

## Backlash and Beyond: The Criminalization of Agrarian Reform and Peasant Response in the Philippines

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### Abstract

In the 35 years since the end of the dictatorship in the Philippines many rural poor Filipinos have been caught up in a political battle over the pace and direction of agrarian change. This paper focuses on the political-legal dimension of agrarian conflict in one region, exploring how it has fueled and been fueled by criminalization, particularly the indiscriminate filing of criminal charges against share tenants struggling for recognition as legal land rights holders under the 1988 agrarian reform law. Here, criminalization is a form of landlord retribution against tenants who dare to defy the status quo. The case demonstrates how tenants get “bound by law” – e.g., caught up in inconsistencies in state law and ensnared in costly legalist traps set by powerful landowners threatened with redistribution, but then also leading to innovative collective efforts to activate state officials to step in on the side of peasants to make state law authoritative in society.

### Key words

Peasants rights; land rights; land redistribution; agrarian law; agrarian conflict; agrarian change; Philippines

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**Resumen**

En los 35 años transcurridos desde el final de la dictadura en Filipinas muchos filipinos pobres de zonas rurales se han visto atrapados en una batalla política por el ritmo y la dirección del cambio agrario. Este artículo se centra en la dimensión político-jurídica del conflicto agrario en una región, analizando cómo ha impulsado y ha sido impulsado por la criminalización, especialmente la presentación indiscriminada de cargos penales contra los aparceros que luchan por que se les reconozcan los derechos de tierra legales, bajo la ley de reforma agraria de 1988. En este caso, la criminalización es la forma que tienen los terratenientes de responder contra los aparceros que osan desafiar el status quo. El caso demuestra cómo los arrendadores están "obligados por ley" - por ejemplo, están inmersos en incoherencias en la ley estatal y atrapados en costosas trampas legalistas puestas por los poderosos terratenientes amenazados con la redistribución, pero al mismo tiempo lideran esfuerzos colectivos innovadores para hacer que los funcionarios estatales se muevan a favor de los agricultores, y conseguir que la ley estatal sea autorizada en sociedad.

**Palabras clave**

Derechos de los campesinos; derechos de tierra; redistribución de la tierra; derecho agrario; conflicto agrario; cambio agrario; Filipinas

**Table of contents**

1. Introduction.....	38
1.1. Overview .....	41
2. Historical-institutional background .....	41
2.1. Long history with mixed results in land reform .....	41
2.2. Fragmented character of rule of law.....	43
3. Criminalization of peasant land rights claimants and redistributive agrarian reform: The case of Bondoc Peninsula .....	46
3.1. Tesalona Case .....	47
3.2. Aquino Case.....	48
3.3. Uy Case.....	51
3.4. Summary.....	53
4. Organized peasants' political response: KMBP's mass surrender .....	54
5. Concluding remarks .....	59
Bibliography .....	60

## 1. Introduction

Across the world, land remains important to both elite and subaltern groups. Control over land is crucial rural people's capacity to construct a rural livelihood and overcome poverty, as well as their autonomy in decision making, which affects their lives. For indigenous groups, land might be valued, not so much as a crucial 'factor of production' but rather as 'territory' that is deeply intertwined with their collective identity and socio-cultural reproduction as a people across generations. For landed classes, control of land is an important basis of wealth, power and prestige. Landlords might use the threat of expulsion from the land or the promise of reward of access to land and farm work to keep tenants and farmworkers under control. Even in countries now perceived as vibrant democracies, landholdings owned or controlled by elites can be a source of 'captive votes' during elections. Monopoly control over land resources by a few is a key factor behind the persistence of 'local authoritarian enclaves' within national electoral-civilian regimes in parts of the world today.<sup>1</sup>

The fundamental yet often deeply contrasting significance of land to different groups in society raises a controversial set of questions. Who has – or should have – what rights to which land, for how long and for what purposes? Moreover, who gets to decide? The underlying issue of land rights and who counts in their allocation is not new, with fundamental disagreements over how to answer these questions lying at the root of many serious, devastating and recurring social conflict across the globe in both the past and present. State-led agrarian reform programs 'from above', which (re)distribute rights to land based on specified technical-legal criteria, are one way in which some states have historically addressed the land problem. By contrast, many peasant movements across the world have approached the problem through social movement-driven agrarian justice campaigns 'from below', drawing on wider human rights-inspired concept of rights and where they come from. Whether and how these two broadly distinct currents interact and (re)shape each other in specific cases over time is important for understanding land rights and why they matter.

No land policy is ever neutral, given that they include some while excluding others in allocating land rights; indeed, for this reason, agrarian reforms (or the threat of reform) have tended to provoke strong backlashes from those whose existing 'rights' would be extinguished or curtailed. Take the case of the Philippines. The archipelago that became the Philippines has been subjected to numerous land policies over the centuries, from the regalian doctrine and encomienda system imposed by Spanish colonial rulers in the 16<sup>th</sup> century and the Torrens titling system by American colonial rulers in the early 20<sup>th</sup> century, to the current Comprehensive Agrarian Reform Program (CARP) that began in 1988. Throughout the previous century (until 1988), agrarian reforms were more an elite response to rising peasant unrest aimed at avoiding land redistribution than a wider social measure aimed at a more equitable and democratic society. In 1988, just after the collapse of the Marcos dictatorship, the country enacted an agrarian reform program that approached land rights as much more than just a political expediency or economic policy. Moreover, the 1988 program also approached land rights as a matter of social justice, and thus promised – or threatened – to change the status quo much more than past programs had. Indeed, the potentials of the program were not lost on the landed classes.

Consequently, while the dictatorship was certainly a dark period in the country's history in terms of repression and human rights, ironically, the subsequent period has proven be arguably even worse for many rural working poor Filipinos. After struggling under hostile conditions for the recognition of land rights, and then getting more significant land rights than ever before in 1988 via CARP, many

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<sup>1</sup> For the concept of 'local authoritarian enclaves', see the work of Jonathan Fox (1990, 1994).

landless (or near-landless) rural working people found themselves having to struggle anew in order to effectively claim their new legal land rights. In the decades since martial rule, many parts of the countryside have been gripped in often bitter conflict involving potential peasant 'beneficiaries' of the government agrarian reform program (mainly share tenants and commercial farm workers), government officials at different levels, anti-reform local authoritarian elites and a Maoist-inspired, anti-reform underground guerrilla movement. Conflict has been the crucible within which land rights on paper are forged into rights in reality, in a long and difficult process where the outcomes are not predetermined, but rather contingent upon the strategies and interactions of key actors.

This article looks at how land rights are constructed in reality in settings characterized by significant land concentration and rural poverty, the coexistence of local authoritarian enclaves and national electoral competition, as well as fragmented and contradictory state law. Land conflict and agrarian reform has a long history in the Philippines, much of which has been examined in depth (see among others Kerkvliet 1977, Putzel 1992, Borras 1999, 2007, Franco 2008a, 2008b). The discussion here builds on previous studies of the organized efforts and political strategies of peasants who have sought full and meaningful recognition as legitimate land rights holders in the post-1986 period. The study by Borras (1999) looked at one strategy commonly referred to in Filipino rural activist circles as the 'bibingka strategy', developed in the late-1980s and early-1990s in the wake of a new agrarian reform land and program. The new strategy contributed to an unprecedented redistribution (or near-redistribution) of thousands of hectares of land to thousands of peasants in the Philippines between 1988 and 1998, the first decade of a major agrarian reform. This accomplishment is significant compared to a string of past reforms that resulted in very limited redistribution of land to peasants, leaving 83 per cent of all farms in the hands of 5 per cent of Filipino families by the late-1980s (Putzel 1992).<sup>2</sup>

'Bibingka' is a festive Filipino cake baked in a special oven with fire on the top and bottom. The word thus describes a strategy of 'cooking'; an outcome by applying 'heat' (e.g. pressure) through the actions and interactions of pro-reformists in both the state and society. The imagery was deliberate. Having participated in the fight for a new agrarian reform law that would recognize their right to own the land upon which they live and work, many rural working poor Filipinos soon found that new land rights accorded by law remained out of reach due to anti-reform resistance from landlords and their allies within the state. The bibingka strategy pointed to an innovative way to build momentum behind land redistribution, and one that envisioned pro-reform actors on both sides of the state-society divide, reaching out to one another in order to overcome the resistance of anti-reform actors. The strategy assumed that 'good' laws (or those with some important pro-reform provisions, as did the CARP) are necessary, although not sufficient, for peasants to gain recognition as land rights holders and claim their land rights. Advocates of the new strategy understood that laws are interpreted, disputed and implemented by numerous state *and* non-state actors at multiple levels, beginning with the very local in *specific* landholdings, but they gave particular importance to the presence of authoritative pro-reform state actors 'at the top' who could direct action at lower levels of the state bureaucracy and to whom lower level bureaucrats were accountable.

Later studies have tried to further unravel the details of exactly *how* land rights are constructed, activated, (re)interpreted, disputed and implemented (or not) in a

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<sup>2</sup> These figures are taken from an unpublished internal study that was conducted by the non-governmental organization PEACE Foundation in 2000 and based on cases within which PEACE Foundation organizers had been directly involved (hereafter referred to as 'PEACE Institutional Study'). The team that conducted this internal study was led by one of the authors of the present article (Franco).

given landholding to more precisely identify the conditions under which peasants' organized efforts leads to 'making land rights accessible' (Franco 2008a). The institutional factors identified include: (i) positive national constitutional-judicial changes that create new opportunities for peasants to claim legal land rights; (ii) institutional reforms that expanded peasants' access to that part of the state most responsible for implementing land reform, i.e. the Department of Agrarian Reform (DAR); and (iii) peasants having access to a support structure for political-legal mobilization, what Epp (1998) calls a 'rights-advocacy organisation' with the *interpretive* resources to exploit the possibilities of using the law to claim land rights, particularly through a proactive, integrated political-legal strategy.<sup>3</sup>

However, it was becoming apparent by the late-1990s that although the earlier institutional reforms had created new opportunities for claiming peasant land rights, these were nonetheless limited. Apart from the Department of Agrarian Reform, other important areas of the state had been left out. The regular courts had not been touched, leaving them closed to the social change pressures that were gathering around the Department of Agrarian Reform, a situation that perhaps illustrates Rosenberg's (1991) notion of the 'constrained court'. Historically, state justice sector institutions – including the various agents responsible for constructing state law at the local level (e.g. local judges, public prosecutors, public attorneys, local police, and village officials) – have been extremely open and receptive to landlord influence. Many past land reform failures have been partly traced to the handling of agrarian cases by local judges tied to landowners or who are in fact landowners themselves (Putzel 1992, p. 146, 162). In the CARP era, where jurisdiction over agrarian matters is supposed to rest with the Department of Agrarian Reform, landlords have taken advantage of existing legal disjunctures to use processes of criminalization to influence the pace and direction of agrarian reform implementation.<sup>4</sup>

Taking up this particular problem, we consider a set of cases in which a local judge and the regular courts emerged as a major obstacle to peasants' organized efforts to claim their legal land rights on the ground. In many cases, peasants have been confronted by a strong backlash of landlords against the agrarian reform law's implementation on the ground. Physical violence is just one means used by landlords, with others including the criminalization of peasant land rights claimants, namely, turning peasants who claim their land rights into 'criminals' by filing criminal charges against them in the regular court system. We examine this landlord strategy in a region, the Bondoc Peninsula in the province of Quezon on the island of Luzon, where landlord resistance to land redistribution has been acute and notorious. This case highlights criminalization not as an isolated incident, but rather as systematic and widespread. Moreover, what makes this case especially interesting is how criminalization in turn prompted peasants to push back using a mass surrender strategy to force higher state authorities to intervene in the defense of the legality of their land rights claims and their legitimacy as land rights holders under CARP. The mass surrender strategy drew inspiration from 'rightful resistance' (O'Brien 1996, O'Brien and Li 2006), where peasants mobilize central state law as leverage in their face-to-face struggles against erring local officials and political corruption. The actual campaign was shaped by several factors, including the growing physical, financial and emotional distress of the peasants (and their

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<sup>3</sup> Whether or not the use of state law led to actual gains depended on the nature of the political-legal strategy used. In particular, it was crucial in (i) activating and sustaining a 'full and meaningful' interpretation of agrarian reform law implementation; (ii) exploiting independent initiatives of state actors; and (iii) resisting legal and extra-legal anti-reform initiatives of state and societal elites. Building on Epp's assertion that sustained official attention to individual rights grows out of pressure 'from below' rather than leadership 'from above', the paper shows that the logic of mobilising different kinds of pressure from below to claim legal land rights is linked to the configuration of institutional obstacles to a 'rights revolution' in the countryside.

<sup>4</sup> The authors would like to thank an anonymous reviewer who suggested this formulation of the problem.

families) facing criminal charges, as well as a growing perception amongst land reform activists concerning the need to undertake not just 'legal defensive action' but also 'legal offensive action' targeting the state law field itself through an action designed to achieve both remedy and reform.<sup>5</sup>

### 1.1. Overview

The paper begins by providing some relevant background to situate the Bondoc case both historically and institutionally. It subsequently proceeds to examine the landlord-led campaign to criminalize peasant land rights claimants there, which reveals both the strengths and weaknesses of the 'bibingka' strategy as originally conceived. The discussion then turns to look at how organized peasants responded to landlord-led efforts to use the regular court system to punish the 'erring' peasants as part of the wider attempt to avert the agrarian reform in specific landholdings. It shows how the peasants mobilized an array of organizational and discursive resources in an effort to push back, against both the landlords and the court system. This case points to the need for a further refinement of the idea that 'a proactive, integrated political-legal strategy' is necessary to (i) activate and sustain a pro-peasant interpretation of agrarian reform law implementation; (ii) exploit independent initiatives of state actors; and (iii) resist legal and extra-legal anti-reform initiatives of state and societal elites (Franco 2008a). It suggests that more proactive efforts might be needed in the future to induce and sustain reforms of the state justice sector institutions to unblock the agrarian reform process. The discussion ends with some concluding remarks about the ongoing challenge of 'making land rights real' in the Philippines, where many land conflicts continue to require the mobilization of strong pressure from peasant land rights claimants. As explained elsewhere, this is necessary to 'fine-tune (e.g. 'tighten' or 'loosen', 'bend' or 'stretch'), correct or fix their constitutional-judicial land rights in practice when either technical-legal gaps, built-in legal loopholes or outright attempts to violate or manipulate the law in favor of the status quo are revealed during implementation' (Franco 2008a, p. 996).

## 2. Historical-institutional background

### 2.1. Long history with mixed results in land reform

Land reform in the Philippines has a long history, marked by cycles of intense popular assertion that periodically managed to put land reform on the national political agenda numerous times during the 20th century. However, government promises of reform made under social pressure have largely failed to lead to the redistribution of land-based wealth and power. Instead, there has been a succession of broken promises and lost opportunities. Perhaps the best way to describe the long history of land reform in the Philippines is periodic cycles of social pressure for land reform from below, met by lukewarm state response from above.

While the fall from power of Ferdinand Marcos brought centralized authoritarian rule to an end, it did not necessarily mean the dawn of democracy in the Philippines. In the countryside, many local and regional elites, whose wealth and power derived from their authoritarian and clientelistic command of vast amounts of land and labor, remained firmly in place. As a result, the key question became: how far would (or could) the national political regime transition go in the direction of greater political democracy and effective access to basic democratic and human rights? For many of those most concerned at that time about ensuring full and meaningful democracy, answering this question was intimately tied with resolving

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<sup>5</sup> Both authors participated in the debates and discussions regarding political strategy at this time, which were partly prompted by a sense that the bibingka strategy was no longer as effective as before, perhaps because conditions had changed, particularly with the loss of a strong pro-reform ally at the top of the national agrarian reform bureaucracy. The question emerged concerning what kind of strategy the new conditions require.

the land issue in a way that would finally break up the power of local and regional landed elites and break their authoritarian hold on the countryside.

Of course, the land issue was not new. When Marcos came to power in the late-1960s, he had inherited a decades old 'land problem', reflected in many swathes of rural unrest simmering at that time. Nonetheless, Marcos significantly aggravated and deepened the problem through his programs and policies, which in turn contributed to spreading the peasant base of a Maoist-inspired underground guerrilla movement, led by the outlawed Communist Party of the Philippines, far beyond its original base in Central Luzon. By the time the dictatorship was teetering on the brink of collapse, this insurgency had burgeoned into a major national political movement that framed its opposition to the dictatorship largely in terms of the problem of deepening social injustice, pointing to (among others) rampant land grabbing by Marcos and his cronies, worsening land concentration, unfettered landlordism, as well as widespread landlessness and rural poverty. When Marcos finally fell, there was a basic consensus almost entirely across the political spectrum that the land problem was severe and urgent and could only be ignored at great peril. Many described the situation at that time as a boiling 'social volcano' about to erupt.

However, beneath the surface of this initial consensus lay sharply competing views concerning who should have what rights to which land, for how long and for what purposes. As a result, the 1987 Comprehensive Agrarian Reform Law (CARL) and 1988 Comprehensive Agrarian Reform Program (CARP) reflected a long-debated, hard-fought compromise, which ended up accommodating demands from the landowning classes, agribusiness and the peasantry alike. CARP was thus laced with some unprecedented redistributive provisions alongside many pro-landlord loopholes. In the still very feudal context of Philippine agrarian politics in the 1980s, this 'compromise' law and program had very progressive potential in terms of establishing legal land rights for the rural poor and creating redistributive pressure points upon which different segments of the Filipino rural working poor could act. It was not until CARP that officially mandated agrarian reform in the Philippines opened up *all* croplands and farm systems to possible expropriation and redistribution, while setting very low retention limits. The scope was unprecedented, thus creating an official institutional channel for most peasants to claim land rights for the first time in Philippine history.

It was during the CARP era that the basic pattern of non-implementation of land reform in the Philippines changed, at least for a short while, with land reform unexpectedly taking off between 1992 and 1998. This change has been largely attributed to a major shift in political strategy after 1992, with the election of a new president bringing a former NGO director and pro-reformist to lead the Department of Agrarian Reform, who reached out to make alliances and work with non-governmental land reform activist organizations involved in informing peasants across the country of their new land rights, as well as working with them to devise strategies for claiming those rights. After the 1998 presidential elections, when a new administration came to power, program implementation increasingly faced more severe resistance as many of the most contested landholdings controlled by the most despotic landlords finally came under consideration. These included the largest landholdings in Bondoc Peninsula, as well as some of the most difficult landholdings in the commercial fruit export farm sector.<sup>6</sup> When the government changed again in 2001, the usual inertia reasserted itself and the implementation of the program once again slowed down, grinding on with mixed results, partly due to assaults on its scope and legitimacy launched through the courts.<sup>7</sup>

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<sup>6</sup> See Franco (2008a) for more on some of the cases that came up for reform at this time.

<sup>7</sup> By 2005, according to the government, nearly six million hectares of private and public lands accounting for around half of the country's farmland had been redistributed to three million rural poor



Looking back, the aggregate gains in land redistribution made especially during the 1992-1998 period are remarkable, and while government data is of limited reliability, data from the PEACE Foundation, a national rights-advocacy organization that was deeply involved in the national land reform campaign, confirms that there was an expansion of progress in land redistribution during the 1992-1998 period, followed by a drop-off after 2001.<sup>8</sup> Moreover, the achievement appears even more remarkable if one takes a close look at any one of the hundreds of individual land conflict cases from this period that were hard-fought between an entrenched rural elite and tenant or farmworkers claimants and subsequently won by the latter. The authoritative implementation of agrarian laws is a complex and difficult process. Laws, policies and programs do not just implement themselves; rather, they are interpreted and implemented by real people who are themselves embedded in discrete institutions and power structures. The dynamics and contradictions of land reform processes can be difficult to read, interpret and successfully negotiate in the moment. The flawed land reform program's potentials thus initially remained beyond the limits of many people's political imaginations in the 1990s. Much had to be re-thought, tested and proved before positive momentum could take hold, and in turn, inspire more critical engagement. The idea that redistribution was possible only began to gain traction after some initial successes. Indeed, even with such 'proof', many observers and activists remained understandably skeptical in light of past non-redistribution amidst extreme land concentration and social unrest.

Of course, the momentum did not come from sheer will power alone, but rather was the result of the ongoing strategic interactions of key actors and their chosen political strategies within changing yet specific, historical-institutional contexts. Viewed from below, these actions and interactions consisted of a diverse repertoire, including formal and informal dialogue and negotiation, as well as more pressure politics through direct mass action (such as collective harvesting and land occupation) and mass mobilization (such as marches and camp-outs) (Franco and Borrás 2009). They can be described as non-violent, but not conflict-free. This is precisely because, when peasants in many parts of the Philippines stand up for their rights, and even their legal rights under state law, this immediately triggers a backlash and resistance from anti-reform forces.

One form that anti-reform backlash and resistance has historically taken is criminalization. Often combined with other forms of landlord resistance and backlash – such as psychological intimidation, physical harassment, killing and other kinds of coercion, criminalization is not new. As far back as the 1930s, landed authoritarian elites used mass arrest and eviction to undercut peasant mobilization around new tenancy and labor rights that had been accorded by the national government (Franco 2001b, p. 52-57). It would not be an exaggeration to say that as long as there has been land conflict and rural unrest in the Philippines, as well as land policy responding to such pressures, there has been criminalization in this sense. Meanwhile, criminalization has always co-existed with landlord impunity (International Fact Finding Mission 2006), which are two sides of the same coin. This situation reflects the relative political weakness of central state law vis-a-vis local elite law, exactly in those parts of the countryside where land concentration continues to exist and land redistribution has not yet come to pass.

## *2.2. Fragmented character of rule of law*

In the Philippine rural context, criminalization is an indicator of an ongoing political battle between three broadly contending social-regulatory orders, namely (i) a fragmented and contradictory state law; (ii) an authoritarian-clientelist 'cacique' law; and (iii) the vision of what the rule of law should mean according to an equity

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households, representing two-fifths of the agricultural population. In addition, 1.5 million hectares of land had been subjected to leasehold, benefiting around one million tenant-peasant households.

<sup>8</sup> PEACE Institutional Study.

and social justice-oriented peasant movement.<sup>9</sup> The use of processes of criminalization of peasant land rights claimants in the CARP era points to the existence of spaces of legal disjuncture resulting from the persistence of these three social-regulatory orders and an ongoing battle between peasants, landlords and the state over the nature and meaning of the rule of law more generally.

To understand rule of law and how it operates in the Philippines, one must "ascertain the way [they] fit into the larger pattern of dispute-processing..." (Machado 1985, p. 15) The literature on legal pluralism is useful. In a plural legal order, different regulatory fields with distinct sets of institutions and forms of stratification coexist and compete for standing, including the juridical field (Benda-Beckmann 2001). The juridical field (or state law) comprises the ensemble of national official institutions, agents, legal instruments and norms particular to a given national territory. From a legal-pluralist's more society-centered perspective, this field is constitutive of the state but not coterminous with it, given that it is reproduced by the actions not only of state agencies and judges, but also lawyers, law firms, professional associations, non-governmental law reform organizations and civil society rights-advocacy groups (Houtzager and Franco 2003).

In agrarian reform matters, the state law field has been fragmented from the start, with its agents and instruments dispersed across administrative, quasi-judicial and judicial sub-arenas. The origins of this fragmented field can be traced to institutions established under American colonial rule (1898-1935), which were modelled after the US adversarial legal system, albeit with elements drawn from the Spanish period (1521-1898) (Forbes 1945, p. 140-146, Lynch and Talbott 1995). Changes to the structure of state law were made during the 1930s, partly in response to rising agrarian unrest. Special courts were set up to handle agrarian and labor disputes, as well as acting as a safety valve for these new social pressures. In 1955, the Court of Agrarian Relations was created just as a peasant rebellion in Central Luzon peaked, sharing jurisdiction over landlord-tenant disputes with the Courts of First Instance (Kerkvliet 1977, p. 240, Feliciano 1996, p. 34). In 1963, a new land reform law created the Department of Agrarian Reform, while the agrarian courts continued to operate (Feliciano 1996, p. 35). By the early-1980s, the CAR had a 'notable presence in the rural sector' (Silliman 1981-1982). However, it was subsequently taken over by newly created Regional Trial Courts (RTC or regional courts), giving the regular judicial system more control over agrarian matters. The RTCs took over jurisdiction '(i)n all civil actions which involve title to, possession of, real property, or any interest therein, except actions for forcible entry into and unlawful holders of lands or buildings' (Bacungan and Tadiar 1988). Regularized lower courts gained exclusive power to try agrarian related cases as criminal, civil and special proceedings, although this situation was later reversed. Just before the 1988 agrarian reform law came into being, the regional courts were divested of exclusive jurisdiction over agrarian reform matters, which were then given over to the DAR and a newly created DAR Adjudication Board (DARAB).

However, in the absence of changes to the written law, these institutional reforms set the stage for a massive jurisdictional tug-of-war played out in courtrooms and local DAR offices nationwide for years to come, with grave implications for the thousands of peasant land rights claimants. An underlying source of institutional discontinuity and legal tension is the co-existence of two contending bases of legal interpretation, the 1950 Civil Code and the 1987 Constitution and 1988 Agrarian Reform Law, each of which was produced at different historical times and under different social-political circumstances. The former takes evidence of title (e.g.

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<sup>9</sup> The discussion in this sub-section is based on research conducted by Franco between 2000 and 2004 as part of a DFID-funded three-year research project "When the Poor Make Law: Comparison from Brazil and the Philippines" carried out under the auspices of the Law, Democracy and Development Programme of the Institute of Development Studies (IDS) in Brighton, England. Most of the findings from this research were published in Franco (2008a, 2008b).

absolute deed of sale, tax records) as the legal basis for land ownership, whereas the 1988 agrarian law takes personal cultivatorship as the basis.<sup>10</sup> While the 1987 Constitution defines land property in terms of its social function, there is no such concept under the Civil Code.<sup>11</sup> In practice, jurisdictional lines in agrarian reform and related disputes remain blurred, leaving it up to better-equipped litigants and individual judges to determine where – and how – a case will be processed.

As a result, criminalization has been able to flourish. Rural poor claimants seeking land reform are obliged to mobilize state law administratively through the DAR or quasi-judicial DARAB structure. However, landowners can activate the more conservative Civil Code by mobilizing trial courts to defend their claim to property threatened with redistribution and to harass peasant claimants, either by filing dubious criminal charges aimed at weakening their resolve and wasting scarce financial resources (e.g. what is understood here as criminalization) or by launching a legal blitzkrieg intended to overwhelm them.

To further complicate matters, this fragmented state field coexists with several non-state fields of regulation.<sup>12</sup> One is community law, or the informal or customary field, which involves face-to-face dispute processing by ordinary people at the grassroots.<sup>13</sup> Another is a non-state patrimonial field of 'cacique law', where the personalized 'laws' of individuals whose wealth and power is based in land hold sway. The cacique field dates back to the colonial era, with the formation of an unrepresentative political party system, comprising contending factions of regional elite, competing for control of central state power and national patronage resources.<sup>14</sup> Influential regional land-based families entered the national elite circle by proving their ability to mobilize patronage networks and coercive machineries at the district level for national political competition. Once elected, representatives of these factions used national office to acquire the resources needed to build, rebuild, maintain or expand their own local fiefdoms in between elections (Anderson 1988). In exchange, local authoritarian bosses 'extracted a de facto regional autonomy as the price for delivering their vote banks to Manila politicians' (McCoy 1993, p. 47). Most Filipinos were integrated into national politics as clients of land-based elite politicians.

Entrenched regional landed elites have long posed a problem for agrarian reform, with even the collapse of the dictatorship and transition to a more open and competitive political regime in the 1980s failing to eliminate local authoritarian enclaves in the countryside (see Fox 1990, Franco 2001a, p. 5-11). Basic rights and freedoms were again officially guaranteed, although millions of rural poor Filipinos remained locked in the grip of local authoritarian bosses, whose repertoire of 'authoritarian clientelist' practices maintain social control and block access to rights and freedoms. The term 'authoritarian clientelism' is useful to refer to situations in which 'imbalanced bargaining relations require the enduring political subordination of clients and are reinforced by the threat of coercion' (Fox 1994, p. 153). Patronage networks, electoral machines, official organizations, conservative local churches and private armies are important rural institutions that tend to reinforce cacique rule of law.

Viewed from below, the land-based cacique field constitutes an entrenched system of privatized social regulation that operates through (i) large landowners and

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<sup>10</sup> Interview by Franco, Marvic Leonen, law professor and Executive Director of the Legal Rights and Natural Resources Center, 11 October 2001, Quezon City.

<sup>11</sup> Interview by Franco, Mabel Arias, prominent agrarian reform lawyer, 11 October 2001, Quezon City.

<sup>12</sup> While the state (juridical) field might be central to the process of law, it is ultimately just one of several fields of action within which people seek to resolve conflict and obtain redress and protection. Other regulatory fields also play a role in determining and processing disputes.

<sup>13</sup> Villagers might handle a personal dispute by what Galanter (1981) calls 'lumping it'. However, they also use direct negotiation, unofficial and informal mediation, as well as retaliation mechanisms and practices.

<sup>14</sup> See Anderson (1988) and McCoy (1993), among others.

his/her representatives such as farm managers, supervisors and overseers, and private armies or company guards; and (ii) 'captive' public authorities.<sup>15</sup> This field may be demarcated by barbed-wire fencing, entrance gates manned by armed security guards and even placards announcing the policies of 'hacienda law'.<sup>16</sup> Power in the cacique law field derives from controlling large tracts of contiguous land and the people who live and work in and around them. Where 'private' and 'public' spaces overlap at the village level, there is a tendency for cacique law to outweigh public authority in areas beyond the range of higher-level government offices, independent media or rights advocacy groups. Moreover, by virtue of landlord control of local political office its effects can be felt beyond the farm gates.<sup>17</sup> Those living under the shadow of hacienda law might even know more about it than they do about state law.<sup>18</sup> The frequency of out-of-court settlement of agrarian disputes illustrates how deeply the cacique field casts a shadow over the state law field. In agrarian disputes in practice in the Philippines, 'amicable settlements' have been more a veil for the extension of hacienda law into state juridical proceedings that often ends up ratifying gross power imbalances between disputing parties than a culturally appropriate and efficient method for dispensing justice.<sup>19</sup>

One aspect of the extension of hacienda law into the state law field is the criminalization of peasant land rights claimants. The indiscriminate filing of criminal charges against peasants involved in large land conflicts is linked to how the country's plural-legal order manifests in places where the ownership and control of land remains concentrated and reinforced by authoritarian-clientelism. This situation poses a major challenge to any effort to extend rural poor people's right to have rights. In the next section, we delve more deeply into how this situation has played out in the Bondoc Peninsula region of the Philippines.

### **3. Criminalization of peasant land rights claimants and redistributive agrarian reform: The case of Bondoc Peninsula**

Bondoc Peninsula is a good example of a rural local authoritarian enclave that was consolidated during the dictatorship during the 1970s-80s, before surviving its collapse and the subsequent re-inauguration of a clientelist electoral regime. Until the early-2000s, most of the land and labor (mainly share-cropping peasants) in the region was under the control of a handful of big landlords. Large areas of the peninsula were locked up in large coconut haciendas lorded over by a few elite families backed up by private armies. In some cases, these private armies overlapped with the underground Maoist rebel movement through 'unholy alliances' (as they are known locally). Economically, the region's life-blood is agriculture and specifically the production of coconut, a relatively low-value crop mainly grown for oil for domestic use. Although most of the region's land is used for agriculture (including grazing), a large portion is classified as (state/public) timberland, adding complexity to the agrarian reform process, given that timberland, by definition, is not alienable and disposable and therefore not subject to agrarian reform. *De facto* private ownership and land titles have emerged throughout the region over time. Some of the region's land was titled during the Spanish colonial period. During the

<sup>15</sup> The latter refers to any village and municipal official whose actions reinforce rather than resist a landlord's self-interested will, including judges, public attorneys and police.

<sup>16</sup> A weathered, hand-painted sign posted on barbed wire fencing announced the physical border between Philippine state law and the law of the hacienda, when the authors paid a visit in 1998 to the share-cropping tenants who had petitioned for its compulsory acquisition and redistribution by the state to the tenants. The 174-hectare landholding in the village of Catulin, also in Bondoc Peninsula, Quezon Province, would eventually become the very first landholding under the control of the Domingo Reyes family to be subjected to the reform, more than ten years after the program began. It was the smallest landholding in the family's vast collection, which has been estimated to total more than 10,000 hectares. The peasants' long journey and struggle to get the land is discussed in depth in Franco (2008a).

<sup>17</sup> See also Anderson (1988), Kerkvliet (1990), Sidel (1999), and Abinales (2000).

<sup>18</sup> This came out in FGDs conducted by Franco in both Bondoc Peninsula and Davao del Norte.

<sup>19</sup> Van Donge (1999, p. 65) makes a similar observation in Malawi.

American colonial period, large areas came under the control of prominent elite families through pasture leases. By the late-1950s, the latter began to develop some areas for cultivation, recruiting landless farmers inside and outside the region as tenants and laborers. Many of these elite families managed to change their legal relationship to the land by securing titles through judicial application.<sup>20</sup> It was through this dubious titling process that lands within forest or timber zones were effectively 'privatized' despite not having been declared alienable and disposable. Therefore, much public (state-owned) land came under private control.

One of the most common forms of criminalization in Bondoc Peninsula has been the filing of 'estafa charges against impoverished, share-cropping tenant farmers who either deliberately withhold or fail to turn over the required share of the coconut harvest'. Under Article 315 (1b) of the Revised Penal Code, estafa (or swindling) refers to 'misappropriating or converting, to the prejudice of another, money, goods, or other personal property received by the offender in trust, or on commission, or for administration, or under any obligation involving the duty to make delivery of, or return, the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property'. Despite its 'utter lack of legal or moral basis', the practice of charging peasants with the crime of estafa increased during the 1990s.<sup>21</sup>

Activist agrarian lawyers have argued that the validity of the charge is automatically limited by the operation of leasehold law on all tenanted lands. Under leasehold law, 'the pertinent liability of the tenant to the landholder is a mere monetary civil obligation to pay lease rentals', with failure to do so in the nature of 'conversion or misappropriation of such money or goods received', which is the essence of estafa (Arias 1998, p. 3). Charging tenants with estafa thus constitutes a 'crooked legal maneuver' by elite landholders, resisting redistribution under the government agrarian reform program (Arias 1998, p. 1). It is even more legally and morally 'crooked' (not to mention untenable) in instances whereby the landholder does not legally own the land, but rather is just pretending to own it to collect share payments from impoverished peasants, as is the case in much of Bondoc Peninsula.

### 3.1. *Tesalona Case*

One of the earliest known cases of criminalization dates back to the early-1960s, pitting several small farmer-settlers occupying a 200-hectare site (near the boundary of San Narciso-Mulanay) against elite claimant Sofronio Tesalona. When the farmer-settlers petitioned the Bureau of Forest Development in 1961 for the land to be awarded to them as the actual occupants, Tesalona suddenly arrived in the area, introduced himself as the owner and began demanding a share of the farmers' produce. Knowing that the land was public land, the farmers asked Tesalona to show his title. When Tesalona failed to show any proof of ownership, the farmers ignored his demand for a share of the harvest. In response, Tesalona filed criminal charges against the farmers, including arson and forcible entry. While none of the charges ever went to court, they were aimed at harassing the farmers into submission.<sup>22</sup> Ultimately, this strategy failed. After twenty years, the Court of

<sup>20</sup> Judicial application is the process of securing title through the regular courts. Application starts with a survey commissioned by private applicants. The applicant subsequently secures a decree from the Land Registration Authority, with this decree order forming the basis for the court to issue a title.

<sup>21</sup> The nongovernmental organization PESANTech reported in 1998 a growing number of its paralegals and members of partner peasant organizations 'being invariably charged with the commission of said crime' (Arias 1998, p. 1).

<sup>22</sup> In one incident, the police "invited" the farmers to the police station to answer the charges. The farmers were taken instead to the house of the claimant, where the police, the sheriff and the claimant took turns in pressing the farmers to recognize and honor the claimants' ownership claim. Due to this harassment, some farmers submitted to the sharing system for a time. Only once the leaders had collected sufficient evidence to prove that the land was within state-owned public forest zone could they

First Instance finally ruled that neither the farmers nor Tesalona could own the land, since the land was within a timberland zone and was not disposable for private ownership. Although the legal ruling was not in their favor, the farmers still won the battle, managing to maintain peaceful possession of the land throughout this time and until the present.<sup>23</sup>

### 3.2. Aquino Case

A subsequent case shows what can happen when the underground rebel movement becomes involved. This case involved a 201-hectare parcel of land that had been acquired by the Aquino family through judicial titling. The Aquinos had originally applied for a title to two parcels of land with a combined area of 402 hectares. At the time of their application, Don Vicente Del Rosario was reportedly the presiding judge of the Court of First Instance (CFI) of Quezon. The farmers believe that because both Aquino and Del Rosario knew that the area was within a forest zone, the judge agreed to issue titles to the two parcels in exchange for receiving one of the landholdings.<sup>24</sup> Aquino and Del Rosario thus divided the newly titled land between themselves. The area attracted farmer-settlers who initially planted banana, citrus trees and coffee. Later, in the 1960s, they began planting coconut trees with financial assistance from Aquino and under the direction of an overseer who was the father of the village chief. Once the trees became productive in the early-1970s, a sharing scheme was introduced.<sup>25</sup> Several individuals took turns to oversee the collection, including the local police chief. The town's police force took part in collecting shares from the tenants in the name of the landowner.<sup>26</sup> At times, one 'overseer' would demand payment even after another had just collected. Some of the farmers would pay, but many refused, and began asking for receipts as proof of payment, which led to a temporary halt in the collection.

In the early-1980s, Serafin Aquino, son of the original title-holder and a municipal councilor and notoriously abusive man, took over as farm manager. Fearing retribution, some of the farmers who had previously stopped paying the share began to pay again. However, when Aquino imposed additional onerous conditions upon them (regarding production costs), some balked, prompting Aquino to file criminal charges against them. The charges were never really pursued in court and the legal case was eventually shelved. This happened around the same time that the underground guerrilla movement began to build a presence in the region.<sup>27</sup> The guerrillas' promises of 'genuine agrarian reform' initially won over many of the region's sharecropping farmers with its (i) free distribution of land to farmers; and

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re-launch the "boycott", which then continued until the case was decided. However, the harassment continued, and by 1965 only four of the 30 petitioners were left to carry on the farmers' struggle.

<sup>23</sup> Interview with Pedro Navarro, the only surviving leader in the original petition of farmers.

<sup>24</sup> Interview with Rodrigo Navela. Cecilio Aquino was able to secure Original Certificate of Title (OCT) No. 011850 pursuant to a Decree of Registration No. N-105760 issued on February 16, 1963 with the help of Don Vicente del Rosario of Quezon. On November 4, 1965 the Register of Deeds of the province of Quezon issued in the name of Alberto Aquino an Original Certificate of Title No. -011850 pursuant to a Decree of Registration No. N-105760 issued on February 16, 1963 by the Honorable Judge Enrique Maglanos and the Honorable Judge Gabriel Valero of the Court of First Instance of the Province of Quezon under Land Registration Case No. G-36, involving an area of 2,140,851 square meters (214 hectares) and 1,861,481 square meters (186 hectares) covering Lots 1 and 2 respectively, of Plan PSU-169380, LRC Record No. N-17076, situated at Sitio Malibago, Barangay Cambuga, Municipality of Mulanay Province of Quezon. See Petition for the Cancellation of Title of the Aquino property filed by the Solicitor General.

<sup>25</sup> Interview with Brgy. Captain De Villa.

<sup>26</sup> Interview with Ka Celestino dela Cruz.

<sup>27</sup> In November 1984, the New People's Army (NPA) raided the Southern Luzon Coconut Oil Mill and municipal town hall, confiscating and destroying many legal documents, including those pertaining to this case (Focus Group Discussion with Celestino dela Cruz, Rodrigo Navela and Kagawad Pio Valencia on December 28, 1998).

(ii) rent-reduction in the form of 'tersyong baligtad', or an inversion of onerous sharing in favor of the farmers.<sup>28</sup>

By 1985, the sharing was an extremely oppressive 80-20 in favor of Serafin Aquino. This should have made it a good place to implement their so-called 'genuine' agrarian reform, and indeed the guerrillas promised to support the farmers if they were to demand a better share.<sup>29</sup> With this understanding, the farmers arranged a dialogue with Aquino, expecting the armed guerrillas to back them up. Thirty farmers arrived at the meeting in the house of one of the tenants, but the guerrillas never showed up and the dialogue never materialized. Instead, Aquino proceeded to castigate the farmers, who, one by one, meekly apologized, with their hopes for better conditions having evaporated.<sup>30</sup> The 80-20 sharing system remained in place for the next ten years.

In the early-1990s, the Aquino farmers learned about the new government agrarian reform program, prompting them to petition for the leasehold provision in 1995.<sup>31</sup> Predictably, the Aquinos resisted.<sup>32</sup> Therefore, the municipal agrarian reform officer (MARO) decided instead to push ahead with the even more radical compulsory acquisition of the land. In the process of moving forward with this plan, the farmers discovered that the land was in fact part of the state timberland zone (e.g. state/public land that cannot be privately owned).<sup>33</sup> Furthermore, they also discovered that share tenancy had been made illegal under the new agrarian reform law.<sup>34</sup> Emboldened by this new information, the farmers organized themselves under the Samahan ng Malayang Magsasaka sa Lupaing Aquino (SAMALA, or Association of Free Farmers of the Aquino Estate), and collectively decided to stop the payment of shares to the Aquinos. Anticipating a legal battle, they deposited the equivalent of 25% per member of the produce in the organization's bank account.

The landowners retaliated by filing estafa cases against them, with 108 counts filed by the end of 1997. On 18 September 1995, five farmers were arrested and detained for five days. On 5 December 1996, thirteen farmers were arrested and detained before being released upon posting bail. On 8 August 1997, two farmers, both 63 years old, were arrested and imprisoned for six days. Moreover, on 30 August 1999, four farmers were arrested and detained for six days, before being released after the mayor petitioned for their release. Bailing out the first two farmers was not difficult because they used the members' 25% share to post bail.

<sup>28</sup> The campaign for free land distribution targeted a 279-hectare parcel that had been acquired by the Coconut Industry Investment Fund, a government-controlled corporation formed by the dictatorship ostensibly to assist the development of the coconut industry, yet in reality was used to enrich the regime's cronies at the expense of small coconut farmers. There was no sharing scheme between the CIIF and the farmer-occupants, who already enjoyed peaceful possession of the land. Ironically, the campaign failed because: (i) the government agrarian reform program at that time did not cover coconut land; and (ii) the campaign never went beyond noisy protests to involve serious dialogue with relevant state agencies.

<sup>29</sup> "*Ang sabi sa amin, tutulongan nila kami na ayusin ang hatian pabor sa amin, kaya akala naming, talagang maipapatupad iyon. Kausapin saw naming ang may-ari at nasa likod naming sila*" (We were told they would help us fix the sharing system in our favor. They encouraged us to dialogue with the landowner and promised to back us up). Two sets of FGDs attended by 11 farmers on December 17, 1998.

<sup>30</sup> Interview with Rodrigo Navela, Sofio Valencia and Simeon Pesigan on November 26, 1998.

<sup>31</sup> CARP essentially outlawed share-cropping and instituted a leasehold system whereby the farmers make cash payments of 25% (versus payment in the form of 80% of the harvest).

<sup>32</sup> FGD with 16 tenants of Aquino property on November 29, 1998.

<sup>33</sup> On 24 July 1995, the Community Environment and Natural Resources Office issued a certification: "This is to certify that the property of Alberto Aquino et. Al., situated at Brgy. Cambuga, Mulanay Quezon, identified as Lot No.2, PCS-12516 with an area of 200.1166 hectares is within the timberland as per Project No. 16-D, Block A L.C. Map No. 1684, dated September 15, 1953".

<sup>34</sup> FGD with Rodrigo Navela, Kagawad Valencia and other Aquino farmers.

However, they later had to use land titles that the mayor helped them to borrow to post as bail.<sup>35</sup>

Once it became known that the case involved public land, the government should have initiated reversion proceedings to cancel and invalidate the Aquino titles. However, movement in this direction proceeded slowly, with the farmers encountering various legal, administrative and political obstacles.<sup>36</sup> For more than two years, the farmers lobbied government agencies to file the cancellation proceedings, albeit to no avail. Since the cancellation of title was linked to the pending estafa case, the farmers eventually filed the petition themselves in February 1997, combined with a camp-out in Manila to pressure the relevant government agencies. Seven months later, the DENR central office (which oversees state/public land) finally ordered the regional office to file the case, which finally happened on 24 October 1997, to the farmers' relief.

After the required cancellation proceedings began, the farmers' lawyer petitioned the Municipal Trial Court to suspend the criminal cases that had been lodged against them, citing the pending prejudicial question of ownership and arguing that the issue of ownership should be decided first to determine whether or not the estafa cases could proceed. At first, the presiding judge granted the motion of farmers in November 1997 and suspended the case, although the matter did not end there. Responding perhaps to landlord pressure (or inducements of another sort), the judge later lifted his own suspension order, leading to the arrest of the SAMALA president on 19 October 1998 on the grounds of a pending arrest warrant. He was released when the mayor took custody of him through a motion for bail on recognizance.

However, by this time, a new movement of peasant farmers was emerging in the region, with the support of community organizers with a national non-governmental organization called the Philippine Ecumenical Action for Community Empowerment (PEACE Foundation), whose most immediate aim was to claim their legal land rights under the 1988 CARP. Faced with well-organized, angry and militant pressure from this new movement, especially after the grisly and brazen murder of one of its rising leaders, the national government created the Inter-Agency Task Force on Bondoc Peninsula. This was a high-level body composed of the Office of the President, DAR, DENR, CHR, DND-AFP PNP and DOJ, among others, whose *raison d'être* was to resolve 'flashpoint' land conflicts resulting from efforts to implement the agrarian reform law. As a result, the atmosphere at the local level dramatically changed, at least for this particular case. The local police stopped arresting the farmers, and would even alert them to the presence of the overseer (since it was previously the overseer who demanded their arrest).<sup>37</sup> By 1998, the Aquinos had simply stopped filing new estafa charges against the farmers.<sup>38</sup> Even if the old charges are still pending, the farmer-settlers' long struggle to be free from the grip of landlordism in effect seems to have succeeded, at least for the time being.

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<sup>35</sup> Throughout this difficult period, the local guerrilla leaders sought to discourage the farmers from continuing the boycott, stating that it was "not yet time" to do so. While they tried to "mediate" between the farmers and the Aquinos, they were clearly acting on behalf of the latter, who wanted to re-institute the sharing system. Initially, the guerrillas tried to get the farmers agreed to a 50-50 sharing scheme; an "offer" that was refused. They then tried to convince the farmers to agree to a 70-30 sharing in favor of the farmers. Once again, the farmers refused. Finally, in June 1998, the guerrillas returned with a new offer of 75-25, which the farmers likewise refused.

<sup>36</sup> For instance, the Office of the Solicitor General claimed that they could not proceed with the farmers' request because they could only file cases on behalf of the government and not those of private petitioners. Without a request from the DENR to file a case, the OSG could not act on the request of the farmers (letter from the Office of the Solicitor General).

<sup>37</sup> FGD with Peping Olarve, Pito delos Reyes, Kagawad Pio Valencia and Simeon Pesigan.

<sup>38</sup> Interview with Simeon Pesigan and Celina Olarve on December 29, 1998.



### 3.3. Uy Case

The next case reveals a far less optimistic outlook than the previous two. The tenant farmers' collective struggle for the land located in Sitio Libas, San Narciso began after the landlord Uy filed criminal charges of estafa against a father and son in June 1997, with the two arrested and jailed for allegedly stealing two sacks of copra (smoked dried coconut meat). When estafa charges were filed against the two tenants, they were not aware of the illegitimacy of the charges, much less the underlying possibility that the landholder did not even possess a valid land title.<sup>39</sup> They did not personally know any private lawyers who could help them out of their immediate predicament, nor were they familiar with the office of the public attorney (PAO), whose job it is to take up indigent cases. Instead, they reached out to the local guerrillas to ask for assistance, since the rebels had once mentioned providing free lawyers to peasants in trouble with the law. The rebels reportedly responded by saying they would only discuss the matter with them after the two men were released from jail.<sup>40</sup> The two men ended up staying in jail for fifty-nine days, and were only released after the municipal judge reduced the bail and let them go.

In the meantime, some of their fellow tenants had stopped harvesting in their assigned villages, out of the fear that they would be next to suffer the hardships of being thrown in jail. A group of community organizers learned about the developing situation during a visit to a nearby village. Another Sitio Libas tenant and close relative of the two men met the activists and arranged for a meeting with the others to discuss the situation. Through this connection, the tenants were able to persuade a volunteer lawyer to take on the estafa case. After several hearings, the case was dismissed on the grounds of insufficient evidence in January 1998.<sup>41</sup>

Learning about the struggles of farmers elsewhere in the peninsula, the emboldened tenants began to take steps to claim the land. They organized themselves as the Free Association of Farmers in Sitio Libas (*Malayang Samahan ng mga Magsasaka sa Sitio Libas* or MSMSL), and petitioned for agrarian reform coverage in October 1997. In taking this step, the tenants signaled their dissociation from both 'hacienda law' and 'guerrilla law'; indeed, their place at that time was in fact still a stronghold of the underground guerrilla movement. Tragically, they would soon learn that such action would not be tolerated by either, while at the same time the local military would suspect them, ironically, of being anti-government rebels.

The agrarian reform case moved slowly, mainly due to landlord resistance and difficulties in locating a title, which few believed existed anyway. Whether or not there was a title mattered little for the tenants' land rights claims, given that state-sponsored redistribution of the land to them could proceed with or without a title. However, the lack of a title had to be verified in order to determine which set of administrative rules and procedures would apply, which, in turn, required conducted extensive research that involved physically locating and subsequently analyzing numerous official land classification and land registration documents from numerous government agencies and offices. Unwilling to rely on DAR alone, the tenants became directly involved in interviewing local DENR officials and conducting archival research at the DENR's regional land management office, the office of the Tax Assessor and the Land Registration Authority. They eventually discovered that the property fell within a zone of alienable and disposable public land, but found no evidence that a homestead patent had ever been issued for it, casting new doubt on the legality of the landholder's ownership claim, while further strengthening their own.<sup>42</sup>

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<sup>39</sup> FGD, MSMSL Leaders, San Juan, San Narciso, February 14, 2002.

<sup>40</sup> FGD, MSMSL Leaders, San Juan, San Narciso, February 14, 2002.

<sup>41</sup> FGD, MSMSL Leaders, San Juan, San Narciso, February 14, 2002.

<sup>42</sup> FGD, MSMSL Leaders, San Juan, San Narciso, February 14, 2002.

In June 1998, the Uys retaliated, with MSMSL leader Edwin Vender murdered in broad daylight by a group led by the Uys' overseer, after the latter accused him of withholding his share payment.<sup>43</sup> Vender's family filed murder charges against the perpetrators and were eventually placed in the state's witness protection program in preparation for a trial. However, the case stalled after a few months when the local police effectively refused to serve the arrest warrants.<sup>44</sup> The killers were left free to roam, maintaining a threatening presence in and around the contested area.<sup>45</sup> Nonetheless, instead of retreating and taking a lesson from the farmers' struggle in the Aquino estate, the Uy tenants launched a collective share payment boycott.<sup>46</sup> This move caught the landholder in a legal trap: he could again file dubious criminal charges and be required to show proof of ownership, which could then be used by the tenants to facilitate coverage of the property as private land, regardless of the outcome of a criminal case; alternatively, he could avoid pressing legal charges and accept the loss of share payments, which would also undermine his legal claim of ownership, but unleash an iron fist to defend his claim. In the end, the landholder chose the latter option. Violence again was unleashed to cow the farmers into submission. In March 2000, men armed with bolos and guns attacked another MSMSL leader, Reymundo Tejeno. While Tejeno managed to defend himself and survive his injuries (and narrowly escaped a second attempt on his life while in hospital recovering from his wounds), he was killed two years later. The underground guerrillas claimed responsibility for Tejeno's murder, although by then it was clear that an alliance had been forged between the Uys and the guerrillas to prevent the 3,500-hectare hacienda from being redistributed.<sup>47</sup>

The Tejeno murder marked the start of an intensive joint campaign against the tenants in all Uy claimed landholdings.<sup>48</sup> This campaign aimed at undermining MSMSL's (and others in Uy-claimed landholdings elsewhere who followed suit) access and control of the land, as well as the harvest that they had painstakingly tried to construct using an innovative combination of direct action and administrative mobilization of state law.<sup>49</sup> Since then, more farmer leaders in Uy landholdings have been killed. The farmers in Sitio Libas as well as neighboring Uy-

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<sup>43</sup> PEACE Statement on Edwin Veder Murder, 'Rising Tension in San Narciso Claims New Victim', dated June 1998.

<sup>44</sup> Personal communication, PEACE community organizer to the author, March 2000.

<sup>45</sup> The authors once spotted one of the men witnesses say killed Edwin Vender during a field visit to San Narciso in September 1999; he was lounging outside a sari-sari store along the main road leading to the town center, apparently unconcerned about being arrested.

<sup>46</sup> FGD, MSMSL Leaders, San Juan, San Narciso, February 14, 2002.

<sup>47</sup> Nonetheless, he fired his gun in self-defense during the attack, shooting and killing one of his attackers. This fact dragged Tejeno into a major political-legal quagmire. The dead man's widow decided to press for a sizeable monetary compensation (Interview, Reymundo Tejeno, San Juan, San Narciso, February 14, 2002). Tejeno balked over the amount demanded in informal talks; after all, the dead man had attacked him and he had been left to pay a substantial amount for his own hospitalization. Therefore, the widow took her case to the guerrillas, while also filing murder charges against him in state court. Tejeno was forced to defend himself against murder charges in two competing systems of law simultaneously. In both arenas, he argued that the dead man had attacked first and that he had shot him in self-defense. In early 2001, Tejeno was arrested by the guerrillas, hog-tied with wire and forced to defend himself before a makeshift 'court' deep in the countryside (The authors learned about the incident directly from Tejeno himself, who fled to Manila after being released by the rebels (Interview, PEACE Foundation Office, Cubao, Quezon City, February 2001). He was released after a few days. However, local guerrillas subsequently began paying him regular visits, demanding he pay 'revolutionary taxes'. In early 2002, the murder case against him was dismissed at the regional trial court on grounds that he had acted in self-defense (Interview, Reymundo Tejeno, San Juan, San Narciso, February 14, 2002.). A year later, he was again attacked and this time did not survive. His attackers identified themselves as members of the rebel New People's Army (NPA) and justified the killing as punishment for alleged counterinsurgency activities, which his family and fellow MSMSL members vehemently denied (PEACE, 'Salaysay ni Minda Tejeno, Maybahay ni Teteng Tejeno na Pinatay ng NPA noong Pebrero 4, 2003', dated April 3, 2003).

<sup>48</sup> The numerous human rights violations that have resulted have been documented by local and international human rights groups, as well as the findings of a 2006 international human rights fact-finding mission, are discussed in Franco (2007).

<sup>49</sup> FGD between Uy tenants and FIAN Fact Finding Mission II, Sitio Culisan, Barangay San Juan, San Narciso, August 15, 2001.

claimed holdings are routinely threatened and harassed by both the guerrillas and members of the landholder's private army, such that the leaders have been forced into hiding and most families temporarily pulled out of the area (Task Force Bondoc Peninsula 2003). Meanwhile, the coverage proceedings have dragged on, especially after a survey revealed more overlapping claims to be verified before free patents could be issued in favor of the tenants.<sup>50</sup> Nonetheless, the real problem is whether and how the state mobilize to effectively re-install the farmers on the land once it has been officially awarded to them on paper.

### 3.4. Summary

The three cases discussed above represent the tip of the iceberg insofar as documented cases are concerned. Table 1 summarizes cases that have been documented by the NGO Quezon Association for Rural Development and Democratization Services (QUARDDS). Criminalization of peasants' rights in Bondoc Peninsula has continued and perhaps even widened over the past decade. As of February 2010, there were 57 documented cases involving 10 different kinds of criminal charges, filed against 249 farmers by just eight of the region's landlords, most of them based on dubious land ownership claims and linked to land conflicts. While some are more like relics of past land conflicts that have been more or less resolved in favor of the peasants, leaving just the criminal cases to be dismissed, the vast majority are still active land conflict cases. The cases involving the largest landlords in the region are summarized in Table 2.

Table 1. Criminal Cases Filed Against Farmers in Bondoc Peninsula (as of 17 February 2010)

Municipality	Total Number Cases	Nature of Cases	Total Number Accused	Total Number Counts	Venues	Land Owner
San Narciso	7	Qualified theft Frustrated murder Robbery with frustrated homicide	41	7	RTC	1. Reyes 2. Uy
San Andres	43	Qualified theft Unlawful detainer	69	171	MCTC RTC OPP	1. Reyes 2. Estrada/ Quizon 3. Hilario Tan
San Francisco	14	Other from of trespass Estafa Grave threats Malicious mischief Qualified theft Attempted homicide Libel	118	15	MCTC RTC OPP	1. Matias 2. Zoleta/ Queblar 3. De Mesa
Mulanay	1	Estafa	21	102	MTC	1. Aquino
TOTAL	57 Cases	10 Different Criminal Charges	249 Accused	295 Counts	3 Levels	8 Landlords

Source: Quezon Association for Rural Development and Democratization Services, Inc.

<sup>50</sup> Interview, PEACE CO, May 2004.

Table 2. Profile of Largest Landholdings Behind the Criminal Cases in Table 1

Landlord	Location	Landholding Aggregate Area (in hectares)	Remarks
Domingo Reyes	San Narciso San Andres	12,000	The Reyes hacienda caretaker filed qualified theft cases against the farmers when the latter refused to remit the copra harvest to the landlord, and instead implemented the State policy on leasehold, after learning the true legal status of the land.
Uy	San Narciso San Andres	3,500	The Uy hacienda administrator filed qualified theft and estafa cases against the farmers when the latter began refusing to remit the copra harvest to the landlord, and instead implemented the State policy on leasehold, after learning the true legal status of the land.
Matias	San Francisco	2,800	The filing of qualified theft and estafa charges in this case followed the same pattern as above. By contrast, the filing of the trespass charges occurred when the farmers assisted DAR officials in surveying the lots to be covered by the State agrarian reform program.

Source: Quezon Association for Rural Development and Democratization Services, Inc.

These cases of criminalization reveal gaps and flaws in the prevailing political-legal institutional context; problems rooted in the fact that large tracts of land remain concentrated in the hands of a few, even after years of efforts to implement CARP. The social, political and cultural aspects of successful land redistribution are difficult to measure and assess. Some see a straightforward breaking of the nexus between peasants and landlord and the transformation of the former into relatively 'free-er' agents, with a greater degree of autonomy in social and political decision-making and action vis-a-vis both state and non-state actors. Meanwhile, others observe that while tenant-landlord ties might be cut through land reform, other unequal relationships can emerge to take their place, such as between government officials and merchants on the one side and newly created small family farmers on the other. In other cases, a peasant's key relationship might shift from being with a domestic landlord to a transnational company, with the underlying issue of who controls the land and its products not resolved in their favor. In the Philippines, the overall picture is mixed. While power of the country's landed elite has certainly been eroded to an unprecedented degree, the criminalization of rights-holding peasants perhaps illustrates both the progress made in eroding landlord power and the failure to complete this process to date. In the next section, we turn to examine how the 'criminalized' peasants responded to this situation in an effort to force higher state authorities to intervene in defense of their right to have land rights.

#### 4. Organized peasants' political response: KMBP's mass surrender

The mass surrender strategy drew inspiration notionally from the idea of 'rightful resistance' (O'Brien 1996, O'Brien and Li 2006), whereby peasants mobilize central state law as leverage in their face-to-face struggles against erring local officials and political corruption. The actual campaign was shaped by several factors, including growing physical, financial and emotional distress of the peasants (and their families) facing criminal charges, as well as land reform activists' growing perception of the need to undertake not just 'legal defensive action' but also 'legal offensive action' targeting the state law field itself through an action designed to achieve both remedy and reform. In this section, we examine how Bondoc's

organized peasants undertook the mass surrender as a form of rightful resistance intended to address the multifaceted problem of criminalization.

In 1999, various landholding-based tenant organizations from among the region's haciendas came together to form the district-wide Kilusang Magbubukid ng Bondoc Peninsula (KMBP or Peasant Movement of Bondoc Peninsula). The peasants were assisted in this step by the community organizers from the non-governmental organizations PEACE Foundation and QUARDDS, who had been working with them in their land rights claim-making initiatives since the mid-1990s. Organizing share tenants facilitated the building of peasant unity around seizing the opportunities under the law and confronting the potential risks of going against the landlords. Even in situations in which they have been aware of their rights, some tenants in large haciendas have been hesitant to lead or join petitions for land redistribution due to a deeply entrenched, feudal sense of debt of gratitude (*utang na loob*). Others fear landlord retribution, especially in those haciendas with a history of violence against tenant communities. Based on the past experience of PEACE and QUARDDS community organizers, informing and organizing the tenants is taken as a crucial first step in breaking the tight social control of landlords. The tenants' 'daringness' to claim their land rights partly depends on knowing and understanding what those rights are, whereby not knowing or understanding poses a serious obstacle to actual claim-making. Moreover, legal and human rights education and training, as well as concrete legal assistance from progressive agrarian lawyers also play a key role in being able to claim their rights. This is due to intense legal contestation by landlords aimed at evading agrarian reform, coupled with the lack of effort by some government officials to recognize, respect and protect peasants' rights in situations in which landlords try to evade agrarian reform and retaliate against peasant claimants. Worse still, some government employees connive with landlords to keep land rights beyond the reach of the tenants in practice. For this reason, social mobilization is constantly required to pressure the government and push it to execute the pro-poor provisions of the agrarian law. The new tenant farmer organizations have played a key role in all these processes, emerging as the main vehicle for pushing forward their land rights claims through local and national level engagements with various government agencies.

Interestingly, despite the downturn in overall agrarian reform momentum after 2001, the new peasant movement, led by the KMBP, gained momentum in Bondoc Peninsula. In 2001, 89 tenant-families petitioned for coverage of the 8,000-plus hectare Hacienda Villa Reyes. By the end of 2002, the number of petitioners had ballooned to more than 300. In 2003, 300 more tenants petitioned for coverage of the 2,000-hectare Hacienda Matias in San Francisco. This expansion of reform-oriented organizations and land rights claim-making in the region was inspired by several earlier 'small victories' in relatively smaller haciendas. The first major breakthrough in land redistribution in contested private land was achieved in a 174-hectare estate owned by the Reyes family, which was distributed to 55 families after a lengthy struggle. Before taking over the land, the farmers had been forcibly evicted, with their houses bulldozed and the land fenced to prevent evicted tenants' entry on the land. Pressuring the government to support their claim, the evicted tenants set-up camp in front of the Department of Agrarian Reform central office in Quezon City, remaining for ten months from December 1998 to September 1999. They eventually gained a favorable decision for peaceful possession from the DAR. Next, they demanded full protection from a community-based security force in retaking physical possession of the landholdings. This case led to the establishment of the high-level Inter-agency Task Force (mentioned earlier), whose first task was to plan and carry out a high profile re-installation of the former tenant-farmers as the new owners of the land in the Catulin case. They were indeed installed by a combined contingent of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). Two Armored Personnel Carriers and two military helicopters were used in the installation to discourage landlord resistance, in a show of full

state power. The DAR was led by a high ranking official while the security forces were led by the Commanding Officers of the Southern Luzon Command and the Chief of Police of Quezon province. This case thus clearly demonstrated to peasants throughout the peninsula (and beyond) that the government's agrarian reform program was feasible, prompting many more to launch their own land claims.

After the program became paralyzed, especially 'at the top' in the early-2000s under a new government, the tenants in Bondoc Peninsula turned to more ground-level initiatives. In the 8,000 plus hectares Villa Reyes, they challenged the legality and persistence of share tenancy after discovering that a good part of the hacienda was classified as timberlands (and therefore should never have been allocated to anyone). Based upon this knowledge, they initiated a campaign to boycott the share payment, starting with 89 families in 300 hectares in one sub-village or *sitio*. While harassment and threats ensured, the campaign spread like wildfire, with more than 300 tenants in 13 more sub-villages cultivating an estimated 4,000 hectares inside the hacienda following suit in open defiance of the landlord. In response, the Reyes' deployed armed goons to forcibly confiscate and take away the tenants' harvested copra. The armed men initially succeeded in doing so, with some losing their harvest. However, the tenant-farmers reacted by drawing on their organizational resources to develop a community system of urgent response that could be activated whenever someone was threatened with confiscation. Once the presence of the landlord's armed goons was detected, an alert circulated across the villages and the organized tenants mobilized in numbers to reinforce their fellow tenants under duress, ensuring that they would significantly outnumber their opponents, before confronting the goons in the field.

Meanwhile, in the untitled coconut lands claimed by the Uy family in the town of San Narciso, two tenant organizations also initiated a campaign to boycott share payments in defiance of cacique law and force the Uys to produce documents of ownership in order that the land could be distributed under the existing agrarian reform program. The tenants had been emboldened to take this action after discovering through their own research of government land records that the holdings in question were not officially listed as Uy properties. In response to the tenants' pressure, the Uys mobilized armed men to harass the tenants, with five of the organized tenants' leaders killed by the Uys armed goons during the course of this struggle over the land. To date, none of the perpetrators of these murders have ever been caught or prosecuted, but the tenants have still been able to hold on to the land through a sustained public campaign that exposed the Uys' 'unholy alliance' with the underground guerrilla movement in the region, as well as their complicity in violating the tenants' human rights, especially the right to life. The Uy tenants, together with other KMBP members, also publicly campaigned against the underground guerrilla movement's violation of their human rights and international humanitarian law. This defiance of landlords rule drew inspiration from earlier initiatives by tenant-farmers in the town Mulanay, who launched a boycott of payment of shares in the 201-hectare Aquino property in 1995 after the government rejected their petition for land redistribution (and later for leasehold implementation). In that earlier case, the tenants' campaign was bolstered by the discovery that the contested landholding was within a non-alienable timber zone and thus was public land that should never have been taken as private property by anyone, thereby enabling the tenants to shift to claiming the land under the government's Community-based Forest Management Program (CBFMP).

Finally, in the 2,000-hectare Hacienda Matias, tenants petitioned for agrarian reform implementation in late 2003, as well as for leasehold implementation as a transition phase to change the existing share tenancy in early 2004. When the leasehold application was approved in early 2005, more than 100 tenants initiated a campaign of organized harvesting, partly in response to the continued presence of armed men inside the hacienda. This was after having previously been unable to harvest the coconut on the strength of the provisional leasehold rentals that had

been processed at the local DAR office in the municipality of San Francisco. The petition for leasehold had placed them in a difficult position when the 24 tenant-petitioners were forcibly evicted by armed men associated with the landowner, which meant that the tenants would have to campaign for their reinstatement as tenants protected with peaceful possession under the existing agrarian reform program.

As ground level social pressure increased, landlords in Bondoc Peninsula employed various forms of retaliatory action to curtail the defiance of tenants and derail agrarian reform. Physical attacks on reform-oriented tenants escalated, resulting in scores of physical injuries and the displacements of dozens of families, as well as the deaths of the five peasant leaders in the Uy properties. Beyond extra-legal measures, the landowner also used the state and criminal justice system to harass organized tenants through the indiscriminate filing of criminal cases against the tenant-farmers who dared to try to claim land rights under CARP. Many tenants had already been jailed due to the criminal cases filed against them, despite their cases being the result of agrarian conflict. The criminal justice system, including the police, prosecutors and judges, thus came to be clearly perceived as forming part of the long arm of the landlords, aimed at blocking the reform and harassing tenants who were pushing for land rights in the biggest landholdings owned by the influential Reyes, Matias, Uy, Tan, Zoleta-Queblar and Aquino families. Criminal charges (or the threat of such) came on top of the harassment and economic pressure already being exerted on them by landlords, their private armies and the guerrillas. By May 2006, there were around 198 cases pending against 189 share tenants. The overwhelming majority of these cases were for qualified theft of coconuts (186 cases), followed by estafa (3 cases), libel (4 cases), other forms of trespass (2 cases) and finally, attempted murder, malicious mischief and grave threat (with 1 case each). In terms of the court level, the majority of the cases were pending before the RTC (177 cases), while the remainder were with the MCTC (5 cases) and the Office of the Provincial Prosecutor (13 cases). The number of criminal cases in this context would shoot up to more than 300 counts against 232 farmers by 2007.

While the Department of Agrarian Reform (DAR) lawyers could and indeed did lend assistance to the farmers in DARAB cases, none of them would represent the farmers in criminal cases. In the resolution of the provincial prosecutor, the agrarian aspect of the conflict was routinely and completely ignored. The cases were filed and resolved piece by piece, obscuring the underlying pattern of systematic filing over a period of time by just a few complainants who happened to be parties to a land case under CARP, as well as against defendants who all happened to be the peasant land right claimants in these cases. The agrarian conflict that gave birth to these cases could only be gleaned by linking all the cases filed over the years. A finding in the agrarian case that the land is public would negate culpability in estafa and qualified theft cases. Even if the land was found to be private, a finding that the farmers are share tenants or leaseholders would likewise negate criminal liability. Under the agrarian law, a tenant or lessee has the right to harvest and appropriate the coconuts in the land s/he is tilling. The obligation to the landowner would only be civil in the form of the rent due for the use of the land. The same reasoning could apply to the crimes of Other Forms of Trespass and Malicious Mischief. As legal occupants of the land, tenants/ lessees clearly have the right to enter and work therein.

Due to the large number of cases filed, the amount required for posting bail was enormous and beyond the reach of the tenant-farmers. For 50 tenant-farmers in Villa Reyes facing qualified theft cases, the total bail fixed by the courts amounted to Php 3.484 million, while the amount of bail for 68 farmers in Hacienda Matias facing two counts of qualified theft amounted to a staggering PhP 4,080,000 each. Indeed, these figures did not take into account the cost of the services of lawyers and paralegals to take up and maintain the cases, transportation (the town of

Gumaca where cases are heard is 4 to 5 hours away from the farmers' residence), meals, communications, photocopying and other administrative expenses that could easily run to hundreds of thousands or even millions of pesos; moreover, nor does it include the cost to the farmers of their economic dislocation due to the pending of the cases. As a result of these enormous costs, the filing of criminal charges, which was also frequently followed by harassment and arrest, ended up forcing many them to evade capture by hiding from the police. Fearing that their houses would be raided at dusk, many slept on the grassy and forested part of their farms. The problem of criminalization soon grew to such a proportion that the farmers, the KMBP leaders, the community organizers and their NGO allies knew that something had to be done, which prompted the mass surrender strategy being devised.

To counter the landowners' legal offensive, the tenants initiated an unusual campaign, which they called a 'mass surrender'. In a meeting among key leaders of the KMBP and other affected farmer organizations, the farmers realized that the landowners were succeeding in utilizing the openings within the state's legal structure to harass and undermine them. To confront this, they agreed to use the same openings through an organized and collective campaign. By voluntarily submitting themselves collectively to the custody and protection of the government, the tenants sought to: (1) end the anxiety arising from fears that they could be arrested at anytime due to the pending arrest warrants issued against them; (2) avoid being arrested by heavily armed men during unholy hours and away from the public gaze in remote areas where anything would be possible; (3) bring to the attention of policy-makers and concerned government agencies how the justice system is being manipulated to harass and discourage farmers from availing of their rights under the state's own agrarian reform laws; and (4) bring to public attention the new trend of criminalization of agrarian reform.

Surrendering collectively to the criminal charges in this way proved more difficult than some had perhaps imagined. In March 2007, one hundred and twenty-three farmers with warrants of arrest, accompanied by a former congressman, attempted to surrender at the national office of the Department of Justice (DOJ) in Manila. However, they were refused by the DOJ officials, despite showing their respective warrants of arrest, and were instead advised to surrender to their local police. However, one of the strategy's aims was to generate as much publicity as possible at the national level to highlight the problem of the criminalization of peasant land rights claimants and, in effect, that of the government agrarian reform program itself. Therefore, the farmers withdrew from the DOJ and proceeded to the DAR central office to involve DAR officials in negotiating their collective surrender. A dialogue with the DAR central office officials ended up lasting for hours, before an undersecretary agreed to negotiate with officers of the Philippine National Police (PNP) for their surrender at the PNP national headquarters. When the farmers went to the police headquarters the next morning, their collective surrender was finally accept and processed.

The farmers' 'mass surrender' was widely covered by radio, television and print media, which helped to gain the attention and support of lawyers groups and human rights advocates. For example, one political party, a party-list group called Akbayan, convened a team of lawyers to assist the farmers in their legal battles. Meanwhile, the head of the Office of the Legal Aid of the Integrated Bar of the Philippines (IBP) - the national lawyers' association in the Philippines - visited the tenants in prison to offer the organization's services. Moreover, the media sustained their reporting, with the national television station Channel 5 and the most widely read national print news daily, the Philippine Daily Inquirer, both featuring lengthy special reports on the issue. Sustained media reporting even weeks after the surrender contributed to increasing pressure on the national government to pay more serious attention to the problem of criminalization of agrarian reform in Bondoc Peninsula.



In response, and in an effort to immediately free the farmers from prison, the Secretaries of the DOJ and the DAR filed a 'Motion for Bail on Recognizance', who were represented in the hearing on this motion by the head of government's Public Attorney's Office (PAO). However, the decision to grant the motion filed by the two government secretaries was at the discretion of the hearing judges. One problem was that qualified theft did not fall within the cases covered by recognizance, and thus the farmers and their supporters had lobbied for the government to set aside a fund for cash bond, just in case. At the first hearing for the Motion for Bail on Recognizance, the judge did not render a decision but rather reset for another hearing, which prompted the farmers, not used to the very poor condition inside prison walls, to opt for temporary liberty through cash bond. The DAR had allocated more than PhP2 million to cover the bail bond, which had also been reduced through an earlier motion granted by the judges. The tenants were thus released after the posting more than PhP2 million in bail.

The campaign immediately helped to relieve the distress on the 'criminalized' farmers that was previously caused by trying to avoid arrest, while also leading to a reduction in the physical harassment by armed men inside the contested landholdings. Meanwhile, the local police avoided making further arrests, even of farmers with pending warrants. In the longer-term, decriminalization of agrarian-related cases was among the reforms introduced in the recent campaign for the extension of the CARP implementation time period. The case of the Bondoc farmers inspired the introduction of a referral system that was institutionalized under Section 19, of Republic Act 9700, when it was passed into law in August 2009. The lawyers who had been involved in the Bondoc farmers' case and mass surrender were directly involved in the crafting of this provision during the drafting phase of RA 9700. Since then, the Bondoc Peninsula farmers have been able to successfully use the referral system, with at least 82 criminal cases having been dismissed. While the Bondoc farmers' mass surrender strategy and collective campaign probably cast a long 'shadow' over these particular instances, pertaining to the Bondoc farmers themselves, where the referral system has since been used to counter criminalization, it remains to be seen whether and to what extent the referral system is being used elsewhere in the country, as well as under what conditions it is used successfully by peasant land rights claimants in their search for agrarian justice.

## 5. Concluding remarks

The 1980s were a major turning point in the history of peasant struggle in the Philippines, eventually leading to a new agrarian reform program, which, in turn, first gave the rural working classes the legal right to land. The CARP itself was a product of organized peasants' militant and assertive mobilizations using new democratic space that had been opened up by so-called 'people power' uprising against the dictatorship. It dramatically expanded the economic and political opportunities of landless peasants, with many non-government organizations quickly responding by initiating new education, training and legal assistance programs aimed at seizing the opportunity for organizing and mobilizing share tenants within the framework of the law. However, these opportunities and the reformist openings were not evenly spread across the state; while the state agencies that deal most directly with agrarian reform and land redistribution underwent significant institutional reform, others did not. One state institution that did not undergo such a process of 'pro-reform' reform was the judiciary.

Most notably, the co-existence of two sets of law in dealing with land conflicts that had survived since the 1950s continued to create havoc during agrarian reform proceedings by facilitating the criminalization of peasants seeking to claim their legal rights to land under the 1988 law. Such criminalization was part and parcel of a landlord strategy of anti-reform resistance and has played a key role in landlords' attempts to undermine and weaken peasant land rights claimants, as seen in the

cases examined here. The criminalization of rights-holding peasants perhaps illustrates both the progress made in eroding landlord power and the failure to complete this process to date. Nonetheless, the case of the organized tenant-farmers in Bondoc Peninsula also shows how 'criminalized' peasants have responded to this situation in an effort with a political-legal strategy and collective campaign aimed at forcing higher state authorities to intervene in defense of their right to have land rights. The discussion has tried to show how such a strategy carried out collectively can lead to both immediate redress for individual peasant land rights claimants and the reform of the system that permitted the landlord strategy of criminalization to flourish. While the Bondoc farmers' mass surrender strategy and collective campaign enabled them to successfully counter efforts to criminalize them and the agrarian reform program, it remains to be seen whether and to what extent the referral system might be useful in other circumstances and in other parts of the country, as well as under what conditions it might be used successfully by more peasant land rights claimants in the ongoing search for agrarian justice throughout the Philippines.

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