

September 21, 2007

Exec. Director Marideth Sandler  
Generalized System of Preferences Program  
Office of the U.S. Trade Representative  
Washington, D.C., U.S.A.

Re: Case No. 007-CP-07, Republic of the Philippines

Dear Exec. Director Sandler:

In compliance with GSP requirements, I am submitting the listed names below as members of the Philippine panel who shall present our position at the October 4, 2007 hearing in relation with the petition of the International Labor Rights Fund for the suspension of the Philippines' GSP privileges for failure to recognize international labor rights.

The members of our panel are:

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For a fuller presentation, we want to include a representative of our Department of National Defense who can fully discuss police and military matters, but we can submit his name only on September 25, 2007. We hope you will allow us to make this late submission.

We hope too that you will find this submission and the Pre-Hearing Brief that we sent separately, to be in order.

Very truly yours,

Arturo D. Brion  
Secretary of Labor & Employment  
Republic of the Philippines

**2007 GSP Annual Review**

**Case No. 007-CP-07**

**Petition filed by the International Labor Rights Fund  
vs. The Government of the Republic of the Philippines.  
Attn: Exec. Dir. Marideth Sandler, GSP, USTR.**

**PRE-HEARING BRIEF**

**I. Introduction**

The Government of the Republic of the Philippines ("GRP") comes before the Office of the U.S. Trade Representative as a country that since 1989 has been under the Generalized System of Preferences ("GSP"), an assistance program aimed at expanding GRP's export trade with the US to spur the Philippines' economic growth and support its employment and anti-poverty programs. It is very thankful for the US assistance and welcomes the opportunity to remove all doubts – raised by the present petition – about the Philippines' qualification to participate in the GSP.

To state the obvious, any suspension of the GSP privileges – a key element in the Philippines' economic engagement with the US - would be a big blow to Philippines' economy and may just halt the momentum of its recent gains. The first casualties in an economic downturn are of course the more vulnerable sectors of Philippine society – among them the workers who the present petition ostensibly wishes to defend.

**II. The Petition**

The subject of this GRP Reply is the petition the International Labor Rights Fund ("ILRF") filed pursuant to 15CFR 2007(b). This petition essentially states that:

- GRP has put in place policies that deny Philippine workers the right of freedom of association under ILO Convention No. 87;
- GRP has taken steps to undermine the ability of workers to form and join unions in violation of ILO Convention No. 98;

These charges arise from alleged:

- Extrajudicial killings of labor leaders through elements of the AFP and the PNP
- Condonation of attacks on union leaders and members by failing to investigate and hold people accountable for the killings, abductions, etc.
- Surveillance, harassment, intimidation and threats against union leaders;
- Promoting a climate of violence and impunity that increases the risk of violence towards union leaders and members.
- Use of the Assumption of Jurisdiction Orders by the Department of Labor - in an overly broad manner and beyond the "essential services" parameter that the ILO requires - to prevent workers from exercising their right to strike.

By zeroing in on alleged violations of freedom of association and collective bargaining (which are the rights at the core of every democratic labor relations system) and claiming that GRP has raised these violations to the level of policy, the petition

effectively condemned the whole Philippine labor relations system without really evaluating its intrinsic merits, particularly how the interests of workers are served by government intervention in strikes and lockouts. The petition also jumped to the conclusion that the GRP should be found liable and the whole Filipino nation penalized by a GSP suspension based solely on isolated incidents and without clear facts showing that indeed the GRP had adopted the policies complained of. Last but not the least, the facts the petition relied upon are far from being certain and established as the discussions below will show.

For an orderly presentation, this Reply shall first discuss the objections to the GRP's policies on strikes and lockouts, then proceed to the killing and harassment issues.

### **III. The Department of Labor and Employment's ("DOLE") Intervention in Strikes and Lockouts**

#### **A. Background**

The Industrial Peace Act of 1953 ("IPA"),<sup>1</sup> patterned after the Wagner Act and the Taft-Hartley Act of the U.S. and passed after the Philippines ratified ILO Convention 87 and 98, brought the concept of collective bargaining into the country while providing for the flexibility of state intervention through compulsory arbitration in (1) disputes over minimum wages, and (2) disputes affecting an industry indispensable to national interest. The IPA, under the terms of the Philippine Constitution of 1935, essentially defined workers' rights and how they were protected.

Worker's rights, particularly the right to mobilize and to take concerted action, came under severe restrictions when martial law was declared in 1972, with an absolute ban against strikes, picketing and lockout in establishments considered as vital industries.<sup>2</sup> Relaxation of the restrictions gradually started when martial law was lifted in 1981. The presidency of President Corazon Aquino that followed saw the passage of R.A. 6715<sup>3</sup> that lifted the ban on strikes in vital industries and restored the protective terms of the IPA. The new law likewise gave the Secretary of Labor the power to resolve disputes in "*industries indispensable to national interest*".<sup>4</sup>

#### **B. The GRP Standard and ILO's Essential Services.**

As Philippine law now stands, the Secretary of Labor must abide by a "national interest" standard in intervening in strikes and lockouts. It is this GRP interpretation of the "national interest" standard that the present petition labels as overly broad and contrary to the ILO's "essential services" standard.

"Essential services" as the ILO Committee of Experts defined it in 1983 refers to the services whose "interruption. . . would endanger the life, personal safety or health of the whole or part of the population". In the strict sense, these include (1) the hospital sector; (2) electricity services; (3) water supply services; (4) the telephone service; and

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<sup>1</sup> R.A. 875

<sup>2</sup> General Order No. 5, issued on September 22, 1972.

<sup>3</sup> Entitled "The New Labor Relations Law"

<sup>4</sup> Now under Art. 263(g) of the Labor Code.

(5) air traffic service.<sup>5</sup> The ILO also made a listing of services that it does not consider essential.<sup>6</sup>

Among others, the petition objects to the Secretary of Labor's intervention in cases involving automobile manufacture, brand name food products, tire manufacturers, hotels, agricultural services, mining companies, schools and universities.

The ILO however apparently does not require the level of adherence that the petition advocates. The ILO Digest on Essential Services<sup>7</sup> itself states:

"582. What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country./ Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health or the whole or part of the population."

GRP submits that this is the realistic and workable view of "essential services" and the one that it has opted to follow in light of its overall circumstances as a developing country; otherwise, the use of the ILO standard may be self-defeating – a strong medication that may kill rather than cure if unthinkingly applied to one still weak and in the process of gathering strength. To the GRP, it cannot be seriously assumed that workers' rights are the only objectives that every nation should uphold above everything else, even to the prejudice of the whole of its society. To be sure, the lives, personal safety or health of Filipinos will be endangered if the national economy dips to a range that can no longer afford to support government efforts in these areas of national life. In this sense, the prevailing GRP interpretation and system of intervention should be tested against the ILO standard in light of existing GRP circumstances, without forgetting that workers should be assured through sound labor relations policies of a level of protection that will adequately afford them protection.

That the ILO does not impose strict adherence to its standards can be seen in the varying practices among nations in defining and interpreting the "essential services" standard.

In *South Korea*, the Minister of Labor intervenes where an industrial dispute is related to public services or where such dispute could impair the national economy or the daily lives of the general public because of the vast extent and specific character of the dispute.<sup>8</sup> In *Malaysia*, the following are essential services: banking service; electricity services; fire services; port, dock, harbor and airport services, including stevedoring, lighterage, cargo handling and pilotage; postal services; production, refining, storage, supply and distribution of fuel and lubricants; radio communication services, including broadcasting and television services; telegraph, telephone and telecommunication services; transport services, by land, sea or air; and water services.<sup>9</sup> In *Thailand*, a strike is not permitted in the following: railway; port; telephone or telecommunication; production or distribution of energy or electricity; water works; production or refinery of fuel oil; hospital or clinic; private colleges and schools; undertakings by cooperatives; land, water and sea transport and supplementary undertakings at depot, harbor, airport

<sup>5</sup> ILO Digest, Freedom of Association, 5<sup>th</sup> (revised ed), at par. 585

<sup>6</sup> *Id.*, par. 587.

<sup>7</sup> *Id.* Par. 582

<sup>8</sup> Sec. 5, Art. 76, Trade Union and Labor Relations Adjustment Act, as amended.

<sup>9</sup> Sec. 2, S ub Act A484, Schedule of Essential Services.

and tourism; and sale of fuel oil.<sup>10</sup> These examples are cited because they are Asian models and are better comparators than western models in terms of political, socio-economic and cultural circumstances; the prevailing labor relations system; and collective bargaining practices.

### **C. Use of the Economy as Yardstick for Intervention**

In the Philippines, the effects of a potential or actual work stoppage or lockout on the national economy must necessarily be taken into account given the problems and the political and socio-economic circumstances facing the country.

As previously mentioned, the development of workers' rights in the Philippines was established early on but was stunted by a political development – the declaration of martial law which saw varying degrees of curtailment of the right to strike and to undertake other concerted activities. The lifting of martial law and the return to normal democratic processes under the 1987 Constitution did not however fully signify complete normalcy for the country. For one, political instability subsisted because of unrest in the military, the resurgence of the long-running communist insurrection that had been there for at least a half century, by secessionist movements in Southern Philippines, and lately by the specter of terrorism – all of them political problems that have in no way been solved with finality up to the present.

Economically, the Philippines' development has been erratic in the past 20 years. The political instability during the term of President Corazon Aquino (1986-1992) necessarily took its toll on the economy and was even reflected in the country's labor relations. When she took over in 1986, everyone rejoiced because democracy had returned to the Philippines, yet 581 strikes (or an average of 48 per month) were declared nationwide!<sup>11</sup> In 1991, the labor relations scene eased up as only 182 strikes took place, but the economy registered a negative growth rate of -0.6% while inflation was at an all-time high of 18.5%. A period of modest recovery took place during the term of President Fidel Ramos (1992-98) partly due to the relatively stable political climate. The incipient recovery however was interrupted as soon as President Joseph Estrada assumed office in 1998 due to the Asian financial crisis, although modest gains were again achieved in the following two years of the Estrada presidency. The presidency of President Gloria M. Arroyo signaled a rebound of the economy. From a 1.8% GDP in 2001, GDP performance improved to 5.4% in 2006 and to 7.3% in the first semester of 2007. GNP had a 6.9% growth while inflation rate was 6% in 2004; the succeeding years yielded 5.3% and 6.1% growth records under inflation rates of 7.6% and 6.2%, respectively.<sup>12</sup> These years yielded equally encouraging strike records of 25 in 2004; 26 in 2005; 12 in 2006; and 3 after the first 8 months of 2007.<sup>13</sup>

These economic developments, while encouraging, cannot be dissociated from social realities that only an improved and stable economy can remedy, i.e., the level of poverty in the country, its population growth and employment realities. Continuing efforts reduced poverty incidence from a high of 49.5% of the population in 1988, to 33% in 2000 and 30% in 2003. These advances however gives the GRP no occasion to rest

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<sup>10</sup> Assumption and Certification Power in the Phils., Inst. for Labor Studies, at. 74,

<sup>11</sup> See: Annex A-1 for the record of strikes in the past 22 years.

<sup>12</sup> See the attached Annex A-2

<sup>13</sup> Supra, at Note 11.

and relax in its efforts because of the approximately 80 million (and still growing) Philippine population. In the period 1990-1995 Philippine population grew by an average of 2.32 percent, and at 2.36 percent annually in the 1995-2000 period. At this rate, population will increase at 1.8 million persons per year. Population pressures have likewise affected employment as job creation must ideally exceed population growth under the Philippines' current circumstances. While unemployment rate of 11.2% to 11.8% in 2000-2004 improved to 7.9% in 2006 (a level currently maintained in the first 8 months of 2007),<sup>14</sup> again no level of comfort has been reached as the improvement is due solely to consistent government efforts at job creation and job search facilitation, and the improving economy. Consistent population growth and any dip in the economic performance can again prove disastrous to the unemployment figures.

#### **D. Philippine "Essential Services" Approach**

It is under the above socio-economic background that the GRP has interpreted the "essential services" that the ILO mandates.

As a developing country with a significant level of poverty and a population growth rate that threatens to eat up its modest economic gains, the Philippines cannot compare itself to the developed western countries and adopt the strictly adversarial labor relations regime that thrives well in these countries. At the same time, GRP realizes that it cannot blindly sacrifice the rights and welfare of its workers to the requirements of economic growth. Its most reasonable path under the circumstances can only be in a balanced course between its aim of developing its economy, on the one hand, and the protection of the interests of the different sectors of its society, on the other. For its workers, GRP must ensure that their basic rights are protected to every extent compatible with the national economic goal.

#### **E. Labor Relations Policy**

To pursue this middle course in a period punctuated by a good measure of political, social and economic turbulence, GRP has decided that its main thrust in labor relations should be dispute avoidance and alternative dispute resolution in order to avoid the risk of industrial disturbance and to immediately address any disturbance that may occur; in employment, the main thrust is enhanced education and training to fully prepare its workforce for competition; and in labor standards, focus and concentration are in ensuring that the most basic standards are at least assured and protected.

##### **E.1. Basic Policy: Dispute Avoidance**

The GRP currently implements its dispute avoidance and dispute resolution policy through an array of initiatives that directly aims for social cooperation and the promotion of industrial peace. These include, among others, 1) the use of early and pro-active interventions and the increasing application of preventive mediation and other alternative dispute resolution (ADR) mechanisms to resolve workplace conflicts; 2) the implementation of a new labor education program focusing on human relations, labor relations, and productivity; 3) the expansion of tripartism at the meso and local levels; 4)

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<sup>14</sup> See: Annexes A-3 to A-5 for the tables on poverty, population growth and employment.

the adoption of social accords for industrial stability; and 5) the promotion of labor-management cooperation schemes at the workplace.

### **E.2. Preventive Mediation and ADR Mechanisms**

Preventive mediation, available to parties before the filing of a notice of strike or lockout or to suspend the effects of a notice of strike or lockout already filed, is a service provided by the National Conciliation and Mediation Board ("NCMB"). The effectiveness of preventive mediation in labor relations is reflected in the settlement rates that the NCMB has achieved. The attached Annex A-6 shows, for example, that in 2006 almost 9 out of 10 disputes brought for preventive mediation were settled amicably.

### **E.3. Administrative Intervention for Dispute Avoidance**

Separately from preventive mediation by the NCMB, the current Department of Labor and Employment ("DOLE") leadership reinforced the concept of dispute avoidance by providing for a procedure called the *Administrative Intervention for Dispute Avoidance* (AIDA).<sup>15</sup> This procedure allows the parties to by-pass the NCMB preventive mediation route and to access the Office of the Secretary directly before any formal charge is filed anywhere within the DOLE. This procedure is an intervention before disputes erupt into actual notices of strikes and lockouts, and is a recognition that a dispute takes on a definitive adversarial character where notice of strikes or lockouts or formal complaints have been filed. It recognizes too that even a preventive mediation case can easily be converted into a notice of strike so that even a preventive mediation mode is best avoided if at all possible.

Significantly, the process is separate from established dispute resolution modes of mediation, conciliation and arbitration under the Philippine Labor Code. If the parties-disputants fail to reach an agreement, either or both parties may still use the remedies provided under the Labor Code. They may also submit their dispute to the Office of the Secretary for voluntary arbitration with the assurance of a decision within sixty (60) days from submission for resolution.

### **E.4. Conciliation Preparatory to Compulsory Arbitration before the National Labor Relations Commission**

The GRP has a compulsory labor arbitration system, initiated by complaint before the NLRC, for the resolution of rights and interest disputes. Even this compulsory arbitration system has institutionalized conciliation and mediation to resolve complaints before it. In 2005 and 2006, the NLRC received a total of 11,115 requests for conciliation and mediation intervention. In addition to the 2004's requests, the NLRC handled a total of 12,095 cases, of which 4,329 actually underwent conciliation and mediation. Ninety three percent (93%) of the cases conciliated were amicably settled. Monetary benefits paid after conciliation amounted to P86.62 million, benefiting almost 7,000 workers.

At the level of the courts (at the Court of Appeals to where DOLE and NLRC decisions may be elevated on the limited ground of grave abuse of discretion), conciliation is now made available if the handling Justice feels that a case can still be

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<sup>15</sup> DOLE Circular No. 1, Series of 2006

settled amicably or at the instance of either of the parties. The conciliation services are now handled by a special office in the Court of Appeals (not by the Justices themselves) and have contributed to the speedy disposition of labor cases.

### **E.5 Labor Education Program**

Another major initiative under the present DOLE leadership is the intensive use of labor education to foster industrial peace. The primary approach is to awaken the workplace parties to the use of the principles of human relations. The advocacy is made through seminars given jointly or separately to middle management and rank-and-file employees – the levels where frictions can most likely erupt. The mantra in these seminars is that workplace parties are human beings first before they can relate to each other as employers and employees. A distinct aim is the reinforcement of the values of cooperation and constructive engagement based on trust and the awareness of human rights. The human relations module is complemented by the labor relations and productivity components that focus on workplace rights and obligations and the demands of competitiveness.

After one year of seminars at the National Capital Region, Southern Tagalog and Central Luzon, the reception by DOLE clientele has been very enthusiastic so that the program is currently scheduled for implementation nationwide on video mode.

### **E.6. Tripartism at the National, Meso and Local levels**

As a State policy in labor relations, tripartism is envisioned to give workers and employers representation in decision- and policy-making bodies of the government. Tripartite bodies at various level of government serve as communication channels and mechanisms for consultations and for undertaking joint programs among the tripartite partners.

There are four types of tripartite structures in the country, as follows: 1) *consultative bodies* like TIPC<sup>16</sup> and industry tripartite councils (ITCs); 2) *policy-making bodies* like OWWA,<sup>17</sup> TESDA,<sup>18</sup> OSHC,<sup>19</sup> NWPC,<sup>20</sup> POEA,<sup>21</sup> ECC,<sup>22</sup> and TVAAC<sup>23</sup> within the DOLE family, and SSC,<sup>24</sup> HDMF,<sup>25</sup> PEZA,<sup>26</sup> PHIC,<sup>27</sup> and NAPC<sup>28</sup>; 3) *quasi-judicial bodies* like NLRC; and 4) *quasi-legislative bodies* like RTWPBs.<sup>29</sup>

At present, there are ITCs in six (6) industries, as follows: 1) clothing and textile; 2) construction; 3) automotive assembly; 4) banking; 5) hotel and restaurants; and 6) sugar. These are supported by 26 regional ITCs, 37 provincial ITCs, and 16 municipal

<sup>16</sup> Tripartite Industrial Peace Council

<sup>17</sup> Overseas Workers Welfare Administration

<sup>18</sup> Technical Education and Skills Development Authority

<sup>19</sup> Occupational Safety and Health Center

<sup>20</sup> National Wages and Productivity Commission

<sup>21</sup> Philippine Overseas Employment Administration

<sup>22</sup> Employees Compensation Commission

<sup>23</sup> Tripartite Voluntary Arbitration Advisory Council

<sup>24</sup> Social Security Commission

<sup>25</sup> Home Development Mutual Fund

<sup>26</sup> Philippine Economic Zone Authority

<sup>27</sup> Philippine Health Insurance Corporation

<sup>28</sup> National Anti-Poverty Commission

<sup>29</sup> Regional Tripartite Wages and Productivity Board



ITCs. All regions have their respective regional TIPC's, which are complemented by provincial, city, and municipal TIPC's.

The DOLE's own internal tripartism program has been expanded in 2007 by the recent Three Plus (3+) program implemented at the regional levels. The Regional Coordinating Council, traditionally composed of GRP regional officers and their worker and employer counterparts, has been subdivided into sub-councils with participants coming from sectors outside of the traditional government-employer-worker council composition.

Thus, in the labor relations sub-council, the traditional social partners invite representatives from the local government units, the non-unionized and informal sectors, and the academe to participate in sub-council activities. The 3+ system has been a big help in dispute resolution through pro-active intervention and hands-on participation in the conciliation of strike and lockout cases. In the employment sub-council, the Public Employment Services Officers (PESO)<sup>30</sup> of the local government units, representatives from the recruitment industry, the NGOs, and the academe are included to ensure job search facilitation and better matching of skills.

#### **E.7. Social Accords for Industrial Stability**

Social accords forged by the social partners at the national, industry, regional and local levels have also played a role in the declining strike incidence. Since 1986, eight (8) national social covenants have been adopted by the tripartite partners, the latest of which is the “Geneva Tripartite Declaration of Principles” forged on 9 June 2006. Last year, five (5) regional social accords were adopted to implement the Geneva Declaration.

#### **E.8. The Promotion of Labor-management Cooperation (LMC) schemes**

The presence and operation of labor-management cooperation schemes or LMCs have also played a very positive role in the workplace, particularly in filling up the institutional gap in workplace representation in non-unionized establishments,

LMCs discuss workplace issues of mutual concern to both labor and management. These usually include issues such as production/work systems, productivity improvement, health and safety, welfare, skills training, human resource development, productivity and gain-sharing or incentive pay schemes. They also serve dispute prevention and resolution functions.

#### **E.9. Initiatives in Progress on Dispute Resolution**

i. **Ex-Officio Voluntary Arbitrators (“EVA”)**. Given the voluntary arbitration experience of the Office of the Secretary under the AIDA, the DOLE has decided to supplement the private sector voluntary arbitration system with *ex officio* voluntary arbitrators from senior officials of every DOLE Regional Office. The training of these EVAs is presently on-going and the production of a voluntary arbitration manual shall soon follow.

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<sup>30</sup> The employment arm of municipalities, cities and provinces.

ii. **Single Entry filing of labor cases.** A reality under our current laws is the grant of jurisdiction to different offices within the DOLE family over different types of labor cases, e.g., small money claims to the Regional Office; dismissal cases to the NLRC; petition for certification election before the Regional Office; and inter- and intra-union disputes with the Bureau of Labor Relations. Groundwork is under way for the filing of all labor cases with the National Conciliation and Mediation Board (NCMB) who shall proceed to undertake conciliation and mediation and forward the complaint to the appropriate office if conciliation fails. The conciliation at the NCMB level is without prejudice to further conciliation efforts at later stages of the dispute resolution process. *The ultimate aim of this initiative is simplification of process, added focus on conciliation and a faster case disposition rate.* Companion measures to the single entry system is the adoption of a case management system through a "clerk of court" type unit, and the adoption of a central records system for DOLE cases.

#### **E.10. New Legislation: Republic Act No. 9481**

On 25 May 2007, Republic Act No. 9481, or "**An Act Strengthening the Workers' Right to Self-Organization**", Amending for the Purpose Presidential Decree No. 442, as amended, Otherwise Known as the Labor Code of the Philippines", became a law. This law expands the capacity of legitimate federations and national unions to organize and help their local chapters acquire representation status for purposes of collective bargaining. Any legitimate federation or national union can now directly create a local chapter and vest it with a legal personality for purposes of filing a petition for certification election even without the statutory 20% minimum membership requirement (although this requirement still applies to independent unions). The rules and guidelines for the implementation of the law is currently undergoing the process of consultation.

Currently filed with the 14<sup>th</sup> Congress are new bills, including those touching on the Assumption of Jurisdiction powers of the Secretary of Labor. Deliberations on these bills will be new opportunities to revisit the soundness of GRP labor relations policies.

#### **E.11. Effects of DOLE Intervention and Initiatives on Workers**

GRP posits that at the end of the day, the collective effect of DOLE's present policies and initiatives will redound to the benefit of the workers – the ultimate beneficiary of all tripartite and multipartite initiatives affecting the workplace.

The avoidance of disputes cannot but redound also to the benefit of all; employers need not have their production and other processes disrupted, while to secure added benefits, the workers need not sacrifice time, energy and money in endless disputes where their unworked days are unpaid days. Intervention, when called for under the parameters of the law, will give the GRP more flexibility to adjust the interests of the social partners as the national situation may require. Thus, it can ensure that disputed economic benefits are equitably shared and do not redound unfairly to the benefit of one sector.

For the nation, a tranquil labor relations also translates to increased competitiveness. It means unwasted hours that can be put to good use. It means increased productivity as enhanced harmony in the workplace increases communications and efficiency.

On the non-economic aspects of employment, a strengthened industrial peace can have lasting effects on the cultural and social fabric of the nation. Labor relations at its most peaceful can be the model to follow to achieve the harmony that has so far eluded the country.

**F. DOLE Intervention Record.**

In the last six (6) years (2001 – 07), Annex A-7 shows the record of interventions by the Secretary of Labor. It should be noted that a significant portion of the intervention does not significantly depart from the "essential services" definition of the ILO. Thus, out of the total 377 interventions, 11 were in the health and social work that includes the hospital sector; 16 were in electricity and gas (including fuel and energy) and water supply services; 51 interventions were in the transport, storage and communication industry which include telephone, radio and television, air traffic and transportation services (including stevedoring). Many interventions also fall within the type of interventions in use among the Philippines' Asian neighbors such as the banking services (with 25 interventions) and in schools and universities (with 46 interventions). These are the classification of disputes that can impair the national economy or the daily lives of the public. Rather than being grossly violative of the ILO "essential services" standard therefore, GRP's system of intervention is in *substantial compliance* with ILO and international standards and can approach the strict levels of adherence as the Philippine economy and overall living standards improve.

**G. The Assumption of Jurisdiction in Practice.**

**G.1. Decision to Assume Jurisdiction or to Certify.**

A notice of strike or lockout undergoes a compulsory cooling-off period of 30 days if the cited ground is collective bargaining deadlock, or 15 days if the cited ground is unfair labor practice. Mediation and conciliation transpire during the cooling-off period. The law likewise requires that a secret strike vote be taken and filed with the NCMB 7 days before the workers can strike.

As soon as a strike vote is filed with the NCMB, the Administrator sends a Report to the Secretary, through the Undersecretary for Labor Relations, outlining the circumstances of the parties, the attendant facts, the issues raised and the parties' positions, and the possibility of settlement. The Report contains as well a recommendation on whether the dispute is a national interest matter that should be assumed by the Secretary or certified to the NLRC for compulsory arbitration.

As a regular procedure, the Secretary meets with the NCMB Administrator and the Undersecretary on the course of action to be taken, not only on the matter of intervention, but on the procedural and substantive issues that may arise in the case. Foremost in the discussion, however, is the issue of intervention where a recommendation to take this course of action is made by the Administrator and concurred in by the Undersecretary. If assumption or certification is decided upon, a course of action is plotted when the Order is to be served when the workers are already on strike.

The DOLE may act on its own, i.e. without any request for assumption or certification from any of the parties, if it believes that a strike or lockout is imminent and national interest is involved. In many of the cases, however, one party – either the union

or the employer - seeks assumption or certification; in some cases, an assumption or certification is made at the request of both parties. While a union request may sound unusual to the uninitiated, the situation is not at all unusual in Philippine practice as a host of reasons may prompt the union to seek compulsory arbitration even though a strike vote has been made. Of the total number of notices of strikes filed over a period of 20 years - 17,975 from 1988 to September 2007 – the Secretary of Labor intervened only in 1,392 or in 7.4% of the notices filed. Based on the same number of notices, 23.3% were submitted by the parties to voluntary arbitration, of which 5.49% were submitted to the officials of the DOLE (including the Secretary) as Voluntary Arbitrator.<sup>31</sup> These figures certainly do not suggest any abuse by the DOLE that its clientele should complain about.

## **H. Enforcement of Assumption of Jurisdiction Orders.**

### **H.1. The Enforcement Process.**

Immediately after an AJ or Certification Order is signed, it is promulgated by sending the original copy of the Order to the NCMB Administrator who thereupon records it and orders its service to the parties. Service before an actual strike or lockout is declared usually poses no problems. If any, the problem encountered relates to a party's refusal to accept service. When this happens, a copy is formally tendered to the refusing party and another copy is sent by registered mail at its address of record.

The biggest problem for the NCMB occurs when service of the Order is to be made while a strike or lockout is ongoing. One problem is the refusal to receive the Order. When this happens, a copy of the Order is posted at the strike scene and a copy is served by registered mail on the refusing party.

The usual directive for a union on strike or a management on lockout is to lift the picket and to return to work within 24 hours under the same terms and conditions prior to the strike or lockout. The company management is likewise ordered to admit workers back to work under the same terms. The problems occur when the striking employees or the employer on lockout choose to defy the Order.

The immediate DOLE response is to send the NCMB conciliation team to communicate with both union and management and arrange for compliance with the Order. If there is disorder at the picket line or an imminent threat of disorder, the DOLE calls on police authorities to secure the area, remaining at all times 50 meters away from the strike scene unless their direct intervention is needed to quell actual disorder. If disobedience to the Order continues (usually after defiance continues, in no case less than 24 hours after service of the Order), then the police authorities are *deputized* to enforce the Order by removing fixed obstruction to ingress and egress from company premises. It is at this point when trouble usually erupts as in the Hacienda Luisita case. DOLE records show that the police authorities were actually present only on five (5) occasions in the last five (5) years.<sup>32</sup>

### **H.2. Strikes and Picketing.**

Both the Philippine Constitution and the law (the Philippine Labor Code) expressly protect all peaceful concerted activities, including strikes, that are conducted in

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<sup>31</sup> See: Annex A-2.

<sup>32</sup> The last deputization order was issued in the Hacienda Luisita strike.

accordance with law. A legitimate strike requires notice, a ground recognized by law, observance of the mandatory cooling-off period, a secret strike vote and submission of the results to the DOLE. A strike becomes illegal if conducted without compliance with the statutory requirements, or if it is in violation of an intervention order of the Secretary, or if the strikers resort to unlawful acts, i.e., violence or intimidation in the course of the strike. Following U.S. jurisprudence, pickets cannot be stationary; they must move. However, there is the tendency in the Philippines - especially among militant unions - to attempt to block ingress and egress through obstructions placed at the company gates; many camp out in makeshift tents at the company gates and others go beyond this by welding the company gates shut. Implementation of an Assumption Order becomes problematic once obstructions are in place or camps have been established and actual dispersal may be ordered. It is these dispersals that give rise to allegations of harassment and violation of workers' rights.

Only union members who are proven to have knowingly participated in the commission of unlawful acts during a strike can be penalized with dismissal and only after being accorded due process. Only officers of the union who knowingly participate in an illegal strike are placed in jeopardy of dismissal, but again only after the observance of due process.<sup>33</sup>

### **H.3. Timelines in Arbitral Decisions**

At the level of the Secretary of Labor, assumed cases are decided within 6 months on the average, while those certified to the NLRC are resolved within 1 year and 6 months. The period to resolve cases does not depend solely on the Secretary as the parties must file pleadings and responses that themselves entail some delay. Cases before the Secretary may be decided earlier because they do not usually require extended reception of evidence. At the NLRC, certified cases are fact-specific and may require extended hearings. The NLRC also has a heavier case load than the Secretary of Labor.

The allegations in the petition that labor cases take years to resolve include the period when the cases are pending before the courts, namely before the Court of Appeals and the Supreme Court. This is true of all types of cases, not merely of labor cases, and is a systemic problem that the Judiciary has been trying to resolve.

### **H.4. The Fallacies of the Petition's Cited Cases and Arguments.**

The petition cites many cases of alleged violation of workers' rights to strike and picketing. **The uniform fallacy in the cited cases and arguments is the petition's claim that workers are engaged in *peaceful and legitimate strike and picketing*.** There is the *marked tendency* too to immediately access the media and outside organizations to complain of human and workers' rights violations and harassments, apparently to lay an early basis for these claims later on.

#### **i. The Hacienda Luisita Case (Nov. 16, 2004).**

Two employer units – linked by common ownership – were involved in this case. The Hacienda Luisita is a sugar plantation that covers 11 barangays.<sup>34</sup> The Hacienda had decided to downsize and served retrenchment (termination of service) notice to 327 of its

<sup>33</sup> Article 264(a) of the Labor Code.

<sup>34</sup> A barangay is a Philippine barrio, the smallest geographical/political unit.

employees (represented by the United Luisita Workers' Union or "ULWU") who resisted the move and filed a notice of strike on Sept. 30, 2004. The Central Azucarera is the sugar mill adjoining the Hacienda. Its collective bargaining with its union (Central Azucarera de Tarlac Labor Union or "CATLU") resulted in a deadlock that led to the filing of its own notice of strike on Oct. 25, 2004. Despite NCMB conciliation efforts, the parties failed to reach an amicable settlement.

On November 6, 2004, ULWU and CATLU staged a simultaneous strike, *blocking all points of ingress and egress* from Hacienda Luisita. The Secretary of Labor issued an Assumption of Jurisdiction and a Return-To-Work Order only on November 10, 2006. These Orders remained unheeded despite talks hosted by the NCMB and the local government authorities. On November 11, 2007, the Secretary issued an Order deputizing the PNP Regional Office No. III to assist the DOLE Sheriff in the implementation of her Orders. The AFP was called upon to assist on November 12 after reports that the strikers would receive outside reinforcement and would be beyond the PNP's capacity to handle.

In the afternoon of Nov. 14, 2004, after all efforts for a peaceful service of the Orders failed, the police authorities called on the Civil Disturbance Management (CDM) unit to disperse the picketers massed at the Hacienda's Gate 1. On November 15, 2007, the Secretary of Labor issued another Order formally deputizing the AFP to assist in implementing her Orders after the CDM's attempt to disperse the massed picketers and to open Gate 1 failed.

On November 16, 2004, early peaceful negotiations again failed. The DOLE Sheriff, assisted by the police and military forces, thereafter again attempted but failed at 3 pm to serve the Orders that would pave the way for the clearing of Gate I. At 4 p.m., the CDM moved in to clear Gate 1. The strikers resisted with clubs, stones and Molotov bombs (resulting in the burning of a fire truck). Shots were fired when the melee escalated resulting in the death of seven (7) persons and scores of injuries on the part of civilians and the authorities. Records show that 65 police, 6 air force, 28 army, 5 fire prevention or a total of 104 government, personnel were injured. On the other hand, 7 civilians (not all of whom were employees of the Hacienda and of the Azucarera) were killed and 36 were injured. A total of 110 were immediately arrested.

It will be seen from this narrative that the Hacienda Luisita incident did not erupt in a single afternoon while strikers were engaged in peaceful strike and picketing. The records show that the dispersal of the strikers came several days after the strike was declared and after all efforts and several attempts to secure a peaceful implementation of the Secretary's order for the employees' return to work and for the observance of free ingress and egress to employer property. There was thus evident violation of the law – at the very least, defiance of a lawful Order and obstruction to ingress and egress to private property - in the presence of police and military authorities.

It is regrettable that deaths and injuries resulted and that investigations now lay the blame on specific police personnel whose case are now up for prosecution, but the GRP should not wholly be blamed in an incident like this where defiance of governmental authorities was open and notorious.

**ii. The Nestle Case.**

In Nestle, the Secretary of Labor assumed jurisdiction over the parties' CBA deadlock on Nov. 29, 2001. (Incidentally, the Nestle Cabuyao bargaining unit represented by the Union of Filipino Employees – Drug, Food and Allied Industries Unions - KMU, is one of eight units represented by their own union in Nestle Philippines. The problem is confined to Nestle's Cabuyao plant.) The parties continued to negotiate in conciliation conferences called by the NCMB. On January 14, 2002, the union went on strike despite an injunction against a strike contained in the Assumption Order. The Secretary issued a Return to Work Order on January 16, 2002. *Despite extensions given by management, the employees refused to return to work and continued obstructing ingress and egress to the Cabuyao plant, prompting the Secretary to issue a Deputization Order for the implementation of her Assumption and Return-to-Work Orders. One concern at the time was the protection of non-striking workers who wanted to report to work but could not because of the effective blockade established by the strikers.*<sup>35</sup>

Every Monday since 2002, the union officers and members (who have since been dismissed for failure to return to work) have continuously undertaken picketing and other concerted actions at the Nestle gate at Cabuyao. These actions resulted in the filing of criminal cases against union officers and members when direct confrontations occurred. One incident happened on June 3, 2002. Another, on January 15, 2007, involved the setting up of barricades and denial of entry to and from company premises. All peaceful efforts by the DOLE and the PNP failed to convince the picketers to remove the obstructions until the PNP was forced to move in and undertake the removal themselves.

**iii. The Toyota Motors Phils. Corp. Workers Assoc. Case.**<sup>36</sup>

This is a perfect example of a violation by the union immediately followed by its immediate access to media and to international organizations to claim the contrary.

The Toyota union has been a frequent picketer at the DOLE in relation with their representation dispute with the company, but on July 26, 2006, they gave their visit to the DOLE a sinister twist. Instead of the usual picket, three persons distracted the attention of the three guards at the DOLE's Muralla gate; soon after, two (2) jeeploads of union members armed with clubs disembarked, went past the distracted guards, running up fast to the DOLE's 7<sup>th</sup> Floor where Executive Offices are located. They went directly to the Office of Undersecretary Manuel Imson, the Head of the Labor Relations Cluster. Shouting invectives and blaming Usec.Imson for their present predicament, they him to come out while trying to break down and beating the door of his office. Fortunately, guards came and after a scuffle brought the intruders out. Despite the initial urge to file criminal cases for the invasion, the Secretary simply reported the case to the police for record purposes.

The incident was repeated on August 16, 2006 when men identified with the Toyota union attempted another invasion of the DOLE premises. As in the first incident, this group came prepared as they were observed to have radio communications and one was even observed to be carrying a gun. Security at the DOLE was tighter because of the previous incident but the attempt to penetrate the General Luna gate proved successful

<sup>35</sup> UFE-DFA-KMU vs. Nestle Phils. Inc., G.R. Nos. 158944-45. August 22, 2006

<sup>36</sup> For background facts, see: Toyota Motor Phils Corp. Workers' Assoc. vs. Toyota Motors Phils, Inc., et al., G.R. No. 148924. September 24, 2003.

because the door was defective and was opened by one of five men who again rushed up to the 7<sup>th</sup> floor. The guards who were overpowered could only fire warning shots in the air to warn the other guards that their gate had been penetrated. The intruders again attempted to enter the Undersecretary Imson's office but again failed to do so. This time, the DOLE pressed criminal charges and these are the same charges that had been alleged in the petition to be the DOLE response to peaceful picketing.

The Toyota union's countermove is to air its charges of harassment and violation of workers' rights over the media and to charge the DOLE before the ILO for violation of their right to peaceful assembly and picketing.

The Toyota union's intrusion is not the first of its kind in the DOLE. In December 1997, under the cover of a Christmas party at the DOLE Secretary's office, union members belonging to the Bukluran ng Manggagawang Pilipino ("BMP") surreptitiously entered the DOLE Annex Building where the Secretary maintained an office. They came prepared to occupy the building and they successfully did for at least 4 days. Only the patience and cool head of the Secretary prevented the forcible retaking of the occupied building by police authorities. The occupiers vandalized the offices within the building, destroyed files, and showed their utter disregard for civility by leaving their excreta on the desks and chairs of the Secretary's office.

During the incumbency of Secretary Patricia Sto Tomas, the BMP again managed to occupy the first six (6) floors of the 7-floor DOLE building after a rally on the Novelty Philippines case. The Secretary whose office is at the 7<sup>th</sup> Floor had to leave by a fire exit at the back of the building to avoid entrapment in her own building.

#### **iv. The Chong Won case.**

The Chong Won case is notable in the line of cases under discussion because the DOLE did not consider it a national interest case in light of the nature of Chong Won's business as a small-time garments manufacturer, the number of workers involved, and the economic dislocation that could result from the strike. Thus, the DOLE directly participated in the case only through the NCMB's conciliation efforts

The root of the problem goes all the way to the beginning of the strike, when the strikers *set up camp with makeshift tents* in front of the company premises, blocking the company's ingress and egress. This barricade, which existed on and off from September 25-28, 2006 apparently prompted the Philippine Economic Zone Authority ("PEZA") to tighten its security measures on the entry and exit of workers from the main PEZA gate; PEZA is an industrial site where many companies are located. The worker camps at Chong Won created problems not only for Chong Won but for the other PEZA companies as well.

The ingress-egress problem was aggravated by the discovery by the PEZA police that the union was using an empty PEZA warehouse as a "safehouse" during the strike. At the safehouse were gate passes (some of them tampered), IDs, pictures of workers from closed companies, and provisions for the Chong Won strikers. The warehouse too had been vandalized. Materials calling for the toppling of the government were also found.

Workers continued to maintain a picket line at the company gate despite the company's closure of its operations and declaration of bankruptcy. Allegedly, on June 10 and 11, 2007, armed men dismantled the workers' tents, threatened the workers with



bodily harm, and robbed them of their valuables. The PEZA police investigation confirmed that the incident indeed transpired but did not indicate who the perpetrators or suspects were. The union, on the other hand, alleged that no real investigation took place.

The situation at Chong Won has become a confused and poisoned one. Cases have been filed with the NLRC for illegal dismissal as well as for illegal strike. With the bankruptcy proceedings, the company is effectively closed with almost no chance of resumption of operation. The workers can now only hope for the success of their case that has been effectively reduced to a money claim.

**v. The NIKKO Materials Case.**<sup>37</sup>

The NIKKO Materials case is worth relating if only because of its brazenness and of the subsequent union claim that workers' rights were violated. The union NMWAP-SUPER (allied with the BMP) declared a strike after the deadlock of their collective bargaining negotiations. In the course of their strike (declared in defiance of an Assumption of Jurisdiction Order), the union herded their members into the company's 2<sup>nd</sup> Floor Production Area which they locked from the inside. They welded, padlocked and bolted all means of entry and exit and occupied the place for 5 days; excreted from holes drilled on the floor so that their excreta and other foul substances fell on the offices below. The strikers came prepared with food for 2 or 3 days and when their food ran out on the 3<sup>rd</sup> day, they appealed to the provincial government for food. They likewise called the Commission on Human Rights to complain of the violation of their rights. Intervention by human rights officers and their dead end situation at the barricaded offices helped convince the strikers to eventually leave the occupied area.

**vi. General Comment on AJ Orders.**

The present petition, particularly its objections to DOLE AJ Orders and their enforcement, can better be appreciated if the configuration of the Philippine labor movement is considered.

The Philippines has an estimated labor force of about 36.2 million, about 2.8 million of whom are unemployed while 7.3 million are underemployed. Of the total wage and salary workers of 17.7 million, a total of 1.9 million are members of organized labor unions – i.e., unions registered with the DOLE.<sup>38</sup> As of June 2007, there are 16,723 unions registered with the DOLE, 128 federations and 10 labor centers. Significantly, KMU which has always identified itself as a labor center never bothered to register itself with the DOLE and thus, has no legal personality under Philippine law.

The labor groups currently fighting for dominance of the Philippine labor movement fall into three general classification. There is the Kilusang Mayo Uno ("KMU") that has always been identified as the "reaffirmist" group or the group acting for the "Communist Party-New People's Army-National Democratic Front" (CPP/NPA/NDF) labor sector. Another is the BMP identified as the "rejectionist" bloc for breaking away from the CPP/NPA/NDF. The last is the moderate Trade Union Congress of the Philippines ("TUCP"). Separately from these groups are federations like the Federation of Free Workers ("FFW") who do not fall into one of the three general

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<sup>37</sup> Assumption of Jurisdiction, OS-AJ-023-05, Sept. 22, 2005

<sup>38</sup> Based on 2007 statistics.

groups but who nevertheless are closer in identification with the TUCP because of their moderate outlook. Many independent unions similarly do not have formal affiliation with any of the three major groups but can be closely identified with one of them.

All labor groups are active in participating in rallies, strikes and other concerted actions for the protection of workers' rights. The difference is that the KMU line goes beyond worker interests. They include political statements like the denunciation of the US military bases, US imperialism, fascism, militarization, the "sins" of the Arroyo administration and other political issues. The BMP has dissociated itself from the CPP/NPA/NDF but presents itself as a social activists who would lead the working class towards a proletarian revolution, initiate reforms in the labor movement, and unite progressive labor groups. The TUCP, on the other hand, constitutes the biggest group. They work for workers' rights without any advocacy for any specific ideology. They are more realistic in their economic demands in bargaining and generally comply with the labor laws, but are militant in the protection of their members' rights and do not hesitate to resort to strikes and other concerted actions if needed. They participate in tripartite bodies and in consultations with government. Their foray into active partisan politics in the past three elections have failed.

All these are pointed out because the cited instances of alleged DOLE excesses in the implementation of AJ orders are mostly related to unions allied or identified with either the KMU or the BMP. Those identified with the KMU too are apt to complain of being victims of AFP/PNP actions because they are the ones who venture into political activities in pursuit of their non-labor agenda.

#### **IV. GRP AND THE EXTRAJUDICIAL KILLINGS.**

##### **A. The Essential Context**

###### **a. The Philippines as a Nation.**

For a full appreciation of its positions, GRP submits that the characteristics of the Philippines as a nation must be fully understood.

The Philippines is a republican and democratic country.<sup>39</sup> These characteristics reflect the basic state principles enshrined in our Constitution<sup>40</sup> that also contains a Bill of Rights whose core principles are no different from those found in the US Constitution.<sup>41</sup> Not only are there express guarantees for labor;<sup>42</sup> there are express guarantees as well for the respect of protection of human rights<sup>43</sup> - the rights that ultimately are at the bottom of what the petition complains about.

The Philippines was the first Asian country to create an independent constitutional body for human rights - the Philippine Commission on Human Rights ("PCHR") which continues to monitor the national human rights situation with great vigilance.<sup>44</sup> President Gloria Macapagal-Arroyo has also created a cabinet-level body -

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<sup>39</sup> Article II, Sec. 1, 1987 Constitution.

<sup>40</sup> Declaration of Principles and State Policies, Art. II 1987 Constitution.

<sup>41</sup> Bill of Rights, Arti. III, 1987 Constitution.

<sup>42</sup> Art. II Sec. 18 and Art. XIII, Sec. 3 of the 1987 Constitution

<sup>43</sup> Art. II, Sec. 11 and Art. XIII, Secs. 17-19, 1987 Constitution.

<sup>44</sup> Art. XIII, Secs. 17-19, 1987 Constitution

the Presidential Human Rights Committee ("PHRC") – to advise her on human rights matters, policies and programs.<sup>45</sup> This Committee is also mandated to monitor the human rights situation in the country, coordinate the formulation of the multi-stakeholder National Human Rights Action Plan, and assist victims and their families.

The Philippine Supreme Court and the judicial system operate independently of the legislature and the executive branches.<sup>46</sup> They meticulously uphold the fundamental civil and political rights guaranteed by the Constitution. They do not hesitate to rule even against the government and have been pro-active on the issue of extrajudicial killings as discussed below.

The Philippines has perhaps the freest press in Asia, if not the world, that fully covers the political scene, including allegations of government abuses and corruption. The Filipino civil society is dynamically engaged and has a well-established advocacy role in human rights and civil liberties.

Politically, democracy is very much alive because of a viable political opposition at every level of the political system. Most significantly, the Philippines has a party list system that allows congressional representation of the marginalized sectors and organizations of every stripe.<sup>47</sup>

There is freedom of expression and of religion, demonstrated daily by their free exercise in Philippine society.<sup>48</sup> The Philippines has no prisoners of conscience. Church and State are separate.<sup>49</sup>

Human life is held sacred so that the country has abolished capital punishment<sup>50</sup> and has constitutionally protected the life of the unborn from the time of conception.<sup>51</sup>

Unfortunately, the Philippines also has its share of problems - derived from its history, politics, and socio-economic circumstances – that have spawned violence in its society. It has a long-running communist insurgency that has survived the demise of communist regimes elsewhere in the world. This insurgency has colored many aspects of Philippine life particularly in the field of labor. The movement for secession in Southern Philippines has time and again surfaced, currently exacerbated by the worldwide specter of terrorism and by plain banditry. Bitter political rivalries time and again have resulted in violence.

#### **b. The Labor-related Character of the Killings.**

Questions about the labor-related character of the killings and harassments essentially arise because of the orientation of the labor groups discussed above.<sup>52</sup> The KMU – an **unregistered labor center** openly operating in the Philippines for the past 27 years – is closely allied with and even serves as the labor arm of the CPP/NPA/NDF – the armed communist group that has sought the violent overthrow of the government for the past 60 years. While KMU and its members have no problem exercising their labor

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<sup>45</sup> Established under Administrative Order No. 29 dated 27 January 2002; Strengthened under Administrative Order No. 163 dated 8 December 2006

<sup>46</sup> Generally, see: Article VIII, 1987 Constitution.

<sup>47</sup> Article VI, Sec. 5 (2), 1987 Constitution; Republic Act No. 7941 entitled the "Party List System Act"

<sup>48</sup> Article III, Secs. 4 and 5

<sup>49</sup> Article II, Sec. 6

<sup>50</sup> Rep. Act No. 9346

<sup>51</sup> Art. II, Sec. 12, 1987 Constitution.

<sup>52</sup> See: III(H.4)(vi) above, at pp. 18-19.

rights, the GRP draws the line between the exercise of labor and other rights entitled to lawful protection and the commission of crimes against the State that the State has the right to prevent. The current war against communist insurgents has been waged on many fronts and labor is the most prominent of them because the communist movement is rooted in the labor movement. Thus, the GRP is faced with the dilemma of handling people wearing two hats at the same time, one of them completely legitimate and under constitutional protection, while the other is illegitimate and utilized for revolutionary ends. To be sure, GRP cannot vacillate in dealing with those who have stepped beyond the line of legitimacy.

To state the GRP's position clearly, the Philippine police and the military pursue only those committing rebellion and they do so even if they are trade unionists. Where a trade unionist crosses the dividing line between rebellion and legitimate trade union activity, then there should be no question about the legitimacy of police or military action, provided the action is done in accordance with the Constitution and the law. Where the police or military themselves breach constitutional and statutory boundaries in the discharge of their duties, then they should be answerable to the State for their misdeed and no appeal to the higher motive of fighting a rebellion can justify their nefarious deeds.

To cite an example that the petition itself mentions, Crispin Beltran had been a labor leader who succeeded to the leadership role of the KMU after the death of KMU founder Rolando Olalia. After bolting prison in the early 1980s, Beltran joined the NPA. Later, he co-founded Partido ng Bayan, Bagong Alyansa ng mga Makabayan, Partido Bayan Muna, and lately, Anakpawis which he now represents in Congress as a party-list congressman. In February 2006, Beltran was arrested in Bulacan on the basis of a warrant of arrest for a standing charge related to rebellion – a charge that has no relation to his trade union activities. That no such relationship exists has been confirmed by no less than the Philippine Supreme Court when it ordered Beltran freed on bail since the charge that should properly be imposed, according to the Court, is bailable.<sup>53</sup> It is therefore incorrect to impute what happened to Beltran to his identity or to his deeds as a labor leader. Beltran, as he currently stands, is now beyond being a trade union leader; he is now a politician who operates more in the political arena than in the labor front.

**GRP cites and discusses all these to clarify that it does not have any policy of acting against its citizens for their beliefs nor for actions in the exercise of their labor rights.**

## **B. GRP Actions on the Extrajudicial Killings.**

### **a. GRP Initiatives in General.**

The GRP actions on the extrajudicial killings in general can be outlined as follows:

- i. establishment of Task Force Usig to verify and investigate political killings;
- ii. creation of the PNP Human Rights Office at the Philippine National Police;

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<sup>53</sup> Beltran v. People of the Philippines, G.R. No. 175013, June 1, 2007

- iii. creation of the Independent Commission to Address Media and Activist Killings (Melo Commission);
- iv. strengthening of the Presidential Human Rights Committee – to advise the President on human rights and to monitor progress of individual cases; the PHRC has drafted a Strategic Workplan to Address Alleged/Suspected Extrajudicial Killings;
- v. strengthening of the Witness Protection Program;
- vi. enhancement of prosecutory capability;
- vii. strengthening of the Commission of Human Rights through the grant of additional resources, some of which will go into the training of judges for special courts;
- viii. clearer comprehension of the “command responsibility” concept within the AFP with the creation of the AFP Human Rights Office;
- ix. cooperation with the United Nations Special Rapporteur Dr. Philip Alston;
- x. cooperation with foreign governments who are committed to assist in strengthening national capacity to investigate and prosecute cases of political killings; the EU has agreed in principle to extend technical cooperation to the Philippine government to address the killings.
- xi. Supreme Court and judicial initiatives to address the problems of political killings.

**b. The Melo Commission**

Of the above initiatives, the most noteworthy and the one mentioned in the petition as evidence of the GRP’s lack of political will to end the killings and provide justice to the victims is the Melo Commission. The petition cites the inclusion of senior officials of the Arroyo administration (the NBI Director<sup>54</sup> and the Chief State Prosecutor<sup>55</sup>) as a fatal defect in establishing the Commission because these officials are under a conflict of interest situation. Thus, the petition in effect assailed the integrity of the Commission and its acceptability as a step in addressing the extrajudicial killings.

It is surprising that the petition would point out the alleged conflict of interest because the NBI Director and the Chief State Prosecutor are the most natural officials to be members of the Commission by reason of the nature of their duties. The NBI Director is the highest crime investigator in the land and his office is one of those that can best contribute towards the investigation of the killings; they are the ones called when the usual police investigation would not suffice. While he is an appointee of the President, the NBI Director is a career public servant and not a political appointee whose term in office depends on the pure discretion of the President. The same is true for the Chief State Prosecutor. Notably, both are career officers who rose from the ranks and who are entitled to security of tenure, i.e., they cannot be dismissed except for cause after

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<sup>54</sup> The National Bureau of Investigation (NBI) is a bureau under the Department of Justice. It is the national investigative arm of the GRP and is similar in structure and functions to the US Federal of Investigation.

<sup>55</sup> The Chief State Prosecutor heads the prosecution arm of the GRP under the Department of Justice. He heads the prosecution service that has branches in every Philippine province and city.

observance of due process, as contrasted to political appointees whose term depends on the pure will and discretion of the appointing authority.

That critics of the Melo Commission now point to a perceived conflict of interest on the part of two members of the Commission is apparently an excuse made in hindsight after the Melo Commission made a credible report despite the refusal of the Karapatan (the left wing human rights group who initially alleged government complicity in the killings) to participate in the Commission's proceedings. To quote the findings of the Commission that demonstrated its intent to find the truth without sparing anyone and the reason it could not arrive at a definitive conclusion:

"From the evidence gathered and after an extensive study of the same, the Commission comes to the conclusion that there is no direct evidence but only circumstantial evidence linking some elements of the military to the killings. There is no official or sanctioned policy on the part of the military or its civilian superiors to resort to what other countries euphemistically call "alternative procedures" – meaning liquidations. However, there is certainly evidence pointing the finger of suspicion on some elements and personalities in the armed forces. . . as responsible for the undetermined number of killings, by allowing, tolerating and even encouraging the killings."<sup>56</sup>

x x x

"... due to lack of cooperation from the activist groups, not enough evidence was presented before the Commission to allow it to pinpoint and eventually recommend prosecution of the persons ultimately responsible for the killings. There is likewise no definitive account of the actual number of activist killings. Even Karapatan and Amnesty International have wildly differing figures."<sup>57</sup>

x x x

"in any case, further in-depth investigation into the numerous killings, including extensive evidence gathering, is necessary for the successful prosecution of those directly responsible. In this, the testimony of witnesses and the presentation of evidence from the victims and their families and colleagues would be indispensable."<sup>58</sup>

Shorn of legalese, the Commission simply said that while some members of the military may be guilty, the evidence on hand falls short of what would be necessary to make a definitive conclusion because the parties who can furnish the needed evidence refuse to help. Karapatan and the KMU – with whom those cited in the petition are allied – are the ones who principally refused to help.

Given the above conclusion and the reason for its limitations, the Commission's findings cannot be faulted for clearing officials in higher positions in the GRP. If specific military officials themselves cannot be identified for lack of the appropriate evidence, then so also can no imputation be made against the military establishment as a whole nor against other higher officials of the GRP.

The following key recommendations of the Melo Commission have been adopted by the GRP:

- establishment of special courts;

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<sup>56</sup> Report at p. 54.

<sup>57</sup> Id, at page 62.

<sup>58</sup> Id, at page 63.

- creation of a corps of special prosecutors;
- strengthening of the witness protection program;
- building of the government's technical and forensic capacity to investigate cases;
- increasing human rights awareness within the military and the police.

It should be noted that the Melo Commission has not passed on to history. President Arroyo has expressly ordered it to continue its work and to submit periodic reports on its findings and recommendations. Karapatan and those who failed to participate in the initial proceedings can therefore still provide testimony and evidence if they are minded to do so.

**c. The Supreme Court's Initiatives.**

Aside from the designation of 99 special courts to hear extrajudicial killings, the Supreme Court, in an unprecedented move, hosted a national summit billed as "National Summit on Extrajudicial Killings and Enforced Disappearances: Searching for Solutions".

The Summit resulted in a far-ranging plan of action for the Judiciary, the most notable of which is the promulgation of a special rule on the "writ of amparo" – a protective and remedial tool for the greater protection of the constitutional rights of the victims. The Court as well plans to undertake a study of how to attain a more creative and resourceful use of the writ of habeas corpus. The Court also intends to amend its rules on arrests, with or without warrants; the rules on evidence with respect to expert testimonies and perpetuation of testimonies; the creation of a disputable presumption by a superior officer of the acts of his subordinates; to expand the definition of "extrajudicial killings" to include those killed for their advocacies, among others.

**d. Progress on the Cases cited in the Petition..**

**d.1 Felipe Lapa** – who was allegedly killed by a paramilitary group – the CAFGU - that is linked with the AFP. The CAFGU allegedly previously warned him to stop his union activities and had accused him also of being an NPA supporter.

The PNP reports that the wife of Lapa no longer wants to pursue the case and no longer wants to participate in the investigation. The PNP is conducting follow-up investigation.

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**d.2. Angelito Mabansag** – was allegedly a KADAMAY organizer. KADAMAY is an organization of informal workers and urban poor affiliated with the KMU. PNP investigation shows that Mabansag was killed by a policeman - SPO4 Burt Tupaz

The PNP reports that Tupaz has been charged administratively and criminally. He was charged with homicide and physical injuries before Branch 9 of the Regional Trial Court of Manila under Criminal Case No. 05-240741-42. He is out on bail and is waiting for his arraignment. His administrative case for grave misconduct is undergoing summary hearing before Police Superintendent Vicente Tan.

**d.3. Hacienda Luisita Victims.** The petition alleges that one of the victims – Jessie Valdez – was shot in the thigh during the dispersal at Hacienda Luisita,



but the military, instead of bringing him to the hospital, brought him to a military camp where he died of blood loss.

Investigation of the Hacienda Luisita incident disclosed that the ranks of the rallyists had been infiltrated. Of the seven casualties, one (1) is listed in the Order of Battle of the Tarlac PNP as a member of the CPP/NPA; three (3) of them were found positive for gunpowder burns based on conducted paraffin tests by the PNP Crime Laboratory. Of the 110 persons arrested at the scene, only seven (7) were workers of Hacienda Luisita. Of the 36 PNP personnel involved in the dispersal operation who were subjected to paraffin test, nine (9) were found positive for powder burns and have been recommended to be charged by the NBI for multiple homicide. The PHRC is presently monitoring the progress of the case and inquiring into the specific case of Jessie Valdez.

**d.4. Edwin Bargamento** was allegedly a member of the National Federation of Sugar Workers ("NFSW"). He suffered 22 gunshot wounds after attending a series of labor protests in Bacolod City. Prior to his murder, he received threats from the RPP-ABB (an armed group that broke away from the CPP/NPA) asking him to stop his organizing activities.

The PNP investigation disclosed that at the time of his death, the deceased was engaged in assisting his co-workers in securing benefits from and in the filing of labor cases against the landlords of various haciendas. The lone witness – Sandro Bargamento – refused to testify but gave the investigators sketches of the suspects. The family refuses to file charges although the police are still trying to convince Sandro Bargamento to testify.

**d.5. Mario Fernandez** was allegedly an organizer of the NFSW who was killed by members of the Regional Mobile Group of the PNP.

The PNP investigation showed that he was killed by Gerardo dela Cruz a.k.a. Reggie dela Cruz and Morito Artuz, a.k.a. Nonoy Artuz who were charged in Criminal Case No. 5908-40 for Murder before the Regional Trial Court Branch 40 of Silay City. However, dela Cruz and Artuz – suspected members of the Otso Oros Gang, a crime syndicate engaged in robbery and hold-up – were killed in an encounter with the police on 22 September 2005. The case is now considered closed.

**d.6. Manuel Batolina**, who was NFSW president, was killed by unidentified men. His daughter, Laura Batolina, declared that Batolina received threats from RPP-ABB prior to his death. Manuel Batolina's family executed an affidavit dated 7 December 2006 stating that they are waiving the right to file charges or to pursue the case.

The PNP reported that they have kept their contacts with the family and are still investigating. They report too that among the materials recovered from the crime scene were subversive documents involving the CPP/NPA and streamers of KMU/NFSW, confirming reports that the deceased was a CPP/NPA organizer.

**d.7. Nilo Bayas** – was the Vice Chair of the Association of Charcoal Makers in Bulacan and was allegedly killed by the military. The PNP interview with the wife, Evelyn, revealed that a certain Pastor Marcelo filed a criminal complaint against her husband and brother-in-law in relation with a land dispute. The criminal case was dismissed. Evelyn claimed that they have no known enemies except for Pastor Marcelo. The PNP has kept up its investigation.



**d.8. Ricardo Ramos** was the President of CATLU, one of the unions in the Hacienda Luisita case. Investigation showed that he was killed by unidentified men allegedly led by sergeants in the 7<sup>th</sup> Infantry Division. A criminal case - Criminal Case No. 14419 - was filed with Branch 65 of the Regional Trial Court of Tarlac against Army Private First Class (Pfc.) Roderick de la Cruz and Pfc. Romeo Castillo.

**d.9. Roberto dela Cruz** was a former driver of Tritran (a transportation company) and was the Vice-chair of Alliance of Bus Workers. He was shot dead by motorcycle-riding men a few days after he presented himself to the ISAFP to clear his name. No data is available on this case and the PCHR is in the process of monitoring.

**d.10. Diosdado Fortuna** was President of the Pagkakaisa ng Manggagawa sa Timog Katagalugan (PAMANTIK) Union at Nestle, Cabuyao. He was reportedly under surveillance immediately before he was killed by 2 motorcycle-riding men. The police formed an *ad hoc* investigation unit – Task Force Fortuna – but no definitive results have been achieved so far. The Presidential Human Rights Committee reports that even the Commission on Human Rights has launched its own investigation.

Fortuna is not the first casualty in the Nestle labor problems as a Plant manager and a union president had previously been killed in the late 80s. The PNP Chief of Cabuyao, Laguna – the site of the Nestle Plant – was likewise killed in early 2007. As in the Fortuna killing, no results have been achieved in the killing of the PNP Chief despite intensive investigation.

**d.9 Abduction of Rogelio Concepcion.** He was an officer of the Solid Development Corporation Workers' Association and was allegedly abducted by elements of the 24<sup>th</sup> Infantry Division; this military unit allegedly camped inside the factory while the union was on strike. Concepcion is still missing and the wife refuses to participate in any investigation, allegedly out of fear. The case is being monitored by the Presidential Human Rights Committee.

**d.10. Metal Ore Mining Company.** The petition alleges that the Rebolusyonaryong Hukbong Bayan rounded up 27 residents of Dona Remedios Trinidad in Bulacan on April 17, 2006 at the company compound. Four of them - Bernabe Mendiola, Virgilio Calilap, Teresita Calilap and Oscar Leuterio - were taken away, and only Leuterio has surfaced since. The 703<sup>rd</sup> Brigade of the IBPA allegedly forcibly detained 15 of the 27 residents in a nearby detachment and subjected them to propaganda.

As against this claim, PNP investigation disclosed that an encounter transpired between elements of the Philippine Army and communist terrorists. Eighteen (18) residents of the area were picked up by unidentified men wearing bonnets.

Barangay Chairman Rodrigo Valmocina reported to the PNP that at 1:45 pm of April 18 that 15 civilians, including a certain Bernabe Mendiola, were missing. At 11:45 pm of the same day, Chairman Valmocina reported that 14 of the missing persons were turned over to him by the 56<sup>th</sup> IB of the Philippine Army. How the 14 persons came under 56<sup>th</sup> IB custody was not clear from the report. Mendiola, Virgilio Calilap, Teresita Calilap and Oscar Leuterio were not among those turned over to the Barangay Chairman.

DOLE Regional Office No. III reported that Virgilio and Teresita Calilap are not missing; they returned home in August 2006; Bernabe Mendiola and Oscar Leuterio have likewise returned home although the date was not specified. The police has no record of their return because the four of them never bothered to check in with the police authorities.

**d.11. Angeles City Transport** The petition alleges that composite members of the AFP and PNP abducted seven labor leaders of the union Workers Alliance in Region III. Emerito Gonzales Lipio, Fernando Poblacion Jr., Jose Ramos, William Aguilar, Jay Francisco Aquino, Jose Bernardino and Archie de Jesus were allegedly beaten and tortured at the police station. Four of them were charged with illegal possession of explosives; Lipio is still in military custody where he is reported to have been forced to cooperate with authorities to protect himself and his family from harm.

The PNP report states that no abduction took place. The composite forces arrested the 7 individuals; 4 were caught – *in flagrante delicto* – carrying illegal explosives. Two of the 7 - Archie de Jesus and Wiliam Aguilar – were released. Lipio was subsequently also released and went home to Guinobatan, Albay. The 4 who had been charged are now out on bail

**e. Complaints for harassment of union leaders by the military.** The petition generally alleges that the military has anti-union programs integrated into the labor relations systems. The military intervention instills fear in the workers' exercise of their rights and has a profound, chilling effect on workers' ability to freely exercise trade union rights. The cited cases are:

**e.1 Console Farms:** The petition alleges that there was militarization at the farm, surveillance on union leaders, persuasion to disaffiliate from KMU, and interrogation and torture of KMU members.

**e.2. Suyapa Farms:** Workers were allegedly directed not to organize because KMU allegedly causes closure of businesses. The soldiers presented a list of union members to those present at a meeting and stated that those who do not come forward to clear their names will be hunted by men in black jackets.

**e.3. Manila Bay Spinning Mills:** Soldiers allegedly conducted anti-communist teach-ins for unions affiliated with the BMP.

**e.4. Coca-Cola Central Luzon:** Soldiers allegedly detained and interrogated the union president. Before his release, he was told to disaffiliate from the KMU; otherwise he would be treated as the enemy.

**e.5. Nestle:** Vice President of Pamantik, Noel Alemania, reported that his home was being monitored, forcing him to relocate his family. Mr. Alemania has not returned home in a year

**e.6. International Wiring System:** The Center for Trade Union and Human Rights reported that military patrolled the area around the company and prevented workers from attending meetings and other union activities. Leaflets were distributed naming the KMU and Angie Ladera as listed in the AFP's Trinity of War. The leaflets accused her as well of being an NPA supporter. During a union general assembly, the union members were surrounded by soldiers and the union president was threatened in an attempt to end his union work.

The PNP reports that Emy Ladera, Angie Ladera's sister, reported that Angie optionally retired in 2005 and is now in Australia. The PHRC continues to monitor the International Wiring System situation.

**e.7. Remegio Saladero:** PLACE (Pro-Labor Legal Assistance Center) lawyer is the lead counsel for the family of Diosdado Fortuna; because of harassment and

surveillance by Military Intelligence Pfc. Rommel Felipe Santiago, PLACE was forced to vacate its office and Saladero went into hiding for fear of persecution. The CHR scheduled a hearing but the AFP did not file an answer nor participate in the proceedings.

The PNP reports that Pfc. Santiago was apprehended by FTI security guards for tailing one Trinidad Panisa, union secretary of Nagkakaisang Bisig ng Manggagawa sa FTI. He was turned over by the FTI security guards to the PNP and the incident was reflected in the police blotter. After an hour of interrogation and when no complaint was filed, the PNP released Pfc. Santiago. Panisa asked for a copy of the police blotter. The PNP is apparently not aware of the Saladero complaint and the hearing held at the CHR.

By way of general comment, the GRP submits that the above incidents (except for the Saladero and the International Wiring System cases) have not been reported by the parties concerned to the authorities, neither to the PNP, the DOLE, the PHRC nor the PCHR. There is thus no formal investigation of these cases. The PHRC has directed the PNP to investigate and report its findings on these cases within 30 days.

#### **g. General Comments on Militarization and Surveillance**

##### **g.1 Militarization of Workplaces**

The GRP does not establish military detachments nor deploy military forces in strike-bound workplaces or in workplaces where there are militant unions *solely because of* the trade union situation in these places.

Police and military presence is dictated by public need. When peace and order concerns exist, then the police is generally in attendance and the military may likewise be present when matters of insurgency and terrorism are involved. To be sure, these responsibilities cannot be held back or withheld from the public simply because there is a strike in the vicinity or there are workers in the process of organizing a union.

**The GRP also hereby points out that it does not allow and has not allowed itself, or any of its agents, to be used by private firms and companies for the purpose of denying the workers their right to organization, collective action and collective bargaining.**

##### **g.2 Surveillance**

The surveillance involved in the cases cited by the petition (i.e., one that does not involve search and seizure nor invasion of privacy and communication) is a tool that police and military authorities use when called for in the course of their investigation. Admittedly, surveillance can be used only in investigations that are properly within the functions of these authorities to undertake.

In the settings of the cited cases, surveillance enters a gray area of legality because of the possible dual nature of what those under surveillance may be undertaking. Where they are actively under investigation for complicity with CPP/NPA activities and subject to the parameters of surveillance defined above, GRP believes that there can be no question that surveillance can be utilized; it only becomes legally objectionable when it is directed at the exercise of labor rights or when the clear overriding intention is to affect, subvert or undermine the exercise of trade union activity.

Another aspect of the problem is the identification of those undertaking the surveillance. Under certain circumstances perhaps, the military or police character of a

surveillance may be obvious. But again, there are a lot of gray areas where the identity of those undertaking the surveillance may be in doubt such as when parties other than the police or the military authorities may have interest to undertake their own surveillance. Except in the obvious cases, those complaining of surveillance should provide concrete particulars on why they attribute the surveillance to the police or the military and duly inform the proper authorities – the PCHR, PHRC or the Ombudsman, if not the military or police authorities – of their complaint for proper recording and investigation. The most objectionable step would be to by-pass the authorities to whom reports can be made and to go direct to the media to sensationalize an unsubstantiated charge of surveillance.

GRP manifests that all the cited cases with inconclusive results have now been brought to the attention of the PHRC for action, and reiterates that the PHRC is ready to act in all reported cases involving perceived violation of labor rights by police and military authorities. Complaints relating to private cases or violation of labor rights by private individuals should, of course, be brought to the DOLE pursuant to the terms of the Labor Code.

## **V. CONCLUSION**

In light of the absence of any policy, express or implied, on the part of the GRP to violate internationally recognized workers' rights, the GRP submits that the ILRF petition should be dismissed and the request for suspension expressly denied for lack of legal and factual bases.

Manila, Philippines, for Washington, D.C.  
September 21, 2007

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ANNEX " A "

**Annex A-1 Strike/Lockout Cases, Philippines, 1986 -2007**

Year	Notices of Strike/Lockout Filed	Actual Strike/Lockout Declared	DOLE Interventions	Submitted to Voluntary Arbitration
1986	1613	581	39	no data
1987	1715	436	49	no data
1988	1428	267	58	104
1989	1518	197	56	162
1990	1562	183	91	174
1991	1345	182	111	134
1992	1209	136	90	139
1993	1146	122	104	253
1994	1089	93	104	294
1995	904	94	99	299
1996	833	89	62	305
1997	932	93	40	288
1998	811	92	56	279
1999	849	58	63	205
2000	734	60	81	221
2001	623	43	47	209
2002	752	36	45	234
2003	606	38	73	191
2004	558	25	79	265
2005	465	26	57	161
2006	353	12	45	166
2007 (Jan-Sept 15)	257	3	31	102

Source of data: National Conciliation and Mediation Board

**Annex A-2 Strikes/Lockout Data, 20-year Period, 1988-2007**

Indicator	1988-2007 (20 years)	As Per Cent of Total NOS
Number of Strike/Lockout Notices (NOS) Filed	17,975	
Actual Strikes/Lockout	1,849	10.3%
DOLE Intervention	1,392	7.4%
Submitted to Voluntary Arbitration	4,185	23.3%

Source of data: National Conciliation and Mediation Board

**Annex A-3 Economic Indicators, Philippines, 2001-2007**

Year	Gross National Product (GNP) (real growth)	Gross Domestic Product (GDP) (real growth)	Inflation Rate (%)	Unemployment Rate (%)
2001	2.4	1.8	6.8	11.1
2002	3.1	4.4	3.0	11.4
2003	7.0	4.9	3.5	11.4
2004	6.9	6.4	6.0	11.8
2005	5.3	4.9	7.6	a
2006	6.1	5.4	6.2	7.9
2007 (1 <sup>st</sup> sem)	8.0	7.3	2.6 (Jan-Aug)	7.8 (July 2007)

a – cannot be computed due to adoption of the revised unemployment definition starting April 2005

Source of data: National Statistical Coordination Board

**Annex A-4 Population Growth, Philippines, 1990-2000**

Year	Population	Average Annual Rate of Increase
1990	60,703,206	2.35
1995	68,616,536	2.32
2000	76,504,077	2.36

\* Population Projection

Source of data: National Census & Statistics Office

**Annex A-5 Incidence of Poverty, Philippines, 1988-2003**

Year	Annual Per Capita Poverty Threshold	Magnitude of Poor Population	Poverty Incidence (%)
1988	4,777	25,005,345	49.5
1991	7,302	28,119,758	45.3
1994	8,885	27,274,205	40.6
1997	9,843	23,952,927	33.0
2000	11,456	25,472,782	33.0
2003	12,309	23,836,104	30.0

Source of data: National Census & Statistics Office

**Annex A-6 Preventive Mediation Cases, Philippines, 2001-2006**

Year	Cases Filed	Settlement Rate
2001	802	71%
2002	871	74%
2003	808	83%

2004	671	83 %
2005	699	87 %
2006	569	88 %

Source of data: National Conciliation and Mediation Board

**Annex A-7 DOLE Interventions on Strike/Lockout Cases by Industry**

Industry	2001	2002	2003	2004	2005	2006	2007	Total
Agriculture, Hunting & Forestry	1	1	1	2	1	1	0	7
Fishing	0	1	0	0	0	0	0	1
Mining & Quarrying	1	0	2	0	1	0	0	4
Manufacturing	18	18	33	38	31	17	15	170
Electricity, Gas & Water Supply	3	1	5	2	0	2	3	16
Construction	0	0	2	1	0	0	0	3
Wholesale & Retail Trade	5	1	3	6	2	0	0	17
Hotels & Restaurants	3	6	0	6	2	2	1	20
Transport, Storage & Communications	4	6	9	10	10	5	7	51
Financial Intermediation	6	2	5	2	2	6	2	25
Real Estate, Renting & Business Activity	0	0	0	0	0	1	0	1
Education	6	8	10	7	4	9	2	46
Hospital, Health & Social Work	0	1	2	3	2	2	1	11
Others	0	0	1	2	2	0	0	5
<b>Total</b>	<b>47</b>	<b>45</b>	<b>73</b>	<b>79</b>	<b>57</b>	<b>45</b>	<b>31</b>	<b>377</b>

Source of data: National Conciliation and Mediation Board