

POLITICALLY MOTIVATED ACCUSATIONS – THE ROLE OF THE PROSECUTORS



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Criminalization is a way of harassing human rights defenders (HRD) and hindering them in their work. In the process of criminalization in the Philippines the public prosecution offices play an important role. After a complaint is filed they decide whether a case is sent to court or dismissed. A guideline issued by the Department of Justice of the Philippines is supposed to prevent the criminalization of farmers who fight for their right to own land.

This article focuses on describing and characterizing this role and the responsibility of the prosecutors in the process of criminalization. Additionally it analyses the efficiency of the guideline of the Department of Justice in preventing criminalisations. The data used is mainly based on the observations of IPON in Bondoc Peninsula and interviews with members of KMBP, prosecutors on provincial and regional level, members of the National Task Force on Agrarian Cases (NTFAC) and local NGOs.



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In Bondoc Peninsula, recently there was a shift of harassments against HRD of the local farmers organization KMBP (Kilusang Magbubukid ng Bondoc Peninsula) from physical violence and direct threats to the abuse of the legal apparatus for criminalizations. More than one hundred cases against HRD are in process at present. Most of them are accusations of qualified theft and trespassing filed by landlords or their employees. It is obvious that many of these cases have only been filed to harass farmers who claim land. No HRD of KMBP has ever been convicted by the court but once the case is at court the process will continue for many years (see article Proceedings on Fair Jurisdiction in Rural Areas in the Philippines, this volume). The negative consequences of a pending criminal case for a farmer are multiple. So the legal apparatus is systematically used by the landlords to intimidate farmers who fight for their rights.

In the Philippine legal system, when a complaint is filed the first institution involved is a local or provincial police station. After a first investigation the case is either dismissed or – and this is usually done – it is passed on to the Office of the Provincial Prosecutor. After the so called preliminary investigation the prosecutor concerned issues a resolution in which he or she determines whether there is probable cause or not. So the case is either dismissed or passed on to the responsible court. This system is abused to harass and put pressure on HRD to hinder them in their fight for the right to own land. In Bondoc Peninsula an increasing number of criminal cases filed against the HRD of KMBP could be obser-

ved (see article Criminalization of Human Rights Defenders in Agrarian Conflict - Structural Consideration, this volume).

The Department of Justice of the Philippines has already realized the problem of criminalization of farmers that applied for landownership according to the Comprehensive Agrarian Reform Program, and thus, are involved in agrarian disputes. This can be seen in the formation of the NTFAC in September 2006 as well as in the issue of the "Guidelines on the preliminary investigation of criminal cases related to agrarian reform", the so called Department Circular NO. 23 (DC23), in June 2007. The Guideline states two important features concerning the handling of criminal offences filed before of the Provincial Prosecutor. The first main statement implies that the Chief of Office or its authorized representative is supposed to assign the case for preliminary investigation to a NTFAC member if he or she has reason to believe that the complaint arises from an agrarian dispute or if one of several listed indicators is given. The list contains so many points that nearly all cases filed against the HRD of Bondoc Peninsula should be handled by the NTFAC (see box: Department Circular NO. 23).

When the NTFAC was formed there was one member who was especially responsible for the cases in Bondoc Peninsula. But after this prosecutor changed office there was nobody left covering her responsibilities. In a case like that the Regional State Prosecutor is obliged to take over the agrarian related cases. Recently the Provincial Prosecutor Dione V. Bustoniera became a mem-

ber of the NTFAC, and thus, he is the prosecutor in charge for this kind of cases. Since all criminal cases of Bondoc Peninsula have to be handled by the Provincial Prosecutor the first demand of Department Circular 23 concerning the complaints against human rights defenders of Bondoc Peninsula is fulfilled.

The second statement of the guideline describes how the NTFAC member has to handle a case that is found to be risen from an agrarian dispute: "If the NTFAC member determines that the complaint is rooted or could be traced to a dispute over the implementation of the agrarian reform program, he/she shall immediately dismiss the complaint for lack of probable cause and/or lack of jurisdiction of the regular courts" (DC23 2007, 5). So far there is not a single case known by IPON that has been dismissed for being rooted in an agrarian dispute. Even though in many cases a connection to a conflict within the agrarian reform is obvious. In an interview the provincial prosecutor called most of the cases filed against HRD of KMBP "agrarian cases". Thus, it is highly questionable if it is even tried to act accordingly to the second part of the guideline of the Department of Justice.

The Provincial Prosecutor has been accused by farmers and NGOs to act in favour of the landowners. This suspicion is encouraged by the fact that one of the great landowners in Bondoc Peninsula is a relative of his (Inquirer 2008).

Another problem the accused HRD have to face is the very long time of treatment of cases in the prosecution offices. It often takes a couple of months until the resolution for a case is issued and therefore decided whether the case will be filed in court or

dismissed. Some of the accused have to stay in jail for the whole time of preliminary investigation which leads to both an economical and psychological damage for the accused and his or her family. The Provincial Prosecutor justified the long waiting times through a lack of financial and personnel resources as well as a defective internal mail system.

The office of the Provincial Prosecutor is responsible for the decision whether a criminal case is dismissed or filed in court. According to the guideline of the Department of Justice cases that are clearly related to an agrarian dispute are supposed to be dismissed. But still there has not been any case in Bondoc Peninsula dismissed for these reasons. The demand of the guideline concerning the treat-

ment of cases that are probably related to agrarian disputes by a member of NTFAC may be fulfilled. But as its most important implication, the dismissing of cases that are rooted in agrarian related conflicts, is not implemented one can say that the attempt of the Department of Justice to stop the criminalization of HRD by issuing a guideline has failed.

SOURCES

- Inquirer (2008): Agrarian Protest. Courthouse pelted with rotten tomatoes - 25-November 2008.

DEPARTMENT CIRCULAR NO. 23

On June 14, 2007 the Department of Justice of the Philippines issued the so called Department Circular NO. 23 (DC 23).

It is a guideline concerning the preliminary investigation of criminal cases that are related to the agrarian reform. In its preface it states that there is an increasing number of criminal cases that are filed by landowners against farmers who are actual or potential beneficiaries of the Comprehensive Agrarian Reform Program (CARP). As it is clear that many of these cases are rooted in a dispute over the implementation of CARP they belong to the jurisdiction of the Special Agrarian Courts, the Department of Agrarian Reform Adjudication Board or the Department of Agrarian Reform, rather than to the regular courts.

When there is a criminal offense filed before the Office of the Provincial Prosecutor and there is reason to believe that the complaint arises from an agrarian dispute, then the concerned prosecutor is supposed to assign the case for preliminary investigation to a member of the National Task Force on Agrarian Cases (NTFAC). The guideline lists elements whose presence might index an agrarian dispute, e.g. the case involves landowners and tenants or an alleged crime that took place in an agricultural landholding or the case filed is estafa, qualified theft, trespassing, grave threat, malicious mischief or robbery. If the investigating prosecutor of the NTFAC finds sufficient basis to determine that the offence charged is rooted in an agrarian dispute he or she is supposed to dismiss the complaint immediately for lack of probable cause or lack of jurisdiction of the regular courts. There is no case that has been dismissed because it was related to an agrarian dispute reported to IPON.

