



Red-Baiting in the Philippines

- Civil Society under general suspicion -

December 2012

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When no distinction is drawn between terrorists and human rights activists, state actors put the whole civil society under general suspicion. Red-Baiting is the practice to publicly and detractively classify government-critical individuals and organizations as state enemies, communist terrorists or members of communist front organizations has a long tradition in the Philippine politics. The security forces still fail to differentiate between organizations that bear arms to fight the state and legitimate unarmed organizations that oppose the government within the framework of their guaranteed rights and freedoms.

This report provides a comprehensive overview on Red-Baiting in the Philippines and its impact for Human Rights Defenders and critical voices in the country. After reams of interviews and talks with victims and state representatives on all levels, two Red-Baiting conferences in Manila and a regional Workshop in Davao, IPON emphasizes the significance of Red-Baiting for the Philippine Human Rights discourse. As an external party working in the Philippine conflict setting we present our perspective based on the outcome of interviews, talks and implemented activities in 2011 and 2012.

International Peace Observers Network (IPON)

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

The Instrument of human rights observation is based on the idea that, if a country has ratified international human rights treaties, it is therefore responsible to enhance, respect, and implement human rights. If state actors do not fulfil their responsibilities, independent international observers document these violations of human rights and bring them to public attention. Furthermore IPON is in contact with relevant stakeholders and remind them of their responsibility to protect human rights and to provide information and data for national and international advocacy and lobbying work. IPON follows this legalistic approach to human rights.

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

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

Outline

Red Baiting has been one of the most serious human rights issues in the Philippines in the past decade. However an exact number of victims is difficult to establish, firstly because statistics broadly vary among different organisations and secondly because the phenomenon is elusive and all-encompassing, making it difficult to define and to categorise. Although several reports were drafted about extrajudicial killings and enforced disappearances by Philippine state institutions such as Task Force USIG and the Melo Commission, by Philippine civil society organisations like Karapatan, international organisations like the UN Human Rights Council and international NGOs, such as Human Rights Now and Amnesty International, there is only a small amount of research about the complex interrelation of extrajudicial killings and enforced disappearances and the strategies that lead to them. Thus, it is not the intention of this report to present its own statistical data about the phenomenon or to provide an exhaustive account about all known cases, but rather to explain it in its theoretical, social, historical, legal and political context.

In the recent years IPON has perceived a structural problem that especially HRD in the Philippines have to cope with. Due to their peaceful engagement for human rights, HRD are often lumped together with those, who decided to use violence as a means of effecting political change. In many cases they therefore become victims of both physical and legal harassments. Over the past decade, extrajudicial killings (EJK) and enforced disappearances (ED) have been reported by different national and international institutions and organisations. However, IPON has assessed that many reports lack a comprehensive analysis of the overall strategy that has contributed to these human rights violations. This strategy is comprised under the term “Red-Baiting”. It is a phenomenon that is commonly known throughout the country, but there haven’t been serious efforts to tackle the problem, yet.

What is Red Baiting?

Red-Baiting describes the practice of (mostly) state actors to publicly and detractively classify government-critical individuals and organisations as state enemies, communist terrorists or members of communist front organisations with the purpose of overthrowing the democratically legitimized state authority. Furthermore, state actors create an atmosphere of insecurity to indoctrinate the belief in an internal or external threat to national security in order to receive societal legitimacy for the implementation of a legal framework that establishes a “state of exception”. Finally, state actors take concealed actions against these government-critical individuals and organisations.

The term Red-Baiting stems from the McCarthy era in the USA during the 1950s. The political campaign against communist elements in the American society, identified with the name of Senator Joe McCarthy, reaches into today’s politics and has experienced a renaissance during the past decades in the Philippines.

The term itself stems from the McCarthy era in the USA during the 1950s. The paradigm of the political campaign against communist elements in the American society, identified with name of Senator Joe McCarthy, reaches into today's politics and has experienced a renaissance during the past decades in the Philippines.

IPON defines Red-Baiting as the practice to publicly and detractively classify government-critical individuals and organizations as communist terrorists, state enemies or subversives. By creating an atmosphere of insecurity the strategy receives societal legitimacy for the violation of civil and political rights and the implementation of legal frameworks that legalise instruments to do so. The belief that rights may have to be sacrificed for security and that civil and human rights can't be respected in the context of an 'emergency' enjoys wide support among those members of society, who perceive insecurity as a major internal threat. The Philippine Congress has passed several bills that constitute legal instruments to facilitate the practice of Red-Baiting. Among those, the Human Security Act of 2007 and the Anti-Terrorism Act of 2005 are the most controversial in respect of human rights.

Red-Baiting in practice often begins with relatively harmless measures. A victim may start receiving threatening text messages on his or her cell phone, e-mail account or by mail. An unidentifiable motorbike driver passes by the house of the victim at the same day and time every week. Victims are recognisably kept under surveillance at home and at their workplace, either through technological means like wiretapping of the phone lines, or by informants, who permanently tail after the victims. The worst consequence of Red-Baiting is that victims can fall prey to torture, ED or EJK. Although Red-Baiting does not necessarily end in these human rights violations, many cases of EJK and ED involve Red-Baiting. Concerted actions against critical individuals and groups are commonly justified by labelling them as communist terrorists or subversives. It therefore usually accompanies the impunity of the perpetrators.

The State of Exception and "La Mano Dura"

One may ask how Red-Baiting can be justified in a liberal democratic system. The answer is as simple as the question: It enjoys support and acceptance within society.

The state of exception is "a provision whereby the state – in times identified as 'crisis moments' that threaten the very continuity of the state itself – is empowered to act outside the constraints of law, permitting the state to adopt extreme measures (including violence against its own citizens) in its own defense" (Goldstein 2007). Hence, state violence against internal "enemies" not only becomes a possible option, but a necessary means to guarantee and safeguard the state's survival. It is the state's right to respond to the internal emergence of extraordinary situations and crises.

Furthermore, the belief "that rights may have to be sacrificed for security and that civil and human rights cannot be respected in the context of 'emergency' " (Goldstein 2007: 54) enjoys wide support among members of society, who perceive insecurity as a major internal threat. For this reason, state actors belonging to the executive enjoy a great scope of measures to react to an emergency and to safeguard national security. This phenomenon is called "la mano dura" (ibid.: 58). When people feel the absence of "a reliable authority, operating according to the rule of law, to which [they] can turn to report crimes, resolve conflicts, or seek redress of grievances" (ibid.: 57), it is this "pervasive sense of insecurity" (ibid.) that explains why they

advocate an extension of “discretionary powers for police personnel to control crime and other security threats” (ibid.: 51). Thus, the state deeply indoctrinates a state of fear in the society, be it the fear of communism or of radical Islamist fundamentalism. This threat to national security or rather to the existence of the state, regardless whether it is real or partly constructed by official governmental discourse, moves the people to call for “la mano dura” and legitimises the confinement of civil liberties and human rights in order to guarantee the further existence of the state during a state of national emergency. The creation of such an atmosphere of insecurity is a necessary pre-condition to be able to implement a legal framework establishing a state of exception.

Legal Aspects

The Philippine Congress has passed several bills that constitute legal instruments to facilitate the practice of Red-Baiting. The Human Security Act of 2007 (HSA)³ is the most comprehensive law in response to international terrorism in the Philippines. It gives a legal definition of terrorism and defines its constitutive elements of crime, penalising them, and provides for measures to prevent acts of terrorism. These measures include the surveillance of suspects and the interception and recording of their communications, the outlawing of organisations deemed terrorist by declaration of a Regional Trial Court, the detention of suspects without judicial warrant of arrest and (disregarding) the rights of the detained, travel restrictions and house arrest for terror suspects on bail, and the examination of bank deposits, accounts and records as well as the seizure and sequestration thereof.

“Political vilification impacts on two different forms on two different victims. One victim is the person, organization, community being vilified which suffers various forms of intimidation, slander, prejudice, exclusion from human rights protection. The other victim is the entire civilian populace whose social consciousness is being conditioned to accept sets of values and meanings that are contrary to long established human rights laws and international humanitarian laws.”

Rhoda Dalang, Dinteg

With regard to the problem of Red-Baiting in the Philippines, the HSA has been criticised in several respects, especially for being imprecise, illegal, ineffective and mostly incoherent and disorganised. Because of its imprecise definition of terrorism, the law may be null and void for vagueness following a legal doctrine in past decisions of the Supreme Court of the Philippines (Balderama 2007-2008: 14 and 16). Concerning the illegality of the HSA, in practice the suspicion of being a member of the Communist Party of the Philippines (CPP) is sufficient to become a terror suspect and to be held under surveillance (ibid. 15). Thus, political beliefs and not acts are facilitated to become punishable under the HSA. The essential basic right of privacy in communications is withheld from persons under observation by state authorities (ibid. 37 and Diokno 2007a). Adding insult to injury, the law

violates due process of citizens under surveillance, since they do not have any legal remedy against their observation by state authorities as arranged by the law (ibid.). Terror suspects can be placed under warrantless arrest for three days without probable cause to be determined by a judge (Balderama 2007-2008: 28-29). Moreover, the law authorises the extension of

warrantless detention of terror suspects beyond the regular three days to an indefinite amount of time without trial (ibid.: 28-29; Diokno 2007a; Pereire 2007: 3). Therefore, the HSA violates basic principles of the rule of law, such as the principle of equal protection under the law and the right to fair trial. Under the HSA terror suspects on bail who are placed under house arrest suffer harsh conditions. Suspects are not allowed to communicate, to follow the media, to be visited by close relatives and friends or to be held in group detention (Balderama 2007-2008: 39; Diokno 2007a). Solitary confinement is prohibited in the Philippines by Art. III Sec. 12 (2) Constitution of the Philippines.

In summary, the legal framework established under the Arroyo administration facilitates the legal implementation of a state of exception, which in turn contributes to the development of a state of fear among the population. It enables state authorities under the protection of the law to pursue citizens who adhere to communism as terrorists and enemies of the state. Although membership of the CPP is legal in the Philippines, the above-mentioned laws provide a basis for the political prosecution of communists.

The Modus Operandi of Red Baiting

Red-Baiting in practice may begin with relatively harmless measures: A victim may start receiving threatening text messages on his or her cell phone, e-mail account or by mail (Diokno 2007b). An unidentifiable motorbike driver passes by the house of the victim at the same day and time every week or even every day. Victims are recognisably kept under surveillance at home and at their workplace, either through technological means like wiretapping of the phone lines, or by police informants, who permanently tail after the victims (ibid.). During public events on the Barangay level⁴ the military informs citizens about potential threats of terrorism and threats to the existence of the state, emanating from particular Barangay residents, who are portrayed as communists. In the PowerPoint presentation “Knowing the Enemy” presented by the armed forces, the names of wanted terrorists and leftist activists suspected of terrorism, are announced publicly (ibid.). Further, leaflets with similar contents are distributed in Barangays (ibid.). The names of those citizens considered as enemies of the state also appear on internal military blacklists called “Military Order of Battle” (UN 2008: 9-10). Blacklisted victims are denied due process against the military. There is no opportunity for them to take their names off the lists, since these are kept top secret in order to protect the existence of the state. The worst consequence of Red-Baiting is that victims can fall prey to enforced disappearance or extrajudicial killing. In case of enforced disappearances, victims are dragged into cars by unrecognisable perpetrators. Sometimes victims reappear or escape years later after having been held in captivity, tortured or used as unpaid workforce, which is a type of modern slavery (Amnesty International 2011). However, in most cases victims of enforced disappearances never return. In the Philippines extrajudicial killings are typically executed by teams riding motorbikes, wearing civilian clothing and bonnets as a disguise (Diokno 2007b). While one person drives the motorbike, the other

„It is clear that Red-Baiting, as practiced by the military here in the Philippines, forms an integral part of its counter insurgency operations.”

Loretta Ann P. Rosales,
Chairperson, Commission
on Human Rights

pulls a firearm and shoots the victim. The killings are executed with such a high degree of professionalism and precision that it does not seem to be far-fetched to suspect people with professional training. Typically, in each extrajudicial killing incident only few shots are being fired, killing the victim immediately. In the Philippines only personnel of the military and the police are professionally trained in the use of firearms. Although suspects of enforced disappearances and extrajudicial killings are rarely arrested, there is ample evidence that point to the involvement of state officials who give the orders for such acts to others who commit the crimes. There are virtually no cases of enforced disappearances and extrajudicial killings known in which suspects were legally persecuted to the extent of being convicted for the crimes committed. Lack of thorough police investigations and impunity of perpetrators are typical characteristics of Red-Baiting in the Philippines.

Regional Perspectives

In August 2012 IPON conducted a regional Red-Baiting Workshop together with the Alternate Forum for Research in Mindanao (AFRIM) in Davao City. The workshop was designed to gather views and recommendations from various civil society groups who are directly affected by red-baiting, and the Armed Forces of the Philippines (AFP). The aim of the activity was to share perspectives, to find common grounds and to work out practical steps to tackle the issue.

The following issues and concerns were raised by the Human Rights Defenders during the workshop. Furthermore the participants came up with several steps to tackle the issue on the local and regional level and approached the Armed Forces of the Philippines with their results.

Issues and Concerns	Actions to be taken
<ul style="list-style-type: none"> • Root causes of conflict are usually due to political and power struggle among community leaders and elders; hence, community members are dragged into the issue, thus involving them in the process and tagging almost all of them as “red” supporters without bases. • Military came in the picture and responded to local conflicts based on information received from informers (mostly community members with political agenda). • NGOs have also experienced red tagging as they do community work since the community members/beneficiaries are also perceived as leftist or red supporters. • Due to lack of proper coordination, info 	<ul style="list-style-type: none"> • Conduct proper/formal dialogue with concerned groups to clarify and resolve issues (e.g., Timuay to conduct dialogue among tribal members). • Tribal groups to be fully aware and to assert their rights, and ensure they have documents to support their claims on tribal rights. • Community leaders to explore the possibility to conduct dialogue with the military at the higher level including politicians (i.e., Local Government Units (LGUs)) regarding the status of events/happenings in their community. • Do proper coordination as SOP (like courtesy calls) and conduct info dissemination/orientation about NGO work especially for military groups operating in the concerned

Issues and Concerns	Actions to be taken
<p>dissemination and their tendency not to determine and acknowledge first the root causes of conflict, the military tend not to listen, but stick to what they believed based on initial information feed to them by their informers; hence, military has the tendency to stereotype and create their own profiles about the community members and NGOs.</p> <ul style="list-style-type: none"> Red tagging is not solely instigated by state actors but also by “investors” –like those into logging and mining businesses – to ensure security of their businesses. <p><u>Effects:</u></p> <ul style="list-style-type: none"> Continued fear felt by “victims” and community members The feeling of insecurity especially in the presence of military Long-term emotional torture Perpetuation of conflict / conflict remains unresolved 	<p>areas, ensuring that the concerned parties have full understanding about their work.</p> <ul style="list-style-type: none"> Lobby and encourage business companies to “know and learn” about their beneficiaries and the practices in the area (i.e., cultural practices and sensitivities, as well as political dynamics; perhaps intensify their community profiling and organizing activities - securing not only business licenses but also social licenses). It is a dilemma for NGOs whether to coordinate with military or with the “red” groups as they may be also tagged as supporters of either party. Hence, NGOs may follow protocol (i.e., coordinate first with politicians and military at the top level; and secure or bring appropriate documents especially during field work to ensure security of the organization and the staff). Inform top level military about the economic activities of some military personnel (supporting their personal agenda and private investments) who use their own clout to secure their businesses. Existing community problems do not necessarily need military solution but civil responsibilities of the local officials. Seek LGU’s response to get their responses on local conflict as the LGU has the primary mandate to know and find solution to the conflict.

Conclusion and Countermeasures

The social phenomenon of Red-Baiting in the Philippines has been described from theoretical, social, political and legal perspectives providing insight into its functional logic determined by the interconnectedness and interaction of these different fields. In light of the terrorist attacks of 9/11 and the global war on terrorism, a state of exception was established under the Arroyo administration, following the US in fighting Islamist fundamentalist and all other kinds of terrorism. The Philippine government and the media portrayed terrorism within the Philippines as a threat to the existence of the state itself, establishing a state of fear in the society. Out of fear for their lives, large parts of the civilian population demanded stronger and more effective anti-terrorism measures from the government. In disregard of several basic civil rights and freedoms, the government adopted a legal framework, including most prominently the HSA to implement rigorous anti-terrorism and security measures. Hence, the establishment of the state of fear and the state of exception are reciprocal and mutually reinforcing processes by societal and state actors which are steered by the government. Thereby, it created a vast array of legal measures to intensify its control over the entire population, especially targeting the so-called enemies of the state (Quimpo 2009: 15). With a legalised state of exception and large parts of the population terrified, supporting a strong government, “la mano dura” could have its unimpeded way against those citizens – may they be portrayed as communists, Islamic fundamentalists or any other kind of radical believers – considered as potentially harmful to the governing administration. In this context, Red-Baiting is a strategy by state authorities to classify political activists and civil society organisations as communist while establishing a state of exception, legitimising it with a legal framework, and conducting covert operations ranging from simple harassment to enforced disappearances and extrajudicial killings of activists.

Although there has been some improvement, the legal instruments do not suffice to prevent incidents of Red-Baiting, as there are still new cases brought to the public and the root causes

“It’s not simply red tagging; the important aspect of it is it violates the freedom of expression, right to peaceful assembly and right to self determination among others. Such violation of these rights gives an impression that to resist or to dissent against tyranny, fight for genuine reform and to clamor for justice are wrong,”

Beverly Longid, Katribu Party-list

are not tackled. In order to deal with the issue of Red-Baiting, the

Philippine state is required to take preventative measures to enforce police investigation and legal prosecution to end impunity and to compensate the victims and their families for the damages they incurred through Red-Baiting. As for the prevention of Red-Baiting, an overarching societal discourse about the issue should be

encouraged to raise awareness about the issue among citizens as well as among state authorities. Especially state employees of the executive branch like the police and military officers should be confronted with the topic, be made aware of it and learn ways of peacefully and lawfully addressing it. A positive human rights education for soldiers and police officers as protectors of the basic rights of the citizens could contribute to this objective. Concerning the prosecution of people suspected of having committed Red-Baiting, the government needs not only to enhance the budget and forensic technology of investigators, but foremost needs to intensify its political will to prosecute suspects. Thus the government will need the unimpaired

cooperation of the military and the police to access and trace old evidence and case file materials. Also, an effort should be made to compensate the victims of Red-Baiting and their close relatives financially for the physical and psychological damages that were inflicted upon them by state authorities. Therefore, all relevant state institutions involved, namely the Commission on Human Rights, the Department of Justice, the Department of Interior and Local Government, the Department of National Defense, the Philippine National Police and the Armed Forces of the Philippines should cooperate in and develop a concerted policy to achieve these goals.

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