



Criminalization of Human Rights Defenders in the Philippines

- Final Project Report 2015 -

Editor

International Peace Observers Network (PON) e. V.

Website: www.ipon-philippines.org, www.ipon-philippines.info

Email: [info\[at\]ipon-philippines.org](mailto:info[at]ipon-philippines.org), [contact\[at\]ipon-philippines.org](mailto:contact[at]ipon-philippines.org)

Web 2.0: www.facebook.com/IPON, www.twitter.com/ipon_de

Project Offices:

Florian-Geyer-Str. 78
12489 Berlin
Germany

12B2 Banuyo Street
Brgy. Amihan, Project 3
1102 Quezon City
Philippines

Regional Office:

Nernstweg 32
22765 Hamburg
Germany

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1. International Peace Observers Network (IPON)

The International Peace Observers Network (IPON) is a German independent, non-intervening non-profit organization, which accompanies human rights defenders and monitors the human rights situation in the Philippines. IPON aims at a situation, where human rights are respected and the accompanied human rights defenders (HRD) are able to undertake their work free from threats, violence and repression and insecurity of their environment.

“Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.”

Article 18 (2), United Nations Declaration on Human Rights Defenders

The Instrument of human rights observation is based on the idea that, if a country has ratified international human rights treaties, it is therefore responsible to enhance, respect, and implement human rights. If state actors do not fulfil their responsibilities, independent international observers document these violations of human rights and bring them to public

attention. Furthermore IPON is in contact with relevant stakeholders and remind them of their responsibility to protect human rights and to provide information and data for national and international advocacy and lobbying work. IPON follows this legalistic approach to human rights.

Since 2006 IPON accompanies organizations of human rights defenders in the Philippines, starting with the request of the farmers’ organization KMBP (Kilusang Magbubukid ng Bondoc Peninsula) in Bondoc Peninsula, Quezon Province. Since 2008 IPON observers are present in Negros Occidental and Oriental accompanying defenders of TFM (Task Force Mapalad). Since 2011 IPON human rights observers have been working in Mindanao, cooperating with PADATA, an organization that advocates for the rights of indigenous people. The human rights observers are international volunteers from Columbia, Switzerland, Austria, Uganda and Germany which were trained by IPON in Germany.

For further information about our principles, our human rights approach and the specific instruments used in conflict areas please visit: www.ipon-philippines.info.

2. Forms of criminalization

The term “criminalization” describes a repressive strategy to hinder and discredit the work of human rights defenders (HRD) by transforming legal, peaceful activities and innocent, non-violent individuals into crimes and criminals. It covers a wide spectrum of measures.

2.1 Labeling HRD as criminals

A root cause for the criminalization of HRD is the ongoing paradigm that legal and peaceful engagement in social issues is being lumped together with the militant and armed struggle in the Philippines. The important and crucial distinction between the two gets intentionally blurred, be it by affiliation with the New People’s Army, the Abu Sayyaf or other militant groups. This directly conflicts with everyone’s right, „individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms” (Article 1, UN Declaration on HRD) as well as the right “to participate in peaceful activities against violations of human rights and fundamental freedoms” (Article 12 (1), *ibid*).

2.2 Arbitrary detention, misuse of warrantless arrests & John/Jane Doe warrants

If a HRD is detained because of trumped up-charges, this detention is to be considered arbitrary and therefore prohibited (Article 9 (1), ICCPR). According to the UN Working Group on Arbitrary Detention, a detention is arbitrary if it either results from the “exercise of the right to freedom of expression” or from a “non-observance of the international norms relating to the right to a fair trial” (2012 Report of the UN Working Group on Arbitrary Detention).

Despite the fact that there are circumstances under which an arrest without warrant is lawful, HRD fall prey to the systematic misuse of warrantless arrests. Even in cases of a lawful arrest without warrant, they are often kept in custody longer than Philippine law warrants. This even leads to the perverse effect that, in some cases, HRD are held in custody longer than the penalty for the alleged crime stipulates.

The same applies to John/Jane Doe warrants of arrest. While it is a legitimate instrument in case the true identity of a person is unknown or must be withheld, its constant misuse is being monitored. The name John/Jane Doe is then used as a placeholder for any number of persons, the prosecution wants to press charges

against. The phenomenon of “mistaken identity” amplifies this problem, since individuals often find themselves being charged for a crime, because of having the looks or a surname similar to the actual perpetrator.

2.3 Strategic lawsuits against public participation (SLAPP)

SLAPPs are charges that are filed as a reaction and against citizens (inter alia) engaging and speaking out politically, mainly addressing environmental issues and Indigenous Peoples’ Rights. The aim is to stop them from exercising their freedom of expression or to punish them for having done so. Plaintiffs in a SLAPP seldom win their case, but reach their goal to silence critics by suing them for huge amounts of damage and compensation. Defendants seldom legally lose their cases, but they emerge emotionally, financially and politically devastated from the litigation. Article 19 (2), ICCPR, states that “everyone shall have the right to freedom of expression” and “to take part in the conduct of public affairs” (Article 25 (a), *ibid*). Although a bill prohibiting SLAPPs has been introduced to the Philippine Congress, it is still pending with the Committee on Justice since July 2013.

2.4 Trumped-up charges, unfair and prolonged trials

Trumped-up or fabricated charges are charges that are filed despite lacking or based on false evidence. They may vary from illegal logging, illegal trespassing and coconut theft to arson, robbery in band or murder. In many cases, HRD only learn about the charges against them upon arrest which precludes them from providing counter-evidence. This could lead to an early dismissal of the case by the prosecutor or an acquittal in court. International law states, that everyone shall be entitled “to be informed promptly and in detail [...] of the nature and cause of the charge against him” (Article 14 (3a), *ibid*). The right to be informed “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence.

Even manifestly false accusations against HRD often lead to several years of pretrial detention, if defendants are not allowed to post bail, so trials drag on for several years. This is in violation of ICCPR Article 9 (3) which states that pretrial detention “shall not be the general rule” and that if a trial does not occur within a reasonable period of time, the accused must be released until a verdict is reached. ICCPR article 14 (3c) furthermore states that defendants have the right “to be tried without undue delay.” Furthermore, “prosecutors shall not initiate or continue prosecution, or shall

make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded” (Article 14, UN Guidelines on the Role of Prosecutors).

When prosecutors and judges are pressured into upholding, even unfounded, charges against HRD, the Philippine state violates its duties to protect the independence of the judiciary. The guarantee of the independence of judges is an obligation which arises under ICCPR Article 14(1) which states that “everyone shall be entitled to a [...] hearing by a competent, independent and impartial tribunal.”

3. Consequences for affected HRD

Labeling HRD as criminals has been documented particularly during the time period leading to grave human rights violations such as extrajudicial killings, torture and enforced disappearances. Thus, HRD not only suffer psychological damages and a loss of reputation within their respective local community, but publicly declaring them as criminal often serves as a legitimization for further actions against them.

Litigation causes HRD to spend a considerable amount of time and money and leads to the discontinuity of their work. In jail, their social commitment comes to a complete stop. Victims often lose their source of income, leaving not only them but also their families in an economically disadvantaged situation. The systematic postponing and prolonging of trials tear apart families, friends and communities, often for years.

Victims of criminalization hardly ever receive any remedy or compensation. This also has the effect of discouraging victims to file countercharges against the perpetrators of criminalization since this would mean additional time and financial burden. The impunity of perpetrators contributes to the systematics and the continuity of the problem.

On the macro level, the criminalization of HRD is followed by a decrease of trust in government institutions and the judicial system. Furthermore, the demoralizing effects on HRD lead to a qualitative and quantitative weakening of civil society and hence to the destabilization of a vivid and pluralistic democracy.

4. Individual cases

The following cases represent some of the aforementioned characteristics of criminalization. Due to the engagement of several international actors such as the Action Network Human Rights Philippines, the Asian Human Rights Commission, the European Union Delegation to the Philippines, the German Embassy to the Philippines

and IPON, the cases of Zara Alvarez and Temogen “Cocoy” Tulawie have to be considered high-profile cases. Considering the numerous cases of criminalized HRD in that continue to be unheard, these two cases are, literally spoken, the visible tip of the iceberg.

4.1 Zara Alvarez

Zara Alvarez is a 34 year old professional human rights activist. She is a licensed teacher, but became a political activist during her school days. She has worked for different political organizations and NGOs in Negros (Anakbayan, Karapatan, Bayan Negros, NNAHRA).

Between 2004 and 2012 she received numerous text messages in which she was warned to be careful, that she was being watched and that she should not feel safe. She also found herself under almost constant surveillance, even during her mother’s funeral and her daughter’s baptism. Her political engagement and the filing of several charges against Philippine National Police (PNP) and Armed Forces of the Philippines (AFP) personal eventually led to Alvarez’ and the Karapatan staff’s public declaration as “persona non-grata” in Barangay Linantuyan. Alvarez faced further vilification in the weekly radio program of the AFP, such as labeling her as a communist and terrorist as well as libel that targeted her personal life. Additionally, military officials presented pictures of Alvarez in a PowerPoint-Presentation to stigmatize her as a terrorist and communist during so called “forums on peace”, which were held at schools and universities.

Due to her engagement in issues of human rights, Zara Alvarez filed two cases against two AFP officers and one case against a PNP Chief at the ombudsman’s office in Cebu in 2008. As they tried to get the copy of a blotter regarding a human rights violation that had occurred to a farmer, the PNP Chief shouted at her and pushed her and some other activists out of his local PNP office. Finally, all cases were dismissed in 2010.

In October 2012, together with 51 others, she was charged with murder of an AFP Lieutenant. These charges led to her arrest on October 30, 2012 and her imprisonment in Cadiz City. In 2013, Alvarez was confronted with a charge of “robbery in band” related to an incidence from 2011. The warrant of arrest was only given to her when she had already been imprisoned. The arraignment of the case took place on May 28th 2013, when Zara had already been imprisoned for 7 month. Since July 22, 2014 Alvarez is out on bail, but still faces charges against her that might lead to a renewed imprisonment.

The overall legal procedures that led to her arrest and imprisonment display numerous legal shortfalls and irregularities on the side of the responsible state actors, such as the AFP, the Department of Justice and the Regional Trial Court. Alvarez was branded as one of the leader of the NPA, which constituted the basis for further legal harassments. Her name was never mentioned in the original complaint, but was only added a year later. Finally, Zara Alvarez never received a subpoena, so she did not have the possibility to submit a counter affidavit that could have led to a dropping of the charges at the stage of preliminary investigations.

Her case reveals the nature of fabricated and trumped-up charges as a political instrument to silence HRD.

4.2 Temogen “Cocoy” Tulawie

Temogen “Cocoy” Tulawie is a human rights advocate from the region of Sulu, in the southern Philippines. He is the founder of the local human rights group Bawgbug and member of several civil society

“No more yellow!”

(Temogen “Cocoy” Tulawie, one week after his acquittal in July 2015 in reference to the yellow T-shirt inmates have to wear at Manila City Jail)

organizations in which he led campaigns for the democratization of local politics, transparency in government and the preservation of civil rights in the region. His campaigns uncovered numerous human rights abuses and violations on the part of the local government, among them mass rapes of women and girls committed by the sons of prominent politicians and their paramilitary protection forces and the unconstitutional declaration of the “state of emergency” by the provincial governor Abdusakur Tan.

After a bomb attack against provincial governor Tan in May 2009, Tulawie was accused of being the hidden mastermind, even though evidence was lacking. In 2012 he was arrested and detained in Davao City. Upon an application of governor Tan, the trial has been moved to Manila on the grounds that Davao was “enemy territory” for Tan. Tulawie was since detained in Manila City jail. The trial had started in October 2013 and was conducted in a comparatively speedy and fair manner overall. On 20th July 2015 the court has acquitted Tulawie on both charges. By then, Tulawie had been imprisoned for almost three and a half years.

He and his family suffer the socio-economic consequences from three and a half years of imprisonment. Because of being at risk in the region of Sulu, they moved to Davao City, where the cost of living is much higher. Tulawie is left without remedy or

compensation for the litigation. Additionally, responsible actors won't have to fear legal retribution for the damage done.

The Tulawie case represents the systematic criminalization of HRD. His prosecution was an attempt to silence his protest against severe human rights violations. Judicial bodies and criminal prosecution authorities, especially in the rural areas of the Philippines are often highly dependent on local power brokers and are systematically abused by the latter for personal, economic and political interests. The legal proceedings against Tulawie illustrate the lack of independence of local judicial bodies in particular from regional and local power structures. Power holders misuse the law to manifest their power and suppress critics without having to fear consequences.

In view of the many human rights defenders, who stay in jail for many years and whose cases are systematically prolonged, Cocoy Tulawie's acquittal may be regarded as a success story. Nonetheless, on the grounds of trumped-up charges, an innocent HRD had to spend three and half years in jail and those who were responsible for his detainment have not been brought to justice.

Finally, Tulawie's acquittal means his return to freedom, but since there's already evidence of threat against him, it is also the return to the dangerous life of a HRD.

5. Conclusion and outlook

While Philippine human rights organizations document a structural change from physical to legal repressions, the current administration prides itself for decreasing numbers of political killings and cases of torture.

"There is a shift from violence to jail."

Edeliza Hernandez, executive director
of the Medical Action Group (MAG)

On a more positive note, the constructive dialogue with representatives from the Department of Justice and the Supreme Court during 2015 gives hope for the future.

Considering the presidential elections in May 2016 however, there will be a diligent need to keep the attention high, especially among government representatives.

Finally, the acquittal of Temogen "Cocoy" Tulawie created a *window of opportunity*. Civil society organizations as well as government institutions have seen that progress is possible. Thus, it is so important to use that momentum, so that achievements in individual cases will positively affect those numerous cases of HRD who remain unheard in their claim for justice and human rights.

