

CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS IN AGRARIAN CONFLICT – STRUCTURAL CONSIDERATIONS



Janina Dannenberg,
28 years, is studying environmental science at the University Lüneburg in Germany. Environmentalist in northern Germany. She is a founding member of IPON.



Anne Lanfer,
28 years, Master of Science in Nutrition and Household Economics, has worked on Philippine agrarian issues since 2002 using both political and scientific approaches. She is a founding member of IPON.



Johannes Richter,
38 years, Diploma in Biology, studies social anthropology and political science at Hamburg University in Germany. Environmentalist in northern Germany, founding member of IPON.

Criminalization of human rights defenders (HRD) has been an issue on international level that is increasingly discussed in connection with the UN- Declaration on Human Rights Defenders. The discourse has also been raised in the Philippines, where HRD report to be offended and criminalized (see www.karapatan.org; Amnesty International 2009).

The following article focuses on the criminalization of HRD with a farming background in the rural Philippines. The figures provide evidence that criminalization affects activists of peoples organizations¹ in rural areas and not only actors of civil society that take centre stage in the Philippine national human rights discourse. It is further shown that criminalization is based on a close entanglement of private actors and particular key players within the state administration.

The Municipalities of Mulanay, San Narciso, San Andres and San Francisco, located on Bondoc Peninsula on the southern tip of the largest Philippine island, Luzon, and the human rights defending Peoples Organization KMBP (Kilusang Magbubukid ng Bondoc Peninsula) serve as case study for this article. The said area is dominated by a “deeply inequitable socioeconomic structure based on ownership or control of land” (Franco 2003:2). As a means to ensure their economic, social and cultural human rights, KMBP is demanding the implementation of the state-led Program for Agrarian Reform². The organization is a locally organised People’s Organization of HRD, that works together closely with a provincial operating NGO³, but which holds no significant stake in the human rights discourse on national level. Since the 1990s, the right-based⁴ non violent activities of the organization were responded with different forms of violent repression mainly by the Landlords and their allies (see IPON 2007, IFFM 2006:19).

The political power relationships in Bondoc Peninsula are dominated by a close interrelationship of landholding elites with local politics and administration (see IFFM 2006:18–19). In the following we analyse how the different actors contribute to the criminalization of HRD. It becomes clear that private actors, such as landlords file

charges whereas state actors legitimize and put the proposed criminalization into practice. As a party directly involved in the agrarian conflict, landlords are not just applying different forms of physical threats (see IPON 2007), but tend to file cases against HRD with Land- Reform- Petitioner background. As of 2008, 295 cases against members of the KMBP are pending (Table 1), most of them since many years⁵. The majority of these are qualified theft. The matter of qualified theft in Philippine law applies, among others, to the stealing of coconut and its derivatives. Given the fact that the whole conflict takes place on coconut plantations, this is a crime that is easy to presume. This also applies as well to most of the

Table 1: Nature of filed cases in Bondoc Peninsula against HRD of KMBP

Type of criminal case	Frequency	%
Qualified Theft	179	60,7
Estafa	104	35,3
Libel	3	1
Grave Threat	1	0,3
Malicious mischief	1	0,3
Attempted homicide	1	0,3
Different forms of trespassing	4	1,4
Frustrated murder	1	0,3
Unlawful detainer	1	0,3
Total	295	

Source: QUARDDS 2008

1) In the Philippine context, peoples organizations are to be seen as local, mainly community based organizations (in opposite to NGOs that work with a national scope and under official registration).

2) Namely CARP (Comprehensive Agrarian Reform Program), that was set into law in 1988.

3) QUARDDS (Quezon Association for Rural Development and Democratization Services).

4) Right-based in this context means that the activities of the organisation refer to the

legal framework of agrarian reform.

5) All figure derive from QUARDDS 2008.

6) Estafa (span.) in Philippine law is a criminal act of fraud/deceit.

7) The same information are gathered in many Interviews conducted by IPON.

8) In 2007 QUARDDS Reported a number of 349 accused Persons, in 2008 the number already went down to 223.

Table 2: Filed cases in Bondoc Peninsula against HRDs of KMBP in the different municipalities

Type of criminal case	San Francisco	San Andres	San Narciso	Mulanay
Qualified Theft	3	170	6	–
Defraud (estafa)	2	–	–	102
Others	10	1	1	–
Total	15	171	7	102

Source: QUARDDS 2008

other types of accusation, such as estafa⁶ and libel.

Table 2 displays the cases by municipality. While qualified theft is the main criminal case filed in San Andres, the HRD in Mulanay are confronted with the accusation of estafa by one single landowner: Aquino. QUARDDS (2008) investigates the geographic distribution of cases in detail and stresses the link between the type of cases and the landowner involved.

The types and the origin of the cases clearly show political motivation. This is underlined by the high number of cases filed: From 295 cases, 223 Persons are affected, which comprises nearly 10% of the KMBP members. Thus, the chances to be accused for a crime is much higher for HRD of KMBP than for the rest of the population of the province (see www.pnp.gov.ph).

In many of the cases, not just single persons but groups of up to 68 HRD are accused. Many members of KMBP are involved in more than one case, a few in up to 10. Farmers with leading position within the KMBP are confronted with the highest number of cases (QUARDDS 2008). This shows the positive association of the intensity of accusation and the human rights defending activities. Further-

more, many HRD describe a strong chronological connection between political activities they made and criminal cases that followed. They also report to have no criminal records prior to their petition for land reform (QUARDDS 2008)⁷.

The given figures refer to cases that were pending in 2008, cases that were already dismissed by then, are not included⁸. None of the trials against the HRD in KMBP has resulted in a final judgement against the accused. This proven innocence gives another strong hint to the political background of the complex process of criminalization.

All figures given so far only refer to cases that ended up in court. Moreover, there is a considerable number of new charges that are in process to be handed over to the court, according to IPON's investigation.

With human rights dimension in mind, it should be stressed that cases reach the court despite the obvious political motivated accusation and despite the Existence of Department Circular NO. 23 of the Department of Justice that establishes a quasi judicial body for agrarian related disputes (see box Department Circular NO. 23, this volume). Based on good practice, the private actors that are filing the charges ought to be iden-

tified as politically driven and their charges should be handled with appropriate caution (see article on The Role of the Prosecutors, this volume). Private actors encourage criminalization of HRD through the filing of charges, but the process of criminalization is boosted through the handing over of politically motivated charges to court and in some cases the treatment of the accused HRD in different agencies (see article Proceedings on fair jurisdiction in rural areas in the Philippines, this volume).

Politically motivated charges identified as those by the relevant state actors would diminish the harm they cause for the affected HRD (for information on the impact of criminalization on affected individuals, see article of Sarah Potthoff, this volume). In order to ensure human rights, the given facts strongly recommend to adequately consider the political motivation and the agrarian context of the said accusation.

As shown, locally working human rights defenders in rural areas are victims of criminalization and should be given the necessary protection in accordance with the UN- Declaration on Human Rights Defenders.

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