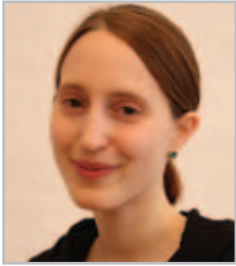


## THE IMPACT OF CRIMINALIZATION ON HUMAN RIGHTS DEFENDERS



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

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

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

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

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

### Who is responsible?

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

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

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

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

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

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

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

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

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

#### SOURCES

- United Nations (2004): Human Rights Defenders: Protecting the Right to Defend Human Rights. UN Fact Sheet No 29, Geneva.