



International Labor Rights Forum

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Pre-Hearing Brief and Notice of Intent to Testify
Case # 004-CP-08
In re. the Philippines Country Practice Petition.

April 2, 2009

ATTN:
Mrs. Marideth Sandler
Chairperson, GSP Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Room 514
Washington, DC 20508

Pursuant to 74 FR 3657 (March 16, 2009), the ILRF files this pre-hearing brief in support of the on-going review of freedom of association violations by the Government of the Republic of the Philippines (GRP), Case # 004-CP-08.

Notice of Intent to Testify: Brian Campbell, Attorney, International Labor Rights Forum, hereby provides notice to the Committee of his intent to testify at the hearing related to this matter scheduled for April 24, 2009.

I. Introduction

In 2007, the International Labor Rights Forum (ILRF) filed 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 take 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). Labor leaders and organizers in the Philippines are subject to widespread, systematic abuses, including murder, disappearances, torture, violence, intimidation harassment, and arbitrary arrests. Furthermore, the Philippine government continues to implement labor laws and regulations intended to deprive workers of their rights to organize.

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Since we filed the original GSP complaint in 2007, we have seen little change in the Philippines where labor rights continue to be routinely violated by the Government of the Republic of the Philippines, often at the hands of the Armed Forces of the Philippines. Impunity for these crimes remains rampant, and many workers live in fear of being killed, kidnapped, tortured and arbitrarily arrested.

Currently, the International Labor Organization has at least three inquiries into the on-going human rights violations of trade union leaders; the first in 2006 was based on a complaint by the Kilusang Mayo Uno (KMU) of the killings and disappearances of its leaders; the second was initiated in 2007 by PSLINK on the use of criminal libel in retaliation for filing corruption charges against a government official; and the third in 2008 by the IWS workers' union seeking protection from death threats and other harassments by the military. As a result, the ILO has requested permission to send a High-level mission to investigate the abuses and provide technical assistance to remedy the violations. Up until now, though, the Philippine government has refused the ILO's request. This June, the ILO CFA will once again be examining the continuing labor abuses in the Philippines where they will again seek acceptance by the Philippine government of a high-level mission to the Philippines.

The ILRF requests at this time that the USTR hold open the review until the Philippine government accepts the International Labor Organization's request to send a High-level Mission and implements the resulting recommendations. In the event that the ILO High-level mission is unable to conduct its assessment of on-going freedom of association (FOA) violations in the Philippines, we request that the USTR consider partial withdraw of trade benefits beginning in industries where FOA violations are egregious and systematic.

II. Philippine labor leaders continue to be targets for extra-judicial killings despite recent reported declines in the incidence of killings.

Due to the alarming reports of rising human rights abuses by military officials since 2001, the Philippine government has faced significant international pressure to bring an end to the killings and other human rights abuses. The United Nation's Special Rapporteur for extrajudicial, summary and arbitrary executions published his findings in April 2008 noting that the Philippine military's "counter-insurgency operations . . . result in the extrajudicial execution of leftist activists", who are "systematically hunted down" through interrogating and torturing friends, family and colleagues. Often, they are killed "following a campaign of individual vilification designed to instill fear into the community."¹

Concerned about the severity of abuses, the United States Congress placed human rights conditions on US military aid to the Philippines following a hearing convened by Senator Barbara Boxer (D-CA) where the Senate heard testimony from church and human rights organizations detailing the severity of the government abuses.² Currently, in order to receive

¹ *Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to the Philippines*. November 2007.

² See U.S. Senate, Subcommittee on East Asia and the Pacific, Hearing: Extra-judicial Killings in the Philippines, March 14, 2007. Testimony available at <http://foreign.senate.gov/hearings/2007/hrg070314p.html>

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full military assistance, the Philippine government must successfully implement the UN Special Rapporteur's recommendations; prosecute those in the military and others responsible for human rights violations; and end the intimidation and harassment of legal civil society organizations by the military. Concerned about continued abuses, the U.S. Congress recently voted in February to maintain the human rights conditions.³

Also, as mentioned above, the International Labor Organization's Committee on Freedom of Association (ILO CFA) and Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) opened an inquiry into the killings of labor leaders and organizers and other FOA violations, including disappearances, torture, violence, intimidation harassment, and arbitrary arrests in response to a petition filed by the Kilusang Mayo Uno (KMU), a national labor union in the Philippines whose members have borne the brunt of the abuses.

In the face of significant international pressure, politically-motivated killings declined in the latter half of 2007 and 2008. The Government reported that the number of political killings declined by 85% in 2008.⁴ Between 2007 and the end of 2008, the CHR identified over 142 cases of extrajudicial killings, where “almost all victims . . . were affiliated with certain activist groups, labor organizations and other political associations.”⁵ According to the U.S. Department of State, “the CHR suspected personnel from the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) in a number of the killings of leftist activists operating in rural areas.”⁶ So far in 2009, though, the trend appears to be changing, human rights groups are reporting a significant increase in extrajudicial killings, which now stand at more than sixteen from January to March; a rate of more than one per week.⁷

Despite the overall downward trend in killings reported by the Philippine government in 2008, labor leaders and organizers continued to be targeted for killings. According to the Center for Trade Union and Human Rights, four labor leaders were assassinated and two others survived assassinations attempts in 2008.⁸

Gerry Cristobal, a union organizer and former president of Samahan ng Manggagawa sa EMI Yazaki – Independent (SM-EMI-Ind.) was killed on March 10 when he was brutally attacked by unknown men armed with M14 and M16 rifles. He sustained six (6) gunshot wounds and instantly died. In less than 30 minutes after the ambush, Imus police and Imus SOCO (Scene of the Crime Operatives) efficiently and quickly removed Cristobal's body, cleaned the area leaving no trace of the bloody incident. Then, only hours after ambush, the police announced to the radio and newspapers that Mr. Cristobal was killed

³ See Omnibus Appropriations Act of 2009, HR 1105.

⁴ See <http://www.gmanews.tv/story/147874/RP-cases-of-extrajudicial-killing-declined-by-85-in-2008---police>

⁵ Id.

⁶ U.S. Department of State, Country Report: Human Rights Practices in the Philippines, February 25, 2009, Sec. 1(a)

⁷ See <http://www.bulatlat.com/main/2009/03/26/killings-on-the-rise-again-16-victims-in-1st-quarter-rights-group/>.

⁸ Center for Trade Union and Human Rights, *Continuing Siege of the Philippine Trade Union Movement: 2008 Year end Report on the State of Workers Rights in the Philippines*, January 28, 2009. (“CTUHR Report”)

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in a traffic altercation. Prior to the murder, Cristobal was ambushed thrice. On April 28, 2006 he narrowly escaped death when a group of intelligence officers from PNP, one of them was known as SPO1 Romeo Lara ambushed him.⁹

On June 6, **Armando Dolorosa**, 45 years old and Vice President of the National Federation of Sugar Workers (NFSW) in Manapla, Negros Occidental was gunned down in front of his son by men wearing masks. Police statements pointed to the New People’s Army or members of the NPA break-away groups Revolutionary Proletarian Army as behind the killings. Dolorosa’s wife said in a statement that she was not inclined to believe that NPAs were behind the killing. The police formed an investigation team to look into the killing but until this writing, no report has been made. Apart from his union activities, Dolorosa was also active in a campaign for land reform in his town.¹⁰

In the Compostella Valley, Mindanao two labor organizers were killed. On July 19, three unknown men shot **Maximo Baranda**, 47 years old, former chairperson of Compostela Workers Association (CWA) and an ally of Kilusang Mayo Uno local chapter. Baranda sustained seven gunshot wounds in different parts of his body. Prior to the murder, Baranda served as an adviser of CWA in a negotiation for a collective bargaining agreement with the local management for a banana company.¹¹

On November 10, 2008, **Rolando Antolihao**, 39, was shot dead inside his house by two unknown men who pretended to be his neighbors. Antolihao was a worker of Global Fruits/Lapanday Food Corp- a non-unionized banana packaging plant. He left a two-year old daughter and a six-month pregnant wife. Mr. Antolihao was also a coordinator of Bayan Muna, a national political party, and an active workers rights’ advocate and union organizer. According to the witnesses, prior to his murder, Mr. Antolihao and his wife had been reported being under constant surveillance by officers from the military’s 60th Infantry Battalion, who had been stationed near their house beginning on November 8. Just days after Mr. Antolihao was murdered, the military surveillance in the area ceased.

The Philippine military is currently engaged in a campaign of intimidation and harassment against trade unions in Mindanao, as described more fully below.

III. The Philippine government has intensified efforts to threaten, intimidate and harass labor leaders and other civil society leaders.

In 2008, the Philippine government has intensified its campaign of intimidation and harassment of democratically-elected trade unions, their leaders, and the communities in which they live. In December 2008, the Philippine Commission on Human Rights (CHR) noted a “resurgence of incidences that violate the right to life, such as killings, summary executions, enforced disappearances and other inimical acts.”¹²

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² *State of the Philippines Human Rights Situation*, Address given by the Hon. Leila De Lima, Chairperson of the Philippine Commission on Human Rights, Dec. 10, 2008.

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According to the Center for Trade Union and Human Rights, thirty-seven union leaders were arbitrarily arrested and detained and 479 union leaders reported surveillance, threats and harassments.¹³ The military’s campaign to systematically harass, threaten, and intimidate trade unions and labor organizers is not localized to one area, or the result of rogue or misguided elements. Rather the Philippine government has implemented a coordinated counter-insurgency strategy, and all branches and units of the military are working with other government agencies, such as the Department of Justice prosecutors, in an effort to dismantle trade unions, labor rights NGOs, and labor law firms, or any other civil society organization the military labels as a threat to the government’s political and economic policies.

A. Union leaders, organizers, and lawyers associated with the KMU have borne the brunt of the military’s campaign of harassment.

Labor leaders and union members of the Kilusang Mayo Uno trade union have borne the brunt of abuses. The KMU is a legally recognized trade union in the Philippines. Philippine military has included KMU-affiliated unions on its list of legitimate targets of counter-insurgency operations. According to the Philippine government, it is fighting a war against communist insurgents on many fronts and that “labor is the most prominent of them because the communist movement is rooted in the labor movement. Thus, the Philippine Government has been faced with the dilemma of handling people wearing two hats, one of them illegitimate utilized purely for revolutionary ends.”¹⁴

To justify its harassment of KMU union members, the Philippine military publicly accuses KMU-affiliated unions of being “fronts” for the New Peoples Army, a communist rebel group fighting a protracted insurgency against the government. KMU leaders and organizers are accused of being members of the Communist Party of the Philippines (CPP) or active members of the New Peoples Army (NPA). When workers elect to join the KMU and seek a collective bargaining unit, the military refers to the KMU as having “infiltrated” the company. KMU members are accused of being terrorists and of financially supporting the insurgency. The military makes no distinction between the KMU and the NPA.

As a part of the counter-insurgency, the military has been deployed to workplaces and the workers’ communities to weaken and eventually dismantle KMU-affiliated unions, along with other civil society organizations. According the Major Medel Aguilar of the AFP, the military’s actions are intended to “protect free enterprises as mandated by the president’s policy of foreign investment and resource development.”¹⁵

In Tarlac province, north of Manila, **Angie Ladera**, a vice-president of the KMU and former president of the democratically-elected trade union representing over 3,000 full-time workers at International Wiring Systems, was branded an “enemy of the state” by the

¹³ See CTUHR Report.

¹⁴ International Labor Organization, Report of the Committee on Freedom of Association, Case No. 2528, ¶1185, at pg. 328 (ILO CFA Report)

¹⁵ Brad Miller, *Philippines: State Forces Shield Corporations from Leftists*, Global Information Network, March 13, 2008.

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military in early 2005.¹⁶ Her brother-in-law, a member of a national opposition political party, was also listed as a threat to national security. Within months, her brother-in-law was dead, assassinated by a sniper's bullet while on his way home from work, and her husband, who received word that he was next, had to go into hiding. Soon, Mrs. Ladera experienced heavy surveillance by military agents who regularly visited to her home, the union office, and work both day and night. At one union rally, Ms. Ladera had to flee after union security noticed a man aiming a gun at her from an adjacent building. Beginning in January 2007, the military began visiting her children's school and asking the security guards about the identity and whereabouts of her 12 year old daughter and 10 year old son. Fearing for her children's safety, Mrs. Ladera and her children fled to Australia. The Australian government immediately granted her family asylum.

Even after forcing Ms. Ladera to flee from Central Luzon, the military has continued to threaten and intimidate other union leaders working for **International Wiring Systems**.¹⁷ Military officers regularly visit their homes. They threaten some union members with death and harm to their families. They accuse the union of funding an armed insurgent group, the New People's Army (NPA). They hold education seminars where they instruct the union not to ask for too much in the next collective bargaining agreement or the factory will close. The IWS workers filed a complaint before the ILO CFA this past fall. Though the ILO was scheduled to take up the case, the Philippine government has not responded to the complaint.

In Bulacan province, also north of Manila, soldiers from the Army's 7th Infantry Division, under the leadership of Maj. Barnas Vargas, established a detachment near the picket line of the Nagkakaisang Samahan ng Footjoy (United Association of Footjoy) workers in March 2008 and have been threatening and harassing the workers.¹⁸ The **Footjoy** union is on strike seeking back wages and compensation after the Footjoy factory closed without settling its debts. Soldiers wearing camouflage uniforms conducted a "census" at the picket line and asking questions about the union president, including her address and her activities. After many attempts by the military to question the picketers that month, union members refused to cooperate, prompting the military to accuse the union of being "infiltrated" by communists. Military officers began visiting the homes of union leaders, and when the union officers continued to refuse to cooperate by answering their questions, the soldiers ordered that they report to the military's local detachment they will be presumed to be "hiding something." The officers then threatened them with death while interrogating them for more than two hours. Previously, in 2004, Nenita Abordo, a worker at Footjoy was killed when she was overrun by a company truck during a picket dispersal in 2002.¹⁹

To justify his actions, Major Vargas, just like Major Aguilar in Mindanao,²⁰ has accused the union and its members of being communists whose only purpose is to undermine the country's economy.

¹⁶ See ILRF 2007 Petition, page 14

¹⁷ International Wiring Systems Workers Union, Complaint filed to the ILO CFA, September 28, 2008.

¹⁸ <http://www.gmanews.tv/story/92628/Human-rights-group-scores-soldiers-for-harassing-labor-leader>

¹⁹ <http://www.bulatlat.com/news/4-34/4-34-repressed.html>

²⁰ See ILRF Testimony In Re: Dole Packaged Foods, LLC petition to add pineapple juice (not concentrated) HTSUS 2009.41.20 and 2009.49.20), Cases 2008-08 and 09. Filed before the USTR on October 20, 2008.

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In South Cotabato, Mindanao, where California-based **Dole Foods** operates a 24,000 hectare plantation and processing facility that produced nearly 87% of all pineapple juice consumed in the US, the military has been conducting operations against the local democratically-elected union representing Dole's 4,500 workers.²¹ According to the military, Dole's Philippine subsidiary has been “infiltrated by” the workers' democratically-elected trade union, who they accuse of being a “front” for the NPA. The military has been giving interviews to the media publicly accusing the union of funding terrorists, and holding “education programs” in the local town hall where, during work hours, union members are forced to face allegations in lectures and power point presentations that they are all “terrorists.” Military officials have also been visiting the homes of union leaders and their families in the morning and the evening pressuring them to disaffiliate from the KMU. At the same time, another organization named UR-Dole, comprised of Dole employees opposed to the union, was quickly formed and suddenly very well-funded. UR-Dole began producing and distributing flyers and hosting a weekly radio show accusing the union leadership of being “terrorists” and financially supporting the insurgency.

In the **Compostella Valley**, Mindanao, the military recently established an organization called WIPER, or Workers' for Industrial Peace and Economic Reform composed entirely of plain clothed military officers.²² They canvass local towns to identify the homes of local union leaders and their families. They conduct seminars in the local villages where union leaders live in an effort to get the local communities to turn against the unions. According to local union leaders, WIPER has also been conducting seminars inside the banana processing facilities where workers, most of whom are union members, are forced to listen to a bevy of accusations maligning the union. WIPER officials arrive along with about 20 armed officers who deploy around the processing facility blocking any possible exit. As discussed earlier, trade union leaders and labor organizers in the remote Compostella Valley live in constant fear for their lives, where killings occur frequently.²³

In nearby **Davao City**, Mindanao, the military publicly accused the KMU's Vice-president for the Southern Mindanao Region, Omar Bantayan, of being an armed insurgent.²⁴ Mr. Bantayan has survived two assassination attempts on his life in recent years.

Yet, despite the military's efforts to harass, intimidate and undermine the KMU, the KMU-affiliated unions in Mindanao continue to enjoy popular support and win certification elections by wide margins.

B. Union leaders and organizers from other federations are also being targeted for harassment by the military.

The military's abuses are not limited to KMU affiliated unions. Union organizers for the Alliance of Progressive Labor (APL), Bukluran ng Manggagawang Pilipino (BMP), Partido

²¹ See ILRF Post-Hearing Brief Petition of Dole Packaged Foods, LLC. Accepted Case # 2008-08 and 2008-09]. Filed before the USTR on November, 3, 2008.

²² ILRF Interview with Mayor of Compostella, January 21, 2009.

²³ ILRF interview with KMU union members in Compostella, January 21, 2009.

²⁴ <http://www.gmanews.tv/story/141822/KMU-warns-military-vs-harassing-labor-leader>

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ng Manggagawang (PM), Makabayan, and other independent unions are experiencing military harassments. These abuses by the Philippines military again belie the Philippine government’s argument before USTR and the ILO CFA that military are only targeting people who are committing illegal acts in support of the on-going insurgency by the New People’s Army and its “front” organizations.

In **Bukidnon, Mindanao**, the Philippine military has been working with the Mindanao Textile Corporation (Mintex) to weaken the union falsely accusing APL leaders of being recruiters for the NPA. Lt. Alexander Macario and other military personnel reportedly harassed the SAMAMIN-PIGLAS union leader, an APL affiliate, Joseph Bantugan at his home along with Jojo Cortez, an APL organizer, though the labor leaders repeatedly asserted that they had no knowledge or association with the NPA while demonstrating that the union was a legal organization. Mr. Bantugan was later threatened with termination while Jojo Cortez has been subject to military investigations, surveillance and death threats, which have prompting him to flee his community for protection.²⁵ These incidences have sent a chilling effect throughout the Mintex plant, scaring workers away from the union and hurting union organizing efforts. The military, Mintex management partnership has sent a strong message to the workers that if they become active in the union, they will be subject to military harassment.²⁶

In **Nueva Ecija**, a province north of Manila, union officers for the Wesleyan University-Philippines Faculty and Staff Association (WUPFSA-LAGMAN), who are associated with the PM, have been threatened with death and injury by military officers of the Civil Military Operations unit. For nearly three years, the union has been engaged in a very contentious collective bargaining agreement negotiation. In 2006, the bargaining had reached a sustained deadlock, so the union called for a strike. Predictably, DOLE assumed jurisdiction over the labor dispute, arguing that the university is “indispensable to the national interest” and therefore, strikes are prohibited. For more than two years, the labor dispute worked its way through the courts until finally the union had obtained a ruling in its favor. University management has appealed the case.

Apparently concerned about the unions newly strengthened bargaining position, the University, in concert with Sgt. Edgar Dimalanta of the Civil Affairs Office of the 71st Infantry Division, held a “peace and development seminar” on October 29, 2008. At the seminar, the military accused the union of being infiltrated by communist guerillas and then threatened that the union will suffer the same bloody fate as the seven Hacienda Luisita workers who were killed if they insist on the presence of the union president in the CBA negotiations.²⁷ Then, on November 25, 2008, Sgt. Dimalanta told the union vice-president that military men will start to visit the homes of union officers if they continue to refuse the military’s invitation for a dialogue with the union executive committee. Union has filed a complaint at the CHR against the military for harassment. The complaint is still pending.

²⁵ Interview with the Alliance for Progressive Labor, March 31, 2009.

²⁷ Affidavits of Corazon C. Gonzalez, President of WUPFSA-LAGMAN, Melquiades A. Guevarra, Vice-president; Rodrigo B. Habling, Secretary, and Eufemia C. Aryo, Treasurer.

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These are just a couple of examples of the growing number of military abuses against trade unions engaged in organizing campaigns or seeking to exercise their right to collectively bargain.

C. The ILO has condemned the Philippine military’s harassment and intimidation of labor organizers and has called for immediate changes.

Despite direct requests by the ILO, the Philippine government did not respond to queries concerning the harassments, intimidations, and grave threats “by the military and police forces . . . ; militarization of workplaces . . . by establishing military detachments and/or deployment of police and military elements under the pretext of counter-insurgency operations.”²⁸ ILO CFA condemned the actions as “liable to have an intimidating effect on the workers” and creating an “atmosphere of mistrust which is hardly conducive to harmonious industrial relations,”²⁹ and has called on the Philippine government to take measures to bring to an end the military harassments and the “prolonged military presence in the workplace.”

Additionally, the ILO has called on the Philippine military “to ensure that any emergency measures aimed at national security do not prevent in any way the exercise of legitimate trade union rights and activities, including strikes, by all trade unions irrespective of their philosophical or political orientation, in a climate of complete security.”³⁰ The ILO has also called on the Philippine government to guarantee that workers have the right, irrespective of trade union affiliation and without discrimination on the basis of political opinion, to join organizations that they consider necessary in a climate of complete security irrespective of whether or not they support the social and economic model of the Government, including the political model of the country.³¹

III. Philippine labor leaders are being arbitrarily arrested, detained and face vexation criminal charges stemming from their union activities.

During her annual address this past December, CHR Chairwoman de Lima described “a shift in methods on silencing . . . civil society. While the incidence of extrajudicial killings has significantly dropped, arrests and enforced detentions have increased.”³² As the Chairwoman further explained, “Many suspected leftists are the subject of hastily issued arrest warrants without the full and benefit of fair and impartial preliminary investigations. Upon arrest, they languish in jails, their detention protected by less than expeditious trials, effectively removing them from their advocacies.”

A. Labor leaders and organizers are increasingly facing politically-motivated criminal charges intended to cripple their organizations.

²⁸ ILO CFA Report, ¶1238, pg. 340.

²⁹ ILO CFA Report, ¶1183 pg. 327

³⁰ Id.

³¹ ILO CFA Report, ¶1205 pg. 332

³² *State of the Philippines Human Rights Situation*, Address given by the Hon. Leila De Lima, Chairperson of the Philippine Commission on Human Rights, Dec. 10, 2008.

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In **CALABARZON**, the conglomeration of provinces south of Manila, the Philippine military has been working with local police and prosecutors to file politically motivated criminal charges as part of a “legal offensive” against dozens of leaders of civil society groups. Prominent among those targeted are labor leaders and advocates.

In October last year, Remigio Saladero, chief legal counsel to the KMU, chairperson of the Pro-Labor Legal Assistance Center, and a member of the Free Legal Assistance Group was arrested on charges of murder. The military accused Mr. Saladero and more than 30 other activists of participating in an NPA ambush in a neighboring province in 2006 during which three police officers were killed. Local prosecutors in Mindoro province, working with military intelligence from Southern Tagalog, amended the original 2006 criminal complaint, which had listed as culprits of the ambush “fifteen or more” John Does, and replaced John Does with the names of at least thirty church, political and labor activists from Southern Tagalog based solely on the statement of one government agent. Labor rights activists and trade union leaders working with the Workers’ Assistance Center in Cavite, transportation unions, Nestle workers’ union, Toyota workers’ union, Honda workers’ union, and many others were all charged along with Mr. Saladero. Military units, working hand in hand with the police, began rounding up those persons whose names were listed in the Mindoro criminal complaint.

After spending more than three months in a fetid, overcrowded jail waiting for his first hearing, Mr. Saladero and five others arrested were released from jail on February 5 after the court ruled that the prosecutor had failed to provide Mr. Saladero with due process.³³

Despite this dismissal, though, another KMU labor organizer in CALABARZON, Mr. Leonardo Arceta, was arrested by military intelligence units, along with local police, based on the same criminal complaint that was dismissed in Mr. Saladero’s case. Mr. Arceta has complained of being tortured while in custody of the police. As a result, the 16 trade union leaders and organizers named in the criminal complaint continue to fear abduction or illegal arrest, and remain in hiding.

Only days after Mr. Saladero was released from the Mindoro jail by order of the judge, prosecutors filed new murder charges against him and many of the same labor organizers and activists for allegedly participating in a different NPA ambush this past July in yet another province. On that day, Mr. Saladero was appearing in court in a different province cross-examining a witness in one of his cases.³⁴ Prosecutors have also charged Mr. Saladero and twenty-seven other labor leaders and political activists with arson stemming from an NPA attack on a cellphone tower.

In its 2008 decision, the ILO CFA discussed yet another example of arbitrary arrests.

“With regard to the arrest and imprisonment of . . . five members of the [National Federation of Sugar Workers], the Committee takes note of the

³³ See *People of the Philippines v. Rustom Simbulan*, Order of Dismissal, Regional Trial Court Fourth Judicial Region, Oriental Mindoro, February 5, 2009.

³⁴ See Affidavit of Remigio Saladero, March 6, 2009.

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decision of the Supreme Court . . . void[ing] the charges. The Court stated that ‘the preliminary investigation was tainted with irregularities’, and it ‘find[s] merit in petitioners’ doubt on respondent prosecutors ‘impartiality.’³⁵

B. The Philippine government’s use of criminal laws to charge strikers with assault after being brutally attacked by government security forces has a strong chilling effect on the right to strike.

Also in CALABARZON, the Chong Won/Phil Jeons cases have intensified since the filing of the 2007 GSP raising concerns about the government’s violent dispersal of a strike by union workers after the company refused to negotiate a first collective bargaining agreement, and the workers were physically assaulted and arrested.³⁶ After defending themselves against physical attacks by the military PEZA guards and police, Chong Won/Phil Jeons garment workers face criminal charges, including grave coercion, libel and direct assault while their attackers’ charges are comparatively insignificant though their actions clearly violate the Philippine Labor Code.³⁷

In order to break up the September 2006 strike, military guards attacked workers with clubs, kicking them on their heads, breasts and bodies.³⁸

While police and guards working with Chong Won/Phils Jeon violated Art. 264 (b) of the Labor Code, “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. . .,” and (c), “No employer shall use or employ any strike-breaker..” by hiring strike breakers, no action was taken against the employer. In fact, not a single employer has ever been convicted of violating Art. 264 (b) and (c) of the code while workers are consistently charged with such violations in labor disputes.³⁹

The arrested workers filed complaints against the guards of direct assault, grave coercion and unintentional abortion (in ref. to one Phils Jeon worker). Police initially arrested eight of the striking workers and more last month, counter-charging the initial eight with grave coercion after defending themselves against the authorities’ attacks,⁴⁰ libel and direct assault.⁴¹ Military police working in collusion with Chong Won/Phils Jeon management continued to violently assault and intimidate striking workers for months. The eight and ten month long strikes ended violently when “armalite-wielding men wearing ski masks and military uniforms

³⁵ ILO CFA Report, ¶1237 at pg. 339

³⁶ ILRF 2007 GSP petition, pg. 15

³⁷ The court eventually dropped sedition and libel charges the charges against Chong Wong and Phils. Jean workers.

³⁸ Workers Assistance Center Press Release, “33 Militant Unionists Ordered Arrest”, April 1, 2009

³⁹ Kilusang Mayo Uno, “Observations by Kilusang Mayo Uno Labor Center on the Implementation of Convention No. 87, 98 and 100 in the Philippines,” September 15, 2008, pg. 6

⁴⁰ Court Citation, January 9, 2009

⁴¹ See Criminal Charge Sheet, I.S. No. C-06-6229, for direct assault/libel/ grave coercion

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violently attacked the workers at gunpoint on June 11, 2007 and August 5, 2007. The armed men threatened to kill the strikers if they did not end their strikes the next day.”⁴²

At early dawn on August 6, 2007 unidentified men forcibly abducted two of the women on strike, Aurora Afable and Normelita Galon, while sleeping in their temporary tent at the picket line in front of Phils. Jeon Garments, Inc. They were taken by the men and dumped into a canal miles away. Before leaving the place, the attackers had forcibly tied the two victims' hands and feet with adhesive tapes and had them blindfolded. One of the victims, Galon, recounted that she had to struggle to breathe as her face was covered with a towel by the attackers. The women later realized that the vehicle was able to pass through the checkpoints of the compound of the Cavite Export Processing Zone (Cepz) without being checked. To date, the men have not been identified and the case has not faced a thorough investigation.⁴³

While the Phil Jeons and Chong Won guards who initiated the attacks were only declared guilty of “physical injuries and slight physical injuries,” the strikers continue to be charged with direct assault while other charges were dropped given lack of evidence.⁴⁴ The charged workers are gravely concerned that the Philippine government authorities have violated their basic rights to freedom of association and right to collective bargaining by charging the workers far more harshly than the police guards who initiated the violence. On March 17, 2009 the local prosecutor's office issued a warrant for the arrest of 32 officers and members of the NMCW and the KMPJI unions representing Chong Won and Phils Jeon workers as part of their ongoing attacks.⁴⁵

The ILO's November 2008 report on the implementation of Conventions 87 and 98 affirms that police authorities have violated the Convention 87 on state obligation to protect workers from physical violence and intimidation and Convention 98 on “protection against acts of interference.” The ILO has made repeated recommendations to the Philippine government to end its use of excessive force when dispersing strikers: “The committee once again recalls that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should... take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations . . .”⁴⁶

Unfortunately, the Philippine government continues to refuse to implement the ILO recommendations, while military personnel enjoy impunity as they continue to violate the Philippine labor code and criminal law. The consistent harassment and charges against workers involved in this labor dispute, coupled with the Philippine governments' failure to prosecute government security agents who initiated the violence has had a strong chilling

⁴² Workers Assistance Center Press Release, “33 Militant Unionists Ordered Arrest”, April 1, 2009

⁴³ Asian Human Rights Commission, August 8, 2007 report based on worker testimony, <http://www.ahrchk.net/ua/mainfile.php/2007/2528/>

⁴⁴ Workers Assistance Center, Inc, Update of the case of Chong Won and Phils Jeon union, email March 26, 2009

⁴⁵ Workers Assistance Center Press Release, “33 Militant Unionists Ordered Arrest”, April 1, 2009

⁴⁶ ILO CFA, ¶1183 pg. 327

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effect on Filipino workers, who now expect routine harassment and intimidation from government agents.

C. The Philippine government and private companies use criminal charges to silence union speech.

As we described in detail in our 2007 Petition, the Philippine law provides stiff criminal sanctions for speech which allows the government and companies to use charges of sedition or libel as a tactic to chill free speech.⁴⁷ The ILO CFA has consistently held that “the right to express opinions through the press” is a fundamental right protected by the right to freedom of association.⁴⁸ In order to exercise the right to freedom of association, the freedom of expression, the freedom to hold opinions without interference, and the ability to impart information and ideas through the media “constitute civil liberties which are essential for the normal exercise of” workers’ rights.⁴⁹

Currently, the ILO has opened an inquiry into criminal libel in the Philippines at the request of PSLINK, a federation of unions representing public sector employees. Annie Geron, the Secretary-General of Public Sector Labour Independent Confederation (PSLINK) Philippines was charged with libel by her boss, the Director General of Technical Education and Skills Development Authority. PSLINK had just filed charges against him with the President’s Anti-Graft Commission for embezzlement and other corrupt practices.⁵⁰ Because of her stand against public corruption, Mrs. Geron still faces the possibility of going to jail.⁵¹ PSLINK recently joined a host of other unions in a letter to DOLE requesting that the Philippine government drop its opposition to the ILO High-level mission.⁵²

Also, as we noted in prior filings, Dole Philippines (Dolefil) filed charges of criminal libel against a union officer for giving a speech on environmental hazards posed by Dole Philippines farming and processing operations, which are heavily dependent on chemicals. Mr. Scrohijos was arrested and held by police for 8 hours, and for two years now, has had criminal charges hanging over his head. He still faces the possibility of going to jail for multiple years if he is found guilty. Despite efforts to work through legal counsel to get the charges dismissed, the government prosecutor’s office and Dole Philippines have ignored his requests.⁵³

D. The ILO has called on the Philippine government to strictly observe due process rights of labor leaders and organizers.

⁴⁷ ILRF 2007 GSP Petition, pg. 2

⁴⁸ ILO. Committee on Freedom of Association. Digest of Decisions. 2006 at ¶¶37,155.

⁴⁹ Id at ¶38.

⁵⁰ International Trade Union Confederation (ITUC), Annual Survey of Trade Union Rights 2007. available at <http://survey07.ituc-csi.org/getcountry.php?IDCountry=PHL&IDLang=EN>

⁵¹ The Supreme Court, under the leadership of Chief Justice Reynato Puno, issued Administrative Circular No. 08-2008 declaring that courts should use their discretion to impose fines instead of jail time for criminal libel verdicts. This is a non-binding circular. See

http://www.supremecourt.gov.ph/circulars/2008/jan/admin%20circ%2008-2008_libel.pdf

⁵² See Letter from Philippine Trade Unions to DOLE Secretary Roque, February 23, 2009.

⁵³ ILRF, Pre-hearing Brief re Dole Packaged Foods Petition, filed on October 3, 2009.

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The ILO has criticized the government for failing to respond to queries concerning the “arrest and detention of and subsequent filing of criminal charges against trade union leaders, members, organizers, and union supporters and informal workers due to their involvement . . . in legitimate economic and political activities.”⁵⁴ The ILO has also called for the “strict observance of due process guarantees in the context of any surveillance and interrogation operations by the army and police in a way that guarantees the rights of workers’ organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations.”⁵⁵

V. The Philippine government continues to implement labor laws and regulations intended to deprive workers of their rights to organize.

A. DOLE continues to expand its power to assume jurisdiction over a labor dispute in violation of workers’ rights to strike.

As described in our 2007 Petition, 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.*”⁵⁶ (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.⁵⁷ The ILO has consistently found the Philippine Assumption of Jurisdiction statute to be in violation of international law, which prohibits mandatory assumption of jurisdiction over a labor dispute to “essential services.”

In 2008, the Secretary of Labor continued his attack on the basic rights of workers to act collectively to protect their rights and interests. In fact, Secretary Roque, who was appointed in April 2008 after former Secretary Brion was appointed to the Philippine Supreme Court, has sought to expand the criteria DOLE uses when determining whether a labor dispute is “indispensable to the national interest.” In one recent case, Secretary Roque assumed jurisdiction over a labor dispute at a garment factory, Triumph International Phil. Inc., after the workers called for a strike in the face of a bargaining deadlock with the management. To justify his actions, Secretary Roque explained that it was necessary to assume jurisdiction, and Triumph is indispensable to the national interest because (1) the firm exports nearly 80% of its product; (2) a work stoppage during the current global financial crisis could cripple to the company; (3) any loss of business would deprive the government of foreign currency, income and corporate taxed; and finally (4) the workers’ families would be negatively impacted.

According to this rationale, every single business in the Philippines is “indispensable to the national interest.” The net effect, of course, is that workers don’t have a right to strike,

⁵⁴ ILO CFA, ¶1183 pg. 327

⁵⁵ Id.

⁵⁶ Philippines Labor Code, Art. 263(g).

⁵⁷ 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>.

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rather striking is a privilege that can only be granted by the government. Furthermore, by trying to argue that workers’ families would be negatively impacted, Secretary Roque, who publicly intervened in order to “save the manufacturing firm” from its workers, failed to respect the role of the trade union. The trade union was democratically-elected by the workers for the sole purpose of improving the lives and working conditions for Triumph employees and their families. Apparently, the workers and their families believed that a strike was in their best interest, and DOLE has no right to replace the union in its role of representing the workers.

B. DOLE regulations undermine efforts by the Philippine Congress to protect an employee’s right to be free from retaliation.

At the 2007 GSP hearing, the GRP testified before the USTR that Republic Act No. 9481, a recent legislative measure intended to strengthen workers’ ability to organize, was evidence of its commitment to labor rights.⁵⁸ In 2007, Philippine trade unions successfully lobbied the Philippine Congress to amend the Philippine labor code to ensure the right of all Filipino’s to form a trade union and to prevent retaliation against workers wishing to form a union by protecting their identities prior to a certification election.⁵⁹ The ILO CEACR had previously registered its strong concern that the Philippine labor law, which required that unions disclose the names of the union officers to employers prior to a certification election, violated workers’ right to freedom of association.⁶⁰

Unfortunately, according to local trade unions, the Department of Labor and Employment (DOLE) has issued Implementing Rules and Regulations for RA 9481 that are intended to undercut the protections provided in the law.⁶¹ Instead of protecting the identities of trade union organizers to prevent retaliation, the IRR requires the disclosure of their names five days before an election. As a result, trade unions seeking to organize unions continue to face coercion and retaliation by employers prior to certification elections.⁶² Additionally, the IRR prohibit unions from organizing or even allowing casual workers, with whom they work side by side every day, from joining their ranks.⁶³ The loopholes and technicalities introduced by the GRP in the IRR significantly weaken RA 9481 and demonstrate a lack of political will to implement needed protections for workers. Furthermore, the IRR demonstrates a compelling need for GRP to accept the ILO High-level mission’s offer of technical assistance to ensure that workers’ rights are protected in DOLE regulations.

VI. Conclusion

In light of the ILO’s request to send a High-level mission to examine the abuses described herein along with many others; near unanimous support for the mission by Philippine trade

⁵⁸ See GRP, Pre Hearing Brief, Case 2007 GSP Annual Review, No. 007-CP-07, at p. 11; GRP, Post Hearing Brief and Responses to Questions, Case 2007 GSP Annual Review, No. 007-CP-07, at p. 9.

⁵⁹ Republic Act No. 9481 – An Act Strengthening the Workers’ Constitutional Right to Self-Organizations.

⁶⁰ See ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report on Freedom of Association and Right to Organize in the Philippines, ILC 97th Session, 2008.

⁶¹ Interview with the Alliance for Progressive Labor, March 2009.

⁶² See IRR, Rule VIII, Section 13e.

⁶³ See IRR, Rule VIII, Section 14.

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unions, and the Philippine governments refusal to accept the mission,⁶⁴ as well as the government’s refusal to respond to the ILO complaint filed by the International Wiring Systems workers, the ILRF requests at this time that the USTR hold open the review until the Philippine government accepts the ILO’s request and implements the resulting recommendations of the High-level Mission. In the event that the ILO High-level mission is unable to conduct its assessment of on-going freedom of association (FOA) violations in the Philippines, we request that the USTR consider partial withdraw of trade benefits beginning in industries where FOA violations are egregious and systematic.

⁶⁴ See Letter from Philippine Trade Unions to DOLE Secretary Roque, February 23, 2009.