

WITNESS PROTECTION – REMAINING CHALLENGE OR UNMET PROMISE?



Friederike Mayer
1985 (Hannover/Germany),
studies International Development and Political Science at University of Vienna (Austria).
Human rights observer with IPON in 2011.

Criminal prosecution in the Philippines relies predominantly on witnesses' testimonies. However, the state of the national witness protection program remains poor, lacking financial and human resources. The former government's failure to strengthen and expand the program poses a challenge for the Aquino administration. Still, after one year in office little progress is shown.

When Florencio Dogomeo, a local farmer¹ in the province of Negros, was shot and killed in June 2010, at least three people witnessed the crime. Although they could clearly identify the perpetrators, they immediately went into hiding, fearing for their lives. "Without the witnesses' testimonies, our hands are tied" the local chief of police told members of IPON back then. Asked for possibilities to place the witnesses under the national witness protection program, he smiled indulgently, stating there was no chance. "This is going to take months until they decide – if at all."

The Philippine national witness protection program has been subject to criticism from human rights organizations and advocates for a long time. In its 2007 report the Melo Commission stated that the "program is suffering from lack of funds and necessary manpower" (Melo Commission 2007:75), calling on the Arroyo (-led) government to give highest priority to improvement and funding of the program. In many Asian countries, the issue of failing witness protection systems allows impunity for state agents accused of severe human rights violations. In the worldwide Impunity Index of the Committee to Protect Journalists (CPJ), the Philippines rank third, representing one of the deadliest countries for journalists with a very low conviction rate (CPJ 2011). Especially in a country like the Philippines, where the adoption of forensic methods remains deficient and plays little to no importance in criminal proceedings, witnesses' testimonies are a crucial element.

The Asian Human Rights Commission pointed in a statement of 2006 to the lack of effective witness protection in the Philippines, which it said undermines the country's entire judicial system (AHRC 2006).

Established in 1991, the "Witness Protection, Security and Benefit Act" (WPSB) specifies that any person with information about a crime who is testifying before a judicial body may be eligible for witness protection. To qualify for the program, the offence about which the witness has information must be a grave felony, the witness'



IPON | The widow of the killed farmer leader Empas has to wait for a strong protection of her family.

testimony has to be substantially corroborated, and the witness (or close family members) must be facing a threat of serious harm².

1) Dogomeo was HRD and local farmerleader of the farmers' organization TFM.

2) Witness Protection, Security and Benefit Act, Sec. 3.

According to the law, the Department of Justice (DOJ) is solely responsible for the screening, approval and implementation of the witness protection program. Decisions can take a long time since no limit is set for the DOJ to resolve applications. Additionally, a potential witness will not be admitted to the program as long as no case is filed in court (ALRC 2010). It is obvious that a long waiting period without any interim protection mechanism may end deadly for many witnesses.

The murder of a key witness of the Maguindanao massacre in 2010 raised nationwide awareness of the poor state of witness protection. Suwaib Upham, former member of the Ampatuan's private army, had agreed to testify against members of the powerful Ampatuan family if guaranteed witness protection³. Private prosecutor Harry Roque, who represents a majority of the 57 victims of the massacre, called him a "strong witness", while former DOJ Secretary Alberto Agra referred to him as "killer". This may be the reason why the DOJ rejected his application after a long delay without further explanation. "Massacre witnesses are dying while the government sits on its hands", Elaine Pearson, Asia director of Human Rights Watch, (HRW) criticized. „Suwaib Upham took enormous personal risks by agreeing to testify against Ampatuan family members, yet the government, knowing full well he was in danger, did nothing. This sends the worst possible message to other witnesses thinking of coming forward" she said (HRW 2010b).

However, shortly before he got killed, Upham planned to re-apply for witness protection when former Commission on Human Rights (CHR) chairperson Leila De Lima was

announced as new DOJ secretary. De Lima has gained high reputation as head of the CHR, viewed by public opinion as one of the most

the program (ALRC 2010). Unless the budget increase is accompanied by amendments of the law, it cannot be shielded from political interference



© IPON | Teamleader Detlef Mehlis of the EU-Philippines Justice Support Programme (left) receives the report about criminalisation from IPON-team (right).

incorruptible and highly respected politicians. Due to the failure of the WPSB, the CHR under De Lima had developed its own witness protection program, notably to deal with cases involving human rights violations by state agents.

Under public pressure former DOJ Secretary Agra had increased the budget of the WPSB from 84 million Pesos to 114 million in the aftermath of Upham's murder. Also, President Aquino proposed an 80 percent increase of the WPSB's budget, which starts to properly fund the program – a step that was long overdue. However, it's not all about money. In order to encourage witnesses to come forward and improve the country's poor conviction rate, overall reforms of the program are much needed. Philip Alston, UN Special Rapporteur on extrajudicial killings, summary or arbitrary executions called the WPSB "deeply flawed" and recommended reforms and full implementation of

and control, the Asian Human Rights Commission stated in 2010. Reforms must include interim protection mechanisms as well as independent bodies to effectively protect witnesses in highly political cases involving high-ranking government officials. Furthermore, the weak support system, particularly the financial support given to witnesses' families, needs to be enhanced (ibid.).

The Maguindanao massacre trial, which began in September last year, involves only 19 of 195 persons accused, 127 others remain at large and another 49 have not yet been arraigned. According to HRW, even though at least five persons with knowledge about abuses by those involved in the massacre have been killed, the government had done little to improve witness protection (HRW 2010a). In the case of HRD and farmer leader Florencio Dogomeo, the witnesses decided three weeks after the murder to testify –

3) See for more information of the Maguindanao massacre and the role of key witness Upham: „Violence and Nullum Ius in the Philippines" previous issue ,Observer' Vol. 2, No. 2, pp.22-23.

knowing well after receiving dead threats that a testimony would put their lives at risk. IPON has documented several cases in which witnesses are reluctant to come forward, distrusting the state's protection⁴. The same was found out by Human Rights Watch researchers investigating extrajudicial killings, saying that "citizens would rather attempt to ensure their own protection than rely on the government's witness protection program" (UNHCR 2008). Although current

DOJ Secretary De Lima, who has recently been ranked by a Pulse Asia survey as number 1 member of the Aquino cabinet, is a high respected person, much more is needed to gain people's trust in government protection. Besides proper funding, systematic and extensive reforms are required – until now, the Aquino administration has shown little political will to tackle those profound changes. ■

4) That includes the killing of Arnaldo Hoyohoy in 2008 on Negros, when many people witnessed the murder, yet out of fear of the influential Teves family, none of them testified (for more information see „Fruitless Actions – how state-agencies protect HRD in areas with „landlord resistance““ this issue). Also in the aftermath of farmerleader Deolito Empas' murder on Bondoc Peninsula, many family members were forced to hide, Empas widow had to wait several month until being affiliated into the witness protection program (for more information see: "Political Killings in San Narciso", previous issue 'Observer', Vol. 2, No. 2, pp. 15-17).

SOURCES

- AHRG (2006): Philippines: Task force on killings must start with witness protection, May 26, <http://www.humanrights.asia/news/ahrc-news/AS-120-2006> (last viewed May 03, 2011).
- ALRC (2010): Philippines: Reforms required immediately to protect witnesses, Aug. 27, <http://www.alrc.net/doc/mainfile.php/hrc15/637/> (last viewed May 15, 2011).
- CPJ (2011): 69 Journalists Murdered in Philippines since 1992, <http://cpj.org/killed/asia/philippines/murder.php> (last viewed May 04, 2011).
- HRW (2010a): Philippines: 100 Days On, Aquino's Actions Fall Short. Structural Reforms Needed to End Abuses and Ensure Justice, <http://www.hrw.org/en/news/2010/10/06/philippines-100-days-aquino-s-actions-fall-short> (last viewed May 20, 2011).
- HRW (2010b): Philippines: Investigate Killing of Massacre Witness. Government Fails to Protect Threatened Witness, June 23, <http://www.hrw.org/en/news/2010/06/23/philippines-investigate-killing-massacre-witness> (last viewed May 19, 2011).
- Melo et al. (2007): Report of Independent Commission to Address Media and Activist Killings ('Melo report').
- UNHCR/Immigration and Refugee Board of Canada (2008): Philippines: Crime, police effectiveness and state response, including witness protection (2005-2007), 14 March 2008, <http://www.unhcr.org/refworld/docid/4804c0dccc.html> (last viewed May 18, 2011).

IPON EVALUATES RED-BAITING

IPON is currently conducting a pre-study on red-baiting in the Philippines jointly in its two offices in Bacolod City, Negros and Malaybalay, Mindanao. This project is funded by the German Federal Foreign Office. In the first phase, information is gathered about the current state of red-baiting from scientific and alternative NGO related literature in order to compile a report about the topic. IPON shall create a deeper understanding about the current structures and developments of red-baiting. Based on the findings, NGOs and other organisations that are either victims of red-baiting or in another way involved with the topic shall be identified. In the second phase of the project these groups will be contacted.

From the data of meetings and interviews with these Philippine-based NGOs, IPON will evaluate whether IPON's instruments such as showing presence, accompanying human rights advocates, performing human rights observations, providing information and publicity will improve the situation of NGO victims of red-baiting. Simultaneously, during the third phase of the project, IPON will raise public awareness on the issue in the Philippines, as it plans to organise a conference with all parties involved in the problem. Actors range from state parties to NGOs and include also other public interest groups.

This pre-study shall reveal whether a development into the direction of protecting red-baiting victims could be fruitful for IPON.

Holger Stoltenberg-Lerche