EXTRAJUDICIAL KILLINGS – A HUMAN RIGHTS CRISIS

Extrajudicial killings in the Philippines are so numerous that a report from USAID and the ASIA Foundation calls them a national epidemic (Al Parreno 2010). This article sheds light on the contextual framework of extrajudicial killings. What defines an extrajudicial killing? Who are the victims and who are the perpetrators? And what is their societal impact? It becomes clear that independent of their number and exact definition, extrajudicial killings are always an alarming sign of a massive human rights crisis within any governance system.

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The killing of human rights defender Arnaldo Hoyohoy who was murdered in front of his house in Negros Oriental by unidentified killers wearing a cap (see Interview with Alexander "Dodong" Hoyohoy, this volume), is just one of the many extrajudicial killings that happen in the Philippines and around the world.

What defines an extrajudicial killing?

The term 'extrajudicial killing' in its original meaning refers to homicides that are committed outside the legal system with no prior judgement of a court[1]. In this sense, the term comprises a large amount of violent acts with different motives, victims and perpetrators. For instance, acts that are predominantly seen as vigilante killings or lynching, carried out by privately organized groups can be called an extrajudicial killing as well as homicides that are committed by the state without legal proceedings.

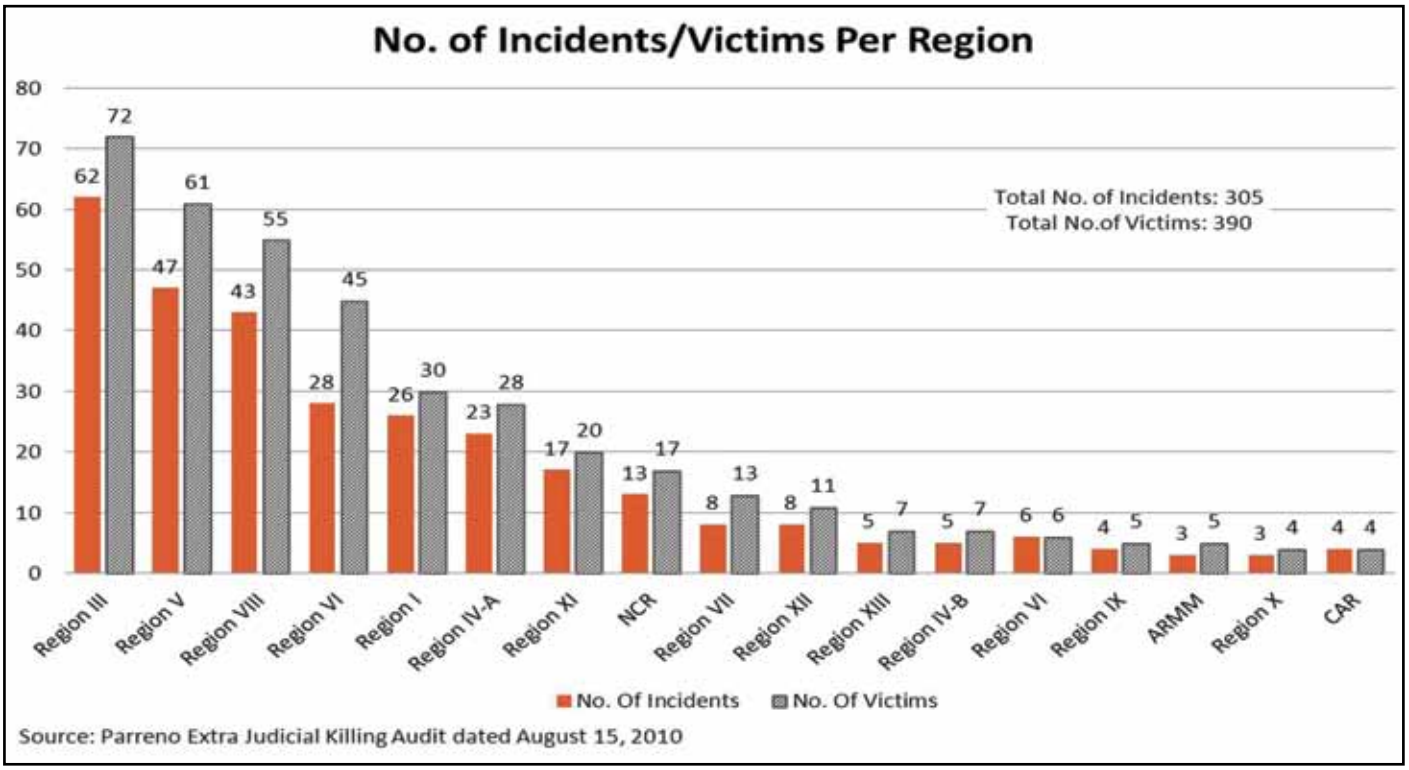
IPON | In front of the court: Who gets access to a fair trail, who does not?

Beside this general description, there exist other predominant definitions of the term that differ in that they claim extrajudicial killings to be politically motivated acts. According to this definition, the state has to be involved in or at least tacitly accept the commission of the killings. This type of definition is also used by the Philippine government[2]. When defining extrajudicial killings in that way, they are almost synonymous to the term "political killings" except for the fact that political killings can be committed with or without state involvement whereas the term extrajudicial killing implies some degree of state involvement at all times.

Politically motivated extrajudicial killings usually have in common that they are intended and well-organized murders that give the victim no chance to defend itself and that the perpetrator remains unidentified. This is achieved by either wearing face covering masks or by committing the acts swiftly with an immediate escape after the murder is committed, possibly during night time or in a lonely surrounding. There can even be the attempt of the perpetrators to make the killing look like a suicidal act. In the Philippines, a large amount of killings have been conducted at the victims' home, at work or in between, where the perpetrator was masked and made a fast escape on a motorcycle (Melo et al. 2007).

It is another characteristic trait of politically motivated extrajudicial killings that they are usually followed by impunity. Between 2001 and 2010, there have been a total of 305 incidents of extrajudicial killings with 390 victims in the Philippines. During this period of time, only 1% of all extrajudicial killings resulted in a conviction (Al Parreno 2010).

It is important to note that extrajudicial killings are not a problem that can only be found in certain regions or only in low-income countries. Almost every country faces or has faced extrajudicial killings. For instance, vigilantism has a long history in the United States and recently



especially persons listed in sex offender registries have been subject to vigilante violence (United Nations 2009).

Who are the victims?

In most countries, suspects of criminal acts form the largest group of victims when adhering to the general definition of extrajudicial killings. According to the report of the UN Special Rapporteur on extrajudicial killings Philip Alston, the highest most of such killings are committed against suspects of thievery (United Nations 2009). Applying the more narrow definition of extrajudicial killings, victims are most likely political activists and journalists. Due to their call for change, political activists are usually at odds with individuals or groups that are interested in maintaining the political Status Quo. In the Philippines, the group of political activists comprises a diverse group that includes human rights defenders such as land reform advocates, peasants, urban poor and trade unionists. Political activists are often affiliated with groups that are considered as communist-influenced and therefore are also in the focus of the Armed Forces of the Philippines (AFP) (Al Parreno 2010). The killings of journalists have a similar background. Because of their work they uncover political and societal backdrops and as they have a public voice, they can shape public opinion.

Both political activists and journalists constitute essential elements for an intact critique and a balanced civil society, key to the wellbeing of a democratic state. The fact that political killings are on the rise and that individuals belonging to the aforementioned groups are threatened is a sign of structural flaws in the governance system within a state.

Who are the perpetrators?

When it comes to the broad definition of extrajudicial killings, the perpetrators can come from various backgrounds. The range covers basically everything from a private person acting on his or her own over a random lynch mob up to a special armed state unit that was trained to conduct extrajudicial killings. Focusing the more specific definition of politically killings based on the condition of state involvement, the range of possible perpetrators is smaller. However, it is one of the very characteristics of politically motivated extrajudicial killings that the perpetrators are very difficult to identify. As explained above, the killings are usually planned in such a way that the victim is attacked without warning and that the perpetrator can make a fast escape. This may be one of the reasons why cases of extrajudicial killings have such low clear-up rates. As the type of killings and the motives are very different from country to country, it is difficult to identify one type of group that is mostly responsible for extrajudicial killings in the world. In the Philippines, a recent report states that in the majority of cases (57%), the perpetrators were unidentified armed men. In 19% of all cases, member of the AFP were identified as perpetrators, followed by members of rebel groups (12%) (Al Parreno 2010).

The definition of extrajudicial killings in its narrow and specific version implies

state involvement on the side of the perpetrator. There is a whole spectrum of possible state involvement. It can mean that a state member actually acts as the executing person but can also comprise phenomena such as the state being the client of an assassin or the acquiescence of state agents in the commission of a killing. Unless the executor is an identified member of a state institution, it is usually very difficult to prove involvement of the state.

IPON | According to the Supreme Court of the Philippines, for a killing to be considered extrajudicial, state actors like military or police have to be involved.

Implications of extrajudicial killings

Extrajudicial killings are always a sign of a major human rights crisis within a society. When the state itself is involved in extrajudicial killings, it is quite clear that this act directly violates the state's duty to protect its citizen's right to life. The fact that state officials circumvent their own structures for legal punishment is evidence of a serious structural problem within a government.

Usually state officials deny any involvement in extrajudicial killings. However, even if this holds true and state agents genuinely despise extrajudicial killings, the killings are a sign of the state's failure to ensure legal prosecution of crimes. According to the report of the UN Special Rapporteur, many private perpetrators of extrajudicial killings justify their actions with a failure of state institutions in protecting their citizens and to exert justice (United Nations 2009). Considering the alarmingly low clear-up rates and the persistent impunity of perpetrators, the failure of the state to fulfil its duty to ensure the prevention, prosecution and punishment of killings becomes evident. Impunity also has a deteriorating effect on a civil society's outfit and can massively hamper a working democratic civil society. Political activists, civil society groups and journalists cannot be guaranteed security, which in turn can lead to diminished activity of such groups. However, such groups are vital in guaranteeing a functioning society and therefore need to be especially protected.

Lately, the new president Benigno "Noynoy" Aquino openly admitted military and police involvement in extrajudicial killings in the Philippines (see article „ai statement about the new Aquino administration to human rights", this volume). Such public recognition by the new government might be a first step in the right direction, however to end extrajudicial killings, the Aquino administration needs to take according measures that would have to be aimed at the protection of their citizen and towards installing and upholding a justice system in which criminal cases are equally prosecuted on all levels. ■

1) See e.g. US legal definition of extrajudicial killings (Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252 (11th Cir. Fla. 2009)).
2) Supreme Court Administrative Order No. 25-2007.

SOURCES

- Parreno, Al A. (2010): Report on the Philippine Extrajudicial Killings (2001-August 2010). USAID and Asia Foundation Report, Manila.
- Melo et al. (2007): Report of Independent Commission to Address Media and Activist Killings. Also called 'Melo report'.
- United Nations (2009): Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/64/187, United Nations Human Rights Council.

DISCUSSING THE LEGALITY OF 'TARGETED KILLINGS'

The intention of this article is to provide an introduction to the question whether and under what circumstances 'targeted killings' in the Philippines can be regarded as legal. Therefore, the question will be discussed from a perspective of international law. The review of this matter is important in order to assess the widespread problematic of extrajudicial killings in the Philippines. Several other important questions connected with this problem are beyond the scope of this article.[1]

Targeted killings are "the intentional slaying, undertaken with explicit governmental approval, of a specific individual or group of individuals belonging to political, armed, or terrorist organizations" (Schmahl 2010: 233). Examples are the firing of missiles from helicopters at suspected terrorists by Israeli military forces[2] (Kendall 2002: 1077) or more recently the attacks of unmanned flying drones used by the US military in Afghanistan and Pakistan against suspected Taliban.

When discussing the question of the legality of targeted killings under international law, essentially four legal paradigms need to be distinguished: First, the law in times of peace and the law of armed conflict, secondly ius ad bellum and ius in bello, thirdly the humanitarian law in armed inter- and intra-state conflicts and fourthly combatants and non-combatants.

The Law of Peacetimes and Human Rights

First, it is important to differentiate between the application of the international law of peacetimes, which is the regular rule of law, and its exception, the law of war or more specifically the international law of armed conflict (Tomuschat 2004: 137). Thus, in times of peace, the International Covenant of Civil and Political Rights (ICCPR) from 1966, to which the Philippines are a contractual party since 1986 (UN 2010), is applicable, Art. 6 (1) ICCPR protects the inherent and non-derogable right to life of every human being against arbitrary deprivation by state authorities, allowing for the imposition of the death penalty in states that have not abolished it yet only after a fair trial and only for the most serious crimes (Art. 6 (2) ICCPR). As the Philippines are a signatory state since 2007 of the Second Optional Protocol to the ICCPR, aiming at the Abolition of the Death Penalty of 1989 the administration of capital punishment is illegal from the point of view of international law (UN 2010). In times of peace, the police are the only public organ to legally hold the monopoly of force in order to protect the life of every individual within the state's territorial boundaries. Lethal use of force in form of a "final rescue shot" (Schmahl 2010: 239) is only admissible under the rule of law as a last resort to save a police officer's own life (self-defence) or to protect the lives of innocent victims who are directly threatened by an offender (assistance in an emergency). Any use of force by state authorities exceeding these narrow conditions would constitute an act of "extrajudicial execution" (Kendall 2002: 1071) and would violate the principle of due process. Accordingly, during times of peace, targeted killings are clearly illegal under international law (Tomuschat 2004: 137). Under the law of armed conflict, however, the legal discussion becomes more complex.

IPON | Policeman or military? Uniform and equipment of the Philippine National Police are similar to that of military combatants.

The Law of Armed Conflict

Under the law of armed conflict, two spheres of law must be distinguished: ius ad bellum, the right to go to war, which aims at the prevention of interstate war, and ius in bello, the humanitarian law regulating the conduct of all parties concerned during armed conflict, which is geared towards the protection of the victims of war (Bothe 2004: 629). Therefore the question of targeted killings will have to be analysed within the realm of the law of hostilities, the ius in bello (Schmahl 2010: 249). In order to meet the criterion

1) For instance the question whether 'targeted killing' constitutes an illegal act of 'treacherous killing' or 'perfidy' (Art. 8 (2.) e) (ix) Rome Statute) or whether 'targeted killing' in anticipatory self-defence or as punitive measure, as so called 'armed reprisal' is permissible against terrorist attacks. Furthermore the balancing of military necessity and proportionality against the rights of individuals under the international law of armed conflict has not been touched and subsequently the question about civilians becoming victims of 'collateral damage' during the 'targeted killing' of combatants was omitted. Besides the question in how far are non-state actors bound by the provisions of international humanitarian law needs to be answered. Moreover the consequences of further court decisions on 'targeted killings' for the interpretation of the international law of armed conflict requires additional clarification. And last, but not least the question about the possibility of liability of the Philippines in potential cases of crimes against humanity e.g. of murder (Art. 7 (1.) (a) Rome Statute) in form of extrajudicial killings or war crimes (Art. 8 (2.) f) Rome Statute) demands an answer.

2) In 2006 the Supreme Court of Israel sitting as the High Court of Justice rendered its important 'targeted killings' decision in Public Committee against Torture in Israel v. the Government of Israel, defining the matter more precisely in cases of armed conflict on occupied territory (Cassese 2007; Eichensehr 2007; Milanovic 2007; Schondorf 2007).