

**Republic of the Philippines**  
**DEPARTMENT OF LABOR AND EMPLOYMENT**  
**Intramuros, Manila**

09 June 2007

**MS. NANCY STEFFAN**

Asst. Director for Policy and Communications  
Worker Rights Consortium  
5 Thomas Circle NW, 5<sup>th</sup> Floor, Washington DC

Dear **Ms Steffan**:

I hereby comment on your email dated May 2, 2007 and the letter from American clothing retailers to President Gloria Macapagal-Arroyo regarding reports of violence against trade unionists and labor rights advocates in the Philippines, particularly in the Cavite Export Processing Zone.

As head of the Philippine Department of Labor and Employment (DOLE), I am keenly aware that the Department has never stopped taking measures to safeguard the rights of workers and labor rights advocates. We deal directly with workplace parties, both labor and management, either through labor education seminars or through conciliation and mediation when disputes arise. As part of our preventive labor relations approach, we are now developing a seminar for the Export Processing Zone Management to guide them in the handling of labor relations disputes at their level. Another seminar is aimed at foreign investors to acquaint them about Philippine culture and values, with suggestions on how to handle labor relations in light of our culture and values. We are doing this because of the awareness that some disputes in foreign-owned and managed firms are rooted in the mutual lack of awareness of each other's (the Filipinos' and the foreigners') culture and values.

When the strike occurred at the Chongwon Fashion, Inc. and the Phils. Jeon Garments, Inc. (both located in Cavite Export Processing Zone), the DOLE immediately intervened through conciliation-mediation to help the workers and the management arrive at a mutually acceptable solution. The series of mediation conferences proved to be very difficult, however, as the parties took hardline and uncompromising positions. That the situation resulted in incidents of violence was caused by various factors. We believe that both parties - labor and management – contributed to the deterioration of labor relations peace; even the

processing zone authorities could have handled the situation better. Our monitoring shows the following recent developments:

### **1. Chongwon Fashion Inc.**

The company changed its name effective October 26, 2006. It is now registered as C. Woo Fashion, Inc. The company, however, has temporarily closed since March 25, 2007 up to the present. There was no notice of closure filed with us. At least ten (10) former Chongwon workers continue to man the picket line.

### **2. Phils. Jeon Garments, Inc.**

The company is fully operational with job orders coming in mostly from Japan and the Middle East. Free ingress and egress at the company is observed though six (6) workers continue to maintain a picket line.

We view the Chongwon and Phils. Jeon cases to be isolated ones, i.e., they are exceptions rather than the general rule in the export processing zones. The best indicator of our general labor situation is perhaps the fact that we only have one (1) strike so far for the year (2007) although the prognosis for continuing labor relations peace may not all be that bright in light of the 430 collective bargaining agreements that will expire this year.

We are also certain that the Philippine Economic Zone Authority (PEZA) continues to do its best in undertaking measures to protect the interest of all stakeholders in the export processing zones, particularly the rights and welfare of the Filipino workers. We have reviewed both the Chongwon and the Phils. Jeon situations with them to guard against the repetition of these incidents.

Investigations have been made since last year about these incidents. The Philippine House of Representatives carried out inquiries on the conduct of the export processing zone police and security guards and have been asked to explain about its policies on the right to strike and free collective bargaining. The remedial measures we have been taking partly arose from the observations made in these legislative inquiries.

Lastly, the killings of the labor leaders and other labor rights advocates, are all under investigation by the Philippine National Police and the other law enforcement agencies. An investigative commission headed by retired Supreme Court Justice Jose A. R. Melo (commonly called the "Melo Commission") has been constituted by President Gloria Macapagal-Arroyo to investigate these killings. The initial report of the Commission was inconclusive in attributing direct

authorship of the killings due to the refusal of the complaining organizations and their members to participate. The President has directed the Commission to continue its investigations while the Philippine Supreme Court has designated special courts to handle the cases arising from the killings. While the cases involving these killings are far from resolved, minor successes have been achieved through the filing of the proper charges before the courts in some of the killings.

For a more comprehensive view of Philippine labor relations in light of the specific concerns you raised, I am attaching a copy of a paper we prepared in March 2007.

We appreciate your concern and we assure you that we are taking proactive measures to address the concerns of all stakeholders, particularly the Filipino working man.

Very truly yours,



**ARTURO D. BRION**

Secretary



Dept. of Labor & Employment  
Office of the Secretary



071070

cc:

**Asst. Secretary Ma. Lourdes P. Varona**  
Head, Correspondence Office  
Office of the President, Malacañang

## The Philippine Labor Relations Situation: 2004-2006

### I. Introduction

The state of Philippine labor relations today is best assessed in terms of social cooperation and industrial stability. The consistent and steady decline in the number of strike notices and actual strikes over the past several years demonstrates that labor-management relations is headed to a more cooperative direction. It also attests to the effectiveness of labor policies and institutional infrastructures in managing workplace tensions caused by the changing world of work.

Table 1 captures these positive developments. During the past three years, only 21 or 4.58 percent of the total 1,376 strike notices matured into actual strikes. The number of directly affected workers and working days lost also went down. With the unprecedented 12 actual strikes, 2006 is our banner year in the realm of labor-management relations.

Table 1  
Notices of Strikes/Lockouts Filed and Actual Strikes, Philippines: 2004-06

Year	Notices of Strikes/Lockouts Filed	Actual Strikes/Lockouts			
		Total	%Share	Workers Involved	Working Days Lost
2004	558	25	4.48	11,197	53,000
2005	465	26	5.59	8,496	123,000
2006	353	12	3.40	1,415	46,000
Total	1,376	63	4.57	21,108	222,000
Average	458	21	4.58	7,036	74,000

Source of basic data: National Conciliation and Mediation Board

As of March 21 this year, only 1 out of 16 strike notices matured into actual work stoppage, affecting 54 workers and resulting to 3,393 working days lost.

#### A. The politics and economics of strikes

As shown in Table 2, collective bargaining deadlocks and other unfair labor practice (ULP) issues underpinned most strikes during the past three years. It appears that actions against officers and members of trade unions, such as illegal dismissal or suspension of union officers/members as well as discrimination against or harassment of union members, also motivated the unions to go on strike. Other reasons cited by striking unions include violation or non-implementation of the CBA and the refusal of employers to bargain in good faith.

Minimum wage and emergency cost of living allowance (ECOLA), retrenchment and contracting-out of services were also among the issues invoked by the unions in their strike notices. These complaints confirm to a large extent the difficulties

associated with the transition from the traditional framework of accommodation bargaining to bargaining for survival and competitiveness. In this transition, bargaining may become more integrative and less adversarial or distributive and conflictual.

Table 2  
Actual Strikes/Lockouts Declared By Issues Involved, Philippines: 2004-06

Issues Involved	2004		2005		2006	
	Strikes Declared	% Share	Strikes Declared	% Share	Strikes Declared	% Share
Bargaining deadlock/economic	17	68	15	57.7	2	16.7
Other ULP issues	15	60	15	57.7	5	41.7
Illegal dismissal/suspension of union officers/members	13	52	8	30.8	5	41.7
Discrimination against/harassment of union embers	11	44	11	42.3	5	41.7

*Breakdown may not add up to total because there are several issues involved in one (1) strike/lockout declared. Other issues are no longer presented in the table.*

Source of basic data: National Conciliation and Mediation Board

### B. Sectoral Concentration

With respect to sectoral concentration of both strike notices and actual strikes during this period, the heavily unionized manufacturing accounted for most of work stoppages (Tables 3 & 4). Actual strikes were also evident in transport, storage and communication industry. Last year, more than half (55%) of strike notices were filed by trade unions in the manufacturing industry, which was almost at the same range as in 2004 (60%) and 2005 (56%).

Table 3  
Strike/Lockout Notices by Major Industry Group, Philippines: 2004-06

Major Industry Group	2004		2005		2006	
	No.	%	No.	%	No.	%
Manufacturing	336	60	262	56	194	55
Transport, Storage & Comm.	48	9	53	11	-	-
Wholesale & Retail, Repair of Vehicles, Motorcycles & Personal & Household Goods	36	6	24	5	11	3
Remaining 14 industry groups	138	25	126	28	148	42
Total	558	100	465	100	353	100

Source of basic data: National Conciliation and Mediation Board

Last year, 2 in 3 actual strikes were accounted for by manufacturing and transport, storage and communication industries (Table 4).

Table 4  
Actual Strikes/Lockouts by Major Industry Group, Philippines: 2004-06

Major Industry Group	2004		2005		2006	
	No.	%	No.	%	No.	%
Manufacturing	16	64	20	77	4	33
Transport, Storage & Comm.	4	16	2	8	4	33
Wholesale & Retail, Repair of Vehicles, Motorcycles & Personal & Household Goods	1	4	1	4	-	-
Remaining 14 industry groups	4	16	3	11	4	33
Total	25	100	26	100	12	100

Source of basic data: National Conciliation and Mediation Board

### C. Geographical Concentration

Quite expectedly, the heavily-unionized Metro Manila accounted for more than half of both notices of strikes and actual strikes in 2005 and 2006 (Tables 5 and 6). Following distantly were the other highly-unionized regions, namely, Southern Tagalog, Central Luzon and Central Visayas.

Table 5  
Notices of Strike/Lockout and Actual Strikes by Region, Philippines: 2005

Region	Strike/Lockout Notices		Actual Strikes	
	No.	% share	No.	% share
National Capital Region	262	56	7	27
Southern Tagalog (IV-A)	90	19	7	27
Central Luzon (III)	50	11	6	23
Central Visayas (VII)	17	4	2	8
Remaining 12 Regions	46	10	4	15
Total	465	100	26	100

Source of basic data: National Conciliation and Mediation Board

Table 6  
Notices of Strike/Lockout and Actual Strikes by Region, Philippines: 2006

Region	Strike/Lockout Notices		Actual Strikes	
	No.	% share	No.	% share
National Capital Region	182	52	6	50
Southern Tagalog (IV-A)	72	20	5	42
Central Luzon (III)	31	9	1	8
Central Visayas (VII)	18	5	-	-
Remaining 12 Regions	50	14	-	-
Total	353	100	12	100

Source of basic data: National Conciliation and Mediation Board

## II. Explaining the downtrend

An array of policies and initiatives can be cited to explain the favorable strike behavior in the country during this period. These include, among others, 1) the increasing application of preventive mediation and other alternative dispute resolution (ADR) mechanisms to resolve workplace conflicts; 2) the implementation of the new labor education program focusing on human relations, labor relations, and productivity; 3) the expansion of tripartism at the meso and local levels; 4) the adoption of social accords for industrial stability; and 5) the promotion of labor-management cooperation schemes at the workplace.

### A. Preventive mediation and ADR mechanisms

The current dispute prevention policy follows the constitutional principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes to foster industrial peace. The effectiveness of preventive mediation and conciliation/mediation in strike prevention is reflected in settlement and disposition rates as shown in Table 7.

Table 7  
Preventive Mediation Cases Filed/Declared Disposed, Philippines: 2004-2005

Preventive Mediation	2004	2005	2006
Cases Filed	671	699	569
Workers Involved	137,036	141,669	129,299
Settlement Rate	83%	87%	88%
Disposition Rate	93%	93%	93%

Source of basic data: National Conciliation and Mediation Board

#### 1. Administrative Intervention for Dispute Avoidance (AIDA)

The first official rule-making act of Secretary Arturo D. Brion was Department of Labor and Employment Circular No. 1, instituting a procedure for the Administrative Intervention for Dispute Avoidance (AIDA). AIDA is a mechanism to resolve disputes before these disputes could erupt into actual notices of strikes and lockouts or before formal complaints can be filed. Under the AIDA initiative, either or both the employer and the workers may **voluntarily** seek the intervention of the Secretary in the settlement of any potential or ongoing dispute without the need for the filing of a formal complaint or a notice of strike or lockout.

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 avail themselves of the remedies provided by 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.

Since its introduction last 11 August 2006, the Department has received sixteen (16) requests for intervention covering twelve (12) companies.<sup>1</sup> Four (4) disputes were submitted by the parties for voluntary arbitration with the Office of the Secretary. In most cases, AIDA has given the parties the opportunity to explore plant-level negotiations. In fact, some were even settled at this level. It is fair to say that AIDA is now receiving a good degree of acceptance among DOLE's clientele.

## 2. NLRC Conciliation and Mediation Center

Even the compulsory arbitration system has institutionalized conciliation and mediation to resolve labor and employment disputes. In 2005 and 2006, the NLRC Conciliation and Mediation Center received a total of 11,115 requests for conciliation and mediation intervention. Adding the 2004's requests, the Center handled a total of 12,095 cases, of which 82 percent were disposed (Table 8). Disposition rate includes conciliated and mediated requests and those withdrawn by one or both parties.

Of the 4,329 total requests that actually underwent conciliation and mediation, 93 percent were settled. Monetary benefits facilitated amounted to P86.62 million, benefiting almost 7,000 workers.

Table 8  
Preventive Conciliation and Mediation Cases, NCR Arbitration Branch: 2005-06

PCM Requests	Total	2005	2006
Received	11,115	5,109	6,006
Handled	12,095	5,214	6,881
Total Requests Disposed	9,940	4,330	5,610
Disposition Rate	82%	83%	82%
Requests that Underwent Con-Med	4,329	1,983	2,346
Percent Share to Total Handled	36%	38%	34%
Requests Settled thru Con-Med	4,030	1,695	2,335
Disposition Rate	93%	85%	99%
Monetary Benefits Facilitated (Peso; '000)	86.62 M	38.08 M	48.54 M
No. of Workers Benefited	6,948	2,942	4,006
Pending, end	2,191	920	1,271

Source of basic data: Bureau of Labor Relations

## B. Labor Education Program

Stable workplace relations also takes place under conditions of mutual recognition of rights and responsibilities. As the values of cooperation and constructive engagement based on trust take root in an enterprise, the space for resolving disagreements and conflicts effectively widens. Labor education has been an important instrument to bring about this outcome.

Table 9 shows the initial accomplishment of the labor education program focusing on human relations, labor relations and productivity. Implemented initially in 2006 at the labor-relations heavy regions such as NCR, Southern Tagalog and Central

<sup>1</sup> One company had two requests while another had four.



Luzon, the program, as of February this year, has so far benefited a total of 4,553 middle to lower managers and rank and file workers nationwide.

Table 9  
Labor Relations, Human Relations and Productivity Seminars  
Conducted By Region: 2006 – Jan.-Feb. 2007

Region	2006		Jan.-Feb. 2007	
	Seminars	Beneficiaries	Seminars	Beneficiaries
NCR	9	317	15	488
Ilocos Region (I)			1	75
Cagayan Valley (II)			1	11
Central Luzon (III)	23	595	7	267
Southern Tagalog (IV_A)	69	1,409	7	178
MIMAROPA (IV-B)			2	160
Bicol Region (V)			1	30
Western Visayas (VI)			3	50
Central Visayas (VII)			4	111
Eastern Visayas (VIII)			4	80
Western Mindanao (IX)			12	279
Northern Mindanao (X)			4	296
Southern Mindanao (XI)			3	197
CARAGA (XIII)			1	10
Total	101	2,321	66	2,232

Source of basic data: Bureau of Labor Relations

Our new seminar module that the DOLE delivers to rank-and-file employees and middle to lower management officials (who have the closest contact with the rank-and-file) focuses on three topics: human relations, labor relations and productivity. Human relation is a new component that highlights the individual character of the worker, including his needs and motivation.

Two modules that the DOLE shall launch in the 2<sup>nd</sup> quarter, 2007, will be for foreign employers (particularly the Taiwanese, the Japanese and Koreans) to acquaint them with Philippine labor relations, culture and practices, and for the Philippine Export Processing Zone Administrators and Managers. To be launched in mid-June, these seminars will hopefully directly address the current export processing zone problems.

### C. 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. As such, tripartite structures at all possible levels serve as a communication channel and a mechanism for undertaking joint programs among government, workers and employers and their organizations toward enhancing labor-management relations. As joint consultation mechanism therefore, tripartism has also contributed in maintaining and sustaining industrial stability in the country.

There are four types of tripartite structures in the country, as follows: 1) consultative bodies like TIPC and industry tripartite councils (ITCs); 2) policy-making bodies like OWWA, TESDA, OSHC, NWPC, POEA, ECC, and TVAAC within the DOLE family, and SSC, HDMF, PEZA, PHIC, and NAPC; 3) quasi-judicial bodies like NLRC; and 4) quasi-legislative bodies like RTWPBs.

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 (Table 10). These are supported by 26 regional ITCs, 37 provincial ITCs, and 16 municipal ITCs. All regions have their respective regional TIPCs, which are being complemented by provincial, city, and municipal TIPCs.

Table 10  
National Industry Tripartite Councils, Philippines

ITC Date Constituted	Member-Organizations		
	Labor	Employer	Government
Clothing & Textile ITC 26 Aug. 2005	ALU-TUCP, PTGWO-TUCP FFW; NCL; APL ALMAGATE-SUPER	GBAP TMAP CONGEP PFFI	NCMB-DOLE GTB-DTI BETP-DTI
Construction ITC 1 May 2003	NUBBCW ALU-TUCP APL NFL	PCA; NCAP ACEL; SPECS PSVARE SPCCG	BWC-DOLE OSHC; TESDA DTI-CIAP DPWH
Automotive Assembly ITC 9 July 2001	TMWU; MMPSA; NMPSU; NPWU; TMPSU; IEU; HCP R&FU	Honda Isuzu Mitsubishi Nissan	DOLE DTI PEZA
Banking ITC 1 May 2001	NUBE TUCP; FFW NATU; LIBO	BAP; Allied Bank; BPI; Metrobank; Chinabank; Cham- ber of Thrift Banks	DOLE DOF BSP
Hotel & Restaurant Tripartite Consultative Body, Inc. 21 December 1992	NUWHRAIN-APL ALU-TUCP	HRAP PHOA	DOLE DOT
Sugar Tripartite Council 1991	NACUSIP; USFO; ALU-TUCP; Batangas Labor Union (CADP)	PSMA PIMA CSPA NFSP	DOLE SRA

Source of basic data: Bureau of Labor Relations

The DOLE tripartism program has been expanded in 2007 by its **3+** program that is being implemented at the regional levels. The Regional Coordinating Council that has a traditional tripartite composition has been subdivided into sub-councils with participants coming from sectors outside of the traditional government-employer-worker triumvirate.

Thus, in the labor relations sub-council, representatives from the local government units, the non-unionized and informal sectors, and the academe are invited to participate aside from the employees and worker representatives. In the employment sub-council, the Public Employment Services Officers (PESO) of the local government units, representatives from the recruitment industry, the NGOs, and the academe are included.

#### D. 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 operationalizing the Geneva Declaration were adopted.

#### E. The promotion of labor-management cooperation schemes

The presence and operation of labor-management cooperation schemes or LMCs, especially in unorganized establishments, has also played a role in sustaining the good labor relations climate. Since LMCs fill the institutional gap in workplace representation, they also facilitate joint consultation to take place and ensure harmonious labor-management relations.

As a rule, LMCs are free to discuss any workplace issues of mutual concerns to both labor and management. These usually include the so-called "soft" issues such as production/work systems, productivity improvement, health and safety, welfare matters, skills training, human resource development, and productivity and gain-sharing or incentive pay schemes. In many cases, LMCs also serve as a forum to discuss workplace differences and a mechanism for dispute prevention and resolution.

#### F. Initiatives in Progress on Dispute Resolution

a. Given the voluntary arbitration experience of the Office of the Secretary under AIDA, the DOLE has decided to supplement the private sector voluntary arbitration system with *ex officio* voluntary arbitrators from among the senior DOLE regional officials. Five (5) such voluntary arbitrators shall be picked from each of the country's 17 regions. Training and the production of a voluntary arbitration manual will start in July.

b. 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-common disputes before the Bureau of Labor. A study is now under review for the filing of all labor cases with the National Conciliation and Mediation Board (NCMB) who shall proceed to undertake conciliation and who will 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 stage of the proceedings. This new initiative is aimed at faster dispute resolution.

### **III. Independent unions and actual strikes**

The strike behavior during the past three years indicate that independent unions have become the main players in workers' collective mobilizations and industrial actions. As shown in Table 11, almost half of the total actual strikes involved independent unions. In contrast, KMU and BMP accounted for only 12.7 percent and 11.11 percent, respectively, of total work stoppages during this period.

On the other hand, unions affiliated with TUCP and LACC, under whose wing FFW belongs, accounted for 7 percent and 4 percent of the total actual strikes. Labor representatives to tripartite bodies are usually drawn from TUCP and FFW and are the traditional signatories in social accords.

Table 11  
Actual Strikes/Lockouts By Labor Center, Philippines: 2004-2006

Labor Center	Total 2004-06	% <i>Share</i>	2004	% <i>Share</i>	2005	% <i>Share</i>	2006	% <i>Share</i>
Independent	31	49.21	12	48	11	42	8	66.67
KMU	8	12.70	4	16	3	12	1	8.33
BMP	7	11.11	1	4	5	20	1	8.33
TUCP	7	11.11	4	16	3	12	-	-
LACC	4	6.35	2	8	1	4	1	8.33
NCL	3	4.76	1	4	2	8	-	-
LMLC	2	3.17	1	4	1	4	-	-
APL	1	1.59	-	-	-	-	1	8.33
Grand Total	63	100	25	100	26	100	12	100

Source of basic data: National Conciliation and Mediation Board

### **IV. Putting Recent Labor Relations Issues in Context**

This portion puts into proper context two (2) recent labor relations issues which the DOLE has squarely addressed, as follows: 1) killings of trade unionists; and 2) suppression of trade union rights, which includes the Hacienda Luisita case and the Chong Won incident.

#### **A. On the Killings of Trade Unionists**

During the third quarter of 2006 (and even earlier), alarming reports of the rising number of killings of trade unionists and journalists in the Philippines appeared in the newspapers. President Gloria Macapagal-Arroyo immediately reacted by condemning the spate of extrajudicial killings in the strongest terms possible and by establishing (through Administrative Order No. 157, Series of 2006) a commission – the **Independent Commission to Address Media and Activist Killings** (the “Melo Commission”) – headed by retired Philippine Supreme Court Justice Jose A. R.

Melo.<sup>2</sup> The Commission submitted its report on January 30, 2007 and was publicly released on 2 February 2007.

A significant aspect of the issue on the killings of the activists and trade unionist is that ***the militant organizations and the relatives of the victim journalists and activists has failed and refused to participate in the proceedings of the Melo Commission.***

The Melo Commission concluded in its Report that:

"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 at 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>3</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 no definite or identifiable person, entity or interest behind 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>4</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>5</sup>

The Commission thereafter made the following ***recommendations:***

<sup>2</sup> With the following members: Director Nestor Mantaring (National Bureau of Investigation); Jovencito R. Zuno (Chief State Prosecutor); Nella I. Gonzales (Regent, University of the Philippines); and Rev. Juan De Dios M. Pueblos, D.D. (Catholic Bishop of Butuan).

<sup>3</sup> Melo Report at page 54.

<sup>4</sup> *Id.*, at page 62.

<sup>5</sup> *Id.*, at page 63.

1. **Political will** – *"It is urged that the President reiterate in the strongest possible manner her expressions or pronouncements of determination and firm resolve to stop the same. . . the Government must consistently and all levels condemn political killings. The President and all the departments of Government should make clear to all members of the police and military forces that extrajudicial executions will not be countenanced under any circumstances."*<sup>6</sup>

2. **Investigation** – *"The investigation must be conducted by a body or agency independent from the armed forces. . . This Civilian investigative agency should. . . have control of its own budget, with personnel trained in enforcement and investigative work, authorized to execute warrants and make arrests, provided with adequate technology. . ."*<sup>7</sup>

3. **Prosecution** – *"the DOJ must create a special team of competent and well-trained prosecutors to handle the trial of said cases. Also the DOJ should request the Supreme Court to designate special courts to hear and try said cases"*<sup>8</sup>

4. **Protection of Witnesses** – *"The government must give the highest priority to the improvement, strengthening, and funding of the Witness Protection Program"*<sup>9</sup>

5. **Special Law for Strict Chain-of Command Responsibility** – *"The President should propose legislation to require police and military forces and other government officials to maintain strict chain-of-command responsibility with respect to extrajudicial killings and other offenses committed by personnel under their command, control or authority."*<sup>10</sup>

6. **Proper Orientation and Training of Security Forces** – *"The AFP should be encouraged and supported to conduct intensive seminars, orientations, or training for mid to high ranking officers to make them conscious of the prevailing doctrines of command responsibility and the ramifications thereof"*<sup>11</sup>

Subsequent to the Report, President Gloria Macapagal-Arroyo gave the following instructions:

(1) She asked the Melo Commission to continue its work and submit supplemental reports from time to time (thus, clarifying that the work of the Melo Commission is not yet finished);

(2) She instructed the Department of Foreign Affairs to submit a formal proposal to the European Union, Spain, Finland and Sweden to send investigators to assist the Melo Commission;

<sup>6</sup> *Id.*, at page 75.

<sup>7</sup> *Id.*, at page 75.

<sup>8</sup> Melo Report, at page 77.

<sup>9</sup> *Id.*, at page 77.

<sup>10</sup> *Id.*, at page 78.

<sup>11</sup> *Id.*, at page 79.

(3) She ordered the Departments of Justice and National Defense to coordinate with the Commission of Human Rights for the constitution of a Joint Fact-Finding Body to delve deeper into the matter of involvement of military personnel in unexplained killings, file the corresponding charges against and prosecute the culpable parties;

(4) She ordered the Department of Justice to broaden the Witness Protection Program to cover all witnesses to the unexplained killings of an ideological/political nature;

(5) She requested the Supreme Court for the creation of special courts for the trial of charges involving unexplained killings of ideological/political nature.

Since then, the Supreme Court – through Administrative Order 25-2007 – designated 99 regional trial courts as special tribunals that shall expeditiously resolve or decide the cases of extrajudicial killings. A.O. 25-2007 enjoined the special courts to give priority to cases of activists and media personnel; mandated a continuous trial that shall be terminated within 60 days from commencement and required a judgment to be rendered within 30 days from submission for decision; and, prohibited the filing of motions for postponements or other dilatory pleadings or motions.

From this narration, it is clear that the Philippine Government made concrete and conscious efforts to address the killings, including attempts at prosecuting the guilty parties whoever they may be – the police, the military, the insurgents or *ordinary* murderers. The limitations imposed by the unavailability and refusal of witnesses to come out, even as the Government can guarantee their welfare and safety under the Witness Protection Program, has however made it difficult, if not impossible, for the Government to arrest, prosecute and punish the culprits.

#### *The Government's Anti-Insurgency / Anti-Terrorism Campaign in its Proper Context*

The Philippines has been facing an insurgency problem for the past sixty (60) years that had been compounded by worldwide terrorism in the past twenty (20) years. A major insurgent group is the Communist Party of the Philippines (CPP); its military arm is the New People's Army ("NPA").

The CPP counts in its fold members of several militant organizations such as the Kilusang Mayo Uno (KMU – a trade union center), Gabriela (a women's organization) and the League of Filipino Students (an organization of students) that are known to be Communist fronts.<sup>12</sup> The NPA boasts of a 10 to 1 tactical advantage, with KMU workers' support, over the AFP. It is identified as the author of the murder of Col. Rowe, Congressman Rodolfo Aguinaldo and Congressman Marcial Punzalan, Jr. It is also the author of internal purges, the summary killing of its members, and the killing fields unearthed in Misamis Occidental reminiscent of the Pol Pot regime. **It has set up a parallel government engaged in its own taxation, interference**

<sup>12</sup> See *Dejillas, Leopoldo J.*, Trade Union Behavior in the Philippines 1946-1990. pp. 74-84 Ateneo de Manila University Press, 1994.

**in election, and harassment of workers who shun foreign ideology and strikes.**

In August 2002, the NPA and the CPP were listed as terrorist organizations by the United States and European Union. This resulted in massive withdrawal of foreign financial support to left-leaning organizations and affiliated unions.

**From 9 August 2002 to the present** (roughly coinciding with the Arroyo administration), the NPA has been besieged by internal dissension, retaliatory action by private enemies, international pressure, and successful campaigns by the AFP.

The fight against terrorism continues. At the same time, the Philippine Government ensures full observance of the Bill of Rights. Open hearings by Congress and special commissions to identify the culprits of the killings of journalists and activists are ongoing

It must be stressed however that ***THE PHILIPPINE GOVERNMENT HAS NO PAST RECORD OF AND NO PRESENT GRAND DESIGN TO SUPPRESS TRADE UNION RIGHTS; MUCH LESS WILL IT CONDONE OR TOLERATE THE POLICE AND THE MILITARY IF AND WHEN THEY VIOLATE THESE RIGHTS.***

The findings of the Independent Melo Commission stated above is particularly instructive – there is no direct evidence showing that the police and the military were indeed the perpetrators of the killing and other actions against trade unionists. At best, the link to the police and to the military appears to be merely circumstantial. If and when the police and the military shall commit the crime of killing activists (trade unionists) on the basis solely of their activism or trade union advocacies, rest assured that there is adequate machinery within the local forum to address these violations.

In this connection, a distinction should be made between legitimate trade union activities entitled to lawful protection and the commission of crimes against the State that the State has the right to prevent. The Philippine police and the military pursue only trade unionists committing rebellion and not trade unionists exercising trade union rights. There is a thin red line that divides some trade unionists from the illegal activities of the CPP/NPA though. Where a trade unionist crosses this line, then there should be no question about the legitimacy of the police or military action, provided the action was done in accordance with the Constitution and the laws.

**B. On Suppression of Trade Union Rights**

*1. The Hacienda Luisita Case*

In 2004, law enforcers shot and killed Jesus Laza, Jun David, Adriano Caballero, Jhaivie Basilio, Jaime Pastidio, Juancho Sanchez and Jessie Valdez at the height of the dispersal of the strike of the workers of Hacienda Luisita while the composite forces of the police and the military were enforcing the assumption of jurisdiction order issued by then Secretary of Labor Patricia Sto. Tomas.



Congressional hearings were held on the incident and the Congressional Committees on Human Rights, Labor and Employment and Agriculture concluded in part that human rights violations were committed against the striking workers of Hacienda Luisita.

We stress however that the Hacienda Luisita case was not a pure case of police action against strikers. The records indisputably show that the dispersal of the strike came several days after the strike and not immediately after its commencement; there were clear indications of provocation on the part of the strikers that compelled the police and the military forces to forcibly enforce the return to work order of the Department of Labor and Employment. To be sure, the strikers and most especially, the trade union leaders, could have actually contributed to the peaceful resolution of the dispute had they complied with the legal orders issued by the lawfully constituted authority – the assumption of jurisdiction order issued by then Secretary of Labor Patricia Sto. Tomas. Had the striking workers returned to their work as ordered, the Hacienda Luisita incident could not have resulted in the death and injuries to workers.

The exercise of the right to strike carries with it the correlative obligation to observe the limitations imposed by law, especially those that are essential to the maintenance of peace and order of the community. Under Philippine laws, a strike should not result in the obstruction of the ingress to and egress from the enterprise and when this recognized statutory limitation is violated by the strikers, it may be necessary to call on, or seek the assistance of, the law enforcement officers. In the context of the Hacienda Luisita strike, the excesses committed by the strikers in obstructing the ingress to and egress from the workplace dictated the intervention of the law enforcement officers who are expected to maintain peace and order at all times. Indeed, an otherwise absolute right ends when the rights of others begin.

If indeed law enforcers exceed the limits of their authority to beyond what is required or dictated by the situation, there are built-in remedies in law to address the situation; the incident need not necessarily call for the conclusion that there had been violation of trade union rights. What happened in Hacienda Luisita is isolated and was affected by abnormal circumstances; it was a deviation from the normal course of things. It is not at all indicative of a governmental design or a pre-meditated attempt directed at suppressing trade union rights.

## *2. The Chong Won Incident*

Chong Won Fashion, Incorporated (the *Company*) is a garments manufacturer operating within the premises of the Cavite Export Processing Zone. The establishment's workers – specifically, members of the *Nagkakaisang Manggagawa sa Chong-Won-Independent* (the *Union*) – struck on 25 September 2006, alleging unfair labor practice for management's refusal to negotiate a collective bargaining agreement. The Company refused to negotiate while the issue of the majority status of the Union, which was pending at the Court of Appeals, awaited final resolution.

Prior to the strike, conciliation-mediation efforts were already jointly undertaken by the Philippine Economic Zone Authority (PEZA) and the National

Conciliation and Mediation Board (NCMB). Conciliation efforts were pursued further after the union struck.

The situation at the company premises appeared to be hostile in the early stage of the strike. On the first day, the strikers set up camp with a makeshift tent in front of the company's main entrance and reportedly prevented the other employees from reporting for work. The following day, the PEZA Police and Jantro Security guards (PEZA's private security force) adopted stricter measures at the entry and exit gates of the zone, which reportedly included the confiscation of food items. Meanwhile, the company representatives failed to appear at the scheduled 26 September 2006 meeting.

On 27 September 2006, the Union dialogued with PEZA to discuss the union's requests for: 1. unhampered entry and exit at the Zone; 2. permit to bring in food for strikers; 3. maintenance of 50-meter distance of PEZA police and Jantro Security guards from picket line. The subsequent meeting of 28 September 2006 did not push through because of Typhoon *Milenyo*.

At the height of the typhoon, the striking workers were dispersed by PEZA Police and Jantro Security guards.

**The Union claims that the dispersal was forceful and violent, that they were denied access to food, their ID cards were confiscated and Jantro guards escorted "scabs."**

PEZA claims that the 28 September 2006 hostilities started with the discovery by PEZA Police that SP Venture, an establishment that has been closed for some time, was forcibly entered and occupied by some workers and members of the Workers' Alliance Center. It alleges that strikers stabbed Jantro guards. It denies not allowing the striking workers to bring in food as employees can get in and out of the Zone provided they have legitimate identification. It clarified that the PEZA Police and Jantro Security Guards were at the site to protect Zone employees who are not part of the strike and to bar entry of strike sympathizers who are not employees of the Zone; this is allegedly vital to the investment climate. It also claimed that the striking workers were already obstructing free ingress and egress at the Zone, including legitimate cargo shipments and prevented Jantro security from escorting employees entering the zone on their (the striking workers) thinking that these are "scabs" hired by management to replace the striking workers.

The Company terminated on 29 September 2006 the services of 116 employees and requested the permanent confiscation of their IDs for security purposes, preventing the employees from entering the zone and bringing food and provisions to the strikers who remained at the picket area in front of the company's main entrance.

The Company has since partially continued its operations, but maintained its hard line stance against negotiating with the striking workers and threatened to pull out its investment in Cavite if the situation does not change. It recently changed its

business name to C. Woo Fashion, Inc.; it is 70% operational due to limited job orders. Meanwhile, ten former Chong Won employees continue to man the picket line.

Continuing conciliation-mediation efforts are in place to resolve the industrial dispute; it is understood of course that the settlement of the dispute would also resolve incidental matters.

There are adequate machineries within the local sphere to address the concerns involved in the Chong Won incident. Likewise, there are existing legal provisions to address the excesses that may have been committed either by the striking workers, *i. e.* the alleged blockade of the ingress to and egress from the company premises, or the PEZA police authorities, the company or any of its agents.

Finally, like Hacienda Luisita, Chong Won is a peculiar case that does not truly reflect the present labor relations situation in the country. It is exceptional in the sense that not all strikes or concerted actions in the country end up like Chong Won's.

## **V. Conclusion**

Essentially, social cooperation and industrial stability characterize the Philippine labor relations today. The consistent and steady decline in both strike notices and actual strikes over the years reflects the increasing maturity of the social partners in managing workplace relations. It also shows the effectiveness of bipartite approaches and alternative dispute resolution mechanisms in managing workplace differences and resolving disputes.

A combination of initiatives and interventions has also played a role in sustaining industrial stability. The labor education program has broadened the space within which workers and employers can enhance their relationships. Tripartism has provided the social partners and other actors with the opportunity to deepen social dialogue and expand their participation in decision-making processes. The social covenants have affirmed the importance of social consensus in bringing about desired social outcomes, in particular industrial peace. Finally, labor-management cooperation schemes have ensured interest representation for other workers outside of the traditional tripartite milieu.

Hence, it is neither proper nor tenable to invoke isolated but headline hugging labor relations incidents which some quarters conveniently use to highlight perceived failures in labor governance and inadequacies of labor institutions. As in the case of other systems, the labor relations system is not perfect and requires reforms and improvements from time to time. Surely, there will always be outliers and exceptions. But these should not distract nor dissuade us from looking at the full landscape and appreciate its good side, which is always the bigger one.