

REQUEST FOR REVIEW OF THE GSP STATUS OF  
THE REPUBLIC OF THE PHILIPPINES  
FOR VIOLATIONS OF WORKER RIGHTS

**Submitted on June 22, 2007 to:**

The Office of the United States Trade Representative  
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**Submitted by the:**

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**International Labor Rights Fund  
Request for Review of the Republic of the Philippines' country eligibility under the  
Generalized System of Preferences Program (Country Practice Petition)  
Submission to the Office of the US Trade Representative in response to Federal  
Register Notice Regarding the Initiation of the 2007 Annual GSP Product and  
Country Eligibility Practices Review and Change in Deadlines for Filing Certain  
Petitions (FR Doc. E7-9756 Filed 5-18-07)**

**Re: Philippines**

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**I. Introduction**

The International Labor Rights Fund (ILRF) presents this petition pursuant to 15 C.F.R. §2007(b) to request a review of the Republic of the Philippines' designation as a beneficiary country under the Trade Act of 1974, Generalized System of Preferences (GSP), 19 U.S.C. §2461 *et seq.*, as amended. The Government of the Republic of the Philippines (or GRP) has failed to takes steps to afford its workers "internationally recognized worker rights" as required under 19 U.S.C. § 2462(b)(2)(G) & (c)(7) and defined in 19 U.S.C. § 2467(4).

The Government of the Republic of the Philippines (GRP) has taken significant steps and engaged policies that deny its workers the right of freedom of association as guaranteed under International Labor Organization (ILO) Convention 87, which guarantees the right to freedom of association and the right to organize.<sup>1</sup> Further, the GRP has taken steps to undermine the ability of workers to form and join unions in violation of ILO Convention 98, which guarantees the right to organize and bargain collectively.<sup>2</sup>

In violation of international workers' rights, the GRP has encouraged and is accused of being engaged in the extra-judicial killings and abductions of union leaders, members, organizers, and supporters through elements of the Armed Forces of the

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<sup>1</sup> See ILO Convention 87, Art. 3,5,11.

<sup>2</sup> See ILO Convention 98, Art. 1. ("Workers shall enjoy adequate protection against acts of anti-union discrimination . . ."). The rights guaranteed under ILO Conventions 87 and 98 are also affirmed in the 1987 Philippines Constitution which states, "The State shall afford protections to labor . . . It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities including the right to strike in accordance with the law." Phil. Const. Sec. 3, Art. XIII (1987). The Philippine Constitution also provides that, "The right of the people . . . to form unions, associations, or societies for purposes not contrary to law shall not be abridged." Phil. Const. Sec. 8, Art. III (1987).

Philippines (AFP), the Philippine National Police (PNP), local police forces, and private security forces. Acting within a climate of impunity that is its own creation, the GRP and its agencies have condoned attacks on union leaders and members, as well as other human rights activists, by failing to investigate or hold people accountable for the killings and abductions and other violence against union leaders and members.

Furthermore, union leaders and members are subject to surveillance, harassments, intimidation and grave threats, which impede the ability of a union to organize and represent its members. The Philippine government promotes a climate of violence and impunity that increases the risk of violence towards labor leaders and activists.

By encouraging a climate of impunity, the GRP has been able to diminish the strength of union representation in the Philippines. Through the Department of Labor and Employment (DOLE) and the Philippine Economic Zone Authority (PEZA)<sup>3</sup>, the GRP utilizes provisions and technicalities in the law, such as the assumption of jurisdiction provision in the Philippine Labor Code<sup>4</sup>, to prevent workers from exercising their right to strike, a violation of international norms and domestic Philippine laws.

Workers are faced with the decision to submit to a binding decision of the Secretary of Labor and compulsory arbitration or otherwise risk having their strike declared illegal and lose their jobs. Legal maneuverings, undertaken in the broader climate of impunity, have led to the violent dispersal of picket lines and the subsequent stationing of AFP and PNP troops in the workplace preventing any meaningful organizing. Criminal charges are filed against the union leaders, members, and their supporters when collective action occurs, including felony charges of sedition for engaging in collective action. Industrial peace in the Philippines, which saw only one strike in 2006, has come at the expense of the workers' freedom of association.

## II. GSP Overview and Background

The GSP was expanded to include the Philippines in 1989. Total exports in 1992 under the U.S. GSP system expanded to \$1.05 billion from \$821.6 million in 1991.<sup>5</sup> The GSP program made such a big impact on the Filipino economy that in 1993, "at least 53 percent of Philippine exports to the U.S. enter the market duty-free either because of the GSP program or the most favored nation (MFN) status."<sup>6</sup> GSP benefits rose to \$1.3 Billion in 1995<sup>7</sup>. From 1996 until 2001, total GSP imports from the Philippines fell sharply. The United States International Trade Commission reported a significant drop from the 1997 high of \$1.647 billion worth of goods to only \$676 million in 2001.<sup>8</sup>

<sup>3</sup> Philippine Economic Zone Authority (PEZA) is a government corporation established through legislative enactment known as "The Special Economic Zone Act of 1995". The Philippine Economic Zone Authority (PEZA) is a government agency, attached to the Department of Trade and Industry, whose director is appointed by the President of the Philippines. PEZA's function is to "operate, administer, manage and develop" export processing zones, exercising "general supervision" over the "development, plans, activities and operations" of the zones (see: [www.peza.gov.ph/about\\_peza.htm](http://www.peza.gov.ph/about_peza.htm)).

<sup>4</sup> See Philippine Labor Code, Title VIII, Ch. 1, Art. 263(g). Available at <http://www.chanrobles.com/legal4labor4.htm#BOOK%20V>

<sup>5</sup> Xinhua, June 20, 1993, "Philippine exports to U.S. up 28 percent in 1992"

<sup>6</sup> Xinhua, March 5, 1993, "Manila to continue enjoying U.S. preferential tariff rates"

<sup>7</sup> Xinhua, February 26, 1996, "Philippine exports to be hurt by US budget impasse"

<sup>8</sup> United States International Trade Commission, Interactive Tariff and Trade Dataweb, at <http://dataweb.usitc.gov/>

In December 2001, President Arroyo visited President Bush at the White House. The Bush Administration offered President Arroyo a significant military/economic package in return for the GRP's support as an ally in the "War on Terror."<sup>9</sup> Soon, the Philippines—and Southeast Asia broadly—came to be referred to in the media as the "second front" in the "War on Terror."<sup>10</sup>

As a part of the aid package, the Bush Administration pledged to increase GSP duty-free imports from the Philippines to \$1 billion.<sup>11</sup> Since 2001, GSP benefits have risen sharply. In 2006, the United States imported \$1.14 billion from the Philippines under the GSP, a 13.2% increase from 2005. This represented about 12% of total Filipino imports, which are valued at \$9.6 billion.<sup>12</sup> In 2006, the USTR conducted a GSP review of the Philippines in order to determine whether the Philippines should be graduated from the GSP program for being too competitive.

GSP benefits, in conjunction with the expansion of export processing zones (EPZs), are central to the Philippine government's continued efforts to attract foreign investment and support export-oriented industrial growth. The Philippine Economic Zone Authority (PEZA) uses GSP access to the United States, along with significant corporate tax breaks, as primary benefits for investing in the Philippines.<sup>13</sup> To achieve their development goals, however, the GRP has engaged in authoritative, at times draconian, anti-union measures. Union leaders and organizers are killed, abducted, tortured, harassed, and placed under surveillance during the course of labor disputes or organizing campaigns. The Department of Labor and Employment (DOLE) and PEZA have effectively prevented labor organizing in the Export Processing Zones (EPZ) through making union organizing impossible and strikes illegal through a "no union, no strike" policy.<sup>14</sup>

Since 2001, the Philippines has experienced sustained economic growth. Figures from the Bangko Sentral ng Pilipinas (BSP) show that from a total of \$491 million in 2003, net foreign direct investments (FDIs) to the Philippines rose to \$2.345 billion in 2006. The country experienced an impressive growth rate of 6.9 percent during the first quarter of 2007. In the same period, the services sector grew by 9.1 percent, as did wholesale and retail trade. Government services expanded at 7.1 percent, while industry grew by 5.3 percent.<sup>15</sup>

The Philippines' GNI per capita "placed the Philippines at the lower end of the lower-middle-income level of economies" and that "Philippine GNI per capita would

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<sup>9</sup> See Gueva, Marina Walker. *Sustaining an Unpopular Regime*, Center for Public Integrity. May 31, 2007.

<sup>10</sup> Marc Erikson, "Philippines the second front in war on terror?" *Asia Times*, October 27, 2001.

<sup>11</sup> John Gershman, "Is Southeast Asia the Second Front?" *Foreign Affairs*, July / August 2002.

<sup>12</sup> Josh Kurlantzick, "Where the War on Terror is Succeeding," *Commentary*, May 2007.

<sup>13</sup> Paul Alexander, "A smaller, more successful front in the war on terror," *Associated Press*, May 20, 2007.

<sup>14</sup> Manila Standard, May 14, 2003, "Gloria to seek more tax perks from US"

<sup>15</sup> United States International Trade Commission, Interactive Tariff and Trade Dataweb, at <http://dataweb.usitc.gov/>

<sup>16</sup> See Website of Philippine Economic Zone Authority, <http://www.peza.gov.ph/>

<sup>17</sup> See United States Department of State, *Country Report on Human Rights- Philippines*, §6(b). March 6, 2006. ("Labor law applies uniformly throughout the country, including the SEZs; however, local political leaders and officials who govern the SEZs attempted to frustrate union organizing efforts by maintaining union-free or strike-free policies.")

<sup>18</sup> "Foreign investment surge," *The Manila Times*, June 21, 2007.

have been still lower were it not for the remittances from overseas Filipino workers.”<sup>16</sup> Meanwhile, Philippine industry groups have heatedly contested any rise in the minimum wage<sup>17</sup>. Labor inspectors have found that one in five companies violates current minimum wage laws, which vary by region, with the highest at only 350 pesos (roughly \$7.60) a day for a non-agriculture worker in metro Manila.<sup>18</sup> An appreciating Philippine peso is, moreover, undercutting remittances, forcing families to make tough spending choices.<sup>19</sup>

Despite the economic growth in the Philippines, inequality in the Philippines has either remained steady or has risen over this same period. With the exception of Malaysia, the Philippines is the most unequal country in Asia.<sup>20</sup> Nearly 37 percent of Filipinos live below the national poverty line, while 45 percent survived on less than two dollars a day. 28 percent of the population did not have access to adequate sanitation in 2004, and 19 percent of the population was undernourished between 2001 and 2003. The Philippines spent a paltry 1.4 percent of GDP on public health (according to 2003 figures).<sup>21</sup>

### **III. The GRP has created a climate of impunity in which union leaders and workers are targets of extra-judicial killing, abductions, threats and harassment.**

Workers can only exercise their rights, including their right to freedom of association, in an environment where human life is respected and protected.<sup>22</sup> When workers face constant threats to their life and security, genuinely free and independent trade unions cannot form.<sup>23</sup> Since 2001, however, there has been a steady rise in the threats to life and security facing union members in the Philippines to the point where the Philippines is considered the second most dangerous country in the world for trade unionists.<sup>24</sup>

<sup>16</sup> The Philippine Trade and Investment Center of the Embassy of the Philippines, “In Response to Federal Register Notice of August 8, 2006.” Available in the reading room of the United States Trade Representative.

<sup>17</sup> Veronica Uy, “1 of 5 companies violate minimum wage law—Recto,” *Philippine Daily Inquirer*, April 30, 2007.

<sup>18</sup> Carlos Conde, “Philippine business groups denounce minimum wage increase,” *International Herald Tribune*, January 3, 2007.

<sup>19</sup> Douglas Bakshian, “Strong Philippine Peso Hurts 8 Million Overseas Filipino Workers,” *Voice of America*, June 7, 2007.

<sup>20</sup> United Nations Development Programme, “Inequality measures: Gini index,” *UNDP Human Development Report 2006: Beyond scarcity—Power, poverty and the global water crisis*, <http://hdr.undp.org/hdr2006/statistics/indicators/147.html>.

<sup>21</sup> United Nations Development Programme, “Country Tables: Philippines,” *UNDP Human Development Report 2006: Beyond scarcity—Power, poverty and the global water crisis*, [http://hdr.undp.org/hdr2006/statistics/countries/data\\_sheets/ctv\\_ds\\_PHL.html](http://hdr.undp.org/hdr2006/statistics/countries/data_sheets/ctv_ds_PHL.html)

<sup>22</sup> See International Labor Organization, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006 at ¶43. (Hereinafter “ILO Digest”)( “Freedom of Association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.” )

<sup>23</sup> See ILO Digest ¶45 (“A genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty.”)

<sup>24</sup> Cueto, Francis. *Rights Issues Strain RP Ties with Allies*. Manila Times, December 10, 2006. Available at [http://www.manilatimes.net/national/2006/dec/10/yehey/top\\_stories/20061210top1.html](http://www.manilatimes.net/national/2006/dec/10/yehey/top_stories/20061210top1.html)

After the Bush Administration and the Arroyo Administration entered into a military/economic relationship in 2002, the GRP negotiations with the National Democratic Front (NDF), aimed at ending the insurgency, were suspended. The Armed Forces of the Philippines (AFP) expanded counter insurgency operations against those suspected of being members of the New Peoples' Army (NPA). Members or employees of legal organizations have been accused of belonging to "front" organizations for the Communist Party of the Philippines-New Peoples Army. (CPP-NPA). These groups and their members are labeled as insurgents and vilified.

According to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the labeling results in "a wide range of groups – including human rights advocates, labour union organizers, journalists, teachers unions, women's groups, indigenous organizations, religious groups, student groups, agrarian reform advocates, and others – [that] are classified as 'fronts' then as 'enemies of the State' that are accordingly considered to be legitimate targets."<sup>25</sup> Initial findings of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions have identified the military as responsible for many of the killings.<sup>26</sup> The Special Rapporteur's findings are bolstered by a report in the *Philippine Daily Inquirer* that the Armed Forces of the Philippines (AFP) has a policy to kill those considered to be "fronts" for the communist insurgency, including those associated with the "militant" left, labor leaders, activists, and farmer organizations.<sup>27</sup>

Trade unions associated with the Kilusang Mayo Uno<sup>28</sup> (KMU) and Anakpawis, a sectoral party-list political party that represents workers in the Congress of the Philippines, have been central targets of the counter-insurgency efforts. In a speech given before newly elected village officials in Laguna in 2002, President Arroyo likened trade unionists to terrorists stating, "Let us fight against criminals, gambling lords, drug lords . . . and those who terrorize factories that create jobs . . ."<sup>29</sup> By doing so, the President sent a message to the AFP, PNP, and others that union leaders must be treated as enemies of the state and common criminals. In a report prepared by the AFP in 2004, entitled the *Trinity of War*, the AFP explains in detail the rationale behind targeting unions from the KMU. Specifically, the AFP accuses unions affiliated with the KMU of engaging in a plan, directed by the CPP-NPA, to unionize key companies, to advocate

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<sup>25</sup> Alston, Phillip. *Preliminary Report on the Visit of the Special Rapporteur, Phillip Alston, to the Philippines (12-21 February 2007)*. United Nations General Assembly, Human Rights Council. Doc. A/HRC/4/20/Add.3, March 22, 2007 at 4.

<sup>26</sup> Statement by Prof. Phillip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, to the United Nations Human Rights Council, March 27, 2007, at 7. (Professor Alston noted that "... there is no reasonable doubt that the military is responsible for a significant number of the killings. Subsequent evidence points to the continuing nature of that practice.")

<sup>27</sup> Esguerra, Christian V., *Generals Bare Plot to Kill Militant Activists*. *Philippine Daily Inquirer*, June 17, 2007.

<sup>28</sup> The Kilusang Mayo Uno or KMU is a labor center in the Philippines representing more or less 300,000 members all over the country. Founded on May 1, 1980, it has eleven (11) national federations and two (2) mass organizations of semi-workers under its wing. It has local unions as members in both industrial and agricultural sectors.

<sup>29</sup> Complaint of Kilusang Mayo Uno Labor Center Against the Government of the Republic of the Philippines to the Committee on Freedom of Association, International Labor Organization, filed on September 18, 2006. Manila, Philippines. (Hereinafter "KMU Complaint"), available at <http://www.kilusangmayouno.org/kmu-complains-arroyo-government-international-labour-organisation-ilo>

against the current land reform program on the national level, and to elevate the issues of land reform and workers' rights to an international level, among others.<sup>30</sup> Angie Ladera, KMU Vice President for International Affairs, is accused in the *Trinity of War* of being a CPP-NPA member.

In a second document, a power point presentation entitled *Knowing The Enemy*, the AFP identifies the KMU, along with other organizations such as the United Church of Christ Philippines and the National Union of Journalists, as front organizations for the NPA-led insurgency. The power point, used in local education campaigns, describes the strategy the AFP employs to eliminate the "revolution" by labeling these organizations as subversive and alleged front organizations for the NPA.<sup>31</sup>

In the year 2006, Philippine trade unionists and labor activists experienced 110 assaults on picket lines, 102 physical assaults and injuries, 41 instances of torture, 33 killings, 40 abductions, 748 instances of intimidation, 946 "grave threats," 159 illegal arrests or detentions, and 1,097 instances of blocking, breaking up or violently dispersing demonstrations.<sup>32</sup> Labor leaders and activists in the Philippines are being killed and abducted, subject to surveillance, harassments, intimidation and grave threats, allegedly by elements of the AFP and PNP. Criminal charges, including rebellion and sedition, are used to quell dissent and end organizing efforts. Further, the Philippine government has sent the message that attacks on labor leaders and members, as well as other human rights activists from the "militant" left, are acceptable by its failure to investigate or hold those responsible accountable for the killings and abductions of union leaders and members.

In a complaint filed at International Labor Organization's Committee on Freedom of Association, the KMU describes in details the killings, torture, harassment and surveillance.<sup>33</sup> During the recent review, the Committee noted that it was alarmed at continuing attacks on trade union leaders stating:

In the case of the Philippines, the Committee reached interim conclusions on allegations of killings, grave threats, continuous harassment and intimidation and other forms of violence inflicted on leaders, members, organizers, union supporters/labour advocates of trade unions and informal workers' organizations. The Committee deplored the gravity of the allegations made in this case and the fact that more than a decade after the filing of the last complaint on similar allegations, inadequate progress has been made by the Government with regard to putting an end to killings,

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<sup>30</sup> Armed Forces of the Philippines, *Trinity of War* (Book III), Northern Luzon Command, Camp General Servillano Aquino, Talac City (2004).

<sup>31</sup> See Amnesty International, *Philippines: Political Killings, Human Rights, and the Peace Process*. August 15, 2006 (Hereinafter "Amnesty Report"), available at <http://web.amnesty.org/library/index/engasa350062006>. ("[T]he practice of 'red-labeling', by which perceived communist or leftist opponents of the government were tagged as 'subversives' became more pronounced. Once publicly labeled, such people were at sharply increased risk of grave human rights violations, including extrajudicial executions, 'disappearances', arbitrary arrest and torture.")

<sup>32</sup> "Workers' Rights Report 2006," *CTUHR Monitor*, December 2006.

<sup>33</sup> See KMU Complaint.

abductions, disappearances and other serious human rights violations.<sup>34</sup>

In its statement, the Committee was referring to a complaint filed by the KMU over ten years ago claiming violation of its right to freedom of association as a result of systematic murder of KMU trade union leaders during the Aquino Presidency in the late 1980s. Over the past 10 years, unionists have continued to face grave threats to their lives.<sup>35</sup>

**1. Sixty-four trade union leaders have been killed, allegedly by elements of the Armed Forces of the Philippines and the Philippine National Police.**

The Center for Trade Union and Human Rights (CTUHR), a Manila-based NGO, has reported that between 2001 and the end of 2006, a staggering 85 workers, trade union leaders, organizers and community leaders have been killed, 33 of whom were murdered in 2006 alone—the highest number for a single year in the post-Marcos era. In 2006 there were, moreover, attempted killings of six people and “frustrated killings” of fifteen people.<sup>36</sup>

**a. Cases of Murdered Union Leaders**

In some of the cases, the AFP and PNP, or security forces, are directly accused of being involved in the killings.<sup>37</sup> For example, on October 25, 2001 a paramilitary group linked with the AFP was accused of murdering *Felipe Lapa*, the president of the Milagrosa Farm Workers Union (NAFLU-KMU) only a few meters from his home. The day before his death, Lapa had collected meat and sweet potatoes from union members to send to the striking workers of the Nissan Motors Corporation in Sta. Rosa, Laguna. Lapa was not only a union president, but was also an elected community leader who was often sought out for advice by local residents. CAFGU had warned him to stop his union activities and he was repeatedly accused of being an NPA supporter.<sup>38</sup>

On September 28, 2003, SPO4 Bartolome Tupaz of the Anti-Terrorist Unit of the PNP-SAF was accused of killing *Angelito Mbansag* near his home. Mbansag was an organizer with KADAMAY, an organization of informal workers and urban poor that is affiliated with KMU.

On November 16, 2004, seven labor activists were shot dead by a combined force of Philippine Army and Philippine National Police (PNP) officers. The activists had been taking part in a strike of thousands of sugar mill workers led jointly by the *United Luisita*

<sup>34</sup> ILO Committee on Freedom of Association, *Committee on Freedom of Association Cites Cambodia, Colombia, and the Philippines*. Press Release. June 15, 2007. Available at [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_083110](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_083110).

<sup>35</sup> Committee on Freedom of Association. *Complaint Against the Government of the Philippines Presented by Kilusang Mayo Uno (KMU)*. Report No. 279, Case No. 1572, Vol. LXXIV, Series B, No. 3, (1991).

<sup>36</sup> “Workers’ Rights Report 2006,” *CTUHR Monitor*, December 2006.

<sup>37</sup> See KMU Complaint.

<sup>38</sup> See Certification from Liliw Municipal Police Station-Police Blotter of Felipe Lapa’s Case; Death Certificate of Felipe Lapa.

*Workers Union*, a farm workers' union, and *Central Azucarera de Tarlac Labor*, a mill workers' union. After a protracted standoff, the police and army trained tear gas and water cannons on the strikers and shot at the strikers and their supporters. Among the dead was *Jessie Valdez*, a farm worker who was shot in the thigh. Rather than being taken to the hospital, he was put in a military camp, where he died of blood loss. An inquiry by the Philippine House of Representatives found that the police and army were responsible for the carnage "directly or by reason of command responsibility."

On April 13, 2005, *Edwin Bargamento*, a member of the National Federation of Sugar Worker (NFSW) Regional Executive Committee, was killed with 22 gunshot wounds on his way to a friend's house after attending a series of labor protests in Bacolod City. Before his murder, he had received threats from RPA-ABB, an armed group linked to the Armed Forces of Philippines, asking him to stop his organizing.

On June 10, 2005, *Mario Fernandez*, an NFSW organizer, was killed by suspected elements of the Regional Mobile Group of the PNP.<sup>39</sup>

On June 13, 2005, *Manuel Batolina*, president of the NFSW died of gunshots by unidentified men after receiving threats from the RPA-ABB, according to testimony by his daughter, Laura Batolina.

On July 17, 2005, members of the military are alleged to have killed *Nilo Bayas*, the vice-chair of the Association of Charcoal Makers in Bulacan.

Unidentified men believed to have been led by sergeants in the 7<sup>th</sup> Infantry Division murdered *Ricardo Ramos*, president of CATLU on October 25, 2005.

On January 25, 2006, *Roberto De la Cruz*, a former driver for the Tritran Bus company and a board member of the Workers Union of Tritran and vice-chairman of the Alliance of Bus Workers was shot dead by motorcycle-riding men after he had presented himself to the Intelligence Service of the Armed Forces of the Philippines to clear his name only days before.<sup>40</sup>

#### **b. Diasdado "Ka Fort" Fortuna**

Often the killers' identities are not known, but the killings have arisen in the context of militarization during a labor dispute and include a common pattern which consists of surveillance followed by a murder. One example is the murder of Diasdado "Ka Fort" Fortuna.

Diasdado "Ka Fort" Fortuna became the President of Pagkakaisa ng Manggagawa sa Timog Katagalugan (PAMANTIK) Union, which represents workers at the Nestle Philippines Cabuyao factory, after Militant Rojas, his predecessor, was murdered outside the Nestle factory during a strike in 1989. In 2001, Mr. Fortuna, as head of PAMANTIK, sought out negotiations with Nestle Philippines management on a new collective bargaining agreement. However by January 2002 negotiations were deadlocked and the union walked out on strike.

At the commencement of the strike in January 2002, the PNP established barracks in the multi-purpose room on the property of Nestle within the gated area leading to the

<sup>39</sup> See ILSM Philippines Report, Factsheet; Sworn Statement and PNP Blotter.

<sup>40</sup> See International Labor Solidarity Mission, Factsheet on the Summary Execution of Roberto De la Cruz, Certificate of Death.

factory.<sup>41</sup> The police remained stationed there and routinely patrolled the area within and in front of the Nestle facilities, including in front of the picket line area which is located across the street. Soon, Mr. Fortuna became concerned that he was under surveillance.<sup>42</sup>

He stayed in the union office or at the picket line, which was located across the street from the factory on private land, only returning home one day a week to visit with his wife and children. At other times, he would stay with his father to avoid being followed home. Mr. Fortuna's neighbors began to notice, almost daily, people watching the Fortuna's home. They would come by in front of the house, spend a minute, then return later and spend a minute. Then, in early 2004, motorcycles frequently came by the Fortuna home and parked across the street in front of their neighbor's house.

In early September 2005, the Union began planning a large demonstration for mid-October that would consist of a march from Cabuyao to Lakbayan. However, on September 20, 2005, President Arroyo declared a policy of calling for the AFP and PNP to disperse and prevent rallies and mass actions.<sup>43</sup>

That same day, the PNP transferred a new commander to take over command of the PNP and security at the Nestle Cabuyao factory. The commander met with Mr. Fortuna at the picket line across the street from the factory that afternoon. Union members present at the meeting report that the PNP commander and Mr. Fortuna shook hands and the PNP commander assured Mr. Fortuna that he was in no danger despite the issuance of the "calibrated pre-emptive response" order.

On September 21, 2005, Ka Fort was murdered on his way home from the Nestle picket line. Around 8:00 a.m., while Ka Fort was conducting a meeting with fellow union members, a car approached the meeting and asked "Is there anyone dead here?" When the union leaders responded "No", the car sped away. At around 4:30 pm, Ka Fort went to the picket line. Witnesses reported seeing a man sitting in a chair at a convenience store (sari-sari store) located in the compound across from the factory near the picket line. Following this, a man was seen watching Ka Fort. When Ka Fort prepared to leave the picket line to return home around 5:20 p.m., the man abruptly left the store. A few minutes later, as Ka Fort was driving past a factory near his subdivision, he was shot twice by men on motorcycles concealed behind helmets. He was brought to the hospital by a tricycle driver. The guards at the factory in front which the murder was committed have refused to come forward as witnesses or provide any information regarding the killing.

Throughout the day of the murder, Ka Fort's residence was under constant surveillance. At one point, a neighbor of Ka Fort spoke to an unidentified man who was asking for the locations of Ka Fort's home. Later, a security guard at the entrance to the

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<sup>41</sup> When asked who was in charge of deploying the police to the Nestle facilities, a representative from the governor's office stated that, though the regional PNP are under the governor's control, he did not order the deployment to the Nestle factory.

<sup>42</sup> Interview with the ILRF, May 7, 2006. Mr. Alemania continues to live in fear of surveillance and has not returned to his home in over a year.

<sup>43</sup> See Statement of Executive Secretary Eduardo Ermita: On Lawful Mass Actions. September 21, 2005. Available at <http://www.news.ops.gov.ph/archives2005/sep21.htm>. See also *Prado v. Ermita*, G.R. No. 169838 (S. Ct. Philippines), April 2006 (ruling that CPR is in violation of the Philippines Constitution.). Available at [http://www.supremecourt.gov.ph/G.R.%20Nos.%20169838%20169848\\_CPR.htm](http://www.supremecourt.gov.ph/G.R.%20Nos.%20169838%20169848_CPR.htm).

community saw two motorcycles traveling at high speed towards the crime scene only minutes before Ka Fort was killed.<sup>44</sup>

**2. Union members, farmer organizers, and other labor activists have been abducted and subjected to torture.**

Recently, human rights organizations have been concerned over the resurgence of abductions and torture of farm workers and labor leaders. It has been reported that in the past three months, abductions have become more common than killings. According to Deaparecidos, a Philippine NGO, disappearances have increased from 7 in 2001 to 75 in 2006. In the first 5 months of 2007, 19 people have been kidnapped, 10 in May alone. Most of the victims “are farmers and workers identified with leftist groups and labor unions, a majority of them from provinces that are among the most militarized in the country.”<sup>45</sup> There is growing concern from many groups that the rise in abductions is the result of a shift in strategy by the AFP away from extra-judicial killings to quell international criticism over the killings.

In 2006 alone 40 trade unionists were abducted. Nine of these people remain missing; 21 were released; and seven were found dead.<sup>46</sup> This represents a two-fold rise over the previous year, when 20 people were kidnapped, 18 of whom were released, reporting mental and physical torture and “slapped with rebellion and illegal possession of firearms charges.” At the end of 2005, two persons remained missing: Geagoni and Junson, both members of NFSW.<sup>47</sup> In the year 2004, the Center for Trade Union and Human Rights recorded eight instances of “arbitrary detention” and one of “illegal detention.” This, in turn, was a sharp rise from three arbitrary detention cases and one illegal detention case in 2003.<sup>48</sup>

**a. Solid Development Corporation**

On March 6, 2006, Rogelio Concepcion, an officer of the Solid Development Corporation Workers’ Association was abducted by elements suspected of belonging to the 24<sup>th</sup> Infantry Division. When his union had gone on strike in protest of the company’s refusal to bargain in December 2005, the military had camped inside the factory. Concepcion remains missing.<sup>49</sup>

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<sup>44</sup>On September 19, 2005, two days before the murder, the security guard at the gate of the Fortuna’s gated compound was murdered while on duty. To date, there has been no investigation of that murder either.

<sup>45</sup> Conde, Carlos. *Rights Groups Warn of Rise of Abductions in the Philippines*. International Herald Tribune, June 11, 2007.

<sup>46</sup> Center for Trade Union and Human Rights, *Trade Unions Under Siege: Trade Union and Human Rights Report, January 1 to December 31, 2006*. January 2007, [www.ctuhr.org](http://www.ctuhr.org).

<sup>47</sup> CTUHR, *The Year of Living Dangerously: Trade Union and Human Rights Y2005 Report*. [www.ctuhr.org](http://www.ctuhr.org).

<sup>48</sup> CTUHR, *Tighter Belts and Bloodier Year: Workers Rights Review in 2004*. December 2004, [www.ctuhr.org](http://www.ctuhr.org).

<sup>49</sup> See CTUHR, *supra* n. 46.

### **b. Metal Ore Mining Company**

On April 17, 2006, elements of the paramilitary organization Rebolusyonaryong Hukbong Bayan (RHB) rounded up 27 residents of Dona Remedios Trinidad in Bulacan, holding them in the compound of the Metal Ore Mining Company. Four of these people—Bernabe Mediola, operations manager at Metal Ore; workers Virgilio Calilap, Teresita Calilap and Oscar Leuterio—were taken away in a company truck. Of these, only Leuterio has surfaced. The 703<sup>rd</sup> Brigade of the IBPA then forcibly detained an additional 15 of the 27 residents in a nearby detachment and subjected them to propaganda.<sup>50</sup>

### **c. Angeles City Transport**

On July 3, 2006, a force composed of members of the 5<sup>th</sup> and 69<sup>th</sup> Infantry Battalions of the Armed Forces and the Pampanga PNP abducted seven transport and labor leaders from the Workers Alliance in Region III. The activists, who included Emerito Gonzales Lipio, Fernando Poblacion Jr., Jose Ramos, William Aguilar, Jay Francisco Aquino, Jose Bernardino and Archie de Jesus, were about to meet to discuss transportation issues. Before being brought to a police station, they were beaten and tortured and their belongings were taken. Four of them were charged with possessing “illegal explosives” and one, Lipio, the PISTON-Central Luzon leader, is still in military custody, where he is reported to have been forced to cooperate with authorities after threats to his family and himself.<sup>51</sup>

## **3. Union leaders and activists are tortured, harassed, placed under surveillance, and threatened with death.**

In testimony before the Senate Sub-Committee on East Asia and the Pacific, Amnesty International testified that typically surveillance precedes a killing, and thus is tantamount to a death threat.

According to NGO reports, a significant number of attacks have been preceded by warnings or death threats, and by patterns of surveillance by alleged security forces personnel. These incidents reportedly led up to targeted attacks in or near the victims’ homes or offices, or while they undertook routine journeys.<sup>52</sup>

As described previously, the military and the government continue to broadly label legally registered organizations as “front organizations” for the insurgency. As a part of its counter-insurgency program, the AFP has increasingly begun anti-union operations in several areas, which include torture and interrogations of union members, anti-labor education programs, efforts to force particular unions to disaffiliate from the KMU or face repercussions, and surveillance of union leaders and activists. Often, the military and police establish a long-term presence in and around a factory after the

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<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Testimony of T. Kumar for Amnesty International before the Senate Sub-Committee on East Asia and the Pacific, United States Senate, March 14, 2007.

Secretary of Labor assumes jurisdiction over a labor dispute or certifies a dispute for arbitration and a strike is declared illegal, as in the case of the Nestle Philippines factory at Cabuyao.

**a. Console Farms**

In November 2005, soldiers from the 24th Infantry Battalion, at the time under the direction of General Jovito Palparan, established a presence in the community located near Console Farms in Bulacan Province where union leaders and members affiliated with the KMU have their homes. Their mission was supposedly to root out members of the NPA. The AFP established surveillance on these union leaders and began inviting union members to elect a new temporary president and disaffiliate with the KMU. Soldiers interrogated and tortured several of the union leaders in an effort to gain information on the union activities and the union's alleged relationship with the NPA.<sup>53</sup>

**b. Suyapa Farms**

In December 2005, workers from the Suyapa Farms in Mindanao reported that soldiers from the 28<sup>th</sup> Infantry Battalion of the AFP met with union members and directed them not to organize. The AFP argued that KMU affiliated unions cause businesses to close. The AFP presented a list of union members to those present at the meeting and stated that if they don't come forward to clear their names, "they will be haunted by men in black jackets."<sup>54</sup>

**c. Manila Bay Spinning Mills**

In September 2006, the AFP held anti-communist teach-ins for unions affiliated with the BMP at Manila Bay Spinning Mills and for the independent union at Armscor.<sup>55</sup>

**d. Coca-Cola Philippines**

In October 2006, in Central Luzon, elements of the 69<sup>th</sup> Infantry Battalion detained and interrogated the union president at Coca-Cola Philippines for nearly six hours. Before releasing him, one of the soldiers allegedly told him "So as not to inconvenience you, just disaffiliate with KMU. Otherwise, we will treat you as the enemy."<sup>56</sup>

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<sup>53</sup> CTUHR, *Data on Console Farms*. Available at <http://www.ctuhr.org/files/Console%20Farm%20Report.pdf>

<sup>54</sup> CTUHR, *Reversal of Gains of Militant Trade Unionism*. 2006. at 17. Available at <http://www.ctuhr.org/>

<sup>55</sup> Open Letter from Representative Renato Magtubo, Congressman in the Philippine Congress for Party-list Partido ng Manggagawa, May 2007.

<sup>56</sup> *Id.*

**e. Nestle Philippine**

Noel Alemania, vice-president, of PAMANTIK-KMU, has reported being under surveillance since prior to the murder of his colleague, Diasdado Fortuna, in September 2005.<sup>57</sup> In particular, Mr. Alemania has reported people monitoring his home beginning in mid-January 2002. He has also reported being followed. His family relocated to another family member's home, and Mr. Alemania has not returned home in over a year.

**f. International Wiring Systems**

According to reports by the CTUHR, military are patrolling the area around this enterprise and preventing workers from attending meetings and other union activities. Leaflets were being distributed in the area of the factory naming the KMU and Angie Ladera, listed in the AFPs *Trinity of War*, accusing them of being supporters of the NPA. During a union general assembly, the union members were surrounded by soldiers. The union president was threatened in an effort to end his union work.<sup>58</sup> International Wiring Systems is one of five primary manufacturers of ignition wiring sets, which comprises more than \$193,728,698 worth of GSP eligible goods.<sup>59</sup>

**g. Remegio Saladero**

On October 5, 2006, Military Intelligence Pfc. Rommel Felipe Santiago was arrested by local police officials while attempting surveillance on Attorney Remegio Saladero, a labor lawyer at the public interest law firm Pro-Labor Legal Assistance Center (PLACE). Atty. Saladero is the lead counsel for the family of murdered union leader Diasdado "Ka Fort" Fortuna and the employees of the Nestle Cabuyao factory who have been on strike for four years. PLACE also represents the workers of the Solidarity of Cavite Workers and the Workers' Assistance Center. The attorneys from PLACE were forced to vacate their offices for several weeks. They were forced into hiding and had to miss several hearings as a result of their well-founded fears of persecution. The Commission on Human Rights scheduled a hearing to consider the evidence for December 19, 2006. However, the AFP refused to file an answer to the complaint and did not participate in the hearing.<sup>60</sup>

Anti-union programs operate to instill fear in the workers, who are intimidated from exercising their rights. Integrating the AFP and PNP directly into the labor relations system has had a profound, chilling effect on workers' ability to exercise their rights free from fear and compulsion.<sup>61</sup>

<sup>57</sup> Interview with the ILRF, May 2007.

<sup>58</sup> CTUHR, *Preliminary Report: Trade Union and Human Rights Situation, January 1 – October 23, 2006*. See <http://www.ctuhr.org/>.

<sup>59</sup> See The Philippine Trade and Investment Center of the Embassy of the Philippines, "In Response to Federal Register Notice of August 8, 2006, at 15. Available in the reading room of the United States Trade Representative.

<sup>60</sup> Interview with ILRF and Remegio Saladero, May 2007.

<sup>61</sup> See ILO Digest ¶60. ("The environment of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities . . .")

**4. Labor leaders and activists are charged with rebellion, sedition, and other criminal charges when exercising their right to strike.**

National Security Advisor Norberto Gonzalez recently announced that the counter-insurgency will expand to emphasize the filing of criminal charges against government critics to give the government “wider elbow room to run after ‘front above-ground organizations’” who they allege to have direct links with the NPA.<sup>62</sup> Amnesty International has expressed concerned about the growing abuse of legal system in the counter-insurgency.<sup>63</sup>

**a. Representative Crispin Beltran:**

Representative Crispin Beltran was arrested and charged with sedition for allegedly making a speech denouncing the Arroyo Administration.<sup>64</sup> When the government could not produce enough evidence, it charged Rep. Beltran with rebellion, alleging that he participated in a coup attempt. Rep. Beltran remains in custody even after the Supreme Court ordered his release.<sup>65</sup>

**b. Toyota Motor Philippines Corporation Workers Association**

On August 16, 2006, 21 members of the Toyota Motor Philippines Corporation Workers Association (TMPCWA) demonstrated against the Department of Labor and Employment’s decision to give a company-backed union exclusive bargaining rights at the Toyota Philippines Motor Corporation. This peaceful exercise of freedom of expression and assembly, at the DOLE, turned bloody when security guards attacked the demonstrators, beating them with bats. All 21 TMPCWA workers were arrested and charged with damage to property, assault, and inciting to sedition.<sup>66</sup> Following international pressure, the workers were released.

**c. Chong Won Fashions, Inc.**

On September 25, 2006, workers at the Korean-owned Chong Won factory in the Cavite Export Processing Zone in the town of Rosario went on strike against

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<sup>62</sup> Panares, Joyce Pangco. *Anti-rebel drive shifts to legal battle*. Manila Standard. May 30, 2007. Available at [http://www.manilastandardtoday.com/?page=politics4\\_may30\\_2007](http://www.manilastandardtoday.com/?page=politics4_may30_2007).

<sup>63</sup> See Amnesty Report . (“Amnesty International is concerned that, in light of the government’s current political and military efforts against the CPP-NPA and its alleged supporters among legal leftist parties, such rebellion charges are open to misuse as a pretext to affect politically-motivated detentions.”)

<sup>64</sup> Representative Beltran is the party-list representative for the Anakpawis workers’ party and former head of KMU.

<sup>65</sup> Torres, Techt, *SC to Gov’t: Withdraw rebellion case v. 6 party-list salons*. Philippine Daily Inquirer. June 1, 2007.

<sup>66</sup> International Metalworkers’ Federation, “Toyota Philippines workers arrested,” August 16, 2006, <http://www.imfmetal.org/main/index.cfm?n=47&l=2&c=14515>.

management's refusal to negotiate a first collective bargaining agreement. The Department of Labor and Employment had already certified the workers' union as the "sole and exclusive bargaining agent." Economic zone police and factory guards attacked the strikers. Then, police from Rosario arrested without warrant and detained Rodel Amo, Annalou Estremos, Josephine Bajar, Glaiza Leysi, Gemma Lape, Lorna Reli, Pablito Zapanta and Ivy Villasan, who were storing food for the strikers. They were later released but charged with "trespassing" and "inciting to sedition."<sup>67</sup>

**5. The Philippines government systematically fails to investigate crimes committed against union leaders and members.**

When a worker is killed or abducted as a result of their participation in a union, "independent judicial inquiries must occur at the earliest date . . ."<sup>68</sup> If police or judicial investigations into the murder or disappearance of trade unionists only rarely result in arrests or convictions, "such a situation means that, in practice, the guilty parties enjoy impunity which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights."<sup>69</sup>

Underlying the failure of the Philippine government to conduct adequate investigations is the lack of political will that is required to conduct full inquiries. This is apparent in the investigations themselves, which usually include a brief investigation at the crime scene with little to no follow-up investigations.

**a. Yazaki-EMI/Jesus Servida**

Investigators make premature pronouncements regarding the motivation behind many of the killings. For example, Jesus Servida, a union leader in the Solidarity of Cavite Workers, was shot and killed while sitting in his vehicle awaiting entrance at the guard booth to a factory in the Cavite Export Processing Zone in Imus, Cavite (PEZA).<sup>70</sup> Before any investigation had been conducted, the Imus police chief had already declared publicly that the investigation would focus solely on possible business rivalries, not allegations of police collusion.<sup>71</sup>

<sup>67</sup> Dennis Espada, "Violent Dispersals, Food Blockade vs. Strikers," *Bulatlat* website accessed via the Asia Monitor Resource Centre's *Asian Labour Update*, No. 60, July-September 2006, <http://www.amrc.org.hk/6013.htm>.

<sup>68</sup> ILO Digest Para. 48, 49.

<sup>69</sup> ILO Digest Para 51.

<sup>70</sup> See Workers' Rights Consortium. *Assessment Re. Chong Won Industries, Inc. (Philippines): Report of Findings and Recommendations*. February 21, 2007 at 45- 47. (Hereinafter WRC Chong Won Report) Available at [http://www.workersrights.org/Freports/Chong\\_Won\\_Report\\_2-21-07.pdf](http://www.workersrights.org/Freports/Chong_Won_Report_2-21-07.pdf).

<sup>71</sup> Several months earlier, in April 2006, Gerardo Cristobal, the former head of the Solidarity of Cavite Workers (SCW), was attacked by three persons later identified as police officers after having received death threats from the Civilian Security Unit in Cavite. Police filed murder charges against Cristobal later that day prior to any official investigation.

## **b. Nestle Philippines/Diasdado Fortuna**

Routinely, the police will fail to interview witnesses or seek the help of the family of the victims to acquire more information.<sup>72</sup> In the case of Diasdado Fortuna,<sup>73</sup> the police failed to interview any of the union members who were present at the picket line with Mr. Fortuna moments before he was murdered. The police spoke with Fortuna's wife only once, at the hospital. A few minutes after Mr. Fortuna was pronounced dead, an officer said to Mrs. Fortuna that he had nothing to do with the killing.<sup>74</sup> No further investigation has been conducted by the police.

## **c. Bishop Alberto Ramento**

In the case of the murder of Bishop Alberto Ramento<sup>75</sup> in October 2006, the police were quick to determine that the case was one of common robbery with homicide. Before interviewing any of the family members, police arrested four men and charged them with robbery with homicide.<sup>76</sup> The defendants have provided conflicting testimony and significant questions remain as to the true motives behind the murder. Bishop Ramento had been receiving death threats in the months preceding his murder. However, now that the case has been turned over to prosecutors, the police case is considered closed since prosecutors in the Philippines are not empowered to initiate or continue investigations.<sup>77</sup>

## **B. The GRP Does Not Have the Political Will to End the Killings and Seek Justice for the Victims.**

The GRP has systematically failed over time to exert the political will to back its rhetoric for change with sustained action to seek justice on behalf of the victims with thorough, impartial investigations and trials.<sup>78</sup> Recently, the ILO expressed concern over the complaints received during the past decade regarding the murders of union leaders, allegedly by military forces.<sup>79</sup>

<sup>72</sup> Asia Human Rights Commission, *Philippines: The Human Rights Situation in 2006*. December 21, 2006. Available at <http://www.ahrchk.net>.

<sup>73</sup> Interview with relatives and members of PAMANTIK Union by ILRF, May 2006.

<sup>74</sup> Dialogue between the Commission on Human Rights and Representatives from the International Labor Solidarity Mission, May 8, 2006. The Commission reopened the investigation when new evidence concerning surveillance on Mr. Fortuna and the union members was presented by attorneys for Mrs. Fortuna. The case remains open.

<sup>75</sup> Bishop Ramento was the president of the Board of the Workers' Assistance Center in Cavite and is well known for helping the victims of the Hacienda Lusita attacks.

<sup>76</sup> Asia Human Rights Commission, *Philippines: The Human Rights Situation in 2006*. December 21, 2006. Available at <http://www.ahrchk.net>.

<sup>77</sup> WRC Chong Won Report at 45-47.

<sup>78</sup> See Amnesty Report ("Unearthing the evidence establishing responsibility . . . will take political will. It will require political determination and persistent practical efforts to undo the legacy of impunity . . ."); See Also del Callar, Michaela P., *Gov't Hit for Wasting EU Aid*, Philippine Daily Tribune, June 15, 2007.

<sup>79</sup> ILO Committee on Freedom of Association, *Committee on Freedom of Association Cites Cambodia, Colombia, and the Philippines*. Press Release. June 15, 2007. Available at [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang-en/WCMS\\_083110](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang-en/WCMS_083110)

In a statement submitted to Senator Barbara Boxer as Chair of the Sub-Committee on East Asian and Pacific Affairs in March 2007, the Philippine Government lauded the establishment and findings of the Melo Commission as a significant step in bringing an end to the killings and justice for the families. However, the Melo Commission faces significant limitations. Victims have expressed concern over the impartiality of a panel. The inclusion of senior officials from President Arroyo's administration, such as the National Bureau of Investigation Director and the Chief State Prosecutor, raises significant conflict of interest concerns.<sup>80</sup> The Commission cannot, in practice, guarantee protection for the witnesses.<sup>81</sup> Furthermore, the Commission has seemingly limited its inquiry by apparently clearing high level officials in President Arroyo's cabinet and the AFP before it was able to conduct full investigation.<sup>82</sup>

The AFP has failed to actively pursue or hold any its members accountable for their role in the killings and abductions of labor leaders and activists. Ambassador Gaa, in his statement to the US Senate, notes as a success the formation of the AFP Human Rights Office (AFPHRO).<sup>83</sup> However the AFP had to be pushed for years to even begin to address the institutional climate that has led to many of the killings. The Ambassador has failed to explain publicly the steps the AFP is taking to ensure a full and impartial investigation.<sup>84</sup> At the same time, members of legal democratic parties, church leaders, labor leaders and civil society organizations are still being killed and abducted, sending the message that violence and impunity will persist.<sup>85</sup>

As the UN Rapporteur noted, "Those government officials who must act decisively if the killings are to end, still refuse to accept that there is even a problem . . . [T]he military remains in a state of almost total denial . . . of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them."<sup>86</sup>

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<sup>80</sup> Letter from Human Rights Watch and Human Rights First to President Gloria Arroyo, March 22, 2007, (available at <http://www.humanrightsfirst.info/pdf/07322-hrd-hrf-hrw-ltr-melo-com.pdf>.) (HRW/HRF Letter) at 2.

<sup>81</sup> Testimony of Fr. Jose Dizon, Workers Assistance Center, Cavite, Philippines, submitted to the Senate Foreign Relations Committee, Sub-Committee on East Asian and Pacific Affairs, March 14, 2007. In his statement to the Sub-Committee, the Ambassador criticized the leftist organizations for refusing to participate with the Melo Commission's on-going inquiry despite the families' legitimate safety concerns.

<sup>82</sup> See HRW/HRF Letter. The Commission has in fact made multiple pronouncements in its findings that have only further confused the underlying reasons for the current human rights crisis in the Philippines. The Commission notes the possibility that the killings are part of an orchestrated plan but immediately dismisses the possibility that top level officers are involved.

<sup>83</sup> Statement Submitted by Philippine Ambassador to the United States H.E. Willy C. Gaa, Sub-Committee on East Asian and Pacific Affairs, United States Senate, March 14, 2007, at 3.

<sup>84</sup> See Report of the Independent Commission to Address Media and Activist Killings (Melo Commission Report), January 22, 2007 at 17. Military leaders have asserted to the Melo Commission that it is not in the interest of the AFP to investigate any officers accused of human rights violations when they are on active duty. Available at <http://www.ctuhr.org/>.

<sup>85</sup> See Amnesty Report. Amnesty notes in its 2006 report that "official assertions that the continuing killings of leftist activists were in fact the result of internal communist 'purges' increased fears that police investigations into the killings were less likely to be sufficiently prompt, determined or thorough, and that there was an increased risk that those responsible for the killings would believe that they had received a signal of official acquiescence for these abuses."

<sup>86</sup> Statement by Prof. Phillip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, to the United Nations Human Rights Council, March 27, 2007, at 6

#### IV. The “Assumption of Jurisdiction” provision in the Philippine Labor Code denies unions the right to freedom of association.

Acting within the climate of impunity, the GRP and private companies have been able to abuse the legal system and use state security forces in violations of the right to freedom of association to diminish the strength of the union representation in the Philippines. Through the Department of Labor and Employment (DOLE) and the Philippine Economic Zone Authority (PEZA), the GRP commonly utilizes provisions and technicalities in the law, such as the Assumption of Jurisdiction provision<sup>87</sup>, to prevent workers from exercising their right to strike in violation of international and domestic Philippine laws.<sup>88</sup>

Workers are faced with the decision to submit to the binding, non-reviewable decision of the Secretary of Labor and compulsory arbitration. Otherwise, they risk having their strike declared illegal and losing their jobs. The legal maneuverings, undertaken in the broader climate of impunity, have led to violent dispersal of picket lines and the subsequent stationing of AFP and PNP troops in the workplace, preventing any meaningful organizing. Criminal charges stemming from collective actions are often filed against the union leaders, members, and their supporters, including felony charges of sedition, which come with criminal penalties of up to 12 years in prison.

##### A. The Secretary of Labor’s Discretion to Assume Jurisdiction or Otherwise Enjoin Collective Actions is Overly Broad and Violates of Internationally Recognized Workers’ Rights.

Under the Philippine Labor Code Art. 263(g), the Secretary of Labor has broad discretion to enjoin a strike and force the parties into mandatory, binding arbitration. To do so, however, the Secretary must determine that “there exists a labor dispute causing or likely to cause a strike . . . in an industry *indispensable to the national interest.*”<sup>89</sup> (emphasis added). When the Secretary of Labor assumes jurisdiction over a case, the strike (or lockout) is immediately enjoined and the workers are ordered back to work.<sup>90</sup>

In many instances of where disputes are compelled to be submitted to mandatory arbitration, the underlying cause of the dispute remains simmering as the losing party does not feel it has a stake in a negotiated solution, especially when decisions in collective disputes tend to favor management’s position. In one study, the Labor Education and Research Network, an NGO in Manila, found that “. . . there is also evidence that cases involving multiple complainants, including unions and large groups

<sup>87</sup> See Philippines Labor Code, Art. 263(g).

<sup>88</sup> See ILO Digest ¶131 (“The right to strike and to organize union meetings are essential aspects of trade union rights . . .”); ILO Digest ¶520 (“The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.”);

<sup>89</sup> Philippines Labor Code, Art. 263(g).

<sup>90</sup> See *Telefunken SemiConductors Employees Union-FFW v. Temic Telefunken Microelectronics (PHILS.)*, Inc., G.R. Nos. 143013-14 (S.Ct Philippines 2000). All Philippine Supreme Court cases are available at <http://www.supremecourt.gov.ph/jurisprudence>.

of workers, are likely to elicit an adverse ruling from arbiters . . .”<sup>91</sup> Once the Secretary issues the AJ order or an order certifying a case for compulsory arbitration, “cases took longer to resolve than ordinary cases. . .”. In fact, “only 10% of certified cases were disposed of within the prescribed period.”<sup>92</sup> Assumed or certified cases average over four years for final resolution with the longest cases taking over ten years.<sup>93</sup> Furthermore, in many instances, the Secretary of Labor simply certifies the case back to the National Labor Relations Commission, thus undermining the original purpose for the AJ power, which is to expedite the dispute resolution process.<sup>94</sup> The effect of the AJ order, in many instances, is to slow down the dispute resolution process and exacerbate already existing tensions in the Philippines labor relations system.

As a result of the inherent tension between compulsory arbitration, which the GRP asserts is within its rights under the police authority of the state, and the workers’ rights to freedom of association, the ILO has been clear that “[c]ompulsory arbitration to end a collective labor dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, i.e. in the case of disputes . . . in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal security or health of the whole or part of the population.”<sup>95</sup> Further, “[i]n as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term.”<sup>96</sup> Thus, when determining in which situations “a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.”<sup>97</sup>

However, the GRP has taken an overly broad view of the “essential services” exception that essentially swallows the rule ensuring workers’ their right to strike as part of their freedom of association. In recent years, the Secretary has been assuming jurisdiction over cases involving automobile manufacturers (Toyota, Nissan), companies that produce brand name food products (Nestle Philippines, Big E Food Corporation), companies that produce canned pineapples for export to the United States (Dole Philippines), tire manufacturers (Yokohama Tires), hotels (Manila Hotel Corporation, Dusit Hotel Nikko); agricultural services (Hacienda Luisita), mining companies (Lepanto Mining Corporations), university staff (De La Salle University, University of Immacualte

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<sup>91</sup> Eileen Rillera and Clarence Pascual, *Labor Dispute Resolution at the National Labor Relations Commission (NLRC): Unfair Labor Justice?* Labor Education and Research Network (LEARN), 2004, at 16. (Herein after (“LEARN Report”).

<sup>92</sup> *Id.* at 14, 16. (“Cases certified for compulsory arbitration take even longer to resolve than cases going through the normal dispute resolution process.”) Even in cases where the Secretary of Labor can justifiably determine a company to be “essential services” “. . . all procedures available for negotiation, conciliation, and arbitration have been exhausted, such a restriction should be accompanied by adequate, impartial, and speedy conciliation and arbitration proceedings . . .” See ILO Digest ¶551

<sup>93</sup> Institute for Labor Studies, *The Assumption and Certification Power In the Philippines: Context, Issues and Options*, ILS Monograph Series No. 14, 2005 at 47.

<sup>94</sup> Magtubo, Renato. *Privileged Speech Delivered on 11 January 2005 before the House of Representatives*, Quezon City. Available in Institute for Labor Studies, *The Assumption and Certification Power In the Philippines: Context, Issues and Options*, ILS Monograph Series No. 14, 2005.

<sup>95</sup> ILO Digest ¶¶564, 565, 568.

<sup>96</sup> ILO Digest ¶¶565.

<sup>97</sup> ILO Digest ¶581.

Concepcion), among hundreds of others.<sup>98</sup> The ILO has previously determined that each of these industries should not be listed as “essential services.”<sup>99</sup>

The Secretary of Labor has been justifying assumption order by arguing that the Philippines is competing with other countries for foreign investment. Therefore, the underlying rationale for deciding what are “essential services” such that a company is “indispensable to the national interest” is whether or not the industry will hurt the economy. In a position paper submitted to the House Committee on Human Rights in 2004, the DOLE explained that in a situation in which there is greater global competition in the domestic production market, “a work stoppage . . . greatly threatens the competitiveness of the industry. If the industry cannot be competitive internationally and domestically, the jobs of . . . workers and the health of the economy will ultimately be threatened.”<sup>100</sup> When deciding to assume jurisdiction or certify a case for mandatory arbitration, the Government routinely cites the pressing need to stay competitive globally as the reason an industry is “indispensable to the national interest.” The Secretary’s decision to assume jurisdiction is based almost solely on basis of President Arroyo’s economic development plan, of which GSP benefits are a primary component.

For example, in *Manila Hotel Employees Association v. Manila Hotel Corporation*, decided in March 2007, the Secretary assumed jurisdiction over a dispute in one of Manila’s many hotels, asserting:

At this critical time when efforts of the present administration are seriously focused on preserving the economic gains achieved and ensuring that existing jobs are maintained, it is the utmost concern of this Office to avoid work disruption that might result [in] *sic* the firm’s closure . . .<sup>101</sup>

The Secretary’s broad justification in the *Manila Hotels* is commonly used when jurisdiction is assumed.<sup>102</sup> By his overbroad discretion, however, the Secretary is able to wield unassailable discretion that endows on him the power to be the ultimate arbiter of when to allow union members the right to exercise their freedom of association and the right to strike.

The ILO Committee on the Freedom of Association has, on two occasions determined that Art. 263(g) is overly broad such that it violates international law.<sup>103</sup> In

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<sup>98</sup> “Essential service” industries include hospitals, electric and water utilities, telephone service, police and armed forces, fire fighting services, prisons, provision of food to children, and air traffic controllers. See ILO Digest ¶585.

<sup>99</sup> “Essential services” does not include radio, television, petroleum production and services, ports, banking, department stores, mining, transport, airline pilots, railroads, postal service, refuse collection, construction, automobile manufacturing, agriculture activities, and education.” See ILO Digest ¶587

<sup>100</sup> Institute for Labor Studies, *The Assumption and Certification Power In the Philippines: Context, Issues and Options*. ILS Monograph Series No. 14, 2005 at 32.

<sup>101</sup> *Manila Hotel Employees Association v. Manila Hotel Corp.*, G.R. 154591 (Supreme Court of the Philippine), March 5, 2007. Available at [http://www.supremecourt.gov.ph/jurisprudence/2007/march2007/154591.htm#\\_ftnref40](http://www.supremecourt.gov.ph/jurisprudence/2007/march2007/154591.htm#_ftnref40)

<sup>102</sup> See also *Pasvil/Pascual Liner, Inc. Workers’ Union-NAFLU v. Pasvil/Pascual Liners*, G.R. 124823 (Supreme Court of the Philippines), July 28, 1999. Available at [http://www.supremecourt.gov.ph/jurisprudence/1999/jul99/124823.htm#\\_ednref5](http://www.supremecourt.gov.ph/jurisprudence/1999/jul99/124823.htm#_ednref5)

<sup>103</sup> ILO Digest ¶549. (“Legislation which provides for the voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of

2003 workers at the Toyota Motor Philippines Corporation Workers' Association (TMPCWA) filed a complaint with the ILO asserting, in part, that the Philippines Secretary of Labor's power to assume jurisdiction under Art. 263(g) is a violation of ILO Conventions 87 and 98.<sup>104</sup> In particular, TMPCWA details the efforts by the Toyota management to nullify the results of a certification election, in which the TMPCWA received a majority of the votes. After the certification election was a success, Toyota appealed the results to the DOLE. When the union members attended a peaceful public assembly at DOLE hearing, Toyota fired 227 union officers and workers and suspended 64 more for 30 days. As a result, the TMPCWA filed a notice of strike and, on March 28, conducted a peaceful strike. The Secretary of Labor assumed jurisdiction over the case pursuant to her powers under Art. 263(g). The Committee noted that, in the context of the TMPCWA complaint, the Secretary of Labor power to assume jurisdiction has gone beyond essential services, the bounds of ILO 87 and 98. The Committee's finding reinforces an earlier decision in which the Committee noted that Art. 263(g) "permits the Secretary of Labor and Employment to submit a dispute to compulsory arbitration, thus bringing and end to the strike, in situationa *going beyond essential services or acute national crisis.*"<sup>105</sup> (emphasis added)

The Committee, in its decision, notes that efforts to reform Art. 263(g) were pending in the Philippines to bring the law in line with internationally recognized workers' rights. Unfortunately, recent efforts to reform §263(g) to limits its scope in order to balance respect freedom of association with the state's police power in line with ILO Conventions 87 and 98 have failed.<sup>106</sup>

In the interim, as in the case of the workers at Chong Won and Nestle Philippines, union members laid off by the enterprise are often times replaced by non-regular contractual workers, who are prohibited from joining the unions. By the time the final order is implemented, ten years later, the laid off workers have lost much of their workplace opportunities.<sup>107</sup>

**B. Enforcement of AJ orders pursuant to 263(g) is draconian and operates in an environment of total near total impunity.**

**I. Violent dispersals of peaceful strikes are routine**

Once jurisdiction has been assumed, workers who remain on the picket lines and do not report back to work usually within 24 hours, but on occasion the workers face

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association, provided recourse to arbitration is not compulsory and does not, in practice, prevent the calling of the strike." See also ILO Digest ¶547 ("The conditions that have to be fulfilled under the law in order to render a strike unlawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations.")

<sup>104</sup> ILO Committee on Freedom of Association. Complaint Against the Government of the Philippines presented by Toyota Motor Philippines Corporation Workers' Association, Case No. 2252, Report No. 332 (Philippines). Vol. LXXXVI, Series B, No. 3. (2003). Available at [www.ilo.org/ilolex](http://www.ilo.org/ilolex).

<sup>105</sup> ILO Committee on Freedom of Association. Complaint Against the Government of the Philippines presented by the Association of Airline Pilots and the Philippines (ALPAP). Case No. 2195, Report No. 329 (Philippines). Vol. LXXXV, Series B., No. 3. (2002). Available at [www.ilo.org/ilolex](http://www.ilo.org/ilolex)

<sup>106</sup> See, e.g., House Bill No. 3627 and 3723, Republic of the Philippines, House of Representatives, 13<sup>th</sup> Congress, First Session, (2006)(No action has been taken on these bills.)

<sup>107</sup> See KMU Complaint at 4 – 6.

immediate, often violent expulsion by the deputized police forces immediately upon receiving the return-to-work order.<sup>108</sup> The Armed Forces of the Philippines (AFP), the Philippine National Police (PNP) or local police and security forces, often working in tandem with private company guards, are deputized by DOLE or PEZA. They move in to physically remove the striking workers often through violent measures.

In testimony before the Philippine House of Representatives, the Center for Trade Union and Human Rights describes in detail instances where the police used force to attempt to move or break the picket line. Strike breakers were escorted onto the company premises in violation of the law without any fear of legal sanctions.<sup>109</sup> The PNP or AFP, or other state security forces, established permanent or semi-permanent presence on or around the premises of the company. In the case of Nestle Philippines, the PNP and the AFP have established a permanent barracks within the Nestle Cabuyao factory compound. In the case of Chong Won and Toyota, private security or local police forces have established barriers to prevent striking workers from picketing on company premises.<sup>110</sup>

#### a. PAMANTIK/Nestle Philippines<sup>111</sup>

In April 2001, before the collective bargaining agreement (CBA) between the PAMANTIK-KMU and Nestle Philippines was to expire, the union sent a proposal for ground rules outlining proposed subjects that would comprise the CBA negotiations. The union made clear in the “ground rules” that retirement benefits would be a mandatory subject for bargaining.

On June 5, 2001, when negotiations were set to begin, Nestle management responded in a letter to the union explaining that it would not bargain over retirement benefits. Management argued that since the employees did not contribute to the retirement plan, they should have no say in it. Also, it argued that the Supreme Court decision from 1991, ruling that retirement benefits are a mandatory subject for bargaining between the Union and Nestle, was no longer applicable. Further, management argued that since management personnel were included in the retirement plan, the union did not have the power to negotiate the provisions despite assurances from the union that it wanted only to deal with the provisions that apply to the union workers. Further, Nestle claimed that the Union and all other unions at its other Philippines facilities had signed agreements stating waiving any demand for negotiations on retirement benefits and agreed that they were non-negotiable unilateral benefits. Nestle argued that any negotiation with PAMANTIK on retirement benefits would affect its relationships with

<sup>108</sup> See ILO Digest ¶150. (“In general, the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity.”); ILO Digest ¶140. (“The authorities should resort to the use of force only in situations where law and order is seriously threatened.”)

<sup>109</sup> See Philippine Labor Code Art. 264 (a) (“No person shall obstruct, impede, or interfere with, by force, violence, coercion, threats or intimidation, any peaceful picketing by employees during any labor controversy or in the exercise of the right to self-organization or collective bargaining, or shall aid or abet such obstruction or interference.”).

<sup>110</sup> In Special Economic Zones, like those where the Toyota, Nestle, and Chong Won factories are located, private security forces are commonly contracted to act as private state sanctioned police forces, empowered by statute to act as under color of authority. See Special Economic Zone Act of 1995. Available at <http://www.peza.gov.ph>.

<sup>111</sup> This Information was collected in a series of interviews between the ILRF and members of PAMANTIK-KMU and relatives of Diasdado Fortuna taken between May 5 – May 8, 2006.

the other factories who had already signed CBAs without bargaining over retirement benefits.<sup>112</sup>

By August 9, no progress had been made towards opening negotiations between the union and management. In meetings between the parties that were to lay the ground-rules for the CBA negotiations, Nestle held firm on its opposition to negotiating retirement benefits. In an attempt to save the negotiations, the union offered to open a second separate negotiation on the issue of retirement benefits so they could move forward with the negotiations on the CBA. Attempting to nullify the 1991 Supreme Court order, Nestle refused to move on the issue unless the union signed a statement saying that retirement benefits are a unilateral grant and thus non-negotiable. The negotiations broke down.

Unable to reach agreement on the ground-rules, the union filed a notice of strike with the Department of Labor and Employment (DOLE) on October 31, 2001. Again, the parties could not reach agreement on the issue. Facing the possibility of a strike, Nestle then requested that the Secretary of Labor, Patricia Sto-Thomas, assert her extraordinary powers under the §263(g) and assume direct jurisdiction over the dispute. On November 29, the Secretary issued an order assuming jurisdiction over the dispute asserting that a strike at the factory will hurt the families of those not affiliated with the union and the government's national interest. She enjoined any strike or lockout. Under orders from the Secretary, the National Conciliation and Mediation Board (NCMB), which is a part of DOLE, called the parties in for mediation. The parties, however, could not reach accord on the disputed issues and the mediation broke down.

On January 14, 2002, after the talks broke down, the union walked out on strike and set up picket lines in front of the factory. On January 16, the Secretary, pursuant on her original order enjoining any strike or lockout, ordered that the union members return to work within 24 hours under the terms of the previous CBA. The union refused, stating that the Secretary has abused her discretion by unilaterally overturning the 1991 Supreme Court decision and forcing the parties to go to mediation rather than enforcing the Supreme Court order.

On January 18, 2002, the Secretary issued Orders deputizing the Philippine National Police and ordering them to take any measures necessary "to ensure ingress and egress from the company's premises for legal purpose; to remove any obstruction on the thoroughfares subject to public use or which are within the company's premises that impede ingress and egress . . ." <sup>113</sup>

On January 28, 2002, while the Nestle workers were sleeping on the picket line in front of the factory, an estimated 1000 PNP officers, wearing full riot gear, surrounded the picketers and began beating their billy clubs on their shields to wake the picketers.<sup>114</sup> Faced with thousands of officers, the workers broke ranks and moved the peaceful picket line to a position in front of the factory wall, but no longer blocking the gates.

The police then moved into Nestle's Cabuyao factory and established a permanent barracks where they continue to remain today escorting contract workers in and out of the factory. The deputization order, empowering the police only to ensure "ingress and

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<sup>112</sup> Philippine Law does not allow for the unionization across industries, but rather unions can only form at the enterprise level. As a result, companies are able to use disputes between competing unions to gain a stronger position in the bargaining process.

<sup>113</sup> Dole Order. See Philippine Labor Code, Article 264.

<sup>114</sup> The PNP did not make any attempt to meet with Mr. Fortuna and the leaders of the striking workers.

gress” in accordance with Philippine law,<sup>115</sup> had already expired. When asked who was in charge of deploying the police to the Nestle facilities, a representative from the local governor’s office stated that, though the regional PNP are supposed to be under the governor’s control, the governor did not order the deployment to the Nestle factory.<sup>116</sup>

On two more occasions, the union attempted to hold a rally, only to have it violently broken up by the police. Eventually, the picket line moved across the street where it remains today.

In August 2006, the Supreme Court ruled again that the retirement provision is a mandatory subject of bargaining. The Court ordered the reinstatement of the workers to their jobs. However, DOLE, in its implementation order, has again reinterpreted the Supreme Court order and decided to provide Nestle Philippines the option of paying severance to the workers in lieu of giving them their jobs back. If followed through with, Nestle Philippines will have succeeded in ending union representation in the Nestle Philippines Cabuyao factory since the union workers have already been replaced by contract laborers.<sup>117</sup>

#### b. NMCW-Ind/Chong Won Fashion, Inc.

In some cases, violent dispersals have occurred even prior to the Secretary of Labor’s assumption of jurisdiction pursuant to a “no union, no strike” policy in the areas under PEZA’s control.<sup>118</sup> As described more fully in the Workers’ Rights Consortium’s report, *Assessment Re. Chong Won Industries, Inc. (Philippines): Report of Findings and Recommendations*,<sup>119</sup> Chong Won employees have been subjected to violence and harassment by agents of the company and of the export zone authority in retaliation for engaging in a lawful strike and picket.

After a year passed without management fulfilling its legal obligation to negotiate a collective bargaining agreement with the Nagkakaisang Manggagawa sa Chong Won-Independent or “United Workers at Chong Won” (NMCW-Ind or union), the union filed a notice of strike with DOLE on July 5, 2006. Over two months later, on September 25, 2006, two hundred union workers went on strike. On the first day of the strike, Chong Won management called in 500 contract workers to replace the striking workers. PEZA police officers and security guards asked the union to disperse the picket line so they could escort the workers into the factory.<sup>120</sup> The union refused, stating that their strike was legal and that neither PEZA nor their officers had the power to unilaterally decide

<sup>115</sup> See Philippine Labor Code, Article 264(a); See also WRC Chong Won Report at 22.

<sup>116</sup> Interview with the ILRF, May 2006; April 2007.

<sup>117</sup> Interview with Luz Bacula and Noel Alemania of PAMANTIK-KMU, May 2007.

<sup>118</sup> See United States Department of State, *Country Report on Human Rights- Philippines*, §6(b), March 6, 2006. (“Labor law applies uniformly throughout the country, including the SEZs; however, local political leaders and officials who govern the SEZs attempted to frustrate union organizing efforts by maintaining union-free or strike-free policies.”)

<sup>119</sup> See WRC Chong Won Report.

<sup>120</sup> See Philippines Labor Code, Article 264(a) (“No person shall obstruct, impede, or interfere with, by force, violence, coercion, threats or intimidation, any peaceful picketing by employees during any labor controversy or in the exercise of the right to self-organization or collective bargaining, or shall aid or abet such obstruction or interference.”).

that a strike is illegal.<sup>121</sup> When it became apparent that the workers would not break, the police and security guards violently dispersed the picket line.<sup>122</sup> More than forty workers were physically beaten. Fourteen suffered serious injuries.

When the police and security forces were unsuccessful in breaking the picket line, they erected checkpoints to block outside access to the picketers and to prevent them from receiving food and water. They launched a second attack on the workers on September 27, 2006. Armed security and police personnel, including Jantro security guards, PEZA police, Rosario police, and SWAT police began assaulting workers after the workers again refused to break their picket line. The picket line finally broke, and the contract workers were escorted into the factory. Twenty-two workers were injured in the attack.<sup>123</sup>

The workers were attacked again on June 10 – 11, 2007 when seven workers on the Chong Won picket line were approached by nine men armed with crowbars and knives. Several of the assailants held the seven striking workers at knifepoint while the others dismantled the picket line. The assailants verbally threatened the workers that if they did not abandon their strike they would be killed. Then, at around 3:30 a.m. that night (early in the morning June 11<sup>th</sup>) approximately 20 men approached the picket line. All were wearing Philippines army-style bonnets and fatigue pants and were armed with M-16 assault rifles. The 20 men alighted from three vehicles, all of which had their license plates covered. At gun point, the 20 men ordered all the strikers to lay face down in the back of one of the vehicles. The strikers remained lying in the vehicle with the barrel of the rifles pushed into the backs of their heads. One of the union officers was kicked in the back and had her hair repeatedly pulled by one of the armed men. The armed men totally demolished the remaining articles on the picket line and threw all of the materials and scraps into the back of one of their trucks. The armed men threatened to kill all of the strikers if they found the picket line still there in the morning. The armed men also confiscated the workers cell phones, cameras, wallets, food and other personal belongings.

The workers went to the PEZA police station to report the incident and seek assistance. However, they were told by the police on duty that they could not assist them nor conduct investigations because June 11<sup>th</sup> is a national holiday. When the workers went to the Rosario Philippine National Police (PNP) Municipal Station to report the crime, the police also refused to give any assistance since that they lacked jurisdiction. The police refused to make any police record of the reported incident.

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<sup>121</sup> See Philippines Labor Code, Article 217-226; 263 (d), (g), and (i)(Only the National Labor Relations Commission (NLRC) of the Department of Labor and Employment (DOLE)—particularly the Labor Arbiters—have jurisdiction to determine legality of strikes. If an employer or employee is unsatisfied with the decision of a Labor Arbiter they may make an appeal to the Commission.)

<sup>122</sup> See supra note 94. PEZA can hire private security guards to act under color of authority.

<sup>123</sup> See Press Release, Workers' Assistance Center, available at <http://www.wacphilippines.com/?p=40#more-40>

### c. Lepanto Mining Corporation

On May 10, 2005, the Secretary issued an assumption order one month after the union filed its notice of strike. Fearing a long and protracted legal battle,<sup>124</sup> the workers went on strike in June. Beginning the next day, the PNP began a food blockade and started harassing the workers on the picket line. In August, two union officers were detained by the police and the picket line was attacked by the police, who injured dozens of workers.<sup>125</sup>

#### 2. Labor leaders face severe criminal sanctions, with the potential for up to 12 years in prison, for exercising their right to strike or protest.

Often, when union members go on strike, or labor and human rights activists publicly protest the policies and practices of particular companies or the GRP, they are charged with the felony of sedition or incitement to sedition.<sup>126</sup> If convicted, the accused face prison sentences from six months to 12 years and the loss of the right to vote.<sup>127</sup>

On several recent occasions, farm worker organizers, pastors, and union leaders have been abducted by the PNP, working in tandem with the AFP. They are interrogated and tortured in police and military encampments. After several days, they are presented to the public and only then charged with murder and sedition.

#### a. Toyota Motor Philippines Corporation Workers Association

On August 16, 2006, 21 members of the Toyota Motor Philippines Corporation Workers Association (TMPCWA) demonstrated against the Department of Labor and Employment's decision to give a company-backed union exclusive bargaining rights at the Toyota Philippines Motor Corporation. This peaceful exercise of freedom of expression and assembly, at the DOLE, turned bloody when security guards attacked the demonstrators, beating them with bats. All 21 TMPCWA workers were arrested and charged with damage to property, assault, and inciting to sedition.<sup>128</sup> Following international pressure, the workers were released.

<sup>124</sup> The American Bar Association commented that "procedural delays may make legally available remedies ineffective." In particular, it noted that "employers can delay the final determination in labor disputes through abusing the administrative and legal processes." See American Bar Association, *Judicial Reform Index for the Philippines*. Asia Law Initiative, March 2006.

<sup>125</sup> CTUHR. Testimony Presented to the Philippine House of Representatives, Committee on Labor and Employment. August 16, 2005. Available at <http://www.ctuhr.org>.

<sup>126</sup> See Revised Penal Code of the Philippine, Art. 139 – 142. Available at <http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook1.htm>

<sup>127</sup> See Revised Penal Code of the Philippines, Art. 27, 42-43. <http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook1.htm>

<sup>128</sup> International Metalworkers' Federation, "Toyota Philippines workers arrested," August 16, 2006, <http://www.imfmetal.org/main/index.cfm?n=47&l=2&c=14515>.

**b. Chong Won Fashions, Inc.**

On September 25, 2006, workers at the Korean-owned Chong Won factory in the Cavite Export Processing Zone in the town of Rosario went on strike against management's refusal to negotiate a first collective bargaining agreement. The Department of Labor and Employment had already certified the workers' union as the "sole and exclusive bargaining agent." Economic zone police and factory guards attacked the strikers. Then, police from Rosario arrested without warrant and detained Rodel Amo, Annalou Estremos, Josephine Bajar, Glaiza Leysi, Gemma Lape, Lorna Reli, Pablito Zapanta and Ivy Villasana, who storing food for the strikers. These people were later released but charged with "trespassing" and "inciting to sedition."<sup>129</sup> The growing trend in abductions and sedition charges act to intimidate union workers and organizers, as well as others community leaders, ending their ability to exercise their right to organize and associate.

**V. Conclusion**

The Government of the Philippines has systematically prevented workers and union members from exercising their internationally recognized workers' right to freedom of association. Union leaders and members, often in the midst of a collective bargaining negotiation or a collective dispute, have been killed, abducted, tortured, and harassed.

The Secretary of Labor is able to use overly broad powers to assume jurisdiction over labor disputes, which prevents workers from exercising their right to strike, a fundamental element of the freedom of association. Enforcement of the assumption order, undertaken in a climate of impunity, is often draconian and violent and threatens workers' right to life and personal security. Further, the "no union, no strike" policies in the EPZs, which is violently enforced, acts in the same manner to prevent workers from exercising their fundamental right to freedom of association.

In light of the Government of the Philippines violations of the Philippine workers' fundamental rights to life and the freedom of association, GSP benefits should be suspended pursuant to 19 U.S.C. §2461 *et seq.*

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<sup>129</sup> Dennis Espada, "Violent Dispersals, Food Blockade vs. Strikers," *Bulatlat* website accessed via the Asia Monitor Resource Centre's *Asian Labour Update*, No. 60, July-September 2006, <http://www.amrc.org.hk/6013.htm>.