

RED-BAITING IN THE PHILIPPINES: CIVIL SOCIETY UNDER GENERAL SUSPICION



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Over the past decade extrajudicial killings (EJK) and enforced disappearances (ED) were reported by several national and international institutions and organisations. Amnesty International, Human Rights Watch, the governmental Melo Commission and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, have analyzed the decade of the Arroyo administration and have discovered grave human rights violations. However, their reports lack a comprehensive analysis of the overall strategy that may have contributed to such violations: Red-Baiting. This strategy is commonly known throughout the country, but there haven't been serious efforts to tackle the problem, yet. "When you decide to work for a society-critical NGO, you inevitably face state repression"¹.

What is Red-Baiting?

Red-Baiting describes the practice of state actors to publicly and detractively classify government-critical individuals and organisations as state enemies, communist terrorists or members of communist front organisations with the purpose of overthrowing the democratically legitimized state authority. Furthermore, state actors create an atmosphere of insecurity to indoctrinate the belief in an internal or external threat to national security in order to receive societal legitimation for the implementation of a legal framework that establishes a "state of exception". Finally, state actors take concealed actions against these government-critical individuals and organisations.

The term Red-Baiting stems from the McCarthy era in the USA during the 1950s. The political campaign against communist elements in the American society, identified with the name of Senator Joe McCarthy, reaches into today's politics and has experienced a renaissance during the past decades in the Philippines. After 9/11 President Bush called for support of his "War on Terrorism" and the Philippine government was one of the first to stand by its American friends. The reward for their loyalty was the promise of \$450 million to terminate internal insurgent and terrorist activities (Francia 2003). However, instead of using this support/money to fight the Abu Sayyaf as

intended by the American government, Arroyo used the money for her fight against the Moro Islamic Liberation Front (MILF) in Mindanao (Glassman 2005) and the leftist insurgent New People's Army (NPA) (Francia 2007)².



© IPON | Is it worth to demonstrate?

The State of Exception and La Mano Dura

One may ask how Red-Baiting can be justified in a liberal democratic system. The answer is as simple as the question:

1) Interview with Sister Crescencia Lucero of Task Force Detainees of the Philippines (TFDP) on 2nd August 2011.

2) See also Article "Terrorists or Terrorised? – Abu Sayyaf-Baiting in the Philippines" in this issue.

It enjoys support and acceptance within society.

The state of exception is “a provision whereby the state – in times identified as ‘crisis moments’ that threaten the very continuity of the state itself – is empowered to act outside the constraints of law, permitting the state to adopt extreme measures (including violence against its own citizens) in its own defense” (Goldstein 2007). Hence, state violence against internal “enemies” not only becomes a possible option, but a necessary means to guarantee and safeguard the state’s survival. It is the state’s right to respond to the internal emergence of extraordinary situations and crises.

Furthermore, the belief “that rights may have to be sacrificed for security and that civil and human rights cannot be respected in the context of ‘emergency’ ” (Goldstein 2007: 54) enjoys wide support among members of society, who perceive insecurity as a major internal threat. For this reason, state actors belonging to the executive enjoy a great scope of measures to react to an emergency and to safeguard national security. This phenomenon is called “la mano dura” (ibid.: 58). When people feel the absence of “a reliable authority, operating according to the rule of law, to which [they] can turn to report crimes, resolve conflicts, or seek redress of grievances” (ibid.: 57), it is this “pervasive sense of insecurity” (ibid.) that explains why they advocate an extension of “discretionary powers for police personnel to control crime and other security threats” (ibid.: 51). Thus, the state deeply indoctrinates a state of fear in the society, be it the fear of communism or of radical Islamist fundamentalism. This threat to national security or rather to the existence of the state, regardless whether it is real or partly constructed by official



© IPON | „Sabagay mga komunista naman silá” (they are communist anyway)!

governmental discourse, moves the people to call for “la mano dura” and legitimises the confinement of civil liberties and human rights in order to guarantee the further existence of the state during a state of national emergency. The creation of such an atmosphere of insecurity is a necessary pre-condition to be able to implement a legal framework establishing a state of exception.

Legal Aspects

The Philippine Congress has passed several bills that constitute legal instruments to facilitate the practice of Red-Baiting. The Human Security Act of 2007 (HSA)³ is the most comprehensive law in response to international terrorism in the Philippines. It gives a legal definition of terrorism and defines

its constitutive elements of crime, penalising them, and provides for measures to prevent acts of terrorism. These measures include the surveillance of suspects and the interception and recording of their communications, the outlawing of organisations deemed terrorist by declaration of a Regional Trial Court, the detention of suspects without judicial warrant of arrest and (disregarding) the rights of the detained, travel restrictions and house arrest for terror suspects on bail, and the examination of bank deposits, accounts and records as well as the seizure and sequestration thereof. With regard to the problem of Red-Baiting in the Philippines, the HSA has been criticised in several respects, especially for being imprecise, illegal, ineffective and mostly incoherent and disorganised. Because of its

3) Republic Act No. 9372 of 2007.

imprecise definition of terrorism, the law may be null and void for vagueness following a legal doctrine in past decisions of the Supreme Court



© IPON | International trail company to prevent Red-Baiting.

of the Philippines (Balderama 2007-2008: 14 and 16). Concerning the illegality of the HSA, in practice the suspicion of being a member of the Communist Party of the Philippines (CPP) is sufficient to become a terror suspect and to be held under surveillance (ibid. 15). Thus, political beliefs and not acts are facilitated to become punishable under the HSA. The essential basic right of privacy in communications is withheld from persons under observation by state authorities (ibid. 37 and Diokno 2007a). Adding insult to injury, the law violates due process of citizens under surveillance, since they do not have any legal remedy against their observation by state authorities as arranged by the law (ibid.). Terror suspects can be placed under warrantless arrest for three days without probable cause to be determined by a judge (Balderama 2007-2008: 28-29). Moreover, the law authorises the extension of warrantless detention of terror suspects beyond the regular three days to an indefinite amount of time without trial (ibid.: 28-29; Diokno 2007a; Pereire 2007: 3). Therefore, the HSA violates basic principles of the rule of law,

such as the principle of equal protection under the law and the right to fair trial. Under the HSA terror suspects on bail who are placed under house arrest suffer harsh conditions. Suspects are not allowed to communicate, to follow the media, to be visited by close relatives and friends or to be held in group detention (Balderama 2007-2008: 39; Diokno 2007a). Solitary confinement is prohibited in the Philippines by Art. III Sec. 12 (2) Constitution of the Philippines.

In summary, the legal framework established under the Arroyo administration facilitates the legal implementation of a state of exception, which in turn contributes to the development of a state of fear among the population. It enables state authorities under the protection of the law to pursue citizens who adhere to communism as terrorists and enemies of the state. Although membership of the CPP is legal in the Philippines, the above-mentioned laws provide a basis for the political prosecution of communists.

The Modus Operandi

Red-Baiting in practice may begin with relatively harmless measures: A victim may start receiving threatening text messages on his or her cell phone, e-mail account or by mail (Diokno 2007b). An unidentifiable motorbike driver passes by the house of the victim at the same day and time every week or even every day. Victims are recognisably kept under surveillance at home and at their workplace, either through technological means like wiretapping of the phone lines, or by police informants, who permanently tail after the victims (ibid.). During public events on the Barangay level⁴ the military informs citizens about potential threats of terrorism and threats to the existence of the state, emanating from particular Barangay residents, who are portrayed as communists. In the PowerPoint presentation "Knowing the Enemy" presented by the armed forces, the names of wanted terrorists and leftist activists suspected of terrorism, are announced publicly (ibid.). Further, leaflets with similar contents are distributed in Barangays (ibid.). The names of those citizens considered as enemies of the state also appear on internal military blacklists called "Military Order of Battle"

4) Local administrative unit in the Philippines.

(UN 2008: 9-10). Blacklisted victims are denied due process against the military. There is no opportunity for them to take their names off the lists, since these are kept top secret in order to protect the existence of the state. The worst consequence of Red-Baiting is that victims can fall prey to enforced disappearance or extrajudicial killing. In case of enforced disappearances, victims are dragged into cars by unrecognisable perpetrators. Sometimes victims reappear or escape years later after having been held in captivity, tortured or used as unpaid workforce, which is a type of modern slavery (Amnesty International 2011). However, in most cases victims of enforced disappearances never return. In the Philippines extrajudicial killings are typically executed by teams riding motorbikes, wearing civilian clothing and bonnets as a disguise (Diokno 2007b). While one person drives the motorbike, the other pulls a firearm and shoots the victim. The killings are executed with such a high degree of professionalism and precision that it does not seem to be far-fetched to suspect people with professional training. Typically, in each extrajudicial killing incident only few shots are being fired, killing the victim immediately. In the Philippines only personnel of the military and the police are professionally trained in the use of firearms. Although suspects of enforced disappearances and extrajudicial killings are rarely arrested, there is ample evidence that point to the involvement of state officials who give the orders for such acts to others who commit the crimes. There are virtually no cases of enforced disappearances and extrajudicial killings known in which suspects were legally persecuted to the extent of being convicted for the crimes committed. Lack of thorough police investigations and impunity of perpetrators are typical characteristics of Red-Baiting in the Philippines.

Conclusion and Countermeasures

The social phenomenon of Red-Baiting in the Philippines has been described from theoretical, social, historical, political and legal perspectives providing insight into its functional logic determined by the interconnectedness and interaction of these different fields. In light of the terrorist attacks of 9/11 and the global war on terrorism, a state of exception was established under the Arroyo administration, following the US in fighting Islamist fundamentalist and all other kinds of terrorism. The Philippine government and the media portrayed terrorism within the Philippines as a threat to the existence of the state itself, establishing a state of fear in the society. Out of fear for their lives, large parts of the civilian population demanded stronger and more effective anti-terrorism measures

processes by societal and state actors which are steered by the government. Thereby, it created a vast array of legal measures to intensify its control over the entire population, especially targeting the so-called enemies of the state (Quimpo 2009: 15). With a legalised state of exception and large parts of the population terrified, supporting a strong government, "la mano dura" could have its unimpeded way against those citizens – may they be portrayed as communists, Islamic fundamentalists or any other kind of radical believers – considered as potentially harmful to the governing administration. In this context, Red-Baiting is a strategy by state authorities to classify political activists and civil society organisations as communist while establishing a state of exception, legitimising it with a legal framework, and conducting covert operations ranging from simple



© IPON | „La mano dura“. Your friendly police department.

from the government. In disregard of several basic civil rights and freedoms, the government adopted a legal framework, including most prominently the HSA to implement rigorous anti-terrorism and security measures. Hence, the establishment of the state of fear and the state of exception are reciprocal and mutually reinforcing

harassment to enforced disappearances and extrajudicial killings of activists. Although there has been some improvement, the legal instruments do not suffice to prevent incidents of Red-Baiting, as there are still new cases brought to the public and the root causes are not tackled. In order to deal with the issue of Red-Baiting, the

Philippine state is required to take preventative measures to enforce police investigation and legal prosecution to end impunity and to compensate the victims and their families for the damages they incurred through Red-Baiting. As for the prevention of Red-Baiting, an overarching societal discourse about the issue should be encouraged to raise awareness about the issue among citizens as well as among state authorities. Especially state employees of the executive branch like the police and military officers should be confronted with the topic, be made aware of it and learn ways of peacefully and lawfully addressing it. A positive human rights education for soldiers and police officers as protectors of the basic rights of the citizens could contribute to this objective. Concerning the prosecution of people suspected of having committed Red-Baiting, the government needs

not only to enhance the budget and forensic technology of investigators, but foremost needs to intensify its political will to prosecute suspects. Thus the government will need the unimpaired cooperation of the military and the police to access and trace old evidence and case file materials. Also, an effort should be made to compensate the victims of Red-Baiting and their close relatives financially for the physical and psychological damages that were inflicted upon them by state authorities. Therefore, all relevant state institutions involved, namely the Commission on Human Rights, the Department of Justice, the Department of Interior and Local Government, the Department of National Defense, the Philippine National Police and the Armed Forces of the Philippines should cooperate in and develop a concerted policy to achieve these goals. ■



© Jimmy Domingo | „Noise barrage“. Negros-farmers demonstration in front of the Department of Agrarian Reform.

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