

POLITICAL CHANGES – CHANGES IN HUMAN RIGHTS POLICIES? A RECORD



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In May 2010 “Noynoy” Aquino III succeeded Gloria Macapagal Arroyo (GMA) as President of the Republic of the Philippines. He is the son of Benigno “Ninoy” Aquino, who was the leading figure of the opposition against Marcos and was killed in August 1983, and Corazon Aquino, who was the first democratic president (1986–1992) after Marcos. His highly esteemed parents made him a beacon of hope for changes in contemporary Philippine constitutional legality. What has he achieved, one year after being elected? To answer this question, Philippine constitutionality, its legislative framework and actors therein have to be analysed. The measures undertaken by the new Aquino administration have to be carved out and be questioned for their effect on the oppressive climate of impunity in the country.

In 2008, when still chairing the Senate Committee on Local Government and being the vice-chairperson of the Committee on Justice and Human Rights, Senator Benigno S. “Noynoy” Aquino III presented a bill in the 14th Congress addressing the ‘Superior Responsibility Act of 2008’. He announced that “there are quarters in our political system that succumb to the temptation of using their power and in the process undermine the system of justice and accountability just to remain in power and position. It has also been observed lately that many killings and disappearances of human rights activists and members of the media are still unsolved up to this time and allegations of military and police involvement in the crimes are being pointed out by many victims and witnesses.” He therefore calls for action “to prevent any possibility of a state turning against its own citizens by abusing its power using violence, intimidation and impunity” (Philippine Senate 2008).

Aquino's period in office by now has last for one year and Philippine Civil Society as well as the international community starts itemizing the political situation looking for legal and political changes which potentially took place.

“You had a knack regarding the choice of your parents”, Nelson Mandela allegedly said once to Noynoy Aquino. It remains to be seen if his knack regarding the advancement of righteousness will meet the implicit hopes.

Legislative framework – the gap between ratification and implementation

Taking the international level, the Philippines set a good example regarding the number of

signed and ratified human rights mechanisms. On paper, the country illustrates democracy – but what reveals a critical look behind? International Non-Governmental Organisations as well as the relevant UN Committees attest defaults and even violations of international human rights obligations. This has to be seen as the result of a missing implementation of international standards into national legislative power.

One turning point in the claims of national and international human rights organisations is the signing of the Rome Statute. The treaty of the International Criminal Court (ICC) is seen as a basic approach towards a solution of continuity of existing impunity. President Aquino signed the treaty on March 8th 2011 during a visit of the president of the ICC, Sang-Hyun Son, and passed it on to the senate. The ratification shall be concluded by the chair of the Senate Committee on Foreign Relations, Loren Legarda, in June 2011. But besides ratification, the Philippine Government is also under obligation to review national law to ensure that commitments coming up by the Rome Statute can be fulfilled.

During his election campaign, Aquino only made two promises regarding an advancement of the human rights situation. First he announced the abolishment of the executive order 546 (EO 546) and second he avowed for a holistic reform of the judicial system. But already by now, he refrained from his first announcement arguing that it would be behind the time and even counterproductive to change the possibilities the EO 546 offers. The EO 546 implies a legalisation of private armed forces. The order – released in 2006 by GMA – has an uncontrollable outcome

that could be seen in the Maguindanao Massacre on November 23rd 2009. The fact that the force levels of the Armed Forces of the Philippines (AFP) is one of the smallest worldwide still does not justify to rely on the current 50,000 civil security forces – especially if control and neutrality cannot be secured.

To ensure controllable administration of justice the judicial system needs to be reformed. But even though promised, the national budget therefore was cut from 27.1 million Pesos to 14.3 million Pesos for 2011. It is a controversial point how a comprehensive reform can take place under this condition.

In December 2009 two bills have been signed on national level: the Anti Torture Bill as well as the Crimes against International Humanitarian Law, Genocide and Other Crimes against Humanity Act (Republic Act 9851). The latter defines war crime as a punishable offense based on international standards. But both bills will symbolize only good will instead of real change if their realization does not turn into reality. It took more than a year to draft the Implementing Rules and Regulations (IRR) of the Anti Torture Bill. And still, after becoming law, striking weak points label the fruition of this new law.

Regarding legislative realization, the catch lies in the societal sustaining pillars – the executive entities.

The human rights politics of Malacanang, headquarter of Philippine state power, leave a lot to be desired, seen that the 16 point agenda of the president does not in one point face human rights violations. 23 priority bills have been admeasured by Aquino and only two of them refer to human rights. The Witness Protection, Security and Benefit Program (WPSB) shall be invigorated and a bill for ensuring security and support for 'Whistle-Blowers', witnesses of revelation shall be passed.

The existence of witnesses supply a much more solid state of evidence and would ensure a reduction of

delaying processes. The protection and strengthening of witnesses potentially brings about faith in state institutions and encourages insisting in ones legal claim. In average, a penal procedure regarding extrajudicial killings (EJK) takes about five years, two months and eleven days to pass all instances. Beside abundance of patience and a lot of staying power, there are much financial resources needed to face such a procedure. In addition, fear of potential loss of life, family insecurity and an outcome without legal cause increase the risk of human rights defenders (HRDs) to retreat from insisting.

Justitia and her stooges

To come to one's right in the Philippines heavily depends on having the appropriate resources. Money, Relations, Power – three variables push the given right to effectiveness and needless to say that violations denying democracy as well as violating human rights go ahead with that said.

Neither the Philippine National Police (PNP) nor the prosecution have a reputation of neutrality. On the contrary, the Philippine Commission on Human Rights (CHR) announced that between 2005 and July 2009 2,408 accusations had been counted against policemen concerning human rights violations. 90% of all arrests go ahead with human rights violations and an exploitation of power can be ascribed to most policemen and -women on duty. Actions to be undertaken are planned as for example the strengthening of human rights offices in all PNP stations, together with corresponding trainings and equipment of a manual for human rights based conducts. Further campaigns for strengthening the trustworthiness of the PNP image are supposed to restore the faith in the National Police. But beside knowledge about human rights standards, there is a need of knowledge in the form of standardised know-how

of adequate investigation techniques as proper forensics, security of witnesses and drafting reports for securing standardized neutrality.

National regulations leading to an end of impunity, clientelism and criminalization can only be established if execution reaches the local level. As long as accusations do not get to the point of judicial treatment because of corruption or intimidation, there is no functioning state of law but rather a network of personalized jurisdiction. Judges defying local clientelism structures and relying on the principle of incorruptibility have to fear for their own security. Since 1999 more than 20 judges have been killed in the Philippines.

Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, estimated the total amount of extrajudicial executions from 2002 – 2008 between 100 and 800 (Alston 2008: 2) depending on who is counting and how. This already outlines the gap of effective control and the loopholes provided by it for those who have powerful resources. Affected by EJKs are civil society leaders, HRDs, trade unionists, journalists, local politicians and land reform advocates – those who claim abidance by the laws and implement standards of democratic statehood.

EJKs label killings due to political affiliation of the victims where the motive for the killing is to gain a political advantage by silencing the opposition. EJKs also contain enforced disappearances and abductions and therewith create space for a huge potential of human rights violations (Parreño 2010: 39, 40). Karapatan scrutinizes advertised changes and cast doubt about Noynoy Aquino's will and capability to act. In its Year End Report Karapatan counts 20 victims of EJK, two victims of enforced disappearance, 16 of torture, 23 of arbitrary arrest and detention and almost 900 who had to leave their houses and land due

to forced evictions because of militarization in the countryside. The numbers are in summary indiscriminate regarding the number of victims under GMA (Karapatan Online: 2010).

Three requirements have to be fulfilled to prosecute a killing: namely to prove that a person was killed, that the accused killed the victim and that the killing was bound by premeditation. All three remain difficult in a climate of personalized jurisdiction and all three require for witnesses to provide positive identification either of the killed person, the perpetrator, the relation towards the accused or the circumstances of murder. But the availability of witnesses who agree on cooperation is poor and their reason to fear well-grounded. Most of them get death threats (Parreño 2010: 44). Therefore the reformation of the witness program towards more legal influence in prosecution on local level should remain one of the chief to-do-points.

Noynoy Aquino was 23 years old the time his father was killed. He personally faced the fact of political, extrajudicial killing and conducted his candidature with promises about changes and justice. He appointed Leila de Lila, former head of office of the Commission on Human Rights as Justice Secretary and therewith pointed the way towards fulfilment of his pledges. This was about one year ago. By now, critics raise and impeach the missing reforms and the lack of political will to resolve previous and current cases of EJKs and to bring the perpetrators and possible influential masterminds to justice.

Between disenchantment and cautious optimism

But there have been some positive signs. Aquino restarted the shelved Peace Talks between the National Democratic Front and the Moro Islamic Liberation Front. Referring to Philip Alston, internal conflicts and especially corresponding counterinsurgency strategies are the main causes for EJKs. Until January 2011 a strongly criticized program, Oplan Bantay Laya II ('Operation for Liberation'), had been in force. Its main targets were civil society actors comprising HRDs, who were listed in the so called 'Order of Battle'. Since January 2011, a new order, the 'Operation of Collective Effort', Oplan Bayanihan or 'Internal Peace and Security

Plan' (ISP) came into force. According to the AFP itself the recognition of human rights standards is inherent in this new counterinsurgency plan. However, critical voices doubt that the new internal security plan will improve the human rights situation in the country.

The biggest doubt regarding 'Oplan Bayanihan' stems from the refusal of the AFP to take responsibility for previous human rights violations. There has been no remorse, not even acknowledgement of these abuses. Renato Reyes Jr., from the leftist group Bayan, also claimed that the new ISP was inspired by the latest US Counter-Insurgency (COIN) guide. "Oplan Bayanihan' appears aimed at sugar-coating the same counter-insurgency thrusts of the AFP. They say they are adopting a people-centered approach, but it seems the ultimate objective is still to control the population right down to the communities," Reyes added. (Philippine STAR 2010).

Of course President Aquino should not be condemned too hasty. Underlying structures of political violence are entrenched deeply in the country's society and changes could not take place from now to then. But still: The real benchmark for an estimation of sustainable reforms on the judicial level as well as the security sector will be the number of cases filed in court and the conviction of the perpetrators as well as of the powerful wirepullers of extrajudicial killings and other cruel human rights violations. No new law or any other written institutional reform could be considered successful as long as the measures undertaken do not positively affect and secure the human rights of the people on the ground. ■

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