

PROCEEDINGS ON FAIR JURISDICTION IN RURAL AREAS IN THE PHILIPPINES



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Fair, impartial, independent and equal. Measures of an effective working judicial system. On Bondoc Peninsula these international standards seem to be far away. Like a local example shows.

„Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.“, respectively: „All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...].“

These are articles of the „Universal Declaration of Human Rights“ and the „International Covenant on Civil and Political Rights“, which were signed by the Republic of the Philippines in 1966. By signing these international human rights treaties the Philippines assume obligations and duties to respect, to protect and to fulfil human rights. The obligation to respect means that the state must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires the state to protect individuals and groups against human right violations. The obligation to fulfil means that the state must take positive action to facilitate the enjoyment of human rights. Through ratification of international human right treaties, the government undertakes to put in place domestic measures and legislation compatible with their treaty obligations and duties. This is the theoretic background, but, unfortunately, often domestic legal proceedings fail to address human rights abuses (Goodhart 2009). The above demonstrated international articles are concerned with so called „judicial human rights“. They deal with the standards of proceedings and the duty of a fair trial, an adequate duration of the process and an impartial judge handling the case. The articles want to make sure, that there is equality before the law and there are international comparable standards. On Bondoc Peninsula, these standards are not totally implemented yet.

This article looks into the guarantee of a fair and effective judicial system in a rural and poor part of the Philippines. The data is based on IPON observations since 2006 (see IPON 2007, 2008), interviews with human rights defenders (HRD), the entrusted judge, lawyers and Philippine non-governmental organizations.

One example of the lack of judicial human rights implementation is the conduct of the Municipal Trial Court (MTC) of San Francisco, Quezon Province. Because there is no autarkic local court in San Andres, cases from this municipality are also given to the MTC of San Francisco. There are two main problems concerning the work of the local Trial Court, specifically with the judge representing the court, accounted from a human rights perspective. The first problem is the risk of protraction of cases, respectively the long duration of the proceedings. The second problem is the unsecured fair trial. Both circumstances are part of the following examination.

It is a fact, that most of the proceedings at the MTC take an incredibly long time until a decision is made by the judge.

The long duration of the proceedings tend to result in psychological problems and economic disadvantages for the HRD concerned. Formally, there should be a hearing every month but in practice, due to the lack of availability of the plaintiff or the judge, hearings are regularly cancelled. The result is that some hearings are only conducted every two or three month and last often over a total period of three years or even longer, the maximum duration reported by IPON are twelve years. The proceedings are connected with financial expenses for the latter. They have to pay for the travel, the food and the legal expenses. The day a hearing take place, the accused is not able to work and earn money for the family. It is stated in the „International Covenant on Civil and Political Rights“ that there should be a decision „[...] without undue delay.“

Some cases handled by the MTC San Francisco, respectively by the judge, are ongoing since several years. Every two or three month the accused have

to appear at the court. In this manner they are kept on the go. In the end most of the accused farmers are cleared of any charges. An ongoing process for several years is alienating the farmers to apply, for example, for own land.

In 2005 the Agrarian Justice Foundation Inc., had to pay the bail for only one farmer of the province Quezon II. one year later, in 2006, the number rised up to 108 farmers (Interview Conrado S. Navarro). Since 1996 more than 300 farmers of the KMBP (Kilusang Magbubukid ng Bondoc Peninsula), the farmers organisation on Bondoc Peninsula, were arrested and had to pay a huge bail (Carranza 2007: 21). This circumstances, that are demoralizing the farmers and which are countenanced by the local judi-

ciary, may underline the assumption that the filed cases are more a systematic harassment by the local landowner than a real legal concern.

Fair jurisdiction is not only about the adequate duration of the process, there are some international standards concerning the term of fair trial, that are not satisfactorily implemented on the local level on Bondoc Peninsula, specifically within the municipalities the MTC San Francisco is entrusted with. IPON-members could observe the judge's conduct during several hearings. There were obvious violations of international juristic human rights standards within these hearings. Not all the accused could attend adequately. Some had to stand because of insufficient seats within the court, others even had to stand

outside at the corridor. The judge, representing the local state authority, was writing text messages during the interrogation of a witness and was smoking during the hearing, which is illegal, regarding the national law (RA9211).

Based on the IPON observations there is a risk to a no equality before the law. The judge did not take the accused seriously and even made fun of them. Efforts of the accused side to show connections between cases and the situation with big landowners had been blocked totally by the judge. Therefore you can say, that the observed hearings were not a fair trial according to national and international guidelines.

„[... next page]“

BRINGING JUSTICE TO THE GRASSROOTS



MOBILE COURT BUSES TRY TO IMPROVE THE UNSUSTAINABLE SITUATION OF THE JUDICIAL SYSTEM. A TRUE EFFORT OR A DROP IN A BUCKET?

Inspired from a Mobil Court System in Guatemala the Supreme Court of the Philippines created the project „Justice on Wheels“ in 2004 (more information: Supreme Court of the Philippines). The project was launched as part of a Judicial Reform Support Project, a countrywide World Bank-supported initiative. The Mobile Court is provided with a full personnel complement: a Presiding Judge, a Clerk of Court, a Prosecutor, a Public Attorney, a Court Stenographer, a Docket Clerk, a Process Server, a Driver, and a Security Guard.

Established as a means to bring justice closer to the province and the poor by providing a fast and free resolution of conflicts through conciliation, mediation or adjudication and to help depleting the country's jails and court dockets it was faced big challenges since the beginning. Overcrowded jails all over the country, a huge lack of resources – financially and labourly – and a hard access to justice for the poor, especially in the province. The long delay in the resolution of cases is due principally to the large number of vacancies in the judiciary, the laziness of some judges and the dilatory tactics of lawyers. Pending court cases, as of 2006, totaled 800,000 (Asian Human Rights Commission 2008b). The regional trial courts had the biggest backlog of 353,026 cases. A lot of the detained inside the Philippine jails are persons charged with crimes that give them the right to be temporarily released on bail while the cases against them are still being heard in court. But because of poverty, they often cannot post the necessary bail and obtain their freedom while their guilt has not yet been proven beyond reasonable doubt. Four Mobile Courts rolled out since 2004. Related to the mentioned circumstances a really small contribution. Sure, „Justice on Wheels“ is a effort to improve this unsustainable situation, but even if Mobile Courts resolve cases, it can neither be an alternative nor a replacement to what should be an effective, competent and an independent judiciary. If the regular courts were functioning efficiently, there would have been no need for buses converted into mobile courts. More (impartial) judges, more prosecutors, more public attorneys, more money for the judiciary and – what is the most important – more justified trust in the judicial system is needed.

There are voices of the local farmers saying that the judge is being paid by the landowners to act in their favor, which is definitely hard to prove. The accused, the local HRD and IPON, after observing several hearings, are afraid that the MTC San Francisco is neither independent nor impartial. Sometimes "day-time judges in the local courts worked in the evenings as lawyers for landlord families" (Putzel 1992: 162, 204).

Until now, there is no effort to investigate in this direction by the superior authority. This would encourage the credibility of the state institutes.

This conduct of the MTC San Francisco and the concerned judge must be seen within the whole situation on Bondoc Peninsula. The criminalization respectively the harassment against HRD are not actively enforced by the state actors, nevertheless they are playing an important role by countenancing or not avoiding the human rights violations on their entrusted level. The landlords, trying to stop the land reform process, obtain injunctions at the local courts to block the redistribution (GTZ 2006: 70).

There is a lack of resources within the Philippine Judiciary (Asian Human Rights Commission 2008a). There is only one judge on Bondoc Peninsula responsible for nine MTCs (Franco 2005: 23). Thousands of accused are waiting in jail for the starting of their processes. But there is not enough money and there is a lack of human resources. Therefore the Supreme Court created "Justice on Wheels", a kind of rolling trial courts, specifically to support the provincial judiciary

and to improve the accessibility to justice by the poor. But even with this lack of resources - financially and labourly - the local Trial Court of San Francisco nor San Andres has an excuse of tolerating human rights abuses, neither an excuse of not avoiding them. They have to respect, protect and fulfil human rights, just like it is stated in the signed treaties.

IPON observation and local voices showed a faulty functioning within the local judiciary. The Philippine state assumed obligations and duties to respect, protect and fulfil human rights. This includes judicial human rights like a fair and independent process. In the rural area the access to justice for the HRD is hard and expensive. The criminalization of them and elite structures of the local authorities lead to an unsustainable human rights situation. The big landowners abuse the judicial system to maintain their own territory of law – "the hacienda law" (see Hoffmann 2007:13), without being bared by the local authorities.

And even with efforts like the "Justice on Wheels" project there is no real improvement of the judicial system – especially in the province. Maybe the EU financed „Access to justice for the poor" reform program, will create a way to reform effectively the paralysed judicial sector. It will be a task for the international community to look of the development how the judiciary structure deal with the situation of human rights defenders in the Philippines.

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