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Dossier on the Occasion of the 2nd Anniversary of the Maguindanao Massacre

The battle for justice in the Philippine's largest murder trial

It is now two years ago that at least 57 people¹ were killed in broad daylight in the southern Philippines, partly chopped up and buried in a mass grave which was beforehand digged for this purpose only. Since this time, the victims' families waiting for justice and their lawyers are subject to counter-charges and obscure delaying tactics on part of the putative murderers' lawyers. It seems that the lawsuit is going to be undermined by deadly assaults on witnesses, attempted bribery, intimidation and incorrect investigatory work.

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An unprecedented political crime

The massacre in the course of which 57 people were brutally killed happened on 23 November 2009. The victims were, among others, relatives of Esmael Mangudadatu, who intended to run for the post of governor in the southern Philippine province of Maguindanao. At that time, Andal Ampatuan Senior held this post, who – for decades – was considered to be the absolute autocrat of this region together with his family clan.

As Esmael Mangadadatu had received death threats already beforehand, he sent some family members to the province capital of Sharif Aguak to file his candidacy documents for the election in May 2010. On its way to the registration office, the delegation was waylaid by the private militia of the Ampatuan clan, members of this ruling family and hired policemen. Among the dead were at least 32 journalists, accompanying the convoy to report about the registration procedures.²

An unprecedented ineffective justice system

On 8 September 2010, almost a year after the massacre, the largest murder trial in Philippine history began. 197 culprits are accused for having participated in plotting, planning and committing the massacre. The principal defendant of the trial is Andal Ampatuan Junior, who is accused by the justice department to have headed more than one hundred armed members of the family-owned militia and to have killed some victims himself. Many victims were brutally abused and afterwards buried in a prepared mass grave. According to witness statements, Ampatuan Jr. together with his father, Andal Ampatuan Sr., who was at

¹ A 58th alleged victim is still missing.

² Esmael Mangudadatu has won the election for governor on 10 May 2010. The governor, who lost his wife, his sisters and other family members in this massacre, is one of the joint plaintiffs in the trial against the alleged perpetrators.

that time acting governor of the province of Maguindanao, and his brother Zaldy Ampatuan have planned and implemented the beastly deed.

The lawsuit, which insiders believe might take years, is considered as litmus test for the efficiency of the Philippine justice system. The latter neither has the reputation of being independent nor efficient. Only 20 % of all committed crimes actually go to court. The conviction rate of murder cases is a mere 1.05 %. Meeting an independent or impartial judge within the Philippine justice system is rather the exception than the rule. If there is no functioning state under the rule of law, the justice system tends to be highly personalised with legal authorities that only work for people with connections.

An unprecedented plenitude of power for regional politicians (following the pattern of feudalism)

Only against this background it can be understood, how the Ampatuan clan succeeded in blackmailing, corrupting and killing people for years without being punished – police, military and justice were on their payroll. Even the former president Macapagal-Arroyo protected the clan. Gloria Macapagal-Arroyo was a close friend of the family; the Ampatuans helped her to get dream election results and were in return ensured free rein in every respect. The government in Manila actively supported the ruling family and its up to 5,000 men strong private army. After the massacre more than a thousand bazookas, mortars and machine guns, belonging to the stocks of the Philippine Ministry of Defence, were found on the Ampatuan estate.

When in April 2010 the charges for murder and insurrection against two accused suspects of the clan – Zaldy and Akmad Ampatuan – were dropped at the highest command, the country was struck by a wave of anger. In view of the imminent elections, this decision was a political decision to protect the string pullers from being punished. Forced by public pressure, the former Minister of Justice, Alberto Agra, revoked his decision only some time later, but his line of action clearly showed that the Ampatuans are able to exert political influence even from behind prison walls.

Out of 197 accused persons, 93 are by now in custody. Only 64 of them were arraigned.

An unprecedented case of intimidations, attempted bribery and delaying tactics

It is very likely that the trial will take a very long time, as between 300 and 500 witnesses will be heard, not in total but for each of the 197 defendants. The lawyers of the Ampatuan clan, however, are pressing every button to delay the court proceedings. Since the begin of the trial, the court is swamped with a plenitude of motions from the Ampatuans' lawyers, demanding – inter alia – to exchange the judge and the prosecutors and let the defendants out of jail on bail.

Furthermore, the prosecutors received threats and the most absurd rumours and speculations are spread in the effort to impeach the credibility of witnesses and medical experts. To this end, one of the lawyers boldly uttered the incredible thesis that the victims had mutilated themselves and killed themselves afterwards. Considering the mutilation degree of the victims, even necrophilia could be involved according to one of the lawyers, which is a more than outrageous thesis.

These motions are another slap in the face of the victims' families, who are by now stretched to their limits through this trial – emotionally and financially.

All the delaying tactics just serve the purpose to demoralise the remaining witnesses and to force the victims' families to drop their lawsuit. A trial like this is very expensive for the victims' families. Many of them don't even know how to afford the travel cost to Manila, where the trial is taking place.

An unprecedented intimidation of witnesses

In exchange for dropping their lawsuit, many families have been offered money of up to five million pesos (approx. EUR 83,000) by intermediaries of the Ampatuan clan. Apart from this strategy, there is also crude violence against the witnesses.

Four witnesses were already killed according to a fifth witness. This fifth witness, too, fell victim to an assault. For months, the Ministry of Defence decided on his application to enter the witness protection programme, when S. Upahm was murdered on 14 June 2010.

The lawyer of another witness, Rasul Sangki, was shot, and the witness's house was strongly bombarded with shells one day after his testimony.

In the Philippine judicial system witness statements are still of utmost importance – forensic techniques and methods of criminal investigations are overly poor – therefore the residual witnesses have to fear for their

lives. The longer the process drags on, the higher the probability that harassed witnesses do not wish to repeat their testimony in front of the court.

Already now it is obvious that the public interest in the murder trial against the Ampatuan clan is declining. President Aquino, who had promised during his election campaign after the massacre to disarm the many private armies in the country in order to prevent that such an atrocity like the Ampatuan massacre is going to repeat itself, does not seem to have learned anything from this tragedy. Instead of disarming private militias and civil defence troops, he ordered that government and non-government security forces are allowed to be deployed to protect mining companies. But in most cases these mining companies are controlled by powerful families and transnational companies and cannot be publicly supervised.

The justice system needs to be reformed!

Considering the given example of structured impunity, the Action Network Human Rights – Philippines (Aktionsbündnis Menschenrechte-Philippinen - AMP) believes that this and other lawsuits need to be reviewed on the basis of adequate legal terms. The following recommendations could pave the ground for more justice and rule of law within the Philippine legal system:

- An extensive reform of the judicial system including the revision and streamlining of lawsuit guidelines.
- Revision and budget increase of the state witness protection program to ensure that threatened witnesses get quicker and unbureaucratic support and protection.
- An independent investigation of all reports on intimidation, assault and attempted bribery of witnesses and the victims' families as well as a systematic prosecution of the suspects in individual lawsuits.
- The introduction of a rapid response team, consisting of forensic and legal experts and leading the criminal investigations in case of felonies.
- Improvement of forensic and criminal investigation techniques and standards.
- A fundamental improvement of cooperation and coordination between the various national prosecution authorities.

These claims are not new. The European Justice Support Programme (EPJUST), which was supported by the European Union, came to the conclusion that the Philippine judicial system is a prominent weakness, as it is based on laws dating back to the 1930s.

The German Federal Foreign Office is currently supporting elements of a legal reform.

But without the political will and the full cooperation of the Philippine government all internationally supported reform programs will be worthless.

The Aquino administration must not only give lip service, but actively commit itself to the rule of law and quickly tackle the comprehensive process of addressing human rights violations of the past. With each day, on which a political crime is committed, the Aquino administration loses another piece of credibility. Until today, these political killings are just a proof of the government's idleness to protect threatened advocates of human rights, thus undermining efforts of the Department of Justice to rework and end these startling crimes. With every day passing by without presentable results, the battle for justice – and that is what also the bereaved families are afraid of – will be lost.

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