

# FOCUS ON THE GLOBAL SOUTH

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Tens of thousands join Kem Ley's funeral procession through the streets of Phnom Penh. Photo credit: @LICADHO

## When Murder and Abuse Become Systemic

By Alina Carrillo and Shalmali Guttal

It was Sunday morning on the 10th of July in the Caltex coffee shop in Phnom Penh, a place where many locals went to start their day. In a few moments a crowd would rush in with utter disbelief and heavy hearts. What they would find has shocked both Cambodians and the international community. Mr. Kem Ley, a well-known social and political analyst, had been shot at point blank range, and his body lay beside the coffee he had just been drinking.

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THIS EDITION  
DRAWS ATTENTION  
TO THE ALARMING  
ESCALATION OF  
VIOLENCE AGAINST  
COMMUNITIES,  
CRIMINALIZATION  
OF DISSENT, AND THE  
SYSTEMIC IMPUNITY  
THAT ALLOWS THIS  
TO HAPPEN.

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This brazen act is the latest in a history of violence in Cambodia that spans more than two decades, motivated by political and economic interests and personal vendettas. In 1997, at least 16 people were killed and over 125 injured when grenades were thrown into a peaceful political rally outside the Royal Palace in Phnom Penh. In 1999, renowned dancer Piseth Pilika was shot while shopping with her niece in a local market. A few months later, 16 year old Tat Marina was beaten and assaulted with nitric acid as she was eating her breakfast. In 2003 Om Radsady, senior advisor to FUNCINPEC, was gunned down after leaving a restaurant in downtown Phnom Penh. The following year, prominent union leader Chea Vichea was shot while buying a newspaper in a busy Phnom Penh street. In 2012, environmental activist Chut Wutty was shot in a forest in Koh Kong province. In 2014, freelance journalist Taing Try was shot in Kratie while investigating illegal logging. The list of victims is much longer and in most cases, justice has yet to be seen.<sup>1</sup> Perpetrators have had close connections with the military and other state security agencies; while some of them may have been prosecuted and put in jail, those who ordered the hits remain above the law.

Cambodia's ruling party has been in power for more than three decades and has built a formidable oligarchy that quiets any opposition through a combination of judicial and extra-judicial actions. Across the country, rural and urban people face arbitrary arrests and detention, brutal forced

evictions and threats of violence when they stand up against land grabbing, forest destruction, dams and mining projects. Kem Ley was documenting and speaking out against the abuse of power and judicial manipulation by Cambodia's ruling elites. Hundreds of people, including friends and family, surrounded Kem Ley immediately after his murder, keeping the authorities at bay and demonstrating a deep mistrust in the ability and integrity of the police and court system.

The absence of accountability in violence surrounding struggles over resources has become appallingly common across Asia. On July 1st 2016, anti-coal mining activist Gloria Capitan was shot dead by two unidentified men in the Philippines. The Bataan province in which she worked has seen environmental destruction and increased health problems arising from the operations of the coal companies, calling into question the beneficiaries of development.

The Philippines has long been a dangerous place for environmental activists, labour organisers, indigenous peoples and other rural peoples defending their lands, territories, livelihoods and rights. According to a Global Witness report, 67 activists were killed between 2002 and 2013, and 22 indigenous activists from the Lumad community were killed in 2015 for defending their communities and land from mining and agribusiness companies.<sup>2</sup> Extra-judicial killings and other violence often remain un-investigated and receive veiled or even overt support from state powers. Not even two months into his term,

Philippines President Rodrigo Duterte has given the green light to police and vigilante death squads to kill suspected drug dealers. To date, almost 300 people have been killed with scant evidence of their involvement with the drug trade.

In Kashmir, India, young people have taken to the streets as a last resort to dealing with several decades of violent occupation and repression by the police and military with little accountability. In 2010, 120 people, including teenagers were killed outright and not one member of the armed forces was charged or convicted. The recent killing of Burhan Wani on July 8th 2016 has led to further protests and clashes with security forces. Many civilians and security personnel have been injured and killed since Wani's death. The resurgence of violence and unrest in Kashmir over the last several years illustrates the complete breakdown of trust that impunity cultivates.

In Thailand, streets are kept clear by laws such as The Public Assembly Act B.E. 2558 designed to criminalize protests against the Military Junta and continuing extraction of natural wealth by state and private capital. Those who criticize the state or are deemed "persons of influence" by the regime are taken in for questioning and "attitude adjustment," or arrested and incarcerated without due process. Regardless of the government in power, violations of peoples' rights, political persecution, murder and enforced disappearance have been rampant for decades, and perpetrators enjoy near total impunity. The

former Prime Minister Thaksin Shinawatra's campaign against drugs resulted in an estimated 2,800 extrajudicial killings during his first three months in office. In 2004, Mr. Somchai Neelaphaijit, a prominent human rights lawyer, was removed from his car on a main road in Bangkok by five policemen and has not been seen since. Mr. Neelaphaijit had submitted a complaint to the National Human Rights Commission and Royal Thai Police regarding a case on torture victims in Southern Thailand shortly before his disappearance. In 2014, Karen rights activist Porlajee "Billy" Rakchongcharoen was apprehended by national park officials following his support for a lawsuit accusing authorities of torching the homes of 20

families in Kaeng Krachan National Park in Petchaburi province.

Land rights defender Den Kamlae from the Khok Yao community in Chaiyaphum province has been missing since April 2016. In 2015, Khok Yao community received eviction notices from the government, on the grounds that it was illegally occupying forestland. Across Thailand, those who defend their lands, forests and communities are targets for violence by state authorities and business interests. In a rush to promote economic growth, the state has privileged large companies and corporations despite social and ecological costs, and the costs to the lives of those who the state should be protecting.

In neighboring Lao PDR (Laos), the state functions with virtually no checks and balances among legislative and judicial structures and institutions. Key decisions about laws and policies concerning all aspects of society and the economy are made by the Politburo of the Lao Peoples' Revolutionary Party (LPRP) and the Party Central Committee, and endorsed with little debate by a National Assembly. Public scrutiny of and participation in law, policy and other decision-making processes are practically absent. The LPRP has firmly anchored the nation's development to rapid economic growth and expansion of the monetized economy, driven overwhelmingly by foreign investment and the extraction of natural resources.



The opening of the AEPF summit in Ulaanbaatar. Sombath Somphone disappeared shortly after the AEPF in Vientiane in 2012. Photo credit: Niabdulghafar Tohming

As in Cambodia, high-ranking military officials have partnered with politically connected business people (domestic and foreign) to run lucrative (largely illegal) logging operations. All land is owned by the state, which continues to grant land concessions to investment companies for commercial plantations, mining and property development without proper independent environmental and social impact assessments, and adequate compensation for affected peoples.

Lao citizens are expected to comply with the decisions of the Lao Government and those who dare question or protest risk facing arrests, incarceration, “re-education,” or worse. Notable exceptions to the rule of LPRP law are high-ranking party members and their families, who have amassed massive wealth through commissions on investment and infrastructure projects (many of which are tied with foreign aid) and business deals that are outside the law.

In December 2012, Sombath Somphone, a respected member of Laos’ civil society and proponent of participatory development and education, was abducted on a busy street in Vientiane. Caught on CCTV camera, the abduction sent waves of shock and fear inside the country and abroad, and triggered unprecedented international expressions of concern and calls for prompt governmental action. The case has not been investigated by government authorities and is acknowledged as an enforced disappearance by the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID).<sup>3</sup> Somphone’s

abduction drew attention to other cases of disappearances in which government authorities at some level were implicated, but that have not been documented because local people are scared and reluctant to share information. The victims’ families and other Lao citizens who face or witness injustice remain silent because they have no legal recourse, no confidence that they will receive justice, and are fearful that speaking out will endanger the victim as well as their own families.

Threats, intimidation, violence and abuse of power are not new to the majority of the people in Asia, nor is impunity a novel issue. Over the past two decades however, these have escalated to alarming levels because of a powerful nexus of political and business interests, and increasingly regressive laws that criminalise those who resist or even speak out against land grabbing, deforestation, mining, dams, human rights violations and social-economic injustice. Narratives of economic growth, progress, nation building, national security, social stability, peace and even happiness are used as justifications by governments to silence dissent and opposition. Institutions and structures of justice are becoming instruments of repression as laws and decrees are amended or introduced to control the exercise of citizenship, while judicial proceedings are manipulated by those with wealth and political power.

Where judicial and administrative mechanisms are ineffective, those in power resort to direct threats and violence through the military,

para-military, police, mobs and private contractors. Most times, perpetrators go free by virtue of their association with those in power. Even when the actual perpetrators who shoot the gun or hold the knife are caught, those that masterminded and ordered the attacks remain virtually untouchable; this is not true justice. They remain free to plan, order more violence and perpetuate threats and criminalisation.

To exist in a world in which development serves the needs of those it aims to serve, we need a system in which critical voices can be heard, and those defending human dignity are not repressed. States and societies must demonstrate strong commitments to protecting fundamental rights and freedoms for everyone, not only for those that political-economic elites deem acceptable. The escalation of impunity is systemic: it subverts the foundation and very notion of human rights, and collective potential to conceptualise alternative futures. We must promote pluralistic narratives of well-being and progress, and put an end to the criminalisation of dissent, to attacks against those who exercise their rights to defend their lives and futures, and to the impunity of those who mastermind, order and perpetrate these crimes.

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1 A 2012 Human Rights Watch report estimated that over 300 people had died in politically motivated killings since 1993.

2 For more information see: <https://www.globalwitness.org/en/reports/dangerous-ground/>

3 For information about this case see: [www.sombath.org](http://www.sombath.org)

# Land Rights Defenders Under the Military Rule in Thailand

By Niabdulghafar Tohming

**“[Mr.] Den is not going anywhere, he is always with us, in our heart”** said the sister of Mr. Den Kamlae, a land rights defender who has been missing since 16 April 2016, during a traditional ceremony held in June to mark three months since his disappearance. The family and villagers believe that local officials are involved in Den’s disappearance as a result of his activism and involvement in the community’s dispute with the national park department on land issues. Meanwhile, proper investigations by the authorities have been delayed and his family has yet to receive justice.

Mr. Den’s disappearance reflects the current situation of land and environmental right defenders who are facing threats, and reaffirms the prevalent culture of impunity in Thailand. In recent years, the struggles of landless villagers, indigenous peoples, urban and rural poor and frontline communities have often been met with violence in the form of physical attacks, killings, enforced disappearance, burning and destruction of houses and property, mandatory attitude adjustment, and the use of SLAPP<sup>1</sup> against activists and community members.

These human rights violations are deliberately committed by state security officials and private security forces. It is argued that these abuses are directly linked to policies on land and natural resources, as well as investment and development policies that are promoted and pursued by the government. This article will discuss and highlight the current human rights situation related to land and natural resources, the threats and challenges facing land rights defenders, and their strategy to respond to the situation.



Family of Mr. Den and villagers in Khok Yao community, Chaiphaphum Province, held the traditional ceremony called “Baisrisookwan” to mark three months of Mr. Den’s disappearance and restore good spirit in the community. *Photo credit: Niabdulghafar Tohming*

## Policies on Land and Marginalized Communities

Immediately after taking control of the country in May 2014, the military government introduced the so-called “Forestry Master Plan (FMP),” along with legal instruments to put an end to forest destruction, trespassing on public land and to improve sustainable management of natural resources. Additionally, it aims to increase forestry land through a joint army-led operation

with harsh measures against alleged encroachers.

According to the report from the military unit, Internal Security Operation Command (ISOC), from June 2014 to February 2015, 1,013 people have been arrested and prosecuted for illegal logging and encroachment. Although there is no clear figure of how many of those arrested were large scale landlords or big corporations, testimonies

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have shown that the majority of those arrested are poor farmers, marginalized and landless people who are entitled to the protection that the Plan seemingly intend to provide.

Under this plan, state security forces are granted the authority to subjugate people. This results in the arbitrary and forceful eviction of many rural and urban poor and forest-dependent communities from their lands and properties, and the destruction of housing and agricultural products. There are a number of human rights violations that have been reported, but the perpetrators have rarely been brought through the justice system.

In Chaiyaphum province, a northeastern part of Thailand, local authorities had notified at least eight communities to move out from the disputed lands. However, they resisted and asserted their rights to remain in the land until the dispute is resolved. Villagers coming together to unite in the collective struggle have been seen as a threat by the state officials. According to villagers, local government officials have been trying to break community cohesion through manipulation and the creation of distrust among the villagers by spreading false information. The leaders of the community have been threatened and followed, and local authorities have monitored collective activities.

It also appears that investors who are in dispute with villagers over land have seized the opportunity to use force against local people to evict them from the land. In the case of a sea gypsy community in Phuket, they were attacked and ambushed several times, at night and daytime, by private security forces that were explicitly connected to the resort business, which led to a number of local people being seriously injured and personal properties being destroyed. The sea gypsies have filed the case and submitted the evidence to the responsible authorities, but the process of investigation to grant

justice to the victims has not made much progress.

Policies on land often come with the promise to provide land access and ownership to landless and the poor communities. However, these promises have rarely been fulfilled, instead, these poor families are at even greater risk of losing the land. The process of expropriation and forced eviction is justified by so called “development” for national interests and have been fully captured by the corporate and elite.

## The Struggle of Land Rights Defenders

From the testimonies, frontline communities, social movements, and land rights defenders no longer see land rights as a separate issue from investment and development policies which are designed to benefit the corporate and the elite, at the cost of people’s lives and the destruction of the ecosystem, promoted and pursued by the current military government.

The issue of legitimacy of this government is at the center of the struggle—through which means have they gained power? And who have brought them to the power? The answers to these questions will determine for whom the government will work and serve.

Therefore, the struggle for land rights is a struggle for democracy, and a struggle for development that respects local peoples’ rights and dignity, and nature.

In response to the struggle for land rights, the military government has adopted different strategies to curb the rights and freedom of people, including their freedom of expression and assembly, and the right to participate in decision-making processes. The shrinking of public space and criminalization of dissent are challenges not only facing land rights defenders, but also student movements, progressive academics, labor groups and journalists.

They have been arrested and subjected to mandatory attitude adjustment. Many of them have been prosecuted in the military court, instead of the civilian court, which has raised concerns about people’s basic rights and the transparency of the judicial process. Many from the media have been threatened and journalists were banned from traveling abroad. In many cases, the military government has attempted to silence criticism of scholars by asserting pressure on their institutions to stop and ban academic forums and meetings.

## The Struggle for Human Rights and Democracy

Despite the challenges and threats they are facing, the shared perspectives and frustrations of injustice that prevail in society have brought land rights defenders, student movements, urban and rural poor movements, academics and other progressive groups together. While individual struggle is still being pursued, synergies for collective actions are also constantly being built.

The structure of power that exists—based on a form of inegalitarianism that breeds injustices—is the target of the collective struggle. To shift to a structure that respects rights and dignity, and allows the voices of the poor and marginalized people to be heard, requires not only collective aspiration and concerted effort, but efficient strategies that are able to address root causes while protecting human rights defenders. For this to materialize, domestic and international solidarities are crucial and need to be mobilized to strengthen and enhance continuous struggle amidst challenge.

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I SLAPP stands for Strategic Lawsuit Against Public Participation. The plaintiff is not aimed to win the legal case but to generate fear and intimidate defendant to silence their criticisms and to stop their resistance. It is often used by the corporate and the state against activists and social movements who resist against destructive investment and development projects.

# Impunity: Legal, Social/Political, Personal

By Clarissa V. Militante

Impunity has been defined by the international legal community, including the United Nations and the International Criminal Court, as being 'exempt from punishment', and thus the implication is that when the perpetrator is not brought before justice and excepted from punishment based on law, then the victim and his/her kin are denied due process and justice too.

Impunity, though, is no longer just about the wrongdoer and his/her victim, as it also involves other actors and institutions, and encompasses an array of actions, mostly harmful, and has impacts on human rights, creating implications for society at large. There is a culture in which impunity thrives—where social values and economic and political factors enable it. But there is also a culture that resists it—one that is anchored on human rights principles and values.

There is a culture of impunity now where acts such as extrajudicial killings, assassinations, abductions, and enforced disappearances, unjust imprisonment, and torture, are directed against people engaged in political activities, such as peasants fighting for land rights, indigenous peoples resisting corporate encroachment on ancestral lands, environmental and human rights activists, and journalists.

Impunity implies failure on the part of those with obligation to protect citizens, specifically government and its security agents. In many countries today, in particular in Asia, where un-democratic political systems prevail, governments have failed to address, much less solve, crimes that have often also involved government security agents. The state's inability to perform its duties, and in many cases its collusion with the perpetrators, contribute to the delegitimizing/criminalization of dissent/dissenters. This breeds and sustains a culture of fear and silence, and worse, apathy among civilians.

Impunity, however, is not merely a legal term nor a political issue, as it affects and transforms people's lives. It means loss, tragedy, scarred futures for many families and communities. It results in the loss of mothers and fathers, daughters and sons,

kin, neighbors, friends, community leaders. Thus, it is also best understood from personal stories and witnessing.

What does the absence of justice mean for a wife and mother, for instance?

Ng Shui Meng, wife of Sombath Somphone, a victim of enforced disappearance since 2012, said in her opening remarks, which was read for her at the Asia-Europe People's Forum (AEPF) in July 2016: 'Recently, I have been asked, "How hopeful are you that Sombath will still come back?" or even more bluntly, "Do you think Sombath is still alive?" To such questions, I only have this to say, "I remain hopeful that he will come back to me alive." I get up every day in the hope that Sombath will come home; I draw each breathe in the hope that Sombath will come back! I must have hope, for what is there left for me if that "hope" is taken away?

But I do have a major fear; my greatest fear is that with the passing of time, his disappearance will be forgotten. I am realistic—everyone is busy with their own life and work; they have families to take care of; they have careers to pursue, and they have other interests or other causes to engage with. It is natural that people forget—sometimes even I want to forget, but I can't. For me it is personal; but for others I cannot begrudge them; I can only hope that all people working for justice, truth, and a better world for themselves and for their children do not forget, Sombath is still missing."<sup>1</sup>

Four years after Sombath's disappearance, the Lao government has not come up with any significant lead as to who abducted Sombath, their motives, and Sombath's whereabouts. CCTV-recorded event of Sombath's abduction had indicated government security forces' involvement.

Edith Burgos, mother of disappeared Jonas Burgos, had once said that "not knowing the truth" about her son is in itself a form of suffering. Jonas was abducted eight years ago by members of the Philippine military.

"We have won the battle and yet we are losing the war... Jonas has

not been returned to his family and nobody has been held responsible for this noncompliance of the Supreme Court order (February 2, 2014). Even the National Bureau of Investigation whom Your Excellency has ordered to investigate and to file the necessary cases as expeditiously as they can as warranted from the investigation, has not done anything after more than a year after your order was received," said Mrs. Burgos in an open letter to the government.<sup>2</sup>

As non-government and civil society organizations continue to address other critical issues and problems faced by the communities and people's organizations, such as land and resource grabbing, environmental destruction brought about by mining operations, coal power plants, and dam constructions, the gravest threat now also comes from criminalization of dissent and direct assault on activists and rights defenders through murder, abduction and enforced disappearance, which have gone on because of impunity.

The list of victims is becoming longer. For communities and people to be able to build their power, however incrementally, to face development and economic issues affecting them, it is important to have space to organize, educate, and mobilize to confront corporate power, as well as state power when it colludes or conspires with corporations. But the space for these community and local actions and discussions is diminishing; whatever space left needs to be defended.

Impunity, especially as a result of collusion between corporate power and repressive States, seems unstoppable. The task to confront it seems daunting. But history has also proven that it is through social movement building and creation of a critical mass of conscious, socially aware civil society actors that such power or forces can be dealt with. A culture that values and upholds human rights is still the best form of resistance to impunity.

<sup>1</sup> <http://www.sombath.org/en/2016/07/shui-mengs-remarks-at-aepf11/>

<sup>2</sup> <http://news.abs-cbn.com/blogs/opinions/04/28/15/edith-burgos-aquino-%E2%80%98end-suffering-not-knowing-truth%E2%80%99>

# Criminalizing the Struggle for Land: A Tale of Two Farmers

By Raphael Baladad

Landowners resorting to “legal harassment” or the act of filing numerous criminal cases to weaken dissenting farmers’ groups are common cases in agrarian disputes in the Philippines.

Rolando “Ka Rolly” Martinez is the current *barangay* (village) captain of Sumalo, a small village in the municipality of Hermosa, Bataan province. Besides his usual tasks as village chief, he also leads a small farmers’ organization, the “Sanamabasu,” in an ongoing struggle against a land developer, the Riverforest Development Corporation, for their claims on a 213-hectare farmland. For more than 20 years, Ka Rolly and the Sanamabasu resiliently stood against the constant harassments and intimidations done by the armed guards of Riverforest while sustaining a protracted agrarian reform case now lodged in the Supreme Court.

Another village chief, “Apung Tony” Tolentino, is also a farmer leader. Elected as *barangay* captain in 2013, his primary tasks included maintaining peace and security in the remote village of Hacienda Dolores, in the municipality of Porac, Province of Pampanga. As the president of a farmers’ organization called “Aniban,” he fought against the conversion of a 761-hectare farmland into an eco-tourism area by the company Leonio Land Holdings. The farmers of Hacienda Dolores had also held out against harassments and intimidations made by the developers’ armed guards since the filing of an agrarian reform case in 2005.

In 2009, criminal cases were filed against Ka Rolly and 27 other farmers of Sanamabasu by the armed guards of Riverforest. Charges such as grave



Several people’s organizations and civil society groups in a solidarity protest to for Apung Tony in front of the Pampanga Regional Trial Court. Photo credit: Raphael Baladad

coercion, destruction of private property, and grave threats were slammed against the farmers who had resisted the land enclosures being installed by Riverforest. Led by Ka Rolly, the farmers had formed blockades to prevent construction supply trucks from entering their farmlands. These actions significantly stalled, but failed to stop the entire fencing operation of the land. Eventually, poverty ensued in the area as farmers were unable to ingress and tend to their farms and livestock, or leave to bring agricultural produce to the market. Living conditions worsened when Ka Rolly and the farmers lead to go to court hearing for the criminal charges. Eighteen of these farmers are mothers, now with very little income to feed their families.

In Hacienda Dolores, the petition for agrarian reform coverage escalated tensions. Leonio Land became more aggressive in clearing out the area, but the farmers steadily resisted, even amidst death threats, forcible evictions, and land enclosures. The

struggle however peaked with the death of Armand Padino in 2014, in a standoff against armed guards who were mobilized to prevent any harvest within the disputed farmlands. To disperse the conflict, the armed guards opened fire, killing Padino, a farmer, and wounding several others. As the village chief, Apung Tony and his men responded to the situation, arresting one of the gunmen who fled in a motorcycle. Apung Tony kept the gunman in the village hall for further investigation. Held only in a small room, the gunman managed to escape days thereafter. In less than three months after the incident, Apung Tony was arrested by the local police for non-bailable crimes such as kidnapping, carnapping, illegal detention, and frustrated murder.

Both Ka Rolly and Apung Tony stood as champions of peasant struggles in their respective areas; undertaking almost all of the legwork required to expedite or sustain the land cases still pending in higher courts as well as taking the brunt of the harassments and intimidations done

to the farmers. Land grabbers can attempt to crush the heads of a movement and lower its morale, but these often potentially give way to stronger resistance or may incur public disgust. Thus, discrediting the legitimacy of a movement by condemning key people has become a better option to immobilize them by utilizing socially accepted or legal mechanisms, and this also prevents further popular support.

The wariness and doubt that resulted from the criminal cases filed against Ka Rolly and Apung Tony greatly affected the cohesiveness of their organizations. Morale hit its lowest and some farmers eventually gave in and sold their claims to developers. Others fled out of sheer terror from getting criminalized or killed. Some local government officials withdrew their support/assistance simply because the farmers' struggles had been deemed illegal.

The criminal cases were tough for Sanabasu farmers who were regularly summoned to appear in court hearings, sometimes held outside the municipality. On top of the criminal cases, administrative cases were also filed at the Office of the Ombudsman against Ka Rolly and other village officials who supported him. As if a single criminal case were not enough, some farmers had over nine cases in their names. The local court even upheld a grave coercion

and grave threats charges filed against a 77-year old woman by an armed security personnel.

Menelao "Ka Melon" Barcia, became Aniban's leader in the absence of Apung Tony, picking up the work for the agrarian case and at the same time taking care of the legal pleadings for the latter's acquittal. Less than two months after Apung Tony had been incarcerated, Ka Melon was ambushed by motorcycle-riding gunmen as he was driving home with his wife. He died on the spot while his wife was seriously injured. He held in his hands documents from their lawyer arguing against the arrest of Apung Tony which became spattered with blood.

During a solidarity protest in the third hearing for Apung Tony's case last June 2015, one of the farmers exclaimed, "before, these developers were only interested in taking our lands and our livelihood, but now they are keen on destroying our lives." But the protest did not lead to their leader's acquittal. Tears rolled down Apung Tony's cheeks while his lawyer and several family members comforted him. He was cuffed and taken back to the city jail.

Last June 2016, Ka Rolly and the 27 farmers of Sanabasu were again summoned by the local court for the resolution of the criminal cases against them. On his way to the courthouse, Ka Rolly lamented,

"We have had to stomach a lot; from the destruction of crops and livestock to death threats. But out of all that we have faced, the hardest to accept is the possibility of criminalizing those who fought dearly for their right to the land." Waiting in the courtroom in the longest two hours of their lives, the Judge finally stepped in and handed down the decision: dismissal of all criminal cases filed due to the lack of merit.

With renewed passion, Ka Rolly and Sanababasu continue their struggle for land, believing that justice will prevail. Today, they are active in government-led consultations for the *United Nations Declaration on the Rights of Peasants and other People Working in Rural Areas*, pushing for provisions against the criminalization of peasants and farmers' struggles and the perpetual protection of farmlands against land conversions.

Apung Tony is still in jail. He was however granted permission to undergo medical treatment due to his deteriorating health. With support from several civil society groups and the church, the farmers of Aniban continue their struggle for land, while fervently seeking Apung Tony's release.

Criminalizing social struggles or dissent contradicts the ideals of justice anchored in the promotion of human rights. In the essence of democracy, people should have the right to struggle, to push for reforms without fear of condemnation from the rule of law. Thus, each case filed against farmers struggling to protect their rights should merit an outrage from the public because it attacks the basic freedoms the law should fundamentally protect. The experiences of Apung Tony, Ka Rolly, and hundreds of other criminalized farmers are blatant examples on how the law can be circumvented, twisted or manipulated to serve the interests of certain few—which should be cause for the judiciary to reflect on their capacity to be detached from external influence, in entertaining cases and rendering decisions.



Praying for an acquittal, Sanababasu farmers patiently wait for the judge's verdict in a small courthouse in Dinalupihan. Photo credit: Raphael Baladad

# Glory to the Captain: A Photo Essay on Gloria Capitan and



**A LONG WAIT FOR JUSTICE.** Mounds of melted candle wax spread below the chair where Gloria Capitan sat in her family's karaoke bar on July 1, when two unidentified motorcycle-riding men shot her in the neck. No suspects have been caught up to this day.



**BLEAK AND BARREN.** The people were seeking the closure of the open coal storage operated by Limay Bulk Handling Terminal, Inc. (LBHTI). The coal stockpile is located inside the Seafront Shipyard and Port Terminal Services Corporation (SFSPSTSC), which is owned by LBHTI. The people blamed the coal dust from the stockpile for the alarming increase in number of residents afflicted with skin diseases and upper respiratory ailments, and for the pollution of the seas of Barangay Lucanin.



**DEVELOPMENT FOR WHOM?** The cross-shaped electric poles and long electricity distribution lines seemed like a grim reminder of the long journey towards a just and quick transition to renewable energy and of the lives that have been lost as the struggle against dirty energy continues. The line of crosses seemed to be an allusion to the fact that people were not only dying because of health hazards attributed to coal—they are also being killed to silence and quell the growing movement against coal and other forms of dirty energy.



**AT THE BATAAN PROVINCIAL HIGHWAY.** People began the 5-kilometer walk to Gloria Capitan's final interment. The heavens cried with her relatives, friends, and other anti-coal advocates as they decry her death. White balloons were released as she was laid down to her final rest on a gloomy and rainy Sunday afternoon, 10th of July, in her hometown province in Mariveles, Bataan.

# the Anti-Coal Movement in Bataan



**COAL KILLS.** According to a 2016 Greenpeace-commissioned study conducted by Harvard University<sup>1</sup>, there are an estimated 960 premature deaths in the Philippines every year due to the hazardous effects of coal-fired power plants on the health of the people. This number may increase up to 2,410 if new coal-fired power plants continue to be developed.



**INDIGNATION RALLY.** Family members, relatives, friends, and fellow comrades in the anti-coal movement in Bataan took to the streets to voice their outrage on the killing of Gloria Capitan. Shouts of “*Katarungan para kay Gloria Capitan*” (Justice for Gloria Capitan) and “*Tuloy lang ang laban!*” (The struggle continues!) filled the air.



**JUSTICE FOR GLORIA CAPITAN.** Family members of slain anti-coal activist and environmental and human rights defender Ka Gloria drew strength from each other as they sought and demanded justice.



**LONG LIVE KA GLORIA!** Gloria Capitan (third from left) with members of the *Samahan ng Nagkakaisang Mamamayan ng Lucanin* (SNML). Gloria Capitan devoted the last year and months of her life to the arduous struggle against open coal stockpiles and the use of coal as energy source. She will be remembered for defending her people's right to a healthy environment.

<sup>1</sup> “Coal: A Public Health Crisis. Diseases and deaths attributed to coal use in the Philippines.” For more information, see: [http://www.greenpeace.org/seasia/ph/PageFiles/718084/Coal\\_A\\_Public\\_Health\\_Crisis.pdf](http://www.greenpeace.org/seasia/ph/PageFiles/718084/Coal_A_Public_Health_Crisis.pdf)

# Struggling on Dangerous Ground<sup>1</sup>

By Val De Guzman<sup>2</sup>

According to a recent report published by Global Witness, the Philippines is not only the second most dangerous place for journalists, it is also the second deadliest country for environmental activists. The report, released last June 20 and entitled *On Dangerous Ground*, said there had been 185 killings of environmental activists around the world in 2015, nearly 60 percent more than in 2014 and the highest since Global Witness began collecting data in 2002.

The recent killing of another environmental defender in Bataan, a province situated in the Central Luzon region of the Philippines, would attest to what the report claims.

On the evening of July 1, 2016, the life of Gloria Capitan, a staunch anti-coal advocate who had led her community in opposing a coal storage plant project near their neighborhood in Mariveles, Bataan, ended violently.

Ate Glo, to people close to her and to those who had the privilege of working with her, remember her friendliness and genuine smile that also met me many times whenever we had an activity or site visit at Lucanin, Mariveles, Bataan.

She was the president of *Samahan ng Nagkakaisang Mamamayan ng Lucanin* (Association of the United People of Lucanin), a community-based organization that resisted the construction of a coal plant and open storage facility by Sea Front Shipyard Services Incorporated which is owned by Limay Bulk and Handling Terminal.

At 57, she was still very active in the fight against coal and even led her village last year in a series of mass actions and petitions calling for a permanent closure of the coal storage facility. For a living, she ran a small karaoke *cantina*—the very place where her life was cut short last July 1 when she was approached and shot at the neck by motorcycle riding gunmen, while her eight year-old grandson suffered a minor injury from a stray bullet in his arm.

If this is a message to silence other anti-coal activist like her, then they are mistaken.

On the ground where Ate Glo's body fell, where the blood from her body flowed, more anti-coal activists will sprout. Instead of silencing us, it will only strengthen our conviction that the evil menace of coal must end. And we will persevere in this fight and see to it that our children and the children of our children will be free from it.

## Justice for Gloria! Stop the killing of environmental defenders!

<sup>1</sup> Article republished with permission of the author. Originally published at: <http://350.org/struggling-on-dangerous-ground/>

<sup>2</sup> Val De Guzman is a campaigner for the Philippine Movement for Climate Justice, a national movement consisting of national networks/alliances and local organizations representing basic sectors, grassroots communities in the Philippines that aim to lead the joint struggles, campaigns and actions in putting forward the climate justice framework as a fundamental element of solving the climate crisis.

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GLORIA  
CAPITAN.  
Mother.  
Community  
leader. Anti-  
coal activist.  
Environmental  
and human rights  
defender. Fellow  
comrade.  
Photo credit:  
Coal-Free Bataan  
Movement



(On July 1, 2016 at around 8 PM, just over 24 hours after the inauguration of President Duterte, Gloria Capitan was shot three times by two unidentified motorcycle-riding men. She died en route to a hospital. She was 57 years old. She is the first, non-criminal and non-drug-related victim of extrajudicial killing under the new administration. Capitan is the President of Samahan ng Nagkakaisang Mamamayan ng Lucanin or SNML, a community organization which is critical of the coal plant and coal storage facilities in Barangay Lucanin, Mariveles, Bataan. Gloria Capitan will be added to the death toll of slain environmental activists. In a June 20 report released by Global Witness, the Philippines is now considered the second deadliest place for environmental activists with more than three environmental activists killed per week in 2015 or 185 killings across 16 countries for defending their land, forest, and rivers.)

## Hulyo Uno

By Galileo de Guzman Castillo\*

Nang ang itim ay pinalitan ng pula  
At nag-iwan nang 'sang malalim na marka  
Na siya namang nagsisilbing alaala  
Para sa mga naiwan ni Ka Gloria

Sabay na bumuhos ang luha at ulan  
Nagtatanong, sinong may pananagutan?  
Nagpapalahaw, nasa'n ang katarungan?  
Naghihinagpis, ito ba ang hantungan?

At sa paglipad ng mga puting lobo  
Ring ang panaghoy at pagsusumamo  
Para sa hustisya at sa pagbabago  
Harinawa'y matapos na ang kalbaryo!

Kahit pilit mang marahas na supilin  
At ang mga mamamayan ay sindakin  
At ang buhay ng kilusan ay kitilin  
Babangong muli ang Barangay Lucanin!

Nang ang itim ay napalitan ng pula  
At nag-iwan nang 'sang malalim na marka  
Na siya namang magsisilbing alaala  
Ng kanilang pagpupunyagi't pag-asa

## First of July (English translation\*\*)

When black turned red,  
A deep cut was embedded  
In the memory of the beloved  
That Ka Gloria had left behind.

The tears are rain, and rain are tears.  
We ask, who shall be responsible?  
We howl, we shall seek justice!  
We grieve, should her life end like this?

When we release the white balloons,  
They shall hear our cries and pleas.  
We want change and justness,  
And an end to these sacrifices.

But they'll continue with violence,  
And force fear upon citizens,  
To quell the people's struggles.  
Yet, Lucanin folks shall always rise!

As black turned red,  
It left a deep mark in memory,  
And thus, we shall be reminded--  
That onwards we fight steadfastly!

\*The author would like to thank Maningning Miclat for the inspiration.

\*\*Originally written in Filipino. Translated to English by Clarissa Villasin-Militante.

# Impunity Unlimited: Human Rights, Freedom of Expression in Shambles

By Afsar Jafri and Mansi Sharma

In the last few years, the culture of impunity has left bloody patches across the secular democratic fabric of India. Repression of dissent is on the rise and perpetrators are free to lynch anyone who dares to keep meat in their fridge or follow their age-old profession of skinning a dead cow. A mere friendly casual talk among fellow travellers in a train compartment can become violent if one dares to express a negative comment about the present government or its policies.

In one case, a mob from the majority Hindu community in Dadri, Uttar Pradesh, attacked a Muslim family, searched their fridge, found meat and lynched to death the head of the family, Akhlaq, and brutally assaulted his young son on the pretext that the meat was of a cow (considered sacred in the Hindu religion). That the meat was that of a cow was immediately contradicted by the local government veterinary officer who ascertained that the meat was “of a goat or its progeny.” In the legal case that followed this incident, the meat of a dead animal was perceived to be of more value than the life of a human being. Akhlaq’s family is still being hounded, after they ran away from the village, and is now trapped in lawsuits for allegedly killing a cow.

In the last two years since the right wing Bharatiya Janata Party (BJP) government came into power, there have been innumerable cases where people from minority communities have been flogged and thrashed or even force-fed cow dung for carrying meat on trains or transporting cattle in a vehicle, even though in some cases they turned out to be farmers who bought the cattle for tilling their farm. The assailants are always the Hindutva supporters. In an incident that happened last July 27 at

Mandsaur railway station in Madhya Pradesh, two Muslim women were beaten, punched, and slapped for carrying 30 kilograms of buffalo meat. The women victims are now being labeled criminals, while no action has been taken against the assailants, as they have the support of local right wing leaders.

The state’s failure to ensure accountability by bringing perpetrators to book for their heinous crimes has given rise to a sense of widespread impunity among a particular section of Hindutva supporters who are now attacking even their fellow Hindus from the Dalit community (still considered untouchables in Hindu religion) who are engaged in skinning dead cows. Last July 11, four Dalit youths were stripped, flogged, and thrashed with steel canes in Gujarat for skinning a dead cow by the self-styled cow protection militia, which led to massive protests throughout the country by members of the Dalit community. In protest, more than 25 Dalit youths have attempted suicide in the last 15 days. These are not a few isolated cases of self-immolation by Dalits as a desperate response to a denial of justice. Earlier this year, a bright Dalit research student, Rohith Vemula, took his own life at Hyderabad Central University over the discrimination shown to Dalits like him by University authorities. Rohith was not alone. Nine other students (all Dalits or from Other Backward Class) have taken their lives during the last seven years at the University of Hyderabad alone. The primary reason was the inability of the University to accommodate and provide equal opportunity to the socially marginalized groups.

The Thorat Committee that studied discriminatory treatment

against students from Dalit and other marginalized communities at an elite medical institute, the All India Institute of Medical Sciences (AIIMS), noted in its 2007 report that “aggression against students from lower castes in every aspect of their daily lives—from the classroom to faculty interaction, and from the hostel and mess to examinations—is making their ostracism from the community activities of the institute a bitter reality.”

Like previous governments, the present government completely fails to listen to the cries of despair coming from the marginalized sections of Indian society. “Instead of assuring social justice to all, the ruling party wishes to use the student unrest in our universities to claim a monopoly on nationalism and tar all of their critics with the same brush of anti-nationalism,” said Sugata Bose, the Trinamool Congress (TMC) member of Parliament, in the Lok Sabha (Lower House) debate on nationalism versus freedom to dissent on February 24, 2016.

Rohith Vemula’s suicide led to a series of student protests across several universities (mostly those funded by the Central Government) that shook the entire nation. Protests against the saffronization of their institute were held at the Film and Television Institute of India (Pune), Jawaharlal Nehru University (Delhi), Jadavpur University (Kolkata), The Allahabad University, the National Institute of Technology (Srinagar), among others. The government responded by slapping some student leaders with sedition charges and declaring them anti-national. They were put behind bars for supposedly making anti-national speeches and shouting anti-India slogans.

The trampling of human rights in the name of cow protection or pseudo-nationalism is as insensitive as the Indian Army and paramilitary forces firing pellet guns on Kashmiri youth and calling it their least lethal weaponry in dealing with the widespread protests in the valley in late July. This “utmost restraint” method, as claimed by armed forces in Kashmir, for maintaining law and order has permanently maimed many, with several dozens losing their eyesight. According to the Greater Kashmir newspaper, more than 40 people, including a police official, have been killed and nearly 2,000, including 200 members of security forces, have been injured in clashes between protesters and the forces, while 150 local people mostly between 9 to 21 years of age have received injuries to their eyes. Doctors from Delhi who are presently treating the pellet gun victims in Kashmir has said that most of these victims may not be able to see again and they have appealed to the government for pellet gun use to be stopped. Though the opposition parties are hoarse from crying out against the present governments in the State and the Centre for the atrocities in Kashmir, the fact was that pellet guns were first used in 2010 in Kashmir by the National Conference government which was then a coalition partner in the Congress government at the federal level.

In Kashmir, the armed forces can get away with the crimes against local youths because the controversial Armed Forces Special Powers Act (AFSPA) grants impunity from civilian prosecution for acts committed in disturbed regions under the AFSPA. Besides Kashmir, the law remains in effect in some of the North Eastern states like Nagaland, Manipur, Assam, and parts of Tripura, which have witnessed several cases of repression and killings of the local population by the armed forces. The law gives the armed forces wide powers to shoot to kill, arrest on flimsy pretexts, conduct searches without warrants, and demolish structures in the name of “aiding civil power.” Equipped with these special powers, soldiers have raped, tortured, disappeared, and killed Indian citizens in these states without fear of being held accountable. And these are being

accompanied by sweeping curbs on freedom of expression and on media reporting.

Irrespective of the party in power in the Centre, the culture of impunity had always been present wherever draconian laws like the Sedition law and AFSPA were imposed to crush peaceful dissent. Among the two, the Sedition law is one of the most abused laws, which has been used by almost every government against dissenters and human rights and NGO activists, or to silence government critics. This year has seen a steep rise in sedition cases filed across India against democratic dissent or peaceful freedom of expression. As per the media watchdog website The Hoot, 11 cases were booked involving 19 people in the first three months of 2016, which included research scholar Kanhaiya Kumar from JNU, compared to none during the same period in 2014 and 2015.

Section 124A of the Central Law, or the Indian Penal Code, defines a person guilty of sedition as “whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.”

Even the previous government under Congress has indiscriminately used the Sedition laws to silence any protests against government projects or peaceful expression. A large number of people in Koodankulam (a small coastal village in Tamilnadu) had opposed the Indian government on the construction of a nuclear power plant, and questioned its safety, transparency and accountability. However, their protest was brutally crushed and in May 2012, sedition charges were brought against 8,956 people in 21 cases, including women and children, and a senior activist of the movement, Dr. SP Udayakumar. Following the major accident at

the Fukushima Daiichi nuclear reactors in March 2011, the massive peoples’ movement in Koodankulam, Jaitpur (Maharashtra), Gorakhpur (Haryana) was not just against the nuclear plants being set up by the Indian government, but against nuclear energy per se. This was used against activists from these peoples’ movements who were charged with sedition.

Recently, a great misuse of the Sedition law came to light when in March 2014 around 60 Kashmiri students who cheered for Pakistan in a cricket match against India were charged with sedition in the state of Uttar Pradesh, which was ruled by Samajwadi Party. Similarly, in the Congress-ruled state of Kerala, the authorities charged seven youths with sedition in August 2014 when they refused to stand up during the national anthem inside a movie theater.

Another feature of the culture of impunity is seen in the government’s use of another draconian law, the Foreign Contribution Regulation Act (FCRA), instead of applying the sedition law, to silence its critics from among the non-governmental organizations. Through the FCRA, the registration of these NGOs that allows them to receive foreign funds can be cancelled. The present regime has used the FCRA law to intimidate activists and organizations very critical of the government. The latest victim among them was the Sabrang Trust, run by Teesta Setalvad and Javed Anand, who have fought legal battles to expose the role of the Gujarat government in 2002 when more than 2000 Muslims were slaughtered in the state, then headed by the present Prime Minister of India. Lawyers Collective, another NGO, was also barred by the Home Ministry from receiving foreign funds, for violations of various provisions of FCRA 2010. But the Lawyers Collective condemned the “blatant attempt of the government of India to victimize the organization and its officer bearers Indira Jaising and Anand Grover. It is nothing but a gross misuse of the FCRA Act which is being used to suppress any form of dissent.”

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# Kashmir, Before and After Burhan Wani

By Seema Mustafa

**NEW DELHI:** the 22-year old poster boy of militancy in Kashmir Valley Burhan Wani is shot dead by the security forces. His death unleashes a series of protests across the Valley where tension has spiked to new levels following the encounter.

In the dichotomy that is Kashmir, Wani had become the face of militancy for the security establishment, but was the face of hope and aspirations for an increasingly large section of Kashmiri youth. He had emerged after the strong suppression of youth protests in 2008 and again in 2010 on the social media. He went on to discard his mask, take ownership of the path that he had chosen as a reported Hizbul Mujahideen recruit, and disclosed that he was from Tral and a well educated family.

His death could prove to be a turning point in a slow ascending curve that can climb the graph dramatically at any point in time. There is deep worry amongst the more aware in Kashmir of the situation now spiraling out of control. More so because Wani's death has come in the midst of deep unrest in Kashmir, daily protests, stone pelting, arrests, curfew, clampdowns with no effort by the political authorities to bring down the temperature.

There is no dialogue, no reaching out, not a word by Chief Minister Mehbooba Mufti who had been in the forefront of protests in 2010 when 126 boys were shot dead under the National Conference government, by the forces across the Valley in different incidents.

Instead, the confrontation between the forces and the people seem to have become more severe, with the youth now defying all restrictions to come out on the streets to lodge their protests against India, not caring about safety. The alienation, as all observers in Kashmir are agreed, is sharper; the anger more visible, and the helplessness and despair growing in the face of a completely non-responsive government.

The story of Wani—his militancy and his popularity—feeds into the larger picture that can be found in an interview given by his father Muzaffar Ahmad Wani to Mir Basit Hussain and carried by the youth portal *Youth Ki Awaaz* earlier this year.

The first point Wani reportedly made was how his entire statement to a Delhi newspaper was not reported, and only a reference to Islam was retained. This of course is the usual Delhi mainstream response to Kashmir: a border state, with the complexities inherent in its geographical location, compounded further by history and debilitating politics, not being understood or recognized.

In what Muzaffar Wani said lay the story of many a household in Kashmir that had felt the impact of insurgency, of encounters, of enforced disappearances over decades. As the father, grieving then for one son, Khalid, and now for two, said, "Young boys are getting radicalized because of the everyday torture and humiliation they face." And added, "to douse that fire you need water, not petrol."

And water is what seems to be missing in Kashmir for decades. Why

boys take to militancy has a simplistic answer as a first response. Because it is there, the way out ingrained into the system, with terror operatives always looking for and encouraging new recruits. Just as why there have been so many shootings ending in massacres in the United States. Because of the easy availability of guns that can then be picked up by those who want to use them.

Having said that, the reasons are highly complex with the youth being driven to militancy by circumstances, and hopelessness in a climate where insurgency co-exists with state suppression and violence. In this context Muzaffar Wani made several important and revealing points in the interview.

Burhan was just a young lad leading a normal life. His elder brother Khalid who had joined the Hizbul earlier was killed in an encounter when he had come to meet Burhan, a teenager at the time. Burhan was also beaten up according to reports. Wani would provide an insight into the decisions taken by both. Khalid along with his father was arrested and interrogated, sometimes for days, when there was any untoward incident in the area and the family was subjected to hundreds of searches with even walls of their home being broken by the invasive forces who walked into their home at any time of the day or night. Burhan joined after his brother was killed, with the guilt, grief, and anger driving him to the terrorist outfit, more so because the system offered no solutions. Not even reprieve from the constant humiliation of detention and searches.

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His father answered an oft repeated question with the wisdom of his years as to why all others, similarly treated, did not join militancy, “Almost everyone here has been beaten up by the Army. You also must have had your share. But everyone didn’t become a militant. It depends on how much one can take. Yeh aap ki ghairat pe depend karta hai (It depends on your self-respect). Someone’s ‘Ghairat’ got challenged time and again, so he decided to answer back. Others decided to stay quiet. My son couldn’t bear to see the atrocities and the humiliation, so he was forced to choose the path which he is on right now.”

Almost all homes in Kashmir are impacted. Militancy enters some homes after a history of being

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detained, interrogated, questioned at will disrupts normal life on an almost daily basis. As Wani pointed out, they were rounded up and detained for several days at times during VIP visits. They were whisked off and questioned for any untoward incident in the area, as a matter of routine. The Public Safety Act was used with impunity against the young people in what was a fear-ridden environment. Young children grew up seeing the male elders in their families being taken away, mothers fearful and terrified, and reacted according to their own disposition later.

Some join the militants, others take to stone pelting, still others vent their anger on the social media, but all in all the young in Kashmir are disturbed, alienated and angry. In Wani’s words heard from many in Kashmir, “I have faced a lot of problems after 2010, especially in 2012. They (police) used to detain me whenever militants used to strike. One day, unknown men snatched rifles from the police; they detained me and Khalid for 5 days. When Obama had come to Delhi, they detained Khalid! He missed his exams due to that.”

And again, “A Sarpanch (village head) got shot and again Khalid and I were put behind bars. During the elections (Parliamentary as well as assembly) we used to be put under detention. Khalid on an average used to spend two months in a year in jail. They (police) raid our house every now and then. That is a routine for us now. And we don’t have a problem with that. It’s their duty. But when they unnecessarily used to detain and trouble Khalid and even me, that used to mentally disturb every one of us. They have searched our home may be a thousand times. Not only rooms, they check the walls to see if anyone is hiding.”

Wani pointed out what all, including the media forgot, Burhan did not start this, he was not responsible.

“When all this started, Burhan was not even born,” he said.

And this portends of the future. As those out on the streets, or before their computers, or with terrorist outfits all have one thing in common—they are young, they are all part of a generation born and brought up in conflict. Unlike their parents, their patience is limited, their aspirations high, and their tolerance for abuse low. They do not share the same support for Pakistan as the older generations did, but their alienation from India is perhaps sharper and more intense now. It was not so before 2010. It has increased since. If one spike in the curve was in 2010, the second perhaps even sharper spike has been the PDP-BJP government in Jammu and Kashmir. The anger against both has reached new levels, with matters worse as there is no alternative today even marginally acceptable. Omar Abdullah brought new hope for the youth when he came to power, but when this dissipated rapidly through his acts of commission and omission, the PDP was there on the sidelines some of the shock.

Today there is no political party with even minimal credibility to stem the tide of alienation and anger. Testimony to this is the increasing number of protests with more and more people coming out to defy the guns and bullets of the forces.

This for any government would have rung big alarm bells but clearly the leadership has turned deaf, and cannot hear the bells as they toll. For the signals are that Kashmiri youth are readying for a battle, but this will not be fought through terrorism that the state is fairly well equipped to deal with. But through possibly increasingly violent protests on the streets that will open the doors to what could become a big human tragedy.

*This article was originally published in The Citizen on 28th July.*

# Culture of Impunity in Cambodia: 20 Years, No Justice

By Ros Sokunthy

***“Last night I heard the Prime Minister said he never heard about community land conflicts, so I want to send a message to the Prime Minister that my community has a land conflict with the company KDC International. We want the company to stop building the wall; we want the government to order the police out from our village; we want the courts to release the 5 villagers who were arrested; and we want to get a fair and just solution to this land conflict.”***

Ms. Um Sophy, resident of Lor Peang village, Kampong Chhnang province, at a press conference at Boeung Kok center in Phnom Penh on 19 August 2014.

*“My community is still living on the street next to our land. We hang banners on our tents in front of the land to show we have been living here since long before the land law was issued. Why can't the court pass the ruling for us to live here?”*

Ms. Heng Chenda, resident of Kompenh Chas community, Preah Sihanouk, in personal interview with the author in Kompenh Chason 5 July 2016.

Do Cambodia's leaders care about the people living in this country? Honestly, I find it hard to say “yes.” Seeing the political situation nowadays I feel hopeless with the leadership. They might say they intend to do something good, but people have observed what they have done to this country and for themselves, and do not believe that they can do good for the country's peoples.

People are crying everyday in every province because of so-called “sustainable development” as it is destroying community wealth, well being, solidarity, security, significance, livelihoods, land, water, fish and nature, and transferring control over life from local people into the hands of businesses, and rich and powerful individuals and families. To explain why I say this, I will present examples from two communities that have had land conflicts with powerful people and companies since 1996. Twenty



Villagers from Lor Peang community march to Phnom Penh in 2014. Photo credit: Ros Sokunthy

years have passed since the conflicts started but the affected families have still not received justice.

The first example is the conflict between Lor Peang community in Kampong Chhnang with KDC International over 196 hectares of farmland.<sup>1</sup> KDC International is owned by Chea Kheng, wife of Minister of Energy and Mining, Suy Sem. The second example is the conflict between Kompenh Chas community in Preah Sihanouk and Thai Bun Rongover 42,710 m square.<sup>2</sup> The owner of the company, Thai Bunma who passed away mid June 2016, was well known in the country as a powerful tycoon.

Affected families from both communities sent many petitions and complaints to different government institutions and the courts, but state agencies do not act on complaints

against rich and powerful people. When ordinary people file such complaints in the courts, the courts ignore them and delay proceedings. But if a company or politically powerful person registers a complaint against ordinary people, the court will not even investigate the truth. Instead the accused will just be thrown into jail without due legal process and locked up for a long time in order to silence and threaten other community members from conducting actions. Authorities usually arrest men but the struggle does not stop with these arrests. Women take over leadership and continue their advocacy for justice, although they face a lot of criticism that women should stay at home and look after the family, and not engage in such high-risk actions.

This is a culture of impunity: the courts are not independent, fair and

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unbiased; they usually act and rule in favour of rich and powerful individuals and companies; and cases are not resolved in favour of ordinary people like those in Lor Peang and Kompenh Chas communities. Over the past 20 years local people have not been able to get justice from the judicial system.

The same story is repeated from one community to another: when their lands are seized or threatened by a company or wealthy person, affected people have mobilized, organized and risked their lives to face bulldozers, military police and company security forces. They have used all the government mechanisms and judicial procedures available from local to national levels, seeking fair and timely resolution to the land conflicts. Lor Peang community members walked 30 km from their village to the provincial hall and provincial court in Kampong Chhnang town, and 70 km to Phnom Penh to file complaints and petitions. By walking, they won the attention of many people in Phnom Penh, who recognized the injustice that the community has been facing. But there is no mechanism that can bring real justice for Lor Peang and other community people. Why? Because the company owners are very rich and politically powerful and have high-ranking positions in the government. Judges, prosecutors, police, justice officials and other authorities are not brave enough to conduct real, independent investigations against such powerful people.

In both Kompenh Chas and Lor Peang communities, affected families have land possession certificates, and/or family books and other documents that show how long they have been living on their lands. But these documents are only recognized at the local administrative levels. On the other hand, both the companies were able to acquire ownership titles for the same lands on which local people have been living for a very long time, and these titles were recognized by the courts. Our judicial system and



Communities in Preah Sihanouk sending their petition and complaints to the provincial court and provincial hall. Photo credit: Ros Sokunthy

laws do not take into account the realities of peoples' lives. Instead judgments are based on documents that can be acquired by purchasing, collusion and nepotism.

Most rural people in Cambodia lead hard lives. They work in their fields, share natural resources equally with one another and protect them for future generations. They struggle to defend their rights to land and for social justice. But when they are not able to get justice or when the courts are used against them, people leave their villages or migrate to work in another country, where they face different types of hardships.

After receiving many complaints regarding land conflicts between rural communities and private investors, the government introduced the idea of "social land concessions" (contrasted with "economic land concessions" that private investors get), through which affected families can get land at a different location. By so doing, the government facilitated and helped companies and private investors to get what they want, instead of resolving the conflicts in a fair, just way for local people. However, affected families did not accept these offers because the lands were infertile and poor quality, and very far from their villages.

Economic land concessions and other investment projects supported by the government in the name of economic development have had extremely destructive impacts on peoples' lives: people were evicted from their lands, their houses were destroyed, they lost many years of livelihood, their families were separated and forced to migrate to escape from threats, violence and judicial harassment and victimization. Rural people want to see local development that does not displace them from their homes and communities. They want real development that allows them to participate using local knowledge, that creates job security for local populations and strengthens local economies. Most of all, people want fair, impartial and honest legal and judicial systems that enable protection of their rights and deliver justice to them instead of allowing the rich and powerful to get away with theft, violence and other crimes.

1 For information about this case, see: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A\\_HRC\\_30\\_58\\_ENG.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_58_ENG.docx)

2 For information about this case, see: [http://cchrcambodia.org/index\\_old.php?url=project\\_page/project\\_page.php&p=land\\_profile\\_detail.php&profile\\_id=19&pro=LR&pro\\_id=12#](http://cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=land_profile_detail.php&profile_id=19&pro=LR&pro_id=12#)

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Criminalization of dissent of NGOs and civil rights activists is also rampant irrespective of the government in power, especially when dissent is directed against the issue of corporate looting of natural resources. Greenpeace lost their FCRA because they had raised the issue of violation of rights of forest communities in Singrauli (Madhya Pradesh) as a result of the coal mining activities by Mahan Coal Ltd, a joint venture between Essar and Aditya Birla Group. Greenpeace staff member and activist Priya Pillai was taken off a plane at Delhi airport on 11 January 2015, because her visit to the UK to address British parliamentarians was considered a threat to the country's economic security by India's Intelligence Bureau (IB). In another incident, a noted activist in Orissa, Prafulla Samatra, was attacked by the goons of Vedanta, a British company mining bauxite in Dangadeuha Hill, which was being resisted by the local people. The tribal communities in the state of Orissa and Chattisgarh

are increasingly facing police repression and attacks by corporate goons for resisting land grabs and displacement as consequence of natural resource mining. Their resistance has often resulted in community members being killed or kept in jail under false allegations that they were involved in Maoist activities.

Since the BJP government came to power in Delhi in May 2014, several NGOs have been put under the microscope for supposedly working against India's development. The government is using all means to clamp down NGOs questioning government decisions or raising questions that make the government uncomfortable. Within a month of assuming power at the Centre, an IB report was released, accusing several foreign funded NGOs and their activists for crimes against the State, namely "activities inimical to India's economic interests." The report included organizations which supported the peoples' opposition to POSCO (a steel company) in Orissa and those opposing

genetically modified food and nuclear energy. These organizations were branded as anti-development for trying to block India's economic development.

The statement "Impunity for killings remains rampant, encouraging their perpetuation and undermining prospects for justice," fits very well the Indian situation, though this referred to Ukraine in a recently released United Nations High Commissioner for Human Rights (OHCHR) report. In the last two years of the BJP rule, dissent has been considered tantamount to intolerance against the government. The current culture of impunity under the BJP regime is not much different from that during the previous regime of Congress. However, the most noticeable difference is that the scope of impunity is now being unofficially extended to cover government supporters (in the previous regime it was officially intended for armed forces) who are free to accuse anyone of opposing the government in the name of hard nationalism.

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says that due process is principally one determined by the needs of the state and not by respect for the rights and welfare of the individual. This historical counter-thrust became dominant during the martial law period from 1972 to 1986 and it threatens to become dominant today, with support from a significant part of the citizenry.

### The Perils of Dutertismo

Currently, President Duterte embodies the view that refuses to recognize the universality of rights and denies due process to certain classes of people in the interest of combating crime and corruption. The majority of those who voted for him agree with his stance. They form the social base of Dutertismo, a movement based on mass support for a leader who personifies the illiberal, extreme measures they feel are necessary to deal with crime, corruption, and other social problems.

At the risk of repeating ourselves, let us make three points with respect to this trend.

First, we do not question the goal of fighting crime. Indeed, we support it. But it cannot be achieved by trampling on human rights. No one has the right to take life except in the very special circumstance and in a very clear case of self-defense. Everyone is entitled to the enjoyment of those rights and their protection by the state. And if these rights must be limited for the greater good, then there must be a legally sanctioned process to determine this. Wrongdoers must certainly be meted punishment, but even wrongdoers have rights and are entitled to due process.

Second, denying some classes of people these rights, as Duterte does, puts all of us on the slippery slope that could end up extending this denial to other groups, like one's political enemies or people that "disrupt" public order, like anti-government demonstrators

or people on strike for better pay. In this connection, remember that candidate Duterte threatened to kill workers who stood in the way of his economic development plans and made the blanket judgment that all journalists who had been assassinated were corrupt and deserved to be eliminated. That was no slip of the tongue.

Third, rights are indivisible. Measures that purportedly promote positive rights and advance the economic and social welfare of citizens rest on a fragile basis and can easily be taken back if they are not recognized as stemming from and resting on the basic right to life. Upholding positive rights while negating fundamental rights involves one not only in a logical but in a very real contradiction. To say I will liberate you from exploitation but hold your life hostage to your "good" behavior involves one in a contradiction that is ultimately unsustainable; this is the contradiction that unraveled the Stalinist socialist states of Eastern Europe.

# Human Rights Under President Duterte

By Walden Bello

*This is an extract from a longer article by Walden Bello titled, “An administration in search of an opposition,” published by Rappler on 10 July 2016. To read the complete article, please go to: <http://www.rappler.com/thought-leaders/139170-administration-in-search-opposition>*

## Fundamental Rights and Positive Rights

When he first signaled his intention to run for the presidency last year, I said that Duterte’s candidacy would be good for democracy because it would force liberals and progressives to defend a proposition that they had long taken for granted: that human rights and due process are core values of Philippine society.

Let us now address this urgent task.

The right to life, right to freedom, right to be free from discrimination, and right to due process have often been called fundamental rights because they assert the intrinsic value of each person’s existence and underline that this value is not bestowed by the state or society. They are also often called “negative” rights or “inalienable” rights to stress that other individuals, corporate bodies, or the state have no right to take them away or violate them.

What have now come to be known as “positive rights” such as the right to be free from poverty, the right to a status of economic equality with others, and the right to a life with dignity are those rights

that promote the attainment of conditions that allow the individual or group to develop fully as a human being. Positive rights—sometimes referred to as social, economic, and cultural rights—build on negative or fundamental rights. The recognition and institutionalization of fundamental rights may have been historically prior to the recognition and achievement of positive rights but the latter are necessary extensions of the former. Rights, in short, are indivisible, and positive rights have a fragile foundation in a state where the basic right to life is negated by leaders who claim to be promoting them.

## Liberal Democracy vs Authoritarian Rule

One of the key functions of the state is to secure the life and limbs of its citizens, but this must be accomplished while respecting the full range of rights of its citizens. There is a necessary tension between not violating individual rights and achieving security and political order. This healthy tension is what distinguishes the liberal democratic or social democratic state from the authoritarian, fascist, Stalinist, or ISIS state.

To progressives and liberals, recognition and respect for human, civil, political, social, economic, and cultural rights have been a fundamental thrust in the evolution of the Philippine polity, a process that has been influenced by landmark events in the history of democracy such as the French Revolution and the later struggles against colonialism, fascism, and Stalinism. Individual rights have been won in interconnected global struggles against ruling classes, imperial oppressors, corporations, and bureaucratic and military elites. This historical process has produced polities called liberal democracies and social democracies, the latter being distinguished by their greater stress on the achievement of the full range of positive rights, including universal social protection.

However, one must acknowledge that there has been a counter-thrust, one that has periodically emerged to challenge the primacy of individual and human rights. This perspective places the state as the authority or arbiter of what “rights” the individual can enjoy, subordinates the welfare of the individual citizen to the security or needs of the state, and

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