

MORE THAN A POUND OF FLESH: RETHINKING IMPUNITY IN THE INTERNATIONAL RICE RESEARCH INSTITUTE*

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Bayan Muna's response to Senator Miriam Defensor-Santiago's treatise *The Status of IRRI as an International Organization in National and International Law* is a straightforward reference to the Constitution. The fundamental document guarantees, above all, a panoply of inviolable rights to labor. It commands the State to "afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all."¹ It painstakingly enumerates not simply the rights of some but *all* workers to self-organization, including

* This article is the party list group Bayan Muna's official reaction to Senator Miriam Defensor Santiago's piece, *The Status of IRRI as an International Organization in National and International Law*, 79 PHIL. L.J. 887 (2005). Because Senator Santiago's article made reference to the party and its proposed amendment regarding IRRI, the JOURNAL offered the party an opportunity to respond in the same issue. Bayan Muna is currently represented in the House of Representatives by Reps. Satur Ocampo, Teodoro Casino, and Joel Virador.

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¹ CONST. art. XIII, § 3.

the rights to strike in accordance with law, to security of tenure, to humane conditions of work, and to a living wage.²

Clearly, workers' rights are more than a pound of flesh. They cannot be shed, cut or sacrificed in exchange for any fiction, least of all one that has proven not only a failure, but a tool of oppression.³

This fiction is the Philippines' grant of immunity to the International Rice Research Institute ("IRRI"). The State cannot bargain away workers' constitutionally guaranteed rights, not for any cause. As no law may stand higher than the Constitution, the grant of immunity, or perhaps more precisely, impunity must be revoked.

IRRI'S INITIAL STATUS AS A CORPORATION

IRRI was established on December 9, 1959 by a Memorandum of Understanding between the Philippine government and the Ford and Rockefeller Foundations. Pursuant to this, it was incorporated and registered with the Securities and Exchange Commission. It was "an autonomous, philanthropic, tax-free, non-profit, non-stock organization" that was "subject to all laws and regulations covering private corporations."⁴ Clearly, at its birth, IRRI was constituted as a corporation not immune from any class of suit.

As a private corporation, it had the following objectives:

1. To conduct basis research on the rice plant, on all phases of rice production, management, distribution and utilization with a view of attaining nutritive and economic advantage of benefit for the people of Asia and other major rice-growing areas through improvement in quality and quantity of rice;

² Art. XIII, § 3.

³ See, *however*, Editorial, THE MANILA TIMES, May 24, 2003, ¶ 12, available at <http://www.manilatimes.net/national/2003/may/24/opinion/20030524opi1.html>. "The National Academy of Science and Technology and the Philippine Science and Higher Education Community passed a resolution that said in part: 'The scientific advances that IRRI has achieved would not have been realized if IRRI were burdened with labor disputes and had to face litigation under the jurisdiction of the local courts. It is reasonable to assume that donors would not have supported IRRI had it not been for the diplomatic immunity accorded.'"

⁴ Pres. Decree No. 1620, art. 1 (1979). "Granting to the International Rice Research Institute (IRRI) the Status, Prerogatives, Privileges and Immunities of an International Organization."

2. To publish and disseminate research findings and recommendations of [the IRR];
3. To distribute improved plant materials to regional and international research centers where they might be of significant value or use in breeding or improvement programs;
4. To develop and educate promising young scientists, primarily from South and Southeast Asia along lines connected with or relating to rice production, distribution and utilization, through a resident training program under the guidance of well-trained and distinguished scientists;
5. To establish, maintain and operate an information center library which will provide, among others, for interested scientists and scholars everywhere a collection of the world's literature on rice; and,
6. To organize or hold periodic conferences, forums and seminars, whether international, regional, local or otherwise for the purpose of discussing current problems.

Under the Memorandum of Understanding, IRR was granted the following incidental powers:

- (1) To acquire or obtain from any governmental authority, national, municipal or local, foreign or domestic or otherwise or from any corporation, company, association, or person, such charters, franchises, licenses, rights, privileges, assistance, financial or otherwise, and concessions as are conducive to and necessary for the attainment of the purpose of [the IRR];
- (2) To receive and acquire by donation, grants, exchange, devise, bequests, purchase, or lease either absolutely or in trust, contributions from any person, firm or entity whomsoever of such properties, real and personal, including funds and valuable effects, as may be necessary to carry out the objects and purpose of [the IRR] and to hold, operate, use or otherwise dispose of the same; and,
- (3) To do and perform all acts and things as are necessary expedient suitable or proper for the furtherance or accomplishment of the purpose and the attainment of any or all of the objectives herein stated, or which shall appear, at any time, as conducive to and useful for the activities of [the IRR].

THE SUBSEQUENT GRANT OF IMMUNITY

IRR's status was redefined only with then President Ferdinand Marcos's issuance of Pres. Decree No. 1620 on April 19, 1979. For the first

time, IRRI was recognized "as an international organization" and accorded "such status in the Philippines."⁵ This translated to "immunity from any penal, civil and administrative proceedings, except insofar as that immunity has been expressly waived by the Director-General of [the IRRI] or his authorized representatives"⁶ as well as "all the immunities and privileges normally accorded to international organizations of a universal character."⁷

It must thus be emphasized that IRRI's immunities with respect to Philippine labor laws arise from statute; they are rooted in a national law that may be repealed at any time. Certainly, no irrepealable laws may be passed.⁸

Further, no precept of international law is violated by returning IRRI to its original status as a private corporation. This is evident from Senator Defensor-Santiago's stated standards on what constitutes an international organization:

[I]t is further submitted that IRRI meets the ICJ's twofold test for determining whether an organization is an international subject, following *Reparation for Injuries*. The two criteria are, as presently qualified: First, the member states, in setting up the organization and entrusting certain functions to it, with the attendant duties and responsibilities, intended to clothe it "with the competence required to enable these functions to be effectively discharged;" and second, it is necessary for the organization in actual fact to enjoy the autonomy from member states, and the effective capacity for it to act as an international subject.⁹

This brief discussion, however, too-neatly sidesteps the fact that there is no multilateral treaty conferring immunities on IRRI, as the senator herself admits.¹⁰ Hence, it cannot be said that the IRRI has passed the International Court of Justice's twofold test. The IRRI cannot be said to have been set up by states, nor have states entrusted it with certain functions. Pres. Decree No. 1620 is certainly not such an international instrument. Crucially, moreover, there are no bilateral agreements in force recognizing IRRI's international legal personality.

⁵ Pres. Decree No. 1620, art. 1 (1979).

⁶ Art. 3.

⁷ Art. 2.

⁸ ENRIQUE FERNANDO, CONSTITUTION OF THE PHILIPPINES 177 (1977 ed.).

⁹ Miriam Defensor Santiago, *The Status of IRRI as an International Organization in National and International Law*, 79 PHIL. L.J. 887, 891 (2005), citing *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174, 179 (Apr. 11).

¹⁰ Defensor Santiago, *supra* note 10, at 888, 890.

IMMUNITIES AT ODDS WITH WORKERS' RIGHTS

According to the Supreme Court's first decision on the subject, *International Catholic Migration Commission v. Calleja*,¹¹ IRRI's immunities assure the unimpeded performance of its functions and avoid interference by the host country. Regrettably, however, these have mostly been used to bar to IRRI workers' free exercise of self-organization and redress of grievances. Perhaps, in an effort to reconcile these immunities with the constitutional guarantee of full protection to labor, the Supreme Court asserted that workers may nevertheless present grievances to the Council of IRRI Employees and Management (CIEM).¹²

Nevertheless, it is argued that not even the Court can completely reconcile these immunities with the Constitutionally-mandated primacy of labor rights. The subsequent decision *IRRI v. National Labor Relations Commission*¹³ affirmed the NLRC's assumption of jurisdiction over an illegal dismissal case against IRRI, despite its recognition that the latter "is an international organization recognized by the Philippine government and accorded privileges, rights and immunities normally granted to organizations of universal character."¹⁴ The Court affirmed the finding that the employee in the case was illegally dismissed, and simply ignored the Institute's immunities.

*Callado v. IRRI*¹⁵ similarly affirmed IRRI's immunities but referred to a memorandum dated July 26, 1983 regarding the dismissal of employees in relation to Pres. Decree No. 1620. This memorandum, it is submitted, admitted the evils of invoking immunity against workers' claims:

Time and again the Institute has reiterated that it will not use its immunity under P.D. 1620 for the purpose of terminating the services of any of its employees. Despite continuing efforts on the part of IRRI to live up to this undertaking, there appears to be apprehension in the minds of some IRRI employees. To help allay these fears the following guidelines will be followed hereafter by the Personnel/Legal Office while handling cases of dismissed employees.

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¹¹ *International Catholic Migration Commission v. Calleja*, G.R. No. 85750, 190 SCRA 130, Sep. 28, 1990. This case also decided *Kapisanan ng Manggagawa at TAC sa IRRI-Organized Labor Association in Line Industries and Agriculture v. Secretary of Labor and IRRI*, G.R. No. 89331.

¹² *Id.* at 134-35.

¹³ G.R. No. 97239, 221 SCRA 760, May 12, 1993.

¹⁴ *Id.* at 761.

¹⁵ G.R. No. 106483, 241 SCRA 681, May 22, 1995.

2. Notification/manifestation to MOLE or labor arbiter

If and when a dismissed employee files a complaint against the Institute contesting the legality of dismissal, IRRI's answer to the complaint will:

1. Indicate in the identification of IRRI that it is an international organization operating under the laws of the Philippines including P.D. 1620.

2. *Base the defense on the merits and facts of the case as well as the legality of the cause or causes for termination.*

3. Waiving immunity under P.D. 1620

If the plaintiff's attorney or the arbiter, asks if IRRI will waive its immunity we may reply that the Institute will be happy to do so, as it has in the past in the formal manner required thereby reaffirming our commitment to abide by the laws of the Philippines and our full faith in the integrity and impartiality of the legal system." (emphasis added)¹⁶

The Court, however, held that this memo was merely an internal communication and "cannot, by any stretch of imagination, be considered the express waiver by the Director-General."¹⁷ The employee's suit was dismissed.

THE EVILS OF IMMUNITY

With the above memorandum, it is submitted that it is difficult to deny the evil effects that the immunity or impunity guarantee has on IRRI workers. This is especially appalling since over 95% of the its scientific and support staff are Filipinos.

Patricio Layosa, Jr.,¹⁸ a former IRRI employee, decried the discrimination of Filipino workers in terms of salaries and benefits, and the adverse working conditions they are subjected to. He stated that in the early stage of operations, field workers are tasked to apply pesticides and fungicides such as furadan, endrin, decis, bromine, zinogas, gramoxon,

¹⁶ *Id.* at 215-16.

¹⁷ *Id.* at 216.

¹⁸ Layosa is the acting president of the Brotherhood of IRRI Support Services Group (BISSIG). The authors have included excerpts of his narration as an appendix to this article, with his permission.

basudin, thiodan and other toxic chemicals without any protective clothing, and with limited orientation and training.

Layosa also averred that IRRI workers' efforts at self-organization were met with "staff adjustment programs," or retrenchment due to union activities. Individual cases of dismissals and work-related deaths and injuries were never addressed. These include the cases of Rogelio Granzore, a regular worker for seventeen years; Bernardo Calibo, a laborer at the Plant Pathology Department; Emerson Delfin, a laboratory assistant in the Biochemistry Division for twenty-two years; and Camilo Malana, a field worker from 1977 to 1990.

TIME FOR CHANGE

In order to protect workers' rights and keep faith with the Constitution, Bayan Muna and its allies introduced a bill proposing to amend article 3 of Pres. Decree No. 1620:

The Institute shall enjoy immunity from any penal, civil and administrative proceedings, except insofar as that immunity has been expressly waived by the Director-General of the Institute or his authorized representatives. THIS IMMUNITY SHALL NOT APPLY WITH RESPECT TO THE RIGHTS OF LABOR.¹⁹

This was in line with Bayan Muna's view that IRRI's immunity is a self-imposed affliction that legislation may cure at any time. Of course, the party would have opted for a complete revocation the immunities, but political realities required that it take only a few small steps at a time. Simply, it was advised that the total repeal of Pres. Decree No. 1620 would never pass in the House of Representatives. In any event, the proposed amendment would have sufficed to provide immediate relief to workers. Nevertheless, even this narrow amendment failed to pass in the face of intense lobbying.

Gaining some lessons from that experience, Bayan Muna, together with other party list groups, is filing a bill in the Thirteenth Congress that seeks the complete repeal of Pres. Decree No. 1620. It is about time IRRI faces the festering issues that have caused so much pain to its workers, rather than hide behind a law imposed by a dictator. Should one not look beyond the frail legal facade and restructure the country's laws according to the dictates of fairness and justice? In the end, Bayan Muna believes that

¹⁹ H. No. 5097, 12th Cong., 1st Sess., § 1 (2002).

there is a better world for these workers than the one effected by a decree that has treated them as mere pounds of flesh.

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APPENDIX A: NARRATION OF PATRICIO M. LAYOSA, JR.²⁰

Amidst the traditional hospitality of Filipino communities in Bay and Los Banos, Laguna, and despite the full support given by the Philippine government, it is pitiful that Filipino farmers, rank-and-file workers, and some intellectuals are treated as second-class citizen by IRRI management. They are discriminated in terms of salaries, benefits and even in recognizing the output of their technical research. On the other hand, foreign staff, particularly those from Western countries, are enjoying enormous compensation and luxurious salaries paid in US dollars.

Under adverse conditions, the Filipinos are designated to do all dirty jobs from laboratory testing to hazardous field experiments. In fact, in the early stage of operations, field workers are tasked to apply pesticide/fungicide such as furadan, endrin, decis, bromine, zinogas, gramoxon, basudin, thiodan and other toxic chemicals without any protective outfit and with limited orientation and/or training given by IRRI.

In the recent survey conducted by BISSIG in coordination with various people's organizations and NGOs, several field workers revealed that during their stint with IRRI, they are applying furadan granules and rat poison in the rice fields with bare hands. Another disgusting revelation is the reality that these hapless field workers are compelled to work in the rice fields even after pesticide was then applied. The July 28, 1998 incident could attest to this wherein six contractual field workers became unwilling victims of chemical poisoning while working in nearby field contaminated with furadan.

²⁰ Layosa is the acting president of the Brotherhood of IRRI Support Services Group (BISSIG). The following are excerpts from his narration. See also Patricio Layosa, *Do We Have the Political Will to Face the Truth Behind the International Rice Research Institute (IRRI)?*, BULATLAT, Aug. 11-17, 2001, available at [http://www.bulatlat.com/archive/026d IRRI.html](http://www.bulatlat.com/archive/026d%20IRRI.html).

The said scenario is just a segment of IRRI's fatal experiment in the name of rice research. These reckless and irresponsible exploration conducted by IRRI have caused irreparable damage not only to health and life of Filipino workers and farmers but also to the environment. The heavy input of chemicals and pesticides are now wrecking havoc in the communities surrounding IRRI.

Curtailment of right to organize and trade union repression

IRRI has been using the immunity granted to it by Pres. Decree No. 1620 to subvert legitimate rights of Filipino workers. In fact, the Filipino workers/farm-workers in IRRI have attempted twice to assert their right to self-organization.

In 1987, a petition seeking certification as the sole bargaining representatives of 1,300 rank-and-file workers/employees was filed before the Department of Labor and Employment ("DOLE"). However, the case²¹ was dismissed simply because of immunity afforded to IRRI.

Likewise, when BISSIG filed a petition for direct certification and/or certification election²² in December 22, 1997, the case was ordered held in abeyance pending final resolution by the Supreme Court of the validity of Pres. Decree No. 1620. Unfortunately, the higher court eventually dismissed the case.

On January 3 and May 8, 1997, the Department of Foreign Affairs asked the DOLE to revoke and rescind the registration certificate of BISSIG, upon the request of IRRI's director general George Rothschild. Such effort is representative of IRRI's anti-union character.

As a consequence of IRRI's despotic policies, several incidents of labor unrest have occurred due to the suppression of legitimate rights and intense discrimination against Filipino workers and farm-workers. In 1989, when Filipino workers sought recognition, IRRI management implemented a special separation program to quell down the unrest. About six hundred rank-and-file workers were illegally terminated.

²¹ *Kapisanan ng Manggagawa at TAC sa IRRI-Organized Labor Association in Line Industries and Agriculture v. Secretary of Labor and IRRI*, G.R. No. 89331, *in* *International Catholic Migration Commission v. Calleja*, G.R. No. 85750, 190 SCRA 130, Sep. 28, 1990.

²² Case No. R0400-9712-RU-008.

In 1993, a series of protest actions was initiated by rank-and-file workers against discrimination in terms of salaries and benefits. IRRI management was adamant, and a staff adjustment program was abruptly implemented.

In 1995, the rank-and-file workers, together with farm-workers, organized a union in quest for their rights to self-organization. In the course of campaign and legitimate union activities, one BISSIG officer was immediately terminated. A case of illegal termination and non-payment of overtime work²³ was then filed at the NLRC-DOLE Regional Arbitration Branch No. IV on April 23, 1996. But in the course of litigation, IRRI refused to participate in the legal proceeding. The case was eventually dismissed on the ground of immunity on October 11, 1996.

And in a calculated move to bust the union, a staff-restructuring program was then implemented by IRRI in 1997, and 70% of BISSIG members were illegally terminated. BISSIG challenged the legality of the program, and a case of unfair labor practice/union busting was filed at NLRC-DOLE Sub-Regional Arbitration Branch No. IV in San Pablo City, Laguna.²⁴ The case was dismissed last May 30, 1997 on ground of immunity.

Lacking the arguments then, Duncan Macintosh of IRRI wantonly disseminated deceitful information that every complaint has been investigated and that no violation of workers' rights has been found. The truth is that all complaints against IRRI were dismissed not on the merits, but simply because of immunity. In fact, the last case filed by employees/researchers retrenched by IRRI²⁵ in October 2002 was also dismissed on the ground of immunity. And if IRRI is not violating any law or labor ruling per se then, why invoke Pres. Decree No. 1620 instead of facing the complaint squarely in court?

Unequal application of the law

In the case of Rogelio P. Granzore, a regular worker of IRRI for 17 years, he was abruptly terminated on the ground of alleged criminal offenses. The case is now pending before the Regional Trial Court in Calamba City, and he is still languishing in jail in Sta. Cruz, Laguna. Granzore subsequently

²³ NLRC Case No. RAB-IV-4-8048-96.

²⁴ NLRC Case No. SRAB-IV-1-15151-97-L.

²⁵ NLRC Case No. SRAB-IV-09-7200-02-L.

filed a case of illegal termination.²⁶ The case was dismissed on the ground of IRRI's immunity.

Death and illness in the midst of injustice

Beyond the failure to uphold the rights and welfare of Filipino workers, IRRI management also failed to protect their life and health as shown by the following cases.

Bernardo B. Calibo, a laborer at the Plant Pathology Department of IRRI, was found to be suffering from neuromuscular ailment, and was later diagnosed with Parkinson's disease. He was then terminated from work effective January 8, 1988, after nineteen years of service. He died in August 1999, leaving a bewildered wife and family.

Emerson B. Delfin was a laboratory assistant in the biochemistry division of IRRI for twenty-two years. In 1992, he was diagnosed to be suffering from Parkinson's disease, and this was certified as work-related. He was eventually included in the retrenchment program in 1993 but IRRI management failed to extend significant financial assistance in consideration of his physical condition. Delfin is still alive but in extreme hardship as a consequence of his constant exposure to chemicals during his stint with IRRI.

Camilo M. Malana was a field worker in IRRI from 1977 to 1990. Because of his deteriorating health condition due to constant exposure to toxic chemicals and pesticide, he was transferred to another division. Later, he was found positive for chemical poisoning, and further diagnosed with leukemia and liver cancer certified as work-related. He finally succumbed and died last January 23, 1997.

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²⁶ NLRC Case No. RAB-IV-02-15233-02-L.