

WHEN SELF-INTEREST THWARTS THE CONSTITUTION – THE STRUGGLE OF THE FARMERS IN NEGROS FOR THE IMPLEMENTATION OF THEIR RIGHTS



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The Constitution of the Republic of the Philippines enacted in 1987 defines clear and unambiguous objectives for the different state actors regarding the implementation of the agrarian reform and the protection of human rights defenders (HRDs). But unfortunately, the relevant institutions and government bodies often fail to live up to the self-established standards formulated in the supreme law. In the following article, the current developments on two Haciendas in Negros shall serve as an example for addressing this topic in a more effective way.¹

Article XIII of the Constitution of the Republic of the Philippines – entitled ‘Social Justice and Human Rights’ – asserts that it is the state’s duty to initiate an agrarian reform program guaranteeing ‘the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till’ it further states that ‘the State shall encourage and undertake the just distribution of all agricultural lands.’ But in reality, the implementation of the CARP-process is often accompanied by human rights violations and many farmers wait for years until their their land titles are issued. This raises the question why the political reality in the Philippines is often not in conformity with certain principles and aspirations prescribed in the constitution. The situation on Hacienda Victoria in the municipality of Isabela and Hacienda Carmenchica in the municipality of Pontevedra is a good example for this discrepancy.² In both cases, the human rights defenders already hold land titles, but the former landowner has successfully managed to hinder the HRDs from entering and cultivating their land. This has caused tremendous security problems in the area in question. Against this background, the symbolic act of handing over the land to the farmers (installation)³ – orchestrated by the Department of Agrarian Reform (DAR) – has the potential to clarify the property situation once again in order to prevent future conflicts between the farmers and the former landowner. Although an installation is not even necessary, since the land is the official property of the farmers, the HRDs put a lot of hope in this act. But unfortunately, the government agencies and institutions in charge are often dominated by the self-interest of different employees or influenced by several family clans that still shape the political and social networks of the country, especially on Negros.

First of all, it is obvious that impartiality of the different state actors cannot be taken for granted in the Republic of the Philippines. In many cases, the former landowners succeed in using their personal bonds and family ties with government officials to delay the agrarian reform process or to prevent further investigations concerning human rights violations. On Hacienda Carmenchica for example, the farm manager, who is loyal to the former landowner, is the brother of the current Mayor of Pontevedra. In addition to that, they are both related to the Chief of Police in charge. According to the HRDs, this constellation makes it really tough to raise their voice against the injustice they are subjected to. Furthermore, it seems to be justified to question the supposedly unprejudiced behavior of several state actors, since some representatives of the DAR refuse to reconsider their individual preconceptions about certain farmers or interest groups. IPON’s mandate organization Task Force Mapalad (TFM) for instance, is sometimes labeled as a leftist organization with overblown demands and against this background, a few relevant officials do not take their concerns and desires seriously.

Another problem for the HRDs results from the tendency of many government officials to shift responsibilities back and forth to justify their lack of action and deliberately delay the process. As a consequence, the HRDs sometimes do not really know who is in charge of their particular case. In terms of the question whether there will be an installation of a certain group of farmers or not, the relevant officers regularly refer to someone else when it comes to the ultimate decision. In June 2012 for instance, Undersecretary Narciso B. Nieto of DAR National sent a request to Florentino

1) This article is based on first hand information IPON observers in Negros collected during research conducted 2009-2012. The information was collected during multiple meetings with local and regional state actors, national NGOs and TFM members as well as visits to the area.

2) Another example for the resistance of a landowner against the agrarian reform and the lack of political will, or weakness of state power to fully enforce the law against influential political clans, is Hacienda Teves (cf. Bauer 2011: 22-25).

3) For possible problems that might occur in the process cf. IPON 2010: 20.

Siladan, Provincial Agrarian Reform Officer in Bacolod (PARO), prompting him to push for an immediate installation of both Haciendas, Carmenchica and Victoria. However, Mr. Siladan did not feel obliged to comply with the request and handed the case over to PARO Yongque instead. Yongque on the other hand, declared he would just follow the recommendations of the responsible Municipal Agrarian Reform Officer. A similar situation can be found inside the police system where officers push responsibilities back and forth between different divisions and positions. Regarding human rights abuses on Hacienda Carmenchica, relevant actors of the Philippine National Police (PNP) distanced themselves from any accountability declaring the investigations would be the responsibility of the Provincial Mobile Group (PMG). The PMG acts as a sub-division of the PNP that operates in rural areas. PMG employees, however, make excuses for their lack of action by pointing out that they only take action upon instructions from the PNP. Furthermore, state actors, especially DAR employees, tend to move or postpone appointments with HRDs without informing them. Very often, they duck out of responsibility, since they are afraid of creating a conflict between themselves and the powerful (former) landowners. As a result, the farmers have to overcome huge financial obstacles and loose working-time in order to go to the relevant city institutions and in the end, they are not even able to present their arguments because nobody receives them.

The activity and commitment of many employees at the DAR seems to be shaped by the termination of the Comprehensive Agrarian Reform Program (CARP) in 2014. It is estimated that two out of three government officials working for the DAR will be laid off and compensated by a huge dismissal wage. Against this background, some of them put their focus on avoiding any mistakes or possible conflicts with the landowner – to make sure that their bonus will not be reduced.

The timidity of the DAR employees is ano-

ther reason for the fact that former landowners, who oppose the agrarian reform, are able to slow down the usual process: The current conflict on Hacienda Victoria is about a parcel of land with 59 hectares leased to the 'Rishi Developers Corporation' since 1987. The leasing-contract expired in the end of June 2012. After that, the farmers decided to cultivate the area by themselves, since they had already become the rightful owners of the land in 2006. The situation on Hacienda Carmenchica is comparable. The area the HRDs are fighting for at the moment was awarded to them while it was still leased by the 'Universal Equity Corporation.' In September 2012, however, the contract was revoked by the competent court, the DARAB.⁴

In both cases, the former landowners successfully filed civil cases at the Regional Trial Court (RTC) in La Carlota to impose an injunction, which aimed at preventing the farmers from entering the land before the termination or revocation of the leasing contracts. As the conflict is about the agrarian reform, the RTC is not in charge of deciding on this matter. It falls entirely under the jurisdiction of the DARAB. Nevertheless, there are some judges who use the broad scope of jurisdiction of the RTC as a justification for taking jurisdiction over agrarian reform related cases. The problem is that once an injunction is issued, it still has to be taken to a higher court in order for it to be nullified – even though the RTC was not in charge of passing judgment in the first place. To avoid a time-consuming, costly process of lifting the injunction, judges ought to refuse agrarian reform related cases. In this context, it is noteworthy that Mr. Francisco N. Rodriguez, who decided the case of Hacienda Victoria, has only functioned as the responsible judge of the RTC for a couple of months. This arouses suspicions that he was only placed in office by the powerful landowner to impose the injunction. Another point underpinning the observation that the Philippine State often fails to fulfill the self-established requirements enshrined in the constitution, is the

fact that it cannot ensure enough protection of HRDs against repressions and threats by the former landowners. Several incidents on Hacienda Carmenchica can illustrate this. In the course of the last twelve months, the human rights defenders have been threatened, their nipa huts were destroyed and even warning shots have been fired. Unfortunately, the PNP has not proved itself to be willing to help and support the HRDs. On the contrary, some police officers even aligned themselves within the conflict and were involved in violent encroachments (see new-sticker, pp. 39). The situation on Hacienda Victoria is similar. The police in charge of Isabela did not react when human rights abuses were reported to them. The HRDs of Hacienda Victoria filed several blotters against security guards working on the sugarcane plantation without uniforms and licenses to carry weapons, but the police did not investigate the cases at all or only half-heartedly. According to some HRDs from both Haciendas, several officers of the police even received money as a reward for their support of the actions initiated by the former landowners.

All those facts outline a state that lacks political will and power to fully enforce the paradigms of the constitution. Hence, the state continues to paralyze itself by obliging to the individual interests of a few single representatives of the state authority or very powerful family clans. By inducing political stagnation and ignoring the basic rights of the constitution, the ruling class in the Philippines consolidates their privileged situation. As long as the different state actors do not visibly assert the rights established in the constitution in order to initiate political and social change in the Philippines, the constitution is not worth the paper on which it is written – and the farmers will be the ones who have to live with the consequences. ■

SOURCES

- Bauer, Lukas (2011): Fruitless Actions – How state-agencies protect HRDs in areas with 'landlord resistance' – In: *Observer*, Vol. 3, No. 1, pp. 22-25.
- IPON (2010): Security Problems after Land Transfer – In: *Observer*, Vol. 2, No. 1, p. 20.

4) Department of Agrarian Reform Adjudication Board. The legal system of the Philippines is divided into two branches, that are not allowed to intervene in the respective responsibilities. Cases regarding the agrarian reform ought to be exclusively heard by the DARAB.