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In all conscience.

The situation of human rights under the presidency of Aquino



By Maïke Grabowski¹

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www.philippinenbuero.de; philippinenbuero@asienhaus.de

¹ The author is coordinator of the Aktionsbündnis Menschenrechte-Philippinen (Action Network Human Rights-Philippines), which is supported by Amnesty International Germany, Brot für die Welt (Bread for the World), the Referat Menschenrechte im Diakonischen Werk der EKD (Team Human Rights at the Social Service Agency of the Evangelical Church of Germany), the Evangelischer Entwicklungsdienst (Church Development Service), Misereor, Missio Munich, the philippinenbüro im Asienhaus (Philippine Office at the Asia House) and the Vereinte Evangelische Mission (United Evangelical Mission). For further information follow the link www.menschenrechte-philippinen.de.

In recent years, hundreds of defenders of human rights have been killed by armed security forces in the Philippines. The victims are journalists, members of political parties, church people, (left) civil society members, trade unionists, local politicians or land-reform and anti-mining activists. Up to now, only a few putative perpetrators and their backers among politicians, military, police or large landowners have been arrested and convicted.

Hopes pinned on Aquino

When the son of the 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.

During the presidential term of his predecessor, Gloria Macapagal-Arroyo (January 2001 to June 2010), the human rights organisation Karapatan registered 1,206 cases of political killings and 206 cases of enforced disappearances (Karapatan 2010, p. 16f.).

The conviction rate of so-called political killings is just about 1.05% (Parreño 2010).

More than 296² political prisoners are still detained in the overcrowded and badly equipped prisons. Unlawful arrests which are often followed by tortures like in the prominent case of "Morong 43"³ are daily

² According to figures of TFDP as of September 2010 (TFDP 2010).

³ The case of Morong 43, which was internationally observed, came to a good end (at least for the time being): On 28 September 2010, after months had passed by without any reaction from Philippine officials, but with huge international support for Morong 43, President Benigno Aquino III finally ordered the Ministry of

routine.⁴

Furthermore, it can be stated that the number of systematic attempts at intimidation has grown. The Philippine Human Rights Commission (CHR) calls it a "legal offensive" against left political activists. The victims are accused of made-up charges, so-called "fabricated cases", where it is impossible to post a bail (e.g. murder) and finally end up in custody for an indefinite period of time.

Under the presidency of Benigno Aquino III things ought to change. After all, his father himself fell victim to a political murder: When the opposition leader and Senator Benigno Aquino Junior was shot on 21 August 1983, "Noynoy" was 23 years old. That he became 15th President of the Philippines at the age of 50 is due to the myth of his family and the support of many NGOs. His election campaign was based on the promise of a fundamental change of policy leading to more justice and rule of law.

In his first government declaration (SONA)

"The extrajudicial killings would have to be solved. It does not mean just identifying the perpetrators but capturing them and also sending them to jail." - Benigno "Noynoy" Simeon Aquino III, 31 May 2010

he promised that he will demand justice for the victims of political killings and

Justice to review the case of the 43 health workers and verify whether the charge of illegal possession of grenades and other explosives against the prisoners has a legal basis. After the investigation was concluded, the President admitted that the imprisonment was subject to irregularities. But he left it to the court to judge the case. On 17 December 2010 38 of the 43 prisoners were eventually released.

⁴ From January to September 2010 TFDP documented 56 cases of illegal arrests of an overall 109 people. 45 of these 109 prisoners were tortured following their arrests (TFDP 2010).

“hold the murderers accountable” for their deeds.

Now, after a year of presidency has gone by, the hopes pinned on Aquino have been replaced by disillusion. Although Aquino has proclaimed his will to terminate extrajudicial killings, enforced disappearances and the impunity of perpetrators, he was not able to stop fundamental human rights violations. Since his inauguration on 30 June 2010, the human rights organisation Karapatan documented 48 new cases (as of 22 June 2011) of extrajudicial killings and five cases of enforced disappearance (Karapatan Monitor 2011). In most of the cases there are strong hints that the perpetrators belong to the Philippine armed forces and their representatives. The families and victims of many killings and cases of enforced disappearance are still waiting that those responsible are called to justice and held accountable for their deeds.

Promises and intended reforms

In his election campaign President Aquino has just given two pre-elective promises, targeting an improvement of the human rights situation.

First, he promised the abolition of the Executive Order No. 546: This order was issued in 2006 by former President Arroyo and deals with the virtual legalisation of private armies. The cruellest example of the scrupulous deployment of such private armies is the Maguindanao massacre of 23 November 2009.

In the meantime, the President has backed away from this pre-election promise. Due to Aquino the abolition of EO 546 would be anachronistic and counterproductive; after all, the military would be dependent on the about 50,000 civil security forces employed by civil defence corps and private security forces (Sisante 2010)⁵.

⁵ In a global comparison, the Philippine Armed Forces have one of the lowest force levels.

Second, he stood in for an extensive reform of the judicial system. In view of the fact that the budget allocated for the legal authorities was decreased by half⁶ in the national budget of 2011, it is questionable how he will realise this pre-election promise (Punay 2010). The appointment of the former head of the Philippine Commission of Human Rights (CHR), Leila de Lima, as Minister of Justice, was acknowledged as first positive step towards a legal reform. However, it requires more financial means and committed staff to bring about determined initiatives for a substantial change of the judicial system.

Considering the current political focus settled on at the presidential residence in Malacanañg it soon becomes obvious that there is a lack of a clear human rights policy. Not one topic on the President's current 16-point agenda deals with the issue of political killings or other serious human rights violations. Among the 23 draft bills, the passing of which Aquino attaches great importance to (priority bills), are just two drafts referring to human rights issues: The often criticised state witness protection programme is to be strengthened and a bill for the protection and support of disclosure witnesses (*Whistle Blower*) is to be adopted (Cheng 2011).

Positive signs of reform

But among the Philippine civil society there are not necessarily doubts about the President's seriousness and sincerity.

After all, he has resumed the peace talks with the communist National Democratic Front (NDF) and the Moro Islamic Liberation Front (MILF) that were put on the hold for a long time.

According to Philip Alston, the former UN Special Rapporteur for extrajudicial, summary and arbitrary executions, these

⁶ A decrease of earmarked PHP 27.1 billion to PHP 14.3 billion, this is 0.78% of the overall budget.

internal conflicts, respectively the concomitant counterinsurgency strategies by the Philippine armed forces, were one of the main reasons for political killings (Alston 2007).

In addition, there seems to be a reinforcement of the state witness protection programme. With referral to the security sector one talks about a paradigm shift with the aim of mainstreaming the

Military and counterinsurgency

The often criticised counterinsurgency programme "Oplan Bantay Laya II" which has been in effect since June 2007 and was supposed to terminate at the end of June 2010 after the conclusion of Arroyo's presidential term, was prolonged under strong protest until January 2011.

"Oplan Bantay Laya II" (operation liberation) specifically targeted civil-society actors, categorised as subversive and registered on so-called "hit lists". Among the actors concerned are agricultural leaders, trade unionists, pastors and human rights advocates and lawyers.

Since January 2011 the new counterinsurgency strategy is in effect, also known as "Internal Peace and Security Plan" (IPSP), *Oplan Bayanihan* (operation team work). According to the chief of the Armed Forces of the Philippines (AFP), General David, the recognition of human rights is an integral part of IPSP. Thus, terms like "neutralisation" and "destruction" were exchanged by "winning the peace". It remains to be seen if and to which extent this is just a form of "window dressing", as many critics assume.

There are first reports that the military's new "Peace and Development Teams", who are instructed to implement *Oplan Bayanihan*, have molested civilians and staff of non-government organisations.

References: <http://www.afp.mil.ph/bayanihan.pdf>
<http://www.dailymirror.ph/Jan-2011/Jan172011/loc4.html>
<http://bulatlat.com/main/2011/01/16/oplan-bayanihan-militarizing-civilian-functions/>
<http://www.philstar.com/Article.aspx?articleId=641746&publicationSubCategoryI>

"human rights based approach".

The Ministry of Justice has set up a task force to examine all "extrajudicial killings", and the Presidential Human Rights Committee (PHRC), which is to observe and advise on human rights issues, works on a National Monitoring Mechanism to document human rights violations, and fine-tunes a National Human Rights Action

Plan (NHRAP), which is to be presented in July 2011.

For that reason, international observers, like Detlev Mehlis, the former team leader of the EPJUST Programme headed by the EU (see box on p. 5), speak of an "open window" for changes. There is currently a good climate for change and international advice is critically accepted.

This open window is also acknowledged by the Philippine civil society. The feelings range from cautious optimism to sobering realism: It happened way too often that the announced reforms and new bills did not bring about the desired improvement of the human rights situation.

This is aggravated by the assessment that the President lacks the political experience and assertiveness required for pursuing an ambitious and all-embracing policy, oriented towards human rights issues.⁷

Legal framework conditions

Considering the international and national human rights legislation, the Philippines are exemplary in the Asian region.

The country has ratified all important international human rights mechanisms and signed eight of the relevant international human rights laws.⁸

But if the required national legal framework is missing that supports the

⁷ Most of all it is criticised that Aquino pursues a similar liberal economic policy like his predecessors, focussing on free trade and foreign investments; a policy that more than often fundamentally counteracts the granting of economic, social and cultural rights to its citizens.

⁸ Namely the Convention on the Elimination of Racial Discrimination (CERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant of Economic, Social and Cultural Rights (ICESCR), Convention Against all Forms of Discrimination Against Women (CEDAW), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CPMW) and the Convention on the Rights of Persons with Disabilities (CRPD).

implementation of the international legislation, the legal acknowledgment of internationally accepted human rights standards is just lip service.

International NGOs as well as the relevant UN Committees certify that the Philippines do not comply with or violate international human rights requirements across the board.⁹ The fulfilment of a central demand

EPJUST – Support from the EU

An important step towards the improvement of the human rights situation in the country was the support that came from the EU within the scope of the *European Justice Support Programme* (EPJUST). The programme aimed to strengthen the performance of the Philippine law enforcement authorities, in particular with respect to combating the so-called extrajudicial killings. To this effect, EPJUST has executed training measures for police, prosecutors and judicial staff.

EPJUST ended on 7 April 2011 after 15 months of active work. The EU Delegation has announced to continue certain programme components as of 2012 within the scope of its *Access to Justice* budget. Following the visit of the German Human Rights Commissioner, Markus Löning, in January 2011, the German Federal government, too, has spoken in favour of providing financial support for the legal reform in the Philippines.

of international and national human rights organisations to improve the international legal framework conditions by signing the Rome Statute of the International Criminal Court has just recently been put on the track by President Aquino.

On the occasion of the visit of the President of the International Criminal

Court, Hang-Hyun Son, on 7 and 8 March 2011, Aquino signed the Statute and passed it on to the senate for ratification.

Through this ratification, which has not been concluded until August 2011, the Philippines would open to an international criminal prosecution of Philippine citizens in the case of genocide, war crimes and other crimes against humanity (Fernandez 2011, Odrionia 2011).

This could be an important step to overcome the impunity of perpetrators of these crimes currently prevailing in the country.

We can only hope that the Rome Statute will not suffer the same fate as the Optional Protocol to the Convention Against Torture (OPCAT), which was ratified in 2008 by the former President Gloria Macapagal-Arroyo, but later on frozen within the Senate.

Under the presidency of Aquino, the signing of OPCAT made a little progress. On 16 February 2011 the Senate Committee in charge held a public hearing on the ratification, which was – unlike former hearings – not counteracted by governmental authorities opposing this ratification (APT 2011).

At the national level, the ratification of two bills was appreciated at the end of 2009: On the occasion of the International Human Rights Day celebrated on 10 December 2009, the *Anti-Torture Bill* and a day later the *Crimes Against International Humanitarian Law, Genocide and Other Crimes against Humanity Act* (Republic Act 9851) were passed. The latter defines and prosecutes war crimes according to international law.

But paper doesn't blush and even the best legal framework isn't of much use, if there are hitches in implementation.

To give an example: A whole year almost passed before the *Implementing Rules and Regulations* (IRR) for an efficient implementation of the Anti-Torture Bill were stipulated.

These IRR are now in effect. But it seems that the awareness of this new reality has

⁹ See for example the report of the World Organisation Against Torture (OMTC) on the implementation of recommendations by the Committee Against Torture and the Committee on Economic, Social and Cultural Rights of the United Nations (online link: <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/OMCT2Philippines41.pdf>).

not yet crossed the minds of security forces and prosecutors: The Asian Human Rights Commission (AHRC) reported a case of torture of the at that time 17-year-old John Paul Nerio, who was arrested in Kidapwan City on 10 December 2010 by five policemen of the *Special Weapons and Tactics* (SWAT) unit and tortured without any reason.

Subsequently, the prosecutor in charge filed charges for violation of the *Special Protection of Children against Abuse, Exploitation and Discrimination Act*, but not for violating the *Anti-Torture Act*. The AHRC heard about this case and urged the

Commission on Human Rights

The Philippine Commission on Human Rights (CHR) is an independent authority, which is anchored in the Philippine constitution since 1987. Its task is to promote and protect human rights. But it has a strong weakness, as it doesn't have an autonomous budget independent of the Philippine government. Thus it lacks staff and financial resources for a professional work. According to Eta Rosales, CHR's current head, the commission's main task is to thoroughly observe the human rights situation in the Philippines (comprehensive monitoring). The CHR is involved in the training of PNP and AFP staff in the field of human rights standards and in the investigation of human rights violations.

prosecutor in charge to apply the national law against torture (AHRC 2011).

This example shows that the Philippines are still miles away from a conscientious implementation of the existing laws. In the first respect, this is due to the weaknesses prevailing in the executive and judiciary.

The police to protect and serve?

Neither the police nor the prosecutors in the Philippines have the reputation of investigating impartially and advocating justice.

On the contrary, it is an open secret that police, security forces and judicial staff are

often involved in kidnappings, drug trafficking, smuggling cars and other crimes.

Therefore, witnesses of political killings or victims of other human rights violations often tend to seek shelter at church or civil-society organisations instead of turning to the police.

The danger to lose one's life when trusting the police is often estimated as being very high.

The figures published by the Philippine Human Rights Committee (CHR) give proof that this mistrust is reasonable: Between 2005 and July 2009 the CHR received 2,408 complaints against the police due to human rights violations. But the conviction rate is a mere 16% (Estella 2010). Nevertheless, it appears that among high-ranking members of the police there seems to be the will to be self-critical: The director of the Philippine National Police, General Raul Bacalzo, publicly confessed that 90 percent of all arrests are subject to human rights violations and that most of the police forces misuse their authority and do not occupy themselves with human rights issues (Caluza 2010).

This apparent deficiency is supposed to be remedied by altered curricula and the inclusion of a human rights module in every subject of police training. In addition, the human rights offices of every police station are to be strengthened, trained and equipped with human rights manuals.

Furthermore, regulations for the admission

The Human Rights Offices of military and police

The *Human Rights Offices* of the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) are in existence since 2007. They have the task and responsibility to advocate the mainstreaming of human rights within their organisations and to document and pass on complaints for human rights violations against their staff to the highest authorities.

procedure of police recruits were adopted within the scope of the police-internal *Integrated Transformation Programme*. Now, a neuropsychiatric test has to be passed as well, in addition to the physical fitness test (which formerly used to be the sole admission criterion).

With the help of a massive image campaign and trust-building measures the authorities plan to restore the lost trust in the police.

Protection of Witnesses: Poor

An important factor contributing to the poor evidence is the lack of witnesses, who have to fear for their lives in most cases, if they testify against perpetrators belonging to police or military forces. In many cases, the latter are involved in the investigations and thus, the witnesses are denied the anonymity which is necessary for their safety. Not only fear but actual killings of witnesses contribute to this status of poor evidence. Up to now, there isn't any secure state witness protection programme. The witness protection programmes of churches and non-governmental organisations, on the other hand, are lacking resources to ensure the safety of witnesses over a longer period of time.

Critics of the state *Witness Protection, Security and Benefit Programme* (WPSB) demand all-embracing reforms of the programme, like for example the increase of the budget, the availability of an independent decision-taking committee, deciding on the admission of witnesses, a 24-hour care of witnesses, the relocation of trials to other regions, thus ensuring a higher level of witness protection, and a separation of witnesses and perpetrators during trials.

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<http://www.unhcr.org/refworld/publisher,IRBC,,PHL,4804c0dcc,0.html>

<http://www.thepoc.net/thepoc-features/politi-ko/politiko-features/8101-state-of-witness-protection-program.html>

But the police forces do not only have a lack in knowledge about human rights standards and their conscientious implementation. The prevailing climate of impunity is particularly dependent on the

poor investigation techniques. There is only rudimentary knowledge of how to correctly secure a crime scene, secure the evidence and traces and find and interrogate witnesses.

In a country, where eight of ten investigating officers have not received any formal training in investigation techniques (Suerte Felipe 2011), many police stations do not even have the simplest equipment – such as crime-scene tape or photo cameras – and the prosecutors do not cooperate with the police during the investigations¹⁰, it is not astonishing that in many cases charges are not filed. Cases that are brought to court take years of processing, as there is only insufficient evidence.

The possible reasons are rather simple: the investigations were insufficient, evidence and traces were destroyed by the police at the crime scene, possible witnesses were not interrogated. Prosecutors put insufficient police reports to the side, instead of asking for additional information. In short: There is a lack of standardised knowledge and skills.

However, the Head of PNP's Human Rights Office, Superintendent Clarence V. Guinto, puts on an air of fighting spirit. There is still much to be done, but the police are aware of the challenge of taking on the required reforms.

If and when these reforms show on the lowest hierarchy levels of the badly paid policemen and –women¹¹, remains to be

¹⁰ According to Superintendent Guinto and the head of the Task Force Usig, Police Director Arturo Cacdac, a new directive of the Ministry of Justice instructs the prosecutors to provide at least one prosecutor to support each police investigation.

¹¹ According to a recent study of the *University of the Philippines* and the CORPS Foundation, ordinary police officers earn PHP 12,500 per month (EUR 200). Estimated 60% of the police forces live below the poverty line. They live in squatter settlements and cannot afford to send their children to school. Half of the inquired policemen and –women stated not to have any savings. This meagre livelihood makes the police

seen. In Cotabato City the author asked a policeman about police-internal human rights manuals and the existence of a human rights office at the premises of his police station – he had never heard of any of those.

Lady Justice's blindfold

To get justice in the Philippines is very much dependent on having the necessary resources – money, connections and power – to be able to enforce one's rights. With respect to the executive forces this means that there won't even be an indictment, if prosecutors are bribed or intimidated by powerful and wealthy people.¹² By the same token, trumped-up charges are filed against unpopular oppositionists, who are muzzled or imprisoned as a result of theft or murder charges, or have to hide over many years.¹³ Moreover, the prosecutors often lack the knowledge of new legal requirements and how to apply them. Independence and impartiality of judges is rather the exception than the rule in the Philippine legal system. When a state lacks a functioning legal system and tolerates loyalties and networks between those, holding political power, justice degenerates into a personalised matter, where legal institutions are only accessible to people with "juice" or good

forces prone to corruption, bribery and criminal actions (Adriano 2011).

¹² In the past years even some prosecutors fell victim to assaults.

¹³ As it is the case with the human rights activist "Cocoy" Tulawie, who is on the run since October 2009. He is supposed to be the string puller of the bomb attack on the Governor of Sulu, Abdusakur Tan, on 13 May 2009. Tulawie denies the deed and in the meantime the two main eye witnesses have put on record that their confessions incriminating Tulawie were made under pressure. Tulawie demands that his lawsuit is moved to Davao or Quezon City, as he does not see any chance for justice and impartiality of the judge or the prosecutor, if his case is ruled in Sulu (for more details on the case of Cocoy Tulawie follow the link: www.mpc.org.ph).

Task Force Usig

Task Force Usig is a special unit within the PNP, set up in May 2006 in order to investigate the murders of activists and journalists. Besides lacking transparency, there is neither a website, nor is it possible to get any information about the criteria according to which TFU selects its cases. Currently, TFU investigates 162 cases, Karapatan, on the other hand, speaks of 1,206 cases. Most of all, it is criticised that TFU embellishes the figures pertaining to cases of political killings and seems to be more interested in covering up government responsibility for cases like these.

Reference: <http://www.chrispforr.net/row2/chrisphil6/rightslinks/rightslinks.htm>.

connections. Incorruptible judges, on the other hand, must fear for their lives. Since 1999 more than 20 judges were killed in the Philippines.¹⁴

Therefore, victims need a high frustration tolerance and a lot of guts to go all the way through the judicial authorities. Considering political killings, a criminal procedure takes five years, two months and eleven days on average (Parreño 2010). Without financial resources this battle for justice is impossible to win. Moreover, the victims and their families are regularly subject to threats and harassment during a trial.

¹⁴ See: <http://attylaserna.blogspot.com/2009/01/16-judges-killed.html>.

Average Number of Days for Each Stage of the Trial



Source: Parreño Extra Judicial Killing Audit dated August 15, 2010

General Jovito Palparan Jr.

by Miriam Styrnol

A convincing example for the impunity of human rights violations is the prominent case of Jovito Palparan. The former general, who enjoyed great popularity among the Arroyo Government due to his "resolute actions" taken against alleged opponents of the state, is not at all acknowledged as celebrated war veteran by human rights activists. Actually, Palparan's missions always left a trail of unsolved cases of disappeared and killed civilians. Thus, his nickname "butcher" does not come as a surprise.

Although the Melo Commission convened by Arroyo in 2006 recommended an investigation of Palparan's case for an unequivocal clarification of the occurrences, the former president Arroyo praised the work of the ageing general as extraordinary service to the public. This was a slap in face of both victims and human rights activists, because according to Karapatan's reports, Palparan is not only indirectly related to many enforced disappearances, but has also been directly identified as active perpetrator of several cruel human rights violations. Until today, it was not possible to call him to account for any of his deeds.

But now the case of two kidnapped students, Sheryln Cadapan and Karen Empeño, could lead to a decisive change of direction to the benefit of the many victims and families that had to suffer from Palparan's systematic "neutralisation" for so many years. The two girls were abducted by soldiers in June 2006 and since then they have disappeared without a trace. Only the courageous statement of Raymond Manalo, who in 2006, too, fell victim to abduction and later on reported about brutal methods of torture applied to him and fellow prisoners – among them were the two missing students, gave significant hints to the later whereabouts of the two girls. Manalo stated that Palparan was present and actively involved in various torture procedures.

Now, the mothers of Karen Empeño and Sherlyn Cadapan have filed a charge against Palparan, among others for rape, grievous bodily harm, unlawful arrest and abuse of detained persons.

References: Ocampo; Satur C. (2011): *Palparan's comeuppance*. The Philippine Star, 07.05.2011, online reference: <http://www.philstar.com/Article.aspx?articleId=683344&publicationSubCategoryId=64>

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Benchmark for success

At first sight, the targeted reform plans and measures tackled look promising and ambitious. All institutional and legislative progress must be welcome.

But the real benchmark for the improvement of the human rights situation and the sincerity of the current government will be the indictment and conviction of the perpetrators and their string pullers staying in the back. But up to now, this has not been the case.

The protection function of the Philippine state must rank higher than all other interests – including economic and political ones – in order to safeguard and guarantee the human rights of its citizens. Furthermore, it must seriously work on coming to terms with the human rights violations of the past to pave the ground for a process of reconciliation and giving justice to the victims.

For that reason, the *Aktionsbündnis Menschenrechte-Philippinen* (Action Network Human Rights-Philippines)¹⁵, a coalition of organisations based in Germany, stands up for human rights, legal reforms and reforms in the security sector in the Philippines. This includes transparent and independent procedures and an effective monitoring of military and police through parliamentary bodies.

Without a rehabilitation of the victims and/or their families and a strengthening of civil-society organisations, the Philippines will not turn into a state under the rule of law during Aquino's presidency either.

Remarks: Undocumented quotes used in this

¹⁵ The Action Network consists of: Amnesty International Germany, Brot für die Welt (Bread for the World), the Referat Menschenrechte im Diakonischen Werk der EKD (Team Human Rights at the Social Service Agency of the Evangelical Church of Germany), the Evangelischer Entwicklungsdienst (Church Development Service), Misereor, Missio Munich, the philippinenbüro e.V. im Asienhaus (Philippine Office at the Asia House) and the Vereinte Evangelische Mission (United Evangelical Mission).

article go back to interviews of a research mission carried out in February 2011.

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