

THE NEW AGRARIAN REFORM PROGRAM – A TOOL TO PREVENT CRIMINALISATION?



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In Bondoc Peninsula human rights defenders (HRD) accompanied by IPON who applied for land titles suffered for a long time from violent threats by different actors, e.g. the private security forces of landowners. Nowadays they are facing an additional kind of obstacle that impedes their struggle for land. Rich landowners file criminal cases against them with the intention of demoralisation. Due to that strategic use of criminalisation, which also states a problem in other parts of the country, the Department of Justice issued a memorandum (known as Circular No. 23¹ – for further details please review Observer Vol. 1, No. 1) that states that criminal cases related to agrarian disputes have to be referred to the Department for Agrarian Reform (DAR) for further consideration.

In July 2009 the underlying law for Agrarian Reform, the Comprehensive Agrarian Reform Law (CARL)², was extended³ and the Circular No. 23 provisions have been included in the new law⁴, the so-called CARPER⁵. To prevent or at least to decrease the possibility of criminalisation by incorporating and improving the referral system in regard to the criminal cases was a main concern of civil society organisations involved in the drafting process. It was feared that the ongoing criminalisation of HRD would paralyse them eventually and terminate the struggle for land. Therefore representatives of civil society basically drafted Section 19, which states that exclusive jurisdiction on agrarian disputes lays within the DAR⁶. Contrary to the provisions of Circular No. 23, the CARPER does not distinguish between criminal and civil cases. Moreover, the decision whether a case is agrarian-related shall only be made by the DAR, i.e. its respective

representatives. Whereas before, the concerned prosecutor had to consider if the case might be agrarian-related, judicial bodies are now required to refer the case automatically.

However, the law does not give information about the further proceedings – more precisely whether the case has to be dismissed by the original court or will be pursued within the DAR. This information is provided through Implementing Rules and Regulations (IRR) that have been issued in October 2009⁷. They explain in detail how to deal with agrarian-related cases. Every case that has been filed since the 1st of July 2009 has to be investigated by the DAR⁸. Until a decision has been made, the original judicial body is prohibited from proceeding and the case is pending. A conclusion has to be reached within 15 days. If the DAR investigation concludes with the statement that the case is related to an agrarian dispute, it is not proper for trial and the concerned court or prosecutor has to dismiss the case immediately⁹.

Even though the new provisions appear much clearer and in favour of criminalised HRD, certain obstacles remain. A legal concern in particular would be the writing of the IRR. When it comes to legal referral systems all involved parties should participate in the drafting of the respective IRR; in this specific case the Department of Justice (DOJ) should have been included in issuing the Administration Order (AO). As long as the DAR remains the single author of this AO, judges and prosecutors who have not been in favour of agrarian reform might not feel the need to oblige. They might argue that an AO has to be issued by the DOJ and the Supreme Court



to be compulsory for them as well. Therefore several NGOs went to the Supreme Court, which promised to release an internal memo stating the same before the end of the year.

A practical obstacle is the warrant of arrest. Even if a case that is used to criminalise HRD has to be dismissed, the court could still issue a warrant of arrest before the referral. For the HRD, the fear of being jailed and of the consequential financial expenses remains (for further details regarding the impacts of criminalisation on HRD - please review Observer Vol 1, No. 1).

Apparently CARPER is an improvement when it comes to the prevention of criminalisation because it is drafted clearly and solves former problems. However between written law and its implementation, huge gaps might exist. So far the new law has not been used but instead served as an apology not to refer an agrarian-related case to the DAR. This might be emphasised by the following example: In the beginning of October 2009, IPON observed a criminal trial where the defendants emphasised the connection between the criminal charges and an existing agrarian dispute. While the counsel for the defence first referred to the Circular No. 23, the judge refused to give into that argument due to the new CARPER. The council then referred to the new law's provisions and the judge stated that without IRR he would not know how to apply it. Hence he postponed the trial until he would attend a legal seminar that could advise him on the matter. After the enactment of the pertinent IRR he should refer the case to the DAR at the next hearing. However this particular judge is known for his resentments towards HRD and he might therefore serve as an indicator for so far undiscovered flaws of the concerned AO.



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After all the impression remains that the CARPER might serve as a better protection for HRD facing criminalisation than the DC No. 23 even did. Nevertheless local HRD do not spread much optimism. They have been part of this struggle for too long to believe in sudden changes. And they are accompanied by the fear that opponents of the agrarian reform within the legal apparatus will find another excuse to prolong and hamper the struggle of agrarian-related human rights violations.

¹Department of Justice: Guidelines in the preliminary investigations on criminal cases related to agrarian reform; issued on June 14, 2007.

²Republic Act No. 6657 otherwise known as the Comprehensive Agrarian Reform Law of 1988.

³Republic Act No. 9700 an Act strengthening the Comprehensive Agrarian Reform Program (CARP), extending the acquisition and distribution of all agricultural lands, instituting necessary reforms, amending for the purpose certain provision of Republic Act No. 6657 was enacted on July the 27th, 2009.

⁴Due to the DAR Administration Order No. 4, Series of 2009 DC 23 is no longer in action. Section 12: All orders, circulars, rules and regulations inconsistent herewith are hereby revoked, amended or modified accordingly.

⁵CARPER stands for CARP (Comprehensive Agrarian Reform Program) Extension with Reforms.

⁶"No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP ... If there is an allegation from any of the parties that the case is agrarian in nature on one of the parties is a farmer, farm worker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify ... whether an agrarian dispute exists."

⁷Department of Agrarian Reform: Rules and Regulations implementing Section 19 of RA. No. 9700 (Jurisdiction on and referral of Agrarian Dispute); issued on October 21st 2009. Administration Order No. 4, Series of 2009.

⁸Ibid. Section 13: This Administration Order shall take effect on July 1, 2009.

⁹Ibid. Section 10.