

TOWARDS ENDING IMPUNITY IN THE PHILIPPINES: THE ROLE OF CIVIC ACTION & JUDICIAL PROCESSES



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For security reasons the authors' real name cannot be published, his identity must remain confidential.

Focusing particularly on extrajudicial killings, the article aims at adding explanation to the socio-economic and political rationale behind excessive human rights violations and the role of the military therein. It highlights the contribution of civic action to the, in terms of prosecution, advanced stage of the Bayles murder case (EJK), and furthermore, discusses power structure distortions that limit the reach of the judicial system.

During the last decade, a spate of extrajudicial killings (EJKs) and enforced disappearances (EDs) has shaken Philippine civic society. The masterminds of the same crimes and several other forms of massive human rights (HR) violations are particularly zeroing in on civic structures and groups, and their key leaders. At the same time, the victims and groups are publicly portrayed and denounced by military and military-controlled circles as communist fronts or are otherwise directly or vaguely accused of maintaining links to, or associating with the armed underground movement. Large segments of Philippine society are ideologically available to this victim blaming.

Both national and international experts conclusively are pointing to military circles as the culprits and/or backers in EJK and ED cases. However, the military yet is in complete denial of any involvement.

Rule of law not toothless

Viewed from the general perspective of the judicial system, isolated incidents of HR violations do not necessarily threaten a society. The rule of law principle provides ample defense mechanisms and instruments for dealing even with such crimes. In the Philippine setting, however, something seems to go badly wrong on the very level of state response.

We want to take a look at underlying structures in order to find an understanding. HR violations per se are not at the core of the matter. The true problem rather is the twin issue of massive HR violations alongside systemic impunity. Questions revolving around the potential impact of the judicial system towards simultaneously solving this twin problem necessarily need to identify and review possible factors contributing to systemic structural distortions.

Structural distortions

It is helpful to consider two additional contextual backgrounds:

1. In the Philippines, different forms of violence are

endemic instruments of (abusing) power. On the one hand, violence is employed horizontally in power contests with an almost folkloristic intonation along intra-elite conflict lines. The assassination of former Senator Benigno Aquino, Jr. back in 1983 and the 2009 Maguindanao massacre are spectacular examples for this type of violence. On the other hand, violence is used in a top-down manner with the main impact of fusing exclusive elite access to political office and resources.

2. Violence is not the only benchmark for unconstitutional misuse of power in Philippine politics. Graft, corruption and plunder are systemic and round out the picture of a political elite that is basically driven by uninhibited greed. Public office is an accepted gateway to wealth and enrichment.

EJKs and EDs are unconstitutional acts and punishable crimes under the Penal Code. The same holds for graft, corruption and plunder, as well as for resorting to non-legitimate force and violence as means towards political and economic ends which, more often than not, are congruent.

Violence & militarization towards economic ends

In the Philippines, rural poor are denied police protection vis-à-vis warlord assaults. Likewise, numerous cases are documented where military force is being unlawfully applied and aligned towards personal, clan and/or corporate interests under the cloak of counterinsurgency. Such incidents are embedded in an ongoing militarization process that practically is suspending democratic rights and civic procedures. Two distinct patterns are visible.

Firstly, the military intrudes and aims at controlling social and political structures especially in those communities where civic self-sustaining organizations are emerging or are already comparatively strong. Furthermore, it is particularly noticeable that military intrusion and warlords' mischief typically occur when target communities succeeded or are about to succeed in gaining land access through the government's agrarian reform program. Militarization is further

pronounced during election campaigns. Thus, the overall picture resembles both the politicization of the military and, moreover, the instrumentalization of the Armed Forces towards particular political and/or economic group interest. This is unconstitutional altogether.

Secondly, mining sites and areas covered by mining applications emerge to be militarization hot spots with the Armed Forces of the Philippines seen as practically taking over mining plant security functions. About one-third of Negros' rural population is directly affected by mining activities in different project stages. On the ground, communities experience a lack of participation and involvement in democratic decision-making processes. This neglect is conjuring up resistance. Experts in development studies are in accord with the World Bank when suggesting generally not to pursue mining projects in conflict-ridden areas.

Populations within areas that are opened to large scale plantation projects dedicated, for example, to bio fuel production are experiencing similar pressure and violations of their rights – including EJKs.

Philippine judicial system aims at ending impunity

Actually, the Philippine Constitution is unambiguous regarding HR and the Philippine judiciary is not short of sharp legal concepts in order to impose sanctions on infringements of whatever law or HR standard. Aiming at ending impunity, the Writ of Amparo, as well as Habeas Data, was introduced to the Philippine judicial system under the office of former Supreme Court Chief Justice Reynato Puno in 2007. The same legal means were modeled with the intention of providing adjuvant remedies particularly with respect to solving the twin problem of EJKs and EDs, on the one hand, and impunity, on the other hand. In fact, several courts meanwhile had issued Writs of Amparo. Following a PDG-initiated petition¹, the Regional Trial Court, Branch LXI, Kabankalan

City in September 2008, for example, issued a Writ of Amparo and consequently forced the military to set free two women, who had been abducted in the hinterland of Sipalay City and held captive without legal grounds. They had been tortured. It is noteworthy that the military accompanied this legal act with a choreographed smear campaign against Atty. Benjamin T. Ramos, Jr., legal counsel of the victims, Fred Caña of KARAPATAN-Negros and other HR advocates.

The introduction of the aforementioned remedies shows that the judicial system aims at solving the yet sorry HR situation in the Philippines. Nevertheless, there still is the sad fact that not a single EJK case had been solved so far. Also, graft and corruption cases, as well as the problem of violence as explicit means in Philippine power contests, yet wait for appropriate legal attention.

Ongoing impunity not a problem of lack of judicial capacity

It may expand explanation if the aforementioned constraints are not viewed isolated but rather taken into consideration together. So far, efforts towards stopping EJKs and ending impunity, such as the establishment of the EU-Philippines Justice Support Programme (EPJUST), focus on the parties involved in the judicial process. This includes law enforcement and investigative agencies. Particularly in the Benjamin Bayles



© PDG | Fact finding team listening to militarization victims in Himamaylan mountains.

murder (EJK) case, EPJUST had a crucial role in increasing the visibility of the case in the Philippines and internationally. EPJUST's work critically contributed to increasing the

safety of key persons who had been put under aggressive military surveillance or are receiving case-related threats on their lives.

Analytically speaking, it is too short to break down EJKs to a series of criminal acts committed and/or masterminded by members of the Armed Forces and, in a second step, to approach the same problem by professional capacity building. EPJUST's mandate formally was narrowly focused precisely on this – i.e., capacity increasing with regards to judicial and investigative processes. In the Bayles case, however, considerable impact was felt on the ground when international pressure and fall-out effects of EPJUST's efforts influenced, or intervened in the power structure. This is the very impact level where the work of EPJUST was most valuable.

Civic concepts fundamentally distorted

The country's true power centers are aligned along kinship links. Families, clans and shifting alliances of clans dominate this system and maintain a solid network of nepotism with regional strongholds. Being the key source for personal enrichment, political office is passed on within families. Even presidential tickets are no exemption as they are discussed under the same family perspectives, too.

On two levels, this unconstitutional configuration distorts the civic concept of separation of powers: 1) The police formally is put under the command of city and municipal governments. Given the role of the traditional landed gentry and their practical claim on dominating regional and national politics at their own discretion, this structurally opens the possibility of aligning law enforcement along individual and group interests. Thus, both investigations and employment of police force are performed selectively. 2) Moreover, the Philippine Army developed an organizational life of its own and aligns military operations along the interests of local political elites and/or business entities such as mining corporations.

1) PDG or „Paghida-et sa Kauswagan“ Development Group, Inc. is a rural development NGO founded in 1987 and located in Kabankalan City, Negros Occidental.

Diverted loyalty

Hence, civic groups have to deal with government bodies characterized by diverted professional and organizational loyalty. This is the institutional breeding ground for impunity. On the one hand, we do have the element of fear. Witnesses tend of not stepping forward because of sheer fear for their lives. For the same reason, government employees may abandon standards of professional ethics. On the other hand, it is not really rare to mistake EJKs as (legitimate) acts in the wake of counterinsurgency. In fact, large segments of Philippine society show a deranged perception with regards to civic exercise of democratic rights.

HR violations counter civic aspirations: Bayles murder case (EJK)

In and off government bodies, we observe pronounced tendencies of mistaking lawful and constitutional claims on resources, and towards democratic inclusion and participation in decision-making processes as subversive aspirations. In Negros, the same legitimate claims of course are touching economic interests of mining corporations, plantation industry entities, and, last but not the least, the very power base of the political elite. Vocally fighting against forced evictions, militarization and HR violations, Benjamin Bayles was vilified by the military. He was marked and eventually killed in an incident that is typical of EJKs in the Philippines. However, his case is unique in the sense that usual cover-up and whitewash mechanisms failed. Literally carrying their smoking guns, the suspected perpetrators had been caught by the police less than an hour after the killing. They were riding on board the motorcycle seen in the incident and, initially introduced themselves as members of the Philippine Army to the arresting policemen. An eyewitness of the killing positively identified them as the two hitmen in the Bayles killing.

The role of civic formations

From the very beginning, civic groups raised concerns that evidences may be manipulated, leads may not be followed, and that the lives of witnesses and other key persons involved in the case may be at stake. Thus, the strategy towards justice for Bayles relies on three pillars.

1. Legal Work: That includes counseling of the victim's family, developing a legal strategy and integrating and coordinating it with major HR advocacy networks on the national and international level, and gaining

private prosecutor status.

2. People-led Civic Society Support: That includes witness protection measures and extensive investigative work.

3. Information Campaign: That includes bringing the Bayles case to the attention of the general public, HR advocacy groups, and national and international decision makers in order to raise support of those government structures in the Philippines that adhere to, and work towards the restoration of, the principle of the rule of law, respectively.

Centrally organized and coordinated by Negros civic groups and networks, this three-pillar strategy



© PDG | Ronald Capionia vocally advocates community interests vis-à-vis a large scale open pit mining project that threatens his hometown at the outskirts of Sipalay City. On February 23, 2010 he survived and EJK attempt.

contributed to the now advanced stage of the Bayles case in terms of prosecution. EJKs and other grave HR violations can be stopped only by ending impunity based on clean judicial processes. However, there are strong attempts of obstructing the due course of justice. On the other hand, state parties involved in the judicial process show a sort of inertia and reluctance to pull out all stops in order to solve the case. Thus, the team of prosecuting lawyers sees reasons for doubting the negative results of the ballistic examination and question the validity of the paraffin tests that had been conducted on the accused and returned negative results too.

Reluctance and inertia

Alarmed by the aforementioned developments and, furthermore, fearing ongoing military interference and threats on lives of key persons involved in the Bayles case, HR advocates brought these disturbing developments to the attention of, among others, Atty. Leila M. De Lima, Secretary of Justice, Cecilia R.V. Quisumbing, then OIC of the Commission on HR of the Philippines, and President Benigno C. Aquino, III. To no avail, the Secretary of Justice particularly was appealed

to tap both Philippine and foreign expertise pooled in the EPJUST towards a pro-active case-related counseling process in order to solve the Bayles case.

For the further judicial process, it became critically important to prove the military background of the accused. Although having themselves initially identified as members of the Philippine Army, the accused still give false names and professions. Based on information collected by PDG-network POs and confirmed through information leaking from military circles, the true identities of the accused, however, had been revealed and made public in an open letter signed by Bishop Ang. Cornered by Congressman Neri Colmenares of Bayan Muna Partylist Group in October 2010, the Department of Defense was forced to acknowledge the enlisted status of the accused.

Civic activists continue to receive death threats

The Bayles murder case could be the turning point in ending impunity. The success of the trial also depends on establishing in the courtroom both the military background of the accused and the military link of the killing. Army circles are aware of this and exert pressure. Several persons are receiving case-related death threats or are put under aggressive surveillance. Such scenarios typically are preceding an eventual EJK and, thus, must be taken most seriously.

Col. Edilberto L. Suratos, Adjutant General, Philippine Army General HQ, Fort Bonifacio, Taguig City; and Lt. Col. Ricardo B. Bayhon, 3rd ID, Jamindan, Capiz had been summoned by the court twice – to no avail so far. The fact that military personnel repeatedly neglect subpoenas nurtures the apprehension that the military is without political control and aims at continuously placing itself off judicial reach. At this point it becomes clear that the issues of EJKs and impunity cannot be solved solely on basis of judicial mechanisms and procedures. Political determination is required to end impunity. Due course of justice presumes the political will to enforce the lawful interplay of constitutional bodies.

President Aquino needs to restore nothing less than the primacy of political leadership and to end diverted loyalty on different levels of the military as well as law enforcement and investigative authorities.

Military seen in power struggle

Decidedly, solutions are well off the reach of capacity building. The military yet is strong and confident and, maybe, desperate enough of continuously threatening the lives of material witnesses and other key persons in the Bayles case. These are bold attempts of obstructing the course of justice. There is not much hope for the better if the state does not put itself into the position

constitutional bodies, and government departments and agencies.

At the Bottom Line: Civic Society

In the Philippines, professional ethics and constitutional/legal standards are much too easily abandoned and subjected to group interests. However, this does not reflect an anomic breakdown. The aforementioned perception of diverted loyalties is applicable from the constitutional perspective only. Embedded in power structures that are without constitutional mandate, public servants and state branches of power tend to align along the system rather than the constitution. And within this system, loyalties



© PDG | Landlord's goons seized land from small farmers in Himamaylan, Negros Occidental, September 2009.

of defending the lives and rights of the population on the ground. Not an option but a question of duty, constitutional bodies are required of lawfully claiming their due constitutional powers and, moreover, to enforce them. The key is not with the judicial system (alone) but, in the first place, with the president's office and, following the line of command, cabinet members, and departments and authorities that are involved in the judicial process.

Clearly, there is no alternative to justice - there is no solution that foregoes the rule of law. The problem of ongoing EJKs and continuing impunity also reflects a persisting power struggle within and across several

are not distorted! The logic and rationale of policy and decision-making processes in the Philippines are set against the background of power centers that root back to, and reflect, colonial structures. The Philippine legal, political and social systems did not evolve internally. Unlike in Europe, there was no history of civic emancipation that was carried and defended by the population. In the long run, the twin problem of grave HR violations and impunity needs to be addressed through strengthening of civic structures, which eventually could lead towards civic society formation. The notion of a fortified democracy may be a feasible goal but it is not yet to be defended in the Philippines. ■