



International Labor Rights Forum

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Post Hearing Brief

Case # 004-CP-08

In re. the Philippines Country Practice Petition.

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ATTN:

William Jackson, Deputy Assistant U.S. Trade Representative for GSP
GSP Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Room 514
Washington, DC 20508

Pursuant to [76 FR 238] (December 12, 2011), the International Labor Rights Forum (ILRF) files this post-hearing brief in support of the on-going review of freedom of association violations by the Government of the Republic of the Philippines (GRP), Case # 004-CP-08.

In September 2009, the ILO HLM conducted an exhaustive analysis of impediments to freedom of association faced by workers in the Philippines during their visit, and even issued some preliminary recommendations such as the establishment of a tripartite labor rights monitoring body. The ILO HLM submitted their reports to both the ILO Committee on Freedom of Associations and ILO Committee on Application of Standards to review issue final recommendations. The ILO CFA issued those recommendations in March 2010

In view of continuing violations from 2009 – 2011, and the lasting impact of previously raised violations, we hereby request that the USTR hold open the review of the petition and implement a freeze on all new GSP benefits, including product petitions, pending implementation of the ILO recommendations.

In this regard, we note that the Philippine Government has requested that the US extend additional benefits to the Philippines during the 2011 – 2012 review for HTSUS

8544.3000 (insulated ignition wiring sets) from the Philippines.¹ As discussed in our 2009 pre-hearing brief, there is currently an open case at the ILO filed by workers from International Wiring Systems, one of the largest producers of electric wire harnesses, who were victims of military harassment in the community around the factory, including the attempted assassination of Ms. Angie Ladera. While the Commission on Human Rights has closed Ms. Ladera's case for lack of participation by the victim, her lack of participation can be explained by the fact that she has received asylum in Australia granted to her after she had managed to escape from the Philippines. Therefore, we request also that the USTR defer any decision on the Government's petition for additional product benefits until the ILO has had an opportunity to review the progress on the case.

We also request that the USG support the work at the ILO, including help to secure a review of the Philippine Government's progress implementing the ILO recommendations this year at the during the ILC. Under normal circumstances, the ILO CAS reviews progress on the outcome of ILO missions at least two years after the end of the mission. Philippines case, however, was not heard in 2011 at ILO CAS, and a review is overdue.

1. In its testimony, the ILRF contends that the National Tripartite Industrial Peace Council (NTIPC) is "without a clear purpose or vision." How can the NTIPC be used more effectively?

The NTIPC's work bringing together to tri-partite partners to monitor trade union killings is an important education tool for the government, employers, unions, and also outside interested parties, like the ILO and the US Government. It is also an important venue through which the trade union community can engage with the government officials responsible for ending killings and impunity in order to keep the issues alive and to keep pressure on the government to resolve the killings. However, it appears that rather than acting solely as a repository of information and a venue to pressure the government into making progress, the NTIPC appears to view as its mandate also the categorizing of cases and determining, to some extent, the merits of the cases.

As we have discussed in previous briefing and as was noted by the United Nations Special Rapporteur in 2007, often the killings are the result of "red-tagging" by the military. The culprit may not always be from the military or the government, but the military created a climate of impunity and established the conditions that encourage others to use threats and violence, including possibly murder, to undermine support for specific democratically elected trade unions or farmer organizations. However, at this time, the NTIPC does not have as a part of its mandate monitoring possible violations of ILO Convention 87 and 98 that do not involve the murder, such as the situation at Dole Philippines. At the behest of the Philippine Commission on Human Rights, and only after the KMU union at Dole Philippines filed a complaint against the military and company management for conducting illegal anti-union campaigns, did the Philippine government attempt to establish a local TIPC monitoring body (not connected with the NTIPC) to

¹ See Docket Number USTR 2011-0015-0019.

monitor possible violations. Unfortunately, the body was established only weeks before the election so was not in existence during the multi-year anti-union campaign.

Also unfortunately, as we indicated in our oral testimony, even when the military had evidence in its possession indicating that Dole Philippines management had in fact retained the services of Mr. Chito Herbolingo from ANAD, who has a history of working with the military, to conduct “labor trainings” around Dole’s facility and indicated that further investigation would be required, the evidence was not submitted to the local TIPC monitoring body in a timely manner.

First, as a tri-partite institution, the NTIPC cannot offer a neutral location for the execution of justice. Rather, the NTIPC was formed as a space for social dialogue between the Government, industry, and labor unions. As a repository of information related to the murder of trade union leaders, the NTIPC can play an important role of documenting the progress made by the government agencies who are ultimately responsible for investigating and prosecuting the culprits and pressing those agencies to prioritize cases they believe may be labor related. However, with the exception of the possible representation at any given meeting from the PNP, AFP, Commission on Human Rights and Department of Justice, the other members of the NTIPC have no specific expertise upon which to draw when determining the motive behind a crime, so its role is limited. Unfortunately, as we saw with the initial report on the Diasdado Fortuna case, this could lead to confusion and speculation as to the motives behind a crime by allowing in hearsay evidence into the reports that could malign or harm the reputation of the victim. This could also prejudice the outcome of the investigation as well.

While the NTIPC’s work in bringing together to tri-partite partners to monitor trade union killings is an important education tool for the government, employers, unions, and also outside interested parties, like the ILO and the US Government, it cannot by itself address the underlying causes of trade union killings nor can prosecute the offenders and end impunity.

We recommend that the NTIPC include within its mandate the monitoring of military and police actions that are violations of ILO Convention 87 and 98 but may not rise to the crime of murder. Second, we encourage the NTIPC to cease making any conclusions or reporting any hearsay evidence in their public reports to the ILO in the interest of protecting the rights and reputations of the victims and their families. Third, the NTIPC must be clear that closed cases are not solved, and therefore cannot simply be discarded. Rather, they should continue to press the government for resolution of those cases.

2. What trends do you see in the frequency and nature of extra-judicial killings (EJKs), disappearances, and violence against trade union leaders and members in the period since you filed the original petition?

We are pleased to note that there has been a reduction in the number of killings of trade union leaders, most of which occurred in 2008 shortly after the visit of the UN Special

Rapporteur. Unfortunately since then, the number of killings appears to have remained steady each year.

We are disappointed to note that we have seen a rise in the abuse of the legal system to target trade union leaders and activists, including charges brought against union and civil society leaders based on unverified statements and false identifications. As we noted in our 2009 testimony, the effect of the use of criminal charges to silence legal trade union leaders also has a chilling effect on the ability of workers to exercise their protected rights, particularly in view of the agonizingly slow prosecution process in the Philippines whereby those accused of a crime can sit in jail for months or years before even having a probable cause determination on their case.

Additionally, we have seen no effort by the military to end its anti-union campaigns as a part of its counter-insurgency operations, as requested by the ILO.

3. Based on the information you have received, how would you assess the Government of the Philippines efforts to address intimidation of trade unions officials by the police and the military? Does the ILRF see one of these organizations as being dealt with in a more productive way? Are there any positive examples of procedures being put in place to address this issue?

Based on the information we have received, we believe that other branches of the government have not demonstrated a will to hold the police and military accountable for intimidating trade union officials. While some government agencies, such as the Department of Labor and the Philippine Economic Zone Authority have signed various different agreements with the PNP and the AFP, including on the rules of conduct during strikes and labor disputes, these agreements do not appear to be legally binding, but rather are only a set of ground rules that the DOL and PEZA hope the police and military will follow. Neither DOL nor PEZA have the authority to hold the military accountable for their actions in relation to labor disputes. While the DOJ and the military prosecutors in theory have authority to prosecute any member of the PNP or the AFP for the intimidation of trade union leaders, it is not clear whether intimidating trade union leaders is in violation of Philippine laws even though they are in violation of international law and the Philippine government's treaty obligations.

4. What are the ILRF's views on the proposed introduction of a special task force for dealing with human rights violations? How does the ILRF assess the comments made by Government officials about getting prosecutors involved in the investigation of cases at an earlier stage?

We believe that this is a positive move by the Philippine Department of Justice, not only in the context of trade union killings but also as in all areas of criminal investigations. We hope that the reforms will proceed as planned and that they will result in a higher success rate for criminal prosecutions once they proceed to trial and reduce the need for the Philippine government to rely solely on witness statements. As we saw in the case of Remigio Saladero, legal counsel to the KMU, witness statements when falsified and used

as the sole basis of a prosecution can be a powerful tool for the government to chill the exercise of trade union rights.

We also encourage the government to undertake needed reforms to its legal system that could undermine the success of the above mentioned reforms. In a March 2006 report, the American Bar Association's Asia Law Initiative noted, "Civil rights and liberties are protected by law . . . In practice, however, lengthy delays and lack of access to counsel often impairs the effectiveness of these guarantees." Specifically, the ABA noted that:

An additional obstacle bearing upon trial court functioning is a shortage of prosecutors, as well as public, legal aid, or pro bono attorneys. One judge reported being able to hear criminal cases only one morning per week, as only 9 or 10 prosecutor positions of 25 were filled for the province and prosecutors have to travel from court to court. Resulting delays aggravate a low conviction rate as witnesses fade away and the incentive for plea bargaining is decreased.

Additionally, trials in the Philippines are not continuous from start to finish. Rather, according to the ABA report, under the Speedy Trial Act (RA 4908) judges are required only to establish a "continuous trial on a weekly [meaning separate hearings once a week] or other short term calendar." Though the law requires a trial to be completed within 180 days of the lodging of a complaint and a decision to be issued within 90 days of the, "there are numerous exclusions and discretionary factors for granting continuances." However, in practice, the ABA observed that often trials last longer than the prescribed time period and continuances of up to three months or more are granted resulting in delayed justice and overcrowded jails.

As a result, we believe while including prosecutors in the investigation phase of a crime is a positive move, we are concerned that without also proceeding with other needed judicial reforms, this may simply aggravate the shortage of prosecutors and lead to further trial delays.

Respectfully submitted,



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