

forces and the police to accuse, denounce and persecute individuals and NGOs as members of communist organizations such as the CPP-NDF-NPA in order to obstruct their work. The security sector recognizes that they have already taken this into consideration. Although “Oplan Bayanihan” is limited to ten months to serve as a foundation for (counter-insurgency) operations, legitimate doubts about the real impact of this new strategy on the improvement of the human rights and Red-Baiting situation can be raised. Atty. Diokno is right when he emphasizes the fundamental attitudes within the security sector as the key problem.

The procedures implemented to tackle the issue are accurate and important. Notwithstanding, Red-Baiting, its dimensions and the *modus operandi* should be a topic in further meetings, dialogues, forums and conferences – including more victims and perpetrators, the media and international voices.

Red-Baiting remains a serious problem in the Philippines. The conference



© IPON | How to improve the situation? Open discussion during the conference.

The participating representatives used the platform for a fruitful discussion and changed ideas and arguments. All actors agreed on the importance of the topic. Red-Baiting in the Philippines used to be and still is a political strategy of state institutions such as the armed

organised by IPON only provided the aforementioned platform and served as a “timely reminder”, as Rosales called it. The participating actors seized the opportunity to openly discuss the issue and potential solutions. Now, they have to make sure to walk the talk. ■

4) The name „John Doe” is used as a placeholder name in a legal action, case or discussion for a male party, whose true identity is unknown.

MONOLOGUE BY CHR: “RED-BAITING AND HUMAN RIGHTS”

Chairperson Rosales represented the Philippine Commission on Human Rights (CHR) at the Conference on “Red-Baiting in the Philippines”. Labelling members of the civil society as communists still forms an integral part of the military’s internal security operations - often going along with massive human rights violations. Therefore, Rosales puts special emphasize on the claimed paradigm shift of the military towards respecting human rights, which has yet to comply with the reality.

What follows is the reprinted and abbreviated speech at the “Conference on Red-Baiting in the Philippines” on the September 30, 2011, in Balay Kalinaw, University of the Philippines, Quezon City.



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1939 (Manila/Philippines),
Activist, teacher and
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Party to the Philippines’
House of Representatives
from the 11th-14th Congress
(1998-2007). She is currently
the Chairperson of the
Commission on Human
Rights in the Philippines.

Good afternoon to all participants and guests [...], Thank you for inviting the Commission on Human Rights to participate and share its perspective on the issue.

Origins

“Red-Baiting” is not new in the Philippines but it has not its origins here. The term seems to have originated from the Cold War conflict between the United States and the Soviet Union and their respective allies along the lines of “democracy versus communism”. The communists were called “Reds” from the colour of their flags and banners of revolution. Inevitably, their sympathizers were also called “Reds”, even if they did not share their ideology while supporting their politics in whole or in part.

In that time “Red-Baiting” emerged as a practice and tactic among the security and intelligence services of the so-called “Free World” countries to expose and go after suspected communists and their supporters. In the United States, this reached its height during the time of Senator McCarthy and the investigations of the Committee on UN-American Activities that he chaired. In the Philippines, its counterpart was the Senate Committee on Anti-Filipino Activities. Red-Baiting is only a recent form of an old method of dealing with one’s perceived enemies. Demonizing enemies as “sub-humans”, not

possessing any rights, made it easier to deal with them using extreme measures such as torture and killings. During the time of the Indian Wars in the U.S., Native Americans who resisted conquest and subjugation were called “savages”. The popular expression at the time among the US military was “The only good Indian is a dead Indian.” This found its way to the Philippines during the Philippine-American War and the Americans’ so-called “pacification campaign” that followed – “The only good Filipino is a dead Filipino.” Members of the Philippine revolutionary army who refused to surrender and continued armed resistance in the early 1900s were called “bandits” and “brigands”. During the Cold War, the expression evolved to: “The only good communist is a dead communist!”

Continuing practice

The practice did not end with the end of the Cold War after the collapse of the Berlin Wall in 1989, and the end of the Soviet Union and the socialist countries of Eastern Europe in 1990. Communist and communist-led insurgencies continued in some parts of the Third World, including the Philippines where the Communist Party of the Philippines-led New People’s Army and National Democratic Front continued with their armed struggle against the government. It also took on new forms, as new enemies of the state

emerged and new terms were used like “terrorist” and “Muslim terrorist”.

Today, the practice continues under such terms as “labelling” and “tagging”. In the past administration, the military showed a video in the villages entitled “Know Your Enemy”, wherein certain civil society groups and party-list organizations were identified as front-organizations or supporters of the CPP-NDF-NPA. This included the party-list Akbayan, of which I was a Representative in the House of Representatives at the time. Even though top military officials and their assurances did not tolerate the practice and looked into the complaints, they were not able to stop it. It even grew worse.

Its more recent incarnation was cited in a complaint against the activities of a military unit in Central Luzon that was filed before the Commission on Human Rights. This unit would enter villages to conduct a so-called “census” among the residents. They would ask the people what organizations are active in the area. They would then name certain organizations and tell them to be careful with them, because they are supporters of the armed rebels. After this, the next questions they would ask are “Who are the leaders and members?” and “Where do they live?” This is the point where the innocent word “census” took on a very sinister meaning.

Effects

Needless to say, the effect was chilling – to the organizations named, but more so to the individuals concerned and their families. Out of fear for their safety, security and their lives, the people concerned took precautions by not going home to their families and hiding out somewhere else until they felt it safe to go home. Their livelihoods were affected, their families forced to live in fear, and their communities intimidated.



© IPON | Rosales during her speech on the conference.

Their fear is often well-grounded, because they have heard from neighbouring villages terrible stories of what happened to those who have been “invited” by the military, or else taken from their homes or picked up in the street in the middle of the night. There have been reported cases of torture inflicted on those taken into custody, and even some have been eventually found dead afterwards.

During the past administration, not too long ago, one former notorious general of the Philippine Army who was in command of a Division in Central

Luzon at that time was reported to have announced during a meeting with businessmen and civic leaders that the military only killed the armed rebels in the area. When asked why it was the unarmed people that were getting killed, he explained that it were these unarmed people, who belonged to aboveground organizations that were helping the underground rebel movement. He ended with the words: “We will kill them all!”

It is clear that “Red-Baiting”, as practiced by the military here in the Philippines, forms an integral part of its

counter-insurgency operations. Whether it led to disappearances, torture and extrajudicial killings, or were merely used to intimidate activists and immobilize their organizations, the practice continued.

The latest version of “Red-Baiting” terminology that we have heard from the military came from a general who delivered the closing remarks in a meeting just over two weeks ago of a regular church and police-military liaison committee monitoring the killing of priests and members of the clergy. Ignoring the remarks of a bishop that a distinction should be made between organizations who bear arms and fight the government and legitimate unarmed organizations who simply oppose the government within the rights and freedoms guaranteed in the Philippine Constitution, the general closed the meeting with a warning to the church people present to be on the lookout for what he called “dubious organizations”. He said he spoke on the basis of his long experience as an intelligence officer in Mindanao. The good bishop’s jaw dropped in disbelief at what he had heard.

Paradigm shift?

The Armed Forces of the Philippines claims that it is now implementing a paradigm shift in the conduct of its internal security operations. They say that their Internal Peace and Security Plan consists of 90% political means and only 10% military. Some quarters grant that the military leadership is sincere in this paradigm shift. They now have a Human Rights Action Officer attached to the office of the Chief of Staff. They also have human rights officers down to the battalion level. They have come up with trainings and manuals on human rights and international humanitarian law. They even have a manual on the “Human Rights-Based Approach to Intelligence Operations” [...]. However, the continuing practice of “Red-Baiting”, among others, casts serious doubt on this transformation that is supposed to be happening within the military establishment. The practice stands in complete contradiction of their policy. It is also in violation of the law. It violates the rights of citizens to due process of law guaranteed by the Constitution [...].



Violation of law and human rights Conclusion

Tagging organizations as supporters of armed groups and thereby putting their members in harm's way and exposing them to all kinds of possible adverse actions from the military goes against the spirit and intent of our laws. The old Anti-Subversion Law, Republic Act No. 1700, used to provide that mere membership in the Communist Party of the Philippines was punishable. It has since been repealed. The existing law that allows the proscription of organizations is the Human Security Act, also known as the Anti-Terrorism Law to others. The law cannot be applied by mere provision of law, as in RA 1700, it needs a judicial declaration based on evidentiary showing. As far as I know, no organization has yet been declared as a proscribed organization under this law.

There are also recent legal developments that impose human rights and international humanitarian law standards on the conduct of both the security sector and their armed adversaries. The recent Act on International Humanitarian Law, RA 9851, was passed in 2009 and punishes war crimes, crimes against humanity and genocide, including torture, enforced disappearances and extrajudicial killings. They apply to both parties in the armed conflict, the government side and that of the rebels. Also passed in 2009 was the Anti-Torture Law, RA 9745, which criminalizes and punishes acts of torture in accordance with the Convention against Torture and our 1987 Constitution. Most recently, the Philippine Senate ratified the Rome Statute of the International Criminal Court. These measures make clear the distinction between combatants and non-combatants, and provide for the protection of the latter.

Clearly, there is a disconnect between the continuing practice of Red-Baiting and the paradigm shift of the Armed Forces of the Philippines (AFP) and our recently adopted legal measures. What needs to be done is for the AFP to show to the Filipino people and the entire country that it is serious in its paradigm shift. The challenge for the security sector is to truly adhere to and comply with human rights and international humanitarian law standards in the implementation of their Internal Peace and Security Plan "Oplan Bayanihan". They should be able to show that it is possible to carry out internal security operations and adhere to these norms and standards at the same time. They should adhere to the basic distinction between combatants and non-combatants in international humanitarian law. They should respect the legitimacy of organizations and their leaders and members who are operating within the bounds of the law. If they have reason to believe otherwise, then they should take the appropriate steps under the law, including the possible filing of charges. They should discard the employment of "dirty tricks" in the conduct of their internal security operations that violate the rights of people, as a thing of the past that do not conform with their paradigm shift.

We don't know if the problem of Red-Baiting, along with other continuing violations of human rights and international humanitarian law committed by the military, is just the inertia of the past holding down and holding back the momentum of the present. If this is the case, the challenge to the human rights community is to help the military increase that momentum, so as to overcome the inertia. The lives, safety and liberty of innocent civilians will thereby be protected. ■

NEWSTICKER +++

Gina Ledesma (56) is a member of TFM, she lives and works near San Carlos. IPON came in contact with her shortly after her husband, a local farmer leader, was killed. Since then, many things have happened that made her live worse than before.

- + May 2010 - husband gets shot
- + May 2010 - suspect is at large
- + June 2010 - shots can be heard close to the village, Gina is scared
- + June 2010 - the suspect's family offers her 50,000 PHP if she does not take court action
- + June 2010 - takes court action to get justice for her husband but cannot afford a private attorney; her brother is one of the main witnesses
- + July 2010 - one member of the suspect's family gets killed
- + July 2010 - threats against Gina's family; especially death threats against her brother
- + July 2010 - complaint against Gina's brother
- + August 2010 - new offer: if her brother takes back his statement on the first murder, his complaint will be cancelled
- + End of 2010 - Gina decides to go on in her case
- + May 2011 - gets threatened by the suspect's family; feels uncomfortable; doesn't leave the Hacienda anymore.
- + May 2011 - considers taking the offer
- + September 2011 - after new threats and caused by the fact that she wants to help her brother, she decides to accept the offer

+++++

THE EU AND EXTRA-JUDICIAL KILLINGS IN THE PHILIPPINES



Martin Nambula

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The European Union has fallen prey to the Philippine government's manipulative excuses and maneuvers to avoid addressing the lingering problem of human rights violations. The government successfully diverted the attention of the EU by claiming that it lacked the technical capacity to deal with a problem created through its own political and military ambitions.

The political and military ambition to root-out armed rebellions—especially those with communist and Islamic links—has caused a serious backlash to the human rights record in the Philippines. At the beginning of 2000s, the government sanctioned counter insurgency operations, such as the **Oplan Bantay Laya**, targeting armed militants, left-wing politicians, civil activists, journalists, human rights advocates, opposition politicians and outspoken clergy. In the name of the operation, hundreds of victims have been summarily executed. Many more have disappeared without explanations while others have either been threatened or tortured. The phrases “extrajudicial killings (EJKs) and enforced disappearances (EDs)” emerged to depict actions of state related killings and disappearances.

Extra-judicial killings in the Philippine context

EJKs and EDs are nationwide phenomena. Victims are targeted in both private and public places and are killed or abducted. There appears to be a very thin line between state related killings and pure thuggery. Despite extensive local and

international condemnation, the problem persists. The government portrays the problem as a failure on the part of the judiciary and the police due to poor facilitation (Melo Report 2006: 2). However, fact remains: Whoever the perpetrators are, they are carrying on their vice with a great deal of impunity, while Philippine government has the obligation to protect its citizens.

Seeking solutions

Following strong public outcry, the government made some efforts to investigate the problem. One of the most significant endeavors was for example the Melo-Commission of 2006 set up to investigate allegations of state involvement. The international community also joined hands to condemn the problem. Various international delegations and representatives from the UN, EU and ASEAN made serious observations and recommendations on the issue. The EU in particular sought to help by technical means. However, critics have dismissed the steps as inadequate, flawed and lacking perspectives. Many point to the fact that, despite overwhelming suspicion surrounding the military, all government related investigations hitherto

© IPON | The EU in a gilded cage – often isolated from the problems and the reality.



exonerated the armed institution. Critics and observers accuse the police of being reluctant to investigate implicated military leaders. Government is also accused of not paying reparations to the victims and their dependants. Calls to have security institutions independently investigated have ever since fallen on the deaf ear. The public and the activists are convinced that the government lacks political interest to solve the problem.

EU contribution

Following discussions and recommendations supported by the international community, the government within its EU-cooperation forum sought technical assistance to address the problem. In 2009, the EU responded by funding the European Union Philippine Justice Support Program (EP_JUST) to “[...] assist the Philippine society government agencies as well as relevant constitutional bodies and civil society in bringing an end to extrajudicial killings [...] and enforced disappearances of activists trade unionists and farmers’ representatives and in identifying the perpetrators and bringing them to justice” (EP_JUST 2011: 1). This was to be attained through enhancing the capacity of the judiciary and police, training armed officers in human rights and establishing a monitoring system besides donating modern technical equipment

used in crime investigation. A team of experts, comprising both EU nationals and Philippine citizens specialized in judiciary and policing, was assigned to fulfill these objectives. The team carried out educational and skill training sessions for the target groups. At the completion of the program in 2011, the experts made technical recommendations for future action.

Critical view of EU program and its visibility policy

Instead of responding to the public calls to address political and military shortcomings that are assumed to be responsible for the problem, the EU rather reacted to the government’s disguised excuse. It ignored the plight of the real victims and activists. Supporting the judiciary and the police as well as donating equipment, among others, were certainly not the most urgent and effective steps when taking into consideration the EU’s resource capacity and political weight. Besides, the program faced a string of formal restrictions. EP_JUST functioned more or less at the level of the EU delegation and dealt mainly with high-profile offices. The mandate was designed to avoid interfering with the internal affairs of the Philippines. Its offices were located in the up-scale fortified district of Makati in Metro-Manila. The experts were treated with first class comfort, security, chauffeur

and luxury – conditions which isolated them from the problem and reality they came to deal with. The highly qualified and experienced professionals were bound to rely on official information and documents. Such documents were often prepared and sanctioned by those thought to be behind the human rights violations. This only increased the risk of working with distorted information. Additionally, the project was overburdened by the EU visibility policy. This policy led to a diversion of a significant amount of financial resources away from the core of the project. This kind of diplomatic and bureaucratic professionalism most likely led to by-passing the reality and gave the culprits extra time to hide.

The problem of EJKs and other human rights abuses is far from being solved. International cooperation and assistance is still very vital, for it is one of the most efficient ways to remind the leaders and the state of their international obligations regarding human rights. The EU should carry on with its efforts. The EU also ought to seek closer cooperation with more independent civil society groups and organizations with more grass-root interaction that are less bound by diplomatic and bureaucratic limitations. Requesting for technical assistance by the government was a scapegoat approach, used to shield its political inability or unwillingness to deal with the problem to which the EU succumbed. ■

© IPON | Counter-insurgency measures: Creating an atmosphere of suspicion and fear within the communities.



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NEGROS AND THE YEARS BEFORE THE FINAL CURTAIN FALLS. THREE NARRATIVES

by Dominik Hammann

Introduced in 1988 and extended in 1998 and 2008, many agrarian NGOs fear the Comprehensive Agrarian Reform Program (CARP)¹ to finally expire in 2014. Human rights defenders in the Philippines have to face a new wave of repression within the coming years. Three narratives from haciendas² on Negros Island illustrate the nature of repressions that members of the farmer's organization Task Force Mapalad (TFM)³ recently had to deal with.

The Declaration on Human Rights Defenders (HRD) provides everyone with “the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms” (UN 1999, Art. 1). However, especially Negros Island has been the arena for human rights violations throughout the past decade. Agriculture, the cultivation of sugar cane in particular, is the strongest economic sector on the Visayan island. Therefore, cases are mostly linked to resisting landowners who are not willing to accept the new ownership developments under the CARP (Bauer 2010: 18). Due to their peaceful struggle for their rights, farmers, who have been awarded with land titles by the Department of Agrarian Reform (DAR), have to deal with a number of harassments such as criminalization, intimidation and physical violence. Although HRDs are supposed to enjoy special protection by state authorities, it is either a lack of political will or resources, which hinders state actors to work properly regarding human rights standards. The coming examples will portray the current situation of the human rights defenders organization TFM on three different haciendas on Negros. They will demonstrate that it is often difficult to judge whether state actors have worked properly and whether the security and life conditions of HRDs have improved.

Hacienda Agueda

With a size of 97 hectares, Hacienda Agueda is located in Negros Occidental. Local TFM members have been awarded with land titles more than

ten years ago, but the past has been violent (IPON 2010: 20) and the HRDs still can't live free of repressions on their land. On 29th of June 2011, members of TFM decided to dismantle a gate that has been illegally built by farmers, who are still loyal to former landowner Rosita Montañez. Initially, these farmers intended to control the persons who are entering and leaving the hacienda. However, the recently built metal gate in combination with its barbed wire fence poses the potential for denying access to the area and thus jeopardizes the existence of the



© IPON | Hacienda Agueda: A metal gate denies access to the hacienda.

TFM members. When they started to work on the gate, private security guards of aforementioned Montañez came to stop them by firing warning shots into the air and the ground. The TFM members couldn't be kept from dismantling the gate, so that the security guards, after the last bullet was fired, went on throwing stones at them. One member received hematoma. As the police came, the parties kept on proceeding until two officers fired two warning shots themselves. Finally, the situation calmed down and the police

1) 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.

2) “Hacienda” is the Spanish word for “estate” and describes agrarian plantations that aim self-sufficiency for its inhabitants.

3) 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).

confiscated three rifles and left the area without any further investigation. Meanwhile, former landowner Montañez filed a petition for annulment of all land titles. Her reason was the size of an official stamp on the land title, which she claimed to be slightly too big. Her case was dismissed.

Rifles were pointed at them and a tent was destroyed. Although the police was informed about the potential of violence in advance, they entered the hacienda with half an hour delay. Until now, no proper investigation of the incidence has taken place and similar happenings are likely to recur. More

Manila to confirm their support for an agreement between former landowner and Congressman Henry Teves and TFM. One farmer died due to the miserable conditions during the protests. At that time, the DAR presented a first draft of a compromise agreement. Negotiations between the two parties were conducted at the Office of the President and the signing of the final draft was proceeded by the DAR on 27th of May this year. Since TFM relinquished half of their rightful land, it is again due to TFM's willingness to give-and-take that an agreement was reached. Despite peaceful developments regarding the new land ownership, a new conflict involving four houses of TFM members and their families arose. The houses are located along a highway and opposite of the Negros Oriental State University (NORSU) and because of the financial potential the university students pose, those houses became valuable and hard-fought. The legal situation regarding the rightful ownership is still unclear, but the four families permanently feel pressured to leave their homes and to move away. Aside from Family Teves, who already let the affected families know that they were "welcome to leave", local DAR officials also asked them about their plans to leave the houses. ■



© IPON | Hacienda Bacan: Human rights defenders proudly demonstrate their landtitles.

Hacienda Bacan

May you enter land, if it's yours? That's the question HRDs had to ask themselves on Hacienda Bacan, Negros Occidental. The prestigious hacienda, formerly owned by former first gentleman Mike Arroyo, partly belongs to members of TFM as well as to a local leasing agency. An agreement between these two parties states that all standing crops belonged to the agency, which is why TFM was permitted access to the land as soon as the harvest season was over. In August 2011, TFM members decided to start cultivating 2 hectares of fallow land, but they were interrupted by private security guards of the aforementioned leasing agency.

and more parts of Hacienda Bacan will be gradually left fallow, creating the option for the members of TFM to enter their rightful land. Their first attempt to do so has shown that this is not a riskless undertaking.

Hacienda Teves

After more than 14 years of peaceful struggle for their land (Bauer 2010: 19), HRDs of TFM finally received access to their land on Hacienda Teves, Negros Oriental, and since several months they have been able to peacefully cultivate it. However, it is to TFM's credit and sacrifices that the ball was set rolling. They organized a campout in front of the DAR central office in



© IPON | Hacienda Teves: A human rights defender during the signing of the final compromise agreement.

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TERRORISTS OR TERRORISED? ABU SAYYAF-BAITING IN THE PHILIPPINES



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While in Red-Baiting victims are accused of being members of the CPP-NDF-NPA or other communist organizations, in ASG-Baiting victims are accused of being members of the Abu Sayyaf Group. In consequence the victims face arbitrary arrests, suffer from torture and some of them are detained for months or even years. In the Philippines these cases occurred even before 9/11 but with the global war against terror the number increased. And it doesn't seem to change much under the Aquino-Administration.

Ever since the attacks on the World Trade Center in the United States on September 11th 2001, the fight against terrorism has become the overriding global preoccupation of the last decade. In the US-led global war on terror, the assumed threat of national security became the key argument for the confinement of civil liberties and human rights by law in and outside the USA. With this human rights abuses and violations in the name of counter-terrorism increased worldwide (HRW 2003).

In the Philippines, however, little of this is really new. In fact, counterinsurgency and the fight against "terrorism" started long before 9/11. As the communist and Moro insurgencies are among the world's longest-running armed conflicts, so is the counter-insurgency (HDN 2005: 2f). In Mindanao where 15 of the 21 provinces with the largest number of armed conflicts are located (ibid: 3), the fight against Muslim insurgents and separatists started in 1969 when the Moro National Liberation Front (MNLF) was founded. Even though the MNLF and later, after a split within the MNLF 1977, the Moro Islamic Liberation Front (MILF), are not categorized as terrorist groups, the emergence of ASG-Baiting mechanisms can be traced back to these times. In 1991 the Abu Sayyaf Group (ASG) emerged (HDN 2005: 70). This militant group, sometimes referred to as a group of bandits or rebels, is officially portrayed as a terrorist group. And in fact the ASG uses terrorist means such as kidnapping for ransom and bombings to achieve their stated aim to establish an independent Islamic state in Mindanao (Turner 1995: 1-8).

"You have to pick a Muslim" – ASG-Baiting

While it is clearly understandable that state authorities are trying to fight the ASG and the threat posed by the group, some of the measures have to be criticized as they lead to human rights abuses and violations in the name of counter-terrorism. ASG-Baiting, the act of labeling a random person to be a member of the ASG, mostly linked to a direct accusation of the participation in a certain terrorist attack is one of the most frequent examples. Such cases are therefore usually found after an actual terrorist act, for example after the detonation of a bomb or kidnappings. In the search of a suspect, victims are then accused of being members of the ASG as well as of being the perpetrators of the recent terrorist act. In the bottom line what this means is: Blaming the act of terror or the kidnapping on a random – well, actually not entirely random – person. "For you to be credible, you have to pick a Muslim" explains Atty. Zainudin Malang, Executive Director of Mindanao Human Rights Action Center (MinHRAC) in Cotabato City¹. The target group – or the vulnerable group for ASG-Baiting therefore includes the entire Moro community.

Military crackdowns and random arrests

That ASG-Baiting, however, is in no way limited to one person or always directly linked to an actual terrorist act, can be illustrated by the happenings of July 2001: Following a series of kidnappings by the ASG and the captivity of 21 hostages in

1) Interview with Atty. Zainudin Malang, Executive Director of Mindanao Human Rights Action Center (MinHRAC) in Cotabato City. Davao, Sept. 16, 2011.

Basilan/Mindanao, former president Gloria Macapagal-Arroyo declared the island to be a “state of lawlessness” on July 13th 2001, which allowed the military to join the police to arrest suspects without a warrant of arrest (The Telegraph 13.07.01). Furthermore a memorandum to the Armed Forces of the Philippines (AFP), signed by the former Department of Justice Secretary Hernando Perez “watered down the Rules of Criminal procedure requirement from lawful information based on probable cause to the lesser standard based only on verified information” (Sabangan 2011a). The AFP reacted with an intensive military crackdown conducted from July 13th till July 15th 2001 in which more than 200 person were arrested (Olea 2011). According to Moro Christian People’s Alliance, an NGO supporting the suspects, until now – ten years later – 73 of the victims of the crackdown are still held in detention in Camp Bagong Diwa in Taguig City waiting for their trials, together with many more alleged ASG members. The human rights lawyer Pura Ferrer-Calleja, who is defending over 100 Abu Sayyaf suspects detained at the camp, maintains, according to a report by Sabangan, “that most of her clients are victims of arbitrary arrests, torture, and of what she calls’ forced, not just mistaken, identity” (2011a). She further estimates that 70-80% of the suspected ASG members held in Camp Bagong are not guilty (ibid.).



Marion Doss | Where is the public enemy?

Impacts of the global war on terror

After 9/11 the Philippines answered the US-call for the global fight against terrorism, a war in which, according to George W. Bush „no nation can be neutral” (Bush 2001), and quickly found itself on the side of the USA. The US opened it’s so called “second front” in the global war in the Philippines and extended direct military support

to the Philippines in combating the ASG, as they assumed direct, even if only sporadic links to the Al-Qaida Network and to the Indonesian based terrorist group Jemaah Islamiyah. For this purpose the USA committed 1, 300 U. S. military personnel in 2002 to support Philippine military operations against the ASG (Vaughn et. al. 2007: 16). The USA not only supported the Philippines in direct and strategic military support, furthermore they

allocated reward money for the capture of ASG-leaders and members under the Reward for Justice Program of the USA. The Philippine Government also put bounty on certain ASG members and leading figures. This didn’t stay without consequences: In the post 9/11 years, the arrest rate of suspected ASG members tripled and an “environment for reckless, wrongful arrests, torture, and the undermining of the entire war on terror” (Sabangan 2011a) evolved.

Mistaken Identity – in no way just an error Tortured into admitting to be Abu Sayyaf

As the Philippines is a signatory to all relevant international human rights treaties the Philippine state is bound to respect and abide these international instruments and the provisions stipulated therein. Also the Philippine Constitution, particularly the bill of rights prohibits the use of torture. Furthermore the Philippines passed the Republic Act 9745 which is also known as the Anti-Torture Law of 2009, as it criminalizes acts

There was much hope for a positive change regarding human rights after the election of President „Noynoy“ Aquino 2010, but sadly when it comes to ASG-Baiting not much seems to have changed, which is clearly demonstrated by the most recent case: Abdul-Khan Balinting Ajid who was working as a baker for eight years, was arrested inside his house in Basilan, Mindanao on July 23rd, 2011 in connection with the infamous



© Zainudin Malang | Evacuation camp in Maguindanao: Another consequence of the military crackdowns in the hunt for members of militant groups is thousands of internal displaced people.

of torture. However, the problem didn't change and until today the main characteristics of ASG-Baiting are the same: Random victims are arrested without a valid warrant of arrest, meaning that they are either arrested without a warrant at all, or they suffer from what is known as mistaken identities. In such cases, the suspects are accused of being a person – one of the members of ASG – who they are really not. If the victims claim to be who they really are, the officials will simply put their real name as an alias (aka.) behind the name of the person, they are accused of being (ibid.). Following their arbitrary arrest, many of the victims are also tortured to confess they are ASG members. And, as seen in the case of 73 detainees in Camp Bagong Diwa, are sometimes facing years of detention without a fair trial.

2001 Lamitan siege. A group of uniformed men, allegedly members of the Special Operation Task Force Basilan of the AFP, kicked his door open, forcibly entered his house, and immediately ordered Ajid to lie face down on the floor. They kicked him in his back and tied his hands with a cable tie. After searching his house, the men grabbed Ajid and dragged him to a truck. He was blindfolded and brought to a military camp for interrogation.

On the first day he was asked if he was a member of the ASG and if he knew any ASG members. Every time he denied, however he was hit with wood on his back, stomach and shoulder "he was also kicked on the head" (TFDP 2011). On July 24th he was asked if he possessed two guns. Again, when he denied, he was tortured. When Ajid still

denied being a member of Abu Sayyaf on July 26, 2011, he was called a liar and according to a report of Task Force Detainees of the Philippines (TFDP) he was “put upside down in a drum filled with water until [he] nearly drowned. A bottle was also inserted in his anus for four times. Gasoline was then poured from his head to his lower abdomen and he was set on fire.” At 2.00 pm the next day he was brought to the Regional Trial Court Branch 1 in Basilan, where, Ajid’s family was able to see him again for the first time after the arrest. Later he was finally brought to the hospital. On August 1, 2011 the Philippine Daily Inquirer reported that four members of the AFP have been placed under “technical arrest” for allegedly torturing a suspected ASG-bandit. According to the Inquirer, Colonel Domingo Tutaan Jr. the head of the Human Rights Office of the AFP stated that “the effect of the investigation is to send the message that we will not tolerate human rights violations.” Five days later it was reported in the Inquirer, that Ajid also was a victim of mistaken identity as he was arrested “on suspicion he was Kanneh Malikilivo, an alleged Abu Sayyaf member.”

The lack of public protest

All these cases are publicly known and so are many more. But still they are oftentimes considered to be only single cases and the protest is very low. One of the reasons is that ASG-Baiting is

hardly acknowledged as a problem in society, and similar to Red-Baiting, a profound discourse targeting the issue as a whole is lacking. Furthermore the fear of actual terrorist threats and the latent public bias towards Moslems in the Philippines make it easy to convince the public that a suspect might be an ASG member, even if evidence is lacking as Atty. Malang points out: “The moment they know he is a Moslem the public forgets about the evidence.” As a matter of fact a stratified random sample survey conducted by the Human Development Network in 2005 exposes a significant degree of anti-Moslem bias “reflected in people’s tendency to agree with negative stereotypes of Muslims” (HDN 2005: 13). The survey shows that 55% of national respondents believe that Muslims “are more prone to run

amok” (ibid.) and 47% believe that “Muslims are probably terrorists or extremists” (ibid: 56). Furthermore, the Abu Sayyaf Group is the most oft-cited group associated with the word terrorism (30%) followed by Muslims (27%) as the second most named group (ibid.).

What can be seen from all these cases is that ASG-Baiting and Red-Baiting have much in common: On the bottom line, they both describe the labeling of innocent civilians as terrorists with very similar consequences. Different, however, is the reason behind it which is also closely linked to the second difference: the targeted group. While in Red-Baiting the victims usually are members of the civil society in ASG-Baiting all the victims have to be a member of, is the Moro Community. ■



© Mario Ignacio | Moro Detainees at Camp Bagong Diwa pause to pray at noon.

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INDIGENOUS GROUP IN CENTRAL MINDANAO STRUGGLES FOR HOMELAND



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& by Alexia Knappmann

In order to create an atmosphere of equal cooperation as a pre-condition for the work of human rights defenders, IPON established a new office in Mindanao to conduct international human rights observations. Currently IPON accompanies human rights defenders belonging to the Panalsalan Dagumbaan Tribal Association. Members of this indigenous peoples association face severe harassment as a result of their aspiration for land rights.

As announced in the previous edition, IPON's new office in the southern Philippines, which was opened in May 2011 is located in Malaybalay, the capital city of the province Bukidnon in North-Eastern Mindanao. Panalsalan Dagumbaan Tribal Association is a group of indigenous people consisting of approximately 250 households. The tribal association was founded in 2004 with the aim to secure a land title, locally known as the Certificate of Ancestral Domain Title (CADT) issued by the National Commission for Indigenous Peoples (NCIP)¹. This title would allow them to set up proper development programs for the land and organize themselves according to customary laws. In July 2011 the association approached IPON and requested for assistance, to which request IPON responded by conducting a pre-study to ascertain any possibilities of cooperation. The members of the association struggle for basic human rights as set out in international human rights documents and declarations. They fight for the right to an adequate standard of living, right to life, liberty and the right to security of person. IPON consequently considers them to be human rights defenders and to that effect, supports them by monitoring the human rights situation in the affected

area. Up to now, the human rights situation is of deep concern.

After having been expelled from the territory leased as a ranch² by the lessee Mr. Ernesto Villalon, most of the PADATA members returned to the claimed area in 2008, where they have been living since then. The first ranch licence expired in 1997. According to PADATA members, Mr. Villalon did not renew his license³ until PADATA members returned to the land in 2008. However, he got the Free and Prior Informed Consent (FPIC) needed for a renewal of the licence from an indigenous community located near Kibawe – a city about 30 kilometres away from the ranch⁴. The PADATA members, actually living on the ranch, were never asked for approval.

Mr. Villalon hired private security guards officially to protect the area. While some of the security guards claim to work for a security agency, none of them is wears an official uniform. Most of them are even reported to carry illegal high-power guns.

PADATA claims that the security guards threaten their members by shooting in the air and/or directly at them. The guards have also been strafing the houses of the human rights defenders, forcing them to



© PADATA | Death threat on a PADATA house.

1) See information box below for further information.

2) The property is specifically defined as a ranch, as Villalon rears cattle on it. It is said, however, that the property does not meet the requirements for being a ranch due to the fact that there is less than one cow per hectare.

3) Forest Land Grazing Management Agreement (FLGMA).

4) On September 28th 2011 the NCIP annulled the FPIC (Compliance Certificate No. CCRX-08-07-150). Now the process is with the DENR, as it is responsible for the revocation of the FLGMA.

vacate and to hide for safety. Some members have been beaten by the security guards with riffles butts. Furthermore, the security guards have been destroying the houses of many PADATA members. They had also designs on the belongings of PADATA members, such as animals, rice, coffee, farming utensils and domestic appliances. The security guards would not allow the members of PADATA to harvest. Even worse, the guards have been harvesting the fields themselves and threatened the indigenous people with death if they dare to enter the fields. Violence culminated on 24th August 2011, with the killing of PADATA member Welcie Gica, 28 years old. He was shot dead by an alleged security guard on the Villalon-ranch.

All cases described above were reported to the police and were registered as entries in the police blotter⁵. However, the police failed to implement effective measures to restore peace and order as well as to investigate the cases.

5) A written document preserving knowledge of facts or events, which can be used as evidence in court.



CC PADATA | Destroyed house of a PADATA member.

In addition to these physical harassments, many PADATA members experience criminalisation. They face fake lawsuits, filed by Mr. Villalon and his men against them. Though most of the cases are dismissed

by the courts. If law, IPON is concerned about this rate of harassment, and the fact that such behaviour and actions strain the already limited resources of the community even more. ■



CC PADATA | PADATA demonstrating, shortly before the murder happens.

THE INDIGENOUS PEOPLES RIGHTS ACT

After centuries of dispossessing, neglecting and ignoring the native peoples of the Philippines, the rise of environmental and indigenous peoples' movements in the 20th century forced the state authorities to address the issues of indigenous peoples. Eventually, the implementation of the Indigenous Peoples Rights Act (IPRA) in 1997 mandates that the state should create a policy to "recognize and promote the rights of indigenous peoples within the framework of national unity and development" (Philippine Constitution, Sec. 22, Act II) and to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being (Philippine Constitution, 1987, Sec. 5, Act XIII and Sec. 17, Act XIV). The National Commission on Indigenous Peoples (NCIP) is the government body mandated to implement the IPRA law.

The Act has four key elements. They include the right to ancestral land/domain, the right to self-governance and empowerment, the right to cultural integrity as well as social justice and human rights. Rights over ancestral domain are manifested through the application of a particular tribal community to obtain the Certificate for Ancestral Domain Title (CADT), which is issued by the NCIP after assessment of submitted documents. Over these lands/domains the IPs have the right of ownership and to develop and manage lands and natural resources. They also enjoy the right to reside in this territory and must not be displaced therefrom and the right to resolve conflict according to customary laws.



ARBITRARY ACT BY THE POLICE IN DRESDEN COURT RULING: SEARCHING OF LEFT PARTY OFFICES WAS UNLAWFUL

Police authorities of Dresden, Germany, exceeded their authority and used disproportional force when searching the head office of the Left Party and arresting some of its party members. The Local District Court of Dresden later found the police action to be unlawful. The Left Party in Germany is a party with members elected to the German national parliament as well as to parliaments on the single state level and to many local governments. However, in some states the party is under the surveillance of the Federal Office for the Protection of the Constitution: the intelligence bureau is investigating the conformity of some of the party members with the German constitution. The author portrays in this article the Left Party's perspective on the incident in Dresden.



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On February 19th 2011 a masked and armed special force team of the Saxon State Investigation Bureau (LKA) raided the "Meeting House", head office of the Left Party in Dresden. Many doors were cut, kicked down or otherwise forcibly opened. The whole house was searched including the offices of the Left Party as well as a lawyer's office. The raid caused damages of more than 5.600 Euros. 20 people were taken into preventive custody including two absolutely respectable members of the Left Party, Bernd T. and Dr. Frank U., who volunteered for hotline and office services in the party's office. They were treated as if they were criminals. The police recorded all their personal data and held them in a prison cell for the whole night. Both the Left Party and the two party members did not accept the treatment and called attorney André Schollbach, who represented their legal interests

in court. At the Local Trial Court he successfully requested that both the searching and the police identification procedure were judged unlawful. The Local District Court in Dresden filed the following resolution on the matter (document number: 270 Gs 662/11): "The searching of the offices of the Left Party, 1st Floor, Großenhainer Str. 93, 01127 Dresden, on 19/02/2011 was legally wrong. [...] Thus it is clear that the search warrant and the recording of the applicant on 19/02/2011 were unlawful."

Furthermore the Trial Court Dresden stated the order that the searching of the office of attorney Thomas Grundmann was illegal, too. Dr. Martin Abend, president of the Saxon law society, commented on this: "Unfortunately only afterwards, but still: with this decision, the Public Prosecution Office and the investigators were brought back in line. The prosecution as well as the police caused harm to the constitutional democracy."

Rico Gebhardt, chairman of the Left Party in Saxony commented on the proceeding of the prosecution office in Dresden: "Anyone who politically misuses the authority of the state in order to pounce on offices of the biggest opposition party, as happened in the evening of February 19th, forfeits his respect."

Lawyer Andre Schollbach explained: „The Saxon judicial authorities were clearly acting beyond their competences by raiding the 'Meeting house'. We would appreciate if the judicial authorities were to take this ruling as an opportunity to pay more and adequate attention to constitutional laws in the future."



© Maximilian Kretschmar | Under police surveillance:
exercising the right to demonstrate.



© Sascha Gläthe | After the peaceful resistance, the police raid the office of the Left Party in Dresden, February 2011.



© Max Kretschmar | Mobilization against right-wing extremism.



© Sascha Gläthe | Arbitrary arrest in Dresden.

NEWSTICKER +++

Adora Daguia (53) is a member of a local farmer organisation in Don Carlos, Bukidnon. The Farmers apply for land-titles. She has nine children.

The following case shows how former landowners try to make people brittle and how they manage to destroy their livelihood.

- + 1988 - move-in at Barangay Sinangguyan
- + 1988 - starts cultivation of a three hectares fallow field
- + 2003 - first dislocation of her house by members of another farmer organisation affiliated with the land owner
- + 2004 - multiple involuntary dislocations of Adora's house
- + 2005 - application for land-title; achieves one hectare
- + 2005 - again dislocations of the house; 100 armed security guards of the former land owner are around; the police does not react to this harassment
- + 2005 - her own land gets bulldozed by a third organisation; she cannot cultivate her land anymore
- + 2006 - big problems to feed her children
- + 2011 - again bulldozing of her land
- + 2011 - scared that her house will be moved again
- + 2011 - sum-up of financial loss: 100.000PHP
- + 2011 - very helpless situation, lost much money, does not feel save anywhere

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RED-BAITING AS PART OF THE COUNTER-INSURGENCY STRATEGY IN PERU OF THE 1980s AND 1990s

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During the 1980s and 1990s, the Peruvian state faced a guerrilla war led by the Communist Party Peru's known as the "Shining Path". In the mid 1990s, the Peruvian state was able to defeat the guerrilla through a complex counter-insurgency strategy. This state repression included Red Baiting, the exercising of repression against all people and organisations which could be potential supporters of the guerrillas and/or could directly or indirectly serve their purposes. In the course of this repression all opposition was criminalised and persecuted. Despite of the defeat of the guerrillas, this practice of repression does exist in a lower intensity until today.

The Communist Party of Peru, called by the media the "Shining Path" started its activities in 1980. Another guerrilla, the Revolutionary Movement Túpac Amaru (MRTA), initiated its struggle in 1983. This guerrilla did not have the same impact as the Shining Path, which in the late 1980s seemed to be able to take over the state power. A brief look at the socio-economic relations and power structures in Peru at that time will illustrate the context in which guerrilla groups acted.

In the mid 1990s, the Peruvian military, police and paramilitary forces had defeated the guerrilla groups. During this war, around 60.000 people were killed, 10.000 were imprisoned, 1.000.000 were displaced and 5.000 people had disappeared (Comisión de la Verdad y Reconciliación 2004). The state was able to

This state repression included the practice of Red Baiting. Exercising its counter-insurgency measures, the state would repress all people and organisations that could be potential supporters of the guerrilla organisations and/or could directly or indirectly serve their purposes. Since the repression of the guerrilla groups took place in the framework of liberal representative democracy, the anti-terrorism legislation was one of the pillars of the counter-insurgency strategy (Rivera Paz 2007). Along with the anti-terrorism act, a wide psycho-social campaign was launched, attempting to create the image of the terrorist as the enemy of the society. This served to widely spread the idea that a terrorist should be fought, no matter for which price.

The anti-terrorism legislation was constantly enforced, parallel to the intensification of the war. Its implementation was carried out by limiting a series of civil rights and fundamental principles of the rule of law. The new legislation aimed at allowing a more effective prosecution of guerrilla suspects while threatening its followers in order to stop their support. In addition, the legislation was used to fight the whole leftist opposition and critical voices from journalists and human rights organisations (Arce Borja 2009).

The minimum penalties for the various types of terrorism were increased continuously. New types of criminal offences were introduced and linked to "terrorist" activities. For example, the mere membership of a so called terrorist organisation was considered as a criminal offence and was therefore punished. It was not required that the accused committed a concrete crime or offence. In the late 1980s, the membership in a "terrorist" organisation was punished with 5 years of prison and from the beginning of the 1990s, with 15 years. Often, only the possession of propaganda material of so-called terrorist organisations was considered as a proof of membership in a "terrorist" organisation,



© Vera Lenz | „Disappeared“.

defeat the guerrilla organisations through counter-insurgency strategies that included extra-judicial killings and perpetration of massacres, the systematic violation of the rule of law to criminalise and persecute people suspected to be members of the guerrillas, the building of paramilitary groups of peasants to encounter the guerrillas (euphemistically called "groups of civil defence") and through aggressive psycho-social campaigns using the media. (elements of a low intensity war) (Ruiz Torres 2001).

allowing to sentence a person to prison. This had consequences not only for the suspect but also for activists of human rights organisations. The "Association of Democratic Lawyers" was suspected to be an organisation of the "Shining Path" because many of its members defended people accused to belong to the "Shining Path". From the beginning of the 1990s many lawyers who were members of this association were condemned to 15 years of prison. The persecution against the "Association of Democratic Lawyers" is reflected in its whole dimension in the murder of the lawyer Manuel Febres Flores, who was assassinated by the paramilitary group "Rodrigo Franco" in 1988. When a lawyer defended several accused of terrorism, he/she was suspected to belong to the forbidden lawyers association. Therefore, some lawyers avoided defending people accused of terrorism in order not to be suspected to belong to a terrorist organisation.

Another newly introduced criminal offence was the "apology of the terrorism", according to which a person could be condemned to a punishment of 5 years in prison because he/she commended a terrorist group or a terrorist act in the public or through the media. There was wide discretion for the criminal courts in assessing what could be considered as "apology of terrorism". Newspapers were closed and journalists were condemned to prison due to this type of crime. It was used not only to repress the media which were considered to be closer to the guerrilla organisations, but also to persecute critical voices from the media in general.

The strongest reformation of the legislation was carried out by the authoritarian regime of Alberto Fujimori (1990-2000). The criminal offence "treason of the fatherland" was created as a more aggravated form of terrorism foreseen for murder and membership in positions of high responsibility within the so called terrorist organisations. Between 1992 and 2000, all processes of the aforementioned aggravated forms of terrorism were conducted by military trials composed of military judges "without faces"; their identification remained secret. The accused could not exercise their right to

defence. Almost all accused were condemned by these trials. Military and police forces were entitled to keep persons detained on the basis of a mere suspicion; the detainee was not allowed to speak to his lawyer or to his close relatives. During this phase, many detainees were tortured and mistreated (Ruiz Torres 2005, p.230 ff).

From the beginning of the counter insurgency war in the early 1980s, so called states of emergency were implemented for certain periods in order to strengthen the power of



© Diario La República | Massacre of Accomarca, Ayacucho, 1985.

the military and police forces to fight against the guerrillas. During this time civil rights guarantees were suspended e.g. the right to demonstrate or to meet collectively in public. The states of emergency were very often constantly prolonged so that they were the rule in vast regions of the countries during the 1980s and 1990s. In addition to this, since the beginning of the 1980s, so called civic-military governments were created in regions with an intensive guerrilla activity. In these cases the politically elected local and regional governments were subordinated to military commandos; political authorities should report to the military commandos which acted de facto as the government (Roberts / Peceny 1997: 204; Amnistía Internacional 1992). People living there did not have any civil rights guarantees, e.g. not to be detained without proof or not to be put into prison for an undetermined period.

State terror was a further instrument to scare people or organisations, which directly or indirectly could represent support for the guerrilla groups. Representatives of human rights organisations were constantly accosted by police forces. There were even assassination

attempts against them. The most famous case was the killing attempt of the director of the human rights organisation Comisión de Derechos Humanos (COMISEDH) Augusto Zuñiga Paz who lost one hand through a letter bomb sent by paramilitary forces. The dimension of the state terror becomes evident by the end of the 1980s when most of the human rights organisations refused to defend people who were suspected to belong to a guerrilla group. That means that the state repression was directed against all groups which could represent an obstacle in its counter-insurgency strategy.

One of the main means of the Peruvian state to encounter the guerrillas was psychological war. The state attempted with all means to discredit the guerrillas. The creation of the criminal offence called "treason of the fatherland" was invented to strengthen the picture that the guerrillas were acting against the interests of the Peruvian "nation". There was a strong co-operation between the counter-insurgency corps and some enterprises of main stream media. Journalists were told what and how they should cover a news item related to the guerrilla groups. Human rights violations by military and police forces were meant to be trivialised while guerrilleros were always presented as "criminal terrorists". The negative portrayal of the guerrillas in the public opinion had also consequences for people working for human rights organisations; they were stigmatised by large parts of the media as "supporters of terrorists".

It should be stressed that the degree of repression from the Peruvian state is not related to the political orientation of the government in power. During the right-wing oriented government of Fernando Belaúnde (1980-1985), the social democratic government of Alan García (1985-1990) and the neoliberal authoritarian government of Alberto Fujimori (1990-2000), violations of human rights were committed almost to the same extent. During the administration of Belaúnde, the highest numbers of massacres and extra-judicial killings were committed. Fujimori was able to build up an authoritarian system with institutions of a liberal democracy;

however the rule of law was absent and citizens could not exercise their right to defence once they were accused to belong to a so-called terrorist organisation (Ruiz Torres 2001).

It should be also pointed out that most of the victims of human rights violations perpetrated by military, police and paramilitary forces were people from indigenous populations and from the impoverished segments of the population (Comisión de la Verdad y la Reconciliación 2004). This reflects the deep racism and discrimination dominating the Peruvian society. People from indigenous populations and low social classes were more vulnerable to become victims of red baiting since they did not have the right instruments to defend themselves.

The counter-insurgency strategy of the Peruvian state during the 1980s and 1990s was based on the systematic violations of human rights for which the fundamental principles of law were denied. The counter-insurgency strategy was directed not only against the guerrillas but against all people and organisations that might have put into question the state action and which could constitute a potential support for the guerrillas. Consequently, members of human rights organisations, independent lawyers and journalists who did not have any relation to the guerrillas faced state repression. Red-baiting constituted one important instrument in the counter-insurgency strategy in Peru during the 1980s and 1990s. Since the defeat of the Shining Path by the end of the 1990s, small guerrilla groups which claim to continue the legacy of the Maoist organisation have been conducting military actions in Peru's jungle. These groups do not have any relevant support in the population and no links to social movements. Nevertheless, the governments of Alejandro Toledo (2001-2006) and Alan García in his second period (2006-2011) have used Anti-terrorism legislation and discourses for persecuting and criminalising protest movements. In 2003, after massive peasants' protests against the plans of Toledo's government to eradicate the coca-leaf plantations, peasants were arrested and accused under the charge of terrorism. The same government tried to pass a law according to which people who blocked streets in the framework of political demonstrations should be punished with 8 years of prison (Pizarro et al. 2004).

The criminalisation of social protests became stronger under the second government of García. The right of assembly in public spaces was de facto limited. In 2008, seven left-wing activists were arrested and accused of terrorism because they had taken part in a congress of the "Coordinadora Bolivariana" which is close to left-wing governments in Latin America. Environmental

activists who protested against mining and oil enterprises due to the immense pollution they created were also accused of terrorism. Furthermore in 2008, by law the intervention of the army in internal security affairs was allowed, as it was in the times of the counter-insurgency war in the 1980s and 1990s. The attempt of García's government to oppress opposition forces went so far that a law was passed in 2006 according to which funds of non-governmental organisations (NGOs) coming from abroad should be controlled by the government to ensure the harmonisation between the priorities of the NGOs and of the Peruvian state. This law was directed against human rights organisations which were criticising human rights violations perpetrated by the state and/or the polluting activities of mining and oil enterprises. In 2007, a law was passed according to which public authorities were forbidden to take part in strikes, public protests and demonstrations (Ardito Vega 2008). These are just examples of the repressive politics of García's government. The repression and criminalisation of the protest and social movements in Peru did not start with the counter-insurgency war in the 1980s. However, since then the governments in power have used the fight against terrorism as an excuse for persecuting and criminalising social protest and movements. Although the anti-terrorism legislation was developed to combat guerrilla organisations, it has been used for persecuting social protest. The criminalisation of social movements is also done under the argument of "guaranteeing" the internal security. These politics of repression will continue unless the Peruvian state will undertake deep reforms to overcome inequalities in the access to income and resources in the Andean country. ■

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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:

PADATA (Panalsalan Dagumbaan Tribal Association) (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.



