



International Labor Rights Forum

2001 S Street NW, Suite 420, Washington, DC 20009

2008 GSP Annual Review

Post-Hearing Brief

Petition re: Government of the Philippines

Accepted Case #004-CP-08

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ATTN:

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I. Introduction

We request at this time that the review remain open pending a successful visit to the Philippines by the International Labor Organization High-level Mission and the successful implementation of the ILO's recommendations. In the event that the Philippine government continues to refuse or delay action on the ILO request to send a High-level Mission and also to implement the recommendations of the ILO concerning internationally recognized workers' rights, we request the USTR to begin a partial revocation of benefits.

The Committee should also consider deferring any further decisions on all current and pending requests for additional trade benefits for the Philippines during the product review process until the matter of the ILO High-level Mission is resolved.

Recognizing the seriousness of the allegations raised in each of the complaints filed by Philippine trade unions before the ILO, the Committee on Freedom of Association has requested to visit the Philippines to conduct a full assessment of the allegations by sending a High-level mission. For over two years now, Philippine trade unions and the ILO have been seeking a clear response from the Government regarding the mission, however, both have faced dilatory tactics by the government to delay or outright prevent the ILO from being able to conduct its requested mission. Even before this Committee, the Government has stated:

“The GRP takes this opportunity to state in all candor, that consideration of the ILO request is made complex by the total lack of reference points and parameters that operate

not only to cast difficulties on the procedural conduct of the intended mission, but likewise serious doubt on how fruitful the intended mission would be. The GRP maintains that the host of initiatives adopted and to be adopted, would somehow operate to define the needed parameters of the intended mission, pending the formal acceptance by the GRP of the ILO request.”

First, the reference points for the ILO High-level Mission are very clear. There are pending complaints before the ILO Committee on Freedom of Association that clearly allege enumerated violations of international labor standards, including the improper use of the military in labor relations¹ and the use of certain laws and regulations in violation of the workers’ freedom of association. Second, the government has had more than two years to work with the ILO and the trade union stakeholders to develop the procedures for the mission, but have failed to do so. As recently as this past January, when one union attempted to raise the issue of the ILO High-level Mission during a Tri-partite meeting, both the government and the Employers Confederation of the Philippines refused to discuss the matter, or even acknowledge the question. Additionally, in the nearly 2 ½ years since the KMU filed its complaint, the government has not once attempted to discuss the ILO High-level Mission with the KMU and the KMU has not been involved in any of the Tri-partite discussion regarding the high-level mission even though the mission will be sent to investigate the KMU’s allegations.

Finally, while the GRP may seriously doubt the fruitfulness of the intended mission, Philippine workers and trade unions disagree with the government. They have nearly unanimously agreed that ILO intervention to help remedy many of the outstanding labor problems in the Philippines is necessary. None of the initiatives discussed by the Government address the systematic use of the military to target and harass trade union leaders, the use of assumption of jurisdiction to prevent workers from exercising their rights, and myriad of other labor problems. In fact, the Government’s own response that its laws are in line with international standards and that the military are conducting legitimate operations clearly show that there is a need for an ILO High-level Mission to more fully assess these government actions and to provide recommendations and technical assistance to bring the government’s policies in line with international standards.

II. Response to the Committee’s Questions

Questions asked during the hearing:

- 1. You suggest partial revocation of GSP benefits for the lack of action on the part of the Government of the Philippines to address violence against unionists and anti-union actions. Could you please explain more specifically what you have in mind?**

At this time, we are concerned that a full revocation of benefits is too blunt an instrument that may adversely impact workers and trade unionists whose employers receive GSP benefits, particularly during this time of economic uncertainty. While there may come a time when a full revocation is called for, we remain hopeful that the GRP will end its opposition to the ILO High-

¹ To be clear, Philippine trade unions are not only alleging that the military or police are violating their rights during a strike or lockout. Rather the military is engaged in daily systematic violations even where there is no current labor dispute, such as in the Compostella Valley in Mindanao and at International Wiring Systems in Tarlac.

level Mission and will work with the ILO to implement standards and practices, both within the Department of Labor and Employment and throughout the government's other institutions which have been at the heart of the labor violations, including the Armed Forces of the Philippines and the Department of Justice.

Furthermore, we are concerned of possible retaliation against trade unions and their leaders that may result from employers and the GRP blaming trade unions for any adverse impact of a full revocation, which may inadvertently impact industries where there are positive labor relations.

However, as we explained in our pre-hearing brief, the GRP has shown little effort to end military abuses against trade unionists, even escalating the abuses in some areas, and to implement labor rules and regulations in line with international labor standards. We believe that, in the event the ILO is unable to assess the contents of the four pending complaints from Philippine trade unions and work with unions, industry, and the government commits to ending the violations, certain industries, where labor violations are particularly egregious, should no longer be allowed to take advantage of GSP privileges.

We are prepared to work with the members of this committee to identify those industries that receive GSP benefits where labor violations are particularly egregious, such as industries where trade unionist have been killed or beaten and where the military has been conducting anti-union campaigns and threatening workers.

Therefore, in lieu of an immediate full revocation of GSP benefits, in the event that the ILO High-level mission is unable to visit the Philippines and work with the government, employers and trade unions to remedy the long-standing labor violations, we ask that this Committee begin the process of identifying industries where labor violations are particularly egregious, starting with industries where the Armed Forces of the Philippines have established anti-union operations.

2. Had you heard or do you know any more details about the Government of the Philippines modifying the Essential Services Act? Do you feel that the Government of Philippines has made any progress in addressing your concerns with respect to essential services?

Other than the limited amount of information provided by the Philippine government in their testimony before the Committee, we are not aware of any progress made in passing or implementing the Essential Services Act. As we noted in our original petition over two years ago:

“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.² In 2003 workers at

² 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 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.”)

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 98.³ 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.*"⁴ (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.⁵

The Government has, for the past several years, referred to the possibility of pending legislation as a tactic to delay or deflect criticism. However, the government has not taken any meaningful steps to push for changes in the statute. As we noted in our Post-hearing Brief in October 2007:

"While the Government has cited efforts in the Philippine Congress to pass legislation to limit the Secretary's broad discretion, the ILO Committee noted that "[t]he Government has been providing information on the draft amendment of article 263(g) since June 2003 without the amendment having been considered by the Senate or House of Representatives."⁶

Furthermore, as we discussed in our prior submissions to this Committee, the Secretary of Labor has broad discretion when deciding whether to invoke its power to assume jurisdiction. The

³ 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.

⁴ 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

⁵ See, e.g., House Bill No. 3627 and 3723, Republic of the Philippines, House of Representatives, 13th Congress, First Session, (2006)(No action has been taken on these bills.)

⁶ See ILO Committee on Freedom of Association, *Interim Report: Case No. 2488, Complaint Against the Government of the Philippines presented by the Federation of Free Workers (FFW)-Visayas Council*, GB.299/4/1, at ¶¶1328 – 29.

GRP's own submissions support this conclusion. The Government does not have to wait for the Philippine Congress to tell them how to use their own discretion, as the SOLE is empowered to establish implementing regulations that will define the parameters of his discretion such that it is in line with international standards. We have seen no effort by the SOLE or the DOLE to implement regulations in-line with international standards.

Also, while the Philippine government asserts that the Secretary's decisions are subject to judicial review, and thus there are limits to the Secretary's power, as we stated in our Post Hearing brief in October 2007:

"The Supreme Court of the Philippines recognizes the Secretary's broad discretion to invoke Article 263(g), and the Supreme Court treats the Secretary's decision with great deference.⁷ Therefore, once the Secretary has made a decision, it is usually the final word, and the judiciary has extremely limited authority to overturn the Secretary's decision."

While there are certainly cases where the Supreme Court has found "grave abuse of discretion", such as a match factory and a liquor store, as a whole, the Supreme Court has not established a set of standards through which it can review whether the SOLE has abused his discretion. As a result, the SOLE has virtually unfettered power to enjoin whenever he pleases without the possibility of meaningful review.

The GRP request that this Committee consider that DOLE use its power only sparingly as evidence that its laws are in line with international standards "in practice." However, what their statistics do not show is whether the power is used in a discriminatory manner, ie. whether only certain unions are allowed to strike while others are not or whether certain corporations are treated differently than others. As the law is currently written, the GRP is allowed to pick and choose the winners and losers among the trade unions, and while they may respect international standards in some cases, it is clear that international standards are not respected in all cases, such as when DOLE declared pineapple production "indispensable to the national interest" to enjoin a strike at the Dole Foods processing facilities in Mindanao. The issue before this committee is whether the GRP is respecting the Philippine workers' rights. The Government response makes clear that it views the right to strike as a privilege, not a right, and is therefore in violation of international standards.

3. In your brief, you acknowledge that politically motivated killings declined in the latter half of 2007 and 2008, but in 2009 the trend appears to be changing. In your opinion, why has the trend changed?

We agree with the UN Special Rapportuer that the GRP has not implemented systematic reforms to end the killings and that the government continues to underreport the number of politically-motivated killings. (See Question 5 below). We also agree with the Special Rapporteur that any gains made during 2007 and 2008 in ending the killings were fragile at best and that the GRP's recent efforts to intensify its counter-insurgency operations in an effort to end the Communist

⁷ See e.g., *Manila Hotel Employees Association v. Manila Hotel Corp.*, G.R. 154591 (S. Ct. Philippines). March 5, 2007.

insurgency by 2010, which has included listing legal organizations like the KMU and other trade unions as insurgent groups, are exacerbating the problem.

4. Can you explain the discrepancy in Government of the Philippines and ILRF data on killings (EJK) in 2007-08? (11 vs. 142)

The ILRF's citation of 142 EJK's comes directly from the Philippine Commission on Human Rights, which is an independent agency tasked with investigating and upholding human rights in the Philippines. The GRP's numbers are derived by Task Force Usig (TFU), a special police task force established to investigate killings. Many organizations, including many media outlets in the Philippines, believe that TFU is significantly underreporting the number of EJKs.

5. Are you aware of any initiatives taken by the Government of the Philippines to address this issue of EJK?

Yes. The Government of the Republic of the Philippines has undertaken several initiatives to address impunity for killings, all of which they outlined in their brief. On June 3, the UN Special Rapporteur for extra-judicial executions will be testifying before the to provide his assessment that the GRP has failed to implement the necessary measures to end the killings and other human rights abuses. According to Phillip Alston's report,

"Overall, the most important shortcoming has been the Government's failure to institutionalize or implement the many necessary reforms that have been identified. In the absence of such steps, the progress that has been made remains fragile and easily reversed."

(Please find attached an article from today's (May 8, 2009) Philippine Daily Inquirer concerning the Rapporteur's findings.)

Further, while the GRP cites the sudden and precipitous drop in the number of killings to support its conclusion that its efforts have been successful, the Commission on Human Rights attributes the decline in killings to a combination of renewed government efforts to end impunity and strong pressure from the international community on the GRP to end policies which enabled the killings.

However, as far as we've been able to determine, the Philippine government has not taken any steps to end the military's illegal harassments of trade union leaders, as we have discussed in our testimony. Nor has the government taken efforts to end disappearances, abductions, or illegal arrests. The Supreme Court of the Philippines has even had to institute a special Writ of Amparo to protect Filipino citizens. The Writ was designed specifically for the purpose of protecting Filipino's from adverse government actions such as abductions.

As for the government's assertions that it has created multiple Task Forces, such as Task Force 211 and the Inter-Agency Legal Action Group (IALAG), to address the killings, we are concerned that it is the work of these various task forces that has lead to an alarming trend of illegal and arbitrary arrests and detentions of labor organizers across the Philippines. For

example, according to police reports, the recent filing of criminal charges against Remigio Saladero, the chief legal counsel for the KMU, came at the behest of the military working hand in hand with prosecutors. Last fall, Mr. Saladero was charged with arson in one case and murder in a different case. As the government testified, the murder case was dismissed by the courts, which found that the government had violated Mr. Saladero's due process rights. Then, this past week, the arson case was dismissed outright by the court, which again chastised the government for not producing credible evidence to support the allegations.

As soon as he was released from jail, though, the government filed yet another set of murder charges against the KMU's counsel. Before being arrested, though, Mr. Saladero's attorneys were able to intervene to seek immediate dismissal of the charges on the grounds that Mr. Saladero had a clear and corroborated alibi; he was arguing a case before a court in a different province on the day of the killing, a fact supported by certified statements from the judge in that case. Despite having hearings scheduled by the court to dismiss the charges, the government's prosecutors have failed to produce its witnesses, and the charges are still pending.

The creation of multiple Task Forces is simply window dressing. We remain concerned that the actual work of the Task Forces are not focused ending the killings. Rather, we are concerned that the Task Forces, whether IALAG, TF Usig, or TF 211, are focused on targeting activists and trade unions leaders for false criminal charges. Expanding these Task Forces to include more government agencies will not change this. Finally, we are very concerned that the close participation of the Armed Forces of the Philippines on each of these Task Forces has distorted the mission to resolve the killings and end other abuses.

6. Has the ILO determined that the Philippine statute on Assumption of Jurisdiction is in violation of international law, or is it the judgment of the ILRF that the Philippine statute fails to meet standards expressed by the ILO?

Yes. Please see response to Question 2 and the ILRF's Post-hearing Brief filed in October 2007.

7. Does ILRF believe that labor practices/protections/enforcement in the Philippines are significantly worse than in other countries at similar levels of economic development within the region? What evidence exists to support that?

While we have serious concerns with regards to the enforcement of labor protections around the world, the ILO and international law is clear that there is one set of labor standards with regards to the right to organize trade unions, bargain collectively and to strike. Income levels and regional practices are irrelevant when determining whether the Philippine government and its military forces are engaged in anti-union activity and are therefore in violation of GSP criteria.

We are aware, though, that the Philippine government, through arguments before the ILO and this Committee, is attempting to justify its anti-union policies by arguing that developing countries should have a different set of labor standards than other countries. As we discussed in our post-hearing brief in October 2007:

“The GRP’s attempts to argue for redefined country specific standards or special dispensation because it is a developing country, such as its attempts to define a “Philippines essential service” exception, prompted the ILO to state:

The Committee takes this opportunity to emphasize . . . that trade union rights, like other basic human rights, should be respected no matter what level of development of the country concerned and recalls the Tripartite Declaration of Principles concerning Multi-national Enterprises and Social Policy, which states that “where governments or host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers’ freedom of association . . . [T]he Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.”⁸ (emphasis added).

8. What is the number of compulsory arbitrations?

Please see the response to Question 2.

III. Attachements

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Breaking News / Nation

<http://newsinfo.inquirer.net/breakingnews/nation/view/20090508-203913/Govt-fails-to-stop-killings-anew--UN-report>

Gov’t fails to stop killings anew--UN report

By Nikko Dizon

Philippine Daily Inquirer

Posted date: May 08, 2009

MANILA, Philippines – The administration of President Gloria Macapagal-Arroyo has failed to institute substantive reforms recommended two years ago by the United Nations’ special rapporteur to put a stop to extrajudicial killings in the Philippines.

And the President’s statement that the military should end the insurgency “once and for all” by 2010 remained the justification of military officials in tagging political and civil society organizations as fronts of the Communist Party of the Philippines and its armed wing, the New People’s Army.

These are some of the observations made by Philip Alston, the UN special rapporteur on

⁸ See ILO. Committee on the Freedom of Association, *Interim Report Case No. 2528: Complaint against the Government of the Philippines presented by the Kilusang Mayo Uno Labor Center*. GB.299/4/1, June 2007 at ¶1446.

extrajudicial killings in a recent report.

"Overall, the most important shortcoming has been the Government's failure to institutionalize or implement the many necessary reforms that have been identified. In the absence of such steps, the progress that has been made remains fragile and easily reversed," Alston said in his 16-page report.

Alston said the follow-up report was based on information provided by the government as well as through consultations with domestic and international civil society, and by reference to publicly available reports and materials.

The Philippine Daily Inquirer obtained an electronic copy of Alston's report from the human rights group Karapatan.

According to Karapatan, Alston's latest report will be taken up in the 11th session of the Human Rights Council on June 2 to 18.

Dated April 29 and submitted to the UN Human Rights Council, Alston's report was a follow up to his findings and recommendations, published in April 2008, following his February 2007 investigation into the killings and abductions of activists and journalists largely blamed on state security forces.

In his follow-up report, Alston took note of the rise in the Davao Death Squad killings and the failure of the local and national government's to end the culture of impunity.

Alston also said the CPP/NPA and the National Democratic Front failed to stop its own killings of civilians on the basis of findings of its the so-called "people's courts," which violate human rights and humanitarian law standards along with rebel statements against people they say have "blood debts" or "accountabilities to the people".

Alston said the government still "deserves credit" for enacting reforms that partially fulfilled his recommendations.

Specifically, he said, the government has sent a strong albeit informal message to the military "which resulted in a significant decrease in the number of killings" and has issued "strong policy statements" affirming its commitment against extrajudicial killings.

Alston noted that from the 220 reported deaths in 2006, the figures dropped to 94 in 2007 and 64 in 2008.

"While current levels are significantly lower than before, they still remain a cause for great alarm, and reflect the failure to make the recommended structural reforms," Alston said.

Alston observed that most of "the Government's formal actions in response to the Special Rapporteur's recommendations have been symbolic, and lack the substantive and preventive

dimensions necessary to end the culture of impunity."

Alston noted that President Arroyo should be more transparent on what "concrete steps have or have not been taken" by her government and the Armed Forces to end measures in its counterinsurgency campaign that have led to the executions of civilians.

"Moreover, forced disappearances and illegal detentions remain all too common, as does the bringing of trumped-up charges against Filipino activists and human rights abuse victims," he said.

The government has not yet abolished the Inter-Agency Legal Action Group (IALAG), as recommended by Alston, because he said its main purpose was to prosecute members of the communist party.

Many of the rebels were not "reachable by legal processes," Alston noted, adding "The temptation to execute such individuals thus remains."

The principle of command responsibility has not been applied in alleged human rights violations by state agents, Alston said, noting that one proof was the report that retired Army Major General Jovito Palparan was to be appointed to the Philippine Drug Enforcement Agency.

(Palparan is now a partylist representative in Congress).

The Witness Protection Program has not been improved since 2007, which has been "one of the most significant causes of continued impunity in the Philippines," Alston said.

The government has not even taken the steps to implement policies that would allow congressional oversight of the military and the police, Alston said, arguing that "congressional oversight could be the entry point for much-needed reforms to the AFP and PNP, as well as for more generally promoting a human rights based approach within the security sector."

There has only been one successful government prosecution of a perpetrator of an extrajudicial killing and no convictions at all of any member of the Armed Forces for the murders of leftist activists even if an enlisted man had been arrested for the 2005 murder of activist Ricardo Ramos, Alston said.

Alston noted with curiosity that while the government claimed that a long judicial process prevented it from prosecuting suspects in the killings of the activists, the same did not appear to be an obstacle in the cases of slain journalists.

He also said there remained a "great disparity" in the number of extrajudicial cases recorded by civil society groups and those acknowledged by the government.

Alston added that the Office of the Ombudsman has done little to respond to the cases of extrajudicial killings while the lack of resources continued to hamper the work of an otherwise

"more vocal" Commission on Human Rights.

Alston said that the Supreme Court has been responsive to the recommendations, particularly in issuing the writs of amparo and habeas data.

However, the writ of amparo "appears to remain underutilized, and even misunderstood in some courts" while the writ of habeas data has been untested because of the financial costs it entails.

"The Supreme Court should be encouraged to further develop the effectiveness of these measures of relief," Alston said.

He added that the high court has yet to use its "constitutional powers over the practice of law to impress upon prosecutors their duty to uphold and protect human rights and to provide reasoned decisions for probable cause determinations."

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