

OBSERVER

A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES

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ACTUAL IMPUNITY - WHEN LAWS ARE NOTHING BUT PAPER PROMISES

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A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS
IN THE PHILIPPINES

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EDITORIAL

On the 15th of October 2012, the Moro Islamic Liberation Front (MILF) and the Philippine Government signed the Peace Framework designed to end the 40 years lasting civil war in Mindanao, southern Philippines. The war dominated the international news coverage of the archipelago for too many years.

In case that the official peace agreement will be signed in December 2012 and if it will actually be implemented, it would be an important leap forward.

This issue seeks to analyse to which extend the Philippines have really made progress in the implementation of human rights, as required by binding UN covenants. How does the implementation of international and national law look like in reality on a worldwide level? Are they worth the paper written on?

Bruns opens this issue by looking into basic framework conditions for democratic coexistence within a society on a theoretical level. In his brief analysis, the philosopher identifies intercultural stumbling blocks that struggle for power.

Werning goes into detail and describes the political power structure in the Philippines along the terms 'guns, goons and gold'. He takes the insufficient legal proceedings against the responsible of the Maguindanao massacre as an example to illustrate his point.

The fact that real implementation foremost depends on political interests in the Philippines is further developed by Keienburg, who looks at the progressive Philippine legislation

with regards to the protection of indigenous peoples. Although impressive, he argues that the bill was never meant to be truly implemented. The case study of a small indigenous group struggling for the recognition of their ancestral domain clearly highlights the ineptitude, unwillingness and failure of the Philippine state to look after law and order.

Reckordt as well as Shirali confirm the ineptitude of the Philippine state to protect the indigenous communities. Mining activities on ancestral domains and the national counter insurgency programme 'Oplan Bayanihan' both make a point on how political and economic interests conflict with and often overrule national laws.

Tiepmar and Trötzer illustrate the extent to which the state seems incapable of providing justice to farmers who peacefully fight for their land rights using the example of the national land reforms.

As land seems to be at the centre of power struggles, it is not surprising that large-scale land acquisitions on a worldwide level often go along with serious human rights violations. Bauer argues that the rights of minorities or other vulnerable groups are often the first to be disrespected.

This can be seen in Europe as well. Andres describes how migrant workers – often refugees without papers – are exploited by owners of plantations. Their living and working conditions in the agricultural sector remind us of those of former slaves.

In fact, although it is widely acknowledged that conventional slavery has

been banished from this globe, this is not entirely true. Schedler's detailed article about Mauretania clearly shows that the abolition of slavery is a myth that needs to be contested.

Coming out of a bloody civil war, the Nepali state is still having problems addressing human rights violations during the dictatorship and of today. Despite extensive constitutional rights impunity prevails, as Gautam reports.

The actual implementation of laws does not always coincide with reality. This is not only true for so-called failing or failed states; it also regards so-called progressive countries such as Italy. A lot needs to be done.

■



CALL FOR ARTICLES

Call for articles until April 15th, 2013 (editorial deadline).

The next issue will consider the following question:

Is it still appropriate to attribute the protection of human rights only to nation states?

The increasing importance of other stakeholders has recently been emphasized in connection to human rights issues. ■

REFLECTIONS ON THE PREMISES OF THE LEGAL STATE



Oliver Bruns
1980 (Bremen/Germany)
working on a doctorate to
the topic 'Ancient premises
for the development of
human rights in modernity'.

Why is it so difficult to enforce human rights in a state where they have been guaranteed to all citizens as enforceable fundamental rights? The answer appears to be obvious – thinking of political parties or other groups which – by means of force, coercion or corruption – are capable of suppressing the functioning of the legal system, also referred to as the 'technical rational machine' by Max Weber. The inherent logic of the law thus still depends on other, external criteria to be able to develop at all. But what can be referred to, if not just one but all of the three powers (legislative, judiciary and executive) are infected by the virus of corruption?

The legal philosopher Ernst-Wolfgang Böckenförde formulated his famous dictum on this issue: 'The liberal secular state lives on premises that it cannot itself guarantee.' (Böckenförde 1976: 60) The sovereignty of the legal state thus rests not on a transcendent source but on the sovereignty of the people. The people delegate their political authority in part to the state and thereby justify its governance. But the state cannot extort its own basis – a democratic ethos – from the citizens, without becoming dictatorial at the same time. Also the 'wehrhafte Demokratie' (fortified democracy) is a venture that is based on 'the moral substance of individuals and [...] a homogeneous society'. (ibid.)

Especially the aspect of 'homogeneity', which already for Carl Schmitt was an attribute of democracy, can be interpreted very differently. It can mean both the adherence of all citizens to the values of Enlightenment and to human rights but also their belonging to a specific culture or religion. The two forms of 'homogeneity' should be distinguished. Commonly shared religious or cultural values may facilitate the process of forming a political will and decision-making. But they do not contain that essence, on which the liberal state relies. On the contrary: if cultural belonging is in fact the main condition of political participation, it is a question of a culturalism or neoracism. The latter is a form of racism, which is based on cultural attributes instead of biological ones.



© Kansas Sebastian | 'No law is stronger than is the public sentiment where it is to be enforced', Statue: 'Law', Archibald Garner's.

The term 'homogeneity' is highly inappropriate to express the common adherence to democratic values, because according to its root (Greek *homoios*: 'same' and *gígnomai*:

'emerge') it refers more to natural or cultural characteristics which the citizens should share a priori. In a democracy it is however a matter to make equal political action for every citizen possible, regardless of cultural, religious, ethnic, gender or other characteristics.

This claim is considered by John Rawls in his contractarian theory of justice. In a thought experiment he assumes that rational people in the 'original position' want to selfishly pursue their interests. At the same time they are surrounded by a 'veil of ignorance', which conceals all knowledge about themselves – their personality, character, social position etc.. All knowledge rational people have is of a general nature – for example scientific knowledge. Therefore people do not know whether they belong to a social minority, if they are subject to discrimination or whether they are rich or poor.

prodigal dog | 'Justice delayed is justice denied', Alexandria Court House.



mari-ll | Lady Justice – Blind for Justice – or blind to Justice?

The 'original position' is designed that way that the people will only agree with a constitution which guarantees fundamental rights for everyone, but also allows economic differences between the members of society.

Rawls tries to combine the claim to human rights with an acceptable socioeconomic inequality. The unequal distribution of wealth which is generated in a state can only be justified if it helps to improve the prospects of the person who benefits least. Therefore inequality should not only be useful to the beneficiaries. Wolfgang Kersting summarizes the connection of equal, fundamental rights and unequal socioeconomic success concisely: 'As equal as possible, as unequal as necessary.' (Kersting 1993: 67) The contract only legitimizes the values upon which the members of society agree, but in actual fact the result is already anticipated in the arrangement of the 'original position'.

Due to the fact that all rational people have the same general knowledge, they cannot contradict each other. Thus the contract idea is unnecessary, as Kersting states. (cf. *ibid.*: 105)

The idea of a 'veil of ignorance' may be helpful to find normative guidelines in situations of complex, political decision-making, but no foundation of moral claims is able to initiate, direct or control free political activity. The 'liberal secular state' can concede its citizens the possibility of political action by guaranteeing fundamental rights, but it cannot ensure that the citizens are really free by acting. The enforcement and observance of human rights do not only depend on the 'moral substance' of citizens or their social homogeneity, but on a political public sphere in which citizens articulate their experiences of injustice. In a public sphere the citizens are already making use of their freedom which they additionally want to be protected by law.

Therefore the positive political freedom depends not on the rule of law, but on the contrary the rule of law on the real event of political freedom. According to Hannah Arendt this freedom is rooted in the ability to make a new beginning (natality) and in the diversity of human beings (plurality). (Arendt 2003: 213ff.) ■

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FINALLY PEACE IN MINDANAO? THE CHALLENGE IS TO TAKE THE CHALLENGE FOR THEMSELVES



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After 40 years of bloody civil war in Mindanao, the government and the paramilitary Moro Islamic Liberation Front (MILF) are seriously talking about a peace agreement. After 13 exploratory meetings in 21 months under the Aquino administration, the president of the Philippines proclaimed on October 7th 2012: „This framework agreement paves the way for a final and enduring peace in Mindanao'. 83 percent of the Filipinos are optimistic about a peace agreement between the government and the MILF. We interviewed the former regional Director of the Commission on Human Rights in Davao, Attorney Alberto Junior Sapico, Atty. Raissa H. Jajurie, who took part in the negotiating of the peace framework, and the journalist Mr. Bobby Lagsa who is also working in Mindanao.

Bobby Lagsa

is a freelance photojournalist and writer for human rights, peace and conflict, gender and equality, based in Cagayan de Oro City in Mindanao. His works appears in the Philippine Daily Inquirer and the Mindanao Gold Star Daily.

Attorney Raissa Jajurie

is an alternative lawyer and advocate for Muslim women's rights. Her work has focused on the area of human rights of the Moro peoples as well as other marginalized sectors and identities, including Muslim Moro women. She attended the Bangsamoro Peace Agreement discussions.

Attorney Alberto B. Sipaco Jr.

was the Regional Director of the Commission on Human Rights in Davao (Mindanao) until October 2012. Although retired, he is still dedicating himself to human rights issues.

IPON: 15 years of peace process in Mindanao and now there is a peace agreement – a success for a sustainable peace development in Mindanao?

Mr. Lagsa: The framework agreement is only a start. There are still a lot of questions, especially on wealth sharing, governance and autonomy. But how they are going to panel it out still remains to be seen until December when the peace

agreement will be signed by the MILF and the Government.

Will it support the socioeconomic development and human rights situation, too?

Mrs. Jajurie: While the socio-economic problems that confront the Moro people and the human rights violations that they face are not the root causes of the conflict, these are real prob-

- 1400
- 1565 - 1889
- December 1898
- Beginning of 1900
- starting from 1913

Islamisation of Mindanao influenced by Arab merchants
Spanish colonisation. Inhabitants of Mindanao fight successfully against Spanish influence
Spain sells the Philippines to the United States of America
Muslim region is declared a special military administration. The colonisation of Mindanao begins
The Mindanao people are dealt with with the help of the Public Land acts

lems that exacerbate and 'feed' the conflict. With the signing of the Framework Agreement we hope for structural changes that will usher in new policies that will ensure that people have access to a decent livelihood, basic services, and good governance, and that their human rights will be respected and promoted.

Mr. Lagsa: The root of the conflict is always an economic one in the Mindanao context, the lack of interest and funding for Mindanao. We provide half of the income of the Philippines and only 10% of spendings on regional issues go to Mindanao; it is a very big injustice.

Mr. Sapico: Under Article IV of the Framework Agreement, which is entitled 'Revenue Generation and Wealth Sharing', both the Government and the MILF have agreed to wealth creation as a key aspect in ensuring the Bangsamoro come up with its own source of revenue, excluding the national share it gets. In fact, the article has eight sections, each one clearly stipulating the ways and means of generating income or revenue for the new political entity. As regards human rights, Article VI, which is Basic Rights, reiterates the fundamental rights accorded to every citizen in a democratic system.

Why is it now?

Mr. Lagsa: Why not? How long should we have to wait for it. I think the 150,000 people who died since 1972 is more than enough. Why wait more? The policy tends towards giving Mind-

anao its fair share. I think there is no special moment. It's just only this big try, big effort to all of this.

Mr. Sapico: The Framework Agreement is an offshoot of so many past initiatives focused on achieving peace in Mindanao. In short, the covenant is a product of long years of consultation, and a reflection of the maturity that was attained in the negotiation. The peace pact is not perfect and complete, but the willingness of the contending parties to respect what is constitutionally demanded effectively opened the floodgate to an open and friendly deal.

Mrs. Jajurie: I think both parties are negotiating because they both know that military victory is difficult and that war brings a lot of casualties. The MILF has said that a negotiated political settlement is what they wanted to pursue, being the most civilized and diplomatic way of resolving the root cause of the conflict.

How did the peace negotiation process work?


Mr. Sapico: The peace agreement started with the elementary consultation between two opposing factions, with each side presenting their intents. To ensure that every step of the deal was reasonable, countries and organizations with clout, interest, and influence were brought in as mediators, observers, and consultants. All through the period when the nitty-gritty of the deal was discussed, the points raised in discussions were always open to media scru-

tiny, except in crucial issues where there was a need to firm up the issues involved before these are made public, then the media access was a bit restricted. On the other hand, while there were international observers invited to the peace process, their presence was not to exert pressure, but to help enlighten critical matters considered as bottlenecks during the negotiation.

Mrs. Jajurie: We must admit that the peace negotiations were very slow – in fact, one of the longest peace processes in the world. The media has been very important in how people perceived the negotiations and the agreements reached. Many media practitioners were really clueless on the issues in Mindanao and about the Bangsamoro question. Many, in fact, fed the prejudices and sensationalized on the negative developments in the process because this is the story that 'sold', and not the good news.

The self-governed Bangsamoro is the core of the peace negotiation. What does self-determined mean in this case? What are the consequences?

Mrs. Jajurie: It merely means that the Bangsamoro will have the chance to exercise powers for governing their people. The Framework Agreement spells out that there will be a new entity called the 'Bangsamoro' which will replace the Autonomous Region of Muslim Mindanao. It will be comprised of territories which are predominantly inhabited by Moro peoples. In order for

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- 1900 - 1960 *The US government supports the settlement of Christians from the Visayas to Mindanao and encourages plantation growing*
 - 04.07.1964 *Independence Day of the Philippines. The rights of the Indigenous Peoples and Muslims are still being ignored*
 - 1969 *The Moro National Liberation Front (MNLF) is founded*
 - 1972 *Martial Law. The MNLF and other rebel groups engage in armed conflict*
 - 1976 *The end of the civil war*

the entity to govern itself (self-government), it has to be endowed with powers to do so. These powers shall be mutually agreed upon by the MILF, as representative of the Moro peoples, and the government of the Republic of the Philippines.

In short, there will be power-sharing. And there will be wealth-sharing as well, because the Bangsamoro cannot run itself without resources. This way, the Bangsamoro can make its own policies, raise its own revenues, and make its own governance programs. It does not have to wait for the national Government in Manila to decide on its fate. It does not have to 'fit into' the unitary form of government, but rather, govern itself with an 'asymmetrical relationship' with the Central Government in relation to the rest of the country. But while the Bangsamoro will hopefully have adequate powers to govern itself, it shall still be part of the Philippines.

Mr. Sapico: In case of land disputes, such as lands covered by ancestral domains, usurped lands resulting from conflict, and other tenable cases involving real estates where the Government or the MILF has direct and immediate responsibility,

payments will be made under acceptable terms of reference. In short, there is reparation for properties destroyed, and there is payment for lands illegally grabbed.

'The Constitution must be amended to make a peace agreement between the government and the Moro Islamic Liberation Front (MILF) work', said Sen. Miriam Defensor-Santiago. But in 2008, the planned signing of a preliminary pact for a Moro homeland was ruined when opponents went to the Supreme Court, which declared the agreement unconstitutional. Is there any change compared to 2008?

Mrs. Jajurie: The Transition Commission which will be created as a result of the Framework Agreement will have the task of looking at the necessity of amending the constitution. This provision was not found in the memorandum of agreement which was declared unconstitutional in 2008 by the Supreme Court, but is now included in the Framework Agreement, to ensure that there is constitutional accommodation of the Comprehensive Agreement and the Basic Law.

© Keith Bacongco | MILF Fighters



The transition of the ARMM into Bangsamoro will be 2016. Is this period too long for a sustainable peace?

Mr. Sapico: Definitely not. The fine-tuning of the details that will support the framework agreement takes time and will be sensitive because the things that are threshed out here are specificities, not generalities.

Mrs. Jajurie: The Framework Agreement talks about a Transition Commission which will be constituted soon, and which will have the primary task of working on the draft of the Basic Law of the Bangsamoro, working on the necessary constitutional amendments, if any, and coord-

- | | |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| • 1977 | <i>The Moro Islamic Liberation Front (MILF) was founded</i> |
| • 1989 | <i>The government declares the bill of Autonomous Region in Muslim Mindanao (ARMM), but different stakeholders prevent a complete implementation</i> |
| • 1997 | <i>Peace agreement between the Philippine government and the MNLF</i> |
| • 1997 | <i>MILF and other rebel groups start the armed war again</i> |
| • 1997, 2000, 2003 | <i>'All out of war', government groups attack some provinces of Mindanao.</i> |

minating development projects. While it does these tasks, the ARMM regional government shall continue to function, and the ARMM continues to exist. When the Basic Law has been passed by Congress, a plebiscite will then be conducted in the proposed Bangsamoro areas. Assuming that the majority of the residents positively vote for the ratification of the Basic Law, the ARMM is dissolved and a Transition Authority (TA) shall be constituted. This may happen sometime in 2015. The transition really happens only then, because it is only then that a transition body WITH GOVERNANCE functions is constituted. It will cease to exist upon the election and assumption of members of the Bangsamoro parliament and the creation of the Bangsamoro government after elections in 2016. So, it is not really a long transition because it will really be only one year of transition, i.e., 2015-2016.

What is your opinion? Is this peace agreement satisfying for the MILF?

Mr. Sapico: The peace agreement is not just about the MILF. It also absorbs into the fold the MNLF, the Indigenous Peoples, and other Muslim factions that have fought, rightly or wrongly, against the government. From the mere fact that the MILF has softened its stance on so many issues, which was not the case in the past, it follows that the covenant has, in its entirety, satisfied the MILF.

In which way does the MILF represent the interests of the Muslim Filipinos?



© hcentre | Negotiations between the government of the Philippines and the MILF, April 2012.

Mrs. Jajurie: The MILF does not claim to represent all the Muslim Filipinos. But it does have a large constituency among the Islamized native inhabitants in Mindanao, Sulu and Palawan, collectively called the Moros.

The Moros have long claimed that they are not part of the Philippines as their territories were not successfully colonized by the Spaniards.

There have been many Moro groups that had been organized around this assertion, including the MILF. Many Moros in Mindanao would resonate with this call, and this is how the MILF gets its mandate as it negotiates with the Philippine government.

Before the Memorandum of Agreement, the government considered them ,terrorists', they are stakeholders and part of the negotiation.

How do you explain this change of roles?

Mrs. Jajurie: The MILF has been engaged with the Philippine government on the issue of peace since 1997. This means that the Philippine government looks at the MILF as a legitimate organization worthy of negotiations.

But the majority of the Philippine population would look at Moros with suspicion, mainly because of prejudices. But the Philippine government has not tagged the MILF as terrorists, although there is acknowledgement that there are terrorist groups working in areas where the MILF is.

The MOA AD was negotiated for about 4 years, i.e. from 2004-2008.

They did not just suddenly become stakeholders.

They were silently toiling for a negotiated political settlement.

- 1997, 2000, 2003
- 2001
- July 2008

- 4. July 2008

(cont.) The result is approximately 1.5 Mio displaced people

New Peace negotiations between the MILF and the Government are taken up in Malaysia. The negotiating parties find a compromise. The government accepts the demand of an autonomous region by the MILF

One day before undersigning the Peace agreement, the Supreme court stops the negotiation and the peace process because autonomous regions dispute the constitution

What are the reactions to the peace agreement in general?

Mr. Sapico: Unlike in the first Government of the Republic of the Philippines where MILF-negotiation failed due to constitutional infirmity, the Framework Agreement has received tremendous positive support from various sectors. Except for some small, fractious segments, the covenant has been lauded even by the World Bank. Interestingly, the Church has been optimistic about it, as are the business investors, local government units, and the citizenry in general. In its entirety, according to a national broadcast made in the Philippines, 83 percent of those sampled support the new peace accord.

Mr. Lagsa: The church is very supportive, the Catholic and the Protestant church, especially the Muslim communities are very supportive of the peace agreement. The support and the acceptance of the Muslim Mindanao are very tremendous in terms of acceptance of the peace agreement. The indigenous people (IP) shared a common history with the Moro people. They have affirmed the kinship in the Region of Bukidnon until 2012. Their only concern is if the new Bangsamoro political entity would also demand for self-determination which also the Moro experience themselves.

What will be the consequences of the peace agreement for other splinter groups and regional political leaders? Might this new agreement be considered as a reward for armed struggle?

Mr. Sapico: Groups like the Abu Sayyaf Group, the MNLF, etc. are part of the deal since its inception. To assure that there will be no political instability, the new areas proposed for inclusion in the Bangsamoro will still be given the chance to vote in a plebiscite to allow them to air their posi-

tion for or against their inclusion. The Framework Agreement is a commitment that involves everybody because the post-effect of its implementation will have pervasive impact on the national direction.

Of course, certain factions want to disrupt the peace process, but the collaboration of the government and its opponent in order to achieve peace is a move in the right direction. The deal is not a reward for an armed struggle; rather, it is a reflection on the positions of the signatories that development can only be achieved through peace.

Any other way, for that matter, is anathema to what is democratic.

Mrs. Jajurie: This is not just a case of a group of people who want to claim a piece of land. This is the narrative of A PEOPLE who once were sovereign in their own land, but whose territory was illegally and immorally annexed to a colonized land to be ceded by a colonizer to its successor.

What will happen to the currently 750,000 displaced people and refugees around the area?

Mr. Lagsa: Looking at the story: Why are Moro brothers migrating to Cagayan de Oro, Manila or to Cebu and other places? It's because of the conflict.

And now they are saying with the peace agreement assignment they can turn back to their homeland to work peacefully. Without the thought of fear, without the thought of bombs and being caught in the cross fire. A lot of them are saying that they are going back.

Mr. Sapico: Families displaced as a result of the conflict that rocked Mindanao for decades will be properly relocated, compensated, and provided the basic amenities they deserve. This means the

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|--------------------|---------------------------------------------------------------------------|
| • 4. July 2008 | <i>The armed conflict escalates again</i> |
| • 4. August 2011 | <i>First Meeting of a Philippine President with MILF members in Japan</i> |
| • 22. August 2011 | <i>The exploratory talks re-start in Malaysia</i> |
| • 15. October 2012 | <i>MILF and the Government undersign the Peace Framework</i> |
| • December 2012 | <i>Anticipated signing of undersignment of the Peace Agreement</i> |
| • 2016 | <i>Planned completion of the implementation of Bangsamoro</i> |



lands they owned would be returned to them, or if not, they would be properly compensated either by the government or the MILF as the case may be.

What will happen to the indigenous people? Do you expect more displaced people?

Mr. Sapico: For the IPs, they remain where they are. The agreement, as a matter of principle, does not discriminate anybody but only strengthens the bid to create a Bangsamoro that reflects the nuances of the majority of the people living within the new political entity.

Mrs. Jajurie: Let me make this clear: The creation of the Bangsamoro will NOT lead to the displacement of settlers within its territory. Vested proprietary rights within the Bangsamoro shall be respected, and nobody will be asked to give up his/her lands.

Of course, if there are cases of land-grabbing and this is proven in an appropriate case filed in court, then that's a different story.

But generally, no one will be driven out of his/her land by virtue of the creation of the Bangsamoro, be s/he a settler, IP or Moro.

Which challenges and obstacles do you foresee in the coming years?

Mrs. Jajurie: The negotiations were long and arduous, but even more so is the implementation.

We would like to see more people to 'buy in' and to help turn a beautiful plan into reality.

We would also like to see active citizenship and good governance in the Bangsamoro, two things that have not really happened in this part of the country because of structural defects and the complete lack of trust by those governed towards those who govern.

We hope that a real party system is able to function in the Bangsamoro so that we need not be at the mercy of traditional politicians who do nothing but ex-

BACKGROUND INFORMATION



During the 1970s, the conflict between the Muslim opposition and the government was getting worse, due to the Martial Law (imposed by then-President Marcos in 1972).

The period prior to that was characterized by a merciless settlement policy. The local inhabitants were underprivileged and pushed back for the benefit of the Christian Visayan settlers, thus turning from a majority to a minority in their homeland. In 1996 the peace agreement between the paramilitary Moro National Liberation Front (MNLF) and the Philippine Government was intended to bring peace.

Unfortunately, contrary to the MNLF which was willing to give up its former claim for an autonomous Islamic region in favour of the above peace agreement, the second more radical group formation, the Moro Islamic Liberation Front (MILF), appeared to insist on the claim. Until 2012, the number of victims fluctuated between 100,000 and 150,000 and there were scores of refugees. In contrast to 1996, the aim today is to implement a new political entity – the Bangsamoro – that will replace the Autonomous Region in Muslim Mindanao (ARMM), established in 1989.

Although there are presumed natural resources in worth of about USD 312 billion, Mindanao is still suffering from war times. It belongs to the most underdeveloped and poorest regions in the Philippines. ▀

plot our people. We would like to see an electoral-political system that delivers the real winners with concrete platforms.

Mr. Lagsa: I think the most challenging part is to observe the peace agreement with dignity and with honor. And that both sides would stay to their words they made. I think some government with peace deals will be brokered in December.

The challenge for the Mindanao people is to take the challenge on themselves. Additionally, I think a lot of foreign governments should help economically, because economics are the real cause of conflict.

Mr. Sapico: Challenges facing the Framework Agreement include pocket resistance from small, disgruntled groups, the political dynasties that will be affected, and the Christian extremists.

Overall, there is reason to believe that any and all obstacles that may come out as a result of the implementation of the Framework Agreement will not prosper if the intention to sincerely develop the Muslim regions is not set aside or abandoned.

The mistakes committed in the past should act as mirrors for future solutions and resolutions that have to be adopted when new challenges and obstacles crop up. The new deal reflects more the interest of the Muslims, and if they fail, the Bangsamoro leaders are answerable to their constituents. ▀

NURTURING MONSTERS – LEGAL AND POLITICAL CONFRONTATION WITH THE MAGUINDANAO MASSACRE



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Three years after the massacre in the southern Philippine province of Maguindanao where 58 people were killed, including 32 media representatives, the legal proceedings against those responsible seem to lead nowhere – adding to the bitterness of the victims' families.

Whoever came to the Philippines as a visitor at the beginning of the 1970s was struck with surprise to see signboards in front of restaurants and night clubs saying 'unescorted ladies and firearms are not allowed'. It was the high season of private armies, employed by wealthy businessmen and politicians with the perspective of a successful career in order to protect their families and themselves from malevolence – and if need be dispose of rivals on their own. It was a typical attribute of the high society and a proof of the level of wealth to be able to afford such a luxury and present it publicly. Then-president Ferdinand E. Marcos used exactly the argument of wanting to prevent these private armies as well as 'communist subversion' and 'moro secessionism' 40 years ago to declare martial law on September 21, 1972. In order to whitewash this state of exception, sly Marcos, by profession lawyer, would henceforth only speak of 'constitutional authoritarianism'.

The country was in rage. Strikes and manifestations were organized against a regime that was deeply involved in the Viet-

nam War and supported the United States by hosting the biggest US military bases outside the US: the Subic Naval Base and the Clark Air Field served as logistic bridge-heads of the war of aggression the US led in Southeast Asia. It was also at that time that the New People's Army (NPA) became known as guerrilla of the Communist Party (CPP) and the long existing conflicts on land on the Southern island of Mindanao escalated due to military involvement. Based on martial law, the Marcos regime militarized national politics and the military increasingly overtook political functions – a heritage that is still present, more than a quarter century after Marcos' overthrow in February 1986. Especially in Mindanao.

Butterflies and 'three Gs'

It was also in Mindanao that I first heard this saying in 1970: 'In times of elections, the dead vote once and the living more than twice. And even butterflies vote in Mindanao'. Election fraud, bloody election campaigns and buying votes in large numbers

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are remarkable constants of national politics. The reason for that – and its consequences disturbingly continue up to today – is the unhindered power of the triade ‘guns, goons, and gold’. One who does not possess of this trinity in the predominantly catholic country should seriously consider if one really wants to try accessing the political arena. On the other hand, whoever possesses many of the above-mentioned items holds many aces. These ensure to live like in paradise already during one’s lifetime, (ab)use power, incomes, carefully established networks and if need be also laws to constantly increase the wealth of one’s own family and relatives. This is the essence of what is called ‘malakas’ in the Philippines – politics of power. Only the powerful enjoy respect, are being fawned over and, if they have halfway decent manners, serve as role models to whom one can look up.

Orchestrated murder

The filthiest demonstration of ‘malakas’ took place on November 23, 2009. This day will enter the annals of Philippine history as Black Monday. 58 persons¹ became victims of a massacre which in its bestiality and coldblooded execution presented a novum and deeply shook the nation. Worried members of the media, universities, churches and NGOs agreed that one can speak of a ‘failed state’.

On said Monday, a convoy of supporters of politician and vice-mayor of Buluan, Esmael Mangudadatu, started in the southern Philippine province of Maguindanao to make its way to the province capital of Shariff Aguak. The objective was to hand in the necessary documents for Mangudadatu’s candi-


dature as governor to the state’s election commission (Comelec). Elections were to be held in May 2010. Since the son of the Mangudadatu clan knew that the rival Ampatuan clan had reclaimed Shariff Aguak and its environment as exclusive political, military and economic domain almost a decade ago, he had decided not to appear personally. His wife and other female relatives and friends, accompanied by several journalists and two human rights advocates, were to make the journey instead and deposit the documents. However, on the way to their destination, their convoy was blocked by more than 100 armed persons; they were drawn out of the vehicles, mutilated and finally shot from short distance.

Esmael Mangudadatu and his close advisers assumed that the opposite party would not touch women and that they would respect the numerous media representatives who came along. A fatal misjudgment. Before the convoy set off, Esmael Mangudadatu had desperately tried to convince the officers in charge of the police (PNP) and the military (AFP) to grant them personal security – in vain. The officers in charge as well as supporting paramilitary groups such as the Citizens’ Armed Force Geographical Units (Cafgu) and the Civilian Volunteers Organizations (CVO) felt exclusively loyal towards one single person: Datu Andal Ampatuan Sr. – Provincial Governor, patriarch and clan chief combined in one person, with an extensive influence far beyond the region.

A large number of witnesses can testify that the massacre had been planned long in advance. The perpetrators even arranged a plan to escape the crime scene as quickly as possible and to destroy any evi-

dence. Huge ditches had been dug with the sole purpose of letting the whole convoy – people as well as their means of transport – disappear. The plan succeeded only partly as the perpetrators had to flee earlier than expected. Survivors and



 The Philippine Online Chronicles | The victims were cut into pieces.

eye witnesses were calling for help. From one day to another, the Philippines suddenly championed the list of the most dangerous countries for journalists.

Warlordism, supported by the State

The Ampatuan clan used to boast about having origins in the Arab world and became more and more influential under Datu Mamasapano Ampatuan. In the 1930s, he was a political adviser under the US administration. In the 1990s, Andal Ampatuan Sr. was Vice governor and mayor and he eventually won the election for governor of the southern province Maguindanao in 2001 – with the help of the Mangudadatu. Mayor of Datu Unsay and main suspect in the massacre is Datu Andal Ampatuan Jr., whereas another third of the whole province of Maguindanao is ruled by members of the Ampatuan clan. Datu Michael Mastura, former Congress man of Maguindanao, said long before the massacre that ‘he [Andal Ampatu-

1) The mortal remains of the 58th victim were never found.

an Sr.] is like a pharaoh – and people call him like that. Those who act against his will should think long and hard about it.’ Meanwhile the Mangudadatu clan started its political career when President Corazon C. Aquino nominated Datu Pua Mangudadatu as Mayor of Buluan, Maguindanao in 1986. At that time both clans were still on friendly terms with each other.

During the presidential elections in 2004, Maguidanao’s Governor Andal Ampatuan Sr. proved to be the most reliable regional ally of President Gloria Macapagal-Arroyo who won the much contested elections not least because of the countless votes from Andal’s province Maguidanao. Ampatuan made sure that the challenger of Arroyo – the po-

© IPON | Justice for Hyfa - Demonstration against impunity in Bukidnon, Mindanao



pular former actor Fernando Poe Jr. – did not stand a chance. Similar proceedings were noticed during the elections for senator in summer 2007, when the senators closest to Arroyo were able to clearly defeat the opposition. The Ampatuan clan eventually became one of the most important pillars of Arroyo’s party (coalition between Lakas-Kampi-CMD/Christian Muslim Democrats) in Mindanao.

Impunity – a virtue of the state?

‘What kind of animals are these killers? We are so shocked and enraged. This is beyond words. It is most despicable. This is the work of someone who is not human. It is a bestial act of the highest order. I have never seen anything like it. It’s brutal ruthlessness all in the name of power. It’s an affront to all forms of civility.’

This was the first reaction after the massacre, pronounced by then-chairperson of the national Commission on Human Rights (CHR)² and current Minister of Justice, Leila de Lima. She has long been a courageous advocate for human rights and had frequently criticized political clans for having private armies as well as the impunity under the Arroyo administration.

From the moment Arroyo took office in January 2001 until the massacre in Maguidanao, more than 1,000 persons lost their lives through extra-judicial killings and more than 200 persons disappeared without a trace – all were victims of the so-called ‘Op-lan Bantay Laya’, a nationwide strategy to combat ‘terrorists’. Many activists had been labelled communists or terrorists by national security forces and were killed as a result. As of now, no one has been brought to justice for these crimes.

The first reactions from the government were surprising – to put it in very decent terms. The massacre was condemned as being barbarian, but the spokesperson of the AFP, Romeo Brawner, and the spokesperson of Arroyo, Cerge Remonde, merely spoke of an ‘incident’. The vice-spokesperson of Arroyo, Lorelei Fajardo, quoted her with the words: ‘This is an incident between two families in Mindanao. It does not concern us.’ As a matter of fact, the Arroyo administration later on tried to play these statements down and promptly declared on November 26 a national day of mourning. The president assured that ‘the obligation to respect human rights and human dignity will eventually prevail in the Philippines.’

This statement was followed by several initiatives: Arroyo sent her adviser for the peace process in Mindanao, Jesus Dureza, to Maguindanao in order to make the Ampatuans collaborate in the investigation of the massacre. Witnesses of this meeting describe it as a rather convivial tea party. Dureza then accompanied Andal Ampatuan Jr., the main suspect, to Manila for him to be handed over to the National Bureau of Investigation. Arroyo finally imposed martial law in the provinces of Maguindanao and

2) The CHR has only a consultative function, no executive powers; it can only conduct investigations and make recommendations.



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Sultan Kudarat, and Cotabato City, residence of the ARMM³ government and asked the Minister of Internal Affairs, Ronaldo Puno, to temporarily take over the ARMM administration. The Provincial Director of the Police, Jesus Verzosa, suspended a few high-ranking police officers of Shariff Aguak, who had allegedly been involved in the massacre. Gilbert Teodoro, former Minister of defence and protégé of Arroyo, immediately invited the Mangudadatus in the coalition of parties in power and simultaneously excluded three members of the Ampatuan clan.

Gangsterism based on reciprocity

These reactions fanned the flames. More and more people asked for Arroyo's resignation. She was involved in several corruption scandals and was the least popular president after Marcos.

Inspired by George W. Bush, Arroyo took a number of measures in order to criminalize opposition and critics and to bring them in line with 'terrorists'. One of these measures was the Executive order 546 that allowed local officials and politicians to employ private armed forces to support the national combat against 'terrorism'. The real reason for this measure was a failed attempt on Andal Ampatuan Sr.'s life – Arroyo's most important asset in Mindanao.

Indeed, the Ampatuans and Arroyo's clientele demonstrate political cooperation and equal ranking par excellence. One would not exist without the other. (cf.: FFF; NUJP; MindaNews; PCIJ; CenPEG 2009) Only under the Arroyo administration was the Ampatuan clan able to rise to such political importance. It is not surprising that numerous critics of ex-President Arroyo and the families of her victims are still unsatisfied with the current human

rights situation under President Benigno S. Aquino III. They want that everyone responsible for the Maguindanao massacre is brought to justice and that the witness protection programme works effectively. As of now, the main suspects have privileged conditions of detention, 94 suspects are still at large and 6 witnesses have been murdered so far. (cf.: BBC News Asia; Der Standard; Olea 2012) Maybe those who believe that the crimes of the November 23, 2009 will not be condemned unless ex-President Arroyo is brought to justice herself are right. Vestigia terrent – the footprints are frightening.■

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© Magic Liwanag | No Martial law - Demonstration in Maguindanao when then president Arroyo declared Martial Law in the province in December 2009.



3) The ARMM, with its headquarters in Cotabato City, was established in 1989 and currently embraces the provinces of Lanao del Sur, Maguindanao, Basilan (without the capital city Isabela City), Sulu and Tawi-Tawi.

BLESSING OR CURSE? – THE INDIGENOUS PEOPLES RIGHTS ACT OF 1997 AND ITS IMPLEMENTATION



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As the very first Asian country, the Philippines passed a law that addressed the issues of their indigenous peoples (IP). Considered as a highly innovative and progressive law by the international community, its perception was and still is quite ambivalent in the Philippines, especially among IP-organisations.¹

The need to redress the injustice towards the Indigenous Peoples

Many Filipinos suffered during the colonial rule of the Spanish and American empires. Under Spanish rule, many of the indigenous people were able to avoid contact and attempts of assimilation by retreating to inaccessible mountainous areas, particularly on the island of Mindanao and in the Cordillera region. However, this radically changed under American colonial policy as is well reflected in a statement of then American president William McKinley who announced a policy of 'benevolent assimilation' for the native Filipinos in 1898. As part of this campaign, English was imposed as the official language of the Philippines. Today the Philippines are the 4th biggest nation of English speakers in the world.

The Spanish had implemented the Regalian doctrine in the Philippines as well as in many other colonies, notably in South America. According to this rule all public land belongs to the state. The US retained that policy and enforced it through various land acts in the early 1900s. These laws proved to be particularly devastating for the Indigenous peoples (IP) as it was contradictory to their customary practice of shared revenue. The concept of distinguishable private property had not existed in their communities. This made it easy for the American occupiers to declare all the lands inhabited by Indigenous peoples as property of the state. The most grave example are the Public land Acts of 1913, 1915 and 1925 through which the whole island of Mindanao – hosting the largest number of IP communities in the Philippines – was declared as unoccupied land

and hence state property. These 'public lands' were made available to homesteaders and corporations regardless of the occupancy by the Indigenous peoples. After the American occupation had ended in 1946, the Regalian doctrine was maintained in the Philippine constitution 1987. Furthermore, a presidential decree under Marcos declared all lands with a slope of 18 percent or more as public lands. This gravely affected the IPs of the Cordillera region, where there is almost no land with a slope of less than 18 percent. After Marcos had been toppled down during the EDSA revolution in 1986 and the republic had stabilized under presidents Aquino and Ramos the latter passed the IPRA during the end of his second term in office. Critique of the law – and the seemingly powerless government institution that came with it – soon began to rise among the indigenous communities.

The conception of Indigenous Peoples rights act (IPRA)

Modeled on the UN Declaration on the rights of Indigenous peoples, IPRA was considered a progressive and exemplary law at the time of its conception. When the law was passed in 1997 many IPs put great hope in it. It was the first time that the specific needs and claims of the indigenous Filipinos – such as their customary law, principles of community and religion – were addressed. By now, 15 years later, perception has drastically changed. The central issue – as well as the main focus of critique – revolves around the recognition of 'ancestral domains' as established in the law. The term defines a certain area of land that has been continuously inhabited by a group of indige-

¹) The information used in this article was acquired through research and interviews. It reflects the authors opinion and interpretation of the gathered facts.



© IPON | The group PADATA is fighting for its rights as indigenous people, Bukidnon, Mindanao.

nous people since 'time immemorial' (1997: Chapter II, section 3a). If a Certificate of Ancestral Domain Title (CADT) is granted, the indigenous community will not only own the land rights to that area. It is also allowed to implement its customary law as long as it does not conflict with the essence of the Philippine Constitution. Along with the law, a National Commission on Indigenous Peoples (NCIP) was installed with the sole purpose of implementing IPRA.

A flawed law implemented by an incompetent government agency?

Critique and discontent among the IPs have accompanied IPRA ever since its conception. In 2003, the Commission on Human Rights (CHR) published a paper by Erlinda M. Burton on the

indigenous groups in the province of Bukidnon with a focus on ancestral domains. The conclusion of that paper was not favorable for the NCIP (Burton 2003). Burton points out that in the first four years of the IPRA implementation, out of 80 applications for CADT in Northern Mindanao, only nine were processed and only three were approved. The paper goes as far as to attest a general incapacity and incompetence to the NCIP and its staff:

- 'There was a lack or absence of clear leadership that has led to the poor performance of the agency's policymaking and adjudication duties and the coordination in the delivery of basic services.
- NCIP's present structure and staff have impelled the institution from carrying out its duties/functions.

- NCIP officials are by in large not qualified or trained with necessary skills to meet its mandate under the IPRA.
- There were manifestations that the processes of issuing titles and certificates to allow mining and other activities have been compromised if not corrupted.
- Past policies and decisions have been prejudicial to the operations of NCIP and should be identified and changed to better serve indigenous communities.' (Burton 2003: 23)

Another problematic issue of IPRA discussed in that paper is the so-called free and prior informed consent (FPIC). If an Indigenous People is recognized as the traditional inhabitants of a certain area of state property, they are granted with Native Rights,

even if they have not acquired the official title of ancestral domain. This means, that all use of that land by a third party is conditional on the free and prior informed consent of the Indigenous People.

IPRA as an additional source of conflict

Since 2011 IPON has been working with a tala-andig tribe organisation called Panalsalan-Dagumbaan-Tribal-Association (PADATA) in Bukidnon, Mindanao. (cf.: Knappmann 2012) Because of their peaceful struggle to regain

ancestral land, only to give their FPIC to the prolonging of Mr. Villalons license. That this fake FPIC was at first approved by the NCIP is a clear example of how problematic IPRA is in reality. In this example, the very law that should protect the Indigenous people helped to legally make them squatters in their own land. Only after one of the PADATA-members got murdered by the Villalon security guards, the NCIP reinvestigated and revised the fake consent. In approving the fake consent in the first place, the NCIP - contrary to its mandate - did not represent the interests of PADATA but further sparked an already intricate situation



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the use of their ancestral land from the private rancher Ernesto Villalon, the members of PADATA have been victims of various crimes, committed by the ranchers private security guards. Since the contested land is government property, the rancher has to lease it from the government. For that purpose, a license is required and since Indigenous People are involved, an FPIC by the IPs is mandatory for the granting of that licence.

According to PADATA, a 'dummy tribe' was created, who would claim the area as their

with catastrophic results for the IPs. After his licence was revoked, the rancher made an appeal, still leaving the conflicted area in a dubious state. Meanwhile an ambiguous status quo order maintains an insecure peace in the area.

Today's perception of IPRA and the NCIP

The perceived incapacity of the NCIP is also reflected in recent statements from within the IP community. Indigenous Filipino author

Gali Dodoy Gumaling calls it 'the National Commission on Indigent People' (Gumaling, 2012) referring to the NCIPs vagabond status among government agencies and its insufficient, insecure and unpredictable funding. The NCIP has in fact been assigned and reassigned to various government agencies and funds since the time of its installment.

'IPRA and the NCIP appear not to be protecting the Indigenous Peoples rights of which they are called to do so. Instead, they are facilitators for mining, logging and timber permits and other big companies entering in IP areas.' (Claver, 2010)

This statement is shared today by many IP-organizations. Some of them even completely turned their backs on the NCIP and have instead started focusing on the Department of Agrarian Reform (DAR). Although still a slouching, ailing snail of a process, the ongoing land reform might actually provide at least some of the IPs with land titles, thus being more promising to them than IPRA. As land is so deeply entangled with the indigenous way of life and their economic concept of shared revenue, it is easy to understand why IPs feel so disappointed about the IPRA. Indeed, many consider it redundant due to its ineffectiveness.

On the 9th August 2010, the international day of the world's Indigenous Peoples, the Task Force on Indigenous Peoples Rights (TFIP) submitted a paper to the newly elected president, Benigno Aquino. This paper addressed various issues and prob-

lems concerning the IPs, such as the NCIP and ancestral domain claims. Two years later, on the very same day, the TFIP published an open letter to President Aquino stating their disappointment about their current situation and about the fact that the president had not yet responded to their paper.

Erwin Marte, member of the Bukidnon tribe and its Council of elders in Malaybalay, Bukidnon, confirms that IPRA is now even regarded as a mere instrument of appeasement with which the Philippines simply responded to international pressure in the late 1990s, but with no sincere intention of ever seriously implementing the law. A thought that might be well reasoned considering the positive reactions IPRA initially garnered among international organisations on the one hand and its doubtful results on the other hand. ■

NEWSTICKER +++

The members of PADATA are constantly threatened by private security guards on the Villalon Ranch, Mindanao. Since 2011 they have to deal with serious cases of destructive arson.

- + June 2011 - 40 armed security guards open fire and burn down 23 houses; incidents are reported to the local police on the same day
- + June 2011 - no police investigation is conducted
- + June 2011 - more fire incidents
- + June 2011 - cases of destructive arson is filed by more than nine families
- + October 2011 - Provincial Prosecutor renders a resolution stating the case as probable cause
- + October 2011 - information is filed in the court
- + December 2011 - Warrant of Arrest against 14 security guards is issued
- + January 2012 - just two of the 14 accused are arrested
- + December until March 2012 - Warrant of Arrest has not been served; case is brought to national Human Rights Office in Manila by IPON
- + March 2012 - Regional Conference Meeting is held at the regional police headquarter; a two month-deadline is set to serve the Warrant of Arrest
- + February until March 2012 - Prosecutor reinvestigates the case of destructive arson

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'MONEY CAN'T BUY ME LOVE' – BUT MAYBE LAW...

On 11th September 2012, the members of PADATA celebrated the four-year anniversary of the erection of their settlement. They were celebrating despite the hardships they had to endure during these years.

by Gregor Keienburg

For centuries, the people of the Talaandig tribe had lived on and cultivated the lands of what is today a private ranch in Maramag, Bukidnon, Mindanao. Starting in the 1960s, they were driven off their ancestral land bit by bit. Today, a private rancher named Ernesto Villalon occupies about 487 hectares of these lands for commercial cattle breeding.

After futile and violently floored attempts of resettling their lands throughout the 1960s and 1980s, the Talaandig community found encouragement in the Indigenous Peoples rights act of 1997 (IPRA). (cf. Keienburg, this issue) This law offers indigenous people an opportunity for legal recognition of their land rights and customs summarized under the term 'ancestral domain'. It guarantees them land rights and autonomous privileges like the practice of their customary law in such an area. Through IPRA, the National Commission on Indigenous Peoples (NCIP) was installed. This government institution is responsible for the IPRA's enactment. The law also states that, if indigenous people are recognized by the NCIP as traditional inhabitants of a certain area, all future use of that area by others than this people will depend on their free and prior informed consent (FPIC).

After a private agreement with the ranch owner – who had promised to leave the lands after the expiration of his license in 1997 – turned out to be ludicrous, the Talaandig founded the Panalsalan-Dagumbaan-Tribal-Association (PADATA) in 2004. When four years had passed without any positive development and forced by increasing poverty among their members, PADATA began to resettle and cultivate the lands on about 200 hectares of the Villalon ranch.

As a response to the erection of the PADATA settlement on the ranch (grounds), the ranch owner

hired a private security agency. Harassments and threats against PADATA members by the security guards or 'goons' were to start soon after.

First they were threatened with large calibre guns and deliberate gunshots at night. When PADATA did not leave the occupied area the guards started stealing from them: After scaring several inhabitants away from their houses with gunfire they would ransack the derelict houses for any item of worth they could find. Soon they went on to inhibit PADATA members from harvesting their crops, or at times even harvest PADATA's crops for themselves, thus depriving them of their sole source of income and livelihood. But still PADATA made a stand and did not leave the area.

Eventually the guards, led by the Head of Security Milo Ceballos, started shooting pointedly at PADATA members, injuring several of them. These actions resulted in many blotters (complaints/police reports) and case filings against various security guards.

In return, the ranch owner filed a case for attempted murder against a member of PADATA. This case was later dismissed due to a lack of evidence and substantiality. However, it is an example of criminalization against an inconvenient adversary and a common measure in land conflicts across the Philippines because costly lawsuits and bailouts drain the limited financial resources of organizations like PADATA.

While police investigations into the criminal cases went slowly, the goons proceeded with the demolition of PADATA's houses, stealing the rooftops and eventually burning complete houses. In total, 15 houses of PADATA members were burned during that time, resulting in several warrants of arrest against the perpetrators, none of which has been carried out to this day.

Since the instalment of the NCIP and the recognition of the Talaandig of PADATA as natives in that

area, the rancher was obliged to acclaim the free and prior informed consent of PADATA to prolong his cattle license.

To circumvent PADATA, in 2010 the rancher went on to install a so-called dummy tribe in the area: A group from the town of Kibawe where Mr. Villalon had been mayor before was settled on the ranch to claim the area as their ancestral domain, only to grant their FPIC to the rancher.

When the NCIP even accepted this fake consent, PADATA protested in Malaybalay, the provincial capital of Bukidnon, to raise awareness for their case in the provincial government.(cf. Knappmann, this issue)

While the leading members of PADATA were absent protesting, violence in their village reached a sad climax. On the morning of August 24, a group of heavily armed goons entered the settlement under the pretense of a peaceful discussion

to resolve the conflictual situation. At the end of the day, 28 year-old farmer Welcie Gica wound up dead, killed by two gunshots to his left armpit and neck. The shooter, presumably Milo Ceballos, went on threatening eye witnesses not to testify against him, or else they might share Gica's fate.

The police however, upon arriving on the crime scene seized the security guards for further questioning. Learning about the death of one of their colleagues, the leadership of PADATA rushed back to the village, trying to convince the eye-witnesses to testify. Jessielyn Colegado, vice-president of PADATA, has stated that on the evening of the same day two witnesses finally agreed to testify. But after they had filed their affidavits at the local police office in Maramag they were denied to file the actual case because the time of day had exceeded office hours.

PADATA returned the next morning to file the case only to find that all suspects

had been released from police custody under unexplained circumstances. At a later time, the responsible officer Bataycan stated that at that time they had no reason for further detaining the suspects since there were no testimonies. But according to PADATA, the witnesses gave their testimonies and filed their affidavits before the release of the suspects.

Due to the tedious processing of cases in Bukidnon, warrants of arrest were not issued until December – neither for the pending murder case nor for the cases of destructive arson. For the months following the murder, the family members of Welcie Gica thus had to endure watching Milo Ceballos roam free around the area.

As soon as the warrant of arrest for murder was issued for Milo Ceballos on December 15, the accused went into hiding. During the months before, he had been spotted regularly around the area. Opinions on his current whereabouts dif-



fer: While members of PADATA have stated that he left the area altogether to avoid incarceration, the local captain of the police (PNP) has stated towards IPON that he is still regularly seen. Validity of such statements on part of the PNP of Maramag is fairly questionable, due to the general lack of active presence of PNP officers in the area.

The documentation of these happenings shows a general tendency of impunity on the Villalon-Ranch. There is no proper conduct of law or none at all, concerning many of the crimes committed against PADATA.

The biggest concern arises from the excuse that PNP officers offered to IPON-Observers on various occasions: that they could not legally enter the Villalon-Ranch to effect the warrants of arrest since it is a private property. Such a statement bears the question, if the PNP is at all capable of keeping peace and order in such an area. When the PNP officers will not even enter the premise, the law itself is de facto no longer existent in such a place.

Without law enforcement there is no law.

Adding up to the problem is the fact that many of the accused have family connections to the PNP office in Maramag. The wanted are able to receive inside information as soon as any attempts towards their arrest are being made. 'Blood is thicker than water', as an officer of the PNP of Maramag stated towards IPON. One can imagine how easy it is for a few suspects to avoid incarceration by hiding on 487 hectares of mountainous forest and fields, if they are timely informed to do so.

Investigation of the Private Security

Since the private security employed by Mr. Villalon is the main cause for the grievances in the area, they should be subjected to a thorough and sincere investigation by the police division called SAGSS¹. The first attempt to investigate the security guards on November 14, 2011 gives a different impression. Without the PNP officers even entering the premises, twelve of the guards were called to the fence to check on their licenses and

CC IPON | IPON-observers on their first visit of the disputed land in the mountains of Bukidnon.



1) The SAGSS is responsible for licensing private security guards.

guns. None of the other personnel were inspected, including cowboys and possible other members of the security, abiding somewhere else in the vast area. In no way can this be considered a thorough investigation of a ranch that comprises hundreds of hectare. That investigation led to no other result than the assessment that all present members of the private security were properly licensed, carrying only licensed firearms and wearing the mandatory uniforms for private security guards. The results of this investigation are dubious. The autopsy report of Welcie Gica states that he was shot with a carbine rifle, a weapon illegal for private security guards. As stated before, it is also probable that the guards knew about the upcoming investigation, and were well prepared.

Following up on these events, IPON brought the situation on the Villalon Ranch to the attention of the National Human Rights Affairs Office of the PNP. The outcome was a dialogue between all involved divisions of the PNP and PADATA with police officers from the local, provincial, regional and national level participating.

A two-month deadline was issued to the local police to finally arrest the fugitive criminals.

During the dialogue, the chief police officer of Maramag was chastised for using the argument of private property as a reason for not entering the ranch. The present legal affairs officer made it clear that the issue of trespassing a private property is non-existent in an actual police investigation, if there is probable cause for entering the premise.

According to PADATA, news about the circumstances on the Villalon Ranch spread, so eventually criminals from other areas of Mindanao would also hide there to escape arrest, thus earning the nickname 'Kingdom of the lawless'.



© IPON | PADATA's settlement on their ancestral domain, Bukidnon, Mindanao. Many of the small huts had been destroyed by arson.

Concerning the pending warrants of arrest, the local police chief of Maramag made the argument that he was unable to act on them, due to a lack of equipment and personnel. Though not fully accepted by the other PNP officers present, this argument was responded to. A taskforce was suggested, consisting of provincial police officers and Armed Forces soldiers. Should the local police be unable to carry out the warrants of arrest within the two-month deadline, the task force would take action.

After the deadline had passed on May 15, a task-force finally entered and combed through the Villalon ranch on June 12, but to no avail.

So the question remains if the PNP is capable of law enforcement in the area. Even after the involvement of regional and national police officers there has been no positive development. Bearing in mind that it is neither the New People's Army nor Muslim separatist groups who hinder the authorities from implementing the law, but just a private business man employing a few armed security guards, it seems improbable that there is nothing the police can do to act on its

duties towards PADATA and towards guaranteeing justice. And whether or not the impunity surrounding the Villalon ranch is caused by delinquency or simple incapacity, it is a matter of fact that for more than one year now a murder case remains unsolved. Or, as Colegado puts it: 'No justice for Gica'.

And why is it that there is no investigation at all against Mr. Villalon for obstruction of justice?

Since many warrants of arrest are issued against his employees, he should be well aware of their misdeeds. So why is it that there is no investigation against the man who not only employs criminal offenders, but also allows them to escape justice by hiding on his property? Under Presidential Decree No. 1829, this is an offence punishable by law, yet there is no such investigation. ■

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THE TRUE NATURE OF MINING – UNSUSTAINABLE, IRRESPONSIBLE, DIRTY AND IT COSTS LIVES



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political and developmental
issues concerning the
Philippines.

Conflicts and human rights violations often occur in areas where mining is either planned or is already taking place. The Philippine mining industry has been promising sustainable and responsible mining for years now. But father Archie Casey, a well-known anti-mining activists knows: 'The failing grades given here today, reflect the true nature of large-scale mining in the Philippines – it is unsustainable, it is irresponsible and it is dirty.' (Alyansa Tigil Mina 2010)

On October 18, 2012, Juvy Capion and two of her underage sons were shot in their hut in a remote area in South Mindanao by the 27th Infantry Battalion of the Armed Forces of the Philippines (AFP). The reason for the killing of Juvy Capion and her family is simple; her husband Daguil Capion is a tribal leader of the B'laan and an anti-mining activist campaigning against the Tampakan-Copper-Gold project of the Swiss company Xstrata.

Lt. Col. Alexis Noel Bravo, commander of the 27th IB quoted, that 'our troops were fired upon while approaching the area so they retaliated' (Mindanews 18.10.2012). No word of excuse for killing the woman and her sons. The AFP was searching for her husband as he killed security guards of a subcontractor of Xstrata in 2010, after they and the military harassed his family, desecrated the graves of the ancestors and intimidated the IP community, Daguil lead. The killing of

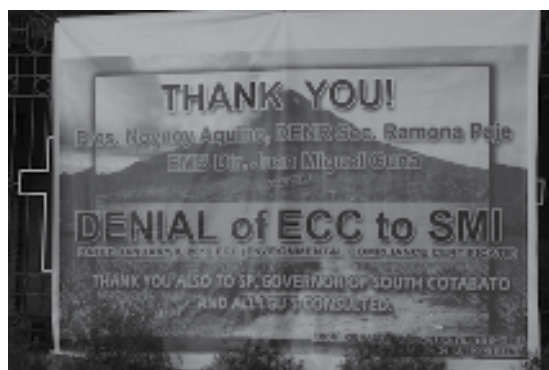
History of mining in the Philippines

Mining in the Philippines has a long standing tradition. Historical evidence of the extraction and processing of metals reaches back to 1,000 AD, when the Philippines traded gold as a commodity. It also used to be a means of exchange and there used to be mainly small scale or artisanal mining. Until today more than 50 percent of the gold production is done this way (Reckordt 2012a).

It was in the early 20th century when the first large-scale mining companies started their operations, like Philex or Lepanto, both still active in resource production and notorious for their environmental destruction through the spillover of toxic waters. In the 60s and 70s the mining sector fell into crisis worldwide. In 1975, the government led by Dictator Ferdinand Marcos saw the need to advertise the opportunities of mining in the Philippines in the Forbes Magazine:

'To attract companies like yours, we have felled mountains, razed jungles, filled swamps, moved rivers, relocated towns all to make it easier for you and your business to do business here.' (Ibid.: 49; quoted from Korten 1995).

In the 1980s and 1990s so called 'foreign experts' of organizations like the World Bank or Asian Development Bank (ADB) put pressure on the government to liberalize the raw material sector. While there were extreme budget cuts for the agriculture and fishery sector, in the 1990s the former senator and later president Gloria Macapagal-Arroyo published the Mining Act of 1995 (Republic Act 7942). This new law was a turning point. It delineated the authorizations for mineral extraction. The law distinguishes between several mining permits, but the most lucrative one for foreign mining compa-



Reckordt | The church of Tampakan states very clear what it thinks about mining-activities in the region: Nothing!

his family was the last of many incidents and human rights violations connected with Xstrata's resource-grabbing in the area. Instead of being a solution to the problem, the AFP seems to be part of it, as there are more violent incidents in the area since it came there.



© Reckordt | Particularly the elders of the community of B'laan report of profanation of ancestral cemeteries by mining companies.

nies is the Financial or Technical Assistance Agreement (FTAA). The privileges are summarized as follows:

- It allows foreign companies and investors to retain a 100 percent share of capital, although the Philippine Constitution previously allowed only for a maximum of 40 percent.
- Companies can lease up to 81,000 hectares for a period of 25 years, but can be extended for another 25 years.
- Logging is allowed as much as the company sees fit in the concession area, as long as it does not conflict with other laws.
- The company receives the water rights for the concession area (cost-free).
- The company is free to construct streets, warehouses, airports, pipelines, power lines, or new stream channels.

- The law allows the free flow of capital, the repatriation of investments, and security from expropriation of investment earnings.
- Furthermore, tax holidays are possible for five to ten years.

On March 30, 1995, less than a month after signing the bill, President Fidel Ramos signed the first FTAA with Western Mining Corporation Philippines (WMC) in Mindanao. Apart from a few test drillings, WMC itself was never active. The FTAA was later transferred to the Swiss mining-giant Xstrata, and the Philippine mining operation Sagittarius Mining Inc. (SMI)¹. SMI / Xstrata are planning the so-called Tampakan-Copper-Gold-Project on a surface of nearly 28,000 hectares in the municipality of Tampakan, South Cotabato. For the Philippines, this project is worth of USD 5.9 billion the biggest foreign direct investment in the history of the country.

In 1997, an indigenous peoples organisation, the La Bugal-B'laan Tribal Association filed a complaint against the new mining law and the decision was only made on January 27, 2004. Several sections, mostly concerning the FTAA's, were classified as unconstitutional. On December 1, 2004 the ruling was annulled and the constitutionality of the Mining Act of 1995 was confirmed. The grounds for the court ruling were that the constitution should not be used as an instrument 'to strangle economic growth or to serve narrow-minded, provincial interests' (Judge Panganiban, as quoted by Ciencia 2006: 4).

The indigenous communities, like the B'laan in Tampakan, are hit hardest by mining. The national alliance of indigenous communities (Kalipunan ng mga Mamamayang Katutubo ng Pilipinas – Kamp) emphasizes that 38 of the 65 priority mining regions stand on the ancestral domain of indigenous communities,

1) 62.5 percent of SMI belongs to the Swiss mining giant Xstrata, which also hold management control, and 37.5 percent is held by the Australian company Indophil Resources.

amounting to a total affected area of 102,000 hectares (Picana 2011; Reckordt 2012a; Sinumlag 2010). Representatives of indigenous communities have thus demanded for some time that reforms be made to the Mining Act of 1995, since this violates their right to self-determination as guaranteed by the Indigenous Peoples Rights Act (IPRA) of 1997. Especially the role of the National Commission on Indigenous Peoples (NCIP) is contested, because the NCIP should monitor the free, prior informed consent (FPIC) of the indigenous peoples (IP) communities, required by law. Nevertheless, several IP communities have complained in the past that the NCIP did not support their interests, but often sided with the investors.²

Despite the support of the government and the privileges promised by the mining act, investors are failing to appear on a grand scale, although the former administration of Gloria Macapagal-Arroyo made it clear, they did not want to miss the opportunity to capitalize on the raw materials, and to attract investors. The government was expecting an estimated 240,000 new jobs, and

Reckordt | Private security services were to uphold security; instead, they intimidate the activists and lead to further militarization in the region.



annual investments of USD 4 to 6 billion. Therefore, President Arroyo signed Executive Order 270 (National Policy Agenda on Revitalizing Mining in the Philippines) on January 16, 2004, in order to move from a policy of tolerance to active promotion of mining.

To support the companies and prevent protests of IPs, she also formed the so called Investment Defense Forces (IDF).

IDFs are semi-private armies, trained by the AFP, paid by the investors. They are often composed of former or active policemen and soldiers (Reckordt 2012b).



Reckordt | Many indigenous people feel that they are not properly informed about mining projects. They complain about the lack of promised job prospects and never heard about open-pit mining for example.

What are the effects on local communities?

Like most companies, SMI / Xstrata aims to extract minerals in isolated mountain regions, in which the central Philippine Government has never seriously attempted to provide basic services. Companies such as SMI / Xstrata fill these gaps by constructing streets, schools, hospitals and other infrastructure. The costs are tax deductible and inexpensive in comparison to expected profits. The residents are given the impression that the corporations take care of the local communities, in contrast to the state. In addition to the social and technical infrastructure, they bring jobs and money to the region.

Like the predecessor Western Mining Corporation (WMC), SMI / Xstrata promised to develop the region and constructed infrastructure. Some jobs were created for the members of the indigenous communities, although they were typically poorly paid and physically exhausting. For instance, indigenous people carried the equipment for exploratory drilling into remote regions. What the company did not disclose to the residents was that the mining activity was not just a test drilling, but an open pit mining (Reckordt 2012c).

Meanwhile several feasibility studies and environmental impact assessments were done by the company, but the results were handled secretly within the company and the Department of Environment and Natural Resources (DENR).

The conflict in Tampakan got more intense at the end of June 2010, when the Provincial Board of South Cotabato (Sangguniáng Panlalawigan) enacted the Environmental Code, a law banning

2) For more details about IPRA law see article: Keienburg 'Blessing or curse? - The Indigenous Peoples Rights Act of 1997 (IPRA) and its implementation' this issue.

method of open pit mining in South Cotabato. Even though the director of SMI, Peter Forrestal, stated that open pit mining is environmentally sustainable and that SMI was committed to the principles of environmental protection and sustainable development.

The company asked the provincial government to review the law several times. The question whether the local law conflicts with national legislation and particularly the Mining Act of 1995 is central to the debate. The law has not yet been contested in front of the Supreme Court. President Benigno Aquino, elected in 2010, and government officials of the DENR and other departments announced their intention to prevent such conflicts in the future, hereby directly referring to the Environmental Code of South Cotabato. With the Executive Order No. 79, President Aquino tried to limit having local legislations clash with national mining laws. This weakens local governments, local decision making and the chances of legal protests on a local level for IP communities and affected people.

Meanwhile, the Environmental Impact Assessment (EIA) of SMI / Xstrata was first made public in September 2011. This EIA was necessary to get an Environmental Clearance Certificate (ECC). By the end of September 2011, the residents, indigenous communities, critics and civil society organizations had a basis for discussion, and for the submission of appeals and objections. Based on the SMI documents, the company anticipates the relocation of 4,000 persons from 870 households, 70 percent of which belong to indigenous communities. Additionally, the rainforest that covers 40 percent of the land (3,750 hectares) and which consists of about 1,000 plant and 280 animal species, must be cleared. On top of that, the remaining 60 percent of the land is used for agriculture. The mining projects, notwithstanding the coal-fired power station to electrify the mine, would account for an estimated

0.4 percent of the total emissions in the Philippines, and can thus be considered anything but climate-neutral (Reckordt 2012c; SMI 2011).

The people of South Cotabato fear that the open pit mining will endanger the region's food supply, since 20,000 hectares of agricultural land will be directly affected. Furthermore, five major rivers flow through the region, including the Padada River, which irrigates over 33,000 hectares of agricultural land. The former governor of South Cotabato, Daisy P. Advance-Fuentes, said that 85,000 farmers and over 200,000 hectares of cultivated land could be affected by the planned open pit mining (Goodland/Wicks 2008:107 ff.).

In January 2012 the ECC was denied by the DENR, because of the ban of the open pit mining method. The company was forbidden to further develop the project. However, after a field trip in March 2012, it seems the company is still preparing the area, heavy equipment was seen by the author. Military and business men conducted hearings with an indigenous community. The indigenous people in Bong Mal (Davao del Sur) as well as in other areas affected by the Tampakan Copper-Gold Project complained about the activities of SMI/Xstrata and their subcontractors. Despite the advanced stage of preparation, many questions remain unanswered for the residents: What happens to the people living in this area? When, how, and where will these

people be relocated to? Will they be awarded compensation and how will it be measured? According to the indigenous communities, to date no FPIC was conducted with the indigenous people about the Xstrata / SMI project and there is no consent for the open pit mine. Even the question when this FPIC will take place has not been answered by the company.

SMI / Xstrata, in contrast, claim to have undertaken several consultation processes in the last quarter of 2009 alone. They advertised the processes with a video shown in the airport in Davao. However, participants report that instead of treating critical questions, these consultations were just used to distribute baseball caps, t-shirts, backpacks and for financing local events or scholarship programmes, which are supposed to prove that the companies care about the locals. Through this, they have received support from a part of the affected communities, but also had a polarizing effect on them. On one side are the mining advocates, who are, above all, interested in employment and improvements of living standards. On the other is the church, the residents and indigenous communities who have spoken out against large-scale mining. They are worried about their fields, livestock and water supply, and do not want to be relocated and see their ancestral land destroyed by mining. Many activists fear the negative ecological and social con-

© Reckordt | A retention basin for toxic slurry is to be built up on this place. The sacred mounts, the fertile fields, and the housings of the indigenous people will have to compromise.

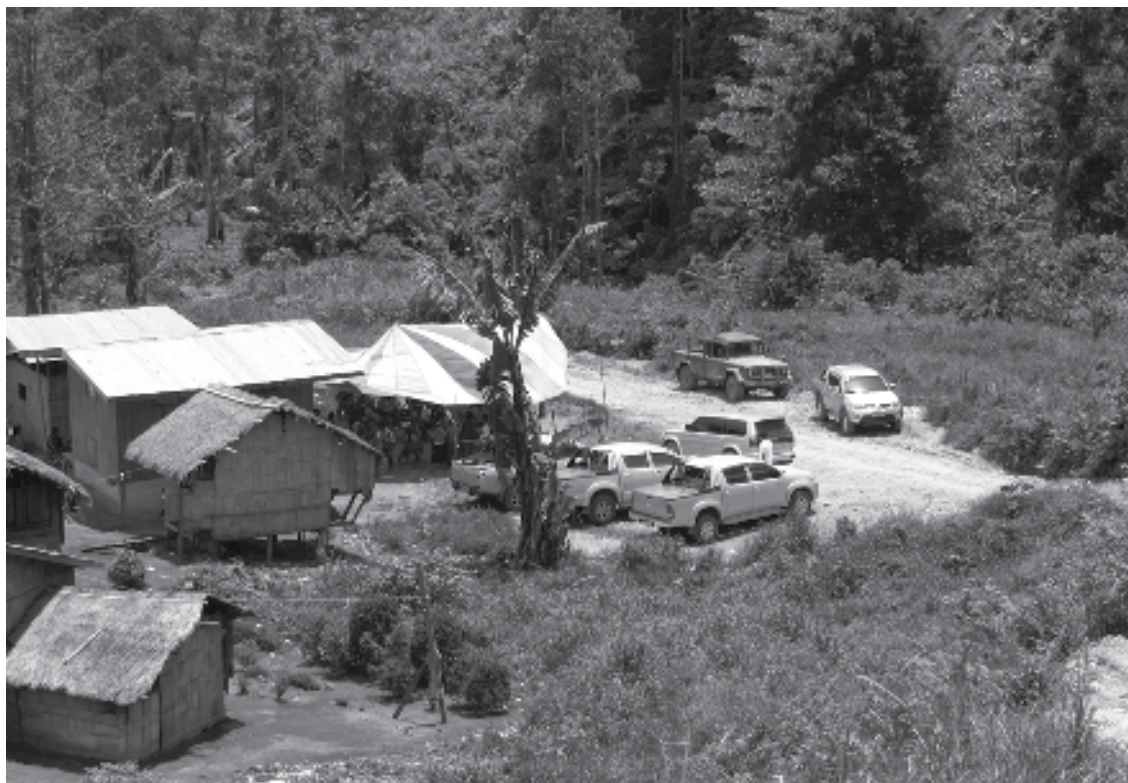


sequences of large-scale mining, not just in South Cotabato. The devastating environmental effects are extensive. The deforestation needed for mining leads to erosion, landslides etc. Rivers and ground water supplies are poisoned by mercury and cyanide, due to leaking of retention basins. This contaminates entire rivers as well as surrounding land. The high power requirements of mine operations are met by a coal-fired power station in the area. This will pose a threat to the health of residents and the increased emissions will exacerbate climate change. Additionally, the region is prone to earthquakes, so the mining dam could burst and toxins spill over and be washed onto the land and to the sea, further affecting fishery opportunities.

Due to the protests against the Tampakan-Copper-Gold-project, the management of SMI / Xstrata announced in 2012 a postponement from 2016 to 2018. This is a small victory, but sadly paid for with the death of activists like Eliezer 'Boy' Bilianes, who was killed in March 2009 (Reckordt 2012b) or more recently the death of Juvy Capion.

It's still an unfair challenge for all Indigenous Peoples to have the right to say 'No!' to mining or any other projects affecting their land. Most of them oppose mining peacefully, but some feel helpless like Daguil Capion and use arms. Regrettably, instead of resorting to legal actions against such crimes, the Philippine government responds by killing women and children. ■

© Reckordt | Although prohibited, subcontractors of Xstrata / SMI and military meet indigenous tribes for the preparation of investment, March 2012.



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OPLAN BAYANIHAN – FROM GOOD INTENTIONS TO IMPUNITY

Over the last few decades, the counterinsurgency programmes in the Republic of Philippines have proved to be brutal and relentless especially on the Indigenous peoples of Mindanao. This article examines the consequences of PNoy administration's supposedly citizen-focused 'multi-stakeholder' approach to peace and security in the Philippines under Oplan Bayanihan.

On July 10, 2012, thirty-four displaced indigenous families staged a weeklong hunger strike in Malaybalay City, Northern Mindanao. (SunStar 11.07.2012) The protesters demanded the immediate arrest of Aldy Salusad, the leader of a paramilitary group, New Indigenous People's Army for Reforms (NIPAR).

In early March 2012, Salusad allegedly killed Jimmy Liguyon, an anti mining activist, Lumad 'Barangay Captain and Vice Chairman of KALISO, an organisation of Matigsalug and Manobo indigenous groups from southern Bukidnon. It was Liguyon's staunch opposition to the entry of large scale mining ventures on their ancestral land that brought him to his violent end.' (Gold Star Daily 31.03.2012)

Following this event and receiving death threats from Aldy Salusad (Hu-

man Rights Watch 2012), his family and other members of his clan fled to Malaybalay city. Since then, the Liguyon family has gone to extraordinary lengths, running from pillar to post, to lobby with the government and international agencies to seek justice.

With their efforts yielding only in the issuance of an arrest warrant, there have been no arrests so far, and the perpetrator along with his paramilitary group continue to openly terrorize the communities in question and others opposing large scale mining activities in this area.

The paramilitary group NIPAR is said to be directly under the control and protection of the 8th Infantry Battalion (IB) of the Armed forces of the Philippines (AFP). (Bulatlat 2012)

This extraordinary account is not an isolated incident but a salient feature in the mineral rich and bio diverse landscapes of the country. Over the last few decades, the Philippines have been plagued with multiple unresolved conflicts in the southern island of Mindanao. The western part of Mindanao is riddled with the Muslim secessionist movement, with the rest of the island, in pockets, by the communist rebels called the 'New Peoples Army' (NPA).

In the last two decades, successive Philippine administrations have intensified their crackdown on the communist insurgency through various counter insurgency programmes that have contributed to a steady decline in the insurgent population, from an estimated strength of 25,000 fighters during the late 1980s. According to the current 'Internal Peace

© Shirali | It is too dangerous to go home, and nobody feels responsible for them.





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and Security Plan: Oplan Bayanihan', in 2010 the NPA strength comprised of only 5,000 fighters influencing about 2.4 percent of the total barangay (village) nationwide.

Under the National Security Policy (2011-2016), the current administration of President Benigno Aquino III launched its very own counterinsurgency plan, the 'Internal Peace and Security: Oplan Bayanihan' ('Operation of Collective Effort'). This plan proposed to involve the AFP, the Philippine National Police, government agencies, NGOs and local communities, often referred to as 'Stakeholders in peace and security' (Bayanihan 2010: 14-16), in effectively combating and eliminating the communist insurgency in the country.

This open, transparent and people-centered approach aimed at ending impunity in the Philippines by addressing and minimising human rights violations in the affected communities. However, the Oplan Bayanihan has proved to be no different from the earlier counter insurgency programmes. Extrajudicial killings, enforced disappearances, harassment and militarization in Indigenous communities continue to reign. Since 2011, there have been at least 15 corroborated accounts of extrajudicial killings in the southern island of Mindanao, carried out by state-backed militias or private armies, the Armed Forces of the Philippines (AFP) and their paramilitary groups, under Oplan Bayanihan. Under this campaign, the AFP's strategic approach is not just limited to combat operation but also includes non-combat operations such as development oriented activities and civil-military operations (CMO) initiatives with partners such as the Department of Environment and Natural Resources (DENR). (Bayanihan 2010: 24)

The administration thus continues to organize AFP's Investment Defense Force (IDF), introduced by the previous Macapagal Arroyo government (Zambotimes 2008), that has become a de facto means to protect power assets, infrastructures and mineral development projects, which have been so far successful in attracting foreign investment in this conflict riddled island.

Mindanao illustrates a classical scenario that exists in many developing countries where the national economic interests are in conflict with

the peaceful existence of its minority groups. This region is roughly one third of the size of Germany, is home to 18 Lumad groups or indigenous groups with an estimated population of 13 million, who are primarily farmers and traditional miners residing in the mineral rich parts of the island for centuries.

With the presence of both the Maoist NPA and the military in this hinterland, the Indigenous communities often find themselves caught up in the middle of various land acquisition propositions for mining, plantations and other economic ventures. Refusal to accede such proposals cascades into a series of human rights violations often leading to summary executions by paramilitary outfits. The human rights advocates often find themselves victims of Red-Baiting and easily come under fire from the Philippines National Police, AFP and its paramilitary groups stationed in the respective region.

On May 9, 2012, Margarito J. Cabal, 47, was gunned down by unknown assailants outside his residence in the southern parts of Bukidnon, Northern Mindanao. At the time of his death he was the leader of the Task Force Save Pulungi (TFSP), a coalition of indigenous communities and farmers from Bukidnon and Cotabato provinces. The TFSP campaigns against the proposed First Bukidnon Electric Cooperative (FIBECO) hydroelectric mega dam, called 'Pulangi V'. This project threatens to submerge 22 villages in Bukidnon and Cotabato provinces. Cabal was also a government official working at the local Mayor's office in Kibawe, Bukidnon. His work involved travelling to the remote villages in this region that are also marked as the NPA stronghold which has facilitated the deployment of the 8th Infantry Battalion under the Oplan Bayanihan.

According to a recent report published by Human Rights Watch, Cabal's family confirmed that he was under surveillance by the 8th Infantry Battalion as Cabal was suspected of having links with the NPA. In the past months since the murder, the police and the local authorities have completely failed to investigate the case.

Yet again in early September 2012, a 23 year old Lumad human rights defender, Genesis Ambason was killed in the province of Agusan Del Sur

by the paramilitary group Civilian Armed Forces Geographical Unit (CAFGU), which is under the 26th Infantry Battalion of the AFP. (Bulatlat 2012) The accused members of CAFGU claim that this incident was an armed encounter

lippine judicial system and the Aquino government, to address the promised issue of impunity that continues to dominate the country. The indigenous human rights defenders and environmental activist who dare to stand up for

porations are relying on the army to help them acquire land where the army units are deployed. Moreover, Datu Goaynon emphasised that all the indigenous people's organisations have to be recognised by the military, police and other agencies, which make it difficult for the Lumads to assert their basic human rights.

Datu Goaynon reiterated that Lumad leaders and human rights advocates who are persistent in educating the oppressed and abused indigenous peoples of their rights and struggles against destructive mining, plantations and dams, face death threats. One of the Lumad leaders that Datu Goaynon had named during our interview in August 2012 as having received death threats was Gilbert Paborada. On October 3, 2012, Paborada was gunned by two unidentified gunmen in the province of Misamis Oriental.

Many domestic and international NGOs and human rights organisations have repeatedly called on the Government of the Philippines to repeal Oplan Bayanihan.

In the first week of August, the Liguyon family and 34 other families returned to their village after five months of displacement. Despite security issues, they simply had to return. As Liguyon family's hope to seek justice gradually diminishes, the Lumads of Mindanao continue their dauntless struggle to retain their ancestral land, culture and traditions, under the murky shadow of Oplan Bayanihan's promise of peace, development and prosperity. ■



© Shirali | The strike, including a hunger strike, has been going on for months, Bukidnon, July 2012.

with NPA rebels. Ambason was the Secretary-General of an indigenous organisation, Tagdumahan, which has been actively campaigning against the entry of large-scale mining ventures into their ancestral domain since the 1980s. He had also campaigned for the release of community members who had reportedly been illegally detained by the military.

These incidences of extrajudicial killing may be just the tip of the ice berg but it they exemplify the failure of the Phi-

their rights meet with death threats and intimidation, often finding no support from the respective authorities. In an interview with Society for Threatened Peoples in early August 2012, the Chairperson of KALUMBAY Regional Lumad Organisation Datu (title for community chief) Jomorito Goaynon said that the government is using Oplan Bayanihan as an apparatus to target indigenous peoples opposing domestic or foreign investments on their ancestral land.

Under the auspices of Oplan Bayanihan, many mining and agribusiness cor-

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WHEN SELF-INTEREST THWARTS THE CONSTITUTION – THE STRUGGLE OF THE FARMERS IN NEGROS FOR THE IMPLEMENTATION OF THEIR RIGHTS



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The Constitution of the Republic of the Philippines enacted in 1987 defines clear and unambiguous objectives for the different state actors regarding the implementation of the agrarian reform and the protection of human rights defenders (HRDs). But unfortunately, the relevant institutions and government bodies often fail to live up to the self-established standards formulated in the supreme law. In the following article, the current developments on two Haciendas in Negros shall serve as an example for addressing this topic in a more effective way.¹

Article XIII of the Constitution of the Republic of the Philippines – entitled ‘Social Justice and Human Rights’ – asserts that it is the state’s duty to initiate an agrarian reform program guaranteeing ‘the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till’ it further states that ‘the State shall encourage and undertake the just distribution of all agricultural lands.’ But in reality, the implementation of the CARP-process is often accompanied by human rights violations and many farmers wait for years until their land titles are issued. This raises the question why the political reality in the Philippines is often not in conformity with certain principles and aspirations prescribed in the constitution. The situation on Hacienda Victoria in the municipality of Isabela and Hacienda Carmenchica in the municipality of Pontevedra is a good example for this discrepancy.² In both cases, the human rights defenders already hold land titles, but the former landowner has successfully managed to hinder the HRDs from entering and cultivating their land. This has caused tremendous security problems in the area in question. Against this background, the symbolic act of handing over the land to the farmers (installation)³ – orchestrated by the Department of Agrarian Reform (DAR) – has the potential to clarify the property situation once again in order to prevent future conflicts between the farmers and the former landowner. Although an installation is not even necessary, since the land is the official property of the farmers, the HRDs put a lot of hope in this act. But unfortunately, the government agencies and institutions in charge are often dominated by the self-interest of different employees or influenced by several family clans that still shape the political and social networks of the country, especially on Negros.

First of all, it is obvious that impartiality of the different state actors cannot be taken for granted in the Republic of the Philippines. In many cases, the former landowners succeed in using their personal bonds and family ties with government officials to delay the agrarian reform process or to prevent further investigations concerning human rights violations. On Hacienda Carmenchica for example, the farm manager, who is loyal to the former landowner, is the brother of the current Mayor of Pontevedra. In addition to that, they are both related to the Chief of Police in charge. According to the HRDs, this constellation makes it really tough to raise their voice against the injustice they are subjected to. Furthermore, it seems to be justified to question the supposedly unprejudiced behavior of several state actors, since some representatives of the DAR refuse to reconsider their individual preconceptions about certain farmers or interest groups. IPON’s mandate organization Task Force Mapalad (TFM) for instance, is sometimes labeled as a leftist organization with overblown demands and against this background, a few relevant officials do not take their concerns and desires seriously.

Another problem for the HRDs results from the tendency of many government officials to shift responsibilities back and forth to justify their lack of action and deliberately delay the process. As a consequence, the HRDs sometimes do not really know who is in charge of their particular case. In terms of the question whether there will be an installation of a certain group of farmers or not, the relevant officers regularly refer to someone else when it comes to the ultimate decision. In June 2012 for instance, Undersecretary Narciso B. Nieto of DAR National sent a request to Florentino

1) This article is based on first hand information IPON observers in Negros collected during research conducted 2009-2012. The information was collected during multiple meetings with local and regional state actors, national NGOs and TFM members as well as visits to the area.

2) Another example for the resistance of a landowner against the agrarian reform and the lack of political will, or weakness of state power to fully enforce the law against influential political clans, is Hacienda Teves (cf. Bauer 2011: 22-25).

3) For possible problems that might occur in the process cf. IPON 2010: 20.

Siladan, Provincial Agrarian Reform Officer in Bacolod (PARO), prompting him to push for an immediate installation of both Haciendas, Carmenchica and Victoria. However, Mr. Siladan did not feel obliged to comply with the request and handed the case over to PARO Yongque instead. Yongque on the other hand, declared he would just follow the recommendations of the responsible Municipal Agrarian Reform Officer. A similar situation can be found inside the police system where officers push responsibilities back and forth between different divisions and positions. Regarding human rights abuses on Hacienda Carmenchica, relevant actors of the Philippine National Police (PNP) distanced themselves from any accountability declaring the investigations would be the responsibility of the Provincial Mobile Group (PMG). The PMG acts as a sub-division of the PNP that operates in rural areas. PMG employees, however, make excuses for their lack of action by pointing out that they only take action upon instructions from the PNP. Furthermore, state actors, especially DAR employees, tend to move or postpone appointments with HRDs without informing them. Very often, they duck out of responsibility, since they are afraid of creating a conflict between themselves and the powerful (former) landowners. As a result, the farmers have to overcome huge financial obstacles and loose working-time in order to go to the relevant city institutions and in the end, they are not even able to present their arguments because nobody receives them.

The activity and commitment of many employees at the DAR seems to be shaped by the termination of the Comprehensive Agrarian Reform Program (CARP) in 2014. It is estimated that two out of three government officials working for the DAR will be laid off and compensated by a huge dismissal wage. Against this background, some of them put their focus on avoiding any mistakes or possible conflicts with the landowner – to make sure that their bonus will not be reduced.

The timidity of the DAR employees is ano-

ther reason for the fact that former landowners, who oppose the agrarian reform, are able to slow down the usual process: The current conflict on Hacienda Victoria is about a parcel of land with 59 hectares leased to the 'Rishi Developers Corporation' since 1987. The leasing-contract expired in the end of June 2012. After that, the farmers decided to cultivate the area by themselves, since they had already become the rightful owners of the land in 2006. The situation on Hacienda Carmenchica is comparable. The area the HRDs are fighting for at the moment was awarded to them while it was still leased by the 'Universal Equity Corporation.' In September 2012, however, the contract was revoked by the competent court, the DARAB.⁴

In both cases, the former landowners successfully filed civil cases at the Regional Trial Court (RTC) in La Carlota to impose an injunction, which aimed at preventing the farmers from entering the land before the termination or revocation of the leasing contracts. As the conflict is about the agrarian reform, the RTC is not in charge of deciding on this matter. It falls entirely under the jurisdiction of the DARAB. Nevertheless, there are some judges who use the broad scope of jurisdiction of the RTC as a justification for taking jurisdiction over agrarian reform related cases. The problem is that once an injunction is issued, it still has to be taken to a higher court in order for it to be nullified – even though the RTC was not in charge of passing judgment in the first place. To avoid a time-consuming, costly process of lifting the injunction, judges ought to refuse agrarian reform related cases. In this context, it is noteworthy that Mr. Francisco N. Rodriguez, who decided the case of Hacienda Victoria, has only functioned as the responsible judge of the RTC for a couple of months. This arouses suspicions that he was only placed in office by the powerful landowner to impose the injunction. Another point underpinning the observation that the Philippine State often fails to fulfill the self-established requirements enshrined in the constitution, is the

fact that it cannot ensure enough protection of HRDs against repressions and threats by the former landowners. Several incidents on Hacienda Carmenchica can illustrate this. In the course of the last twelve months, the human rights defenders have been threatened, their nipa huts were destroyed and even warning shots have been fired. Unfortunately, the PNP has not proved itself to be willing to help and support the HRDs. On the contrary, some police officers even aligned themselves within the conflict and were involved in violent encroachments (see newsticker, pp. 39). The situation on Hacienda Victoria is similar. The police in charge of Isabela did not react when human rights abuses were reported to them. The HRDs of Hacienda Victoria filed several blotters against security guards working on the sugarcane plantation without uniforms and licenses to carry weapons, but the police did not investigate the cases at all or only half-heartedly. According to some HRDs from both Haciendas, several officers of the police even received money as a reward for their support of the actions initiated by the former landowners.

All those facts outline a state that lacks political will and power to fully enforce the paradigms of the constitution. Hence, the state continues to paralyze itself by obliging to the individual interests of a few single representatives of the state authority or very powerful family clans. By inducing political stagnation and ignoring the basic rights of the constitution, the ruling class in the Philippines consolidates their privileged situation. As long as the different state actors do not visibly assert the rights established in the constitution in order to initiate political and social change in the Philippines, the constitution is not worth the paper on which it is written – and the farmers will be the ones who have to live with the consequences. ■

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4) Department of Agrarian Reform Adjudication Board. The legal system of the Philippines is divided into two branches, that are not allowed to intervene in the respective responsibilities. Cases regarding the agrarian reform ought to be exclusively heard by the DARAB.

LARGE-SCALE LAND ACQUISITIONS AND LEASES – THE RIGHT TO FOOD VERSUS THE RIGHT TO DEVELOPMENT



Lukas Bauer

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The global rush for land created a situation where under the pretext of the right to food for the increasing world population, the right to development for rural and poor people is threatened to become the puppet of global trade interests.

The fight for land is not a new phenomenon but has recently reached a new dimension. Recently, countless reports of human rights violations in the course of large-scale acquisition of farmland in Africa, Latin America, and Central- and Southeast Asia have been reported making the phenomenon of the so called 'Land Grabbing'¹ a global political issue. This article aims to shed light on the development and the consequences of 'Land Grabbing' for development and human rights.

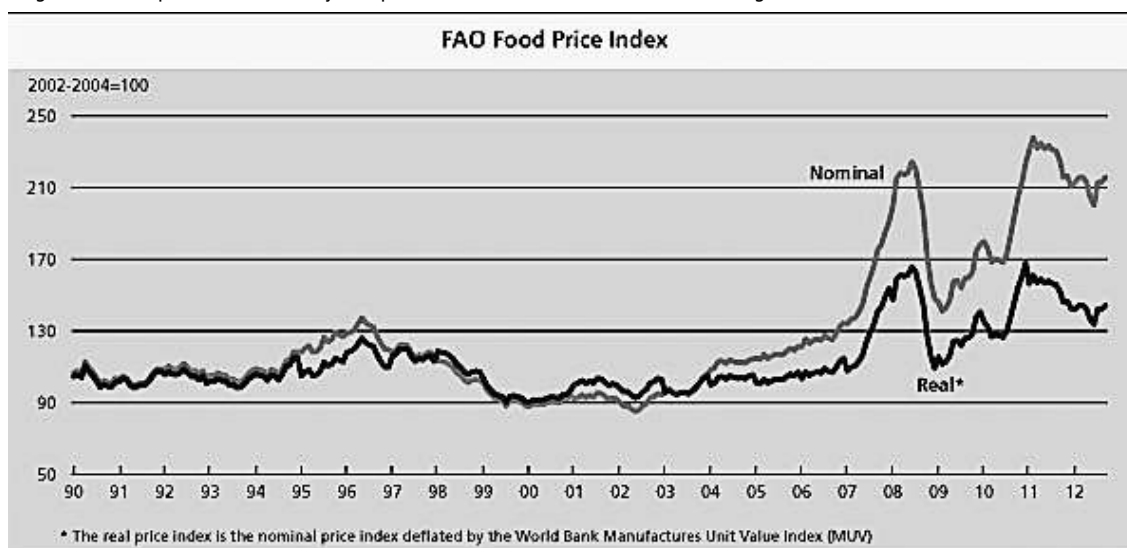
In most developing countries land conflict was and is intrinsically tied to social dispute, as it is in the Philippines. (cf. Tiepmar, Trötzer; Keienburg this issue) In the course of urbanization² and increasing diversification of national economies one might suggest a decline

in the conflict potential for land. Instead, the interest for investment in agricultural land of private, semi-public and state companies increased globally because of two³ main reasons:

First, the rising demand for food and fodder combined with an on-going speculation in global food commodity markets are leading to a dramatic rise in global food prices. Since 2007 the food prices frequently have reached a critical level as shown by the Food Price Index⁴ of the Food and Agriculture Organisation of the United Nations (FAO) (see diagram 1).

Secondly, the rising demand for energy and the use of biomass for industrial and energy production is an important reason for competing

Diagram 1: Development of the monthly food price in US\$ 1990 – 2012. Source: www.fao.org/worldfoodsituation/en/



1) The judgmental 'Land Grabbing' describes the ruthless grab of agricultural land and other natural resources including water, by foreign or national investors.

2) In the case of the Philippines, no more than 12 percent of the Philippine gross domestic product (GDP) is produced by the agricultural sector, 40 percent of the population depends on it, under it 75 percent of the poor.

3) Further reasons could also be expected profits in consequence of uncertainties in agricultural production due to limited access to water and arable land, bottlenecks in storage and distribution, increasing urbanisation rates, as well as climatic circumstances like droughts. Furthermore land can be seen as alternative investment in the result of the financial crisis.

4) The FAO Food Price Index measures the monthly change in international prices of a basket of food commodities in US\$ (<http://www.fao.org/worldfoodsituation/wfs-home/foodpricesindex/en/>).

land and crop use and is responsible for rising food prices (cf. Ajanovic 2010). Government consumption targets and financial incentives (like in the European Union) caused demand for land continues to increase. The impact of biofuel expansion on food security is much-debated.

Foreign direct investment and large-scale land acquisition become a real problem.

Although it is generally accepted that increased agricultural investment is needed in order to reduce hunger and poverty, the new rush for land has not yet shown positive effects. Instead, various non-governmental but also governmental organisations (cf. BMZ 2012) have expressed their concern that, without further regulations the current rush will even threaten the livelihoods and other basic human rights of those whose families have used the acquired land for centuries.

'FDI [Foreign direct investment] in land by a foreign company or state is based on a lasting interest in taking control over land use rights. The transaction includes either rights of land-use or land-ownership.' (GTZ 2009: 9) In most developing countries like the Philippines foreign investors are not allowed to acquire property, but leasing agreements for terms up to 99 years produce similar results. (cf. Cotula et al. 2009: 8)

Moreover, the phenomenon is not limited to foreign investors but also includes local and national elites. The relevance of the global phenomenon has been pointed out by the world's

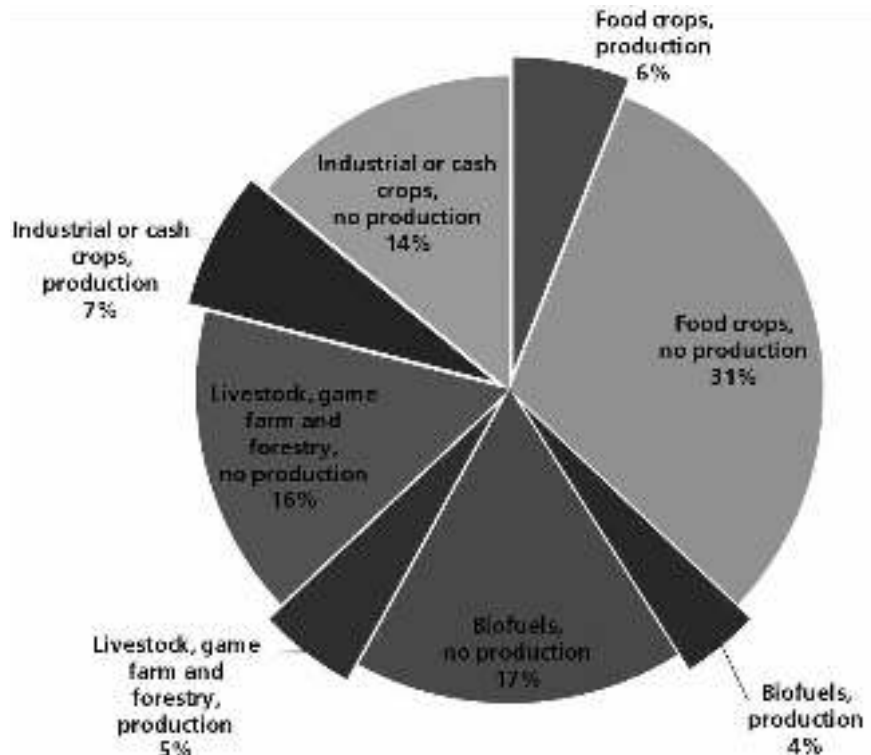


Diagramm 2: Commodity and production status of large-scale land acquisitions worldwide. Source: Deininger/Byerlee 2011: 53.

largest public database of the 'Land-Matrix Project'⁵ – currently listing 924 reported large national and international land deals worldwide covering a total area of 48.8 Mio. hectares of land.⁶ 'In many cases, national investors, domestic elites or companies in the developing countries are involved in land acquisition [...] to acquire land for their own purposes.' (GIZ 2012:1)

The Right to Food. But to whom?

In order to guarantee national food security investors from countries with bounded agricultural land (Japan, South Korea), with high population pressure (China, Singapore) or extreme water shortage (Saudi Arabia, United Arab Emirates) tend to out-

source their agricultural production to third party countries. As the findings of Land Matrix clearly show, most of the acquired land lies in the Global South.⁷

In anticipation of surging prices for agricultural land, land increasingly became an object of speculation. As diagram 2 shows, only a small fraction of the area concerned is cultivated. The percentage of areas actually cultivated with food crops (6 percent) and livestock (5 percent) are quite limited.⁸ As an investment property large areas lie fallow. This situation neither leads to impetuses in development through knowledge transfer stimulating local consumption etc., nor will it create positive effects on security anywhere.⁹ ■

5) The open source Project is a partnership between the International Land Coalition (ILC), Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD), Centre for Development and Environment (CDE), German Institute for Global and Area Studies (GIGA) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (www.landportal.info/landmatrix).

6) These data are reported deals since they cover 200 ha or more and since a conversion of land use has taken place. The availability of reliable data as well as the examination is a long process. Nevertheless, they show the relevance of the worldwide rush on land. Recently, the Land Matrix only lists 7 (crosschecked) deals with an overall area of 1.1 Mio. hectares of land in the Philippines, far less than the number of actual land deals. Report land deals to reportlanddeal@landportal.info.

7) 46 percent of reported land deals in Asia, 35 percent in Africa, 14 percent in America, 4 percent in Europe, and 1 percent in Oceania.

8) According to the findings of the Land Matrix 21 percent of the land deals suppose to be cultivated with Jatropha, 10 percent are for palm oil, 6 percent for sugar, 6 percent corn, 2 percent rice, and in 55 percent the usage is unknown.

9) Anticipated spill-over effects for the local development among other things remain due to cases of non-compliance to investment in local infrastructure.



© IPON | Even though small farmers recently were identified as important development partners in third world countries the massive sell-off of farmland to huge companies continues.

What is the legal basis at international level?

Under international law, the Right to Adequate Food is outlined within the General Declaration of Human Rights but also within the International Covenant on Economic, Social and Cultural Rights (Art. 11, ICESCR) – currently ratified by 151 states. Due to its historical context of the Cold War, the ICESCR-rights were not considered as enforceable rights but as objectives to be attained.

In 2004, the 187 member states of FAO unanimously adopted the Voluntary Right to Food Guideline (FAO 2004). Even though it is a soft law¹⁰ instrument, this guideline strengthened the Right to Food but also the interpretation of ICESCR-rights in general. It includes exact descriptions of the necessary general conditions and requirements to be met by government policies. Since 2008, with the optional protocol for individual complaints and inquiry procedure, the progress of suability for ICESCR-rights is in flux.¹¹

In spring 2012, the FAO adopted the Voluntary Guidelines on Responsible Land Use (FAO 2012). In addition to emphasizing the state's duty to guarantee access to nutrition relevant resources, the guideline stresses the rights of marginalized groups like indigenous people. The state is obliged to insure inclusiveness and transparency of investments while including all stakeholders in decision making processes in a free, prior and informed consent (FPIC) (cf. Keienburg this issue) way. Group-rights or the so-called 'third dimension on human rights' thereby seem to become more and more important in international law.

How international governance mechanism can be used to assess investment in land

Due to differing concepts of land ownership (individual, state, communal, traditional and informal), on a human rights perspective the problem of 'Land Grabbing' is extremely complex (cf. Schonecke/Kurzke-Maasmeier 2009: 3).

10) In contrast to binding covenants, soft law is the term for non-binding guidelines, declarations, etc. Its absence of accountability is usually compensated by its flexibility in achieving policy objectives.

11) As of now, in one out of three individual cases at the Inter-American Court of Human Rights, the land was given back to the indigenous group in Paraguay.

Under which conditions 'Land Grabbing' can be considered as human rights abuse/violation? In most cases, large-scale land acquisitions are not illegal according to positive law¹².

In specific cases like forced evictions, in the absence of a just compensation to clearly identified land holder shortcomings in human rights are obvious.

But in most of the cases, the lack of legal certainty regarding (overlapping) land rights leads to a situation where the informal and participation rights of small farmers and other members of the local community are ignored. This can lead to devastating effects on their food security and overall well-being. Aggravating this situation, in many cases the decisions of poor farmers to leave their land is not free. Resettlements to urban areas destroy the local community and social cohesion.

Besides proactive efforts by the international community, the target country's government still has a key role to play in order to guarantee the rights of potentially affected groups and to insure food security.

'Although on paper some countries have progressive laws and procedures that seek to increase local voice and benefit, big gaps between theory and practice, between statute books and reality on the ground result in major

costs being internalised by local people – but also in difficulties for investor companies.' (Cotula et al. 2009: 7) This general statement is also characteristic for the overall situation in the Philippines as it is shown in this issue. ■

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In October 2011 the leasing contract on Hacienda Carmenchica in Pontevedra expired. Soon after, the human rights defenders (HRDs) decided to cultivate their land independently. Since then they have faced repressions and human rights abuses by the former landowner and his employees as well as human rights violations by responsible state actors.

- + 13.11.11 – destruction of nipa huts, warn shots are fired
- + 26.11.11 – 9 hectares of land are plowed, warn shots are fired again, chicanes and physical threats, present police doesn't intervene
- + 27.11.11 – police refuses to accept blotter (complaint)
- + 28.11.11 – attempt to destroy nipa huts, present police remains inactive
- + 17.02.12 – destructions of HRDs properties
- + 17.02.12 – since then, HRDs have not entered their fields because they are intimidated
- + 01.10.12 – fields of HRDs are harvested in the presence of private security guards
- + 03.10.12 – presence of more than a dozen security guards during night in front of houses of the HRDs, HRDs are afraid
- + 09.10.12 – verbal threats increase feeling of insecurity
- + 11.10.12 – tense situation caused by the presence of security guards

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© IPON | TFM-farmers in Negros organised in a cooperative, and active as human rights defenders.



12) In contrast to natural law, positive law is man-made law, regardless general feeling amongst the population about what is fair or just.

ROSARNO – ORANGES, NDRANGETHA, ECONOMIC HARDSHIP AND RACE RIOTS



Jacqueline Andres

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The agricultural sector in Europe depends heavily on undocumented migrant workers who constitute the most vulnerable and cheapest work force. Often escaping economic hardship and human rights abuse in their home countries, these migrant workers arrive in Europe facing once more a striking gap between their de jure and de facto rights. Rosarno is a complex example of how neoliberalism, the EU migration policy and corruption of Italian state officials can cause this gap.

Rosarno is a small Italian town on the tip of the 'boot', in the region of Calabria, the far south of Italy. The economy of the town and the whole region relies heavily on agriculture. Its soil is one of the most fertile in Italy and it is one of the main producers of oranges in Europe.

Every winter, when the oranges are ripe and waiting to be harvested, the high demand for cheap labour attracts about 2,000-2,500 migrant workers to come to Rosarno. Most of them are migrants from the Ivory Coast, Burkina Faso, Ghana and Liberia, who cross the Mediterranean in search for a better life. According to the Confederazione Generale Italiana del Lavoro (CGIL), an Italian trade union, some 50,000 migrant workers are sup-

porting and maintaining the agricultural sector of Italy. (Martelliano; Andrew 28.02.2012) Some of them have a legal residence status while others are trying to make a living without legal papers. Very few have a working contract and all of them are pushed by their economic hardship to accept the difficult and inhumane working conditions in Rosarno, as the Doctors without Borders describe it. The going wage for a 12-14 hour working day on the plantations is 15-25 Euro per day. Housing is not provided, so abandoned houses are turned into semi-functional shelters and tents are set up by the workers. In winter, they live without heating, electricity and water. Medical care is not provided, even though they are exposed to chemicals that attack the skin, inflame the eyes and lead to other physical harm

How does the Ndrangetha dominate the business?

First of all, factories for the processing of oranges and other agricultural products are opened and closed arbitrarily by them in order to get subsidies for the creation of jobs in the Mezzogiorno, the Italian South, from the Italian government and the EU. Furthermore they are involved in organising migrant workers work force through a so-called 'middle man' who is protected by and usually belongs to a criminal organisation which gets a cut from the migrants' hard earned salary for his operating and the transportation to the workplace. According to The Economist this cut is about 5 percent for one working day – this amounts to as much as a fifth or even a third of their daily income. (cf. The Economist 14.01.2010)

Apart from that the agricultural sector and much of the municipal administrations in Calabria is dominated by the Ndrangetha that corrupts the political and administrative processes and thus hinders fair and just proceedings. The most recent result of these strong ties between state authorities and the mafia was visible at the beginning of October this year. The government of the provincial capital Reggio Calabria was suspected to be disintegrated to such a high extent by links to the Calabrian mafia that its Mayor Arena as well as all thirty city councillors were replaced preliminary by three commissioners appointed by the Italian central government. (cf. BBC 09.10.2012) ▢

that requires treatment. These conditions have long since been rejected by Italian workers.

Apart from Exploitation: Xenophobia and Organized Crime

Apart from exploitation and undignified working conditions, migrant workers in Rosarno face other problems as well: xenophobia and organized crime. Together, they provide an explosive mix.

In 2008, migrant workers took to the streets in Rosarno after two of their colleagues were shot. They protested against these racist hate crimes and against their working and living conditions on the orange plantations. As a consequence of these protests, three businessmen who exploited migrant workers, were arrested (The Economist 14.01.2010) but the causes for their rage remained.

In 2010, the tensions rose again. This time the situation was different. The working conditions had not changed but the amount of work available decreased. In December 2009 'the Italian farmers' confederation said that the local citrus industry had been made 'unsustainable' by a flood of cheap Spanish oranges and Brazilian orange juice. Imported concentrate could be bought for 1.27 Euro a kilo — 53 cents less than production cost in Italy' (ibid.) Furthermore the EU changed its subsidizing policy. Instead of paying subsidies for the amount of fruits that are produced, farmers are now being paid for the amount of land they farm. Therefore it becomes simply cheaper for them to let the fruits rot on the trees. Migrants still came to Rosarno but spent their days in the town searching for work instead of being employed by orange plantation owners. Their work force was no lon-

ger needed. Two fellow migrant workers were shot by Italian youth and triggered another protest, this time it was louder and left traces in the city, such as smashed shops, burned trash bins and cars. According to Francesco Forgione, a former head of Italy's governmental anti-mafia commission, the migrants for the first time 'rebelled against the local Ndrangheta mafia which dominates the fruit and vegetable businesses. [...] During their protest they even surrounded the house of an old boss in the Pesce clan, which is powerful locally, something the Calabrians have never done.' (The Independent 15.01.2010)

But it was not just them who took to the streets. The local Italian population protested – angry about the destroyed cars and shops – against the actions of the migrant workers. During their protest they attacked migrants. Some were beaten up by Ndrangheta thugs, their property was damaged and torched. The fights continued for three days, with five migrants shot and 53 injured people, comprising 18 police, 14 local people and 21 migrants. (Kington 10.01.2010) These events can be characterized as race riots. The government intervened and the solution they found was to evacuate all remaining migrant workers and bring them out of Rosarno. Luigi Manconi, a former minister of the centre-left government, called Rosarno 'the only wholly white

town in the world. Not even South African apartheid obtained such a result' (Hooper 11.01.2010). The interior minister at that time, Roberto Maroni from the far-right Lega Nord Party, saw the reason in these exploding tensions in the tolerance from local authorities of the undocumented migrant workers. They, according to him, were the reason behind the riots.

Do undocumented migrant workers have rights in Europe?

Existing labour unions do not include undocumented workers since the national labour legislation is not applicable on their cases but even though the assumption is diffused that undocumented workers do not have rights in Europe, several conventions, declarations and resolutions signed by the Italian government actually do guarantee them rights. Among them are the International Convention on Economic, Social and Cultural Rights (ICESCR), the Resolution of the UN Commission on Human Rights on the Human Rights of Migrants (2005) and the Universal Declaration of Human Rights. (cf. Platform for International Cooperation and Undocumented Migrants 2007)

The ICESCR says in Article 2 that it is to be applied to everyone 'without discrimination of any kind as to race,

© Antonello Mangano | Orange harvest - Campaign SOS Rosarno.



colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'(ibid.).

A resolution was issued by the UN Commission on Human Rights specifically on the Human Rights of Migrants in 2005, that stresses explicitly the rights of undocumented migrants by requiring 'States effectively to promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party' (ibid.).

Furthermore, undocumented migrants have a powerful human rights instrument: the

European Court of Human Rights (ECtHR). The European Convention on Human Rights (ECHR) created and regulates this supranational institutional system whose decisions are legally binding for the states concerned. Apart from states, it is possible for non-governmental organizations, groups and individuals to sue for their rights and file cases against human rights abuse. Certain planned deportations of undocumented migrants have been successfully stopped by the ECtHR, such as in the *Saadi v. Italy* case in 2008. A Tunisian citizen, Nassim Saadi, was to be deported to Tunisia where he would have faced torture (ECtHR 2010) but since Article 3 states 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'(ECtHR 28.02.2008), the ECtHR found in favour of the applicant Saadi that an expulsion to Tunisia would constitute a violation of his human rights.

A more significant ECtHR decision regarding Italy took place in the *Hirsi Jamaa and Others v. Italy* case in February 2012. The court condemned the Italian government for having violated several articles of the ECHR when the Italian coastguard rescued 24 Somalians and Eritreans from drowning in the Mediterranean and brought them - on board of military vessels - to Libya without informing them of their destination and forcing them to leave the ships after the arrival in Tripolis. (ECtHR 23.01.2012) This court decision made it more difficult for state authorities to abdicate from their human rights responsibilities. Therefore the decision in the *Hirsi and Others v. Italy* case made it harder to defend state attempts of pushing back irregular migration on sea juridically. Yet only a few particular cases have reached the ECtHR so far and the situation of undocumented migrants in Europe has not yet witnessed any profound improvement.

De jure and de facto rights for migrant workers – A big gap between them?

Even though Rosarno drew national and international attention to itself, not much has improved for the migrant workers. Some willingness to change and improve the situation was demonstrated from state institutions as well as from international organizations. But

THE ICESCR, ARTICLE 7 STATES:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

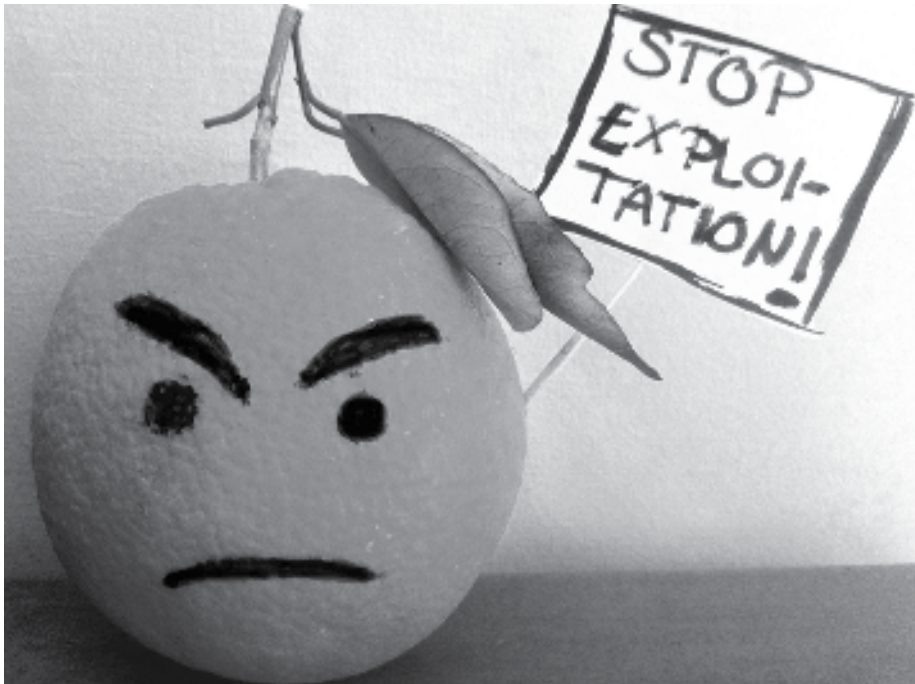
(a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. ▀



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these steps are rather symbolic and cosmetic than bringing a systemic and sustainable change. One of them was the setting up of a few tents and sanitary provisions that enable a few hundred of the returned migrants in Rosarno to have a humane standard of living.

Yet major problems remain why migrants cannot demand their rights. First of all, undocumented migrants risk detention with a following potential deportation if they complain to the police about their working conditions. They do not have access to information nor do they have the financial means to fight cases in court. Migration policies criminalize migrants rather than protecting them from exploitation, abuse and violence. Having politicians using racist propaganda against them further decreases the courage of migrants to stand up for their rights. De jure they have the rights, but de facto it is too risky for them to demand them. Furthermore, in order to protect the rights of migrants and its own citizens, the government has to enable them to make use of the legal tools

they have. This does not work in an atmosphere of fear in which the mafia can terrorize everyone and prevent them from filing cases against mafia structures and where migrants do not dare to go to the police because of their immigration status. Apart from that the Italian government should be seeking to help farmers who cannot compete with the cheap oranges from Brazil and Spain. These low prices can only be accepted by the farmer if the working costs are extremely low – too low for the fruit pickers to afford a dignified life. Italy's agricultural sector is shouldered by migrants and would be shattered into pieces without their cheap work force. A structural and radical change in the economic system seems to be necessary to bring forward a true change and improvement of the situation. Amnesty International calls on the Italian government to protect the migrants from racist hate crimes, from exploitation and to 'ensure all migrants are able effectively to access the right to adequate housing and living conditions, a right the UN Committee on Economic, Social and Cultural Rights has indicated applies

to everyone, regardless of status and includes the 'right to live somewhere in security, peace and dignity' (Amnesty International 12.01.2010).

A civil society led initiative by 'Equosud', shows a possible path to a de facto solution of the problem. They are a support network for fair traded and produced food. Their initiative 'SOS Rosarno' promotes and organises the selling of oranges produced in Rosarno in a fair manner within Italy. At the end, solidarity of the people makes these bitter oranges taste sweet. ■

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IN MAURITANIA – NO SLAVERY WITHOUT IMPUNITY



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Society for Threatened
Peoples.

In 1905 the colonial French administration prohibited slavery in Mauritania. In 1960 Mauritania became an independent country and adopted a new constitution in which slavery was officially abolished. Furthermore, in 1980, the government of Mauritania again abolished slavery. In 2007 a law was passed that made slavery punishable, according to which slaveholders could be sentenced to up to 10 years in prison. In reality, however, not much has changed over the last few centuries.

The government has repeatedly stated that slavery no longer exists in Mauritania. Asked by CNN reporters in December 2011 about slavery in his country the minister of rural development stated: 'I must tell you that in Mauritania, freedom is total: freedom of thought, equality – of all men and women of Mauritania. Equality for all people. There is a phenomenon to which you are probably alluding, that has existed in Mauritania, that has existed in other countries, which is slavery. And it is abolished in all communities, and criminalized today by our government. Therefore, there is absolutely no more problem of that in Mauritania [...] All people are free in Mauritania and this phenomenon no longer exists.' (CNN 17 March 2012) Unfortunately, this is not the case. Mauritania is a classic example for what happens when the existence of a problem is denied or referred to as something that only existed in the past. Slavery is portrayed to be a historical phenomenon. Yet in 2012, 10 to 20 percent of the country's 3.5 million inhabitants are the property of others. The ruling lighter-skinned white Moors enslave the more dark-skinned black Africans, also called Haratin. Most slaves are women and children. It is still common that slaves are given as wedding presents. Slaves mostly serve as domestic help or as agricultural labourers. So far, there has only been one instance where a slaveholder was convicted. However, the verdict was later revoked: Instead of being sentenced to two years in prison in November 2011 for enslaving two 10 and 14 year old boys, Ahmed Ould Hassine's sentence was converted into a simple fine by Mauritania's Supreme Court (Nouakchott 26 April 2012).

How impunity works

In a 2010 report the UN Special Rapporteur on slavery, Gulnara Shahinia stated that during her visit in Mauritania she '[...] heard of situations where cases of slavery were reported to the relevant authorities. However, either the cases were reclassified and filed under a different name such as 'inheritance or land dispute' or were not pursued owing to insufficient documentary evidence, or the person who put forward the claim was put under pressure from her extended family, master or sometimes local authorities to retract her claim. This results in cases never being reported as 'slavery' and therefore – judicially slavery cases do not exist (Gulnara 2010)'. Hence, it does not matter what the law states; if it is not enforced, the practice continues unpunished.

Even if slaves escape or are liberated by abolitionists, the probability that they return to their former 'masters' is high. In a country where slavery was introduced in the 8th century, a slave is a descendant of former slaves. Slaves are held by the threat of physical force, but – what is more for someone who cannot read and write and make decisions for himself – fleeing means a myriad of challenges. If one is told for a lifetime that slavery is part of Allah's command, being against slavery and running away means to be against religion itself. Former slaves seldom file legal complaints since they are illiterate. Furthermore, they are often harassed and intimidated by officials and their former 'masters'. Unmarried slaves who have children – often the result of rape – can be threatened with prosecution for having committed adultery. The lack of trust in

the judicial system also explains their reluctance to seek justice. Education is vilified: Haratin are made to believe that learning to read means abandoning one's god-given role. Moctar Teyeb, a former slave who fled to the United States told a reporter, that '[...] there are many stories about the Haratin who learns some verses of the Holy Koran, and then he is called names, and shamed until he hates himself' (Finnegan 2010). Learned dependency is extremely difficult to get rid of and job opportunities are scarce in Mauritania. That is also why Mauritanian abolitionist groups call for concerted efforts to provide former slaves with education and housing. Lack of law enforcement and keeping slaves away from education are two of the main pillars on which impunity rests. Another one is making sure that those who speak out and help former slaves to file legal complaints are silenced or driven into exile.

The battle against abolitionists

Instead of trying to support the struggle against slavery and to assist former slaves as far as possible, the Mauritanian Government silences anybody who discusses the taboo. For several years now, the Mauritanian authorities have denied an official registration of the Initiative for the Resurgence of the Abolitionist Movement (IRA) and have systematically tried to discredit and close down the human rights organisation. Those in Mauritania who oppose slavery and fight against it, live dangerously. Take the case of Biram Dah Abeid, founder and president of IRA. Biram Dah Abeid and his colleagues are a nuisance for the Mauritanian government because they are continuously trying to organize public protests to make the police and the judiciary take action against slaveholders.

Thanks to its involvement, IRA helped to free several thousand Mauritanian slaves in 2011.

After public protests of human rights activists, many slave owners chose to free their slaves out of fear of prosecution (Society for Threatened Peoples 2011).

Mauritania's government has tried different methods to silence Biram. He was offered lucrative management and government jobs to make him stop his human rights work.

When he refused the proposals, Mauretanian state security members offered money to members of IRA in order to divide the organization. Fake psychological reports were published which declared Biram insane. Leading Muslim imams labelled him as an enemy of Islam because of his on-going criticism of the enslavement of 500,000 Mauritians – endangering the 'God-given order' in his country. His passport was confiscated for several months to prevent him from spreading information abroad. He repeatedly received subpoenas from the police or state security.


He was able to closely avoid two assassination attempts on his life. Biram has been arrested and imprisoned several times, most recently from late April to August 2012 (Unrepresented Nations and Peoples Organizations 2012).

He and six associates were arrested during protests against continued forms of slavery that are officially banned. The faithful Muslims – Mauritania is an Islamic Republic – had burned religious texts that justify servitude, thus trying to draw attention to their protest against Muslim clerics who support slavery.

The charge against them was 'Endangering state security'. In prison he fell seriously ill and lost more than 15 kilos. He and his colleagues were released in August after foreign governments called for his release.

What should be done?

In order for things to change, the Mauritanian government must officially recognize organisations such as IRA instead of persecuting its members. The existing anti-slavery law must be enforced and slaveholders punished. Widespread myths that slavery is what Allah commands must be countered with education. However, as impunity for slaveholders has a long history, it will take time to change the attitudes. ■

 Hanno Schelder | Said – a fleeing slave – just arrived at the IRA headquarter.



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JUSTICE KEPT ASIDE IN THE INSTITUTION OF IMPUNITY – A CRITICAL SKETCH OF NEPAL



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'The Government of Nepal is fully committed to establishing Constitutional supremacy, ensuring the rule of law, good governance and human rights, as well as providing a positive conclusion to the peace process by eliminating insecurity and addressing impunity. Addressing impunity entails addressing the past and maintaining the rule of law at present. Nepal is fully committed to work on both fronts.'
(Human Rights Council 2011: 51)

One emblematic case is the cold blood murder of Ujjan Kumar Shrestha on June 24 2008. After shooting him dead, Balkrishna Dhungel (Constituent Assembly (CA) member) and his associates had allegedly thrown the dismembered body into the Likhu River near by the spot. Dhungel's case is well known. It is a murder case for which Dhungel has been convicted in both the Okhaldhunga District Court and the Supreme Court. However, the government recommended amnesty to Dhungel stating that the case is 'political' in nature. Sabitri Shrestha, sister of Ujjan Kumar Shrestha, threatened to commit suicide if the government grants amnesty to the murderer. And she is suffering, as the only thing that is political about this whole situation is how justice has been avoided.

Her elder brother, Ganesh Kumar Shrestha, was also murdered by a group of Maoists in 2002. It is suspected that he got murdered because he had filed a First Information Report (FIR) against Dhungel and his cohorts for Ujjan's murder. It is said that Dhungel was not there at the scene, but he was publicly talking about killing Ganesh and threatened him. Now, Sabitri has been receiving death threats, as she has been fighting for her brother's justice and fears her life, said Sabitri.

Six years have passed since the significant peace agreement was signed specifically promising greater respect for human rights and accountability impunity remains firmly entrenching in Nepal. No member of security forces or Maoists has been held to account in civilian court for grave human rights abuses committed during the decade long internal armed conflict that took the lives of more than 17,000 citizens, more than thousand disappeared, thousands tortured, thousands displaced, hundreds sexually abused; most cases

that have been filed are mired. The conflict emerged in 1996 with the announcement of 'people's war' initiated by the Communist Party of Nepal (Maoist) (CPN-M) against the 'ruling classes', which included the monarchy and the political parties. Human rights violations committed since the end of armed conflict also remain unpunished: cases against suspects are routinely withdrawn, adding insult to injuries of victims, the reports of Advocacy Forum depict. Critically, Nepal at present stands at crossroads between a future that tributes and protects human rights and rule of law by combating impunity, and a future that merely perpetuates past functioning and abuses that further impunity to be institutionalized.

Despite the current practice in international scenarios, which expresses that the states are increasingly pivoting on de facto amnesties to avoid accountability and to strengthen impunity as de jure amnesties are defined as being against international law, Nepal has witnessed adopting both practices, with mounting political pressure and the introduction of various measures that are indifferent to ensure accountability for human rights violations. There have been various attempts made by groups, either of the current warring parties, to introduce blanket amnesty in the legislation of transitional justice mechanisms, including the Truth and Reconciliation Commission (TRC) and the Disappearances Commission. In addition, the moves of successive governments after the Constituent Assembly (CA) election, held in April 2008, acting on the legislation, have proved that the legislation is found to be used for an opportunity to put in place blanket amnesty provisions, as the current Maoist led government has passed the ordinance of the legislation frankly mentioning general amnesty provisions to those

who were allegedly implicated in crimes of human rights violations. And such tendency have clearly thrived the widespread practice of impunity in Nepal. On the other hand, during the Universal Periodic Review in January 2011, the Government of Nepal accepted recommendations made by Germany 'to undertake legal and administrative efforts to end torture and related impunity'. (ibid.: 107.2) And similarly, it also accepted the recommendation made by New Zealand 'to review legislation, and amend it where necessary, to remove provisions which allow government and military personnel to act with impunity'. (ibid.: 107.3) There are several other recommendations accepted by the Government of Nepal in regard to combating impunity. Despite official commitments to end impunity, and intensive litigation and campaigning by families of those killed or disappeared during armed conflict, no one has been arrested, let alone brought to justice in civilian courts for the crimes they committed.

The quest of family members of victims for justice and clarity on what happened to their loved ones continues to be blocked by both *de facto* and *de jure* impunity. The political parties and the government are seen completely indifferent in addressing the issues of victims. Besides, there are some articles and provisions in the Interim Constitution and the Comprehensive Peace Agreement (CPA), signed in November 2006, which have had enormous influence in institutionalizing impunity. The CPA, which is accepted as the most influential document to conclude conflict to logical end, was a promise to establish a TRC.¹ There are many hurdles in the laws that impede effective criminal investigations into past human rights violations. Since

the peace agreement was signed none of the successive governments has introduced any changes to the laws, including the State Cases Act, Army Act, Police Act, Evidence Act, Commission of Inquiry Act, Public Security Act and Country Code. (Advocacy Forum and Human Rights Watch 2009: 7) Instead, there has been negative progress toward establishing the transitional justice mechanisms, which is supposed to submit strong and obligatory recommendations to provide comprehensive justice to the conflict victims, including effective investigation and prosecution provision to the perpetrators, as the current government has recently submitted the legislation with apparent amnesty provision to the President.

Across the country FIRs are filed in 120 different cases, referring to Advocacy Forum, Nepal. This documents the continuing failure of state authorities to initiate meaningful investigations and prosecutions relating to past grave human rights abuses. Some relatives are losing hope and are no longer actively pursuing the case, tired of constantly fighting obstacles put in their way by the police and other authorities. Some of the relatives are even too afraid for registering FIR. The police authorities often refuse to register the complaints, sometimes in the face of a court order to do so. However, the large majority of the relatives of victims have been continuing their fight for justice, despite repeated delays and obstacles erected by the authorities.

From several years to date, successive governments have evaded delivering justice and accountability for gross human rights violations by promising a transitional justice mechanism; perverting the effects of those mechanisms from complementing the normal cri-

minal justice system to replacing it. It is contrary to the clear decision rendered in June 2007 by the Supreme Court of Nepal² and the views issued by the UN Human Rights Committee in 'Giri v. Nepal' (Communication 1761/2008) and 'Sharma v. Nepal' (Communication 1469/2006).

At another level, the political parties have put pressure on the police not to investigate certain cases in order to protect their members. Institutions long opposed to accountability, most notably the Nepal Army refused to cooperate with ongoing police investigations. The governments have promoted several officers of Nepal Police and Nepal Army, who are allegedly charged of being responsible for grave human rights violations. Similarly, among the Maoists elected to CA are alleged perpetrators of human rights abuses who are found absconding at the documents of Nepal Police. The National Human Rights Commission (NHRC) is mandated to investigate alleged violations of human rights. However, it has repeatedly expressed concern about the lack of implementation of its recommendations by the governments. (NHRC 2009)

Nepal has witnessed several *ad hoc* Commission of Inquiry (COIs) forming to investigate into cases of public concern, including incidents of serious human rights violations, and to recommend the Government and/or authorities concerned for subsequent remedial action. Experiences collected in Nepal and around the world, as the report states, suggest that continuing practice of setting up COIs is not effective in providing remedies to victims of human rights violations unless there is significant reform in law and practice. The COIs, nevertheless, have promoted impunity by influencing investigation of human rights

1) The Comprehensive Peace Agreement is held between the Government of Nepal and the Communist Party of Nepal, Section 5.2.5, November 22, 2006 – <http://reliefweb.int/report/nepal/full-text-comprehensive-peace-agreement-held-between-government-nepal-and-communist>.

2) Rajendra Dhakal and Others v. The Government of Nepal, Writ No. 3575, Supreme Court decision, 1 June 2007. In this landmark ruling on a number of enforced disappearance cases including 80 habeas corpus writs, the Supreme Court of Nepal issued directive orders, *inter alia*, for the Government to enact legislation consistent with international law that would criminalise enforced disappearance; establish a high level 'Investigation Commission for Disappeared People' for inquiry into past enforced disappearances in compliance with international criteria on such commissions on inquiry; require investigations and prosecutions of persons responsible for disappearances and provide interim relief to the families of the victims without prejudice to the final outcome of these cases.

violations with political interference rather than make it go through the criminal justice process. (ICJ 2012: i)

The Government of Nepal has the duty to promptly investigate and prosecute serious crimes. In ignoring this duty the Government perils further deterioration of the justice system in Nepal and denies the right of all persons to an effective remedy. It further depicts the possibility of a repetition of past crimes if they are left unpunished. Under domestic law, where any inconsistency



© Gautam | Victim families and members of Civil Society making sit-in protests as the Maoist-led government prepares to recommend amnesty to Balkrishna Dhungel, a convicted murderer.

between domestic and international law exists, Nepal is obliged to implement the provisions of any international treaty ratified by Nepal. Nepal, like all nations, is obligated to adhere to jus cogens and provide effective remedy to the victims, bringing all the alleged perpetrators to book for criminal investigation.

The practice of withdrawing cases, including murder and rape, filed in several district courts across the country, has been accustomed in Nepal: numbering in approximately 1500, which has strengthened impunity. The governments formed after CA election have used executive power to withdraw a substantial number of cases stating in the name of steering the peace process and to implement Clause 5.2.7 of the CPA. Misinterpreting the Clause 5.2.7 of the CPA, which clearly states that the cases charged against individuals of warring parties due to political reasons are to be withdrawn, as reads, 'withdraw accusations, claims, complaints and cases under consideration leveled against various individuals due to political reasons' (Clause 5.2.7 of the CPA), the governments deliberately misused the Clause as a justification for the withdrawal of cases which constitute evident violations of international humanitarian and human rights laws. It is however

against international law to withdraw cases of gross violations of human rights.

Impunity is seen in de jure form, which is reflected in the Clemency Clause in the Interim Constitution of Nepal³. Invoking the Article 151 of the Interim Constitution the UCPN-Maoist formally requested the then Prime Minister and Home Minister to pardon Bal Krishna Dhungel, who was convicted by the Supreme Court for the murder of Ujjan Kumar Shrestha. Mr. Dhungel was a Constituent Assembly member and is yet to be arrested. And Dhungel has been collecting political strength within the Maoist party and showed his ability to pervert the course of justice and that he is escaping punishment moving around publicly. Hence, the case depicts a symbolic effort to show how Ujjan's killing is illustrative of the failure to prosecute even a single perpetrator for the thousands of cases during and in the aftermath of armed conflict in Nepal.

All these illustrations have evidently shown that the practice of politicization of crimes and criminalization in politics have been the mutually reinforcing two main scourges that are affecting the whole system of the country, the polity and the society in Nepal; when one has been acting as the cause the other has been appearing as the effect and vice versa. The apathy exposed by the Government of Nepal as well as the vague concept of articles and clauses of the laws and documents concerned have plainly depicted the de facto and de jure impunity as the most challenging and threatening hurdles to combat with in order to provide justice to victims and to envision sustainable peace in the country. ■

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3) Article 151 of the Interim Constitution of Nepal-2007 allows the cabinet to 'grant pardons (to persons convicted), and suspend, commute or reduce any sentence imposed by any court, special court, military court or by any other judicial or quasi-judicial, or administrative authority or institution.'

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). Since 2011 IPON works in Bukidnon, Mindanao upon the request of the indigenous group PADATA. 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)

TFM (Task Force Mapalad)

Current Project:

IPON highlights Red-Baiting in the Philippine human rights discourse and offers platforms both to state and civil society actors to tackle the issue.

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. ■



Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Adopted by General Assembly resolution 53/144, of 9 December 1998

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental

or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain

to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:
 - (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
 - (b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
 - (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction. [...]

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.