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OBLIGATIONS BEYOND BORDERS

Divisibility of Liability for Fundamental Human Rights

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EDITORIAL

The role of the state and of transnational organisations as the only legitimate institutions responsible to protect human rights seems to be increasingly questioned. Recent debates, centered

für die Welt to serve as a guideline for activists and affected communities by introducing legal instruments for the fight against human rights abuses committed by corporations.



Who we are – Some members of IPON Coordination. (Source IPON)

around the topic of globalisation analyse phenomena as global financial flows, companies and organisations, the decentralisation of production and pursuit to find new answers and solutions to the problems of concern. As a result, political debates increasingly raise the question of political responsibility of stakeholders other than the state. Multinational corporations, due to their international presence and economic force, are particularly targeted by these debates and recent trends have shown a willingness to make these corporations accountable for protecting and implementing human rights, especially when related to their economic activities. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework endorsed by the United Nations in June 2011, are clearly representative of this trend.

In this issue Werdermann presents the brochure "Making corporations respond to the damages they cause", published by the European Center for Constitutional and Human rights (ECCHR) in cooperation with the German church-related development agencies Misereor and Brot

A recent and tragic example for such human rights abuses involving famous multinational corporations was the collapse of a factory in Bangladesh, killing more than 400 people. Although some multinationals first tried to distance themselves from their responsibility, activists, particularly labour activists, have insisted that they take responsibility, as Chatterjee reports. However, as Marggraf & Gebhard outline in their article, it is not only corporations that commit human rights abuses, it can also be powerful private persons who engage in commercial activities. Landowners in the Philippines often sell their products in accordance to the anonymous conditions of the world-market, which diffuses the question of the responsibility of merchants, brokers, manufacturing companies and corporations and consumers – but not for the acting individuals and the states responsibility to protect human rights on site.

Trötzer, who briefly explains the Guiding Principles on Business and Human Rights, highlights the importance of the state's responsibility.

This ultimate responsibility of the state seems both undeniable and difficult to

put into practice in the case of countries that have a weak legal system, where political elites enjoy impunity and where people's safety and interests are subordinated to economic interests. The case of the Philippines, illustrated by Paulke, Dannenberg & Föller, and of the young republic of South Sudan, which Onditi describes, are excellent examples of situations where the gap between theory and practice raise the question of responsibility of the different stakeholders involved.

The state alone cannot ensure the protection and implementation of human rights – it needs the assistance of other stakeholders such as NGOs or corporations – but it should nevertheless uphold the ultimate power to do so. In the case of states where multinational corporations and/or private people have a lot of economic and political power due to the weakness of the state, a lot needs to be done in terms of clarifying each stakeholder's role(s). ■

CALL FOR ARTICLES

Red-Baiting in the Philippines is a political strategy – most notably employed by national security forces – to accuse, denounce and persecute individuals and civil society organisations as members or supporter of front organisations of communist guerrilla groups to obstruct their work.

The upcoming issue (referring to vol. 3 no. 2) will strengthen and gather Red-Baiting and related issues by discussing innovative approaches and dialogues.

We welcome articles of 5,500 or 12,000 characters that contribute a systemic analysis of the topic with a focus on human rights or human rights defenders, until 1st December 2013 (editorial deadline). Please send a short note concerning your presumed topic until 20th November 2013. You can also find our author guidelines and further informations on www.ipon-philippines.org.

Contact: editor@ipon-philippines.org

PROTECTION THROUGH LITIGATION – STRATEGIES AGAINST CORPORATE HUMAN RIGHTS ABUSE



David Werdermann

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The brochure “Making corporations respond to the damages they cause” outlines approaches on how to react to human rights abuses by corporations. It can serve as a useful guide for activists and affected communities in their struggle for human rights.

Human rights – understood as norms of public international law – primarily concern states. States are bound to the so-called trias of obligations. They must respect human rights, protect them from interventions of a third party and fulfil them by actively taking measures. Hence, the behaviour of private persons – especially corporations – is only taken into consideration in case of a violation of a state’s duty to protect. Human rights standards for corporations such as the UN Guiding Principles on Business and Human Rights are not regarded as binding but as merely morally obligating soft law. Thus, it is not a corporation’s duty to respect human rights; it has merely a responsibility to do so. Taking into account the fact that private duties are not unknown to public international law, there are ways to transfer these responsibilities into legal obligations. However, this should not veil the fact that effective legal instruments to react to human rights abuses by corporations exist. Explaining these and offering instructions to use them is the goal of the brochure “Making corporations respond to the damages they cause” edited by the European Center for Constitutional and Human rights (ECCHR) in cooperation with the German church-related development agencies Misereor and Brot für die Welt.

Introductory, the brochure provides an overview of typical human rights violations related to corporate activities such as forced displacement, environmental pollution, inhuman labour conditions and violent attacks against human rights defenders. In this context, the relevant norms of international human rights conventions and UN declarations are named. Subsequently, there is an introduction of strategies on how to prevent and limit harm. Communities that foresee being affected by an investment pro-

ject should initially gather a solid basis of information, then build a support network and set themselves goals: is the aim to obstruct the project or to receive fair compensation? What can fair compensation look like? What should be the mode of distribution within the community? The needs and interests depend on the respective communities and projects. Financial compensation is not always an adequate solution.

Afterwards, communities have to decide whether they want to take legal action. Therefore the brochure introduces essential legal instruments. Among these are soft law mechanisms, such as complain procedures within the scope of the Organisation for Economic Co-operation and Development (OECD), civil action, criminal complaints, other claims based on national legislation as well as trials at international courts. Nevertheless, only states can stand trial at the Human Rights Court as described above. Especially remarkable are the approaches that show how codes of conduct that corporations voluntarily comply with can be used in court. As an example, a case is illustrated in which the ECCHR and a German customer protection agency lodged an appeal against the supermarket chain LIDL. The plaintiffs argued that the LIDL’s code of conduct is contradictory to the inhuman labour conditions in the supplying factories in Bangladesh. This would deceive costumers and violate European competition law. As a result, LIDL was forced to renounce promises made in advertisement and had to admit to the unbearable and exploitative labour conditions in their factories.

The main focus, however, is on claims for compensation in civil law, which can, depending on the case, be filed in the host country as well as the home country against



LIDL had to admit to the inhuman labour conditions in their supplying factories in Bangladesh after a complaint had been filed due to unfair competition (Source www.cleanclothes.at)

suppliers or the parent company. In a language comprehensible to legal laypersons, the basic rules, the requirements for a successful lawsuit as well as the burden of proof are illustrated without going into detail due to differences in national legislations. Furthermore, there are useful hints on how to embed the compensation case into a broad strategy. This can imply negotiations with corporations alongside networking and public relations - which is especially important for the losing party.

The brochure succeeds in introducing core legal instruments for the struggle against human rights abuses by corporations without concealing their dangers and difficulties. Various real and fictional examples simplify the comprehension. The appendix offers an overview of relevant human rights organisations and a selection of online material facilitates further research. The

brochure has been developed on the basis of experiences gained during workshops and meetings with human rights organisations and affected communities. This gives hope that the brochure is designed to be practically relevant and to cater for the needs of the target audience:

National and international law fundamentally contributes to the establishment and legitimacy of undemocratic structures of exploitation and domination. At the same time, it can be a weapon in the hands of weaker groups and hence offer an emancipatory potential. The brochure "Making Corporations Respond to the damage they cause" displays this potential and – to a certain extent – makes it manageable for affected people. ■

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HUMAN RIGHTS – A BUSINESS DUTY



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As a consequence of the changing power structures in our globalized world, transnational business corporations have gained importance in the international political scenery. This development has a substantial impact on the international protection of human rights.

"It is the absence of broad-based business activity, not its presence, that condemns much of humanity to suffering." (Annan 2005: 1)

In a very significant way, globalization has changed the world we live in, entailing new and complex challenges for the protection of human rights. Especially international business corporations exercise considerable influence on the rights of individual human beings or demographic groups.

This development has been observed by the International Peace Observers Network (IPON) in rural areas of the Republic of the Philippines as well. Large farming enterprises like Del Monte or Dole act in immediate vicinity of IPON's partner organizations and their presence naturally affects the daily life of the Human Rights Defenders (cf. Reckordt 2012).

As stated above by former UN Secretary General Kofi Annan, the impact of the business corporations can be positive. Cost-effective and profitable enterprises generate new jobs and by paying taxes, they increase the earnings of the state meaning that the public authorities are provided with the opportunity to finance social services or certain public-spirited initiatives. Positive scale effects to regional development and public revenue might be a consequence.

But from a human rights perspective, it's not difficult to adduce reasons for negative effects of the strategies and guidelines pursued by some business corporations, either. In fact, many enterprises with an international orientation face a barrage of complex and multi-layered criticism. According to Amnesty International's research for example, the working conditions in some developing countries are unacceptable and in addition, both the exploration and the ex-

ploitation of natural resources by multinational companies have caused distributional conflicts, human rights abuses and an increase in poverty (Amnesty International 2012: 1; cf. Bauer 2012).

Furthermore, there are few effective mechanisms on the national or international level to prevent corporate complicity in human rights abuses or to hold the business corporations accountable.

Implementing Responsibility of Corporations

The UN Guiding Principles on Business and human Rights present three ways in order to proceed against human rights abuses committed by powerful transnational corporations:

- 1) States have to lend weight to their existing obligations to respect, protect and fulfill human rights and fundamental freedoms across national or regional borders. They should not be allowed to deal with human rights questions separately from other policy fields.
- 2) Business corporations as specialized organs of society are obliged to abide by the law and respect human rights.
- 3) Victims of human rights abuses need an effective access to legal remedies. (United Nations Guiding Principles for Business and Human Rights 2011: 6)

Against this background, the debate about the social responsibility of business corporations has gained momentum over the last couple of years. An intense discussion has flared up concerning the question whether and how economic perspectives of big enterprises and human rights can be made compatible.

George Kell, Executive Head of the United Nations Global Compact, expressed in 2008:

"Companies have a vital responsibility to ensure that the global marketplace is one of inclusion and acts as a force for improving, not injuring, social and natural environments. Because business interests increasingly overlap with development objectives in today's global society, there is a growing need for responsible business practices and partnerships with government and civil society. [...]" (Kell 2008: 1)

The Concept of Corporate Social Responsibility

In this context, Corporate Social Responsibility (CSR) has become an iridescent catchphrase that many international enterprises included in their guiding principles codes of conducts.

CSR is a multi-faceted concept marked by numerous understandings and notions from different perspectives. In general, the definitions usually make reference to a concept, whereby companies integrate social and environmental concerns in their business operations on a voluntary basis. (European Competitiveness Report 2008: 774)

In the "Renewed EU Strategy 2011-2014 for Corporate Social Responsibility", the European commission puts forward a definition that emphasizes the responsibility of enterprises for their impacts on society:

"To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

1) maximizing the creation of shared value of their owners/shareholders and for their other stakeholders and society at large;

2) identifying, preventing and mitigating their possible adverse impacts." (European Commission 2011: 6)

This statement exemplifies a trend towards a more mandatory and binding commitment of multinational corporations that seems to be emerging.

Consequences for the work of IPON

With this in mind, the question arises whether the claim that states are the only responsible actors to uphold human rights still reflects the political reality of the 21st century. Does the legalistic approach followed by many Non-Governmental Organizations still make sense in a world, where 50 of the 100 biggest economies are in fact multinational companies and new communications technology is erasing national borders?

John Ruggie, United Nations Special Representative for Business and human Rights from 2005 to 2011, underlines that simply taking state-based human rights instruments and asserting that many of their bindings are on corporations as well is not a solution. From his perspective, international enterprises are not public interest institutions and making them duty bearers for the broad spectrum of human rights may undermine efforts to build indigenous social capacity and to make governments more responsible for their own citizenry. (Ruggie 2010: 1ff.)

Hence, it becomes clear, why IPON favors a legalistic human rights approach, shaped by the following definition:

"Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all inter-related, interdependent and indivisible. Universal human rights are often expressed and guaranteed by

law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups." (Office of the United Nations High Commissioner for Human Rights 2009)

Only states can sign and ratify the international human rights conventions and are, as a result, the only ones who can violate human rights. It is their duty to respect, protect and fulfill human rights under international law and the respective state should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Of course, it is important to recognize and not to deny the increasing significance of transnational corporations in our globalized world, but according to the United Nations, this realization should not result in an equal status of states and corporations. The state as a "born" subject of international law can still be considered as the essential player of international human rights protection.

In this respect, IPON distinguishes between human rights violations and human rights abuses. While the latter can be committed by non state actors, the first (the actual violation) can be only committed by state actors.

Nevertheless, IPON does not disavow the increasing role of private actors, especially in areas of limited statehood, where transnational companies or powerful landlords take over government functions. IPON regards this development with great concern and therefore, in case a certain private group systematically abuses human rights, the organization documents what is happening and reports to the relevant government institutions.

In order to ensure that the interna-

tional protection of human rights is consistent with the ongoing processes of systemic social and economic changes on a global scale, the creation of an effective international human rights regime that includes nation-states, regional organizations, transnational companies and non-governmental organizations might be a first starting point. In this context, the leading role of states as the major subjects of international law should not be questioned, but the creation of such a regime – were states uphold ultimate responsibility – could function as an answer to the changing power structure of our globalized world. ■

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MEMORANDUM OF AGREEMENT: THE ILLUSION OF A SOLUTION

The last issue tackled the precarious situation of the indigenous Mindanao-based Human Rights Defenders (HRDs) of the Panalsalan-Dagumbaan-Tribal-Association (PADATA). Ten years ago, PADATA applied for an Ancestral Domain title so as to gain the exclusive power of disposal over their tribal territory, based on the Indigenous Peoples Rights Act (IPRA, a Philippine law enacted to guarantee the IPs right to land, customary and religious autonomy). However up until now, large parts of the area are occupied by the private rancher Ernesto Villalon who controls this area with the help of private security guards, despite the expiry of his license in 1997. This is a clear violation of the IP's legitimate claim. The land conflict culminated in 2010 when violent acts against PADATA members resulted in the assassination of Welcie Gica. Now, almost three years later, justice seems to be more elusive than ever: the last perceivable effort of the Philippine National Police (PNP) to execute outstanding Warrants of Arrest dates back to July 2012. The National Committee on Indigenous Peoples (NCIP) that is responsible for the implementation of IPRA, made no noticeable progress in the processing of PADATA's land title claim. On the other hand, one of the other state agencies is intervening more frequently than ever: the Department of Environment and Natural Resources (DENR). The DENR awards ranch licenses and grants permits for other non-agricultural land use, and is thus involved in the land conflict. While both the PNP and the NCIP remain inactive,

COMBATING HUMAN RIGHTS VIOLATIONS: LEGAL LIMBO BETWEEN INDIVIDUAL RESPONSIBILITY AND STATE OBLIGATION

To establish a general state of international respect of the human rights, the commitment and action of non-state actors, including individuals, is indispensable. However, ultimately, it is incumbent upon the state to protect the human rights. Which form this interaction takes in the case of the Philippine state, where it fails, and when it becomes necessary for the international community to intervene can be illustrated by the story of human rights defender and political prisoner Temogen "Cocoy" Tulawie.

The National System for Combating Human Rights Violations

No one – except maybe the most idealistic utopian – is seriously expecting the perfect state to emerge: it can be taken for granted that in any state, at any time, Human Rights Violations (HRVs) will occur, although the internationally recognized and enforced covenants formulate the threefold duty for the state to respect, protect, and

fulfil Human Rights (HR). Hence, one crucial question needs to be posed when evaluating a state's handling of HR affairs, namely whether this inevitable deviation from the pursued ideal is acknowledged by the state itself, and if – based on this concession – it provides suitable mechanisms to deal with this deviation. That is, does the state create an institution to monitor the domestic HR situation and to take suitable action if HRVs are discovered?

In this context, the UN General Assembly formulated guidelines for the establishment of "national institutions for the promotion and protection of human rights". According to these, National Human Rights Institutions (NHRIs) should be independent from the government and serve the following purposes:

1) gather data on the national HR situation;

thereby neglecting their duty to safeguard the rights of the PADATA members, the DENR engineered what might first have looked like an acceptable compromise: in recognition of the "string of violence" in the affected area, and "in its desire to achieve a workable, genuine and lasting solution to the problem"¹ it negotiated a so-called Memorandum of Agreement (MoA). This MoA is supposed to create a "win-win"-situation for all parties involved and bring about lasting peace. It stipulates that PADATA and some other peasant groups receive segments of the total area currently occupied by Villalon, subject to the condition that they "terminate all actions pending in courts or other bodies" against the opponent parties. This is strictly speaking a governmental instigation to impunity. For the charges filed against the assumed murderer of Welcie Gica are part of the pending actions. The situation surrounding the signature of the MoA was as questionable as its content: the date was moved forward on short notice – thereby not allowing the participants to prepare sufficiently – and the clause on dropping all charges as a precondition for the validity of the MoA was only mentioned in the English version, which was signed by all parties, but not in the Visayan version which was read out aloud to PADATA members. Nevertheless PADATA could not be forced to dismiss their cases against Villalon on the basis of the signed MoA and the MoA alone could not release the PNP from its duty to execute the Warrants of Arrest: The jurisdiction lies with the courts and only a judicial order can declare a Warrant of Arrest null and void. Knowing this, both Villalon's lawyer and security guards persistently tried to persuade the Gica family to drop their cases against the alleged murderer. Although no physical violence was used, the frequent visits ended up demoralizing Welcie Gica's relatives and they decided to settle on receiving monetary compensation. To make any further criminal proceedings impossible, the lawyer also convinced all witnesses of the murder to change their affidavits. Believing that this was necessary to finally have the MoA implemented, the witnesses did as they were advised by Villalon's lawyer. Consequently in juridical terms, it appears that Welcie Gica was never murdered; he might as well have been killed in an accident, simply disappeared, or have never existed at all.

¹) Quotation taken from MoA

2) inform and advise the government to achieve a better implementation and fulfilment of the international covenants;

3) act as a link between international, national, and local actors;

4) participate in the provision of sufficient HR education and raise the public awareness on HR issues.

Additionally, an NHRI might exercise quasi-judisdictional tasks by accepting complaints concerning individual cases and in this function constitute a supplement to ombudsmen, HR commissioners, and the jurisdiction. These guidelines leave room for a wide range of different organizational designs for NHRIs. Whether a specific institution meets the formulated requirements is determined by an international committee. Like the German NHRI, the Philippine NHRI, the "Commission on Human Rights of the Philippines" (CHR), received a positive rating by this international committee concerning the compliance with the requirements. Moreover, the combination of the CHR and judicial institutions like the Office of the Ombudsman and the Supreme Court (SC), along with legal remedies like the Writ of Amparo and Habeas Corpus, constitutes an elaborate operative network of instruments and mechanisms that enables the Philippine state to meet its HR commitments. Yet, both in the Philippine and the German system, this network relies heavily on non-state actors to achieve effectiveness. These fulfil an essential function, as it is them who act as informants and thereby enable the state institutions to undertake legal action in case of HRVs. Tom Koenigs (2009), chairman of the German Committee on Human Rights and Humanitarian Aid, puts it this way: "HR work without the support of NGOs is impossible. In many cases, it is the local activists who possess information that is indispensable for our work."¹ Accordingly, it is listed among the obligations of the CHR to establish and strengthen cooperation with non-governmental and civil society organizations with the aim of "complementat-ion, sharing and mutual reinforcement" (CHR Web site). But not only NGOs, CSOs, or third parties are to draw the authorities' attention to particular HRVs; it is the aggrieved party, i.e. the individual citizen who is equally responsible to display HRVs. The German Commissioner for Human Rights Policy Markus Löning (2010) emphasizes: "Under the German legal system, anyone who believes their rights have been violated is in principle entitled and obliged to take

their case to court."² This principle is also established in the Philippine constitution. However, despite the aforementioned network of laws and institutions, its realization remains threatened by the indifference of responsible officials, by favouritism, and by the personal interests and excessive self-importance of those in power. The case of Human Rights Defender (HRD) Temogen "Cocoy" Tulawie is an illustrative example for this deficiency in the system for the combat of HRVs.

Embracing Civic Responsibility: Human Rights Defender Cocoy Tulawie

For 20 years, Cocoy Tulawie promoted HR work in his home region, the province of Sulu. As he stated in an interview, convincing the inhabitants of this remote and crisis-ridden area to advocate for their cause with non-violent means instead of armed force, was tedious. Even so, Cocoy was not discouraged but stuck to his way of fighting HRVs and social injustice: Together with students and other like-minded people he documented HRVs, initiated fact-finding missions, and organized mass mobilizations whenever necessary. Though these activities often meant criticizing members of the government, and sometimes to make common cause with the opposition, he felt no personal aversions but stuck to facts. However, things became more difficult when Abdusakur M. Tan was elected Governor of Sulu for a second term in 2007. To the detriment of civil society, the violent clashes between Abu Sayyaf, MNLF (Moro National Liberation Front), and the US-backed AFP (Armed Forces of the Philippines) continued unabated. Seemingly more concerned about his prestige than about the well-being of his citizens, Gov. Tan endorsed any measure to eliminate extremist armed resistance in his province. In the name of fighting terrorism, he furthered the introduction of a highly intrusive and discriminating ID card system (January 2008), supported the aerial bombing of a residential area, causing numerous civil casualties (June 2008), and put the province under State of Emergency (March 2009). Since each of these actions entailed various HRVs, Cocoy and his fellow campaigners opposed them vehemently. As condemnable as these actions were from a humanitarian and human rights perspective, the interventions carried out by the NHRI and by the jurisdiction were exemplary. This is especially true for the case of the announced introduction of the ID card system. When the plans were made public, citizens and the political opposition expressed their discontent using the legal democratic tools available. So whilst several opposition parties formu-



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1) author's translation

2) emphasis added

lated a resolution asking the House of Representatives to conduct an immediate inquiry into the case, Cocoy and his allies organized mass demonstrations and appealed to Gov. Tan personally. However, according to Cocoy, Gov. Tan merely uttered his anger in response to this protest and proceeded with his plans, supposedly on account of the financial resources already invested. Subsequently, and in accordance with the NHRI guidelines, the CHR decided to intervene and submitted a legal opinion to the government. Therein, the implementation of the proposed ID system was declared unconstitutional, concluding that the CHR "supports the call and move for the cessation and revocation of ID system in Sulu", for it made "oppression and harassment highly possible" and therefore "would be a blatant violation of human rights" (Commission on Human Rights – IX Legal Section, 2008). Due to this pressure, Gov. Tan had to cancel the implementation of the ID system. Following the aerial bombings and comparable incidents in 2008, events followed a similar course: the joint protest of local activists, national NGOs, and the regional NHRI sufficed to force Gov. Tan's retreat. However, when he declared the State of Emergency in March 2009, a more powerful authority was necessary to stop the despotic ruling of the regional chief of government. Thus Cocoy and fellow HRDs made use

of their right to appeal directly to the SC as constitutional questions of transcendental importance to the public were concerned. They filed a petition urging the SC to declare the State of Emergency null and void for being unconstitutional. While the petition was still pending, the situation suddenly became critical for Cocoy himself, and being used to fight for the rights of others, he was forced to act on his own behalf: Gov. Tan reacted most indignantly towards Cocoy's constant opposition, and his private armed forces began to threaten Cocoy and his family. When Cocoy was officially suspected of having links to Abu Sayyaf and being involved in a bomb attack, matters became even worse, as elaborated below. In their distress, Cocoy and his wife Mussah sought recourse in a particular Philippine legal remedy: the "Writ of Amparo", i.e. writ of protection. In acknowledgement of the particular situation of harassment of HRDs in the Philippines, this judicial instrument was introduced in 2007 to prevent enforced disappearances and extrajudicial killings. After hearing Mussah on the matter, the Court of Appeals decided in her favour and granted a Temporary Protection Order, directing the AFP to deploy two soldiers for the full time protection of the Tulawie family. So far, the Philippine national system to combat HRVs did not fail. Cocoy's behaviour and actions demonstrate

NEWSTICKER +++

Apex of violence and injustice: PADATA member Welcie Gica shot on August 24th 2011, the murderer has to fear no criminal prosecution, and arsonists who burnt 15 houses are not arrested, yet:

- + Jun/Jul 2012 – PADATA**
members and PNP informants regularly see alleged murderer Milo Ceballos in Panalsalan, but the warrant of arrest is not served
- + Jul 2012 – Joint attempt of local and provincial PNP forces to serve warrants of arrest against Ceballos and arsonists failed: suspects were not to be found on the ranch**
- + Aug 2012 – Ceballos is believed to have left the area**
- + Oct 2012 – IPON meets the chief of the human rights office at the national PNP in Manila, to follow up the cases on a higher level**
- + Dec 2012 – the conflict parties sign a DENR-negotiated Memorandum of Agreement (MoA) settling the land distribution; a precondition is the dismissal of all cases formerly filed against one another**
- + Dec-Feb 2013 – Villalon's lawyer and goons continuously pressure Gica's family to drop their charges against Ceballos**
- + Feb 2013 – Gica's family withdraws the charges against Ceballos, receiving in exchange 50,000PHP from Villalon**

An impressive solidarity network: relatives and members of various NGOs campaign for Cocoy's release (Source IPON)



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that the notion of an individual obligation to manifest the violation of one's rights by oneself is legitimate. However, the duty to act on such a manifestation ultimately remains with the state. Gov. Tan's declaration of a State of Emergency was a public act the national government must have been aware of without further intervention. However, there was no presidential reaction of any kind. And it took three years for the SC to announce a decision on Cocoy's petition against the State of Emergency. Within those three years,

Cocoy's personal situation changed dramatically, unveiling what was only looming: That Gov. Tan's Machiavellian governance and his unscrupulous methods were almost sufficient to override the national institutions for the combat of HRVs, and that only the joint effort of national and international non-state actors could prevent the worst consequences for Cocoy Tulawie.

Vulnerable and dependant on others: fugitive and detainee Cocoy Tulawie

For Cocoy, his being such a strong voice vehemently placing the implementation of HR above the interests of those in power had to be his undoing eventually. This time came when Gov. Tan and 12 other people were wounded in a bomb attack in May 2009. Shortly afterwards, the list of suspects included a number of inconvenient officials and other political opponents of the Governor. Cocoy was one of them and, not surprisingly but absurdly so, he was soon singled out as the alleged mastermind of the bombing. When he was accused of multiple attempted as well as frustrated murder, he continued to trust the legal system of the Philippines and that of Sulu, having just been granted the Writ of Amparo. But as he had already experienced Gov. Tan's influence and power, he was careful. After his first lawyer, Atty. Kulayan, had been to court, he tried to make Cocoy understand that he could not expect a fair trial in Sulu. He said the courtroom was a war room, full of armed men. Enough weapons were shown to intimidate the unarmed defence counsel. Under these circumstances, Cocoy was not willing to surren-



Cocoy Tulawie during the bail hearing on 4th March 2013 (Source IPON)

der to the authorities in Sulu but filed a petition for the transfer of venue and went into hiding.

This change of situation left him, the self-reliant HR advocate, dependent on the support of others. As a victim of criminalization, Cocoy had to face a powerful opponent, and living clandestinely had a large impact on his possibilities to continue his HR work and to efficiently press his own struggle for justice. So when he fled to Davao, one of his former partners in HR advocacy, the Mindanao Peoples Caucus (MPC), took over

his legal defence, with Atty. Mary Ann Arnado as senior in a team of lawyers from various NGOs. While concerning his own case, Cocoy's position changed from a defender to the defended, his and his allies' principles and aims remained the same, namely to push the state to fulfil its duty of enforcing HR. Accordingly, they based the argument for his defence on the right of a speedy and impartial trial, as well as the right of physical and psychological integrity and security. Thus, in addition to the still pending petition for the transfer of venue, he wrote a letter to the president offering to surrender to him or any other person he would name. Yet, following the advice of the Department of Justice (DOJ) and the Philippine National Police (PNP) rather than the recommendation of the CHR, the president denied it.

Two years later, when MPC already raised international interest in the case, the SC finally granted the transfer of venue. Another half a year later, on Saturday, January 14th 2012, Cocoy was arrested by the joint forces of PNP and AFP. Despite the order of the SC, which determined the venue to be in Davao, they insisted in bringing him to Sulu, as the warrant of arrest had been issued there. A private plane was already waiting for him at the airport, and although the arrest happened to be peaceful, being brought to Sulu meant life threat for Cocoy. Because a weekend was chosen for the arrest, it was impossible for his lawyers to reach the Executive Judge of Davao, Hon. Paguican, or the SC. Through a great effort, they reached Sec. Rubredo of the Department of Interior and Local Government. At their request, he ordered that Cocoy should remain in



Mussah Tulawie (to the right) during an interview with IPON observers in March 2013 (Source IPON)

Davao until Monday. But by then, Hon. Paguican refused to file the requisite Order of Commitment, noting that the case folder had not arrived in Davao yet. Under these circumstances, it seemed to be MPC who had to enforce the authority of the SC over the courts in Davao and Sulu: Supported by Loretta Rosales, Chairperson of the CHR in Manila, they got hold of the Deputy Court Administrator of Mindanao on Tuesday. He issued another order, saying Cocoy should remain in Davao until the case folder was processed. Despite this new order, for it being only a fax, the PNP brought Cocoy to the airport, where he was turned over to the officials of Zamboanga. It was only after his plane had left that Hon. Paguican, following the advice of the SC, agreed to decide in Cocoy's favour. The Executive Judge of Zamboanga was immediately informed about this latest development, and he personally went to the airport to enforce the decision as soon as the plane landed. A few days later, Hon. Paguican finally signed the Order of Commitment and Cocoy could be brought back to Davao – the travel expenses were paid by MPC.

As the case proceeded, it became obvious that a higher level of public awareness was needed to protect the rule of law as well as to ensure Cocoy's safety.

The more MPC succeeded in bringing his case to public attention, the more they risked becoming Gov. Tan's next target of physical harassment and defamation, which in turn they could only prevent by continuing their work.

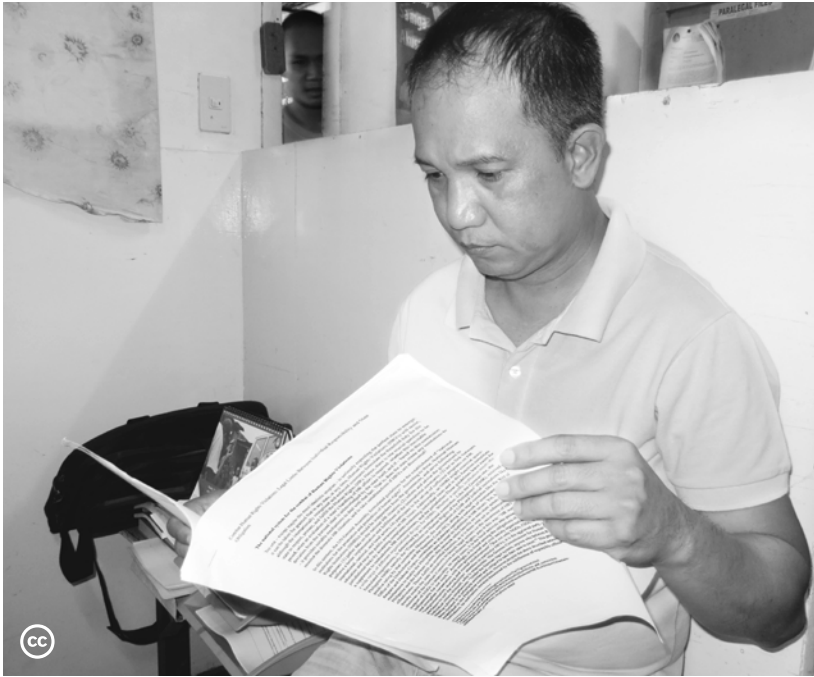
When Cocoy's defence grew stronger, Gov. Tan filed a petition to transfer the venue to Manila, arguing Cocoy had too much local support in Davao. Meanwhile, it turned out that the confessions the prosecution used as basic evidence had been either extorted or purchased. What is more, MPC received reports that murderers were hired in the jail in Manila, in which Cocoy would most probably be detained. Given these circumstances, they appealed against Gov. Tan's petition and alerted a varied local and international network including GOs, NGOs, and other HRDs, e.g. the European Union, the Asian Commission on Human Rights, and the Action Network Human Rights - Philippines. As a result, trial observers were put on their guard, articles published, and urgent actions started to ensure a fair trial and Cocoy's safety. When Gov. Tan's petition was granted, trial observers were irritated since it seemed to be based on a weak argumentation, and the SC had already defined the venue beforehand. Consequently, the defence filed ano-

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Continuation:

- + **Mar 2013** – Follow-up at the regional PNP: promise to increase the effort to implement the warrants of arrest
- + **Apr 2013** – IPON meets Barangay Captain of Dagumbaan: the local PNP outpost is still unmanned
- + **Early May 2013** – Area is distributed according to the MoA, PADATA members start cultivating their land
- + **May 2013** – Goons accuse PADATA members of crossing the border to Villalon's area
- End of May 2013** – Goons intimidate PADATA members with shots in the air
- + **May/Jun 2013** – Families of the arsonists ask PADATA members to drop their charges

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Cocoy Tulawie in Davao City Jail, reading this very article (Source IPON)

ther motion asking for Cocoy's continued detention in Davao City Jail as the danger of him being murdered in case of a transfer to Manila remained acute.

Presently, Hon. Magdoza -Malagar's judgment on the bail and the place of detention is expected at the Regional Trial Court in Manila soon, and the main hearing is to start shortly. However, a motion which questions the legitimacy of the whole trial on the basis of grave procedural errors is pending at the DOJ since 2009, despite the huge relevance and impact of this issue. This nicely fits the Governor's apparent delaying strategy, since he has to endure far less criticism as long as Cocoy is put out of action.

Shared Responsibility: Defining the Remits in the Combat of HRVs

The described course of events shows how essential it is that non-state actors advise the liable state actors on HRVs and call into action the respective control institution if one organ should fail to fulfil its duty.: HRD Cocoy denounced Gov. Tan's Proclamation of the State of Emergency as a violation of HR, thereby causing the SC to declare it unconstitutional, and MPC obtained the implementation of an existing SC order by prompting the CHR to intervene. Although within certain parameters these activities imply a performance of civic duty, there are functions which non-state actors cannot fulfil but which have to remain with the state. Once the state has been informed about an HRV, or the mere risk of one, and was provided with recommendations, e.g. by the NHRI, it is obliged

to take action. Our example illustrates how the Philippine state authorities tend to fail in this respect. If it was not for the enormous effort of MPC and other supporters who prevented Cocoy from being brought to Sulu, he might by now be one of the many enforced disappearances in the country. Thereby, what United Nations High Commissioner for Human Rights Navanethem Pillay (2012) stated in a recent publication was proven true: Especially those persons who make use of the instruments introduced by the UN to protect HR are in danger of suffering from harassment and reprisals. Not only Cocoy himself but also his family and allies were severely threatened, and increasingly so the more actively they voiced their protest. At this point, the international community is required to step in: when those who monitor and demand the observance of the HR systematically become victims of HRVs themselves, a vicious circle is constructed, which has to be interrupted from the outside. Besides, even if no harassments occur, the influence of most common HRDs is limited compared to the power of the involved state actors. This is one more reason why international engagement is essential to support the national HRDs whenever the effectiveness of their state institutions is undercut by the officials' personal interests. In view of that, it can be hoped that Cocoy Tulawie will finally find justice as his case receives high international attention. However, it is really the Philippine government that is in charge of amending and improving the structure of the national state institutions so as to render any intervention from third countries superfluous. The system for the combating of HRVs can only function if HRDs can rely on being able to voice their criticism and be heard without having to fear revenge. ■

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At Lake Mainit, people share their experience with mining (Source Nokie Calunsag)

THE MYTH OF GOLD AND A BETTER LIFE IN MINDANAO

Since March 2013, a coalition of different NGOs and church members is protesting against ruthless large-scale mining in the Caraga Region in the northeast of Mindanao. Especially the Chinese mining company Marcventures Mining and Development Corporation (MMDC) is accused of human rights abuses, polluting the water and destroying the ancestral domain

However, not only MMDC is responsible, also the government is blamed for ignoring human rights and not acting because of the great influence of international mining companies in the Philippines.

Rich Country, Poor People

The Philippines rank first in the world concerning the iron ore deposit, third in gold, fourth in copper and fifth in nickel. It is assumed that 9 Mio hectare out of a total of 30 Mio hectare are potential mining areas. Approximately 1,4% of this potential area is being mined now. Furthermore, the Asia Monitor Resource Centre reports that the gold reserves alone could amount to 16.873 billion US Dollar (Arago 2012). This would be enough to completely eradicate poverty in the country. The reality looks different though. Mindanao for example, the richest island in natural resources, registers the highest poverty and unemployment

rate in the whole Philippines. Only 0,6% of all jobs in the Philippines are in the mining sector, and most of these people are working in small-scale mining.

The Philippines Welcome International Companies

With the Mining Act of 1995, the government welcomed international multi-mining companies in the Philippines. Nowadays, it supports specifically large-scale mining. With the argument that only big companies with high-level technical equipment and the required capital are able to mine effectively, they legalise the on-going land grab. Since the Mining Act of

1995, international companies are enabled to mine without any Philippine involvement whatsoever. With this law, the government also follows the international economic dictate of the Worldbank, Asian Development Bank and other financial institutions, which demand laws that are advantageous for free trade and less state action. Nowadays, every foreign international company can apply for 81.000 ha land in the Philippines only for the first steps of its mining. Furthermore, these companies have tax immunity for the first five years and 100% tax-free bank transfers of their profits to their home countries. This does not address sustainable and reasonable mining, it rather facilitates fast and ruthless mi-



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ning. The consequences such as a completely destroyed landscape are already visible. This is also a result of the legal possibility to clear the forest unlimitedly and using as much water as needed for the operations. Forced displacement, check points and paramilitary unions are possible, too. Everything seems to be allowed for some fore-eyes: even though the mining contributes only with 6% to the national income, it provokes 57% of environmental destruction. Admittedly, there are some regulations which are designed to protect the environment and the population. But in reality there is a lack of implementation and prosecution. Indictments are ignored like in the conflict between the MMDC and local activists from Caraga Region in Mindanao.

Mining versus Human Life Quality

The Caraga Region is noted as the mining capital of the Philippines due to the presence of several mining companies conducting exploration or operating in the area. However, with the mining emerged environmental problems, too. For example, the five municipalities Cantilan, Madrid, Carasal, Carmen and Lanuza are affected by the ruthless nickel-mining in the northeast of Mindanao. Five international companies, including MMDC, are mining in this area, and the results are silty and contaminated rivers. Analysis of the University of the Philippines Natural Sciences Research Institute reveal an exceed of nickel of approximately 10.000 times the standard values in drinking water. This might be endangering not only the marine flora and fauna, but also the quality of human life. Different coalitions of local environmentalists, human rights defenders, Indigenous People and the Social Action Center blamed MMDC in particular for this situation. They claim the company acts without providing sedimentation or siltation dams, which are necessary to prevent erosion and siltation of the rivers. Furthermore, MMDC is claimed to operate illegally because business permits are missing since 2010. Additionally, the operating area of MMDC is located in a region declared watershed forest reserve, surrounded by ancestral domain. In November 2010, a coalition of different human rights defenders and several tribal communities named Tribal Coalition of Mindanao (TRICOM) filed a petition to the Regional Trial Court Branch 41. The signatories of the petition call for the immediate stop of allegedly illegal mining operations of 5 mining companies, including MMDC, because the water source of local communities and the livelihood of fishers are threatened by mining. The court granted the petition on the same day, but it was only confirmed later, in May 2011. The judge issued a Temporal

Environmental Protection Order (TEPO) and consequently a mining stop in this region as "subsisting and effective until there is an order lifting, revoking or dissolving it". However, despite the court order, until now MMDC is still operating in the area. Also the Regional Director of the Mines and Geosciences Mining Bureau Roger A. de Dios confirmed taking no action in implementing the TEPO until he gets an order from Manila. How is this possible and why can civil servants ignore court orders?

"Mining shall be pro-people and pro-environment in sustaining wealth creation and improved quality of life",
Homepage of the Mines and Geosciences Bureau (MGB)

The Mines and Geosciences Bureau (MGB) is, among other things, in charge of the administration and disposition of the country's mineral lands and mineral resources. They name rehabilitation and mine-related pollution thresholds; mine environmental audit and research; development of strategies for a comprehensive environmental protection program for mining operations; and mine safety and health audit as some of their duties. Regional Bureaus of the MGB and especially the Regional Directors are in charge of the implementation of pertinent laws, policies, rules and regulations. But this is only written on paper:

After the court decision the mining company MMDC continued its mining meanwhile the responsible MGB regional director Mr. Alilo Ensomo denied his competence for implementing the TEPO. Finally, a congressional inquiry was held in August 2011. The consequence was a memorandum issued by the national MGB Director Leo Jasareno which was addressed to the regional director to enforce the TEPO. Almost two years later, human rights defenders confronted the new MGB Regional Director since 2013, Roger A. de Dios, with the ongoing mining, but he still refuses to enforce the TEPO without a written order of the MGB Director. His main argument against the implementation is that he allegedly never got a personal order from his former colleague or the Director of the MGB in Manila-he therefore does not consider himself, to be in charge. The Philippine newsportal Mindanews reported in March 2013 that the National MGB Director Leo Jasareno said that the TEPO would be enforced if he were the Regional Executor. On the other hand, he could not enforce it even



Earth Day in Mindanao – people demonstrated peacefully against ruthless mining (Source Nokie Calunsag)

then because of a standing motion for reconsideration that the mining company has filled against the TEPO (Mindanews 2013a). However, in reality this does not affect the implementation: as long as there is no new court decision, the old order is binding. This means that the MGB is not acting even though it should. Meanwhile, three different judges refused the case, and a request to the supreme court to appoint a new judge or transfer the case to another City on neutral ground is still without action so far. Finally, in March 2013, the National MGB office sent a Memorandum of Agreement (MoA) with the order to enforce the TEPO, but there is still no action. The anti-mining activist Daniel Arias reports IPON from his experience that MoAs are often used to fool the people. *„They are full of empty promises but not hard facts according to action.’* This situation is not only an example of missing state action and an existing kingdom of lawlessness for the mining companies. Especially the fact that state actors like the Regional

MGB Director delay the implementation of the TEPO by ignoring court orders and orders of their superiors shows that they work in favor of mining companies and against the interests of the Philippine people.

Nokie Calunsag of the environmental NGO Green Mindanao uttered criticism in an interview with mindanews: „This is a very funny decision from MGB, a very controversial one since the mining firm operating in the area is closely linked to politicians in Surigao del Sur. A law is a law and nobody is supposed to be above the law,[...] I’m sure there is a bigger anomaly behind this and that the MGB is afraid that this might come out open.”¹

More than 100 Environmental and Human Rights Activists Killed since 2010

Even the Executive of the local MGB-Office support the mining issues and not the interests of the people. There are still many activists and NGOs who observe and protest against ruthless

mining. But public criticism might be very dangerous: Missio counted more than 100 killings in the context of large-scale mining, illegal logging and other environmental conflicts since 2010. Also in context with the MMDC conflict, human rights abuses took place. Last October for example, Dr. Isidrio Olan, an activist against MMDC, was ambushed. In May 2013, another environmentalist was shot down in the Caraga Region. Other activists are still threatened, and mining companies are not innocent.

Destroyed Homeland and Damaged Society

Approximately one third of the mining tenements are founded in ancestral domain, and in many parts of the Philippines this has had a disastrous impact on the livelihood of the Indigenous People and their environment. The special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, reports

1) Mindanews: Almeda, Vanessa (2013): MGB-13 insists it won’t enforce court order vs mining firm in Surigao Sur.

<http://www.mindanews.com/top-stories/2013/03/15/mgb-13-insists-it-wont-enforce-court-order-vs-mining-firm-in-surigao-sur/>

that „activities are often carried out without their prior, free and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as ‚development aggression‘. Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape and forced recruitment by the armed forces, the police or the so-called paramilitaries[...].“²

In theory, the state established protective law mechanisms with the Indigenous Peoples Rights Act (IPRA) in 1997. This law is modeled on the UN declaration on the rights of Indigenous People. It includes the right for self-determination of IP, including their lands, territories and resources. IPRA also recognized their right to manage their ancestral domain and to define its sustainable development and protection. This also includes the Free Prior and Informed Consent (FPIC), which granted them Native Rights. Even when they do not have an official title, they are recognized as the traditional inhabitants. This means in particular that the Indigenous Peoples have the right to use their land and the natural resources. But the state also reserved for itself in the constitution the privilege of the final ownership of all mineral resources in public and private lands. In reality, this means that mining companies have to ask the Indigenous People for the FPIC title and the state will decide about different permits. „But each state agency, like the Department of Environment and Natural Resources (DENR), the Mayor, Governor or National Commission on Indigenous Peoples (NCIP) get for each permission its bribe shares for their special permits“, explains Daniel Arias from a coalition of anti-mining activists. Furthermore, mining companies promise almost everything to get the FPIC from the local people: schools, health centers, infrastructure, jobs and money are only some possibilities. Another strategy are fake FPICs, corruption, or the use of force. Additionally, the law on the FPIC does not matter if the mining project was decided before the Indigenous Peoples Rights Act in 1997.

When Tribal Groups Break Because of Mining

Especially Indigenous Peoples (IP) are affected by poverty, unemployment, and social and political inequality in Mindanao. These are some reasons why local IP communities often welcome

the promises given by mining companies to build schools or health centers.

Normally one tribe is not homogeneous. There are different clans, groups and tribal elders, which together make up a tribe.

Only because they are one tribe does not mean they follow the same ideas in using their ancestral domain. In the conflict with MMDC, the affected area is the homeland of different clans of the Manobo tribe. The mining is against the will of the Bat-ao and Hunanhanun clans led by tribal leader Jimmy ‚Datu Dag-saan‘ Bat-ao, his tribal and church coalition. In March 2013, he and approximately 300 people barricaded an accessed the road which leadsto the mining operations of MMDC for weeks until the company suspended operation in the affected area. The protesters urged that mining be immediately stopped in their region. Moreover, they demanded more than 3 Mio US\$ in damages for the alleged desecration of the clan’s burial site and water source among other things.

As explained above, different clans of the Manobo tribe are sharing the rights over the land, and some of them are in favor of mining. One clan for example gave the mining company MMDC the FPIC and allowed them to mine.

It was Teodoro, the brother of tribal leader Jimmy ‚Datu Dag-saan‘ Bat-ao who allowed the mining activity in their shared area. Teodoro signed the agreement between MMDC and other tribal leaders, which excluded Jimmy ‚Datu Dag-saan‘ Bat-ao. This Memorandum of Agreement contains monthly allowances to the tribal elders as well as scholarships, regular jobs and a water system project. After one year, the mining company stopped all this support and dismissed Ips from the Manobo Tribe them from their jobs. Especially during the barricade, the community became more divided. People are still asking: „What will happen to the people when the mining company closes?“ Mining companies play exactly with these hopes and abuses.

False promises from the side of the companies are strategic. Local anti-mining activists report that mining companies promise every clan different things. As soon as one of the tribes realizes that these are false promises and starts rejecting mining, the company’s efforts centralize on another tribe. This results in a divided society. There is usually at least one clan that is supporting the mining company, even if they get only empty promises. Thus the mining can still go on.

People first – then Mining

Most people in the (potentially) affected area are not against mining in general. In mining they also see possibilities for their future. However

²) Stavenhagen, Rodolfo: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission on Human Rights resolution 2002/65. <http://www.indigenousrights.ph/hr-mechanism/human-rights-bodies/charter-based-bodies/special-procedures/reportsrecommendations/report-of-the-special-rapporteur-on-the-situation-of-human-rights-and-fundamental-freedoms-of-indigenous-people-mr-rodolfo-stavenhagen/>

they are against the sell-out of their land, missing participation, the ruthlessness and the environmental destruction. To improve this situation, a coalition of IPs, NGOs and church members are advocating the Alternative Minerals Management Bill. They are lobbying in Congress for principles like:

- responsible mining that serves the basic needs of the population
- (partly) Filipino involvement in production and benefit
- mining only in places where it does not endanger the ecosystem

In general, many people prefer the traditional small-scale mining. From their point of view, it ensures the local involvement and financial participation of the communities. Furthermore, it often means a regular income for the local people. On the other hand, there is no regulation about work conditions and security measures. Additionally child labor is more likely in small scale mining because there is less governmental control. However, both ways of mining are damaging the nature. That is why other local activists like the environmental NGO Green Mindanao promote the conservation of nature and sustainable development. They inform the local people about the strategies of the mining companies while providing mutual exchange of experience between affected people. But they also document extrajudicial killings and human rights abuses related to mining activities. These NGOs do the job that the state is normally supposed to do. Besides they are observing ruthless mining and questioning the relation between state and mining, thus putting themselves into danger. ■

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In August 2011, a group of farmers from sugar plantation Diaz, Negros Oriental, were awarded their land title. But instead of being able to cultivate their fields they have to face a series of human rights violations and abuses culminating in the killing of farmer Arturo Maicom.

- + **31st Aug 2011** – A group of farmers receives land title for Lot No. 60
- + **Sept 2011** – Opposing group of 25 farmers occupies Lot No. 60
- + **29th Nov 2011** – Promised land-handover ceremony by Department of Agrarian Reform (DAR) fails due to resistance of opposing group
- + **5th Jan 2012** – Due to inactiveness of DAR, rightful land beneficiaries decide to enter Lot No. 60 on their own
- + **5th Jan 2012** – Opposing group attacks rightful land beneficiaries with bolos and knives. Shots are fired. Some farmers get seriously injured; Arturo Maicom is killed
- + **Jun 2013** – Until now, beneficiaries still not able to cultivate their land. DAR still has not officially handed over the land to the rightful owners. Opposing group is still resisting. Death threats against beneficiaries continue

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WIDEN THE PERSPECTIVE: THE POWER OF PRIVATE PERSONS AS BREEDING GROUND FOR HUMAN RIGHTS ABUSES AND VIOLATIONS



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The debate about implementing human rights standards reached a point where also the private sector has its obligations and corporations are called upon to take responsibility to acknowledge and implement human rights standards. As cases of agrarian disputes on Negros Island exemplify, this approach is short-sided since it cannot solve all the problems related to human rights abuses. Another main source for human rights violations are powerful private persons. Their systemized human rights abuses can, if not tackled by state actors, result in human rights violations. Therefore the connection between human rights abuses and violations needs to be investigated in more depth.

A glance back at history shows that the discourse about human right standards and its implementations developed in the course of time. From the recognition of the Universal Declaration of Human Rights in 1948 it took almost 20 years until the first binding contracts for the protection of human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), were adopted in 1966. Today, several declarations and contracts focus on the safeguarding of the rights of specific groups of persons.¹ The evolution of the idea of Corporate Social Responsibility and its embedding in the human rights discourse can be included into this progress. As the recent strategy papers from the United Nations² and the European Commission³ emphasize, the impact and responsibility of corporations regarding the respect of human rights is given more and more weight. As stated in the commentary regarding Art. 1 of the UN Guiding Principles of 2011 „states international human rights obligations require that they respect, protect and fulfill the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.“ The Philippine state signed eight of the nine international human rights treaties. Based on the legalistic approach, human rights violations (HRV) can only be committed by state actors. In contrast, human rights abuses (HRA) can only be committed by non-state actors who are not bound by any contracts. Unlike the state, these actors cannot be held accountable for violating human rights. However, by holding businesses accountable for the recognition and realization of human rights through the UN Guiding Principles, the fo-

cus thus widens from HRV to HRA and from state actors to non-state actors. Therefore, the amplification of responsibilities with regard to human rights standards is to be welcomed since the different aspects of corporate activity affect a variety of rights such as labour rights, the right of people to equal treatment or the right to a clean environment, e.g. clean drinking water.

However, everyday experience of IPON-Observers shows that there is a need not only to include companies into the debate over the protection of human rights standards but that the role of other non-state actors such as powerful private persons should also be taken into account when it comes to HRA. Here, assaults, repressions or threats committed by individuals are understood as the abuse of human rights. It can be assumed that in areas where the influence of the state is limited, HRA (might) occur in a systemized way. This is due to the fact that the power of non-state actors can influence different state actors and paralyze the operations of state institutions in respect to their duty to protect human rights and follow standards. More importantly, this situation can only occur because the state tolerates and does not thwart the strategies of these non-state actors. By ignoring these abuses, the state becomes guilty of inaction and the case thus turns into a HRV. It can therefore be concluded, that areas of limited statehood are the perfect breeding ground for private persons to act beyond the law and commit HRA without being held accountable for those actions. The following section substantiates this assumption by taking a closer look at the phenomenon in the Philippines. It will especially focus on the influence of sugar plantation owners on Negros Island and on how they use their family bonds, connec-

1) Examples are the Refugee Convention, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of Persons with Disabilities, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

2) The Guiding Principles on Business and Human Rights: Implementing the United Nations „Protect, Respect and Remedy“ Framework.



IPON-Observers are talking to representatives of the police, the military, and the local government about the power of landowners in the rural areas and their systemised committed human rights abuses. (Source IPON)

tions and money in order to undermine state institutions. The interaction between HRA and HRV will be illustrated later by taking a closer look at the situation on the sugar plantation Carmenchika.

The Power of Family Dynasties in the Philippines

The influence of family dynasties which roots in the time of Spanish colonization is still unbroken and it stretches into the political field. According to the Center for People Empowerment in Governance, there are currently 178 „dominant political dynasties“ in the Philippines, and those families are present in 94% of all country's provinces.⁴ On Negros the influence of powerful families owning and controlling the sugar plantations is clearly perceptible. In the rural countryside,

the landowners often created and control an area with its own rules and laws. The Comprehensive Agrarian Reform Program is one attempt to break up the feudal structures and to enable the farmers to petition for their own piece of land and become independent. In the following context, farmers will be referred to as human right defenders (HRDs) as they are peacefully promoting their human rights within the agrarian reform.

Family bonds and personal relationships function as a basis for establishing and increasing the power of private persons and their influence. And the lack of willingness from state side to disable these networks makes it possible to establish them in the first place. The landowners have connections

to different state institutions, such as the police, the military, courts or ministries, e.g. the Ministry for Agrarian Reform. Due to this far-reaching network, the institution in charge often does not hold the landowners accountable for the HRA they commit. Additionally, it is not uncommon that crime complaints by HRDs regarding violent assaults, repression or the destruction of property are not investigated properly by the police officers in charge. In some cases, they ignore some of the accusations, leave out crucial facts or even refuse to accept the complaint as a whole. In certain areas, it is well-known that the landowner makes use of his connections to the police officers so that complaints are not investigated. In some cases, the HRDs do not even request help from the police anymore due to the expe-

3) A renewed EU Strategy 2011-2014 for Corporate Social Responsibility.

4) Article „CBCP denounces political dynasties“ - <http://newsinfo.inquirer.net/349333/cbcp-denounces-political-dynasties> (last viewed 28 March 2013).



The doors at the local agrarian reform office in Pontevedra always seem to be closed for the human rights defenders. Based on several sources, it can be assumed that the officer in charge is afraid of the powerful landowner and thus refuses to comment on the situation and to take action in the case of Carmenchika. (Source IPON)

rience and knowledge that the local police officers are loyal to the landowner. By not following their obligations as state actors, the police commits human rights violations.

In the unlikely event of a serious investigation by the police or other state institutions in charge, the landowners can still count on their family bonds and relationships to get rid of the problem. Besides, money is a willingly used instrument to bribe police officers, judges, employees of the ministries or even the HRDs themselves.

Next to corruption, criminalization⁵ of HRDs and the so-called „forum-shopping“⁶ are common strategies of landowners to enforce their personal interests and to iron out accusations made against them. Landowners report invented offences in which they accuse the HRDs of forceful entry of their property or harvest theft. The purpose of these accusations is to enforce an injunction against the HRDs and hence stop them from entering and cultivating their land. This modus operandi of repression is practicable due to two dependent facts:

1) landowners occupy a powerful position compared to the limited possibilities of the HRDs.

2) the state facilitates the influence of the private persons by letting them succeed with their far-fetched accusations and by allowing „forum-shopping“ tacitly.

All Comes Together: The Case of Hacienda Carmenchika

The HRDs on Hacienda Carmenchika, located in Pontevedra, have already been awarded their land titles, but since February 2012, they have not been able to enter their land and cultivate it anymore.⁷ The former landowner, Francisca „Kitchie“ Benedicto-Paulino refers to a leasing contract which is, according to her, valid until 2015, although this contract was already revoked by the competent court, the DARAB⁸, in September 2012. As a consequence of the unwillingness of the former landowner to accept this decision, the HRDs experienced several incidents of repression, threats and different cases of harassment from farmers loyal to Benedicto. Between October 2011 and February 2012, the HRDs reported six cases

5) For more information see IPON Report 2010, and Dannenberg/Lanfer/Richter 2009.

6) The term „forum-shopping“ describes the plaintiffs practice to choose the court that will most likely provide a favorable judgment for them.

7) For further information cf. Tiepmar/Trötzer 2012, and IPON Report 2013.



IPON Observers regularly show presence in the concerned area of Hacienda Carmenchika and talk to the human rights defenders about their overall situation and their security on the sugar plantation.

(Source IPON)

the landowners gain. In the end, the state gives up its control over certain areas and paralyzes itself. Therefore it is even more necessary to widen the debate about ensuring and implementing human rights standards and to enlarge the perspective by taking into account the connection between HRV and HRA, which are also committed by non-state actors other than only businesses. ■

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of physical violence, verbal threats, warning shots and the destruction of their property to the local police in Pontevedra. Besides, the landowner's employs several security guards who are armed with guns that they do not hold official permissions for. They patrol the area and threaten the farmers. However, the police did not process the complaints of the HRDs. Moreover, they even refused to record all incidents. Due to this absence of action, the HRDs do not ask for help from the police anymore. By not acting, the police commits a HRV and opens the door for further HRA. Additionally, the former landowner succeeded in enforcing an injunction against the HRDs by the use of „forum shopping“: Instead of calling the „DARAB“, a judgment was passed by the Regional Trial Court in La Carlota. Even though this court is not in charge when it comes to agrarian reform disputes, its decision in favor of the former landowner is still valid.

A reason for this effective influence might be the fact that the main representative of Benedicto, Edgardo Alonso, has personal bonds to the Chief of Police in Pontevedra. Moreover, Alonso's brother is the current mayor of the city. The ties

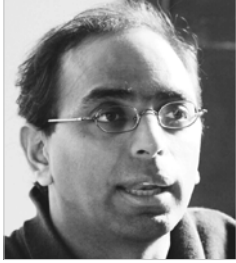
of the Benedicto family even reach the level of national politics. One family member, Juliet Marie D. Ferrer, is the current mayor of La Carlota city and married to the recently re-elected congressman Jeffrey P. Ferrer. This is also why state actors on the local as well as national level describe the sugar plantation as a „high profile case“ and turn a blind eye to the events. But still, this does not free the state of its duty to prevent HRV. To sum up, the case of Carmenchika exemplifies what Werning 2012: 13 defines as an unhindered power of the triad „guns, goons and gold“.

Conclusion

What is happening on the sugar plantation Carmenchika is no isolated case. Rather, it exemplifies that the actual impunity and the discretionary power of private persons leads to HRA being committed systematically. In the end, the non-investigation of HRA by the responsible state institutions causes the violation of human rights. The HRDs on the sugar plantations who are fighting for and claiming their rights are caught in a vicious circle of power relations. The more the state actors fail to meet their responsibilities, the more power

8) 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 other's respective responsibilities. Cases regarding the agrarian reform ought to be exclusively heard by the DARAB.

BENETTON, OTHERS TIED TO BANGLADESH FACTORY DISASTER: 400 KILLED¹



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Over 400 people were killed when a Bangladeshi building housing five clothing factories collapsed last week. (BBC News Asia 2013) The tragedy at Rana Plaza in the town of Savar is the latest in a series of industrial disasters to call attention to unsafe working conditions in the global apparel trade.

In the last few days, paperwork and unfinished materials pulled from the rubble indicate that the list of companies that bought clothing from the factories included: Benetton of Italy, Children's Place and Cato Corporation from the U.S., Kik from Germany, Loblaw from Canada, Mango and El Corte Inglés from Spain as well as Bon Marche and Primark of the U.K.

Several companies, including Benetton, initially attempted to distance themselves from the five Bangladeshi suppliers in the building - Ether Tex, New Wave Bottoms, New Wave Style, Phantom Apparels and Phantom Tac. (Daily Ittefaq 2013)

“None of the companies involved are suppliers to Benetton Group or any of its brands,” Benetton tweeted (24 April 2013, 10:11 a.m. Tweet). “[We] did not have any ongoing production at the time of the incident”, said Cato in a Facebook statement, “at the time of this terrible tragedy” (29 April 2013, 11:05 p.m. Facebook).

Children's Place did the same: “[N]one of our apparel was in production” (New York Times 2013). Spanish manufacturer Mango claimed that they “would not have been able to ascertain that the owners of said building had built three storeys more than is permitted” (27 April 2013, 6:45 p.m. Facebook).

The powerful Bangladesh Garment Manufacturers and Exporters Association (BGMEA) has also tried to distance itself. “We asked the garment owners to keep it (the building) closed,” claimed Mohammad Atiqul Islam, president of BGMEA. (Dawn Media 2013)

Activists are furious. “[T]hese retailers cannot just wash their hand and say, „We didn't do production there,“ Kalpona Akter, executive director of the Bangladesh Center for Worker Solidarity, told Democracy Now, a U.S. TV program. “They have responsibility. They cannot just go away from this responsibility and say that „We didn't sew, or we didn't pro-

CORP WATCH – HOLDING CORPORATIONS ACCOUNTABLE

Non-profit investigative research and journalism to expose corporate malfeasance and to advocate for multinational corporate accountability and transparency. We work to foster global justice, independent media activism and democratic control over corporations. We seek to expose multinational corporations that profit from war, fraud, environmental, human rights and other abuses, and to provide critical information to foster a more informed public and an effective democracy.
(Extract from the selfdescription of CorpWatch)

¹) Slightly shortened reprint – with the kind approval of CorpWatch. First published at CorpWatch Blog (2013) – <http://www.corpwatch.org/article.php?id=15836> – 1 May (last viewed 28 March 2013).

duce, make clothes in this factory.” (Democracy Now! 2013)

“It is high time for (companies like) Benetton to stop this senseless game of always trying to pretend they’re not there,” said Ineke Zeldenrust, international coordinator of the Clean Clothes Campaign, an anti-sweatshop group based in Amsterdam. (New York Times 2013) “Since Tazreen, where 112 people died, brands have come up with insufficient proposals such as safety videos (H&M) or a safety academy (Walmart). How much safety does a video provide, when floors collapse or emergency exits do not exist? The lack of action demonstrated by brands amounts to criminal negligence.” (Clean Clothes Campaign 2013; cf. CorpWatch 2013)

European Union (EU) governments have promised to take action by targeting the Bangladeshi government. “The EU is presently considering appropriate action, including through the Generalised System of Preferences – through which Bangladesh currently receives duty-free and quota-free access to the EU market under the „Everything But Arms“ scheme – in order to incentivise responsible management of supply chains involving developing countries,” said Catherine Ashton, the EU foreign policy chief. (Financial Times 2013a)

But experts are skeptical noting that the 27 countries that make up the EU will probably back down under pressure from the multinational retailers who source \$20 billion of clothing a year from the south Asian country. Nor is the Bangladeshi government likely to pay much heed, given that many senior politicians own garment factories.

Some believe that the big retailers can provide a solution. “[I]n a world where consumers demand ever lower prices, the cost

of a bargain can be too high,” editorialized the Financial Times. “Retailers will argue that it is not their job to enforce regulation. That is true ... [T]hey should also use their economic muscle to press the government to do its job.” (Financial Times 2013b)

At least one reader poured scorn on the editorial. “Common arguments to benefit developing world garment workers hinge on charging higher prices to the consumer,” wrote William Hamilton to the newspaper. “Yet, wouldn’t it be easier and more beneficial for everybody if, instead of clothing companies selling shirts at a 400 per cent mark up, even on sale, they dropped their margins by paying manufacturers more?” (Financial Times 2013c)

The apparel industry is starting to wake up to the negative publicity generated by garment factory deaths. Some 25 companies including Carrefour from France, H&M from Sweden, the Gap and Walmart from the U.S., agreed to meet with labor activists in the town of Eschborn, near Frankfurt, on Monday, to discuss ideas to improve factory safety in Bangladesh, at the invitation of the German Agency for International Cooperation. (Wall Street Journal 2013)

Others say that change will only happen when ordinary Bangladeshis are empowered. “The reaction in the global north to the latest „accident“ in Bangladesh has been to talk about boycotts – to break the global commodity chain at the point of consumption. But that is not enough,” adds Vijay Prashad in the Guardian. “What is needed is robust support for the workers as they try to build their own organisations at the point of production. The Bangladeshis are capable of doing their own labour organising; what they need is political backing to do so.” (The Guardian 2013) ■

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DRIVERS OF HUMAN RIGHTS VIOLATIONS IN SOUTH SUDAN



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The denial of basic human rights to millions of citizens in the world's newest state of South Sudan does not seem to feature highly on the global agenda. Yet, this is the basis for transforming the country into a democratic and fully institutionalized state. Most attention is focused on the conflict of the country with the Sudan over ownership and allocation of oil resources. South Sudan's independence in July 2011 was a result of the lengthy peace deliberations that culminated in the Comprehensive Peace Agreement (CPA) signed in Kenya in 2005. Within the ambit of this agreement the South Sudan People's Liberation Army/Movement (SPLA/M) government strongly asserted its commitment to the protection of citizens by strengthening security institutions. However, the realization of a secure environment for the citizens remains elusive. As a result, the country continues to witness an increasingly high incidence of human rights violations resulting from violent conflicts across most of the States, with puzzling government response. The quandary for many analysts is that these violations seem to be executed by the national army in its fight against the highly organized rebel groups. Yet, the state has the obligation to protect the citizens against any form of violations. The purpose of this analysis is therefore to contextualize the human rights violations in the post-conflict state.

Introduction

Human rights have a mixed history in the newly created sub-Saharan country South Sudan. The poorly structured security institutions and hidden political contradictions have recently been blamed for inhibiting the implementation of the 2005 Comprehensive Peace Agreement (CPA) and thereby hindering democratic rule. The country is struggling to get politics right, develop a new constitutional order that respects individual and group rights as well as institute a culture of governance that incorporates the people and liberates their energies for economic development. For some analysts the changes happening in South Sudan since the signing of the CPA in Kenya are merely a façade and are not likely to bring about real change.

It is worth noting that the last two years since the Republic of South Sudan was inaugurated as the 54th country of Africa, the old barriers created by the Anglo-Egyptian Condominium (1899-1956) policy have been deconstructed and new hopes created (Deng 1995; Douglas 2003). However, while marginalization may be a thing of the past among many south Sudanese, it has not eradicated the dictatorial tendencies of the incumbent leadership. The oscillating political instability in almost all of the ten States across the country exposes civilians to brutality of both the national army and organized criminal groups. Indeed, scholars on South Sudan have predicted that despite the praise that surrounded the signing of the CPA, and the critical role ascribed to the former lea-

der of the South Sudan People's Liberation Army/Movement (SPLA/M) John Garang, the peace process would face prolonged challenges due to its inadequacy and short-sightedness (Young 2005; Adwok 2000; Young 2003; Rolandsen 2011). This murky history provokes that the initial hopes of citizens are diminishing at an alarming rate due to an increase in killings of civilians, abduction of women and children, cattle theft and the condoning of violence by some government quarters.

Conceptual Issues

The concept of human rights is context-specific. Its interpretation and usage is governed by political and socio-economic variables across regions and cultures, which prompts a proliferation of definitions. In this paper, there are two ways in which human rights are perceived: in a narrow developing country's perspective; and the broader universal one.

The Human Rights concept especially as it relates to development of institutions seems elastic (Kibwana (1993). Segura (2006) further observes that many African governments, South Sudan included, see the concept of human rights as merely providing a yardstick to criticize and/or evaluate their performance with a Western bias. This perhaps explains the reasons behind the perception across Africa that international instruments such as the ICC „unfairly“ target African leaders. However, given the dubious nature of most of the African political elites this serves to illustrate their repulsion of justice for



A Sudan People's Liberation Army (SPLA) tank in Turalei, South Sudan. (Source flickr, Tim Freccia, ENOUGH Project)

the victims of dictatorial rule and the impunity that accompanies class politics. This thinking furthermore contradicts the UN core values and the consolidation of international peace as well as the prevention of conflicts across the globe.

On the same line of argument, most African political leadership view human rights as an ideology or theoretical construct employed to criticize their leadership (Mutua 1993). Such a pessimistic attitude arises due to several reasons. Many leaders fail to recognize that the provision of human rights in their countries can act as a liberating and empowering force which can place their countries on the path to development (Sen 1999; Annan 1998). Indeed, among the many causes of conflicts in the new Republic of South Sudan, lack of economic opportunities and the vague land policies are ranked high (GOSS 2011). Scholars and practitioners have always considered human rights in different ways. For example, Amartya Sen and Kofi Annan have argued that some aspects of the human rights approach such as ethics may not necessarily be universal. Nevertheless, trends on human development indicate that this

approach has been applied in countries emerging from long-lived conflicts with profound impact on poverty eradication and institutional transformation (Todaro and Smith 2003; Keohane 1984).

Institutional Failure or Political Negligence?

This paper hypothesises that no clear line exists between the different arms of government in South Sudan, thus leading to ineffective coordination of human rights policies.

The Government of South Sudan has made efforts towards developing a functioning criminal justice system (CJS). The focus has been on establishing the South Sudan police, prison services and courts, constructing necessary infrastructure and passing new legislation. Personnel in these institutions have benefited from global capacity building initiatives by peacekeeping training institutions such as the International Peace Support Training Centre (IPSTC). However, for a number of reasons, including uncoordinated capacity building activities, perpetual weak-

nesses in both military and rule of law institutions seem to prevail. This in turn leads to a high rate of human rights violations whenever there is an outbreak of violence.

The South Sudan Police Service was instituted in 2005. Whilst the mandate of the police is well articulated by the Ministry of Interior, the service is largely unable to discharge this mandate due to lack of sufficient resources and trained personnel. In fact, the police service is commonly described as the „weakest link“ in the criminal justice system. Following the CPA, a large number of former SPLA combatants and members of numerous militia groups were transferred to both the police and prison services. As a result, the service faces a significant loss in capacity. This makes citizens vulnerable to risks of rape, abduction and child labour. UN OCHA reported in 2011 that about 3,400 people died due to violent incidents (Human Rights Watch 2012).

The second crisis hampering the protection of human rights in South Sudan is the complexity of a plural legal system. Both statutory and customary courts draw on multiple sources of law. The basis



Doing research in the field. (Source Francis Onditi)

for criminal punishment is an amalgam of British-introduced common law embodied in statutes as well as the unwritten customs of over 50 indigenous ethnic groups. There is also evidence that Islamic law continues to have subtle influence on judicial practices. Furthermore the blotted prison service coupled with ill trained staff compound the challenges facing the justice system.

On the political side, governance experts and analysts on South Sudan have repeatedly warned that one of the crises to the political legitimacy of the GOSS is building an effective governance structure that brings the SPLA under civil control (Deng 1995). This brings to focus certain points of concern. One is the professionalization of the SPLA as a standing army and an improvement in the capacity and procedural policies of related government bodies. The SPLA has yet to decentralize operational structures and down-size an estimated 210,000 soldiers who currently use 40% of the GOSS's national budget (GOSS, 2011).

Moreover, the transparency and accountability in the trading of arms in South Sudan has been called into question. Under the CPA, arms transfers to Sudan's „ceasefire zone“, which also included South Sudan, were prohibited without the express authorization of the Joint Defence Board (JDB) that is comprised of equal membership of Sudan Armed Forces (SAF) and SPLA. It is also important to note that SPLA does not yet have an elaborate and transparent structure of reporting

arms imports but has a legitimate right to obtain military equipment and material as part of its outgoing professionalization towards a modern army capable of defending its sovereignty (Mike, 2009).

The lack of command, control and communications (C3) structures has led to reliance on the initiatives of local commanders. Dispersed units are dependent on support from the local population or have to resort to self-reliance methods to survive. This rather loose command system provides operational and tactical flexibility but undermined strategic cohesiveness. The integration of an estimated 50,000 organized armed groups (OAGs) especially after the Juba Declaration, complicate the SPLA's internal structures as the integration of former adversaries into the hierarchy triggered tensions over the distribution of ranks (Small Arms Survey, 2008). The crisis facing the GOSS towards defending human rights against violations is also disregarded by the ethnicity-driven system of appointment to the security arm of government. This has slowed the efforts of transitioning from a guerrilla military to a professional national defence force that can uphold and defend the national, regional and international human rights principles.

Finally, there seems to be a convergence of the two major factors driving human rights violation in GOSS. The weaknesses in the political organization led by SPLA/M spills over to the security organs including police and prison. Though idealists (Morgenthau and

Thompson 1991) have asserted that the politics of a country are governed by laws of the land, this may not be the case for states emerging from conflicts such as South Sudan. This is due to a combination of factors including the subtle military rule that is slowly building a class state in Juba at the expense of the population that is exposed to the brutal arm of the security forces-government and organized militia groups.

Conclusions

The aim of this article was to identify both institutional and politico-military factors that drive inter-communal conflicts and their implications on the status of human rights in the new Republic of South Sudan. The uncoordinated institutions of police, prison and the military has been found to be an outcome of both historical factors as well as the fixation of the current regime to reward the former fighters without considering the professional gaps that exist in the entire system. This dual (institutional and politico-military) jittery indicate that future research in this area will be more informati-

ve if it focuses on post-SPLA/M internal governance and how this relates to the status of the country's Human Rights Framework and the entire Criminal Justice System (CJS).

■

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A soldier from SPLA, Sudanese People's Liberation Army, Juba, Southern Sudan. (Source flickr, Stein Ove Korneliussen)



IPON AND THE INSTRUMENT OF HUMAN RIGHTS OBSERVATION

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

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

IPON will not intervene in any internal conflict and will not interfere in the strategies of the accompanied HRD. The organisation will only go into a conflict area after a request from a human rights defender organisation and after preliminary studies which include an examination whether the instrument of human rights observation is suitable for the present situation.

The work of IPON is based on four pillars:

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

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

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

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



Partner groups 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 Charter is performed by Philippine Institutions? Which are the elemental dangers human rights defenders in the Philippines are exposed to? These are some of the possible topics. Comparisons with other countries will expand the handling and perspectives of human rights observation. Each publication has its own thematic emphasis. Guest articles from different disciplines and organisations are welcome.

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