

COMBATING HUMAN RIGHTS VIOLATIONS: LEGAL LIMBO BETWEEN INDIVIDUAL RESPONSIBILITY AND STATE OBLIGATION

To establish a general state of international respect of the human rights, the commitment and action of non-state actors, including individuals, is indispensable. However, ultimately, it is incumbent upon the state to protect the human rights. Which form this interaction takes in the case of the Philippine state, where it fails, and when it becomes necessary for the international community to intervene can be illustrated by the story of human rights defender and political prisoner Temogen "Cocoy" Tulawie.

The National System for Combating Human Rights Violations

No one – except maybe the most idealistic utopian – is seriously expecting the perfect state to emerge: it can be taken for granted that in any state, at any time, Human Rights Violations (HRVs) will occur, although the internationally recognized and enforced covenants formulate the threefold duty for the state to respect, protect, and

fulfil Human Rights (HR). Hence, one crucial question needs to be posed when evaluating a state's handling of HR affairs, namely whether this inevitable deviation from the pursued ideal is acknowledged by the state itself, and if – based on this concession – it provides suitable mechanisms to deal with this deviation. That is, does the state create an institution to monitor the domestic HR situation and to take suitable action if HRVs are discovered?

In this context, the UN General Assembly formulated guidelines for the establishment of "national institutions for the promotion and protection of human rights". According to these, National Human Rights Institutions (NHRIs) should be independent from the government and serve the following purposes:

1) gather data on the national HR situation;

thereby neglecting their duty to safeguard the rights of the PADATA members, the DENR engineered what might first have looked like an acceptable compromise: in recognition of the "string of violence" in the affected area, and "in its desire to achieve a workable, genuine and lasting solution to the problem"¹ it negotiated a so-called Memorandum of Agreement (MoA). This MoA is supposed to create a "win-win"-situation for all parties involved and bring about lasting peace. It stipulates that PADATA and some other peasant groups receive segments of the total area currently occupied by Villalon, subject to the condition that they "terminate all actions pending in courts or other bodies" against the opponent parties. This is strictly speaking a governmental instigation to impunity. For the charges filed against the assumed murderer of Welcie Gica are part of the pending actions. The situation surrounding the signature of the MoA was as questionable as its content: the date was moved forward on short notice – thereby not allowing the participants to prepare sufficiently - and the clause on dropping all charges as a precondition for the validity of the MoA was only mentioned in the English version, which was signed by all parties, but not in the Visayan version which was read out aloud to PADATA members. Nevertheless PADATA could not be forced to dismiss their cases against Villalon on the basis of the signed MoA and the MoA alone could not release the PNP from its duty to execute the Warrants of Arrest: The jurisdiction lies with the courts and only a judicial order can declare a Warrant of Arrest null and void. Knowing this, both Villalon's lawyer and security guards persistently tried to persuade the Gica family to drop their cases against the alleged murderer. Although no physical violence was used, the frequent visits ended up demoralizing Welcie Gica's relatives and they decided to settle on receiving monetary compensation. To make any further criminal proceedings impossible, the lawyer also convinced all witnesses of the murder to change their affidavits. Believing that this was necessary to finally have the MoA implemented, the witnesses did as they were advised by Villalon's lawyer. Consequently in juridical terms, it appears that Welcie Gica was never murdered; he might as well have been killed in an accident, simply disappeared, or have never existed at all.

1) Quotation taken from MoA

2) inform and advise the government to achieve a better implementation and fulfilment of the international covenants;

3) act as a link between international, national, and local actors;

4) participate in the provision of sufficient HR education and raise the public awareness on HR issues.

Additionally, an NHRI might exercise quasi-judicial tasks by accepting complaints concerning individual cases and in this function constitute a supplement to ombudsmen, HR commissioners, and the jurisdiction. These guidelines leave room for a wide range of different organizational designs for NHRIs. Whether a specific institution meets the formulated requirements is determined by an international committee. Like the German NHRI, the Philippine NHRI, the "Commission on Human Rights of the Philippines" (CHR), received a positive rating by this international committee concerning the compliance with the requirements. Moreover, the combination of the CHR and judicial institutions like the Office of the Ombudsman and the Supreme Court (SC), along with legal remedies like the Writ of Amparo and Habeas Corpus, constitutes an elaborate operative network of instruments and mechanisms that enables the Philippine state to meet its HR commitments. Yet, both in the Philippine and the German system, this network relies heavily on non-state actors to achieve effectiveness. These fulfil an essential function, as it is them who act as informants and thereby enable the state institutions to undertake legal action in case of HRVs. Tom Koenigs (2009), chairman of the German Committee on Human Rights and Humanitarian Aid, puts it this way: "HR work without the support of NGOs is impossible. In many cases, it is the local activists who possess information that is indispensable for our work."¹ Accordingly, it is listed among the obligations of the CHR to establish and strengthen cooperation with non-governmental and civil society organizations with the aim of "complementat-ion, sharing and mutual reinforcement" (CHR Web site). But not only NGOs, CSOs, or third parties are to draw the authorities' attention to particular HRVs; it is the aggrieved party, i.e. the individual citizen who is equally responsible to display HRVs. The German Commissioner for Human Rights Policy Markus Löning (2010) emphasizes: "Under the German legal system, anyone who believes their rights have been violated is in principle entitled and obliged to take

their case to court."² This principle is also established in the Philippine constitution. However, despite the aforementioned network of laws and institutions, its realization remains threatened by the indifference of responsible officials, by favouritism, and by the personal interests and excessive self-importance of those in power. The case of Human Rights Defender (HRD) Temogen "Cocoy" Tulawie is an illustrative example for this deficiency in the system for the combat of HRVs.

Embracing Civic Responsibility: Human Rights Defender Cocoy Tulawie

For 20 years, Cocoy Tulawie promoted HR work in his home region, the province of Sulu. As he stated in an interview, convincing the inhabitants of this remote and crisis-ridden area to advocate for their cause with non-violent means instead of armed force, was tedious. Even so, Cocoy was not discouraged but stuck to his way of fighting HRVs and social injustice: Together with students and other like-minded people he documented HRVs, initiated fact-finding missions, and organized mass mobilizations whenever necessary. Though these activities often meant criticizing members of the government, and sometimes to make common cause with the opposition, he felt no personal aversions but stuck to facts. However, things became more difficult when Abdusakur M. Tan was elected Governor of Sulu for a second term in 2007. To the detriment of civil society, the violent clashes between Abu Sayyaf, MNLF (Moro National Liberation Front), and the US-backed AFP (Armed Forces of the Philippines) continued unabated. Seemingly more concerned about his prestige than about the well-being of his citizens, Gov. Tan endorsed any measure to eliminate extremist armed resistance in his province. In the name of fighting terrorism, he furthered the introduction of a highly intrusive and discriminating ID card system (January 2008), supported the aerial bombing of a residential area, causing numerous civil casualties (June 2008), and put the province under State of Emergency (March 2009). Since each of these actions entailed various HRVs, Cocoy and his fellow campaigners opposed them vehemently. As condemnable as these actions were from a humanitarian and human rights perspective, the interventions carried out by the NHRI and by the jurisdiction were exemplary. This is especially true for the case of the announced introduction of the ID card system. When the plans were made public, citizens and the political opposition expressed their discontent using the legal democratic tools available. So whilst several opposition parties formu-



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1) author's translation

2) emphasis added

lated a resolution asking the House of Representatives to conduct an immediate inquiry into the case, Cocoy and his allies organized mass demonstrations and appealed to Gov. Tan personally. However, according to Cocoy, Gov. Tan merely uttered his anger in response to this protest and proceeded with his plans, supposedly on account of the financial resources already invested. . Subsequently, and in accordance with the NHRI guidelines, the CHR decided to intervene and submitted a legal opinion to the government. Therein, the implementation of the proposed ID system was declared unconstitutional, concluding that the CHR “supports the call and move for the cessation and revocation of ID system in Sulu”, for it made “oppression and harassment highly possible” and therefore “would be a blatant violation of human rights” (Commission on Human Rights – IX Legal Section, 2008). Due to this pressure, Gov. Tan had to cancel the implementation of the ID system. Following the aerial bombings and comparable incidents in 2008, events followed a similar course: the joint protest of local activists, national NGOs, and the regional NHRI sufficed to force Gov. Tan’s retreat. However, when he declared the State of Emergency in March 2009, a more powerful authority was necessary to stop the despotic ruling of the regional chief of government. Thus Cocoy and fellow HRDs made use

of their right to appeal directly to the SC as constitutional questions of transcendental importance to the public were concerned. They filed a petition urging the SC to declare the State of Emergency null and void for being unconstitutional. While the petition was still pending, the situation suddenly became critical for Cocoy himself, and being used to fight for the rights of others, he was forced to act on his own behalf: Gov. Tan reacted most indignantly towards Cocoy’s constant opposition, and his private armed forces began to threaten Cocoy and his family. When Cocoy was officially suspected of having links to Abu Sayyaf and being involved in a bomb attack, matters became even worse, as elaborated below. In their distress, Cocoy and his wife Mussah sought recourse in a particular Philippine legal remedy: the “Writ of Amparo”, i.e. writ of protection. In acknowledgement of the particular situation of harassment of HRDs in the Philippines, this judicial instrument was introduced in 2007 to prevent enforced disappearances and extrajudicial killings. After hearing Mussah on the matter, the Court of Appeals decided in her favour and granted a Temporary Protection Order, directing the AFP to deploy two soldiers for the full time protection of the Tulawie family. So far, the Philippine national system to combat HRVs did not fail. Cocoy’s behaviour and actions demonstrate

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Apex of violence and injustice: PADATA member Welcie Gica shot on August 24th 2011, the murderer has to fear no criminal prosecution, and arsonists who burnt 15 houses are not arrested, yet:

- + Jun/Jul 2012 – PADATA members and PNP informants regularly see alleged murderer Milo Ceballos in Panalsalan, but the warrant of arrest is not served**
- + Jul 2012 – Joint attempt of local and provincial PNP forces to serve warrants of arrest against Ceballos and arsonists failed: suspects were not to be found on the ranch**
- + Aug 2012 – Ceballos is believed to have left the area**
- + Oct 2012 – IPON meets the chief of the human rights office at the national PNP in Manila, to follow up the cases on a higher level**
- + Dec 2012 – the conflict parties sign a DENR-negotiated Memorandum of Agreement (MoA) settling the land distribution; a precondition is the dismissal of all cases formerly filed against one another**
- + Dec-Feb 2013 – Villalon’s lawyer and goons continuously pressure Gica’s family to drop their charges against Ceballos**
- + Feb 2013 – Gica’s family withdraws the charges against Ceballos, receiving in exchange 50,000PHP from Villalon**

An impressive solidarity network: relatives and members of various NGOs campaign for Cocoy’s release (Source IPON)



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that the notion of an individual obligation to manifest the violation of one's rights by oneself is legitimate. However, the duty to act on such a manifestation ultimately remains with the state. Gov. Tan's declaration of a State of Emergency was a public act the national government must have been aware of without further intervention. However, there was no presidential reaction of any kind. And it took three years for the SC to announce a decision on Cocoy's petition against the State of Emergency. Within those three years,

Cocoy's personal situation changed dramatically, unveiling what was only looming: That Gov. Tan's Machiavellian governance and his unscrupulous methods were almost sufficient to override the national institutions for the combat of HRVs, and that only the joint effort of national and international non-state actors could prevent the worst consequences for Cocoy Tulawie.

Vulnerable and dependant on others: fugitive and detainee Cocoy Tulawie

For Cocoy, his being such a strong voice vehemently placing the implementation of HR above the interests of those in power had to be his undoing eventually. This time came when Gov. Tan and 12 other people were wounded in a bomb attack in May 2009. Shortly afterwards, the list of suspects included a number of inconvenient officials and other political opponents of the Governor. Cocoy was one of them and, not surprisingly but absurdly so, he was soon singled out as the alleged mastermind of the bombing. When he was accused of multiple attempted as well as frustrated murder, he continued to trust the legal system of the Philippines and that of Sulu, having just been granted the Writ of Amparo. But as he had already experienced Gov. Tan's influence and power, he was careful. After his first lawyer, Atty. Kulayan, had been to court, he tried to make Cocoy understand that he could not expect a fair trial in Sulu. He said the courtroom was a war room, full of armed men. Enough weapons were shown to intimidate the unarmed defence counsel. Under these circumstances, Cocoy was not willing to surren-



Cocoy Tulawie during the bail hearing on 4th March 2013 (Source IPON)

der to the authorities in Sulu but filed a petition for the transfer of venue and went into hiding.

This change of situation left him, the self-reliant HR advocate, dependent on the support of others. As a victim of criminalization, Cocoy had to face a powerful opponent, and living clandestinely had a large impact on his possibilities to continue his HR work and to efficiently press his own struggle for justice. So when he fled to Davao, one of his former partners in HR advocacy, the Mindanao Peoples Caucus (MPC), took over

his legal defence, with Atty. Mary Ann Arnado as senior in a team of lawyers from various NGOs. While concerning his own case, Cocoy's position changed from a defender to the defended, his and his allies' principles and aims remained the same, namely to push the state to fulfil its duty of enforcing HR. Accordingly, they based the argument for his defence on the right of a speedy and impartial trial, as well as the right of physical and psychological integrity and security. Thus, in addition to the still pending petition for the transfer of venue, he wrote a letter to the president offering to surrender to him or any other person he would name. Yet, following the advice of the Department of Justice (DOJ) and the Philippine National Police (PNP) rather than the recommendation of the CHR, the president denied it.

Two years later, when MPC already raised international interest in the case, the SC finally granted the transfer of venue. Another half a year later, on Saturday, January 14th 2012, Cocoy was arrested by the joint forces of PNP and AFP. Despite the order of the SC, which determined the venue to be in Davao, they insisted in bringing him to Sulu, as the warrant of arrest had been issued there. A private plane was already waiting for him at the airport, and although the arrest happened to be peaceful, being brought to Sulu meant life threat for Cocoy. Because a weekend was chosen for the arrest, it was impossible for his lawyers to reach the Executive Judge of Davao, Hon. Paguican, or the SC. Through a great effort, they reached Sec. Rubredo of the Department of Interior and Local Government. At their request, he ordered that Cocoy should remain in



Mussah Tulawie (to the right) during an interview with IPON observers in March 2013 (Source IPON)

Davao until Monday. But by then, Hon. Paguican refused to file the requisite Order of Commitment, noting that the case folder had not arrived in Davao yet. Under these circumstances, it seemed to be MPC who had to enforce the authority of the SC over the courts in Davao and Sulu: Supported by Loretta Rosales, Chairperson of the CHR in Manila, they got hold of the Deputy Court Administrator of Mindanao on Tuesday. He issued another order, saying Cocoy should remain in Davao until the case folder was processed. Despite this new order, for it being only a fax, the PNP brought Cocoy to the airport, where he was turned over to the officials of Zamboanga. It was only after his plane had left that Hon. Paguican, following the advice of the SC, agreed to decide in Cocoy's favour. The Executive Judge of Zamboanga was immediately informed about this latest development, and he personally went to the airport to enforce the decision as soon as the plane landed. A few days later, Hon. Paguican finally signed the Order of Commitment and Cocoy could be brought back to Davao – the travel expenses were paid by MPC.

As the case proceeded, it became obvious that a higher level of public awareness was needed to protect the rule of law as well as to ensure Cocoy's safety.

The more MPC succeeded in bringing his case to public attention, the more they risked becoming Gov. Tan's next target of physical harassment and defamation, which in turn they could only prevent by continuing their work.

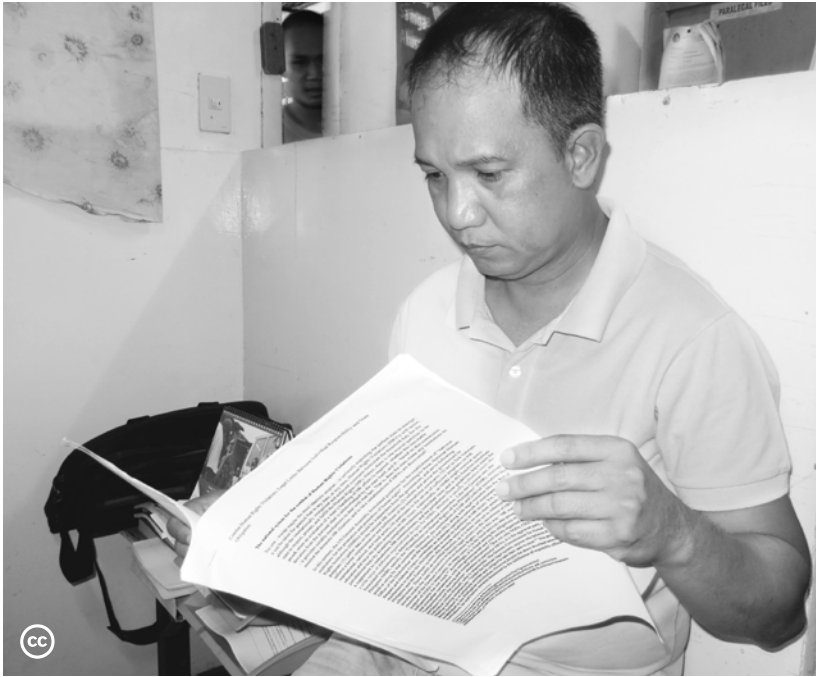
When Cocoy's defence grew stronger, Gov. Tan filed a petition to transfer the venue to Manila, arguing Cocoy had too much local support in Davao. Meanwhile, it turned out that the confessions the prosecution used as basic evidence had been either extorted or purchased. What is more, MPC received reports that murderers were hired in the jail in Manila, in which Cocoy would most probably be detained. Given these circumstances, they appealed against Gov. Tan's petition and alerted a varied local and international network including GOs, NGOs, and other HRDs, e.g. the European Union, the Asian Commission on Human Rights, and the Action Network Human Rights - Philippines. As a result, trial observers were put on their guard, articles published, and urgent actions started to ensure a fair trial and Cocoy's safety. When Gov. Tan's petition was granted, trial observers were irritated since it seemed to be based on a weak argumentation, and the SC had already defined the venue beforehand. Consequently, the defence filed ano-

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Continuation:

- + **Mar 2013** – Follow-up at the regional PNP: promise to increase the effort to implement the warrants of arrest
- + **Apr 2013** – IPON meets Barangay Captain of Dagumbaan: the local PNP outpost is still unmanned
- + **Early May 2013** – Area is distributed according to the MoA, PADATA members start cultivating their land
- + **May 2013** – Goons accuse PADATA members of crossing the border to Villalon's area
- End of May 2013** – Goons intimidate PADATA members with shots in the air
- + **May/June 2013** – Families of the arsonists ask PADATA members to drop their charges

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Cocoy Tulawie in Davao City Jail, reading this very article (Source IPON)

ther motion asking for Cocoy's continued detention in Davao City Jail as the danger of him being murdered in case of a transfer to Manila remained acute.

Presently, Hon. Magdoza -Malagar's judgment on the bail and the place of detention is expected at the Regional Trial Court in Manila soon, and the main hearing is to start shortly. However, a motion which questions the legitimacy of the whole trial on the basis of grave procedural errors is pending at the DOJ since 2009, despite the huge relevance and impact of this issue. This nicely fits the Governor's apparent delaying strategy, since he has to endure far less criticism as long as Cocoy is put out of action.

Shared Responsibility: Defining the Remits in the Combat of HRVs

The described course of events shows how essential it is that non-state actors advise the liable state actors on HRVs and call into action the respective control institution if one organ should fail to fulfil its duty.: HRD Cocoy denounced Gov. Tan's Proclamation of the State of Emergency as a violation of HR, thereby causing the SC to declare it unconstitutional, and MPC obtained the implementation of an existing SC order by prompting the CHR to intervene. Although within certain parameters these activities imply a performance of civic duty, there are functions which non-state actors cannot fulfil but which have to remain with the state. Once the state has been informed about an HRV, or the mere risk of one, and was provided with recommendations, e.g. by the NHRI, it is obliged

to take action. Our example illustrates how the Philippine state authorities tend to fail in this respect. If it was not for the enormous effort of MPC and other supporters who prevented Cocoy from being brought to Sulu, he might by now be one of the many enforced disappearances in the country. Thereby, what United Nations High Commissioner for Human Rights Navanethem Pillay (2012) stated in a recent publication was proven true: Especially those persons who make use of the instruments introduced by the UN to protect HR are in danger of suffering from harassment and reprisals. Not only Cocoy himself but also his family and allies were severely threatened, and increasingly so the more actively they voiced their protest. At this point, the international community is required to step in: when those who monitor and demand the observance of the HR systematically become victims of HRVs themselves, a vicious circle is constructed, which has to be interrupted from the outside. Besides, even if no harassments occur, the influence of most common HRDs is limited compared to the power of the involved state actors. This is one more reason why international engagement is essential to support the national HRDs whenever the effectiveness of their state institutions is undercut by the officials' personal interests. In view of that, it can be hoped that Cocoy Tulawie will finally find justice as his case receives high international attention. However, it is really the Philippine government that is in charge of amending and improving the structure of the national state institutions so as to render any intervention from third countries superfluous. The system for the combating of HRVs can only function if HRDs can rely on being able to voice their criticism and be heard without having to fear revenge. ■

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