



Aktionsbündnis Menschenrechte – Philippinen (Ed.)

Human Rights in the Philippines

Trends and Challenges under the Aquino Government

Conference Documentation, June 29–30, 2011, Berlin, Germany

In den letzten Jahrzehnten sind in den Philippinen hunderte Menschenrechtsverteidiger und Menschenrechtsverteidigerinnen politischen Morden, Zwangsverschwinden und Folter – oft verübt von staatlichen Sicherheitskräften – zum Opfer gefallen.

Als Benigno »Noynoy« Aquino III, der von der Zivilgesellschaft favorisierte Sohn der Politikikonen Corazon und Benigno Aquino, die Wahlen im Mai 2010 gewann, war die Hoffnung von Menschenrechtsorganisationen inner- und außerhalb des Landes groß, dass sich die Lage der Menschenrechte verbessern würde. Der Präsident erklärte in seiner Einführungsrede: **»Es kann keine Versöhnung ohne Gerechtigkeit geben. Wenn wir zulassen, das Verbrechen unbestraft bleiben, dann geben wir unsere Zustimmung dazu, dass sie immer wieder geschehen.«**

Genau ein Jahr nach dieser Rede lud das *Aktionsbündnis Menschenrechte – Philippinen* (AMP) namhafte Vertreterinnen und Vertreter von Menschenrechtsorganisationen, aber auch Politikerinnen und Politiker und andere Experten zu seiner zweiten Menschenrechtstagung mit dem Titel *»Menschenrechte in den Philippinen. Entwicklungen und Trends unter der Regierung Aquino«* vom 29.–30.6.2011 nach Berlin ein. Die Tagung ging der Frage nach, ob es der Regierung Aquino gelungen ist, einen wirklichen Politikwechsel einzuleiten, Menschenrechtsverbrechen zu stoppen und die begangenen Menschenrechtsverletzungen der Vorgängerregierungen juristisch aufzuarbeiten.

Die dabei gezogene menschenrechtliche Bilanz fällt bei aller Anerkennung des Reformwillens und einiger hoffnungsvoller Entscheidungen der neuen Regierung, wie z. B. der Besetzung einiger Schlüsselpositionen in Kabinett und Administration, ernüchternd aus, und viele Referentinnen und Referenten dokumentierten ihre Enttäuschung durch Fakten zu neuen Menschenrechtsverletzungen und mangelhafter Umsetzung von

Ankündigungen und Beschlüssen der neuen Regierung.

Die in der hier vorliegenden Tagungsdokumentation wiedergegebenen Beiträge namhafter Menschenrechtsverteidigerinnen und -verteidiger offenbaren die mannigfaltigen und interdependenten Schwachstellen in der politischen Kultur, der Legislative, der Judikative und der Exekutive, die einer sichtbaren Verbesserung der Menschenrechtsslage entgegenstehen. Deutsche und europäische Entscheidungsträger, aber auch philippinische Repräsentanten stellten sich der kritischen Diskussion. Der Band fasst auch die dabei entstandenen spannenden Diskurse um Einschätzungen, Handlungsansätze und internationale Interventions- und Unterstützungsmöglichkeiten zusammen. Am Ende der Dokumentation in Kapitel 9 (S. 75) finden sich zusammengefasst Empfehlungen, die es verdienen, von allen Lesern in besonderer Weise beachtet zu werden, bieten sie der philippinischen Politik doch lohnenswerte Anregungen zu mehr Demokratie und Rechtsstaatlichkeit.

Wir danken allen, die diese Tagung möglich gemacht haben, den Mitgliedsorganisationen des *Aktionsbündnis Menschenrechte – Philippinen*, der *Konrad Adenauer Stiftung* als Gastgeber und Kooperationspartner, den vielen Referentinnen und Referenten und allen Gästen. Es ist ihr Verdienst, dass wir diesen Tagungsband herausgeben können, der nicht nur eine Dokumentation, sondern ein zeitgemäßer Zwischenruf und ein praxisorientierter Leitfaden ist, der von möglichst vielen politischen Entscheidungsträgern in den Philippinen, aber auch in Deutschland und Europa für eine gerechte Politikgestaltung genutzt werden möge. Versöhnung auf der Basis von Gerechtigkeit, wie Aquino sie in seiner Antrittsrede forderte, bedarf keiner Lippenbekenntnisse, sondern energischer Schritte zur Verwirklichung. Mit dem Vorlegen des Tagungsbandes möchten wir zu diesen Schritten beitragen.

Michael Schirmer
– Vorsitzender AMP –

Maike Grabowski
– Koordinatorin –

During the last decades hundreds of human rights defenders in the Philippines fell victim to political killings, enforced disappearances and torture – often committed by armed security forces.

When Benigno “Noynoy” Aquino III, the son of democracy icons Benigno and Cory Aquino was elected president of the Philippines on 10 May 2010, human rights organisations within and outside the country had high hopes that the human rights situation would improve under the presidency of “Noynoy” Aquino III.

In his inauguration speech he declared: **“There can be no reconciliation without justice. When we allow crimes to go unpunished, we give consent to their occurring over and over again.”**

Exactly one year after his speech, the Action Network Human Rights – *Philippines (Aktionsbündnis Menschenrechte – Philippinen)* invited renowned representatives of human rights organisations, but also politicians and other experts to its second conference on *“Human Rights in the Philippines. Developments and Trends under the Presidency of Aquino”*, which took place in Berlin from June 29 to 30, 2011. The conference aimed to investigate the question whether the new Aquino administration succeeded in bringing about a real change in policy, stopping human rights crimes and coming to terms with the legal challenge of pursuing the human rights violations committed by the predecessor governments.

Although acknowledging the new administration’s will to bring about reforms and despite some hopeful political decisions, for example the filling of some key positions in the cabinet and administration, the stock taken with respect to human rights was rather sobering, and many lecturers documented their disappointment by reporting facts about new human rights violations and the insufficient implementation of pronounced

reforms and resolutions from the side of the new government.

The contributions of renowned advocates of human rights, included in this conference collection, reveal the manifold and interdependent weaknesses of the Philippine political culture, legislative, judicial and executive power. All these weaknesses stand against a perceptible improvement of the human rights situation. German and European policy-makers, but also Philippine representatives were actively involved in critical discussions. Thus, this volume also gives a summary of the exciting discussions of evaluations, approaches of action and possibilities to intervene and support at an international level. At the end of the documentation in chapter 9 (p. 75) condensed recommendations are given that deserve special consideration by all readers, as they offer worthwhile suggestions for more democracy and rule of law in the Philippine policy.

We would like to thank all the people who empowered us to organise this conference, the member organisations of the Action Network *Human Rights – Philippines (Aktionsbündnis Menschenrechte – Philippinen)*, the *Konrad-Adenauer-Stiftung* (KAS) in its capacity as host and cooperation partner, the many lecturers and all our guests. They are the ones who made the publication of this conference volume possible, which is not only a documentation, but also a contemporary interjection and a practice-oriented guideline. We hope that many policy-makers in the Philippines, Germany and in Europe will make use of this guideline to the benefit of fair policy-making. Reconciliation based on justice, as was demanded by Aquino in his inauguration speech, does not need any lip services but vigorous action. This conference documentation is our contribution to promote this undertaking.

Michael Schirmer
– Chairman –

Maike Grabowski
– Coordinator –

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1. Zusammenfassender Tagungsbericht

Menschenrechte in den Philippinen – Entwicklung und Trends unter Aquino

Lilli Breiniger, Miriam Styrnol und Hannah Wolf

Unter der ehemaligen philippinischen Präsidentin Gloria Macapagal-Arroyo herrschte ein Klima der Straflosigkeit. Während ihrer Amtszeit von 2001–2010 berichteten Menschenrechtsorganisationen von massiven Menschenrechtsverletzungen, darunter über 1.200 politisch motivierte Morde.

Der seit dem 30. Juni 2010 amtierende Präsident Benigno »Noynoy« Aquino kündigte an, den Kreislauf der Gewalt und Korruption zu brechen. Ein Jahr nach seinem Amtsantritt ziehen die Referent/innen der Fachtagung »Menschenrechte in den Philippinen. Entwicklungen und Trends unter der Aquino Regierung« am 29. und 30. Juni 2011 in Berlin eine erste Bilanz.

Hat sich die Menschenrechtssituation auf den Philippinen verbessert? Welche Reformen wurden angestoßen? Welchen Beitrag leistet die internationale Gemeinschaft? Ausgehend von diesen und ähnlichen Fragen lud das *Aktionsbündnis Menschenrechte – Philippinen* (AMP) in Kooperation mit der *Konrad Adenauer Stiftung* (KAS) Referent/innen aus Politik, Kirche, Zivilgesellschaft und Militär in die Konrad Adenauer Akademie in Berlin ein. Neben hochrangigen Entscheidungsträger/innen wie z.B. Leila De Lima, philippinische Justizministerin, und Markus Löning, Menschenrechtsbeauftragter der Bundesregierung, diskutierte ein Fachpublikum von über einhundert Teilnehmer/innen über konkrete Lösungs- und Veränderungsvorschläge, insbesondere für die philippinische Judikative und Exekutive. Die Fachtagung brachte zum zweiten Mal Expert/innen aus den Philippinen, Europa und Deutschland zum kritischen Diskurs zusammen und informierte über strukturelle und sozio-ökonomische Ursachen politischer Gewalt und deren Kontexte vor Ort, wie in den Einführungsvorträgen von Niklas Reese (Universität Bonn) und Kaloy Manlupig (Balay Mindanaw). Eine ernüchternde Bilanz des ersten Amtsjahres der Aquino-Regierung zogen Hazel Galang (Amnesty International) und Marie Hilao-Enriquez (Karapa-

tan), in dem kaum positive Veränderungen, sondern vielmehr eine kontinuierliche Stagnation beschrieben wurde. Einen besonderen inhaltlichen Höhepunkt des ersten Konferenztags stellte die Podiumsdiskussion »There can be no Reconciliation without Justice« mit Leila De Lima, Markus Löning, Max de Mesa (PAHRA), Hazel Galang (Amnesty International) und Bischof Jaime Moriles (UCCP) dar. Die Bestrebungen der Aquino-Regierung, die Menschenrechtssituation zu verbessern, wurden positiv aufgenommen. So sicherte M. Löning weitere Unterstützung seitens der deutschen Regierung zu und L. De Lima plädierte für eine Versöhnung unter Filipin@s, um ideologische Grenzen zu überwinden.

Am zweiten Konferenztage befassten sich zwei Panels mit konkreten Problemstellungen in der philippinischen Menschenrechtspolitik: Der rechtsstaatlichen Kontrolle im Sicherheitssektor einerseits und den Stärken und Schwächen im Justizsystem andererseits. Im ersten Panel diskutierten der ehemalige Oberst und Berater des *European Justice Support Program* (EPJUST) Karl-Bernhard Müller, der ehemalige General des philippinischen Militärs Benjamin Dolorfino und die Leiterin der philippinischen Menschenrechtskommission (CHR), Loretta Rosales, über das Menschenrechtsbewusstsein im philippinischen Militär und die zwiespältige Rolle der philippinischen Sicherheitskräfte bei der Aufstandsbekämpfung. Parallel erläuterten Rechtsanwalt Jose Manuel Diokno (FLAG) und Schwester Crescencia Lucero (TFDP) Schwächen im Justizsystem. Beispiele dafür waren der fehlende Zeugnenschutz oder die langwierigen Gerichtsprozesse. Nachdem Jochen Range (Amnesty International) und Elmar Noe (Misereor) vom Aktionsbündnis die Ergebnisse und Verbesserungsvorschläge der jeweiligen Panels vorgestellt hatten, gab es eine abschließende Diskussion unter dem Titel »Erwartungen und Beiträge der internationalen Gemeinschaft und der Zivilgesellschaft«. Hier zeigten die philippinischen Vertreter/innen Max De Mesa und

Marie Hilao-Enriquez konkrete Lösungsansätze auf. Die beiden europäischen Politiker Dr. Martin Kremer (Referatsleiter Südostasien des Auswärtigen Amtes) sowie Seamus Gillespie (Leiter der Südostasienabteilung des Europäischen Auswärtigen Dienstes) sicherten ihre fortlaufende Unterstützung zu und drückten ihre Wertschätzung für die Zusammenarbeit mit den Philippinen aus.

Michael Schirmer stellte abschließend für das AMP fest, dass eine kritische Partnerschaft Europas und Deutschlands mit den Philippinen durchaus begrüßt wird. Dabei dürften allerdings klare Worte zu fortgesetzten Menschenrechtsverletzungen in den Philippinen kein Tabu sein.

Die Fachtagung zählt zu den Höhepunkten der Informations- und Menschenrechtsarbeit zu den Philippinen innerhalb Deutschlands. Neben dem Vermitteln von Informationen hatten die philippinischen Expert/innen auch die Möglichkeit, direkte Gespräche mit deutschen Entscheidungsträger/innen, u. a. mit dem Auswärtigen Amt, dem Ausschuss für Menschenrechtsfragen sowie dem Ausschuss für wirtschaftliche Zusammenarbeit und Entwicklung des deutschen Bundestages, zu führen und so unvermittelt Auskunft über die aktuelle Lage in ihrem Heimatland zu geben.

Weitere Informationen, Beiträge und die vollständigen Präsentationen finden Sie unter: www.menschenrechte-philippinen.de. ■

1. Summary of the Conference Report

Human Rights in the Philippines – Development and Trends under the Presidency of Aquino

Lilli Breiniger, Miriam Styrnol and Hannah Wolf

During the administration of former Philippine President Gloria Macapagal-Arroyo there was a climate of impunity. Throughout her presidency from 2001–2010 human rights organisations reported of massive human rights violations, including more than 1,200 politically motivated killings.

The new President, Benigno “Noynoy” Aquino, who took over on June 30, 2010, heralded to break the cycle of violence and corruption. After one year of presidency, experts took stock in Berlin during the conference on “Human Rights in the Philippines. Developments and Trends under the Presidency of Aquino” from June 29 to 30, 2011.

Has the situation of human rights improved in the Philippines? What kinds of reforms have been launched? How about the contribution of the international community? With reference to these and similar questions, the *Action Network Human Rights – Philippines* (*Aktionsbündnis Menschenrechte – Philippinen* – AMP) together with the *Konrad-Adenauer-Stiftung* (KAS) invited specialists of politics, church, civil society and military to the KAS Academy in Berlin. In addition to high-ranking decision-makers, such as Leila De Lima, the Philippine Minister of Justice, and Markus Löning, Federal Government Commissioner for Human Rights Policy and Humanitarian Aid, an expert audience comprising more than 100 participants, discussed about clear-cut solutions and proposals for change, in particular with respect to the Philippine judicial and executive power. For the second time, the expert conference brought together experts from the Philippines, Europe and Germany to critically discuss and inform about the structural and socioeconomic reasons for political violence within the given local environment, as was explained in the introductory lectures held by Niklas Reese (Bonn University) and Kaloy Manlupig (Balay Mindanaw). Hazel Galang (Amnesty International) and Marie

Hilao-Enriquez (Karapatan) stroke a disillusioning balance of Aquino’s first year of presidency, reporting about only few changes to the better, and rather a continuous stagnation. A special highlight of the first conference day was the panel discussion “There can be no Reconciliation without Justice” with Leila De Lima, Markus Löning, Max de Mesa (PAHRA), Hazel Galang (Amnesty International) and Bishop Jaime Moriles (UCCP). The efforts of the Aquino administration to improve the human rights situation were met with positive response. Thus, M. Löning assured further support from the German Federal Government and L. De Lima spoke in favour of reconciliation among Filipin@s to overcome ideological boundaries.¹

During the second conference day, two panels dealt with specific problems within the Philippine human rights policy: the constitutional control of the security sector on the one hand and the strengths and weaknesses of the legal system on the other. Within the scope of the first panel, the former Colonel and consultant of the *European Justice Support Program* (EPJUST), Karl-Bernhard Müller, the former General of the Philippine Military, Benjamin Dolorfino, and the Head of the Philippine Human Rights Commission (CHR), Loretta Rosales, discussed about the awareness of human rights among the Philippine military and the ambivalent role of Philippine security forces in counterinsurgency.

At the same time, the lawyer Jose Manuel Diokno (FLAG) and Sister Crescencia Lucero (TFDP) discussed weaknesses of the legal system. A lack of witness protection or long-lasting court proceedings served as model examples. After Jochen Range (Amnesty International) and Elmar Noe (Misereor) from the AMP had presented the results and proposals for improvement worked out by the different

1 gender sensitive spelling.

panels, a final discussion took place with the title “Expectations and Contributions of the International Community and Civil Society”. During this final discussion, the Philippine representatives Max De Mesa and Marie Hilao-Enriquez presented clear-cut solution approaches. The two European politicians, Dr. Martin Kremer (Head of Division for Southeast Asia of the German Federal Foreign Office), as well as Seamus Gillespie (Head of Unit for Southeast Asia of the European External Action Service), assured their continuous support and highest esteem for the cooperation with the Philippines.

On behalf of the AMP, Michael Schirmer finally came to the conclusion that a critical partnership between Europe, Germany and the Philippines is by all means welcome. Nevertheless, clear words on continued human rights violations in the Philippines must be permitted and not regarded as a taboo.

Throughout Germany, this expert conference is one of the highlights of the information and human rights activities for the Philippines. In addition to imparting information, the Philippine experts got the opportunity to directly talk to and discuss with German decision-makers, inter alia with the Federal Foreign Office, the Committee for Human Rights Issues and the Committee for Economic Cooperation and Development of the German Bundestag. Thus, they could convey unimpaired information about the current situation in their home country.

If you are interested in further information, contributions and the complete set of presentations, please, follow the link: www.menschenrechte-philippinen.de. ■



An expert audience of more than 100 people took stock during the conference

2. Welcoming Remarks

Speakers: Dr. Stefan Friedrich, Michael Schirmer und Ute Granold

Dr. Stefan Friedrich – head of the Asia and Pacific Desk of the *Konrad-Adenauer Foundation* – welcomes Philippine Justice Secretary Leila De Lima, German Member of Parliament Ute Granold, the ambassador and other representatives from the Philippine Embassy, Loretta Rosales and all other participants and guests to the conference “Human Rights in the Philippines – Developments and Trends under the Aquino Administration”.

The *Konrad-Adenauer Foundation* is represented with an office in the Philippines for over 40 years. It observes and promotes political and social developments and engages in dialogues between the Philippines, Germany and the European Union (EU). One of its goals is the establishment of platforms in order to provide informational exchange and foster discussions between the general public, experts, decision makers and politicians. In this light the conference is meant to enhance the human rights agenda of the newly elected President Aquino, its commitment to break impunity, its reforms in the security sector and the judiciary as well as the demand for witness protection and the training of forensic experts. Furthermore the conference is meant to give interim results and concrete recommendations in the presence and with the cooperation of high ranking representatives from the Philippines and Germany.

Michael Schirmer, the chairperson of the *Action Network Human Rights – Philippines (Aktionsbündnis Menschenrechte-Philippinen – AMP)*, greets all guests on behalf of the eight member organizations – *Amnesty International*, *Bread for the World*, the *Human Rights Team of Diakonisches Werk*, the *Church Development Service (EED)*, *Misereor*, *Missio*, the *philippinenbüro* and the *United Evangelical Mission (UEM)* – and especially Maike Grabowski, the coordinator of the network.

The conference is the second one on human rights in the Philippines organized by the AMP. The first took place in 2008 and focused on

political killings and the rule of law under the Arroyo administration.

When the current conference was outlined, President Noynoy Aquino was just elected and sowed hope for change. In his State of the Nation Address (SONA) he said that there is “no reconciliation without justice”. The President further stated that crimes left unpunished are an approval of letting them happen again.

Impunity and corruption were characteristics of the previous administration. While the political will of the current government sounds promising more than 40 political killings since his inauguration are a rather disappointing fact. So what has changed with the new administration? In response to this question, the conference is meant to provide analysis, debates and recommendations for the current state of human rights in the Philippines. It is also a platform for the Philippine partner organizations to speak out and be heard.

Ute Granold, Parliamentarian from the Christian Democrats and a member of the Parliamentary *Committee for Human Rights and Humanitarian Aid*, explains the government’s human rights agenda. She points out that human rights issues are a central component of the current legislation’s foreign affairs which are also addressed by members of Parliament and government representatives during their visits to foreign countries. In these instances representatives challenge observed deficits and offer possible support programs with qualified standards. The strengthening of constitutional structures are among the priorities in the highly dynamic region of Asia.

Due to its participation in the *United Nations Human Rights Council (UNHRC)* and its collaboration with the German government against human trafficking, Granold points to the Philippines as a positive and guiding example in the region. In spite of all its deficits the Philippines move towards the right direction. ■

3. Introduction Inputs: Quo Vadis Philippines?

3.1 Human Rights and Socio-Economic Factors

The Example of Mindanao

Speaker: Charlito »Kaloy« Manlupig
(Balay Mindanaw)

Charlito “Kaloy” Manlupig does not aim to assess the first year performance of the Aquino Administration but to conduct a dispassionate analysis and discussion of the present realities in the Philippines in general and Mindanao in particular.

Inequity in ownership and control of basic economic resources such as land and fishing grounds had caused poverty, marginalization and continuing powerlessness of the majority. This continuing inequity, injustice and marginalization are in turn the main causes of the continuing unpeace and violent conflicts in the country, particularly in Mindanao. Therefore, in order to bring about peace, the conditions of underdevelopment, poverty and marginalization caused by inequities have to be addressed squarely.

However, the work for equity, development and peace is cyclical since each of the three is

intrinsically related to each other. This highlights the structural nature of the problem and hence structural violence.

The dispossession of lands and the marginalization of the people – especially the farmers, the Moro and indigenous communities – can be considered as among the biggest unresolved historical injustices in the Philippines in general and in Mindanao in particular. The effects of this historical injustice are felt until today.

Philippine History: Colonial and Recent

The Philippines has a colonial history that dates back to its “discovery” and annexation by Spain in 1521. More than a century earlier, Arab missionaries brought Islam to the Philippines beginning in the 14th century, and a formal Sultanate was established in 1450 in Sulu. The country was “sold” by Spain to the United States of America in 1898, and was granted “independence” after the Second World War in 1945. Its governmental structures are patterned after that of the US except that there is a



Kaloy Manlupig

unitary (not a federal) system, concentrating or centralizing all resources and decision-making in the seat of power and center of commerce that is Manila. After almost twenty years of the Local Government Code, which is an attempt to correct the over-centralization of governmental powers in Manila, decisions about the budgets and funds for the farthest and smallest political units are still made in Manila.

Advanced laws meet a lack of implementation

The Philippines is one of few countries to have formally recognized the rights of the first nations or indigenous peoples (IPs) through a law, the *Indigenous Peoples Rights Act* (IPRA), enacted in 1997. However, the IPs remain as the country's most marginalized, exploited and threatened people.

It also has one of the most progressive laws on agrarian reform. The *Comprehensive Agrarian Reform Law* (CARL) which was originally passed in 1988 is considered as a social justice legislation aimed at correcting the landlessness of the Filipino farmers. It is an enabling law for the Constitutional principle of "Land to the Tiller". After more than 20 years and two extensions, many of the farmers have remained landless and poor. It has also given rise to "second generation" land problems like the growing indebtedness of the rural poor. A proper implementation of *CARP Extension with Reform* (CARPER)¹ would have significantly helped to address the roots of poverty and hunger. In fact, a simple mathematical calculation could very well show this point: the present Philippine population is 90 million; 63 million are farmers (70 percent of the population). If 9.1 million of Philippine agricultural lands were to be divided evenly among the farmers, each Filipino farming household would have at least one hectare of land to till.

The current President (and son of former President Corazon Aquino, under whose term CARP was enacted into law) has inherited the unfulfilled promise of giving land to the poor tiller.

1 The Comprehensive Agrarian Reform Program (CARP) was not very effective. It was extended into CARPER until 2014.

In his presentation to the Asian-German Dialogue on June 24, 2011 in Singapore, Dr. Peter Koeppinger, who is *Konrad Adenauer Stiftung's* Country Representative to the Philippines, described the country's situation: "We have only a façade of democracy, high levels of violence and impunity, 25 percent of population in absolute poverty without improvement for decades. How could this happen to a country which was considered to be the first and freest democracy in Asia, to be number two behind Japan in its economic development in the sixties?"

He attempted to answer his question by quoting Former Chief Justice Reynato Puno: "This vicious politics of patronage has allowed few oligarchs and bosses to rule us from colonial to post-colonial times, and their rule has brought us nothing but a façade of democracy."

Mindanao and the disparity between center and periphery

The data on the national situation does not fully reflect the skewed relationship between the center and periphery. A look into the Mindanao situation may provide a better and deeper understanding of the inequities and disparities that may explain the continuing unease.

Mindanao is the second largest island in the Philippine archipelago. Most of the Philippines' earnings from agricultural and fisheries exports come from Mindanao. One hundred percent of banana, pineapple and tuna exports come from Mindanao. More than half of the country's mineral and forest resources are in Mindanao.

Mindanao is the island most threatened by the possible destructive effects of the onslaught of mining. In Caraga Region, for instance, mining permits have been issued covering 2,126,898.2 hectares. The total area for exploration is much bigger than the region's total area of 1,884,770 hectares. Aside from the threat of environmental destruction, the region's indigenous peoples are now in danger of being displaced and their tribes exterminated.

The indigenous peoples remain the least involved or consulted group of all. Fourteen of the country's 20 poorest provinces are in Mindanao. All the Moro provinces belong to the ten poorest.

In its publication entitled “Shattered Lives” Amnesty International reports²: “Mindanao, particularly in its conflict-ridden provinces, continues to lag behind the rest of the Philippines in economic and social development.” According to the 2008/2009 Philippine Human Development Report which covers the period of 2004–2006, provinces with the lowest life expectancy in the country were Tawi-Tawi, Sulu, Maguindanao and Lanao del Sur which are all conflict-affected for decades. Those living in Tawi-Tawi province are expected to live only 53.5 years, 21 years less than those who live in La Union, the province with the highest life expectancy in Central Luzon. This disparity could be explained by disparities in access to quality healthcare.

People living in the conflict-affected provinces of Sarangani, Maguindanao, Zamboanga del Norte, Lanao del Sur, Basilan, Sulu and Tawi-Tawi also have some of the lowest real per capita income and the lowest *Human Development Index* (HDI) in the Philippines, with HDI levels of the provinces not significantly different from those of Uganda, Nigeria and Senegal.

Finally, while the island region is poor and lacking in basic social services, it is flooded with weapons. In a public statement, a senior police officer said that 80 percent of the two million illegal weapons in the Philippines can be found in Mindanao.

Because it is the poorest, Mindanao is also the most war-torn region. It continues to suffer from the violent conflicts and the armed struggles being waged by the Moros as they continue to fight for self-determination, the Maoists’ revolution for national liberation, and the local Marxists-Leninists’ struggle against landlessness, marginalization and poverty.



Samuel Maulana

Discussion

Samuel Maulana, General Secretary of the *Consortium of Bangsa Moro Civil Society* (CBCS) based in Cotabato City, speaks up to clarify two points on the Mindanao issue and the Bangsa Moro question. He explains: “The Bangsa Moro struggle is not a mere rebellion, it is not a mere secession, it is not a mere insurgency [...] but it is a continuing resistance against the impact of colonialism. [It is the] unwavering stand to sit for the restoration of their right to self-determination to freely design their social, cultural, economic and political destiny as a people and not as a mere citizen.” ■

2 The full report can be downloaded here: <http://www.amnesty.org/en/library/info/ACT30/003/2003>, (10.07.2011).

The current political, economic and social conflicts as structural causes for political violence in the Philippines

Speaker: Niklas Reese (University Bonn)

During the administration of Gloria Macapagal-Arroyo (2001–2010) the human rights alliance Karapatan registered 1.207 people who became victims of political killings and 206 persons who forcibly disappeared. Convictions in cases of political killings rate at 1.05 percent (Source: Grabowski).

Yet, it has come to 45 further political killings and two cases of disappearances under President Aquino (Source: Karapatan). Political killings, Reese states, are only the peak of an iceberg of structural violence that pervades the Philippine society. The violation of economic, social and cultural rights, such as the right to comprehensive education, health care and decent housing etc., is a sad but daily reality. “Development aggression” is to a large extent attended by violence which culminates in killings against those who resist it. Thus, Reese points out, that political killings cannot be separated from the economic and social dimensions.

In order to illustrate the interdependence between political killings and their economic, social and cultural dimension, Reese presents the following examples:

- a) Among those who have been killed are **(landless) farmers and members of movements for agrarian reform** while their economic and social rights are violated as in the case of the Palo-Massacre. Said massacre occurred on 21 November 2005 on the island of Leyte when beneficiaries of the land reform program started to till their land and were ambushed by military units on grounds of suspicion that they were communist rebels. Six farmers and one pregnant woman were killed on the spot while a dozen more were injured in the same incidence. Yet, the case has not reached court, the perpetrators are still at large and the awarded land remains under the control of the landlord.
- b) Targeted are also **NGO-activists and investigative journalists** who commit themselves to transformation and socio-economic change. One of them, Gerardo Ortega, a radio journalist from the island of Palawan and project director of the ABS-CBN foundation *Bantay Kalikasan* who was also active against mining, was shot to death in the beginning of 2011. Thus the number of journalists who have been killed since 1986 rose to 142 persons.
- c) The number of **forest wardens, inspectors and environmentalists** has reached 120 individuals since 1990. Ten new cases have been counted under President Aquino.
- d) **Indigenous people and local communities resistant against mining and against the construction of large dams:** Santos ‘Ricky’ Manrique for instance, chair of the local environmental organization *Panlipan* in Mindanao and a leader of small-scale miners active against the US-American mining corporation *Rusell Mines and Minerals* was killed on 12 April 2011. His killing went in line with eleven cases of gross human right violations such as other extrajudicial killings, illegal checkpoints, land grabbing etc. that occurred in the span of three months, affected 3.664 individuals and which were committed by the military and the corporation’s private goons.
- e) **Lynching:** In cities such as Davao, Tagum, General Santos and Cebu an increasing number of people has been “summarily executed” by motorcycle riding men. From 1999 to 2011 more than 1.000 individuals, half of them children and youth, have become victims of these lynching in Davao City alone. In the years 2009 and 2010 about 100 victims were counted respectively. No perpetrator was prosecuted and no case solved. International condemnation has only led to halfhearted counteractive measures as the lynching is broadly accepted as means of the implementation of “law and order”. The victims, people living in poverty, are accused of theft, robbery and drug racketeering. Their poverty and their despair due to economic stagnation might not be insignificant causes to the commission of these crimes.

f) And last but not least: The **Conflict in Mindanao**, often dubbed as Christian-Muslim conflict, is in fact rooted in economic injustice such as expropriation, displacement and cultural marginalization that has ripened the Moro's determination of armed resistance over decades. Massive settlement programs from Luzon and the Visayas were designed to ease the uprising of the landless but became one of the central causes for conflict.

The current interest in the conflict's solution is also influenced by the desire to control and to exploit the countless resources that rest in the regions with Muslim majorities. Once the "investment" enters these very poor areas, they are feared to be attended by more conflict, human rights violations and killings in particular. Hence, interventions to "solve the existing conflicts peacefully" are viewed with suspicion and are understood as hidden counter insurgency programs.

Structural approaches instead of ad-hoc solutions

The socio-economic situation which is rather expected to further worsen than to improve poses another general threat to peace within the Philippine society. The National Intelligence Coordinating Agency (NICA) warns that the rising costs of basic commodities and services in the country and a shrinking rice supply will become a national security problem.

Reese stresses that the ad-hoc strategies for conflict interventions, such as the *Conditional Cash Transfers* (CCT) which are pushed by the Aquino administration rather intensify than ease conflicts. Similarly, a study conducted by the NATO Civil Military Fusion Center examined the relation between ad-hoc socio-economic intervention and violence in Afghanistan, Iraq and the Philippines. The study reveals that monetary focused approaches rather increase the vulnerability of communities to become targets of armed groups.

Another study by the World Bank (WB) examined the impact of the WB funded "community development project" Kalahi-Cidss (*Comprehensive and Integrated Delivery of Social Services*) on the beneficiary communities. The study found out that the communities' security situation deteriorated as a result of these programs.

Possible reasons for such developments are selective financial targeting that increases the communities' attractiveness for armed groups, whether paramilitaries, NPA, lost commands or state army. Since development aid is an integral component of the new counter insurgency program of the Aquino administration, now dubbed *Oplan Bayanihan* ("Operation Sharing"), the occurrence of armed conflict – in the presence of aid and cash flow for development and infrastructure projects – may even intensify.

Selective ad-hoc measures, such as short term employment programs or social programs like the conditional cash transfer that only target the "poorest of the poor" do not address the lack in education, health care and employment opportunities in the first place and are therefore unable to contribute to less violence. Nevertheless the Aquino administration has declared these ad-hoc measures as its central socio-political strategy.

Finally, Reese appeals, that political and societal violence cannot be terminated by only caring for the wounded but by breaking the wheel's crossing (Dietrich Bonhoeffer). Political violence may be curtailed but continues to prevail as long as the structures that cause and fuel them are not given appropriate attention by actions and campaigns against political violence.

In conclusion, Reese mentions the following six political, economic and cultural causes that continue to fuel political violence and impunity in the Philippines and therefore need to be addressed:

1. Local strongmen and elites that monopolize and abuse their power.
2. The lack of independence and impartiality of the Philippine judiciary.
3. The lack of trust by the common people in the judiciary that hinder witnesses and victims to come forward.
4. A limited human rights awareness and confidence of each individual to be entitled to have certain rights.
5. The precedence of economic interests over human rights.
6. The continuous unequal distribution of resources and the discrepancy between formal (political) freedom on the one hand and social rights, and material freedom, on the other hand.

On the exploitation of resources and human rights

Will there be any difference when, at any point in the future, the resources are exploited by the MILF or an autonomous government akin to the current or will the much criticized “development aggression” continue?

According to *Niklas Reese* this will depend on whether or not local elites and strongmen will enforce their claim. The Ampatuans have shown that it is not sufficient to just transfer the centralized power to local elites. Moreover, it is still in question whether the broad participation of the population is involved.

On the autonomy of Muslim Mindanao

In his response to the question whether the autonomy has ripened in the past few years, Reese differentiates between the former presidency of Gloria Macapagal-Arroyo and the current administration of President Aquino. Much more than the former, the latter credibly involves in the advancement of the peace process. Nevertheless it is one thing to begin the process and another to root this process locally. In this regard Reese recalls to have been shocked in 2008 when the rejection of the *Memorandum of Agreement on Ancestral*

Domain (MOA-AD) resulted in an outcry within the Mindanaowon population and the resurgence of the *Ilaga* (a Christian vigilante group). The incidence showed what can happen if a peace process is negotiated in a top-down manner and without involving those who are actually affected.

On the lynching and human rights awareness

In regards to the satisfaction that is observed among large parts of the Philippine population over the summary executions committed by death squads as in Davao, Reese is asked how human rights awareness can be enhanced.

In response, Reese emphasizes that cultural transformation is much more complex and involves more time than the alteration of political institutions. Human rights awareness often develops in line with concrete social experiences and struggles. The population's acceptance in the distinct case of extrajudicial killings is linked to the lack of trust in the judiciary and the continuing desire to reduce and control crime. And Reese adds that it was the year-long mayor of Davao City, Duterte, who justified the killing and said to be proud if his city is dubbed “the murder's capital” as long as the “right ones” are killed. Naturally, such statements are counterproductive to building human rights awareness. ■

Niklas Reese



3.2 Progress, Regression or Stagnation?

The current Human Rights Situation under President Aquino

Speaker: Hazel Galang (Amnesty International's International Secretariat, London)

Before he became President of the Philippines on 30 June 2010, Benigno “Noy” Aquino III ran on a platform that promised to reduce poverty, combat corruption, restore good governance and uphold human rights to better the lives of Filipin@s.

Hazel Galang quotes Aquino from one of his speeches as saying, “I grew up in an era where human rights were often violated. My father, together with many others, was a victim. (...) We know more than anyone that the blatant disregard of liberties will only bring us further into the dark.”¹

Nonetheless, Amnesty International (AI) has stated that President Aquino had not shown in his first year as president that human rights are a priority for his administration.

In February 2010, after a consultation with national and local human rights groups in the Philippines, AI wrote to Presidential candidates, including current President Aquino, to call their attention to pressing human rights issues. AI also presented action recommendations, which it believes are doable within the president's first year, on issues that needed to be prioritized in the new government's human rights agenda. Galang presented the majority of these recommendations together with AI's assessment of their implementation:

- *End political killings, unlawful arrests, secret detention, enforced disappearances, torture and cruel, inhuman and degrading treatment. Prevent the use of counter-insurgency and counterterrorism to justify human rights violations.*

While it is positive that his administration has put significant attention on political kill-

ings that happened since he took office, President Aquino must also put substantial effort in ensuring that cases of political killings that happened during the previous administration are expedited. While members of the state security forces have been implicated in violations of human rights, no one has been convicted under the Aquino administration.

- *Issue an executive order that clearly states your administration's commitment to stop the practice of enforced disappearances in the country. In particular, establish a Presidential commission that will review all cases of extrajudicial executions and enforced disappearances during the last decade, in co-operation with independent bodies, with the aim of enabling speedy prosecutions.*

In his first executive order in July 2010, President Aquino established a Truth Commission. But unlike earlier truth commissions established around the world, President Aquino's commission was given no mandate to address human rights violations. The Truth Commission was solely tasked to investigate graft and corruption allegations against associates of former President Arroyo. In December 2010 the Supreme Court declared the Commission unconstitutional as it violated the equal protection clause by singling out certain individuals. In December 2010 President Aquino said that he was drafting an executive order for a human rights “superbody”. He also said that he was considering the possibility of putting together a “special Presidential team” focusing on expediting the progress in court of cases of extrajudicial killings.² However, AI is still waiting for this to materialize.

- *Initiate legislation that specifically criminalizes enforced disappearances and extrajudicial executions.*

President Aquino has not yet endorsed any human rights legislation as a priority. However,

1 President Benigno S. Aquino III's speech during the 62nd Anniversary of the Universal Declaration on Human Rights, Malacañang Palace, 10 December 2010.

2 President Aquino's speech during the 25th Anniversary of the Philippine Daily Inquirer and Launching of the coffee table book, »From Ninoy to Noy: 25 Years of The Philippine Daily Inquirer«, Makati, 1 December 2010.

the Enforced Disappearance Act of 2011 (Senate Bill No. 2817), was passed by the Senate in June 2011.

- *Introduce a national quick-response hotline for families of victims of arbitrary or warrant-less arrests and enforced disappearances to gain immediate recourse.*

President Aquino's administration has not introduced such a practical mechanism. As time is of the essence when a person has disappeared or when someone is arrested under a "john doe" warrant³, a quick-action hotline would be helpful for families to be able to report the matter to the authorities

- *Review the government's counter-insurgency policies and revoke those policies which infringe on human rights protection and do not comply with International Humanitarian Law (IHL).*

In December 2010 the *Armed Forces of the Philippines* (AFP) launched its *Internal Peace and Security Plan* (IPSP), locally known as *Bayanihan* (communal unity).

According to the military, this plan was a "paradigm shift". The IPSP states that "the greatest hindrance to stronger civilian-military cooperation is the continued perception of human rights violations allegedly committed by military personnel."⁴ But to protect human rights, the AFP leadership must acknowledge that human rights violations have been committed by state security forces, and they should hold their forces accountable for them. Human rights violations are not a mere perception.

- *Establish control and accountability over the military, police and other state-sponsored forces, and ensure witness protection.*

In early 2011, the Senate held hearings on allegations of corruption by military officials. Numerous military officials and AFP personnel were interrogated in publicized hearings in the Senate, momentarily quieting down after a

former Defense Secretary who was implicated in one of the cases committed suicide. So far, none of the accused has been prosecuted.

Combating abuse of power by government officials and military officers, particularly through corruption, has been the cornerstone of President Aquino's move to "clean up the system". He must put the same effort in combating human rights abuses, which is also an abuse of power.

- *Revoke Executive Order 546 (E.O. 546), which directs the Philippine National Police (PNP) to support the military in its counter-insurgency work, including the use of militias and paramilitary groups.*

Amnesty assess that President Aquino has failed his vow to revoke E.O. 546 and to stop the use of public funds to support and maintain a private security force. While running for the presidency, then Senator Aquino vowed that he will revoke E.O. 546.

In November 2010, however, President Aquino announced that he had no plans to revoke E.O. 546. President Aquino also said he had no plans to disband the paramilitary groups that act as "force multipliers" for the military and police. He argued that these paramilitary groups were the cheaper alternative to recruiting more soldiers and police as the government cannot afford to fund pensions of more military personnel. But Galang asks, "is the cheaper option the best option? And will these paramilitary forces, who are paid only two dollars a day, be 'insulate[d] from political forces' in their local areas?"⁵ Despite being dubbed civilian forces by the government, these groups are armed and perform security and military functions.

- *Disarm and disband all private armies.*

According to AI, President Aquino has failed to take even preliminary steps to achieve this. As of November 2010, the President was still "assessing" the confidential report of the *Commission Against Private Armies*. Moreover, the mandate of this commission (created under Arroyo) was not extended under the Aquino administration. In the *Autonomous Region in Muslim Mindanao* (ARMM), local elections are still postponed. The presence of private

3 A »John Doe« warrant is one where the name of the person arrested is not indicated in the warrant and in lieu of his name »john doe« is put in place. In this case, there is no proof that the warrant of arrest served is directed specifically to the person being arrested. This type of arrest warrant could easily be abused.

4 Internal Peace and Security Plan Bayanihan, December 2010, p. 8.

5 »Aquino thumbs down abolition of militia forces«, GMA News Online, 23 November 2010.



Kaloy Manlupig,
Katharina
Stahlenbrecher,
Hazel Galang and
Marie Hilao-Enriquez
sitting on the podium

armies in the restive region is one of the key reasons for this, according to the *Department of Interior and Local Government*.⁶

- *Ensure that the Police and the Armed Forces develop and implement human rights-based policies in their rules of engagement and operating procedures.*

In August 2010, the military launched the *AFP Human Rights Handbook* and announced that it will provide human rights education to soldiers, because it considers human rights essential to the accomplishment of their mission.⁷

However, on closer inspection, AI finds that the human rights handbook focuses on instructing soldiers how to avoid being investigated for human rights violations, rather than focusing on how to avoid committing them in the first place. In setting out its mission, the book states: “It is imperative that soldiers are conversant with the HR [human rights] standards in order to survive the ordeals of investigation in cases when he becomes involved in a HR violation.”

Rights cannot be protected unless there is accountability. But the AFP’s handbook omitted a fundamental part of this equation: the military’s responsibility to hold soldiers accountable for human rights violations. This

omission reflects the core problem of impunity for violations committed by the security forces.

- *Provide sufficient resources and mandate to human rights offices of both the military and the police in order for them to be able to effectively conduct detailed and impartial investigations of credible allegations of human rights violations.*

In July 2010 then Chief of Staff General Ricardo David directed that the *AFP Human Rights Office* (AFPHRO) be upgraded into a full department, with a rank of General to lead it. He also ordered all units to have a designated human rights officer, down to the battalion level.

These human rights officers are tasked to receive and process complaints of human rights violations against military personnel, including allegations raised through the media. The deputy commander of every unit, according to the new policy, will now also act as a human rights officer in their respective units. However, under the doctrine of command responsibility, the deputy commander also holds responsibility for serious violations of human rights by his subordinates. This means in practice that the deputy commander is directly accountable for any human rights violations by his subordinates. While it is incumbent on him to exercise vigilance in preventing, monitoring and reporting on such violations, this structure presents a conflict of interest. Therefore, AI recommends that a more independent monitoring system within the battalions should also be put into place.

6 »DILG wants private armies disbanded before ARMM elections are held«, Philippine Information Agency press release, 17 May 2011.

7 The handbook received funding support from the EU Justice Assistance Program (EPJUST).

- *Review the Witness Protection Act with a view to introducing provisions that enable a more sustainable protection for witnesses enrolled in the program.*

Criminal convictions in the Philippines are heavily reliant on witness testimony, given limited capacity for effective investigations, including forensic investigation.

President Aquino increased the 2011 budget of the Department of Justice's (DoJ) *Witness Protection Program* by 68 percent to 141 million Philippine pesos (approximately US-Dollar 3.3 million).

In February 2011, the President endorsed the amendment of the *Witness Protection, Security and Benefit Act* (RA 6981) as one of the administration's 23 priority bills sent to Congress. While these proposed amendments, if passed by Congress, could benefit witnesses, they do not address crucial reforms needed in the WPP:

1. providing an interim protection mechanism for persons awaiting the decision of the DoJ regarding their enrollment into the program;
2. ordering a limit on waiting times for the DoJ to decide on a witness application for enrollment to the WPP; and
3. improving the support system provided by the WPP for the financial needs of witnesses, who may need to be in the WPP for many years.

- *Establish and provide resources for a specialized program for witness protection and sanctuary for families of victims under the CHR for cases involving grave human rights violations, including but not limited to extrajudicial executions and enforced disappearances. Particularly when the suspected perpetrators are members of the armed forces, police, or other officials.*

During the final months of the Arroyo administration, the CHR under then Chair Leila De Lima adopted its own protection program to protect the lives of witnesses in cases of human rights violations. Establishing a separate witness protection program under an independent body could encourage witnesses of human rights violations cases to come forward.

Currently, many witnesses in human rights cases opt to go to non-governmental organizations for temporary sanctuary, instead of

enrolling themselves in the WPP under the DoJ. The problem is that President Aquino passed the 2011 budget with no allocations to the CHR for the protection program for witnesses in human rights cases.

- *Integrate human rights principles in any peace process with armed opposition groups. Include provisions on mutual cooperation for human rights protection and joint investigations on credible allegations of violations of human rights and IHL violations committed in the context of armed conflicts.*

In the early months of 2011, the Aquino administration successfully re-opened peace talks with the Moro Islamic Liberation Front (MILF) and the National Democratic Front (NDF). However, in its peace talks with the NDF, the government said it made human rights a "side issue" in order to avoid derailing progress to a peace accord.⁸

Human rights issues, including investigation of allegations, bringing perpetrators to justice, redress for victims (or their families), and agreeing on and implementing protection mechanisms to protect civilians in the peace talks agenda are crucial. Justice is a necessary component for a lasting peace. Human rights abuses, which have contributed to the intermittent armed conflict in the Philippines, need to be addressed within the framework of the peace process.

- *Ratify key treaties on human rights and International Humanitarian Law (IHL).*

The Aquino administration made some progress as President Aquino signed the Rome Statute and announced that his office has transmitted the instrument of ratification to the Senate in March 2011. [Note: in August 2011, the Philippines ratified the Rome Statute of the International Criminal Court.]

- *Make human rights a priority integrated across government bodies.*

Human rights are still not mainstreamed in the civilian sectors of government but remain largely compartmentalized in the DoJ and the CHR. The seriousness of the Aquino administration's commitment to human rights could be directly manifested through the effective

8 »Philippines start new peace talks with Maoists«, Reuters and Abs-cbn News, 15 February 2011.

adoption and implementation of a national human rights action plan.

- *Integrate binding obligations to respect, protect and fulfill human rights into the Medium Term Development Plan.*

In March 2011, the Aquino administration released the *Philippine Medium Term Development Plan*, which presents the achievement of the Millennium Development Goals (MDGs) as one of its key targets. However, the targets set by the MDGs in some cases ask governments to do less than they are already required to under international human rights law.

Respecting and promoting human rights is not separate from actions to fight poverty – it is central to those efforts. To ensure that its development plans protect the full range of human rights, the Aquino government will need to establish accountability for violations of civil and political rights which fuel poverty.

Amnesty International calls on President Aquino to make human rights the centerpiece of his administration's legacy. This means not only making human rights reforms in law and policy a priority, but also a commitment to ensure that these reforms are implemented fully through concerted action.

Reform is only genuine when significant improvements are seen and felt by the people. "Transformational change," the catchphrase of President Aquino's Presidential campaign, will only be achieved if human rights protection becomes a priority for the Aquino administration in the next five years.

Discussion

On the role of the deputy battalion commander

Being asked about the responsibility of the deputy battalion commander *Hazel Galang* responded that under the doctrine of "command responsibility" the deputy battalion commander is responsible for the human rights violations of his soldiers and she adds: "That is why we are saying, how can you make him the human rights officer when he will unlikely report it because he will be culpable?"

On the human rights handbook of the AFP and the human rights action plan

Ret. Colonel KB Müller, the military expert of EPJUST, adds two aspects. He confirms the pronounced shortfalls of the military's handbook on human rights at the time the first draft was launched. The September edition however shows changes which were worked out together with EPJUST and the CHR. Yet, even the latest version of the AFP's Human Rights Handbook does not meet Colonel Müller's full satisfaction.

Colonel Müller further comments that he has received information from the AFP that the Human Rights Action Plan already exists. A five-year period of implementation has started. A lot of patience is required for this to implement. The same is true for the AFP's IPSP Bayanihan which was developed in cooperation with many human rights groups and contrasts the security plan Bantay Laya under the former administration. ■

What kind of peace does the President intend to win?

Speaker: Marie Hilao-Enriquez (Karapatan)

When President Aquino was sworn into office one year ago, he declared: “I will dedicate my life to making our democracy reach its fullest potential...” And that he knows “what it is like to be denied justice” and “to be ignored by those in whom we placed our trust and tasked to become our advocates.”

One day before President Benigno Aquino’s one year in office, Marie Hilao-Enriquez states that it would be prudent to say that no substantial change has happened as far as the human rights situation in the Philippines is concerned. President Benigno Simeon Aquino III took off where Gloria Macapagal-Arroyo (GMA) left off.

Hilao-Enriquez neither observed the promised reforms nor a brief relief from economic policies of the previous administration. Instead, she states that globalization is pursued more actively and continues in the name of

Public-Private Partnership Programs (PPP). The PPP projects, or simply globalization, espoused by President Aquino, entails a plan that will displace and disempower more of the already suffering Filipin@s. The urban poor, or those now called belonging to the informal settlers, became targets of violent evictions and demolitions, burning of communities and urban poor leaders killed or harassed. Prices of basic commodities and services increased (e.g. tuition fees, health services and medicines). And despite the promise of change, state terror and violence continue to be used against those who fight or criticize such policies and programs.

Hilao-Enriquez points out that GMA’s counter insurgency campaign “operation freedom watch” or “Oplan Bantay Laya” (OBL) continued to be implemented during the first six months of the Aquino government. In this light Hilao-Enriquez was not surprised that the killings of political activists continued.

On the fifth day after Noynoy’s inaugural address, on 5 July 2010, Bayan Muna leader **Fernando Baldomero** was shot dead in front of his 12 year old son. Baldomero was the provincial chairperson of the Bayan Muna party list and a member of *Selda*, an organization of former political detainees.

Four days after Baldomero’s killing, on July 9, the ninth day of President Aquino in office, the 78 year old peasant leader **Pascual Guevarra** was shot dead in his home. His 18-year old grandson, **Ronnel Viloria** was also shot and fortunately survived the attack.

Oplan Bayanihan

Starting in January 2011 Aquino implemented his own version of counter-insurgency, now called *Oplan Bayanihan*. The targets of both counter-insurgency plans (OBL and Bayanihan) are leaders of organized groups vocal in their criticisms of anti-people policies of the government, Hilao-Enriquez says.

Bayanihan, she explains, takes after the Filipino tradition of mutual aid. According to the AFP it aims to mobilize the population to achieve “peace and development.” *Oplan Bayanihan* claims to be different from the previous counterinsurgency programs especially on the respect for human rights. It boasts of being “people-centered” and focused on “peace and development” rather than on war.

Violation of Civil and Political Rights under the Noynoy Aquino Government (July 2010 to June 2011)

(Source: Karapatan 2011)

Violations	No. of victims
Extrajudicial Killing	48
Enforced Disappearance	5
Torture	29
Frustrated Extrajudicial Killing	13
Illegal Arrest without Detention	56
Illegal Arrest and Detention	95
Physical Assault and Injury	32
Demolition	5,722
Illegal Search	78
Violation of Domicile	87
Divestment of Property	52
Forced Evacuation	3,010
Threat/Harassment/Intimidation	9,589
Forced/Fake Surrender	32
Use of Civilians in Police and/or Military Operations as Guides and/or Shield	15
Use of Schools, Medical, Religious and Other Public Places for Military Purpose	5,245

Based on the years of experience as a human rights activist, Marie Hilao-Enriquez strongly believes that it is an oxymoron to say that a counter-insurgency program is respectful of human rights as there has been no counter-insurgency program that is evidently respectful of human rights. All the counter-insurgency programs that had been implemented from Marcos up to all the administrations after him really involved deploying a large number of state security forces in the areas suspected as rebel stronghold. In order for them to “win the hearts and minds of people”, they have to exert force first.

Likewise, the reports coming from Karapatan member organizations and chapters clearly confirm that indeed no change has happened in the human rights situation of the country under the Aquino government.

Victims under Oplan Bayanihan

The ordinary folk, the people whom the President referred to as his boss, have ironically been the most victimized with the implementation of the Aquino government’s *Oplan Bayanihan*. They have been displaced from their homes and communities, have been harassed, arrested and detained, tortured and killed. To illustrate these cases of human rights violations, Hilao-Enriquez lists the following examples:

A tribal chieftain of the indigenous group B'laan, **Rudy Dejos**, 50, and the Vice-Chairperson of *Zone-1 Farmers Association* (Zofa)¹ was killed, along with his 26-year old son, *Rudyric* on 27 February 2011. Rudy’s wife, Mercy Dejos, found her husband and son dead inside their house in Sta. Cruz, Davao del Sur. Their bodies bore signs of torture. The 39th *Infantry Battalion of the Philippine Army* (IBPA), led by Lt. Col. Oliver Artuz, and the PNP, spread rumors that the Dejos were killed by members of the NPA. No investigation was conducted on this case.

Since June 2010, the Dejos were subjected to threats and harassment by members of the 39th IBPA. Soldiers discourage people in the community to join the Zofa and require them to take part in the military organized *Barangay Defense System*.

On 9 March 2011, another peasant leader, **Bonifacio Labasan**, was shot dead on his way to a relative’s house in Bgy. San Mateo, Isabela Province. Labasan and his daughter, Lani Miguel, were riding his motorcycle when another motorcycle with two men aboard overtook them. The men forced Labasan to go with them and when Labasan refused, one of the men shot him in the torso. Lani appealed for her father’s life but instead of heeding her pleas, the man shot Labasan in the head.

Labasan was the chairperson of *Danggayang Dagiti Mannalon iti Isabela* (Dagami), a farmers’ organization in Isabela, also a local affiliate of KMP.

On 5 January 2011, soldiers along with some members of the *Civilian Armed Geographical Unit* (CAFGU) barged into the residence of **Manuelito and Annabelle Loreno** in Bgy. Binulusan Grande, Iloilo. The soldiers said they were after members of the NPA but were pointing their M-14 rifles at Annabelle and her five daughters, whose ages range from three to 14 years. They ordered the family to stay or they would be shot. The eldest daughter scampered away crying and hit her head against the wall. Annabelle demanded that the soldiers point their guns away from her and the children. The Loreno children were traumatized by the incident.

Hilao-Enriquez explains that the above mentioned incidents happened under the Aquino government but actually exhibit the same patterns and characteristics of the forms used during the period of the OBL: Killers aboard motorcycles, leaders of peasant organizations killed, even in front of their children; soldiers looking for members of the rebels but turning their guns against the unarmed population; soldiers campaigning against people’s organizations that they brand as leftist organizations or fronts.

In this light Hilao-Enriquez concludes that the claim of the Aquino government to engage in peace and development as Oplan Bayanihan’s centerpiece contradicts with the conduct of military operations against people and organizations who, because of government’s neglect and lack of basic social services, took the initiative to develop their communities and ensure the education of their children. Additional examples are the following:

On 11 March 2011, the *Center for Lumad Advocacy and Services, Inc.* (CLANS), reported

1 Zofa is an affiliate of the *Kilusang Magbubukid ng Pilipinas* (KMP) or National peasant movement.

that three teachers and **30 students of the Balaan Literacy School and Learning Center (BLSLC)** were harassed by members of the CAFGU and the 73rd IBPA. The military's constant visits to the school, interrogation of teachers and school personnel, and harassment of students and parents have terrorized the villagers, specially the children. In fact the school was forced to suspend classes and postpone graduation ceremonies for the school year 2010–2011.

While this government adds up to the cases of human rights violations, it has yet to render justice to the victims of human rights violations under the past regime. To date, Arroyo and her generals remain scot free from the crimes they have committed against the Filipino people.

To counter this prevailing impunity Karapatan and the relatives of the victims have taken up the initiative to file court cases against Arroyo specifically on the case of the imprisonment of the Morong 43, the Cadapan-Empeño and Jonas Burgos disappearances. Hilao-Enriquez expects that there will be more cases filed in the future. Yet the people's call to punish Arroyo and to end impunity in this country remains to fall on deaf ears.

Finally, Hilao-Enriquez appeals to President Aquino to really implement and adhere to the human rights conventions and treaties his government enters into, like signing the *Statute of Rome of the International Criminal Court* (ICC). Signing important UN documents does not make a human rights advocate, nor does pronouncing human rights conventions and treaties do so.

The problem really lies on what kind of peace and development this government means when it says "we would like to win the peace, not to wage war." These are portent of things to come in the five years of the Aquino government, until and unless the Aquino government acts now to sincerely address the root causes of insurgency and punish those who committed crimes against the people, in the past and under his own rule.

Discussion

On the accountability of non-state actors in cases of human rights violation

Marie Hilao-Enriquez is asked how non-state armed groups like the NPA can be taken into account and made responsible for their human rights violations.

Hilao-Enriquez responded that under the peace negotiations of the NDF and the *Government of the Philippines* (GRP) there is the *Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law* (CARHRIHL) under which the *Joint Monitoring Committee* (JMC) was established. Karapatan hopes that the JMC will be allowed to meet on the complaints of human rights violations that the Joint Secretariat have collected from both sides, hence, including complaints against the NDF. And she states that the different groups working in the Philippines have their own mandate. While Karapatan's mandate is to continuously watch the state party, she believes that there are other groups that have monitored non-state actors and so does the CHR as well as the DoJ. In that sense there are enough structures to monitor also non-state actors.

On the impact of human rights work by NGOs

Hilao-Enriquez is asked whether she feels acceptance and an impact of her organization's work when it comes to the parties involved such as the government or the AFP.

She states that there is a feeling that her organization is being heard. And despite the persecution of her human rights organization that has resulted in the murder of 35 human rights activists within the recent years among other violations, the organization is committed to continue to assert the right to development, the right to life and the right to have a right. ■

4. Case Studies – Impunity, Criminalization of Human Rights Defenders and Deficits in Criminal Proceedings

4.1 Some Examples of Impunity

Speaker: Max de Mesa (Philippine Alliance of Human Rights Advocates, PAHRA)

“Impunity” means the impossibility, de jure or de facto, of holding the perpetrators of violations to account since they are not subject to any inquiry that might lead to their being accused, arrested, tried and if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.¹

“Unless there is a fundamental change of heart on the part of the military or the emergence of civilian resolve to compel the military to change its ways. Then, and only then, will it be possible to make real progress in ending the killings.” (UN Special Rapporteur on arbitrary killings, Philip Alston)

Since the change of heart on the part of the military – as mentioned by Philip Alston – will take time, de Mesa stresses the need for emerging civilian resolve, the strengthening of human rights formations and most importantly the implementation of the four core principles to combat impunity, which is the **right to truth**, the **right to justice**, the **right to redress** and the **right to institutionalized reforms**.²

The Right to Truth

According to UN Special Rapporteur, Louis Joinet and others, the inalienable right of all peoples to the “right to the truth” or “the right to know” has both an individual and social dimension³. At the individual level, “the right to truth” is the right of victims or their families and relatives to know the basic facts that surrounded the violations or abuses they suffered personally. At the collective level, the right to truth means the state must take effective measures to preserve records concerning past violations and to facilitate public knowledge of the circumstances from which ensued the perpetration of serious crimes.

The state obligation to ensure that the victims would know the details of their case and would have access to the documents related to their case is passed on from one administration to the next. Pursuing determinedly the breaking through of impunity is to be taken as an imperative to assert the common humanity and dignity and human rights. The Aquino administration should thus publicly affirm this core principle – the right to truth – and make appropriate concomitant actions, such as executive and/or administrative orders, or certifying as urgent the bill on the right to information, to combat impunity. In concrete, the present administration of President Aquino should reach out into the past, beginning with, but not limited to, the immediate preceding administration and review cases that may have clothed impunity with a veneer of judicial immunity. The violations with impunity of the past has continuing adverse repercussions in the present in the persons of victim-survivors and/or their families and, sometimes, even in communities.

1 See Orentlicher, Diane 2005: «Promotion and Protection of Human Rights. Impunity. Report of the independent expert to update the Set of principles to combat impunity», E/CN.4/2005/102/Add.1, 8 February 2005.

2 UNCHR, «Sixty-first session. Item 17 of the provisional agenda. The right to know (principles 2–18) in the Promotion and Protection of Human Rights. Impunity.» Paragraphs 17–35, p. 7; 36–57, p. 12; 58–69, p. 16; 37–42, p. 12.

3 Orentlicher, Diane, op.cit.

On October 14, 2000, six contract workers of the *Paper Industries Corporation of the Philippines* (PICOP) were forcibly disappeared at Brgy. Sta. Maria, Trento, Agusan del Sur. They came from families who live below or within the poverty line.

The six workers – Joseph Belar, Jovenio Lagare, Romualdo Orcullo, Diosdado Oliver, Artemio Ayala and Arnold Dangkisan – were abducted by Corporal Rodrigo Billones from the 62nd Infantry Battalion of the Philippine Army. Billones suspected these six workers to be members of the NPA who were responsible for the deadly ambush of another Colonel.

A friend of the missing workers, Crispin Barot, was able to evade the abduction by concealing himself in the crowd. He saw the six workers being held at gunpoint from the *peryahang* (village carnival) and brought inside the army camp.

Parents and relatives looked for their loved ones but the military blatantly denied that the 6 PICOP workers were in their custody. The search for the workers and for justice continued and was sustained by the organization of *Families of the Involuntarily Disappeared* (FIND).

Had not another witness come forward four years later, the case would have been dismissed as none of the six could be found in the camp or could be accounted elsewhere. The witness was an insider. He was a soldier of the 62nd IB. Sgt. Exequias Duyogan had witnessed the brutal murder of the six workers.

PICOP 6 was a landmark case as Duyogan's testimony as a fellow soldier convicted Corporal Rodrigo Billones not as a principal but as an accomplice to the kidnapping and illegal detention of the six PICOP workers. The sentence was handed down by Executive Judge Dante Luz N. Viacrusis on July 11, 2008.

The families of victims later filed charges of multiple-murder against 13 soldiers including the Camp Commander at that time. The Camp Commander in a counter-affidavit even went to the extent of putting into an official

report that the accused soldiers could not be in the alleged place where the six were killed but were actually in another camp. In effect, he claimed that the killings never took place but were a sort of a hallucination of the witness, Sgt. Duyogan.

The PICOP case was later personally presented to President Aquino during the first 100 days after his election by PAHRA and FIND. As Commander-in-Chief the President was requested to take special attention or even an intervention to ensure that the truth comes out. Sadly, there had been no response or action regarding the PICOP 6. It has not been taken as a unique case which could help breakthrough impunity in extrajudicial killings.

The PICOP 6 case and the status of the soldier witness at risk were also shared with the *AFP Human Rights Office* (HRO). It seems that the whole case was ignored or by-passed for reasons we do not know. In the meantime, Billones was given special treatment by living in a separate house outside a regular prison.

The right to truth, the first core principle to combat impunity, has been blocked by the duty bearers themselves from the very start and later at every step towards obtaining justice. There has been no concrete cooperation from the military command before and after the putting up of the *AFP Human Rights Office*. The truth does not consist only of the data documented by human rights defenders in civil society. It is also the data from the part of the military to which only the military has access. State obligations are not demarcated by the periods covered by each administration. Rather these obligations transcend every political regime. The impunity of the past must be resolved and measures done to prevent recurrence.

Usually, civil society's data could not stand alone. The decisive part often is within the ambit of the military. It is only the military who would have access to their own records, immediately if desired and solely, most of the time, as civil society need to go through the proper, tedious legal processes to see or to obtain copies of the pertinent documents of their cases.

Even if one had obtained the proper legal process such as the *Writ of Habeas Corpus* in a case of abduction, kidnapping or enforced disappearance, outright denial usually is made, such as what happened in the PICOP 6. It was

⁴ *Families of the Involuntarily Disappeared* (FIND) files on the PICOP 6; PAHRA Bulletin, December 10, 2010, PAHRA Urgent Appeal: PICOP 6 key witness to 10 year enforced disappearance case under threat.



so in the case of the two Manalo brothers.⁵

The military consistently denied they had the brothers in custody until the two were able to escape after 18 months in captivity and narrate their ordeal of torture in the hands of their military captors and identified the military official who had command responsibility – then Gen. Jovito Palparan Jr.⁶

The military – in both cases of the PICOP 6 and of the Manalo brothers – stonewalled the truth and tried to insulate themselves with legal technicalities until determined pursuit of justice with the help of unexpected actions breached the wall to some extent – the appearance of a soldier-witness and the courageous escape of the Manalo brothers.

The PICOP 6 case is at its crossroads. The respondents to the multiple-murder charge are most probably waiting for a legal victory, but certainly on behalf of the victims and their

families, justice would not be served and impunity could be further entrenched, unless unexpected turn of events would again happen. Unless the military through its now established Human Rights Office and appropriate processes pro-actively investigate the human rights violations, the announced paradigm shift may have been stuck.

The Right to Justice and the Right to Reparation/Guarantees of non-recurrence

While victim-survivors and families of victims always demand for justice, most of the time the attempt to start the judicial process is already blocked or had to be hastily abandoned either due to severe harassment and intimidation or out of fear of reprisal and also revenge. If earlier significant portions of the truth have not been released by the security forces, then it would be very difficult if not impossible to file charges.

There is also the refusal to reveal data on personnel or troop composition due to “national security” reason. Manipulation of the truth, such as the planting of evidence, turning in false reports or making use of false witnesses are also forms of refusal to one’s right to truth. The burden to prove the truth is unevenly placed often on the shoulders of the poor and the intimidated. Denial of the right to the truth or the right to know leads often to the disabling a person’s pursuit of justice or to an outright rejection of a person’s right to justice.

The PICOP 6 case and the Manalo brothers are examples also of the breach to the right

5 On December 26, 2007, under the new rule of the *writ of amparo*, the second division of the Court of Appeals gave a decision penned by Justice Lucas Bersamin which unequivocally stated that «General Palparan’s participation in the abduction was also established», «saying that he at least knew about the arrest and detention by his men of the Manalo brothers.»

6 The Manalo brothers also narrated how they met the two students from the University of the Philippines during their captivity and learned of the girls’ ordeal of torture and sexual abuse in the hands of their military custodians. Please see: Palparan can’t comply with SC order to release activists – Yahoo! News. (<http://ph.news.yahoo.com/palparan-cant-comply-sc-order-release-activists-123754618.html>).

to justice which leads to the loss of the right to reparation. Impunity then entrenches itself further signaling once again that similar violations will recur. And recur they did.

Case Study: The Miraflores Brothers

In the morning of June 2, 2010, the Miraflores brothers Raymond, Rosemel and Erik assisted their father in getting charcoal. They were wearing their shorts and old t-shirts.

Around 7 am of the same day, members of the *Philippine National Police* (PNP) conducted a patrol operation in Sitio Hobol, Brgy. Candelaria, Zambales. They spotted some heavily armed men whom they suspected as members of the *Rebolusyonaryong Hukbong Bayan*, an armed group that was once a part of the *New People's Army*. A shootout ensued.

Meanwhile, the mother of the three Miraflores and relatives heard the shooting and tried to check on the brothers. However, Erick neither responded to text messages nor phone calls. Instead an unidentified male voice answered the phone. The mother, the wife of Raymond and some relatives went to the Municipal Mayor and informed him that the three brothers and their father were in their homestead in the mountains and were gathering charcoal. They expressed their concern about their family members because of the shots they heard.

The uncle, Leopoldo Miraflores later identified the three brothers in the St. Luke Funeral home.

He was surprised to see that Erick and Rosemel were wearing long-sleeved camouflage shirts, while Raymond was still in his home clothes. All had multiple gunshot wounds. Rosemel had both legs fractured and dislocated.

The investigation report of the regional office of the CHR submitted its *Initial Investigative Report*⁷ on June 15, 2010 which contained among others possible signs of torture. It stated that “deeper investigation is needed”, in order to establish whether the brothers had been extrajudicially killed. A deeper and faster investigation is the imperative here because it

is an integral component of due diligence and of the rights to truth and to justice.

At the least, the post-operational reports should be reviewed and analyzed for coherence. Missing is the post-operational report of the 24th Infantry Battalion which provided military reinforcement and later “conducted pursuit and mapping [sic] operations”. Yet, the investigation as to whether the Miraflores brothers were extra-judicially killed or not has not yet been progressed or gained depth.

4th Core Principle – Duty of States: Undertaking Institutional Reforms

The Principles do have the characteristics of interdependence and interrelatedness to eliminate impunity. The law that has finally criminalized torture, RA 9745 and its *Implementing Rules and Regulations* (IRR) are not sufficient. There must be determined actions to prosecute when a violation occurs. Jail reforms, such as decongestion, have to be made. Redress and reparations for victims must be ensured, like the passage of the *Compensation Bill for Martial Law Victims of Human Rights Violations*.

Cognizant of the fact that the state or this administration alone could not eliminate impunity, without the slightest digression from the primary obligation of the state, different stakeholders are now working together to put up a *National Monitoring Mechanism* (NMM) to prevent and breakthrough the impunity of extra-judicial killings, enforced disappearances and torture. These stakeholders are the CHR and the *Presidential Committee on Human Rights* (PCHR), who serve as co-convenors, together with the representatives of different government departments and agencies, the Security Forces/Uniformed Services and Civil Society Organizations and People's Organizations.

Case Study: A National Monitoring Mechanism

The Miraflores case and other cases of human rights violations committed in Central Luzon seem to have stuck due to some institutional resistance within the security forces to the emerging resolve to break through and eventually end impunity. This phenomenon seems to exemplify what has earlier been referred to as the gap between the pronouncements at the

7 Initial Investigation Report, CHR-III-2010-0157, submitted by Special Investigators Elmer L. Maniego and Joel Boaniaras to Atty. Jasmin Navarro-Regino, Regional HR Director.

top, e.g. AFP's paradigm shift: "primacy of human rights in all military operations" on the one side and the actualities on the ground on the other side, exemplified by the statement of Pampanga PNP Supt. Madzgani Mukaram's, who says: "There are no human rights for us".

On March 29, 2011, together with CHR, PAHRA has conducted an EPJUST-sponsored Case Conference on EJKs, Enforced Disappearance and Torture with the concerned Regional Command officers and personnel of both the AFP and the PNP in San Fernando, Pampanga.

The Case Conference was to determine the status of the 13 cases out of around 80 which were chosen by PAHRA and DEFEND CL.

The exchange of reports and notes among the Civil Society Organisations (CSOs), the CHR and the uniformed services – AFP and the PNP – revealed there were some variances in each one's report. More encouraging was the establishing of possible witnesses and leads to some of the cases. At the end, an agreement was reached that all reports and notes regarding the said cases would be turned over to the CHR. Then, the CHR would pass on common status reports to the concerned CSO and the uniformed services.

The process and content of the said March 29 Conference had enthused all parties concerned that the same were unanimously recommended to become an integral part of the about-to-be-set-up *National Monitoring Mechanism*. It was certainly reinforcing goodwill and transparency to become an institutional structure to prevent and/or to break impunity. This is the boost. But three months later no reports were coming.

Hence, if even these substantial cases could not bring a break through then maybe all other cases would also be buried in impunity.

Again, the military's application of the right to truth and the right to know is essential to the rights to justice, to redress and to institutionalize reforms. This lack can indicate the status of impunity under the Aquino administration.

On the role of the Ombudsman

As of the reports promised by the military, the overall role of the Ombudsman has been one of inactiveness. Accordingly, the late Ombudswoman denied her responsibility in matters of the AFP when asked by *Ret. Col. Müller* during his visit.

He stresses that in the absence of continuous pressure from the public, the media as well as all parts of the government, excuses are expected to reign over the implementation of the right to truth. ■

4.2 Criminalization of Human Rights Defenders: Cases of »Trumped up Charges«

Speaker: Dr. Oliver Gimenez (Community Empowerment Resource Network, CERNET)

“When a State cannot meet its obligation to investigate human rights violations and prosecute the perpetrators then it becomes impossible to hold them accountable in law or in fact, a condition of impunity is said to exist.” – Philip Alston, UN Special Rapporteur on Extrajudicial and Summary Executions.

Gimenez adds that the situation even becomes worse if the justice system, upon which one expects to rely upon to seek justice for human rights violations, is by itself prostituted, abused and made an instrument for the systematic suppression of political dissent.

According to Gimenez, this was the character of the concerted efforts of the AFP, PNP, DoJ and other government agencies during the administration of President Arroyo to file and prosecute cases against legal personalities.

He refers to it as “legal offensive” not so much of its (non-existent) legality but because of the use of the legal processes for purposes of repression.

The Context of the Legal Offensive

In 2006, President Gloria Macapagal Arroyo issued *Presidential Proclamation 1017* declaring a state of emergency in the country and arrogating, in a way eerily reminiscent of the late dictator Ferdinand Marcos, legislative powers unto herself. Massive warrantless and invalid arrests were made of political dissenters from all spectrums. This course of action was declared unconstitutional by the Supreme Court in a case filed by *Bayan Muna* and other groups.

This was also the time when the government was at the height of its implementation of its National Internal Security Plan (NISP), the so called Operational Plan *Bantay Laya* or Freedom Watch. This NISP did not distinguish combatants from non-combatants, armed political dissenters from unarmed and

legal political dissenters. Thus it resulted in the systematic violation of civil and political rights of countless individuals.

By the end of *Bantay Laya* in 2010, 1,207 activists had fallen victim to extrajudicial killings. Hundreds of activists had disappeared or became *desaparecidos*¹. Thousands more had become victims of systematic violations of the rights to life, liberty, security and other human rights.

This was the context by which the government pursued its legal offensive, as part and parcel of this internal security plan. It was going to be the epitome of the prostitution of the justice system to pursue a national policy of repression.

The Legal Offensive under Inter Agency Legal Action Group and OBL

In 2006, then President Arroyo issued an executive order forming an inter-agency ad hoc committee, the *Inter Agency Legal Action Group* (IALAG) at the national, regional and provincial levels. It was headed by the Office of the National Security Adviser and composed of representatives from the various government departments. The principal task was to “coordinate all national security cases” which were classified as rebellion, sedition and related offenses, and “national interest cases that threaten national security”.

Gimenez recalls Prof. Alston, who fittingly pointed out the impact of the IALAG, by saying that the most deleterious role played by IALAG bodies may be to encourage prosecutors to act as team players with the AFP and PNP in counter-insurgency operations and to de-prioritize cases involving the deaths of leftist activists.² This is mainly the reason for the deluge of “trumped-up charges” all initiated and pursued as part of a legal offensive against perceived enemies of the state.

1 The term *desaparecidos* is colloquially used for »enforced disappearances« or persons who disappeared involuntarily.

2 Report Of The Special Rapporteur On Extrajudicial Summary Or Arbitrary Executions, Philip Alston, On His Mission To Philippines (12–21 February 2007); <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/130/01/PDF/G0813001.pdf?OpenElement>.



Dr. Oliver Gimenez

Why do we call them »trumped-up« cases?

A rather peculiar but sinister character in the filing of the cases was the fact that they *falsely* accuse legal personalities of rebellion, murder, arson, robbery and other crimes, committing acts like ambushes of soldiers, burning of buses and heavy equipments.

Consequently, six members of the House of Representatives were accused of rebellion and committing murder, arson and robbery. Leaders and members alike of peoples' organizations were also similarly charged. Development workers from the civil society and non-government organizations were likewise charged in different cases.

In Central Visayas alone, at least eight trumped up cases filed against development workers, leaders and members of people's organizations were documented in 2008. Central Visayas is only one of the 17 regions in the Philippines.

In 2006, charges for multiple murder were filed against Vimarie Arcilla, a human rights worker from Karapatan, and Manuel Benthillo, an organizer from Bayan Muna. In 2007, Miss Arcilla, was again charged with kidnapping by the PNP and the military in Negros Oriental in connection with the rescue made of a witness to a case of a summary execution. The case was also dismissed by the Office of the Provincial Prosecutor of Negros Oriental.

In 2008, Gimenez recalls to have himself been charged with two separate cases of murder and frustrated murder before the Office of the

Provincial Prosecutor of Negros Oriental by the military and the police through the coordination of the provincial IALAG.

In one case he was charged with having taken part, armed with an M-16 armalite, in an ambush of a group of soldiers somewhere in Sta. Catalina, Negros Oriental on 8 September 2008.

In the other case he was also charged with participation in an NPA ambush of another group of soldiers in another place in Sta. Catalina, Negros Oriental on 25 September 2008. Five other development workers were included as Gimenez co-respondents in these cases, including his office mate Miss Cristina Munoz.

These cases were rightfully dismissed by the Office of the Provincial Prosecutor of Negros Oriental in 2009.

While the accused were confident that justice was on their side, they were alarmed by the way the cases were filed. The police and the military were bent on having Gimenez and his co-respondents arrested without affording them of the right to contest the charges before the prosecutor, and preventing them from doing their work as development workers and human rights defenders.

Gimenez draws this evident from the fact that the Chief of Police of Sta. Catalina as well as the soldiers and the Criminal Investigation and Detection Group of the Phil. National Police deliberately gave fictitious addresses as the supposed addresses. According to Gimenez conclusion, he and his co-respondents were intentionally deprived of receiving subpoena

and notices. Gimenez stresses that he only read about his cases in the newspapers.

Had they not been able to answer the charges before the prosecutor, the cases would have been filed. Then all of them would be incarcerated until now as murder is a non-bailable offense and since the resolution of criminal cases takes as much as five years at least.

Why were we singled out as respondents?

The accused, including Gimenez himself, may be critical of the government policies especially in so far as they are detrimental to the people's interests, but they have done their advocacy using legal and legitimate means. And most importantly, Gimenez emphasizes that they did not commit the acts for which they were being charged.

"But then, why would the government embark on such an outrageous proposition?" Gimenez asks and gives the following answer: "The filing of these cases has one purpose: to keep development workers from doing their work."

From the point of view of the government, they are the enemies of the state and therefore should be neutralized. Because they are involved in issues which do not concern their own respective sectors, because they are critical of government policies, they are deemed as such. Even the *Catholic Bishops Conference of the Philippines*, the *United Church of Christ in the Philippines* and the *Philippine Independent Church* were considered as enemies of the state by the *Department of National Defense* in 2004 purportedly by virtue of these standards.

He explains that it was the work as development workers and as human rights defenders which made them legitimate targets for neutralization by the government under its national security plan OBL. And neutralization came in many forms at that time such as extrajudicial killings, enforced disappearances, intimidation, and the filing of these cases.

Referring to recent developments, Gimenez acknowledges that the IALAG was abolished by the Arroyo administration in May 2009 through another executive order, but he notices that the legal offensives go on. He explains that its abolition came not much as a result of an admission of its being an anathema

to human rights but was more of an audacious claim that the IALAG has already accomplished its mandate.

"From where I stand", he says, "and on a personal note, I could say that the cases affect us greatly in ways which could not be measured even by the language of international law." And he continues: "The idea that the government, with all its vast resources, thinks of me as a criminal and that I should be placed behind bars for the rest of my life, has a chilling effect on me. And I could say that the others facing similar cases feel the same way."

In view of the ongoing killings of legal personalities, Gimenez says that the filing of the cases appeared like a death wish.

The support of the various sectors, organizations and individuals in the local, national and in the international arena helped a lot in pressuring the government and eventually leading to the dismissal of the cases. Here, Gimenez especially mentions CERNET's partner organizations in Germany such as the EED and the Jülich based Philippine Section of Amnesty International in Germany.

Prospects under the Aquino administration

Frankly speaking, Gimenez and his colleagues harbor hopes that what they underwent under the Arroyo administration would somehow cease and human rights violations will not anymore be as systematic. He also hopes that the present government will abandon the legal offensive against legal personalities.

Gimenez and his colleagues wish that Pres. Aquino would take the lead in seeking justice for victims of human rights violations and use his vast powers as the President and Commander in Chief of the Armed Forces of the Philippines to put a stop to the systematic violation of human rights and the legal offensive.

After all, Gimenez remarks, that it was Aquino's campaign promise that he would lead the Filipino people towards a righteous path.

However, what is happening now is quite disquieting, disconcerting and worrying. A year into the present administration and yet justice for victims of human rights violations has to be seen. And he continues that still the government has to be seen leading the prosecution of officers and members of the state security forces responsible for human rights violations.

In conclusion, substantial gains in the promotion and protection of human rights under the Aquino administration are still awaited.

Instead the present administration has even continued the prosecution of the trumped-up cases filed by IALAG during the previous administration.

In order to illustrate, Gimenez mentions another case of rebellion filed in Negros Oriental in May 2011 and the re-filing of the so called “Southern Tagalog 77” in Laguna. The allegations of the military and the police and the manner how it was filed are all familiar in a menacing way.

One of Gimenez’s colleagues in CERNET, Miss Cristina Munoz, was again allegedly among the NPA rebels who ambushed a group of soldiers last 16 March 2011 in Sta. Catalina, Negros Oriental. Again a wrong address was deliberately provided by the police obviously to keep Miss Munoz from defending herself before the said office.

After the failure of the OBL and its lack of respect for human rights has virtually been admitted by the Aquino administration, a new national security plan termed as “Bayanihan” is being implemented. “Bayanihan” speaks of protection of human rights as an integral component in the counter-insurgency campaign.

In view of the disregard for human rights of the previous administration Gimenez welcomes this development and remarks that the military establishment now *formally* recognizes human rights as a valid issue in society.

Nevertheless he mentions this as a guarded optimism. He adds, that the situation remains problematic if the continued filing of trumped-up charges against legal personalities and development workers, the implementation of draconian measures such as the Negros Oriental ordinance, as well as the documented extrajudicial killings and other human rights violations, will be deemed as indicators for the current state of human rights.

Gimenez adds: “There is a great deal of things to be done by the present administration lest these talks of human rights be reduced to mere lip service.”

Supportive Intentions

Gimenez and his colleagues in the development work intend to persevere and continue their mandate, to bring empowerment to communities. They intend to utilize the justice system, however limiting, to seek justice for human rights violations. Moreover they aim to train themselves and their partners how to utilize existing civil, administrative and criminal remedies not only for redress of violations of human rights but for its promotion and protection as well.

Gimenez ends his presentation by stating that with the very timely conference and the enabled sharing the quest for justice, for the protection and promotion of human rights may gain support. ■

4.3 Deficits in Criminal Procedures – The Case of Benjamin Bayles

Speaker: Marie Hilao-Enriquez (Karapatan)¹

Benjamin Bayles was 43-years old, single and resident of barangay Buenavista, Himamaylan City, Negros Occidental. He was a member of the *Inglesia Filipina Independiente* (IFI), a human rights worker of the *September 21 Movement* and together with Karapatan he denounced abuses committed by the officers of the AFP against upland farmers and agricuturist workers.

Case Summary

On June 14, 2010, at around 4: 30 pm, Benjamin Bayles was shot to death in Himamaylan City, Negros Occidental, by two men wearing helmets and sweatshirts on board a black Honda TMX 155cc motorcycle without a license plate. When the perpetrators left the crime scene on board the motorcycle going towards the next city (Kabankalan), a bystander immediately reported the incident to the Himamaylan Police who in turn alerted the Kabankalan City Police.

At around 5:20 pm of the same day, members of the Kabankalan Police saw an approaching motorcycle resembling the description. They were able to stop the suspects and frisked them. The police officers recovered from one suspect (who identified himself as Ronnie Lizada Caurino) one caliber .45 pistol with one empty magazine, and from the other suspect (who identified himself as Roger Mareza Bajon) one caliber .45 pistol with one magazine containing two live ammunitions.

The arresting police officers immediately brought the suspects and the seized objects to the Kabankalan Police Station and recorded the incident in the police blotter. A few minutes later, the police officers of Himamaylan City arrived and brought the suspects and the seized objects to the Himamaylan police station.

Deficits in Investigation Before the arrest

Immediately after the killing, the police conducted a hot pursuit operation resulting to the arrest of the suspects about an hour after the killing. However, within that hour, the other police officers limited themselves to visiting the crime scene, gathering only two (out of 19) empty shells of ammunition, and interviewing bystanders. They did not cordon the crime scene nor did they conduct thorough crime scene investigation to gather more object evidence, such as measuring distances, taking blood stains, finding all empty shells of ammunition, finding slugs, taking pictures and records, etc. The police officers did not immediately pursue and interview possible witnesses.

After the arrest

1. The police investigators did not look for willing witnesses who could identify the suspects in a police line-up.
2. Considering that the perpetrators were wearing helmets at the time of the killing, hence quite impossible to be identified through their faces, the police did not bother to immediately take pictures of the arrested suspects in order to preserve or document how they looked when arrested. They did not even record the clothes worn by the suspects when arrested, as witnesses may be able to remember the clothes worn by the perpetrators.
In the evening of the killing, it were the members of the *September 21 Movement-Karapatan* who looked for and secured an eyewitness and brought him to the police station. Among the eight male detainees at that time, the witness was able to identify the two suspects and he was very sure that the suspects were the perpetrators based on their body build, complexion and the short pants they were wearing.
3. In the following days, the police facilitated the paraffin testing on the suspects and the ballistic examination on the recovered firearms. The result of the ballistic examination is particularly crucial in this case. The slugs and the firearms were turned over to the custody and control of the police crime laboratory which conducted the ballistic

¹ The speech was prepared by Atty. Ben Ramos from the *September 21 Movement* belonging to the alliance of Karapatan.



examination. There was no way of independently ensuring, for example, that the barrels of the firearms were not changed prior to the examination. Surprisingly, both paraffin testing and ballistic examination returned negative results, according to the police.

4. On the part of the medico-legal officer, he recovered only three slugs from the victim's cadaver. He did not bother to recover more despite his findings that there were eleven gunshot wounds without exit point, strongly indicating that eight other slugs remained somewhere in the cadaver. He did not even put identifying marks on the recovered slugs to preserve their integrity.
5. The police investigators did not actively seek for any willing witness despite being informed that there were several eyewitnesses to the killing. They were practically waiting at the police station for witnesses to come out and testify.
6. Despite the availability of the serial numbers of the firearms taken from both suspects and the engine and chassis serial numbers of the motorcycle they used, the police investigators did not follow such leads.

Hilao-Enriquez notes that *September 21 Movement-Karapatan* and allied organizations were able to trace that the motorcycle used by the suspects was last registered on August 19, 2009 at the *Land Transportation Office* (LTO) in Bayawan City, Negros Oriental in the name of Reygine Laus. Laus was identified as the suspect

Ronnie Caurino, a member of the 61st IB, AFP.

7. The above-shown reluctance of the police to further investigate and to follow leads, as well as the negative results of the paraffin test and the ballistic examination, may be explained as follows:

- a.) In a Spot Report made by the Chief of Police of Himamaylan City, he stated that at about 5:25pm of June 14, 2010, the Kabankalan City Police Station informed the Himamaylan City Police Station that the arrested suspects claimed to be members of the Philippine Army.

On the same date, the Kabankalan City police, in their statement to radio station DYEZ "Aksyon Radyo" Bacolod City, confirmed that the arrested suspects confessed to be "organic" members of the 61st IBPA. On the following day, the Chief of Police of Himamaylan City claimed before the same radio station that the suspects are not connected with the military.

- b.) After the arrest, when the police realized that the suspects are members of the AFP and that Bayles was a victim of extrajudicial execution pursuant to the counter-insurgency program of the government, the police became reluctant to further investigate and to work on the case. The police officers denied over the radio that the suspects are members of the military and they



worked to suppress and destroy the evidence, hence, the negative results of the paraffin test and the ballistic examination.

Deficits in Criminal Procedure

1. In criminal cases, the government has the obligation to investigate the crime, gather evidence and to act as the prosecutor to the end that the guilt of the person responsible of the crime is proved beyond reasonable doubt and he is punished accordingly, thereby attaining justice for the victim and the society at large. Under normal circumstances, the present criminal procedure in the country seems to be sufficient for the purpose.

However, in this particular case which is apparently an extrajudicial execution pursuant to the counter-insurgency program of the government itself the investigating and prosecuting arms of the government are not working at all, and this is the very reason why impunity prevails in the country.

Hence, it may be of no use to talk about the present criminal procedure when it comes to extrajudicial execution and enforced disappearances as the same procedure presupposes investigating and prosecuting arms of the government which are working. The same procedure is designed for ordinary crimes only and not for crimes committed by state security forces in furtherance of

the counter-insurgency program of the government, such as extrajudicial killing and disappearance (EJK and ED). In fact, the crimes of EJK and ED are not even defined and covered by the *Revised Penal Code*, that is why the suspects in the Bayles case are being charged of murder, not EJK.

2. Under the criminal law and procedure, the prosecution has the burden of proving the guilt of the accused beyond reasonable doubt. Failing in this, the case must be dismissed as the accused is entitled to be presumed innocent.

In the Bayles case, considering that there was no thorough investigation and gathering of evidence conducted by the police as above shown, and there was even an indication of suppression or destruction of evidence as shown in the doubtful negative results of the paraffin test and ballistic examination, such burden of proving the guilt of the accused has become a lot heavier, if not nearly impossible. This concern refers more to the deficiency in the performance of investigation and gathering of evidence rather than in the criminal procedure itself, but it does have a very significant bearing on the evidence in this case.

3. There seems to be a necessity for a special procedure to prosecute EJKs, EDs and other crimes committed by state security forces in furtherance of counter-insurgency program or operations of the government. Such special procedure may provide, among others, for the following:

- a) Creating a special court for the purpose, as the present court tends to regard this case as an ordinary crime of murder, not properly appreciating and accounting for the political aspect or nature of the case;
- b) Allowing local private, or foreign private or government experts (e.g. ballistic or forensic) to investigate the crime, as a matter of right and without need of any approval by the government, and to present their findings in court, such findings to be accorded by the court similar weight as those of the government investigators. In the present case, we requested the DoJ to tap the pool of experts of EPJUST (which was willing) to do an independent ballistic examination but there was no reply;
- c) Creating a special prosecutor's office and allowing the CHR and private lawyers to prosecute the crime without need of approval and supervision by the government. Generally, the present prosecutors lack the proper appreciation/perspective for EJKs and similar crimes.

Handling of Witnesses

Given that this case involves an EJK pursuant to the counter-insurgency program of the government itself and that the suspects are members of the military, it is normal that the witnesses would shirk from testifying for fear of their own safety and lives. In fact, the witnesses in this case, as well as the private prosecutor, were already subjected to heightened

surveillance, harassment, intimidation and even direct threats by the members of the military in order to discourage them from further prosecuting the case.

Also, it is normal that the witnesses would distrust the WPP of the government which would also dislocate the witnesses from their normal lives with their own families and from their livelihood.

Under these circumstances, human rights and religious groups have contributed resources and capabilities to encourage, support, hide and protect (provide sanctuary to) witnesses, at the same time making arrangements to minimize dislocation of witnesses from their normal lives and livelihood.

Since the day of the killing (June 14, 2010) until now, the only eyewitness who is willing to take the risk to testify, Johnrey Mayongue, has been provided sanctuary by the *September 21 Movement-Karapatan*, with the financial support from the IFI and the *United Church of Christ in the Philippines* (UCCP).

Also, when military surveillance and harassment heightened in the first week of November 2010 against her to discourage her from testifying in the case, Vilma E. Tejada, together with her husband and eight children, have been provided sanctuary by the same group until after she was presented in court on March 23 and 30, 2011. Now she is back in her usual life.

Without such sanctuary and support provided by human rights groups, the witnesses could have been very vulnerable to pressures, threats and harassments which could have discouraged them from testifying in the case.

Discussion

On the role of the military in the counter insurgency campaign

Ret. Col. Müller notes that the national security perception of the opposition as “enemies of the state” legitimates the Philippine security forces and the police to fight their fellow Filipin@s. In other countries, such as Germany, non-state armed groups like the NPA, who transgress fundamental principles of the state, would encounter the state security not the military or police. Human rights violations are investigated and prosecuted by the public prosecutor and hence sanctioned by the state.

He adds that instead of demanding special courts and prosecuting procedures he would wish the military to be exempted from all counter-insurgency operations within the country.

Alternatively, Müller recommends to enable, to discipline and to increase the independence of the police in order to assume its original task in cooperation with the prosecutors’ office.

According to Müller, it is not a special court or process but a re-structuring of the mandate of the military and the police that could deliver changes.

Marie Hilao-Enriquez however notes that it is the Philippine situation of an armed conflict that serves the military as justification for its involvement and continues to legitimize the “enemy of the state” doctrine. Additionally, she adds that yet no commander in chief has condemned or demanded the stop of the political killings. Gloria Macapagal-Arroyo even encouraged human rights violation by promoting retired Gen. Jovito Palparan Jr., a notorious human rights violator, a few years ago. Thus, the sense of impunity has been strengthened among the state security forces.

Karapatan has therefore persuaded President Aquino to clearly voice his condemnation and to demand a stop of the killings. Yet, Karapatan is still waiting.

On the critical role of the media

Emmalyn Liwag-Kotte, a journalist on Philippine issues, stresses the importance of the media for a more conscious and responsive citizenry. She raises concern that the role of the media however continues to be vulnerable as killings of journalists persist with at least six

cases under the Aquino administration. It is therefore essential that the master minds behind the Ampatuan or Maguindanao massacre are held accountable. Liwag-Kotte is concerned that the manipulation of evidence – as reported by the *Committee to Protect Journalists* (CPJ)² – will lead to impunity, further weaken democratic procedures such as a participative citizenry and consequently reduce hope for civilian resolve.

In response *Loretta Rosales* points to the complexity of the Maguindanao Massacre and the need for a united citizenry. In view of the Maguindanao Massacre she explains that quite a number of men have been falsely included in the list of suspects or have been incidental and were released in order to focus on the principal suspects.

She further emphasizes that to break impunity there is a need for the media and a need for civil society groups, lawyers and well intentioned people in the government, military and police to communicate and to unite crossing grit and factions.

Taking a broader perspective: multinational companies and human rights violations

Susan Cueva, from *Campaign for Human Rights in the Philippines* (United Kingdom), encourages the audience and panelists to take a broader look on the different perpetrators and more complex context of human rights violations. She stresses that it is not just the military or the government that commit human rights violation but instead there are multiple actors embedded in a global context. In terms of international organization she therefore advises to extend the discussion to the role of multinational companies based in Western countries who also persistently violate human rights. As example Cueva mentions mining companies that violate the rights of their workers and of Indigenous People. She challenges the simplistic military focused perspective to become a more comprehensive and global one. ■

2 See Committee to Protect Journalists: » Impunity on trial in the Philippines«, 10 November 2010, <http://www.cpj.org/reports/2010/11/impunity-on-trial-in-the-philippines.php> (08. 08. 2011).

5. Panel Discussion:

»There can be no reconciliation without justice«

Keynote speech

Speaker: Leila De Lima
(Philippine Justice Secretary)¹

“I come not only as the Secretary of Justice from the Government of the Republic of the Philippines but also as a fellow advocate in the promotion and protection of human rights.

Allow me to underscore that I am honored by the task that had been given to me tonight. I realized that tonight’s gathering includes many of the spiritual leaders of the Christian churches both in the Philippines and in other parts of the world. And I realized too, that the subject matters of ‘reconciliation’ and ‘justice’ are part of the realm of theological studies.

So when you ask me to speak on the subject matter ‘There can be no reconciliation without justice’ I decided I will not treat this from a conceptual viewpoint rather I shall stick to the simpler ‘A-B-Cs’ of this issue:

- ‘A’ which stands for the ‘aspiration’ of the Philippine government as far as reconciliation and justice are concerned;
- ‘B’ for the ‘bold initiatives’ of the administration and President Noyonoy Aquino along these lines; and
- ‘C’ for the present administration’s ‘commitment to the promotion and protection of human rights.’

Aspiration

Let me go back to the first: the “aspiration”. “Reconciliation” is an integral part of the vision of the Philippine government. But first, let me ask this: Have we answered the questions ‘What do we really mean by reconciliation?’, and ‘reconciliation with whom?’ Why is

the issue of reconciliation so vital to the Philippine nation today?

To the first question I say there are two possible answers: ‘Reconciliation’ may simply mean (1) the mending of political fences or (2) the restoration of right relationships.

I hope we are not looking at the issue simply based on the first definition. Our aspiration for true ‘reconciliation’ goes beyond the resolution of the issues of, for example, where and how the late President Marcos is to be buried; and how the present government is to handle the allegations of graft and corruption in the past administration. The current direction is not simply on the mending of political fences, it goes beyond that. Our current aspiration is towards ‘genuine reconciliation’. The restoration of right relationships.

Next question: reconciliation with whom?

For a while I thought it seemed awkward for a representative of the present administration to talk about ‘reconciliation’. After all, I do not think the current President has a quarrel with anyone. The issues of broken political fences were the issues that were brought up by the past, definitely not by the current President. Let me therefore underscore: the aspiration for reconciliation is not exclusive to the domain of petty political enmity, it goes beyond that.

So then, what is the answer? Reconciliation by whom or with whom?

I believe the answer is this: Our aspiration is for genuine reconciliation by Filipinos with their countrymen with whom their deeply held beliefs and ideologies have clashed, and among Filipinos who were separated from one another by the rift caused by social and economic gaps.

The aspiration is for a genuine reconciliation process that would narrow the deep chasm that separate those who stand on the opposite ends of the ideological and economic spectrum, those who are on the left and on the right, those who are perceived as rich and those who think of themselves as poor.

¹ The speech of the Justice Secretary is the only one fully transcribed here.

The gaps have caused us hurt, very, very deep hurt. Our countrymen suffer from deep emotional wounds as a result. Many have lost their lives in the consequent physical conflict. And regardless of which side of the ideological and social spectrum they stand on, the direct casualties and the collateral damage are all crying out for justice. And this is part of the aspiration: That justice they shall get.

Bold Initiative

Let me go now to ‘B’ that stands for the bold initiatives, the first steps that would get us there. First, in December 2010, the President directly ordered the release of 43 health workers who were summarily arrested and detained in February 2010 under the previous administration, on suspicion that they were involved in insurgent activities. It was alleged that they were guerillas and that they were doing a training in bomb-making and that soldiers found bomb making materials, guns and a claymore mine ‘under the beds’ of the health workers.

In ordering their release, the Aquino administration did not prejudge the merits filed against the individual detainees. Nor did it ignore the right of people in local communities to be free from the specter of violence. Rather, the government ordered the release to ensure that the rights of the detainees to due process of law are protected and upheld in accordance with the principles of the rule of law and the rights as human beings, whatever their ideological orientation may be.

The Aquino administration took that initiative – that potentially politically risky step – because, at that time, one thing was absolutely clear to the newly established Aquino administration, that is the understanding that a government cannot lead, cannot expect to be followed, cannot expect to re-establish or demand obedience to the laws of the land, if it is seen by the people as a foremost violator of the Rule of Law. A government – from the Chief Executive to the heads of the other branches of government and all the way down the ranks – ought to lead by example and destroy the culture of hypocrisy and impunity.

To say that no one is above the law, not even the police, the President or government, may sound trite to most, but in our country, after

years of witnessing the spread of moral decay among so-called ‘public servants’, it was time that we were reminded of something so basic. Hence, the order to release the group that has been dubbed and known internationally as the ‘Morong 43’ – a bold move to restore and demand respect for the rule of law.

Second, in January 2011, the Aquino government submitted the instrument of ratification of the *Optional Protocol to the Convention Against Torture* to the Senate for concurrence in our country’s accession to the treaty. Among other things, the treaty provides for a system of regular visits by international and national organizations where people are, I quote, ‘deprived of their liberty in order to prevent torture and other cruel or inhumane or degrading treatment or punishment.’

This is a bold initiative since this means opening our doors to international scrutiny and boldly seeking the assistance and cooperation of other nations in our bid to ensure that human rights are respected in our country, respected even by those who wield the powers of the state.

In March 2011, President Aquino also signed and transmitted to the Senate the instrument of ratification of the *Statute of the International Criminal Court*. We recall that, in the past, the Philippine government had signed but refused to ratify the statute, defying the fundamental obligation to ensure the prosecution and punishment of the worst crimes under international law. This even made necessary that a petition be submitted to compel the then Executive Branch of government to transmit the instrument of ratification. The pleas were left unheard.

Why? Why would an instrument which has already been signed, be refused to be transmitted – even claimed to have been lost – if not to profess some fear for the possibility of being made to take responsibility for one’s actions?

That is a thing of the past. Now, with the transmission to the Senate of the instruments of ratification, the Aquino administration has demonstrated its solidarity with the movement to replace ad hoc tribunals with permanent courts. This is an expression of our firm resolve to ensure that we all can effectively prosecute those accused of the worst international crimes or submit them to an impartial international tribunal. We believe that this will *perfect* the sovereignty of the state, which exists precisely

to protect human dignity and development. For the record, the Aquino administration will fulfill its obligations under these treaties.

Third, we are strengthening the rule of law in our country by undertaking the following reforms.

One, reforming the prosecution mechanism. In December 2010, the Department of Justice launched the *Codes of Conduct of the Prosecution Service*, which were developed through the cooperation among our department, the *National Prosecution Service* and the *Planning and Managing Service*, with support from the *Asian Development Bank*, the *United States Agency for International Development* and the *American Bar Association*. We have made sure that the Codes were issued in our determined bid to ensure that prosecutors who stand at the front line of the criminal justice system will conduct their duties with the highest regard for human rights, particularly the natural right to due process of law and with fairness, dignity, impartiality, integrity and professionalism. I believe this is another important step in the comprehensive reform of the criminal justice system which is part of the aspiration for reconciliation.

Two, the government has sent a strong signal that it is set to do battle with the culture of impunity. Under the international law the obligation to protect rights also includes the duty to provide remedies for their violation. We fully recognize this. One of the primary battle fronts we are presently facing and earnestly fighting for involves an atrocity so heinous and bestial that I believe it is no exaggeration to state: This is one battle we fight, not just in behalf of the victims, their families and the Filipino people, but in behalf of the whole human race. The brutal massacre of 57 human beings in the name of preserving political power has no place in a civilized society. And we hope we have strongly conveyed this in the wake of the expeditious and just investigation of the massacre in Maguindanao, which was allegedly perpetrated by local warlords to prevent a rival group from contesting the last general elections. Despite of the never ending reference to the alleged political connections of the alleged malfactors, the case has already been submitted to the trial court before which the principal accused have been arraigned to pave way for public trial. The clamor for live media coverage of the trial, as officially requested by the

President himself, was recently granted by the Supreme Court. That would bring the proceedings in the full 'light of day'.

Yet the battle is still uphill because – arraigned or not and detained or not – the primary accused still wield a lot of political and economic influence, even from behind bars and are still capable of thwarting the efforts of investigators and prosecutors including terrorizing potential witnesses.

This is one trial that we invite the entire world to continue monitoring, because apathy is to favor the perpetrators and betray the cause of human rights. We will do what we can to win this fight and deliver justice for the victims.

The stories and cases of the Filipino *desaparecidos* have, for a long time now, been a subject and focus of concern from many quarters. In fact, if the plot of the perpetrators of the Maguindanao massacre was not revealed as soon as it was, the victims would have, in all likelihood, been counted among the numbers of the disappeared as they were in the process of being buried in large mass graves along with their belongings and motor vehicles. They would have disappeared from the face of the earth, seemingly without a trace. Like James Balao, Jonas Burgos, Karen Empeño and Sherlyn Cadapan, to name a few victims of enforced disappearance.

Much public attention has been drawn to the disappearance of these individuals – a mystery that has remained unsolved for several years now. Unfortunately, the disappearances have caused many to suspect that this is the handiwork of military elements.

Mr. James Balao is alleged to be a founding member of the *Cordillera People's Alliance*, who was supposedly kidnapped from his house in Baguio City by armed men in uniform in September of 2008. At that time, I was just about three months and three weeks into my appointment as chairperson of the Commission on Human Rights. Unfortunately, until now, there is very little development in solving this case. In huge part because – based on the report of the Police Regional Office Cordillera – there are still no witnesses who are willing to come out that could give relevant information regarding his disappearance.

Unfortunate and deplorable as the current state of the Balao case is, it simply goes to emphasize the difficulties we face when we attempt to solve cold cases that have been

pending for so long and with so little cooperation from potential witnesses. But who could blame them really? When they were given good reasons to grow wary and jaded regarding the sincerity of government efforts. What with the phrases ‘culture of impunity’, ‘rampant moral degradation’, and ‘moderation of greed’ having become common words to apply in the last decade to describe public perception of its own government?

That is, therefore, a first order of business especially with respect to human rights violations cases, to restore the trust and confidence of the public in our sincerity to deliver justice for all victims through prompt and sincere efforts. Thus, we, in the Department of Justice, have taken care to take advantage of the recent developments in other enforced disappearance cases, particularly the Jonas Burgos and the Sherlyn Cadapan and Karen Empeño cases.

A development in the Jonas Burgos disappearance occurred when the Philippine Supreme Court en banc promulgated its resolution a year ago. As a result of which I, as Secretary of Justice, directed the Prosecutor General to coordinate with the *Philippine Commission on Human Rights* and review the investigation report it submitted to the Supreme Court. Pursuant to said directive, after more than four years since Jonas went missing in April 2007, preliminary investigation has finally been initiated to the end of determining whether there is probable cause to charge before the courts a member of the Philippine Army as principal by direct participation in the abduction of Jonas Joseph T. Burgos and several other individuals for, among others, obstruction of justice.

The most recent development however involves the case of two female students Sherlyn Cadapan and Karen Empeño who, along with another individual, Manuel Merino, were abducted more than five years ago, on 26 June 2006. The Supreme Court en banc has finally promulgated its decision in the petitions for *habeas corpus* filed for their release, the Court ordering their immediate release from detention and ordering further that individual respondents – which include officials of the Philippine army – remain personally impleaded to answer for any responsibilities they may have incurred during their incumbencies. The Department of Justice, for its part, has created a three-person panel to conduct the preliminary investigation of the

charges against them for rape, serious physical injuries, arbitrary detention, among others.

Another notable development perhaps is the act of the *United Church of Christ in the Philippines* (UCCP) of filing a civil suit against the former President and the military leaders under her administration for human rights abuses committed against its members.

The effort of the DoJ, however, is not merely on a case-to-case basis. As part of our sincere hope to solve cold or unresolved cases of extralegal killings and enforced disappearances, before any available evidence and leads in said cases are lost forever, we have constituted on December 10, 2010 – to coincide with the celebration of anniversary of the adoption of the *Universal Declaration of Human Rights* – a *Special Task Force to Address Extralegal Killings and Enforced Disappearances*. Said special task force is headed by an Undersecretary of the Department and assisted by a whole slew of prosecutors, state counsels and other officers to address all reported cases and unresolved cases of EJKs and enforced disappearance.

We have also taken steps to strengthen our *Witness Protection Program* (WPP). In a criminal justice system that, admittedly, still has relatively little familiarity with the use and interpretation of advance forensic evidence, the WPP helps the Department preserve its most vital source of prosecution evidence, namely, the testimony of eyewitnesses. As potential witnesses are themselves most prone to become victims of ELKs and enforced disappearance – especially in cases where involvement of high ranking government officials are alleged or suspected – adequate and effective protection and assistance to witnesses and whistleblowers are key factors – sometimes, even deal breakers – in the fight against impunity. Hence, we have fought for the increase of budgetary allotment for the program, and are continuing to advocate for legislative reforms to the WPP and the passage of a *Whistleblowers Act*. Most importantly we are making sure that all the complaints and cases filed before the Department go through a swift, transparent and fair process – and that the process would reach a just conclusion.

In this regard it is maybe appropriate to mention another set of controversial cases of human rights violations. At the time that I was still chairperson of the *Commission on Human Rights*, we investigated a series of killings in the



Philippine Justice
Secretary Leila De Lima

Southern part of the country, allegedly perpetrated by a group known by the macabre moniker the 'Davao Death Squad' or 'DDS'. Unfortunately, the investigation and resolution of the CHR in said cases, which are suspected to be EJKs committed in a systematic and calculated manner under the orders of a long time local government chief executive, was not completed before I transitioned to the DoJ. And I think we are looking forward to the release of the resolution of the CHR on this investigation. The unfortunate part of the story, however, is that we have been receiving information that incidences of killings are still ongoing but unreported. Apparently, the situation in that area has developed into a sort of 'cottage industry' for free lancing hired killers. These are just some of the issues we are keeping a close eye on.

Now, let me underscore an important dimension in the aspiration and initiatives towards reconciliation with justice.

From where the Aquino administration stands, it is clear that the promotion of justice and human rights must not be limited to the prevention of acts against human dignity. It must extend to the active promotion of those social, economic and cultural conditions in which the dignity of human beings and communities can prosper. This is what I meant when I referred earlier to the need to bridge the chasm that separates those who stand on the opposite poles of a socio-economic spectrum.

In the pursuit of this aspiration we are inspired by sterling example of the Federal Republic of Germany in the post-war era. It will be recalled that then Chancellor Konrad

Adenauer himself pointed out that human dignity cannot flourish in a regime of individualism that ignored the common good, nor in a system of collectivism that ignored human freedom. As a result, Germany earned the admiration of the international community by forging a social market economy that reconciled subsidiarity and solidarity, promoted human dignity and paved the way for stable growth. We will definitely benefit from this example. We affirm our belief in the principle that 'doing the right thing does not only make sense morally, but translates into economic value as well'.

The Government's Commitment

So let me re-state our commitment: 'no reconciliation without justice'. And since our aspiration is for genuine reconciliation among us, who we are separated by reasons of ideology and socio-economic gaps, then we are going all-out in our bid to ensure that justice is done.

Tonight let me assure you once more that the protection of human rights as well as the promotion of peace efforts are part and parcel of national policy in the Philippines today.

I am sure you are aware that President Aquino has directed an unrelenting pursuit of the peace process. Part of the initial success is that the *Moro Islamic Liberation Front* (MILF) has already submitted its proposal for negotiations. Meanwhile, the Philippine government has already agreed with the National Democratic Front (NDF) on a specific time table for the long delayed negotiation and execution of

final agreements on political and economic reforms, socio-economic reforms and termination of hostilities. The last agreement with the NDF, on human rights and humanitarian law, was signed in 1998, more than 13 years ago.

By these actions the government has shown that it does not see the negotiations as a mere gambit, political platform, or strategy for extracting concessions. For us, this is a concrete bridge to reconciliation. We believe that this demonstration of resolve will finally achieve the cessation of the longstanding conflict and the forging of a lasting and just peace.

It is safe to presume that after my speech there will be whispered remarks that these commitments are 'easier said than done'. So let me spare you the trouble, let me say it myself: Yes, these commitments are easier said than done. There you go.

Now, going back to our commitment 'no reconciliation without justice'.

When I started out, I stated that genuine reconciliation is between us Filipinos and our countrymen. That is absolutely true. For too long we have been divided along lines of culture, religious belief, political affiliation, economic status and so forth. What ought to be physical, geographical divisions – Luzon, Visayas and Mindanao – have been interpreted and has thus evolved into representations of ideological divisions that stand in the way of each of us accepting the other fully. True, there are real differences, but real differences do not have to result in lack of understanding. Even the word 'tolerance' is not enough, because we need not simply to 'tolerate' one another when we feel genuine empathy and concern for one another.

The first step of reconciliation, therefore, is among the Filipino people themselves, to learn to accept one another without 'ifs' and 'buts' – unconditional and genuine reconciliation. So unconditional and genuine, that the very thought of doing injustice to any of our brothers and sisters will be felt as a betrayal of our closest of kins.

But such a reconciliation must go further, the Filipino people must come to a reconciliation with *itself*. For too long we have seen ourselves in the eyes of others, a habit forged by centuries of colonization. We have compared ourselves to other nations and sadly at times even to our own eyes we feel we are lacking. That has to end.

We must accept that our strengths are different from those of other nations, but such does not make us inferior in any way. We have to learn to play to our own strong points and not allow others to dictate our path. That is the only way for Filipinos to progress beyond division and hatred and move towards peace and justice for all. We must see ourselves as being worthy *and* capable of achieving these goals. In other words, the Filipino people must come to a reconciliation with its true self in order to gain the true power derived from the exercise of the right of self-determination.

Finally, and perhaps the aspect of reconciliation that is well within my jurisdiction, is the reconciliation of the Filipino people with its government. Suspicion, mistrust, counter-productive bickering and heckling have, in varying degrees, characterized the dynamics between the Filipino people and its government of late. We must re-establish the social contract between our people and our government. That is one of my personal advocacies. I hope to help reconcile what government is now to what it ought to aspire to be. Perhaps, through such efforts to become the government that the Filipino people need *and* deserve, we can again gain their trust and support.

My point in all of this is this: The dynamics between justice and reconciliation is not one way. We have been discussing justice as a means to achieve reconciliation, but, in truth, a genuine and unconditional reconciliation would serve to reinforce the respect and high regard for justice in our society.

Reconciliation through justice. Justice through reconciliation.

This is a challenge to all of us Filipinos. This is where we have to summon our will and our faith in our ability for 'meaningful and productive' dialogues. By meaningful and productive I refer to our openness to listening and understanding our common hurts and setting our eyes on the mutual benefits of taking the path towards genuine reconciliation. We must not give up on dialogue, we must not lose faith in ourselves.

Yes, before we can walk along the same path, the hurts must first be solved or salved and the wrongs must be set right. Such is the function of justice and such is the very mission of the department I head. Our department motto declares 'pax justitiae opus'. Peace is the work of Justice.

Secretary De Lima
and Bishop Moriles
during the Panel
Discussion



Allow me to give you this assurance: I will fulfill our mandate. My critics and nemeses know that for a fact. And there is one thing they know for sure: that I am a 'just person'. I think they mean that, if you cross paths with the law, I will 'just' make sure you pay the price for it.

At the end of the day, that might have been exactly what the conference wanted to find out from me. Will the present administration make sure that those who have wronged their fellow Filipinos by reason of political, ideological or socio-economic reasons be made to pay the price before reconciliation is considered?

If that was the intention then I officially give you the assurance at least as far as 'paying the price' part is concerned.

I think the other part of your question is: Will there be political alliances between the present administration and those who may have wronged the Filipino people in the past? I believe that is a question that is best left alone to the politicians to answer. I believe that our quest for genuine reconciliation is not confined to the tiny corner of political enmities. My job is to make sure that the Rule of Law and the Reign of Justice are upheld in our land

so that reconciliation in its most meaningful form could take place.

I believe that the greatest injustice would be for us to give up on dialogue. To do so would be to lose our chance for lasting peace and genuine reconciliation. But everyone's presence here tonight shows that we continue to have faith in dialogue and in ourselves. In fact, I am deeply honored and awed because in reflection I wonder how many Secretaries of Justice from our country in the past have been given the opportunity to join a conference and dialogue as this, not just in the capacity of being a representative of the Executive Department, but as a true advocate of human rights as well? I think no one else did. Given our recent history, human rights advocates and members of the executive branch of government have been more often been pitted against one another rather than joined in ideologies in this manner.

By coming together in this conference we have taken an important step towards the aspiration for reconciliation. And such is an important act of justice.

I thank and congratulate you all on behalf of our government." ■

Continuous Support for New Political Aspirations

Speaker: Markus Löning
(Federal Government Commissioner for
Human Rights Policy and Humanitarian Aid)

After more than one year in office, Markus Löning, describes the Philippines as an important partner on international level and he particularly values the collaboration between the German and the Philippine government in the combat against human trafficking. Further he emphasizes that the Philippines play an important role in the ASEAN region by promoting a human rights agenda within the ASEAN region. In this regard, Löning mentions the Philippine efforts to establish regional mechanisms for dialogue, its support for the *Convention against Torture* or its persuasion of a country such as Burma to approve the ASEAN's human rights agenda. Löning stresses, that since the ASEAN region deals with basic questions of human rights it is even more important to have such a good partner in human rights promotion.

Different to Löning's initial concern that the accession process of the *Rome Statute of the International Criminal Court* in the Philippines would stop, President Aquino already brought the statute to Congress.

Pointing to the dilemmas implied by his position and task Löning raises critical questions: "There are several instruments such as international courts but with which governments do you work together? Do you point out the ones who are doing miserable or do you work together with the ones who say themselves 'we need help'?" And he concludes



German Commissioner for Human Rights and Humanitarian Aid, Markus Löning

that it is necessary to point out deficits but it is more important to work on the situations« improvement whereby the motivation has to come from within the country, from inner aspiration. This has to be grounded within the whole society and the political will for change has to be rooted in the concerned country.

In the Philippines there are many deficits but there is a will to name them and to work on them. That is the crucial criteria for the German government to decide on its support. Currently, it is glad to assist, for example, in the legal and judiciary sector.

Löning visited several Asian countries and mentions the huge difference between Manila and Rangoon (Naypyidaw), where political fear and fear of expressing one's thoughts was predominant. In his view the Philippines has a very different starting point.

On behalf of the German government he ensures the continuous support and collaboration. ■

Human Rights Violations against Church Members

Speaker: Bishop Jaime Moriles (United Church
of Christ in the Philippines, UCCP)

Bishop Jaime Moriles reports cases of grave human rights violations against members of his church. First he explains the difficulties his church is facing in the delivery of assistance in cases of natural disasters. He then recounts examples of the violations to the right of life and other political rights experienced by his church.

Early in 2011 an extensive flooding caused massive damage in several barangays¹ in the municipality of Matuguinao, Samar province.

Matuguinao is located in a remote area. Barangays like these are left behind or unaccounted for in the political order of government today especially during elections. However, priorities in the delivery of basic social services to these remotest barangays are a different issue after all.

After the flood in early 2011 a relief mission, dubbed “Tabang Samar” (Help Samar) was conducted. The mission’s objectives were to provide food and medical aid and other assistance for rehabilitation. Although the participants made a courtesy call to the municipality mayor of Matuguinao, they were almost denied permission to carry out the mission. In the view of the government, the mission’s actions probably disrupt the usual way of doing things – even if the activities essentially accentuate government service that the people seek to meet basic necessities in life.

After the mission, on March 18, 2011, Bishop Dulce Pia Rose (the bishop of the UCCP for the Conferences in these areas), a convenor of *Tabang Samar*, reported that two suspicious looking men riding on a motorcycle had come to the UCCP office and were asking about her whereabouts. This incident happened twice.

Moriles sees a connection between the efforts Dulce Pia Rose extends to the poor and

the flood victims in particular and the reported harassment.

Information about harassments are significant in the light of the disappearances and killings that are always preceded by this kind of pattern. These things happen to people who are socially active, helping the poor and the needy sectors of the society. Those who survive are living witnesses and can testify to this unnerving pattern of threat, intimidation and harassment. Ultimately, Bishop Moriles recalls those who have maliciously been killed following these patterns.

There is the story of Rev. Edison Lapuz, an ordained minister of the UCCP, who struggled against militarization and human rights violations in Eastern Leyte. Lapuz was a tireless advocate for human rights and genuine peace. In the night of May 12, 2005, Rev. Edison Lapuz was shot dead in front of his wife, his daughter and neighbors in their house in San Isidro, Leyte, right after the burial of his father-in-law. Prior to the shooting a certain Lieut. Mangohan of the AFP went to the house of his father several times looking for him and asking about his identity and whereabouts. Rev. Edison Lapuz is one of the 27 church people killed under the Arroyo government.

Since the UCCP wants to take part in ending the culture of impunity, the church urges that someone must be held accountable for these political killings. Under the principal of command responsibility, former President Arroyo had full knowledge of the illegal actions committed by her ground commanders who detained or killed the church workers. On this basis UCCP filed a legal suit, a civil case against former President Arroyo on June 16, 2011. Uncertain about the case’s progress the UCCP hopes for the sympathy of the present administration and its translation into action.

The UCCP asks for support from the international society to join in the pressure and demand for justice based on reconciliation. Bishop Moriles closes with the hope based on the Prophet Isaiah that “everywhere in the land righteousness and justice will be done.” ■

1 Barangay is the smallest political unit in the Philippines.

We Have To Reconcile For Justice

Speaker: Max de Mesa (PAHRA)

Instead of the suggested theme “no reconciliation without justice” Max De Mesa advocates “to reconcile for justice”. In his view, to reconcile means to come together, to recognize each other and to respect everyone’s full human rights. Without reconciliation on that basis, justice will also not come about.

Referring to his earlier speech¹ De Mesa mentions the case study of the *National Monitoring Mechanism* (NMM) which has produced a situation that can actually perpetuate impunity. He explains that in order to attain justice it is essential for the military and police to submit their overdue reports.

However, De Mesa uses the example of the NMM to show that PAHRA’s participation in this mechanism is actually an attempt to reconcile in order to have justice. About five years ago PAHRA would not have dealt or held dialogue with the police or the military for fears of reprisals and due to a lack of hope that justice would result.

PAHRA realized that justice cannot be served either without reaching out to the security forces. Now the alliance intends to seek for truth together with the military and the police.

Still, for the right to truth and justice to realize the military and the police need to produce the data on the selected human rights cases.

During the assessment of needs with the European Union, the NMM was recommended for the resolve of human rights violation cases and to break impunity. On March 29, 2011, the CHR together with the *Presidential Human Rights Committee* (PHRC) and the civil society have co-convened the earlier mentioned case conference to meet with the military on cases with a high probability to establish probable cause and convictions.

Yet, PAHRA is still waiting for the report of the security forces to complement their own and those of the CHR. De Mesa states that attempts of cooperation with the military must continue but emphasizes the need to insist on justice. As a consequence PAHRA decided to withdraw from the NMM process until the awaited reports have been submitted.

While the NMM is a step for reconciliation, justice shall not be compromised. Meanwhile, PAHRA remains open to engage with the police and the military on other venues.

Going beyond reconciliation between civil society, the security forces and the government agencies De Mesa sees an additional need for reconciliation within civil society, a reconciliation which allows the freedom of expression and mutual respect among individuals and organizations within civil society. ■

1 See »Case Studies of Impunity«, p. 25 ff.

Without Justice There is No Peace

Speaker: Hazel Galang (Amnesty
International, London)

Hazel Galang starts her presentation by looking for commonalities between Germany and the Philippines. She finds the following: Both countries uphold democracy, aspire the rule of law and the protection of human rights, both have an active civil society, both have people among government ranks who are willing to listen, and people of both countries have gone through a painful history. While at least on the German side justice was the catalyst for reconciliation, peace and national unity, the Philippines is still trying to find how justice can be the catalyst for reconciliation. “Both countries are similar in some aspects but what went wrong in the Philippines?”, she asks.

Galang mentions a few things that manifest that “something went wrong”.

- The Philippines has one of the longest running internal armed conflicts, lasting for 40 years.
- By 2008 and 2009 it hit the record by having the single largest new displacement in the world with 750.000 people in Mindanao.
- In November 2009, there was the single largest attack on journalists worldwide, the Maguindanao Massacre.

In May 2010 there has been a change in government followed by pronouncements and promises. Galang mentions two of them. Before the election the political party of President Aquino pronounced “that human rights form the most convincing path to peace between people as well as between states. Whether human rights are worthy of support is no longer the issue but rather how human rights need to be achieved.” Galang adds a quote of a promise made by the President after his inauguration: “In the past no one was ever punished. It was the standard to be blind, mute and deaf to these things. While those who were supposed to be brought to justice were able to go in and out of the country and those who were meant to hold them accountable lazily dragged their feet. This will not happen in my administration.”

One way of looking at the issue of justice through reconciliation is through the on-going peace process. In this regard Galang criticizes that human rights and the achievement of justice are not really part of the main agenda. In the peace talks with the *National Democratic Front* (NDF), the government said that it made human rights a side issue in order to avoid derailing problems to the peace accord. In the peace processes between the government and the MILF human rights have not become even a side issue. Galang states that unless human rights violations are not addressed in these two conflicts genuine peace will be unlikely. Justice and peace are inseparable. Without peace there will be no justice and without justice there will be no peace.

Finally, Galang asks the German civil society to lobby the German government and the latter to lobby the Philippines with respect to the following aspects:

The Philippine government needs to make human rights a part of the peace talks’ agenda.

The German government is recommended to support the CHR witness protection program either with technical or funding support.

The German government is likewise recommended to support the human rights officers of the AFP.

Yet, they have been mechanically assigned but it is not clear if they do receive training on how to monitor and report human rights violations. A preventive step would be to help the Philippine military academy by giving human rights training including monitoring and reporting to the lieutenants and human rights officers to be. Further, as a member of the UNHRC the Philippine government should ensure the expedite ratification of the ICC within the Philippine senate.

The Philippine President should make his stance against torture clear by declaring the ratification of the *Optional Protocol to the Convention against Torture* (OPCAT) a priority.

This has become especially relevant as the existing anti-torture law as well as the implementing rules and regulations (IRR) are already in place.

The Philippines should *sign the International Convention on Enforced Disappearances* as a clear manifestation of the government’s commitment of addressing the problem of enforced disappearances in the country. ■

On the need for accountability and the role of the security forces

In regards to the question by the moderator of the panel discussion, *Dr. Jochen Motte* (UEM), whether more perpetrators of human rights violations can be expected to be held accountable, *De Lima* responded with a positive outlook. She mentions the case of *Jonas Burgos* and that of *Sherlyn Cadapan* and *Karen Empeño* as promising examples. Immediately after the SC rendered its position on those two cases the DoJ acted by forming panels to investigate. The cases are in the state of preliminary investigation. In the cases of the two UP students *General Palparan* himself has been included as a respondent, so the process has begun. For the first time the justice system is about to hold the alleged perpetrator of human rights violations accountable. The DoJ happens to be at the forefront of this change.

In response to the question about the role of the security forces in that process and whether a change in their mindset can be predicted *De Lima* notices that the leadership of the armed forces and the PNP are now conscious of the respect for human rights.

She stresses that more efforts need to be mobilized in order to make the NMM work. In this respect the challenge for the CHR to come up with desired reports should be taken seriously. Its task is similar to that of the DoJ's special task force on extrajudicial killings: The identification of cases of extrajudicial killings and enforced disappearances which have enough evidence to stick in the court in order to assure a successful prosecution and conviction. Though *De Lima* does not expect that all cases can be solved, she confirms the urgency and possibility for a substantial increase in the number of cases solved in order to really make a difference between the current administration and the past.

On the prospect of changes within the DoJ

In response to the question whether changes within the institution of the DoJ are feasible, *De Lima* points to the complexity of the institution, its vast responsibilities and challenges. The DoJ does not only cover the whole country with its prosecutors but carries the responsibility for the prosecution of all violations of crim-

inal law. The DoJ has ten attached agencies and these are major agencies of the government such as *the National Bureau of Investigation*, *the Bureau of Immigration*, *the Bureau of Correction*, which are three very problematic institutions. Moreover, *the Public Attorney's Office*, *the Solicitor General*, *the Office of the Government Corporate Council* and *the Land Registration Authority*.

Taking the latter as an example, the prevalence of fake titles and overlapping land claims result in a wide range of concerns and issues that the DoJ confronts on a daily basis.

Additionally and especially due to her previous commitment as chairperson of the CHR, *De Lima* focuses on cases of extrajudicial killings by creating the already mentioned special task force. She works on an inventory of those cases that need to be pursued, those that have already reached court but have somehow been archived due to a lack of attendance.

On top of all this, Justice Secretary *De Lima* is also the legal advisor of the government as primary law enforcer and receives special assignments from the President. All legal issues that affect the government, such as security, peace and order, economic, health or poverty issues need to pass through her.

Meanwhile *De Lima* is one of the five last members of cabinet who still wait for their confirmation by the powerful commission on appointment. And she was told to be the last to be scheduled as she would be the one most "grilled".

Based on these many responsibilities and challenges and because of the controversies that are attempted against her, *De Lima* confirms to face a lot of difficulties.

On actual and possible assistance of the German government

Catering to the question of how the German government can assist in the improvement of the human rights situation in the Philippines, *Markus Löning* stresses that the German government developed its assistance in regards to the rules of criminal proceedings based on the request of the Philippine government. He therefore stresses, that Germany is able to extend support, but the initiative and the assessment of development has to come from the government in Manila. Projects that are planned in Germany may sound nice but often lack sustainability and success when

the concerned government lacks in will and responsibility for change.

The German government is willing to support the Philippines in its legal system and proceedings as well as in the witness protection programs if such need is expressed. Löning expresses his frustration that the EU has decided not to extend EPJUST based on incomprehensible rules and regulations as he would have wished for its continuation. Although, different EU partners continue to finance parts of the EPJUST program a comprehensive funding for the complete program is missing.

Currently, Germany collaborates in projects on the existing human rights mechanisms within the Philippine army and the police.

When asked about his impressions during his visit to the Philippines Löning remarks that, as a government representative, he may have gained a selective and limited picture of the situation but he has noticed the very crucial political will for change to be existent within the security forces and the government as well. Finally, Löning expresses his enthusiasm about President Aquino's promise to promote the ratification of both the Rome Statute and the OPCAT.

In reaction to Löning's comments *De Lima* affirms that the strengthening of the witness protection program should be a priority. As the prosecution process is very much centered on witness evidences and lacks the capacity and resources for forensic evidence, the witness protection program is the key for a higher rate of prosecution and conviction rate. In fact, statistics state that 92 to 95 percent of the cases where witnesses are covered under the WPP

were able to achieve conviction.

Under the law, the DoJ is the administrator of the WPP. The DoJ however supports the proposal to give the CHR its own WPP and its own budget for that. *De Lima* states that it would not be advisable to spread the WPP to other branches of government such as the Ombudsman. There should be only one in the executive branch as implementer of the program, which ought to be the DoJ, and an independent constitutional body that should be the CHR handling its own program. She therefore affirms that there is a need for help in these areas.

Loretta Rosales finally comments on the role of the AFP and of the police with respect to the peace process and the improvement to the criminal justice system. Here she sees a possible area for the German government to extend assistance.

In its monitoring role across the range of civil, political, social, economic and cultural rights the CHR has encountered a problem with respect to the training of the military and the police. On the policy level the military has declared to develop human rights offices in 80 battalions. While the deputy commander being the human rights officer is a technical problem that needs to be addressed, *Rosales* raises concern about the development of a training for 80 battalions that should become part and parcel of the monitoring mechanism. In addition there are 1.744 police stations that also need training. Yet, these trainings need to be developed and operationalized in respect to the peace process and to the improvement of the investigative system. ■

6. Panel 1: Constitutional Control within the Security Sector

Adherence to Human Rights Standards within the Armed Forces

Speaker: Loretta Ann Rosales (Chair of the
Commission on Human Rights, CHR)

Loretta Rosales presentation aims to give a brief review from the Marcos time to the present, showing the continuity and changes in the occurrence of human rights violations from which she finally draws recommendations for “the way forward”.

When President Marcos put the archipelago under Martial Law in 1972 he could no longer reign over the country under formal democratic processes. What he really wanted was to cling to the Presidency long after he had exceeded his maximum two-terms in office. However, he knew that this was not possible because of the strong political opposition, the vibrant civil society, and the dynamic media that saw through his schemes. Thus, upon declaring Martial Law, Marcos curtailed civil liberties, closed down the Congress of the Philippines, and seized media establishments. A frenzied crackdown on all opposition followed, with the military and the constabulary abducting everyone merely suspected of harboring anti-Marcos sentiments. Tens of thousands of journalists, students, labor activists and opposition leaders were detained at military camps, including then Senator Ninoy Aquino, the father of the current President of the Philippines. Marcos cleverly put a semblance of legality to these abductions by personally issuing *Arrest, Search and Seizure Orders* and even *Presidential Commitment Orders*. When the *Writ of Habeas Corpus* was suspended, torture and other degrading treatments against civilians, extrajudicial killings, abductions and disappearances became prevalent, with Rosales being among the torture victims.

In 1986, the people staged the first peaceful and bloodless revolution that caused President Marcos to flee the country. Never again should the rights of the people be disrespected or trampled upon. It followed the ratification of the 1987 human rights based constitution in which “the state values the dignity of every human person and guarantees the full respect for human rights”. Its Article III of the Constitution was dedicated to the bill of rights while Article XIII dealt with social justice and human rights.

The constitution established the CHR and granted it various mandates and powers, including the power to investigate, cite for contempt, to grant immunity, to provide legal measures and legal aid services, to visit jails and detention centers, to monitor the government and to conduct research and education, among many others.

Clearly, the CHR was born out of the horrific experience of Martial Law. It is an institution primarily intended to prevent the systematic violation of human rights, first by state-actors, and then by non-state actors. It is in this historical background of government abuse that the CHR has been closely monitoring and persistently intervening in government operations, especially those of the security forces.

The dark years of Martial Law fomented a culture of abuse of authority and a corollary culture of impunity. It is an abhorrent culture that unfortunately seems to have taken root in the corridors of government offices and has been carried over to this day.

This culture once again showed itself so glaringly during the administration of Gloria Macapagal-Arroyo, when the security forces were deliberately used to silence political opposition through brute force. It was during this time that the number of Enforced Disappearances, Summary Killings and Torture in the Philippines rose to shocking levels that the entire international community could no longer ignore it.



Chair of the CHR
Loretta Rosales

The state of human rights under Arroyo

Under Arroyo the rule of coercion returned and has been effective in ensuring her adherence to power. To show the impact of this rule of coercion and the involvement of government institutions Rosales refers to the numbers of cases of enforced disappearances, extrajudicial killings and torture.

Enforced Disappearances

From 2001 to June 2010, there were a total of 431 reported individual victims of enforced disappearances from all over the country, with the number of victims peaking in 2006 at 104 in that year alone.

Summary Killings

From 2001 to mid-2010, a total of 1,254 people were summarily killed. Note that the summary killings escalated in 2005 and 2006 with 188 and 204 victims respectively, then the numbers dropped to 135 in 2007 following Philip Alston's visit, and then peaked at a high of 211 the next year of 2008.

Torture

There are 381 reported victims of torture from 2001 to mid-2010. Noticeably, the number of victims spiked in mid-2010 with 97 reported victims. Others may attribute this to the Anti-Torture Law) enacted in late 2009.

The state of human rights under Aquino

Under the Aquino administration (from July 2010 to July 2011), there are a total of 64 reported victims of summary killings which indicates an upward trend of summary killings under the new administration. In regard to torture the CHR counted 18 reported torture victims from July 2010 to July 2011 – a significant drop from 97 victims in the last 6 months of the former President Arroyo.

The perpetrators

The statistics of the CHR indicate that most of the alleged perpetrators of Enforced Disappearances are unidentified (35 percent). However, 31 percent of the perpetrators allegedly belong to the military while 13 percent belong to the police. For torture, a staggering 49 percent of the cases are reportedly committed by the police, and a significant 20 percent reportedly perpetrated by the military.

Based on these numbers, Rosales points out that the security forces – the military and the police – are the foremost suspected perpetrators of enforced disappearances, summary killings and torture.

25 years after the People Power Revolution and the promulgation of a human-rights based Constitution, the security forces remain detached from the people, with the militaristic mindset stuck in its institutional sub-consciousness. To a large extent, the security forces are still beholden to political warlords

that make possible egregious crimes such as the Ampatuan Massacre, the summary killings by the *Davao Death Squad* and the systematic oppression of the indigenous peoples in their ancestral domains. They apparently lack a clear understanding of the root causes of insurgency and secession in the Philippines. Many of them continue to perceive human rights as diametrically opposed to their sworn duty, as essentially “leftist”, and as a mere legal tool used by the “enemies of the State” to cast a bad light on them.

The way forward

“This does not mean, however, that all is lost”, Rosales states. She believes that there is still hope for the security forces.

In fact, there is a significant drop in the number of victims of enforced disappearances and torture under the new administration. Still, one victim of ED or torture or summary killing is one too many.

The good news is that the current Aquino government recognizes the weaknesses of the security forces and strives to address them holistically by espousing a “paradigm shift” in the way the security forces conduct their operations. This crucial move finds manifestation in several policy issuances:

Foremost of these is the *Internal Peace and Security Plan* of the AFP – a five year strategic plan that eschews draconian military tactics in favor of strategies that are guided by the imperatives of human rights, international humanitarian law and the rule of law. The process through which this strategic plan was formulated is in itself ground-breaking, with the AFP bringing together numerous government agencies and civil society organizations in public consultations and dialogues for the drafting of the plan’s actual text. The AFP also published its own *Human Rights Manual* which is not fully satisfactory but nevertheless an important step towards the right direction.

Moreover, the *Office of the Deputy Chief of Staff for Intelligence Operations* came out with a *Manual on Human Rights Based Intelligence Operations*. As for the PNP, it also published several manuals, including the *Human-Rights Based Approach Police Operations* and the *Manual for Human Rights Desk Officers*.¹

These efforts have a great potential to make genuine and meaningful changes in the security forces. Unfortunately, there is a huge gap between what is written in policy and what is happening on the ground. There is a need for deliberate, concerted and focused effort in ensuring that these policy changes reach the bottom of the organization, and at the soonest possible time to consolidate what has been gained so far.

Needless to say, reforming the badly damaged security forces is a gargantuan task that the military and the police cannot do on their own. Civilian authorities and civil society must work together in this painful but worthy endeavor. Rosales confirms that the CHR is doing all it can to help the military and police imbibe a human rights-based approach to their operations, at the same time that the CHR re-examines itself to improve its capacities to better respond to the changing needs of the time. Civil society must continue sitting down with the military and the police in dialogues and consultations, notwithstanding differences in perspective and the perceived slyness of the latter.

Conclusion

To this day, human rights violations continue to happen all around the country, albeit considerably lower compared to the previous administration. But human rights violations are a slippery slope – condoning one violation will create the necessary condition for the next one. Introducing a good policy framework to address chronic and systemic problems will never be enough; follow through from all sectors of society is a must. ■

1 With the the help of the *Hanns Seidel Foundation*.

Adherence to Human Rights Standards within the Armed Forces

Speaker: Karl Bernhard Müller
(Retired Colonel, EPJUST Military Expert)

Ret. Colonel KB Müller begins his presentation by explaining the principles he has adopted within his 41 years of service within the security forces in which he had traveled or been deployed in 42 countries. The first principle Müller explains by quoting Konrad Adenauer “There is nothing that can hinder us to become brighter every day.” The second principle is to preserve patience while generally advancing things.

When Müller came to the Philippines he was given several documents such as the constitution as well as the AFP human right curriculum published in 2008. Both documents are exemplary for their human rights based approach. Realizing this, Müller wondered about his responsibility in the EPJUST mission but figured out that it was not this theoretical or legal basis that needed adjustment but that the deficiencies were rooted in a lacking operationalization and implementation. In this light Ret. Colonel Müller observed a big gap between the political and strategic center of Manila and all the areas of deployment, in that sense the peripheries. The fantastic cur-

riculum had remained a mere piece of paper. Müller ends his introduction by using a metaphor for the situation he observed: The curriculum seems to him like a young plant (“a tree of humanity”) that does not receive the continuous care and fertilizer it needs in order to flourish. He says:

“At the tactical level, there is still a common perception that troop awareness and respect for human rights negatively affects the will to fight as well as the employment of military power to maximize any advantage over the enemy”.

Ret. Colonel Müller experienced that this statement still describes the current reality. The statement does not only reflect the perception of soldiers far from Manila. Müller observed such attitude also among members of special units in Northern Luzon who have very limited knowledge in English. A so called “Yes Sir” mentality persists and obstructs the decisive reflection of received commands on the basis of human rights awareness. The latter, however, should be promoted especially when it comes to commanding officers.

The superiors have stated to integrate rules and human rights issues in their operational command and have developed so called non-negotiable such as the “adherence to the rule of law, respect for human rights and international humanitarian law, and observance of the rules of engagement and the use of force.” Müller welcomes this statement by Lieutenant General Ricardo A. David Jr. (AFP Chief of Staff until March 2011) and notices that



Karl-Bernhard Müller

torture by the security forces is already prohibited even though the additional protocol on the prohibition of torture is still waiting to be ratified. And the current chief of staff General Eduardo SL Oban Jr affirmed the statement of his predecessor by saying:

“First and foremost, we shall sustain the reform initiatives laid down by those who came before me, most particularly General Ricardo A. David Jr, and implement fully the findings of the 2005 Feliciano Commission, so that the vestiges of the past will not reappear to be as if it is of the present. We shall have nothing to fear if we have nothing to hide.”

Still, the general headquarters in Manila and the statement of the chief of staff is different to its operationalization and implementation.

Referring to the military human rights handbook, Müller agrees with Hazel Galang and Loretta Rosales that its first version appeared to be a mere excuse for the violations committed by the military under the administrations of former President Marcos and late President Arroyo. Additionally it appeared as a lamentation about the framework “imposed” by current President Aquino that would render the military operations impossible. However, the last version of the handbook published at the end of 2010 was at least a rudimentary edition of the ideal. Still, more work needs to be done in this regard. Ret. Col. Müller uses the example of a still lacking *Human Rights Office* (HRO) logo on the AFP homepage to explain the patience needed in order to change the existing structures.

In the beginning of the year 2011 the human rights chapter on said homepage presented a misspelling that read “Enforces” instead of “Enforced Disappearances”. Despite several emails from Col. Müller to AFP’s HRO, six months later the mistake is not yet corrected. This is what Müller calls to be the “flesh in the pen” as it takes a long breath to change even the smallest detail. Yet, there are things that must not change the next day and not in five months or years but very fast.

When it comes to the mandate of the Armed Forces Ret. Col. Müller notices significant differences between the German and the Philippine Armed Forces. The deployment of the German Bundeswehr is confined to foreign affairs. Contrary, the AFP is primarily deployed inside the country. As the original mandate of the Armed Forces is not to fight the own population and oppositional groups, Müller recommends the AFP to assume a similar role as the *German Bundeswehr* in the future.

Ret. Col. Müller remarks that it is most urgent to work on the implementation of all the principles released by the strategic command and to do so in all areas of work. Similar as health does not come from medicine, “humanity does not come from laws but it primarily comes from human spirit, human education, human treatments, parents and superiors, giving a ‘living example’”. Ret. Col. Müller explains that especially the education has to be designed according to the released principles. He envisions an education that enables the security forces to abandon the “Yes Sir” mentality and the unconditional obedience demanded by superiors like Ret. Gen. Palparan. An education which, instead, encourages a “No Sir” mentality based on human rights awareness. However, in order to foster this mind-set and attitude superiors responsible for the education have to work as example.

This, according to Müller, will need a holistic approach that involves all stakeholders into the process. Yet, the rootedness of this approach goes beyond the military education and requires a change in the mentality of the police, the society and the family to no longer accept the occurrence of extrajudicial killings and enforced disappearances. Moreover it is the soldier’s standard of living that needs to be addressed in order to counter the prevailing corruption. Ret. Col. Müller closes his presentation by encouraging also the media to play a vital role in criticizing the mentioned deficiencies and helping to build and root a different mind-set within the society. ■

Adherence to Human Rights Standards within the Armed Forces

Speaker: Ret. Lt. General Dolorfino of the Armed Forces of the Philippines (AFP)

As mandated by the 1987 Constitution, the *Armed Forces of the Philippines* are the protectors of the people and the state. Among the state actors the AFP should be in the forefront in the promotion and protection of human rights. In the performance of these duties, soldiers are entrusted with the authority to bear arms and use appropriate force whenever called for by military necessity to accomplish the mission.

However, misapplication of this authority and imprudent use of force may trample the rights of the very people they have sworn to serve and protect. Among the state actors, the Armed Forces are the most prone to human rights violations because of their constant exposure to conflict situations and law enforcement.

The real culprit is the conflict situation. Armed conflict often leads to infringement of human rights by both the state and the non-state actors. It is for this reason that so much international efforts had been exerted to regulate armed conflict especially after World War II. Efforts by the *United Nations* and the *International Committee of the Red Cross* resulted in a number of international pronouncements such as the *Universal Declaration of Human Rights* (UDHR) in 1948, the Geneva Conventions of 1949 and the *International Humanitarian Law* (IHL).

The Philippines, as a member state of the UN and signatory to international treaties and conventions, assumes the obligation and responsibility to uphold, promote and protect the fundamental rights of every individual in war or in peace. General Dolorfino mentions a number of legal tools that require the implementation of this responsibility such as the 1987 constitution and the revised penal code, among others.

While the intensity of conflict situations has greatly diminished over the years, much is still to be desired as far as enforcing the IHL and protecting human rights are concerned. Decades-old insurgency, secessionism, terrorism and organized criminality are still major stumbling blocks to peace, development and human security.

The AFP, being the instrument of the state in confronting the internal conflicts, gets the brunt of accusations when it comes to human rights issues and concerns. However there are two sides. The continued occurrence of EJKs, EDs and other human rights violations has been a great concern in the past decade.

While undeniably there were actual infractions by military personnel, the preponderance of these accusations remain unsubstantiated hence prosecution of suspects does not prosper. Some of these may also be concocted by adversary groups to smear the image of the AFP. It is common knowledge that killings due to internal rifts and purges of suspected spies continue to happen in the ranks of insurgents. The perception of the AFP as human rights violator strikes at the very core of its constitutional mandate as the protector of the people.

Non-state armed groups have persistently infringed on the rights of the people, as consistently reported by the AFP to the CHR. From January 2001 to July 2009, the AFP filed 417 formal complaints to the CHR against the NPA. In 2009 alone, the NPA carried out 115 killing incidents. From 2002 to 2010, there were 523 arsons, 66 bombings and 53 landmine incidents attributed to the NPA, with damage to public and private infrastructures amounting to 1.3 billion pesos. The UN reports have consistently listed the NPA as one of the non-state armed groups that continues to employ children in their armed struggle.

Human rights abuses are committed by *Southern Philippine Secessionist Groups* and the terrorist *Abu Sayaf Group*. Bombings, kidnappings, extortions, arson incidents, displacement of civilians, and risk of landmines are just among the common atrocities in areas of Mindanao.

Human rights situation attributable to armed conflicts

Armed conflicts remain the primary cause of human rights violations in the Philippines.

AFP's adherence to human rights standards

There have been institutional efforts after Martial Law, for instance, with the crafting of the code of ethics and the integration of

human rights and IHL in the current forces. Other examples that Dolorfino highlights to illustrate the AFP's institutional commitment to human rights are the following:

- The issuance of the *Philippine Army Handbook on Human Rights and IHL* launched in 1999.
- The *AFP Human Rights Office* (AFPHRO) had been replicated down to the Battalion level.
- The *Soldier's Handbook on Human Rights and IHL* which is an improved version of the Philippine army handbook from 1999. Here Dolorfino adds that there is still room for improvement agreeing to concerns raised earlier in the conference.
- Publications on human rights such as the *Code of Conduct of Combatants*, the pamphlet on IHL and the human rights based intelligence handbook.

The current military operation *Bayanihan* takes on the right direction, so Dolorfino. It is a radical paradigm-shift and opposite to the former operation "Bantay Laya" since it uses a people-oriented approach. The observance of human rights and IHL are some of the imperatives. And the AFPHRO has opened up to other stakeholders.

Deficits, Weaknesses and some recommendations

Despite the significant efforts already exerted by the AFP, there are still gaps to be filled in to make it a truly human-rights-adherent organization. These gaps are the following:

- Translating individual human rights awareness to a higher level of unit advocacy. Here Dolorfino adds that awareness actually exists as human rights subjects have been inte-

grated since 1991. But this has to be raised to a level of unit advocacy.

- There is a need to fully appreciate the nature of low-intensity conflict.

A low-intensity conflict is complicated in the sense that insurgents, terrorists and criminals live and operate among the people, Dolorfino elaborates. The difficulty here is how to conduct the operation according to its mandate while at the same time preventing civilians from getting caught in the cross-fire and not violating human rights. Hence, the AFP must exercise strong will within its ranks, winning battles but not losing the trust of the people. Being alienated from the people is a greater concern to national security than posed by the insurgents. The atmosphere of impunity due to many unsolved human rights cases has caused societal divides. No organization can hope to mitigate this situation alone.

- Monitoring, corrective measures and disciplinary actions

Instead of just relying on complaints and passively assuming a defensive stance, field units must proactively reach out and work in partnership with stakeholders in monitoring and investigating human rights violation cases. the doctrine of command responsibility must always prevail. Only then can the AFP institute appropriate corrective measures within its ranks and impose disciplinary actions on erring personnel.

Personally, Dolorfino believes that the AFP has to cooperate with other stakeholders through sustained dialogue, partnership and collaboration to address all the issues and concerns relative to human rights in the Philippines. ■

On the role of the military in investment strategies

On the question whether there are any plans to abolish the *Investment Defense Forces* (IDF) which have been initiated by Gloria Macapagal-Arroyo in 2008 and have since been used to suppress opposition against mining *Ret. Gen. Dolorfino* explains that the military has three maxims, which are (1) to serve and protect the people, (2) to uphold the sovereignty of the state and (3) to defend national territory. The protection of Filipino and foreign investment by the Philippine armed forces (the military, the police and other armed services of the state) is understood to be part of upholding state sovereignty.

On the military's collaboration with unidentified armed men

In response to the occurrence of bonnet-wearing men who operate alongside the military especially when it comes to cases of political killings *Ret. Gen. Dolorfino* notes that "it is not only the armed forces that do that [riding a motorcycle and wearing bonnets]." He stresses that those riding motorcycles in military operations are usually members of the intelligence units and "this will always be a practice". According to *Dolorfino*, the intelligence personnel compose an important element of military operations and concrete human rights programs should help to control their practice and be deeply internalized.

On the use of public places under Oplan Bayanihan

When asked about the use of public places such as churches and barangay halls for military purposes *Dolorfino* says: "Normally, we discourage the use of school buildings and other facilities in the barangay." But he further states, "in cases this cannot be avoided, we always seek the permission of the barangay officials". However, *Dolorfino* explains the situation depends on the responsible attitude of the commander.

On the concrete differences between OBL and Oplan Bayanihan

According to *Ret. Gen. Dolorfino*, the two operations plans are opposite and reflect

a radical paradigm shift. While the first one was a combat-oriented approach, the latter is intended to be a people-centered approach and live up to the military's mandate to protect the people.

Dolorfino draws attention to two imperatives: (1) to carefully use force in order to protect the people and the state in order to stabilize the situation, and more importantly, (2) to win peace within the community and to address the root causes of the conflict. This, according to *Dolorfino*, has been practiced in Mindanao.

On the military's human rights officers and their monitoring potential

Ret. Gen. KB Müller draws attention to the incidents of "civilians being caught in cross-fire", which, according to *Müller*, is the worst excuse for the killing of civilians.

Müller points to two ways of dealing with such incidents: (1) to continue shooting and accepting the death of civilians, or (2) to stop the operation despite possible failure. The latter is an integral part to the *rules of engagement*.

As far as the role of the human rights officers on different unit levels is concerned, it involves the following obligations:

The military's human rights office (AFPHRO) is responsible for the education of its commanding and unit personnel in human rights and IHL, including the knowledge about the military's own publications.

The deputy commander of each formation/unit has the responsibility as human rights officer to foster the internalization of these guidelines.

He has the responsibility to monitor the compliance with these guidelines and rules of engagement throughout all stages of preparation and implementation.

In the case of transgressions, it is the deputy commander/human rights officer who is responsible for the first investigations. He has to consult with the state prosecutor when blatant violations occur.

The human rights officer has to submit and deliver the information to other institutions that can hold the perpetrators accountable.

Moreover, it is the deputy commander/human rights officer who is the contact person for CSOs, NGOs and the Ombudsman in order to coordinate cooperation and operations.

Discussing about Human Rights Standards within the AFP: Retired General Dolorfino and Loretta Rosales



Finally, the deputy commander receives orders from his commander to respond to inquiries regarding human rights violations and military operations and to submit investigative reports.

Ret. Gen. Müller, however, stresses that it is not the deputy commander or human rights officer but the unit commander who carries the responsibility.

On education in the security sector

Rosales closes with the challenge to all stakeholders to come to terms with one's internal and individual organization, and no longer excuse abuses and take responsibility and engage in unity to resolve the past. The CHR is willing to offer concrete education to soldiers on the field in order to stimulate a change in the attitude of the soldiers. Yet, after 20 years of human rights education in the security sector, lectures alone were not able to achieve this. ■

7. Panel 2: Strengths and Weaknesses in the Judicial System

Human Rights and Judicial Remedies: Problems and Prospects

Speaker: Jose Manuel L. Diokno
(Free Legal Assistance Group, FLAG)

Why has there been no improvement in the human rights situation in the Philippines?

We are after all a democracy, we have a free press, we have active and committed civil society groups. We have a president who was himself victim of human rights violations, a secretary of justice who is well versed in human rights and a proactive commission on human rights. We have civilian courts run by judges who are familiar with both the common law and the civilian provisions. We have legal remedies like the *writ of amparo*, the *writ of habeas corpus*, the *writ of habeas data* and recently the *anti-torture law*, among others that protect human rights. The Philippines receives a lot of funding from Germany, the United States and others to improve human rights work in the public and private sector.

I have been asked that question many times. Why has the Philippines not made any progress as far as the human rights situation is concerned? The answers to this question, I believe, can be found if we dig deeper into how my country works; if we look beyond the words and see the realities of the situation.

We have a legal system that is very much like the American system as far as procedure is concerned, very much like any European country as far as the substantive law is concerned. But it is a legal system that is fatally flawed; a system where one out of every four trial courts has no judge and that has been the case for years. A system where we follow rules of procedure designed for juries, but we have no juries and we have been following these rules for over one hundred years when they are designed for a different system than ours. We have a system where our judges are supposed to

be independent but in reality they are not independent; a system where judges are appointed and promoted not because they are good but because they are good to the Chief Executive; a system where judges are corruptible if not corrupted, and easily intimidated.

We have legal remedies on paper but not in fact; legal remedies that promise justice to victims of human rights abuses, but deliver only more suffering and injustice to them.

We have a press that is free, yes; but it is a press that has no access to vital information on matters of public concern. It is a press that must content itself with sensationalism and which is dependent on big business for its survival.

We have military and police forces that declare their commitment to human rights with one hand and take it away with the other; military and police forces who still believe that membership in the *Communist Party of the Philippines* is illegal when it was legalized more than 15 years ago; and who operate on the belief that communism is an evil that should be stamped out by any means – fair or fault.

We have a prosecution service that professes adherence to the rule of law but does not practice what it preaches; a prosecution service that protects witnesses but has no mechanism for perpetuating their testimonies – so that the witnesses end up languishing in safehouses for years waiting to testify, while the perpetrators of the abuses roam free. A prosecution service that allows the filing of John Doe cases against human rights defenders and tolerates their persecution when the cases against them are utterly without basis. I know this for a fact because I handled many of those cases. One of them was mentioned yesterday, the case of Attorney Romelio Saladero.

And we have an Ombudsman's office that views human rights violations with disdain, that is too scared to go after high-ranking officials who commit or condone human rights abuses; an office that is itself plagued by corruption, inefficiency and delay.

We have, in short, a democracy in name but not in fact; a democracy struggling to stay afloat in the dark sea of impunity.

What then can and should be done?

There are no easy answers, because the problems are so deeply rooted. To solve these problems we must dig out those roots, by challenging, confronting and changing the institutions, policies and practices that generate injustice and human rights abuses on a massive scale.

I have eight proposals that I like to submit, but this list is by no means exhaustive. These are only baby steps that I believe we must take if only to start us in the right direction.

First, depoliticize the selection of judges, and fill the vacancies with qualified and well-trained judges. The present process for selecting and appointing judges is done by the *Judicial and Bar Council*. That council is supposed to be independent and free of any political partisanship but in the truth it owes everything to its very existence to the President because he appoints all its members. That council is supposed to be a clean organization that will choose judges on the basis of merit and fitness but in reality it doesn't do that. In fact, the reports I have received are that benches or seats for judges are for sale. The budget depends on how high you want the position to be in the judicial system.

Second, stop the practice of filing "John Doe cases" against human rights defenders, a practice that has been going on since the 1970s, during the time of martial law. The *Free Legal Assistance Group* (FLAG) has been fighting and opposing that practice ever since. But every political administration has not lifted a finger. Many of my friends and colleagues in the human rights have suffered because of that practice.

Third, establish mechanisms for perpetuating the testimonies of material and protected witnesses. The Philippine Congress should amend the *Witness Protection Law* to allow a witness to testify as soon as he is submitted into the program, with proper notice and right to cross examination by the other parties implicated by this testimony. That way the witness does not have to languish in the safehouse for years waiting for a trial that may never come. That way we can give that witness a new iden-

tity, a new occupation or at least ensure that he can go on with his life. The *Philippine Supreme Court* should amend the rules on criminal procedure to provide a similar mechanism for perpetuating the testimonies of whistleblowers and other material witnesses.

Fourth, strengthen the capability of our law enforcement agencies to solve extrajudicial killings and enforced disappearances by forensic and physical evidence instead of relying heavily on testimonial evidence. Witnesses can be bought, can easily be intimidated, pressured, compromised, threatened or killed. But physical evidence and forensics is a much better way to go. But unfortunately, in my country, we don't have many experts in these fields. We would really benefit a lot from foreign support in that area. Law enforcement agencies, with the support of the national government, must reduce their reliance on testimonial evidence and develop their forensic capabilities.

Fifth, re-educate the military and police to eradicate their belief that membership in the *Communist Party of the Philippines* is illegal, because it isn't. They hold also the belief that any communist is evil and therefore he can be treated like an animal, he has no rights, he can be tortured or even killed summarily and it will not even prink their conscious. Until we can re-educate our military and police in those two beliefs, I don't think we will ever have a military and police force that will truly respect human rights.

Sixth, require all members of the military and police forces to obtain clearance from the *Commission on Human Rights* before they can be promoted. About 15 years ago during the administration of President Fidel V. Ramos, he issued an administrative order requiring all police – men and women – to get clearance before they could be promoted. And it served as an effective deterrent. At that time there were a lot military and police who thought twice before committing human rights violations because they knew it would affect their pocket, their right to earn a living, when that happens of course they have to think of their families, they have different priorities in mind. Unfortunately, the presidents who succeeded him did not continue this requirement. President Aquino does not need congressional action to do this; he can do this himself simply by issuing an administrative order requiring such clearance.



Seventh, demand that the Ombudsman concentrates on prosecuting high level government officials instead of wasting resources on low level officials. The Ombudsman must also exercise the powers granted by the Constitution not only after crimes had been admitted but to pre-empt and prevent corruption and human rights violations, instead of waiting for them to happen before taking action.

If you look at the Constitution, the Ombudsman has so many powers that have never been exercised in its about twenty or 25 years of existence. For one reason or another, our Ombudsman has focused only and solely on prosecution.

Eighth, insist that the Ombudsman and *Department of Justice* evaluate their performance and the performance of the government over all, not just based on conviction rates but on the number of officials, actual serving sentence in prison. Conviction rates are mere

paper statistics. To restore accountability, the Filipino people must actually see corrupt and abusive government officials in jail. To date, there is no central body in the national government that monitors and ensures that those who are convicted by final judgement actually go to jail and serve their sentences. And there is no central database that collects the data needed to ensure that they serve time. In fact what I have been told, and what I'm eager to confirm, is that only roughly ten percent of those who have been convicted actually go to jail. What happens to the 90 percent that have been convicted, where the government spent so much money getting that conviction? They are out, at large, they are free.

Eliminating impunity is no easy task. But address it we must, if we are to build a nation we can be proud of, a nation where our children can live in peace, instead of dreaming of a better life in distant shores. ■

On the potentials for change

Asked to identify the institutions that are capable of change *Diokno* gives the following response.

The *Judicial and Bar Council* is not the only salvation, there can be put more focus on the judiciary. A system cannot operate when one out of four courts has no judge, it is simply impossible. This needs to be addressed by the government.

On the influences of the Marcos era in the judiciary

Responding to why there has not been much change since Marcos *Diokno* says that in fact, many policies of the Marcos time still remain until today, some of the decisions and cases of Marcos have not been overturned, i.e. cases of Ilagan, Enrile and so many other cases that date back to the 1970s. The practice of filing “John Doe” cases has started at that time.

On the (in)efficiency of human rights education

Given that human rights education is on the agenda of many human rights organizations and government programs such as the EPJUST *Diokno* is asked why there has been no progress for years.

In response he raises the question whether it has really been studied how many military receive such training. In *Diokno*’s experience these programs do not reach the provinces where they are needed the most.

Secondly, he points to notorious battalions of which he wonders that they ever have been trained in human rights. In addition, the trainings might not address the issues mentioned earlier that membership in the communist party is not illegal. So the organizations have to change their operational policies with that in mind.

On the role of the CAFGUs

Being asked about the CAFGUs in regards to human rights education *Diokno* explains that they are used by the military but are not organic to its structure. They have no accountability, not even listed names and they are not included in the human rights programs. In

many cases they are really used by the military to conduct human rights violations.

On the needs of wider political reform

In response to the question whether *Diokno* sees a need for further and wider political reform he says that it really is a systemic problem, addressing it judicially would only be one approach to it. In fact, human rights violations and other problems such as corruption really go hand in hand and the issue here is accountability. If there is impunity in human rights violations, there is also impunity in other things. There are people who are untouchable; they think they are above the law. They must have cause to believe that because they do not get caught or if they do get caught they manage to get out in a short time.

On the lack of Accountability of Police Forces

Diokno makes a last note on the problem with the administrative accountability of the police forces. According to the *Civil Service Commission* all members of the government have to follow the same administrative liability. But since they took out the jurisdiction for the police and gave it to an office within the PNP, now there are policemen filing cases against other policemen and one can imagine what results come out of that. FLAG has tried to appeal these cases but only the government is allowed to appeal them. Therefore, many victims of human rights violations have difficulty to prosecute their case criminally. They do not have the money to file a civil suit, they end up filing an administrative suit and it gets dismissed. They are left without remedy. On the political level, the secretary of the local government can do something – if he wants to. ■

Enhancing the Protection of Human Rights Defenders

Speaker: Sister Crescencia Lucero (Task Force Detainees of the Philippines, TFDP)

Sister Lucero notes that after one year in office the Aquino Administration has no policy statement on human rights, no statement on the *Human Security Act*, no statement on legislations pending 14th Congress on EJK, Enforced Disappearance, the *Right to Information Bill*, no marching orders on current human rights concerns as well as no clear policy on international human rights instruments, protocols or mechanisms that remain pending.

There are continuing extra-judicial killings, unsolved/unaddressed enforced disappearances, arrests and torture. With the current human rights environment, impunity and de facto immunity exists. However, a window of hope remains: the Philippine Constitution remains clear in its mandate to guarantee full respect of human rights to ensure human dignity. Civil Society Organizations, NGOs, Peoples Organization's (POs) and individual citizens must remain vigilant and together consistently engage, assert and defend peoples' rights.

Human Rights Defenders (HRDs)

Human Rights Defenders' work is risky and dangerous in an environment where there is controversial alignment of power. A common danger to HRDs in relation to their work is in forms of harassment. This comes either through psychological intimidation and threat, or through legal forms, such as libel or false accusations as one of the "Jean or John Doe" cases or accusation of any criminal offense. The third most common danger to human rights work is the dominant social perception that human rights is actually left-winged, so they are frequently called "enemies of the state". For example, Ms. Rita Melecio, Task Force Detainees of the Philippines worker in Mindanao for more than ten years was trailed by unknown persons while documenting a report of a human rights violation. Previously, Ms. Melecio was tagged as a member of the revolu-

tionary underground and her name appeared in a slide presentation of the military (Know Your Enemies). Clearly, the patterns of harassment and intimidation have not ceased even with the ascension of a President who allegedly is pro-human rights.

Protection of Human Rights Defenders

According to Dr. Renato Mabunga, the Chairperson of *Human Rights Defenders-Pilipinas*, good protection mechanisms for HRDs are a combination of various levels at play. Generally, the first level of protection is the protection of person on an individual level. The second level of protection is offered by the organization whether local or regional or international. Protection for HRDs on organizational level can be enhanced through networking, concerted actions and mobilization as well as continuing education for the HRDs, a regular dialogue with various stakeholders and the formation of *Quick Response Teams* (QRTs). The third level of protection is those provided by government through legislative measures, prosecution, mainstreaming human rights work and strong political will. Another level comes from those that exert influence on government and on contending parties. Usually they are the Church, media, international pressure that may be a factor to the security of human rights defenders, not only because of their moral or legal position but also because they have access to government beyond ordinary circumstances. In some very specific circumstances you need to dialogue with rebels or the warring parties in terms of their position on issues and to guarantee security of human rights defenders in the area. The proper combination of these levels highly depends on the situation of the area or society. In all levels of protections a strong network is important.

Witness Protection Program (WPP) and its weaknesses

The *Witness Protection, Security and Benefit Act* was approved in 1991 and provides protection to any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is about to testify before any investigating authority. However,

there is no interim protection mechanism available for persons who are waiting for a decision by the DoJ if the person is qualified to act as a witness. This denies potential witnesses protection at times when they may need it urgently. The law does not have any provisions concerning sanctions against persons who are not part of the government and who put witnesses at risk by exposing their identities. Most witnesses are reluctant to testify because of the very poor support system such as the financial support and there is also no support system for recreation and self development for witnesses. In addition, the DoJ is under the control and supervision of the executive branch of government. When cases that the DoJ is prosecuting conflict with the interests of the executive and its officials, the implementation of the WPP is detrimentally affected. Any applications that risk undermining the government will likely be rejected and influential persons are likely to be treated preferentially.

Policemen and military are not qualified to be admitted under the program. If they are testifying against their superiors, who have power and authority over their promotions, assignments and other aspects, it is simply impossible for them to come forward and testify without protection. For a prisoner who wants to testify, the policy on whether or not he can also qualify to enlist in the program is not clear.

Sanctuary Program for Victims and Witnesses

The *Association of Major Religious Superiors in the Philippines* (AMRSP) Sanctuary Program is a Sanctuary Network for Human Rights Victims, Witnesses and Families whose lives are at risk. It provides refuge and protection, legal assistance, psycho-social assistance and

spiritual/moral support and lobbies for the enhancement of the WPP of the government. It has established an alternative support mechanism with a nationwide network which is recognized by the government. Further it offers accompaniment in court hearings and legislative inquiries, a safe haven including spiritual and psychosocial support as well as financial and material support or sharing of resources. The program encourages survivors and whistleblowers to fight for justice through the filing of cases and also helps rebuilding lives and reintegrating whistleblowers and human rights defenders into the communities.

Recommendations

Sister Lucero encourages a greater public pronouncement on human rights and the prosecution of perpetrators, the improvement of people's access to justice and respect for human rights, reforms in the justice system, better protection measures with the WPP as well as to strengthen trust and confidence in existing State institutions to guarantee public accountability. Further, to strengthen the Commission on Human Rights as a National Mechanism for Protection, ratify laws on Human Rights Protection regarding EJKs and enforced disappearances as well as to incorporate international laws and ratify the *Rome Statute of the International Criminal Court* to provide solid foundation to the question of Command responsibility (Art. 28, Rome Statute of the ICC). While there are challenges for the government, the civil society and the AMRSP through its Sanctuary program, continue to play a significant role in the work for support and empowerment of the people for the sake of human rights, justice and peace. ■

8. Final Discussion: Contribution of the International Community

Let the People Be Heard

Speaker: Marie Hilao-Enriquez (Karapatan)

Mrs. Hilao-Enriquez summarizes possible contributions from the viewpoint of people's organizations. Since there are already effective policies in the Philippines, the government should really implement these declarations. Karapatan requests the international community, the EU and other countries to continue monitoring the human rights situation in the country.

Karapatan initiated the filing of certain cases because there was no action on government side to hold the human rights violators responsible. In the case of the two students Empeño and Cadapan, the Supreme Court (SC) upheld the earlier decision of the Court of Appeals on the *Writ of Amparo* and further advanced the identification of the perpetrators, for example the role of General Palparan. It has named the responsible military officials and listed them on its website and it has ordered the release of the two missing students. Karapatan would like to see this as a sample case for convictions. Thus, Hilao-Enriquez welcomes the Justice Secretary's initiative to form a special prosecutors' panel on this case.

In the organization's experience, the government or certain courts can only be compelled to do the right thing when there is a strong civil society who mobilizes actions during the hearing. Hilao-Enriquez expresses hope to be helped in regard to this formation of public pressure.

Aside from being a constitutional guaranteed right to voice one's opinion, the mobilizations make the courts, the officials and even the public know that there is an interest in the case and that people are watching.

Coming to the training of prosecutors and judges Hilao-Enriquez affirms its importance. Karapatan is filing cases against prosecutors who have filed fabricated charges against

leaders of civil society groups who are critical of government policies. One of the paradigm shifts should be that the government and the military really review and listen to the criticism of people's organizations. People should be able to criticize and be heard. The training of prosecutors and judges should contain not only this but also include the integration of judges into the local society. Within a two-day training judges do not have a chance to integrate, they cannot see who the victims are, what they do or how they live.

They should be exposed to local communities for at least for one week. The judges should see why these people cry out in demonstration and assert their right to decent life so they will not be treated as »enemies of the state« in the hearings.

Further, the German or the EU governments should ask the Philippine government to allow Special Rapporteurs on arbitrary detention, from the working group on enforced and involuntary disappearance, on human rights defenders and on human rights while encountering terrorism to visit the country. Those areas should be looked into and our President should break the "culture of not allowing Special Rapporteurs" to visit the country.

Moreover, Hilao-Enriquez requests for help for witness protection. Karapatan strongly suggests that the German parliament sends a mission to the Philippines and shows its interest in monitoring the situation. She asks international groups and the German government to help in sending a UN delegation to the Universal Periodic Review in 2012.

Last but not least, international groups are welcome to help CSOs in the Philippines to strengthen the capacities on investigation and documentation, on forensics and in lobbying and campaigns for human rights as well as in the protections of human rights defenders. ■

Protect Human Rights Defenders at All Levels

Speaker: Max De Mesa
(PAHRA)

Max de Mesa speaks from the standpoint of a human rights advocate. He argues none of the mentioned cases would have been processed if there had not been civil society and human rights defenders – not only for the part of supplementing but also taking on the burden of protecting witnesses, sustaining them, collecting evidences and preserving them, filing cases and at the same time looking for lawyers who would back this up with passion and commitment. Whatever happens during this administration the encouraging commitment of human rights defenders will be constant – whether it would be in the grass root communities, in the academe, in government offices or even in the security forces. Therefore, he emphasizes and requests trainings and protection of human rights defenders at all levels.

PAHRA encourages the government, military and also the police forces to engage in the ongoing national monitoring mechanism. The NMM enables the international community to look at the indicators where the policies indeed are coming to a convergence and concretization.

In relation to the international community as a whole, especially the EU and the German government, PAHRA summons the European Union bodies to financially sustain the momentum that the EPJUST program has initiated in empowering the values, duty bearers and claim holders separately and jointly to combat impunity against extrajudicial killings, enforced disappearances and torture.

PAHRA invites the international community to monitor cases, their court proceedings and the final convictions. At least for the cases that have been put forward as well as the unique case of the PICOP 6, the workers who have been extrajudicially killed in Agusan del Sur. The case is unique because a soldier has come forward to become a key witness. In this matter witness protection should be cared for not only in regards to the witnesses' physical security but also in view of moral and financial support.

Similarly to the requests of Karapatan, PAHRA persuades and supports the Philippine government to use and implement the human rights based approach in respect to the interior support in governance, in the security sector, in development, in trade and in democratic processes.

Finally, De Mesa requests the support of the international community to call upon the current government to invite Special Rapporteurs so the political will that has been brought forward can be pushed further. ■

Platform for Possibilities

Speaker: Michael Schirmer
(Action Network Human Rights – Philippines)

Michael Schirmer describes the conference as a platform full of possibilities and as a dialogue between different stakeholders and viewpoints that can be continued in many different ways. The Action Network seeks to support Philippine partner organizations not only during high-level conferences but also on a daily basis. Further, Schirmer recommends to take the documented cases and reports seriously and to point out certain deficits in the system.

Schirmer mentions two important points: First, he expresses his doubts in view of a neutral monitoring office within the Armed Forces of the Philippines. General David said that the AFP will maintain human rights standards – “as long as they are not in conflict with national security interests”. This mindset within the AFP needs to be changed and a *national monitoring mechanism* should be designed to work impartial and in accordance with the rule of law to really implement human rights standards in the country. Therefore, politicians should keep this in mind while

debating about future programs. The national security must not be guarded at the expense of people’s lives.

Second, he brings up issues of the judicial system. The EPJUST initiated efforts in different sectors such as the security sector as well as in civil society and created new networks and a dialogue between different actors. Nevertheless there have been no trainings in the judiciary sector. Hence, the training of judges, lawyers and even the Ombudsman should be addressed in the next program. This gap ought to be addressed by an EPJUST follow-up program with similar stakeholders. Despite the recognition of international stakeholders for reform efforts Schirmer asked the German and European Politics not to ignore but to address the continuation of Human Rights violations presented during the conference. He requests to cultivate collaboration and communication between the representatives of the different embassies on a regular basis and discuss about human rights issues.

The *Action Network Human Rights – Philippines* (AMP) places its emphasis on the continuation of dialogues for reconciliation and is pleased to convey the concerns of its partner organizations in the Philippines. ■



Michael Schirmer
and Martin Kremer

Bearing Challenges, Building Steps

Speaker: Seamus Gillespie (Head of the European External Action Service's Unit for relations with South East Asia)

Seamus Gillespie took over the South East Asia division in 2006 just when the upsurge of extrajudicial killings was reaching its peak. In that context the Philippine government had asked countries for international assistance, including the EU. After some difficulties the EPJUST program eventually got moving.

The EPJUST program brought some improvement, but more important than technical assistance is the implementation and the political will to follow up. There also needs to be political will to address the wider problems and these are ultimately connected with the funding of social services as a parameter to poorer people, good financing of the judiciary, of the police and of the army to cut off the incentive for corruption.

There are many strong elements in the legislative architecture for the protection of human rights in the Philippines. Not only is it strongly enshrined in the Constitution but also the Philippines is a state party to eight of the key UN instruments and it has been working on transposing those international obligations into domestic law. Further, the Philippines' role within ASEAN is a very positive one in regards to human rights.

Given the various elements at play such as physical interference and political will, the problem will not be solved overnight but insofar as the government has plans and good intentions, there is the need to deliver on those and spell them out much more clearly. There

is a need to speak more to the own people in order to build up confidence domestically. At the time of justice Melo's report (2006/07), there was a clear gap in confidence between civil society and the police. The police had difficulties to get organizations to collaborate with them in investigations. Gillespie sensed from the past discussions that this begins to change – whether it is a paradigm change or not, but it certainly is a good change if it can be continued.

The EU is determined to continue to support these efforts. The EPJUST program is coming to an end but it is going to be continued building on the lessons learned. It will be incorporated into a much larger project to help gaining access to justice. Alongside there will be continuing support for the CHR and also for the national monitoring mechanisms. Witness protection programs are very expensive and it might be beyond the EU's capacities. Certainly the strengthening of investigations and the shortening of the procedures in the judicial system will continue to be a focus.

There has to be political will in order for all of this to come to a concrete conclusion in the sense of getting a few convictions. There is a generic problem in the system, all in all only twelve percent of all cases eventually end up in convictions. In cases of extrajudicial killings only one percent result in convictions.

There is a lot of good will since the cases are being reviewed and being looked at. However, if the government does like to bring about an understanding of the law, there need to be at least a few good convictions with high publicity and exemplary punishment that sent a clear and warning message to those who benefit from impunity – be it in the army or non-army people. ■

Support Encouraged by Political Will

Speaker: Martin Kremer
(Desk Officer for South East Asia at the German Ministry of Foreign Affairs)

The German Ministry of Foreign Affairs, all other 26 EU member states and the European External Action Service (EEAS) are currently working on annual human rights reports, which critically display the situation in non-EU countries. Anticipatory of criticism against the EU's human rights politics, Kremer points to this instance as a successful example for the collaboration in the frame of human rights.

As representative of the German government Kremer agrees to the points made by EU's representative Gillespie regarding the situation in the Philippines. He points out that the Philippines are not only a concern of foreign affairs but also a core issue regarding the area of conflict between interests and values in the foreign affairs of Germany.

Based on the fact that the new administration ambitiously expressed its political will, Kremer sees a great potential for transformation that has to be realized. In comparison with other countries in South East Asia, the expressed political will regarding human rights should be appreciated rather than viewed as treated like a side issue in the fight against corruption or in addressing general judicial grievances. The setup of the Commission on Human Rights is an important step to actively implement the expressed political will.

Kremer however stresses that political will needs to be realized in visible and practical progress that cares for the substantial value of human rights – and serves as basis for economic development and sustainable stability.

In that light Kremer views a continuation of the first good results of the EPJUST program. The follow-up program should have a broader approach in the field of human rights. He sees a potential of expanding the work of German foundations. This potential should be used to support criminal proceedings, the training of judges and defense attorneys, hence, very concrete projects.

The German government supports the Philippine government by monitoring projects and the German government shares an open dialogue especially with the civil society to enhance further development. The Philippines is a good example for and might have an effect on its neighboring countries. Burma (Myanmar) also pronounced a political will but the two countries face completely different situations when it comes to civil society. In Burma civil society has not yet evolved as it did in the Philippines. Burma is not yet in a position of judicially re-processing human rights violations. In this view the support of concrete steps towards a sustainable human rights policy in the Philippines is not only crucial for the country's development but for that of the region as well.

Finally, Kremer pronounces the support to the Philippine government and shares a self-critical view to improve and upgrade this supporting structure. Thus, he encourages German foundations to engage in needed assistance and he stresses that implementation is the order of the day. ■

On the German and EU's assistance to the Witness Protection Program

Being asked about the position of the EU and the German government regarding the witness protection program and to clarify on the different positions stated during the conference, *Kremer* explains that there are defined measures conditioning the process of assistance. Witness protection programs are expensive and they can only be approached with concrete financing plans. Such a support program needs to include not only the EU but also other states as well as NGOs. He expresses his desire to collaborate with other important players such as the United States and to gain from their knowledge and support. He wishes to act with a broad policy approach and to involve all possible support measures such as including the UN and the sending of Special Rapporteurs. He appreciates the potentials and the cooperation of the Philippines in these matters as they are the best condition for future collaboration.

Gillespie assures to report the outcome of this conference and to underlay the witness protection program. Within the EU he will discuss possible assistance for the immediate future based on the available resources.

On the cooperation between the German government, the EU and civil society

Regarding the possibilities of NGOs and civil society to participate in the drafting of the mentioned To-Do list *Kremer* explains that the list is connected to the process of developing support programs. The European External Action Service's annual human rights reports will contribute to decisions of future initiatives coming from the EU. Often these are aimed to be follow-up measures which benefit from the expertise and participation of NGOs. Human rights policy is a transnational process which gains legitimacy through the collaboration of other actors. Therefore, the collaboration of NGOs, embassies and governments is necessary when the projects get more concrete.

Commenting on the same issue, *Gillespie* adds that embassies in Manila closely work together and produce a human rights strategy. In such a process the advices of NGOs are included. Over the past five, six years con-

scious attempts have been made to engage more on the political level with the Philippine authorities. Recently, an initial partnership and cooperation agreement with important provisions on human rights has been negotiated. The agreement will enable a platform for the EU for a dialogue with authorities. The EU does also work with the Philippines in the UN context and in the Human Rights Council which enables the EU to extend encouragement, persuasion and criticism. He stresses that the EU certainly supports the Philippines to allow visits by the UN officials. Although funds in Europe are short, the EU does its best and is committed to continue the support in the area of the EPJUST program, regarding human rights defenders and to further strengthen the CHR. The EU wants to continue to work with the army and also with the civil society on a technical level.

On the EU's economic interests and its human rights approach

In response to the question whether the EU's economic interest and its human rights approach are conflicting, *Gillespie* stresses that the EU's external relations are based on values and on advancing its interests. There should be no necessary contradiction between the two. The EU has to make a balance at times. Giving the example of Vietnam, *Gillespie* wonders whether condemning the country's huge human rights problems would stop the relations. In this regard the EU opts for a process of enhancing the economy and reducing poverty. The EU tries to make a balance based on values and rational assessment of interests and the ability in the situation. This remains a challenge and it is not always easy to defend before the EU parliament.

In addition *Kremer* comments that the balance of interests and values is a dialogical process whereby values should be the foundation of interests. The imposition of sanctions often results in less political opening. Keeping the balance is always tightrope walk whereas the German government tries to combine effectiveness and credibility as a foundation of its human rights policy. He mentions the role of the Philippines within ASEAN which is important and very constructive.

On possible conflicts between economic interest and the human rights approach *Kremer* points out that economic develop-



The Panelists
of the Final Podium
discussing prospects
and expectations

ment often provides opportunities for human rights but human rights are more than civil liberties and include social and economic rights. For instance, land grabbing, dislocations as well as arbitrary irregularities should stop. Generally, the German government supports an economic development that allows human rights to flourish. He stresses the importance to ensure consistency. Potential of economic development has to be used and politics to be followed. Human rights politics are done for everyone's own sake and for a social and economic development.

On the future of EPJUST

Elaborating on the concrete future of the EPJUST program *Gillespie* explains that the EU is committed to build on the work of EPJUST and to finish the job EPJUST has started. Beginning 2012 a new program will be started with a funding line of ten million Euros to cover a wider range of objectives including finding ways for better access to justice for poor people. The final definition of the project is still being worked out but it should be finished by the end of the year. The delegation in Manila is working on that and they are available for further information.

On contradicting laws like the Mining Act of 1995 and the IPRA, the EU's interest in FTAs and the protection of economic, social and cultural rights

In regards to these topics *Gillespie* emphasizes that it is very important that human rights, environmental and gender issues will

be mainstreamed. Every year there is a senior meeting with the Philippine authorities and a senior Euro-visions meeting where economic progress and possible support in social services and infrastructure are discussed. The attempt is to draw the economy but also to provide better services to the citizens.

The EU is bilaterally working on agreements with ASEAN on a regional level. Important provisions in those agreements are provisions of sustainable development and labor conditions. If the Philippines agree on conditions and exploration zones with the FTA, then sustainable development and labor conditions, esp. in the extractive industries need to be discussed too. There is no certain provision for EU companies in the Philippines and other countries in the region. The EU is not interested in low quality employment but in fair conditions. EU companies should provide good quality investment especially in extractive industry. Some people think FTAs are bad but the EU believes that FTAs can bring better access to major markets with development prospects. The views of NGOs are taken into consideration as the EU is now obliged to consult with the civil society on major trade policy initiatives. There should not be any confusion with FTAs coming from China, Japan or the United States.

Rosales adds that the different contradicting laws are a problem not only on the domestic level but also on regional level. There are ongoing discussions to come up with a regional initiative to address a critical position regarding FTAs as they are not beneficial to the Phil-

ippines. Regional coherence regarding FTAs should be developed so that it would be easier to defend the Philippine interests with regard to foreign companies. There should be standards. Rosales stresses, that she does not know so far of any mining activity in the Philippines that has maintained standards and provided mutual benefits. A central question here is the regional patronage and landlord rules. The Ampatuan [Massacre] is an example, which

Commitments from the EU and Germany

- The German government is willing to support the Philippines in its legal system and proceedings as well as in the witness protection programs if such need is expressed
- The EU is determined to continue to support its efforts to help gaining access to justice, strengthening investigations and shortening of procedures
- The EU will continue its support for the CHR and for the national monitoring mechanisms
- The European External Action Service will discuss possible assistance for the witness protection program based on available resources
- The EU will support the conference recommendation vis-à-vis the Philippines to allow visits by the UN officials

needs to be addressed politically. The *National Human Rights Action Plan* (NHRAP) should come up with good and sound standards on sustainable economic development including considerations of climate change.

On trial observers from the EU or the German government

In response to the question whether there is a possibility to send trial observers to cases which could be landmark cases in breaking impunity, *Kremer* and *Gillespie* agree that it is a

good mechanism and confirm such possibility.

They cite the positive examples of such EU observations in Malaysia and Vietnam. It depends on the coordination of the EU delegation in Manila and any initiative has to rest in the frame of constructive dialogue.

Suggestions for EPJUST, the paradigm shift and the Philippine role in the UNHRC

Cecilia Jimenez, a human rights lawyer from the *Geneva Forum for Philippine Concerns*, suggests the development of a strategic program for the protection of human rights defenders in the Philippines from the side of the EU.

She opts not only for a paradigm shift in regards to the Philippine domestic governance but also its foreign policy especially in regards to Burma. The Philippines was again elected as member to the UNHRC for the next three years. Voluntary commitment and pledges are part of their candidacy. She suggests that those commitments the Philippines has made should be some of the targets concerning on how to assess the Philippine performance on human rights.

The UPR is coming up in June 2012 whereby Jimenez encourages the German government to take a more active and positive role in the UPR.

There are eight Special Rapporteurs of the UNHRC who have been requesting to visit the Philippines in the last five years – none of them has been acknowledged by the Philippine government. But they said that they might invite a Rapporteur on poverty who has not requested to visit and maybe the one on human trafficking. Hence, she suggests the expansion of standing invitations for Special Rapporteurs by the Philippine government instead of picking the ones they would like to come. ■

9.1 Recommendations to the Philippine Government

Political Action

- Make human rights a priority across all government bodies through effective adoption and implementation of a National Human Rights Action Plan
- Create a Presidential Accountability Commission to ensure diligent investigation and fair prosecution in cases of extrajudicial killings, enforced disappearances and torture during the last decades
- Issue a standing invitation for UN-Special Rapporteurs and UN-Working
- Make human rights a part of the peace talks agenda
- Request the Ombudsman to give particular attention to prosecute high level government officials who are under reasonable suspicion to have violated human rights

Legislation

- Ratify the Optional Protocol to the Convention against Torture (OPCAT)
- Sign the International Convention on Enforced Disappearances
- Pass legislation that criminalizes enforced disappearances
- Initiate legislation that criminalizes extrajudicial executions
- Review the Witness Protection Act and introduce provisions that enable a sustainable protection for witnesses and their families
- Certify the bill on the right to information
- Pass the Compensation Bill for Martial Law Victims of Human Rights Violations to ensure redress and reparation for victims

Security Sector

- Revoke Executive Order 546 (E. O. 546), which – till today - directs the Philippine National Police (PNP) to support the military in its counterinsurgency work, including the use of militias and paramilitary groups

- Disarm and disband all private armies
- Establish control and accountability through chain of command responsibility over the Armed Forces (AFP), PNP and all other security forces
- Ensure that the PNP and AFP develop and implement human rights-based policies in their rules of engagement and operating procedures
- Provide sufficient resources and mandate to human rights offices of both AFP and PNP in order to effectively conduct detailed and impartial investigations
- Provide resources for a specialized program for witness protection and sanctuary for families of victims under the CHR for cases where suspected perpetrators are members of the AFP, PNP or other state officials
- Institute appropriate corrective measures within the ranks of the AFP and PNP and impose disciplinary actions on erring personnel
- Issue an Administrative Order that requires all members of the AFP and PNP to obtain clearance from the Commission on Human Rights before being promoted
- Order the AFP and PNP to provide all relevant data in cases of human rights related lawsuits involving their personnel to produce all needed data on human rights cases related to them
- Improve the soldier's living standard in order to counter prevailing corruption among members of the AFP.

Justice Sector

- Create a special prosecutor's office for EJKs and EDs
- Create a special court for cases of EJKs and EDs
- Depoliticize the selection of judges and fill the vacancies with qualified and well-trained members of the Judicial and Bar Council
- Stop the practice of filing "John Doe cases" against human rights defenders

- Amend the rules on criminal procedure by the Philippine Supreme Court and provide a mechanism for perpetuating the testimonies of whistleblowers and other material witnesses
- Develop the forensic capabilities of law enforcement agencies
- Train Judges and Prosecutors on human rights legislation and investigation techniques

Civil Society

- Engage with AFP and PNP in dialogues and consultations, notwithstanding differences in perspective and the perceived slowness of the latter

9.2 Recommendations to the EU and the German government

- Address the training of judges, lawyers and the Ombudsman in the EU's Access to Justice Program (EU)
- Cultivate collaboration and communication about human rights issues between the different European embassies on a regular basis (EU)
- Develop a strategic program for the protection of human rights defenders in the Philippines (EU)

- Put pressure on the Philippine government to allow Special Rapporteurs on arbitrary detention, on HRDs, on human rights while encountering terrorism, the Working Group on enforced and involuntary disappearance and others to visit the country (EU and Germany)
- Implement the EU-guidelines on HRDs and a Local Implementation Strategy jointly developed with HRDs (EU and Germany)
- Monitor special cases, their court proceedings and the final conviction (EU and Germany)
- Support the CHR witness protection program either with technical and/or funding assistance (EU and Germany)
- Send a mission to the Philippines to monitor the HR situation (Germany)
- Help the Philippine military academy by giving human rights training including monitoring and reporting to the lieutenants and human rights officers to be (Germany)
- Give support to forensic and ballistic experts through training and modern equipment (Germany)
- Take an active and critical role in the next Universal Periodic Review for the Philippines (Germany)

10.1 List of Abbreviations/Abkürzungen

AFP	Armed Forces of the Philippines	IPRA	Indigenous Peoples Rights Act
AI	Amnesty International	JMC	Joint Monitoring Committee
AMP	Aktionsbündnis Menschenrechte-Philippinen (Action Network Human Rights-Philippines)	LTO	Land Transportation Office
ASEAN	Association of Southeast Asian Nations	MILF	Moro Islamic Liberation Front
CAFGU	Civilian Armed Forces Geographical Unit	MNLF	Moro National Liberation Front
CERNET	Community Empowerment and Resource Network	MOA-AD	Memorandum of Agreement on Ancestral Domain
CHR	Commission on Human Rights	MTPDP	Medium-Term Philippine Development Plan
CPP	Communist Party of the Philippines	NBI	National Bureau of Investigation
CSO	Civil Society Organization	NCCP	National Council of Churches in the Philippines
DDS	Davao Death Squad	NDF	National Democratic Front
DENR	Department of Environment and Natural Resources	NGO	Non-Governmental Organization
DoJ	Department of Justice	NPA	New People's Army
DPA	Deep Penetration Agent	OBL	Oplan Bantay Laya
ED	Enforced Disappearance	OPCAT	Optional Protocol on the Convention against Torture
EED	Evangelischer Entwicklungsdienst (Church Development Service)	PAHRA	Philippine Alliance of Human Rights Advocates
EJK	Extrajudicial Killing	PHRC	Presidential Human Rights Committee
EPJUST	European Philippine Justice Support Program	PICOP	Paper Industries and Corporation Philippines
EEAS	European External Action Service	PNP	Philippine National Police
FIND	Families of the Involuntarily Disappeared	PO	People's Organization
FLAG	Free Legal Assistance Group	SC	Supreme Court
FTA	Free Trade Agreement	SONA	State of Nation Address
GMA	Gloria Macapagal-Arroyo	TFDP	Task Force Detainees of the Philippines
GRP	Government of the Republic of the Philippines	UCCP	United Church of Christ in the Philippines
HRD	Human Rights Defender	UDHR	Universal Declaration of Human Rights
IALAG	Inter Agency Legal Action Group	UPR	Universal Periodic Review
IPSP	Internal Peace and Security Plan	UNHRC	United Nations Human Rights Council
ICC	International Criminal Court	VEM/UEM	Vereinigte Evangelische Mission (United Evangelical Mission)
IPs	Indigenous Peoples	WPP	Witness Protection Program

10.2 Conference proceedings

Wednesday, June 29, 2011

1:30 pm – 1:40 pm	Welcome and Introduction <i>Dr. Stefan Friedrich</i> – Teamleader Asia and the Pacific (KAS) <i>Michael Schirmer</i> – Chairman Action Network Human Rights – Philippines/Diakonie Human Rights Desk
1:40 pm – 1:45 pm	Greeting <i>Ute Granold</i> – Representative of the CDU/CSU in the Committee on Human Rights and Humanitarian Aid of the German Parliament
1:45 pm – 3:15 pm	Introduction Inputs <i>Niklas Reese</i> (University Bonn) and <i>Kaloy Manlupig</i> (Balay Mind-anaw) – Quo vadis Philippines? The current political, economic and social conflicts as structural causes for political violence in the Philippines <i>Hazel Galang</i> (AI London) and <i>Marie Hilao-Enriquez</i> (Karapatan) – Progress, Regression or Stagnation? The current Human Rights Situation under President Aquino
3:15 pm	Coffeebreak
3:45 pm – 6:00 pm	Impunity/Criminalization/Deficiencies within the criminal procedure – Case Studies <i>Max de Mesa</i> – Impunity of the Perpetrators: Some Case Studies <i>Ogie Giminez</i> (CERNET) – Criminalization of HR-Defenders: “Trumped Up Charges” <i>Marie Hilao-Enriquez</i> – Deficiencies within the criminal procedure: The case of Benjamin Bayles
6:00 pm	Dinner
7:00 pm – 9:00 pm	Panel Discussion: “There can be no reconciliation without Justice” with: <i>Leila de Lima</i> – Philippine Secretary of Justice (Key Note Speech) <i>Markus Löning</i> – Federal Government Commissioner for Human Rights Policy and Humanitarian Aid <i>Bishop Jaime Moriles</i> – United Church of Christ in the Philippines (UCCP) <i>Max de Mesa</i> – Philippine Alliance of Human Rights Advocates (PAHRA) <i>Hazel Galang</i> – Amnesty International London Moderation: <i>Dr. Jochen Motte</i> – United Evangelical Mission (UEM)
9:00 pm	Reception and Gathering

Thursday, June 30, 2011

9:00 am	“Flash light” – Review on the previous day
9:15 am – 10:45 am	<p>Inputs and Discussion</p> <p>Panel 1: Constitutional control within the security sector</p> <p>Speakers: <i>Ret. General Dolorfino</i> (Armed Forces of the Philippines – AFP), <i>Eta Rosales</i> (Commission of Human Rights – CHR) and <i>Ret. Colonel KB Müller</i> (EPJUST Military Expert) Moderation: <i>Peter Köppinger</i> (KAS Philippines)</p> <p>Panel 2: Strengths and weaknesses in the judicial system</p> <p>Speakers: <i>Atty. Jose Manuel I. Diokno</i> (Free Legal Assistance Group – FLAG) and <i>Sister Cres Lucero</i> (Task Force Detainees of the Philippines – TFDP) Moderation: <i>Katharina Stahlenbrecher</i></p>
10:45 am	Coffee break
11:15 am – 1:15 pm	<p>Inputs and final discussion: Expectations and contributions of the international community and the civil society (working title)</p> <p><i>Martin Kremer</i> – Desk Officer for South East Asia at the German Ministry of Foreign Affairs <i>Seamus Gillespie</i> – Head of the European External Action Service’s Unit for relations with South East Asia <i>Max de Mesa</i> – PAHRA <i>Marie Hilao-Enriquez</i> – Karapatan <i>Michael Schimer</i> – Action Network Human Rights – Philippines Moderation: <i>Katharina Stahlenbrecher</i></p>
1:15 pm	Closure and gratitude

10.3 About the Speakers

Charlito “Kaloy” Manlupig is the chairperson and founder of the organization *Balay Mindanaw Foundation Inc.* and does advocacy work for peace in Mindanao.

Hazel Galang works for the International Secretariat of Amnesty International in London. She works in the Asia Pacific Program as a campaigner and advocate for Southeast Asia and an expert on Philippine issues.

Jaime Moriles is Bishop of the *United Church of Christ in the Philippines* (UCCP) and supervises the West Visayan Region. He is a board member of the curatorship of the College of Maasin.

Attorney Jose Manuel Diokno is a human rights lawyer of the *Free Legal Assistance Group* (FLAG). He works as advisor for several government and non-government institutions and is founder as well as superintendent of the *De La Salle University College of Law*.

Karl Bernhard Müller is a former Colonel of the Armed Forces in Germany and worked as military advisor for the *European Philippine Justice Support Programm* (EPJUST) in 2010.

Leila De Lima is the current Philippine Justice Secretary and heads the Department of Justice. Between 2008 and 2010 she was Chairperson of the CHR. As lawyer and politician she is famous for her outspoken commitment to human rights.

Loretta Ann P. Rosales is the current chairperson of the CHR. Since the Marcos regime she is committed to stop human rights violations. She was representative of *Akbayan Citizen's Action Party* in the Philippine House of Representatives from 1998–2007.

Marie Hilao-Enriquez is the chairperson of the *Alliance for the Advancement of People's Rights – Karapatan*. Under Marcos she was detained by the military. She founded the organization KAPATID after her release. She chairs the organization SELDA, an organization of former political detainees in the country which works for the unconditional release of all political prisoners and humane treatment in prisons.

Markus Löning is the German Government

Commissioner on Human Rights Policy and Humanitarian Aid. He is a member of the Liberal Party (FDP).

Martin Kremer is the desk officer for South East Asia at the German Ministry of Foreign Affairs.

Martin-Maurice Böhme is the desk officer for Asia at the *Konrad Adenauer Foundation*.

Max De Mesa is the chairperson of *Philippine Alliance of Human Rights Advocats* (PAHRA). As a human rights defender he worked for TFDP and FORUM-ASIA among others and is currently board member of TFDP and the *Balay Rehabilitation Center*.

Michael Schirmer is the chairperson of the *Action Network Human Rights – Philippines*. He works as Regional Coordinator for Programs in Africa and Asia with the Human Rights Team of the Social Service Agency (Diakonisches Werk der EKD).

Mohammed Benjamin Dolorfino is a former Lieutenant General of the *Armed Forces of the Philippines* (AFP) and was based in Western Mindanao. He is now active in several NGOs.

Niklas Reese is sociologist and works in the academe at the Universities of Bonn and Passau. He is an expert on Philippine issues and active member of the *philippinenbüro*.

Dr. Oliver Gimenez is the executive director of the Cebu-based organization *Community Empowerment and Resource Network* (CERNET) and also works as community doctor.

Seamus Gillespie is the head of the European External Action Service's Unit for relations with South East Asia.

Sister Crescencia L. Lucero is a Franciscan Sister of the SFIC order and the deputy executive director of the *Task Force Detainees of the Philippines* (TFDP).

Dr. Stefan Friedrich is the head of the Asia-Pacific team in the *Konrad Adenauer Foundation*.

Ute Granold is representative of the German Christian Democratic Party (CDU/CSU) and a member of the German governments committee for human rights and humanitarian aid.

10.4 Links to Complete Speeches and Presentations

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Input of Niklas Reese (Uni Bonn) about structural causes of political violence in the Philippines
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/FachtagungReese_Quo%20vadis%20Philippines.pdf (German only)

Input of Kaloy Manlupig (Balay Mindanaw) about political and socio-economic conflicts in Mindanao
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_Manlupig.pdf

Input of Hazel Galang (Amnesty International) about the human rights situation under the Aquino administration
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_Galang.pdf

Input of Marie Hilao-Enriquez (Karapatan) about a viewpoint of a human rights organization in prosecuting human rights violations
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_HilaoEnriquez.pdf

Input of Max de Mesa (Pahra) about case studies of extrajudicial killings and enforced disappearances
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_deMesa.pdf

Input of Oliver Gimenez (CERNET) about the red labeling of human rights defenders
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_GimenezCaseStudy.pdf

Input of Marie Hilao-Enriquez (Karapatan) about the case of Benjamin Bayles and deficits in criminal procedures
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_CaseStudyMarie.pdf

Keynote Speech of Justice Secretary Leila de Lima about initiatives of the Philippine government to counter human rights violations
<http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Speech%20of%20Sec.%20de%20Lima%20DOJ%20June%2029030,%202011%20Berlin.pdf>

Input of Karl-Bernhard Müller (EPJUST expert) about his experience in the EPJUST training with the Philippine Army
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_M%FCller.pptx

Input of General a. D. Dolorfino (AFP) about command responsibility and maintaining human rights standards within the security forces
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_Dolorfino.ppt

Input of Loretta Rosales (CHR) about obstacles in implementing a reform in the security sector and support offers of the Commission on Human Rights
<http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011RosalesSpeech.pdf>

Input of Jose Manuel I. Diokno (FLAG) about chances and problems of the Philippine judicial system
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_DioknoPresentation.pdf

Input of Sister Cres Lucero (TFDP) about witness and victim's protection in the Philippines
http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Fachtagung2011_LuceroSpeechWP.pdf

10.5 Further Reading

This reading list is just a selection of a large range of resources on extrajudicial executions in the Philippines.

- Action Network Human Rights – Philippines, various documents: www.menschenrechte-philippinen.de
- Alston, Phillip (2007), Report on the Philippines, United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, View full report at: www.extrajudicialexecutions.org/philippines
- Alston (2009): Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum. Follow-Up to Country Recommendations-Philippines. http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Alston_follow-up.pdf
- Amnesty International (2009): Shattered Lives. Beyond the 2008–2009 Armed Conflict. London: Amnesty International. http://www.asienhaus.de/menschenrechte-philippinen/dokumente/Amnesty_Philippines-Shattered-Lives_2009.pdf
- Amnesty International, Webseite der Koordinationsgruppe für die Philippinen, <http://www.amnesty-philippinen.eu>
- Asian Federation Against Involuntary Disappearances (AFAD), website, view: www.afad-online.org/
- Asian Human Rights Commission, Philippines Country Site, view: philippines.ahrchk.net/
- Asian Human Rights Commission, Stop Extrajudicial Killings in the Philippines, website with links to various NGO reports, www.pinoyhr.net/
- Commission on Human Rights of the Philippines, website, view: www.chr.gov.ph/
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- Human Rights Watch (2009): “You can die anytime.” Death Squad Killings in Mindanao. New York: Human Rights Watch. http://www.asienhaus.de/menschenrechte-philippinen/dokumente/humanrightswatch_report_youcandieanytime.pdf
- Human Rights Watch (2011): “No Justice Just Adds to the Pain.” Killings, Disappearances, and Impunity in the Philippines. <http://www.hrw.org/sites/default/files/reports/philippines0711WebRevised.pdf>
- Human Rights Watch (2011): The Phil-

ippines. Country Summary. http://www.asienhaus.de/menschenrechte-philippinen/dokumente/philippines_4.pdf

- Human Rights Watch (2011): “They Own the People”. The Ampatuans, State-backed Militias, and Killings in the Southern Philippines. <http://www.asienhaus.de/menschenrechte-philippinen/dokumente/philippines1110.pdf>
- Independent Commission to Address Media and Activist Killings/Created under Administrative Order No. 157 (s. 2006)/ Report (2007) – besser bekannt als (José A. R.) MELO-Bericht. Quezon City, January 22.
- International Peace Observers Network (IPON), website: www.ipon-philippines.org/
- Karapatan, website: www.Karapatan.org/
- Knowing the Enemy – Are We Missing the Point? (2004). A Power Point Presentation, General Headquarters of the AFP (Armed Forces of the Philippines). Quezon City
- National Council of Churches of the Philippines (2007): “Let the Stones Cry Out” – An Ecumenical Report on Human Rights in the Philippines and a Call to Action. Quezon City. <http://www.oikoumene.org/fileadmin/files/wcc-main/documents/p3/05-03-07nccp-report.pdf>
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- Task Force Detainees of the Philippines (TFDP), website: www.tfdp.net
- United Nations Human Rights Council, Documents on the Universal Periodic Review of the Philippines, 1st Session 2008, view: www.ohchr.org/EN/HRBodies/UPR/Pages/search.aspx, select “Philippines”



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Action Network Human Rights – Philippines

The Action Network Human Rights – Philippines (“Aktionsbündnis Menschenrechte – Philippinen” – AMP) pursues the objective to contribute to the improvement of the human rights situation in the Philippines by educating and influencing policy and decision makers as well as representatives of the civil society in Germany and the EU.

Member Organisations of the AMP are Amnesty International Germany, Bread for the World, the Human Rights Team of the Social Service Agency (Diakonisches Werk), the Church Development Service (EED), Misereor, Missio Munich, philippinenbuero Inc. in Asia House and the United Evangelical Mission (UEM). The main focus of the network lies on the core human rights issues of extrajudicial killings and enforced disappearances.

Activities of the AMP

- Monitoring of the human rights situation in the Philippines based on information from our partners, media reports as well as direct research on the ground
- Public and political information about cases of severe human rights violations
- Dissemination of urgent actions and lobbying letters to politicians and concerned political bodies in Germany, the EU and the Philippines
- Briefing of political decision-makers as well as missions and delegations to the Philippines
- Organisation of public events in Germany on political killings and enforced disappearances in the Philippines

Services of the AMP

- To provide analysis of the political and human rights situation
- To provide contacts to the engaged civil society in the Philippines
- To publish a monthly newsletter and regular press releases on human rights issues in the Philippines
- To document cases of extrajudicial killings and enforced disappearances

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Aktionsbündnis Menschenrechte – Philippinen

Das Aktionsbündnis Menschenrechte – Philippinen verfolgt das Ziel, durch Lobby- und Öffentlichkeitsarbeit auf Entscheider/innen und Multiplikator/innen in Deutschland und der EU zu wirken, um zu einer Verbesserung der Menschenrechtssituation in den Philippinen beizutragen.

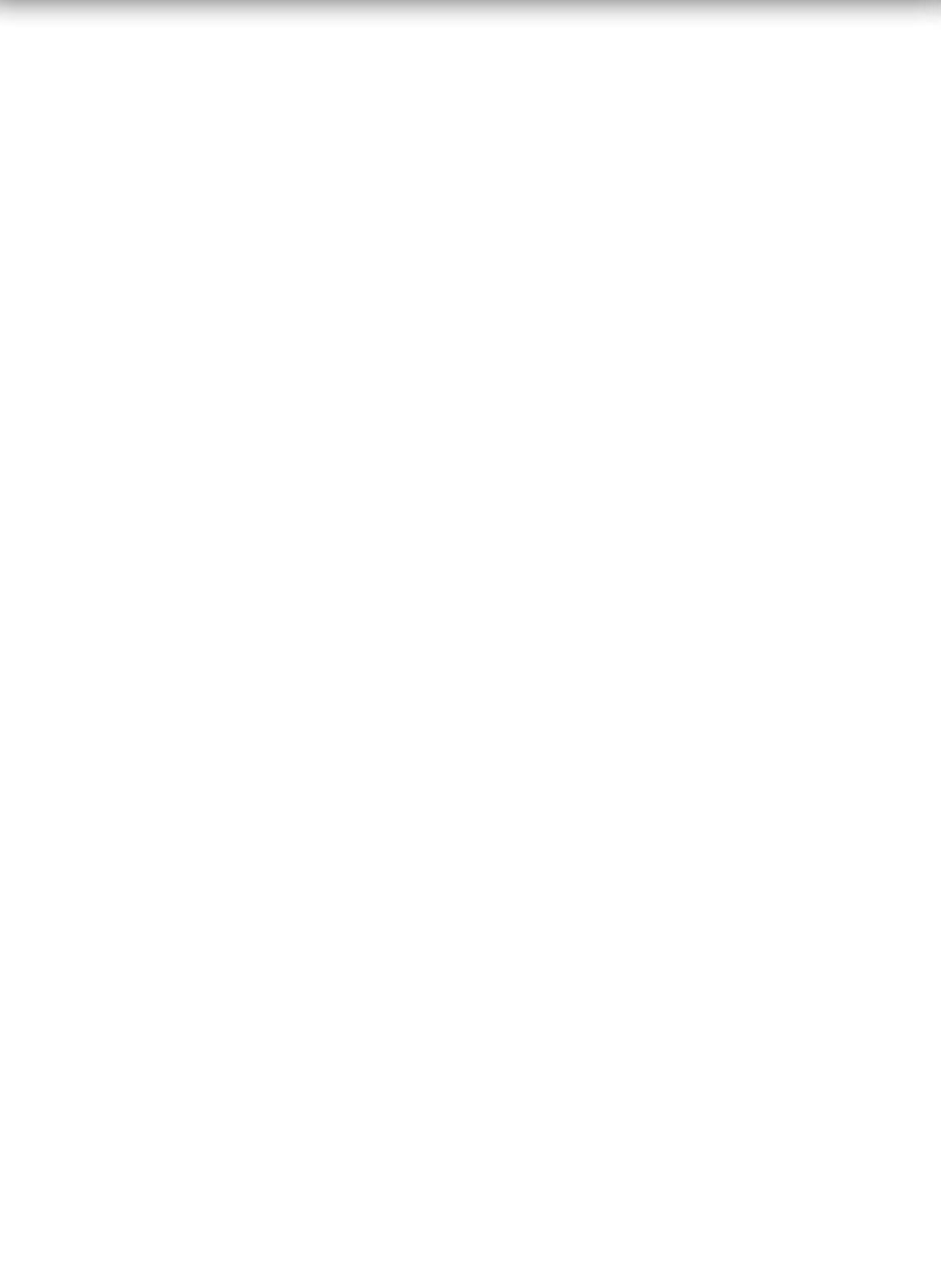
Trägerorganisationen des Bündnisses sind Amnesty International, Brot für die Welt, das Referat für Menschenrechte im Diakonischen Werk der EKD, der Evangelische Entwicklungsdienst (EED), Misereor, Missio-München, das philippinenbüro e. V. im Asienhaus und die Vereinte Evangelische Mission (VEM). Der Hauptfokus der Arbeit liegt auf den thematischen Schwerpunkten extralegale Hinrichtungen und erzwungenes Verschwindenlassen.

Was wir tun

- Beobachtung der Menschenrechtssituation in den Philippinen auf der Grundlage direkter Informationen unserer Partner, durch eigene Reisen und über Medienberichte
- Information von Öffentlichkeit und Politik über Fälle schwerer Menschenrechtsverletzungen
- Schreiben von Aktions- und Lobbybriefen
- Briefing von politischen Entscheidungsträger/innen, Parlamentarier/innen sowie Missionen und Delegationen in die Philippinen
- Organisation von Veranstaltungen zum Thema politische Morde und Verschwindenlassen

Was wir bieten

- Bereitstellung von Kontakten und politischen Analysen über die Philippinen und die dortige Menschenrechtssituation
- Monatliche Newsletter und regelmäßige Pressemitteilungen zu philippinischen Menschenrechtsthemen
- Dokumentation von Fällen außergerichtlicher Hinrichtungen und erzwungenem Verschwindenlassen





The opinions which are expressed in this reader exclusively reflect views and opinions of the respective speakers, guests and participants of the conference.

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This reader offers the English summary of each presentation given during the conference »Human Rights in the Philippines – Trends und Challenges under the Aquino Government«, which took place on June 29 and 30, 2011 in Berlin. The complete presentations and further information are available under: www.menschenrechte-philippinen.de. This conference documentation is part of the project »**Action Network Human Rights – Philippines**« (AMP). Member Organizations of the AMP are Amnesty International Germany, Bread for the World, the Human Rights Team of the Social Service Agency (Diakonisches Werk), the Church Development Service (EED), Misereor, Missio Munich, **philippinenbüro** Inc. in Asia House and the United Evangelical Mission (UEM).

