

RE: **POST HEARING COMMENTS**  
USTR GSP PETITION REVIEW  
CASE NUMBER 007-CP-07 PHILIPPINES  
OCTOBER 19, 2007

FROM:

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TO:

United States Trade Representative  
Generalized System of Preferences Subcommittee

To Whom It May Concern,

The International Labor Rights Forum (ILRF) respectfully requests that the Trade Practice Sub-Committee (TPSC) hold open for review the ILRF's Request for Review of the GSP Status of the Republic of the Philippines (GRP) for Violations of Workers' Rights. Review of the GRP's country practices pursuant to 19 U.S.C. §2461 *et. seq.* should remain open pending:

- (1) implementation of the recommendations of the United Nations Special Rapporteur for extrajudicial killings and the International Labor Organization (ILO) Committee on Freedom of Association; and
- (2) promulgation of clear regulations for implementation of Philippine Labor Code §263(g) in accordance with international standards as recommended by the ILO Committee on Freedom of Association.

**The GRP continues to promote a climate of fear and violence against members of trade unions in violation of their right to freedom of association.**

As discussed in the ILRF's petition, workers can only exercise their rights, including their right to freedom of association, in an environment where human life is respected and protected.<sup>1</sup> When workers face constant threats to their life and security, genuinely free and independent trade unions cannot form.<sup>2</sup> The GRP is in clear violation of these fundamental workers' rights because it promotes a "climate of violence, fear and

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<sup>1</sup> See International Labor Organization (ILO), Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth Edition, 2006 at ¶43.

<sup>2</sup> See ILO Digest at ¶45.

coercion” against members of the Kilusang Mayo Uno (KMU) trade unions and other labor and farmers’ organizations, human rights groups, and political parties.

In his report to the General Assembly in August 2007, the United Nations Special Rapporteur for extrajudicial killings, Phillip Alston, stated:

Many in the Government have concluded that numerous civil society organizations are “fronts” for the Communist Party of the Philippines and its armed group, the New People’s Army.”

One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas, the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instill fear into the community.<sup>3</sup>

This policy has resulted in the extrajudicial executions of leftist activist over the past six years, aimed at eliminating “key civil society leaders, including human rights defenders, trade unionists, land reform advocates, and others.”<sup>4</sup>

As a result, since the beginning of 2007, the Center for Trade Union and Human Rights reports an additional 59 cases of alleged labor-related human rights violations encompassing 821 individuals.<sup>5</sup> On 2 March 2007, Renato Pacaide (a union leader in Digos City) was shot dead by two assailants on his way to a union meeting. Mr. Pacaide was in the process of organizing a union for workers at Nakayama Corporation in Digos City. Similarly, in July of 2007, Charlie Solayao (a union leader in Tacloban City) was assassinated in his home, a few days after he had been warned by a member of the AFP that he would likely be killed if he did not cease his organizing activities. In addition to these killings, there have been numerous abductions of union leaders, many of whom remain missing.

The AFP continues to harass KMU leaders and members. KMU members at the DOLE-Stanfilco subsidiary Davao Integrated Transport Facilities, Inc. (DITFI) on October 9, 2007, were in the middle of CBA negotiations when the factory suddenly closed. During the negotiations, the 27th Infantry Battalion of the Armed Forces of the Philippines (AFP) was deployed to the premises to monitor union activity and the movement of the union’s leaders. Major Medel Aguilar, major with the 5th Civil Relations Group of the AFP was recently quoted as saying the KMU was responsible for the “termination of the contract between Stanfilco and its trucking and hauling service provider DITFI [a subsidiary of DOLE] which has left about 270 employees out of work.” In response, the leader of the

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<sup>3</sup> United Nations, General Assembly. *Interim Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston*. August 16, 2007. A/62/265 at ¶14. Available at [www.extrajudicialexecutions.org](http://www.extrajudicialexecutions.org).

<sup>4</sup> Id. at ¶13.

<sup>5</sup> See Center for Trade Union and Human Rights, *Workers and Unions Under Attack: A Trade Union and Human Rights Report January to August 2007*. Available at [www.ctuhr.org](http://www.ctuhr.org). (Herein after CTUHR Update).

union representing DITFI workers stated that “[the military] have been doing the rounds ... in Panabo and Davao, going house to house and to other companies, warning workers against [NAMADITFI] and KMU. They call [NAMADITFI and KMU union workers] communists, recruiters for the New People’s Army, and tail [NAMADITFI and KMU union workers] to and from work.”<sup>6</sup> On a different occasion, KMU members in Davao del Norte were obliged by private security forces and members of regiment 73IB of the AFP, to watch a film that also misrepresented the form and function of union activity, again vilifying the KMU as a shell organization of the NPA.

Furthermore, a professionally produced film circulating in certain regions promotes the extrajudicial killings of union leaders and activists by accusing KMU members as being NPA agents.

The GRP has stated, in no uncertain terms, that it believes that the KMU is a “front” organization for the Communist Party of the Philippines-New People’s Army (CPP-NPA), and that the KMU is “an arm of an insurgent movement.”<sup>7</sup> The GRP states that “the KMU has Marxist-Leninist-Maoist orientation similar to those of the CPP/NPA . . . and the NPA counts in its fold members of the KMU.”<sup>8</sup> The GRP goes on to explain that there is a “thin red line” between the KMU and the NPA, calling the KMU and all of its affiliated organizations “fronts” for the NPA.<sup>9</sup>

The GRP, though, does not bother to distinguish legal KMU federations and local unions from individual members of the KMU it alleges are also members of NPA. The NPA has been fighting a protracted insurgency for more than 39 years. Philippine military officials estimate that the NPA has around 7,500 members, and that they have broad support in many communities with many sympathizers.<sup>10</sup> The CPP-NPA is a designated terrorist organization under U.S. law pursuant to the Patriot Act, 8 U.S.C. § 1182 *et. seq.* The sanctions under U.S. law for being designated a terrorist organization are severe.<sup>11</sup>

The KMU, on the other hand, is an unregistered national labor center. **It is a recognized, legal entity** in the Philippine judicial system with standing to bring claims on behalf of its members.<sup>12</sup> The GRP has recognized the KMU as a trade union center for the past 27

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<sup>6</sup> See ILO Digest at ¶44

<sup>7</sup> The New People’s Army is a designated terrorist organization pursuant to the U.S.A. Patriot Act, 8 U.S.C. §1182 *et. seq.*

<sup>8</sup> 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 at ¶1401, June 2007.

<sup>9</sup> *Id.* at ¶1427

<sup>10</sup> See Human Rights Watch. *Scared Silent: Impunity for Extrajudicial Killings in the Philippines*. June 2007.

<sup>11</sup> See United States Department of State, Fact Sheet. Foreign Terrorist Organizations. October 11, 2005. <http://www.state.gov/s/ct/rls/fs/37191.htm>

<sup>12</sup> See *Prof. Randolph David, et. al. vs. Gloria Macapagal Arroyo*, G.R. No. 171396, May 3, 2006 (Supreme Court of the Philippines)(granting the KMU and one of its federations, NAFLU, standing to assert the rights of its members.)

years.<sup>13</sup> The KMU is comprised of eleven *legally registered* and recognized labor federations, and their affiliated, *legally registered* local enterprise unions.<sup>14</sup> In total, the KMU represents an estimated 300,000 workers in the Philippines.<sup>15</sup>

When the KMU is named a “front” organization, each of those 300,000 workers become subject to violence, threats and discrimination based on their affiliation with the KMU. They live in a climate of fear. KMU members are at risk of becoming targets for counter-insurgency operations. The AFP are conducting education campaigns labeling the KMU as a “front” organization, and the AFP is pressuring workers not to affiliate with the KMU.<sup>16</sup> Philippine security forces are stationed in several companies where there are labor disputes.

Labor groups other than the KMU have felt the effects of the GRP’s “red-labelling.” The Solidarity of Cavite Workers (SCW), which helped to organize the Chong Won union, has filed a petition to the Supreme Court because they are concerned about being identified as a “terrorist organization.”<sup>17</sup> Officials for the Bukluran ng Manggagawang Pilipino (BMP) and the Alliance for Progressive Labor (APL) have reported harassment by police and military personnel.<sup>18</sup> Any union accused by government officials of being “communist” or a “front” organization operate in a very difficult environment.

**The GRP’s continued denial of involvement in labor rights violations impede efforts to end the killings and military harassment.**

The Melo Commission found that there was evidence to link the military to the killings.<sup>19</sup> The Commission found that “only a group with certain military capabilities can succeed in carrying out an orchestrated plan of eliminating its admitted enemies.”<sup>20</sup> Finally, the Commission noted that “the likelihood . . . of violence increases after senior military officials label those organizations as communist fronts and ‘enemies of the state.’”<sup>21</sup> However, the GRP has distanced itself from these findings, claiming that “the Melo Commission clearly indicated that there was no evidence showing that the police and the

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<sup>13</sup> 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 at ¶1401, June 2007.

<sup>14</sup> See ILO Digest ¶58.

<sup>15</sup> The Philippine military claims that there are only 7,500 NPA members, not 300,000.

<sup>16</sup> See CTUHR Update

<sup>17</sup> See *Bayan et. al. v. Gloria Macapagal Arroyo et. al.*, Petition for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order re. Republic Act of 9372 or the Human Security Act of 2007 filed July 16, 2007. (Herein after “SCW Complaint.”)

<sup>18</sup> Interview with officials of the BMP and APL, September/October 2007.

<sup>19</sup> See Report of the Independent Commission to Address Media and Activist Killings (Melo Commission Report) at 6, January 22, 2007. See also 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).

<sup>20</sup> Id.

<sup>21</sup> Id.

military were the perpetrators of killings and other actions against trade unionists. The link to military and police appeared to be merely circumstantial.”<sup>22</sup>

While the Melo Commission did stop short of implicating military leadership, stating that “there is no official or sanctioned policy on the part of the military or its civilian superiors . . .,”<sup>23</sup> military generals have since come forward anonymously to refute this finding.<sup>24</sup> Furthermore, even the Melo Commission has acknowledged that its investigation into the military was limited and noted that no agency has adequately investigated allegations that recently retired senior military officer Major General Jovito Palparan may be responsible, directly or indirectly, for many of the killings.<sup>25</sup> When the Commission inquired as to why the General had not been investigated by either Task Force Usig or the military chief of staff, neither took responsibility for investigating allegations against military leaders.<sup>26</sup>

The U.N. Special Rapporteur on extra-judicial killings, Phillip Alston, has criticized the Philippine military for being “in a state of denial concerning the numerous extrajudicial executions in which its soldiers were implicated.”<sup>27</sup> Human Rights Watch has cited this state of denial and the “unwillingness of senior military officials” to recognize command responsibility as a “roadblock” to prosecutions.<sup>28</sup>

**Civil society and labor organizations are concerned about being labeled terrorist entities through abuse of the legal system.**

The Human Security Act, the Philippines version of the U.S.A. Patriot Act, went into effect in July 2007.<sup>29</sup> The Act was passed to provide the GRP with new tools to target people and organizations it considers “terrorist organizations,” including warrantless arrest, secret surveillance, and prolonged detention of persons who are accused of being a terrorist, but where evidence is weak.

The KMU and the Solidarity of Cavite Workers, along with dozens of other civil society organizations, filed petitions to the Philippine Supreme Court seeking to enjoin enforcement of the act arguing, in part, that the HSA is a violation of the right to freedom

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<sup>22</sup> Statement of the Philippine Government Representative to the ILO Committee on the Application of Standards, C087-PHL-PV(8)-En, June 2007 at pg. 2.

<sup>23</sup> Id.

<sup>24</sup> See Esguerra, Christian V., *Generals Bare Plot to Kill Militant Activists*. Philippine Daily Inquirer, June 17, 2007.

<sup>25</sup> The Commission on Human Rights heard a case brought against General Palparan last fall. After only three days of taking statements from witnesses provided by KARAPATAN, Commissioner Mallari dismissed the case. General Palparan and the military were not investigated.

<sup>26</sup> See Melo Commission Report.

<sup>27</sup> United Nations, General Assembly. *Interim Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston*. August 16, 2007. A/62/265 at ¶14. Available at [www.extrajudicialexecutions.org](http://www.extrajudicialexecutions.org).

<sup>28</sup> See Human Rights Watch, *Philippines: Prosecute Political Killings*. available at <http://hrw.org/english/docs/2007/06/28/philip16251.htm>

<sup>29</sup> See Human Security Act of 2007, Republic Act 9372

of association.<sup>30</sup> The complaints argue that the definition of “terrorism” under the acts is overly broad, vague and devoid of any clear standards for implementation. In particular, the law states that a terrorist act is simply a standard criminal act that was intended to sow and create “a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand . . .”<sup>31</sup> Therefore, the GRP has extremely broad authority to exercise sweeping discretion when interpreting these subjective standards.

As has been noted by the Philippine Supreme Court in response to a case brought by the KMU concerning the sweeping definition of “terrorist act” under a martial law declaration promulgated by President Arroyo, if an “act of terrorism” is not clearly defined, it may result in abuse and oppression on the part of the police or military against the claimants.<sup>32</sup> In that case, the KMU complained that the GRP, when declaring martial law for fear of a coup and related terrorist acts, defined a terrorist act as, “hindering the growth of the economy” and “actions [that] are adversely affecting the economy.”<sup>33</sup> Based on the Secretary of Labor’s broad definition of industries “indispensable to the national interest,” which has seen industries outside the “essential services” designated as vital to the growth of the economy, the potential reach of a terrorist act is enormous.

Further, the HSA’s overly broad definition of terrorism has already been criticized by the U.N. Special Rapporteur on promotion and protection of human rights and fundamental freedoms while combating terrorism, as being in violation of international law and the International Covenant on Civil and Political Rights.<sup>34</sup>

The KMU and other alleged “front” organizations’ concerns of becoming targeted are well-founded. In particular, the HSA establishes an Anti-terrorism Council (ATC), which is granted sweeping authority to “implement this Act and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country.”<sup>35</sup> The ATC is comprised of seven cabinet members; including the Secretary of National Defense and the National Security Advisor. Both the Armed Forces, under the Secretary of National Defense, and the National Security Advisor have been among the strongest supporters of the view that legal organizations are “fronts” for the CPP-NPA and are therefore “terrorist organizations.”

The U.N. Special Rapporteur and Amnesty International have already raised serious concerns that the GRP is abusing the legal system in pursuit of its counter-insurgency

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<sup>30</sup> See *Kilusang Mayo Uno et. al. v. Hon. Eduardo Ermita et. al.*, Petition for Certiorari and Prohibition with Prayer for Issuance of a Restraining Order. July 2007. (Herein after KMU HSA Petition). See also SCW Complaint.

<sup>31</sup> See HSA at §3.

<sup>32</sup> See *Prof. Randolph David, et. al. vs. Gloria Macapagal Arroyo*, G.R. No. 171396, May 3, 2006.

<sup>33</sup> Id. See also Presidential Proclamation 1017, February 24, 2006. (“Whereas, this series of actions is hurting the Philippine state – by obstructing governance including hindering growth of the economy . . . Whereas, the actions are adversely affecting the economy.”)

<sup>34</sup> United Nations. Press Release. *UN Special Rapporteur Calls for Changes to the Philippines’ Human Security Act.*, 12 March 2007. Available at [www.unhcr.ch](http://www.unhcr.ch).

<sup>35</sup> See Human Security Act of 2007, Republic Act 9372, §53.

efforts against “front” organizations.<sup>36</sup> These concerns were supported by the Supreme Court of the Philippines recently questioned the partisan political motives of the Secretary of Justice and the federal prosecutors in arresting and charging Rep. Crispin Beltran, representative of the Anakpawis party-list, with rebellion.<sup>37</sup> In *Beltran v. People of the Philippines*, G.R. No. 175013, June 1, 2007, the court chastised the Secretary of Justice and the federal prosecutors for the “obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors.”<sup>38</sup> The Court felt the need to send a warning to the GRP that:

[P]rosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public’s perception of the impartiality of the prosecutor be enhanced.<sup>39</sup>

Heeding its own warning, the Supreme Court has already begun to implement its own responses to state abuse, including issuing the writ of Amparo.<sup>40</sup>

Once an organization has been designated a terrorist organization under the HSA, the organization’s members lose their right to freely associate.<sup>41</sup> Members become subject to secret surveillance and face possible warrantless arrests and detention based solely on suspicion on the order of the GRP and without timely independent judicial review.<sup>42</sup>

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<sup>36</sup>United Nations. Press Release. *UN Special Rapporteur Calls for Changes to the Philippines’ Human Security Act.*, 12 March 2007. Available at [www.unhchr.ch](http://www.unhchr.ch). See also Coronel, “The Philippines in 2006,” 176; AI, Report 2007 (London: AI, 2007), <http://thereport.amnesty.org/eng/Regions/Asia-Pacific/Philippines>;

American Bar Association (ABA) Asia Law Initiative, Judicial Reform Index for the Philippines (Washington, DC: ABA, March 2006), 23, available at [http://www.abanet.org/rol/publications/philippines\\_jri\\_2006.pdf](http://www.abanet.org/rol/publications/philippines_jri_2006.pdf).

<sup>37</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)

<sup>38</sup> See *Beltran v. People of the Philippines*, G.R. No. 175013, June 1, 2007. (dismissing charges of rebellion against Rep. Crispin Beltran brought by the GRP.)

<sup>39</sup> *Id.*

<sup>40</sup> See *infra*. ILRF Response to TPSC Hearing Question No. 1.

<sup>41</sup> See Human Security Act of 2007, Republic Act 9372, §§17, 27 – 30.

<sup>42</sup> See Human Security Act of 2007, Republic Act 9372, §§7, 18.

**The ILO Committee on the Freedom of Association found that the GRP has not taken adequate steps to end the killing of trade union leaders.**

As noted in the petition, the KMU filed a complaint before the ILO's Committee on Freedom of Association presenting similar claims to those of the ILRF's petition.<sup>43</sup> The Committee conducted a hearing this past summer and found that the GRP has not shown that it has taken adequate steps to end the killing and harassment of trade unions members. First, the Committee found that though Melo Commission originally recommended that the investigation of extrajudicial killings be carried out by an impartial body, independent of military involvement or oversight, the actual fact-finding mission set up by the GRP included the Department of National Defense. Since the Committee's decision, the HSA was passed granting the Anti-Terrorism Council broad discretion to act often without independent judicial checks on arrests without warrants. Concerned that the military and other security forces who are involved in extrajudicial killings sit on the fact finding body, the Committee reiterates its recommendation that the GRP undertake an investigation "without delay and in full independence ... [and] establish an independent judicial inquiry and proceedings before the competent courts as soon as possible."<sup>44</sup> The Committee further urges the GRP "to ... [implement] legislation to require police and military forces and other government officials to maintain strict chain-of-command, control and authority."<sup>45</sup>

The Committee also noted that the GRP conceded that the Regional Special Action Forces, the Philippine National Police Mobile Group and Special Weapons Action are a "common sight" in companies throughout Southern Tagalog and Central Luzon, two highly concentrated industrial areas.<sup>46</sup> The Committee raised concerns that the military's presence will "have an intimidating effect on the workers wishing to engage in trade union activities, and ... [will] create an atmosphere of mistrust which is hardly conducive to harmonious industrial relations."<sup>47</sup> Consequentially, the Committee "requests the Government to take measures, including the issuance of appropriate instructions, to bring an end to prolonged military presence inside workplaces."<sup>48</sup>

In regards to allegations of abuse of surveillance and interrogation employed against trade union leaders and activists, the Committee recommended that the GRP "give specific instructions without delay so as to ensure the strict observance of due process guarantees in the context of any ... operations by the army and police in a way that guarantees that the rights of workers' organizations can be exercised in a climate that is free of violence."<sup>49</sup>

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<sup>43</sup> See Complaint of the Kilusang Mayo Uno Against the Government of the Republic of the Philippines to the Committee on Freedom of Association, International Labor Organization, filed on September 18, 2006.

<sup>44</sup> 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.

<sup>45</sup> Id. at p. 368

<sup>46</sup> Id. at p. 365

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id. at p. 369.

One serious concern to the Committee is the GRP's focus solely on extrajudicial killings while allegations of abductions and disappearances go unexplored. The Committee has observed that the GRP "does not mention any steps taken to investigate the alleged abductions or disappearances ... on the contrary, the Government tends to reject outright the allegations ..."<sup>50</sup> The Committee has noted that this absence of investigations and judgments in to the abduction and disappearance of individuals "creates in practice a situation of impunity which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights."<sup>51</sup> As such, the Committee recommends that the GRP extend its independent investigation and judicial inquiry of extrajudicial killings to include cases of abduction and disappearance.

In addition to the fact-finding of the ILO Committee, the United Nations Special Rapporteur is currently investigating the facts gathered on his mission to the Philippines in February 2007 and will issue his findings and recommendations.

The ILRF request that the review remain open pending the GRP's implementation of their recommendations, including bringing and end to vilifying the KMU and other labor organizations as a part of the counter-insurgency and removing military and police forces from company premises.

**The Secretary of Labor enforces Article 263(g) in an overly broad manner, devoid of any meaningful standards.**

Article 263(g) of the Philippine Labor Code grants the Secretary of Labor broad discretion to determine when to exercise authority to enjoin a strike and refer it to mandatory arbitration.<sup>52</sup> In exercising that discretion, though, the Secretary has failed to issue clear, manageable standards for determining when an industry is "indispensable to the national interest."<sup>53</sup> In particular, while the Secretary of Labor has the legislative authority to exercise his discretion in conformity with the international standard of "essential services," he has decided instead to interpret "indispensable to the national interest" as any labor dispute that, in his opinion, may cause harm to the Philippine national economy.

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<sup>50</sup> Id. at p. 362

<sup>51</sup> Id.

<sup>52</sup> See Philippine Labor Code §263(g). §263(g) provides that:

When, in his opinion, there exists a labour dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interests, the SOLE (Secretary of Labor) may assume jurisdiction over the dispute and decide it or certify the same for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order.

<sup>53</sup> It should be noted that nearly every union federation in the Philippines, no matter their underlying political philosophies, are in agreement that the Secretary's power to assume jurisdiction is in violation of international standards.

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.<sup>54</sup> 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.

The GRP suggests that the committee accept that it "is in substantial compliance with ILO and international standards" and that it can become in even greater compliance gradually over time.<sup>55</sup> However, the ILO on three separate occasions has found the GRP's interpretation of "indispensable to the national interest" in violation of the internationally recognized minimum standard, including this past year in a case brought by the FFW.<sup>56</sup> In that case, the ILO stated in regards to the Secretary's power under §263(g):

[C]ompulsory arbitration to end a collective labor dispute and a strike is acceptable if it is at the request of both parties . . . or in essential services in the **strict sense of the term**, namely those services whose interruption would endanger the life, personal safety or health of a whole or part of the population. Moreover, the conditions that have to be fulfilled under the law to render a strike lawful should be reasonable and in any event not be such as to place a substantial limitation on the means of actions open to trade union organizations. . . The Committee therefore expresses the firm hope that the amendment of article 263(g), which has been under consideration for at least four years now, will be adopted without further delay.<sup>57</sup>

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

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<sup>54</sup> See e.g., *Manila Hotel Employees Association v. Manila Hotel Corp.*, G.R. 154591 (S. Ct. Philippines). March 5, 2007.

<sup>55</sup> Government of the Philippines, Pre-Hearing Brief at 12.

<sup>56</sup> 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 pp. 314 – 39.

<sup>57</sup> See *Id.* at pp. 330 – 31.

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>58</sup> (emphasis added).

The Secretary's discretion to craft different remedies when invoking Article 263(g) seemingly also without clear standards, only adds to the confusion during an already ill-defined, ad hoc process. Unions are often faced with disparate treatment when the order is enforced. In some cases, upon issuing the assumption order, the Secretary will require the physical reinstatement of workers. In other cases, the Secretary will simply order payroll reinstatement pending outcome of the dispute. In other cases, any union member that had been fired prior to the AJ order, which often times is the reason for the strike to begin with, is not reinstated in any form.<sup>59</sup>

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."<sup>60</sup>

The International Labor Rights Forum requests that review of its petition remain open pending efforts by the Secretary of Labor to implement clear standards governing assumption of jurisdiction in line with international law and the ILO Committee of Freedom of Association's recommendations.

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## **INTERNATIONAL LABOR RIGHTS FORUM'S RESPONSES TO POST-HEARING QUESTIONS FROM THE TPSC**

### **Hearing Question 1: Could you please discuss the relationship between the Writ of Amparo to your discussion of the security laws?**

The Philippine Supreme Court, under Chief Justice Reynato S. Puno's leadership has begun to play a more central role in efforts to bring an end to the continued killings and find justice for the families. However, his efforts appear to be motivated by the perception that the Administration is failing to take steps to protect those who are working for alleged "front" organizations, including the KMU.

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<sup>58</sup> 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.

<sup>59</sup> Interview with officials of the Alliance of Progressive Labor (APL).

<sup>60</sup> 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.

Chief Justice Puno held a conference this past July that was widely lauded by many groups as a positive step toward ending the killings. The conferees recognized the need for stronger legal remedies for victims of enforced disappearances and killings.<sup>61</sup> As a result, the Supreme Court has decided to take a more activist approach to try to end the human rights abuses. To that end, they decided to instate the Writ of Amparo and Habeus Data to provide additional remedies to victims of government abuse.

According to Chief Justice Puno, the writ

. . . will provide the victims of extralegal killings and enforced disappearances the protection they need and the promise of vindication for their rights. This rule empowers our courts to issue reliefs that may be granted through judicial orders of protection, production, inspection and other relief to safeguard one's life and liberty.”<sup>62</sup>

The writ of Amparo is meant to protect the Philippine peoples’ rights of life, liberty, and security against any “violation by an unlawful act or omission **by a public official** or employee or of a private individual or entity.”<sup>63</sup> Under the writ, military or any other government official will be obligated to provide information in its possession pertaining to the missing persons, and the military will be prohibited from denying that it has the possession of relevant information.

The protections granted by the writ and how far the military will go to support its implementation is not yet clear. In September, President Arroyo issued Administrative Order 97 which directed the military to “draft in consultation with the Presidential Legislative Liason Office and Congress allies for safeguards against disclosure of military secrets and undue interference in military operations inimical to national security.”<sup>64</sup> The scope of the phrase “inimical to national security” has alarmed many civil society organizations and labor groups, in part because of the Administration’s well known position that economic development is a matter of national security.<sup>65</sup>

**Hearing Questions No. 10: Is there a legal definition for when workers’ actions against companies would authorize government enforcement response?**

As discussed in the complaint, often tensions arise when PNP, AFP or other government security forces attempt to escort replacement into the factories. The government notes that “[u]nder Filipino law, a strike should not result in the obstruction of entry to and exit from the enterprise. When this statutory limitation was violated by the strikers, it might

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<sup>61</sup> See <http://www.supremecourt.gov.ph/publications/summit/Summit%20Papers/Esperon%20-%20The%20AFP%20in%20a%20Democracy.pdf>

<sup>62</sup><http://www.supremecourt.gov.ph/publications/summit/EJK%20Summit%20CJRSP%20Keynote%20Speech.pdf>

<sup>63</sup><http://www.supremecourt.gov.ph/publications/summit/EJK%20Summit%20CJRSP%20Keynote%20Speech.pdf>

<sup>64</sup> See Administrative Order No. 97.

<sup>65</sup> See, *supra*, n. 32.

be necessary to enforce the law.”<sup>66</sup> However, in the Philippine Labor Code, the right to free ingress and egress is limited to lawful purposes only.<sup>67</sup> Ingress and egress is not a right when attempting to (1) employ a strike-breaker; (2) seek employment as a strike breaker, and (3) government officials escorting replacement workers into the factory.<sup>68</sup> Philippine Economic Zone Authorities ordered violent dispersal of the picket line of the members of the independent United Workers at Chong Won for the purpose of escorting replacement workers into the factory.

**Post Hearing Question 5: Can you elaborate on outside reinforcement? By how much would the numbers have increased?**

In regards to the government’s assertions that fear of “reinforcements” to the picket line during the strike at Hacienda Luisita forced the police to move in to violently break the picket line, it is important for the Committee to understand that Hacienda Luisita is a large, sprawling sugar plantation. As a result, the plantation is home to a number of communities. When the workers at Hacienda Luisita went on strike, many of those in the plantation’s communities, frustrated with a long stalled land reform program, joined the workers on the picket line in a show of support for the workers.

The GRP has cited two grounds as justification for the violent dispersal at Hacienda Luisita.<sup>69</sup> First, the strike was in violation of a lawful order. The ILRF notes that the assumption of jurisdiction order was issued based on vague, undefined standards in violation of international law. Second, an independent Congressional inquiry found that the ingress and egress to Hacienda Luisita was not blocked by the union. Rather, three out of the four entrances were open.<sup>70</sup>

**Post Hearing Question No. 10: What is the line between rebellion and legitimate trade union activity?**

The GRP cites Representative Crispin Beltran as an example of a case the line between political/rebellious activity and legitimate labor-related activity. First, the charges against Representative Beltran have been dismissed and, as noted above, the judges chastised the GRP for filing a politically motivated case.

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<sup>66</sup> Statement of the Philippine Government Representative to the ILO Committee on the Application of Standards, C087-PHL-PV(8)-En, June 2007 at pg. 3.

<sup>67</sup> Philippine Labor Code §264(e) states:

No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer’s premises for lawful purposes, or obstruct public thoroughfares.

<sup>68</sup> Philippine Labor Code §264(d) states

No public official or employee, including officers and personnel of the New Armed Forces of the Philippines or the Integrated National Police, or armed person, shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers.

<sup>69</sup> See Philippine Government, Pre-Hearing Brief at 15.

<sup>70</sup> 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.

Second, Representative Beltran holds a seat in the Philippine Congress for the Anakpawis, a party-list political party. The party-list system was developed specifically for the purpose of providing new opportunities for sectoral representation, including giving unions the opportunity form political parties.

KMU members have embraced the opportunity to participate in government through participation in the party-list system.<sup>71</sup> They have been integral in organizing and campaigning for Anakpawis, as is their right. Many union members are active in Anakpawis, particularly in areas where the KMU has a strong union presence. In Polomolok, Mindanao, for example, Anakpawis representatives were the first political party organizers to ever visit indigenous communities living in the middle of the Dole Philippines plantation. Workers at Dole Philippines belong to the KMU and have been working under a collective bargaining agreement for years. For union members, Anakpawis is an opportunity for them to directly participate in a government and raise their concerns about poverty, job security, and labor conditions.<sup>72</sup> Due mostly to the organizing and campaigning efforts of KMU union members, Rep. Beltran was re-elected to Congress in 2007 when Anakpawis received 328,171 votes in the party-list elections.<sup>73</sup>

As the government notes, other unions, such as the TUCP, FFW and BMP, have also formed political parties.

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<sup>71</sup> Consitution of the Republic of the Philippines (1987). Art. VI, Sec. 5 (2); Republic Act No. 7941.

<sup>72</sup> Anakpawis' platform is to promote workers' rights through legislative initiatives, and central to its platform are efforts to raise the minimum wage by 125 pesos a day.

<sup>73</sup> See <http://eleksyon2007.inquirer.net/partytally.htm>.