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TIGHTER BELTS AND BLOODIED YEAR

Workers rights review in 2004

Yearly Report Trade Union and Human Rights Situation January 1 to December 31, 2004

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Everybody, including those who are responsible for widening the poverty in this country - agreed that Y2004 was the most difficult in GMA's four year administration. Difficult, may be too polite a term to describe how the economy left the poor to feed their children, literally with garbage as election promises fail miserably, high-ranking government officials, bury themselves in immeasurable corrupt practices and quality of life sinks as rapidly as the value of peso.

At the labor front, slimmer bodies of low-paid workers got their belts tightened further as government incessantly refused the demand for P125 daily wage increase and contented itself handing the P20 (\$0.36) daily allowance as against the multitudes (times since) of oil price hikes that logically increase prices of other goods. Employed workers, often contractuales were forced to work longer to augment their income to the detriment of their health. Raymundo Aguba, 29 years old, for instance died after working for 22 straight hours at Masuda Philippines, in Laguna Technopark, Binan, Laguna last August 3, 2004.

On the other hand, organized workers who mustered strength to strike have to deal with other kinds of beatings. The massacre of farm and sugarmill workers at Hacienda Luisita in Tarlac city last November 16, that killed seven persons and seriously injured 36 others, was the most cruel, most violent and bloodied in the recent history of the workers movement.

It (massacre) also illustrated the state's readiness and efficiency to stamp out legitimate strikes and protests in sharp contrast to that of snail-pace prosecution of corrupt officials despite strong evidence. In addition, it underscored a more dangerous pattern of GMA's government tendencies to legalize and legitimize questionable and overwhelming police and military actions to justify measures that are totally unjustifiable such as the use of military and high caliber weapons against unarmed strikers, on one hand, and Pres. GMA naked militarist-style of governance, on the other.

The year 2004 was a showcase of this contradiction. Strings of human rights violations were committed in the exercise of what the government calls the rule of law and of the economic cum-employment programs, a trend that for several years has been silently killing trade unions and its membership particularly those that are independent and with progressive or militant orientation.

Union busting and Strike ban: Arroyo government's road to industrial peace

Last year, the Department of Labor and Employment (DOLE) recorded a total of 25 strikes, a 34 percent decrease compared with the 2003's total 38 strikes. This figure is slightly lower than the number of strikes and protest actions against company lock-out that CTUHR monitored (total # 27) during the same period. The largest strike, in terms of participants is the strike at Hacienda Luisita in Tarlac city.

Analysts and economic planners blaming strikes for decreasing investors' confidence may rejoice, as DOLE's strike statistics shows an apparent downtrend since 2001. DOLE Secretary Sto Tomas, attributes the decline in the 'improving industrial relation in the country and the decreasing workers' interests on strike'. 'Moderate unions call it responsible trade unionism'.

Nothing from these above perceptions however, come closer to the workers' reality and the true state of trade unionism in the country.

For one, the decline in strikes is by no means equivalent to improving working conditions. The death of Raymundo Aguba - a contractual worker in Masuda Philippines -who died of exhaustion after working continuously for 22 hours is a case in point. Often, workers particularly the contractual ones, are enticed if not forced to work for longer hours as means to augment income and as job condition but primarily to meet the company's production quota. To keep the workers' awake and working for at least 16 hours, companies like Fashion House Garments in Cavite, gave their workers Bonamine tablets - an anti-dizziness drug taken before traveling. A similar case also happened with Anvil Ensembles wherein workers were given Duromine --a regulated drug belonging to the amphetamine and methamphetamine families to keep them awake. Anvil Ensembles is sub-contractor of baby clothes for such First World Companies such as Sears and Roebuck [PDI-july 5/03] Meanwhile, workers wage is kept at a barely survival level. The call for P125 across the board wage increase has long been the workers' battle cry as their only means to endure the onslaught of price increases. Yet the government did not only refuse the demand but tell the protesting workers and trade unions to get their pay

increase through collective bargaining agreement (CBA) with the company that employs them and to expand union membership through organizing more workers.

The advice is not only misplaced but an anti-worker attitude in the highest term. DOLE knows that both the numbers of local unions and the concluded CBA have been decreasing dramatically and that the workers covered by CBA represent a mere one percent of the country's total employed. The strings of laws and regulations that DOLE has avidly implemented ensure that unions are kept at the minimum and CBA at a much reduced scale.

CTUHR documentation of several federations' experiences for instance, point out that in the last five years, majority of the newly organized unions are busted before they are certified. There are different ways of effecting union busting: dismissal of union officers and active members, shutdown of operation where majority of union members are working, closures, so-called change of management, retrenchment etc. . Then, budding unions so young and vulnerable are forced to go on strike to defend itself or filed a complaint and let government authorities (DOLE to Supreme Court) handle its fate. Frequently, the result is even more frustrating

Union and Strikes (based on DOLE-NCMB/BLR data)				
	2002 (total)	2003	2004	% of total employed (2004)
Strikes	36	41	27	
Enterprise-based Unions/O	11,365	11,472	15,193	
Total Union Members (UM) (000)	3,914	3,923	1,296,373	4%
Number of CBAs	2,700	2,757	1,770	
Workers Covered by CBA/ % (UM)	528,000 or 13% of TUM	540,000 or 14% of total UM	308,796 or 24% of union members	1%

For instance, 100 protesting members of the newly organized Sun Ever Light Labor Union-Independent in Laguna Technopark, Binan, were not allowed to eat for 26 hours while company guards from Emirates and Volks Security Agency beat and clamped them in a nylon-net with steel on both sides every time they attempted to resist the attacks. Then they were dragged outside the compound and pushed towards the gate of the Technopark. On their way out of the company premises last December 1, management through the guards and police made clear that those young women workers did not just lose their union, they lost their jobs too. True to the gesture, guards pre-empted these workers from entering the Technopark the following day (December 2,2004).

Prior to the noise barrage, in October Secretary Patricia Sto. Tomas assumed jurisdiction over the union's complaint filed at the National Conciliation and Mediation Board-DOLE against company's refusal to bargain. In effect, the union was barred from taking any concerted action while agents from PNP- Special Weapons Action Group (SWAG) were deployed to man the production line. At the same time, union officers were dismissed.

In more ways than one, the labyrinthine process of certifying trade union as bargaining agent and concluding a CBA, parallel with massive employment of contractual workers trigger the decline of trade unions. DOLE-BLR's data, for instance, show that as of December 2004 union membership at the enterprise level only accounts to four (4%) percent of the total estimated 31.733 million employed workers in the country. This is 67 percent decrease compared with the 2003 data. *[see table union & strike)*

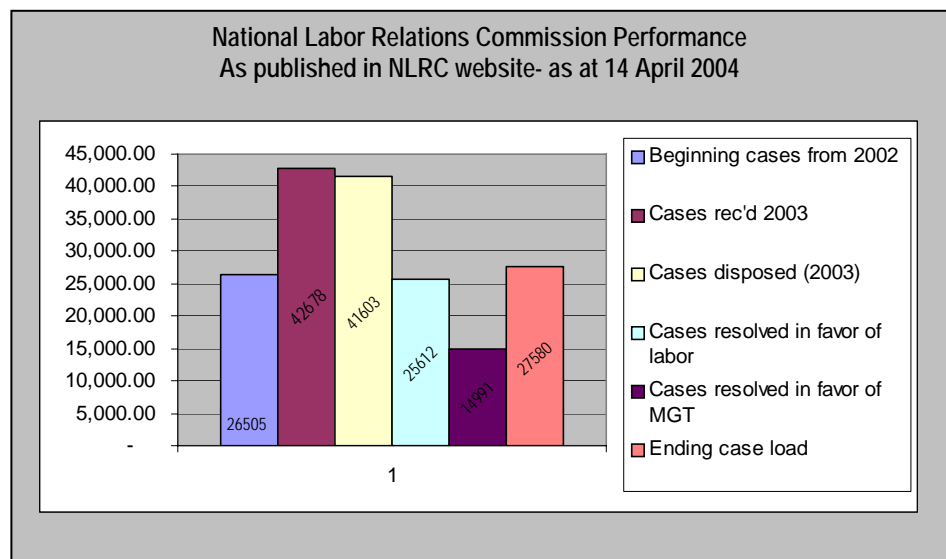
This only proves that if there are new unions who managed to withstand the attacks in its infancy stage, their numbers are not enough to replace or outweigh the rapid loss of membership of existing unions. In addition, the increase means nothing, because it did not result in the increase of membership and the number of workers covered by the CBA. To ink a CBA is the main purpose of organizing union as some sort of guarantee for workers' protection and benefits and the company's commitment to adhere thereto.

Arbitration over strike?

Trade union organizations who called themselves promoters of industrial peace and responsible unionism often if not always advise workers to resort to conciliation and arbitration process, instead of strikes. This can be done through filing of complaints against illegal dismissals to non-payment to minimum wages and such other problems that workers deem unfair at the National Labor Relations Commission (NLRC). This process, according to this argument will avoid strikes and antagonism between workers and employers, and will benefit workers.

The NLRC Performance Report however, is not encouraging. According to the data published in their website, NLRC Commission Proper and regional branches receive an estimated 232 cases a day, that's assuming that there are only 144 working days in a year. Often these involve money claims from complaints against illegal dismissal, non-payment of wages and benefits. Out of this number, the Commission Proper reports 52% annual disposition rate and 63% in its regional offices. This means that only half of the total cases filed are disposed, which is not encouraging. Apart from that, the report also states that disposition does not necessarily mean the case is settled

What happened to other cases that were disposed but not settled is beyond the report. Perhaps, disposition includes handing the case over to Court of Appeals. This makes filing complaints even more frustrating. Interviews with complainants indicate that at the fastest, a decision is handed after three years of filing the complaint, and still appealable at the Court of Appeals, then at the Supreme Court. This means that at the least eight to 10 years are needed to process a complaint. There are instances, where Arbiters acting like



management spokespersons lengthily talk about these long, winding and expensive legal processes to push workers, particularly the unorganized, to settle even if the terms are not satisfactory. This system not only denies the workers possible benefit from filing complaints but abets their further exploitation particularly when the slow wheels of justice outlive the complainants.

When strikes could not be prevented

Notwithstanding the difficulties, the drop in strike statistics cannot be construed as absence of workers' restlessness or the defeat of trade union movement. In 2004 alone, 558 unions with 126,862 members or an average of 46 unions per day filed their Notices of Strikes against mass dismissal, discrimination tantamount to union busting, refusal to bargain and CBA deadlock. Obviously, not all notices consummated into strike. The DOLE settled the disputes or pre-empt the strike in various ways that are not often acceptable to workers. For example, DOLE pre-empted the strike in 62 companies in 2003 and ___ 2004 by assuming jurisdiction or certifying the dispute for compulsory arbitration.

Upon certification, the intended or impending strike or lock-out is automatically prohibited even if there is motion for reconsideration of the certification order in the Office of the Secretary of Labor. (*Sec5, Rule 9, NLRC Rules as Amended*)

In effect, it constitutes a legal strike ban lest, concerted activities, would be declared illegal and the workers could be terminated en masse without any remuneration from the companies.

Is there an option left to the workers? The words of a 60-year old Aling Aida of Hacienda Luisita embody the tragic workers' conditions and the conscious bravery that emanates from it *"Kahit hindi ka magwelga, magugutom din kami at matatanggal sa trabaho, kaya mas mabuti ng magutom ng lumalaban kesa mamatay kami na kahit dangal ay wala."* (Even if we don't go on strike, we will get hungry and will lose our jobs, so it is better to fight and go hungry than die hungry and without our dignity.)

The current administration outsmarting even its predecessors, look at strikes not as a democratic expression of legitimate grievances but deterrents to foreign investment and terrorism at the factory level. So, it has always been easy and swift for the police and military to attack the workers' picketlines the way they attack wild animals or criminals on the loose. In fact, strike-related incidents and cases of violations increased by 81 percent during the year compared with 2003.

To illustrate, in 2004 alone CTUHR documented 121 cases of violations in workers civil and political rights. This figure is 23 percent increase compared with 98 cases in 2003. There were two workers leaders cum organizers who were killed separately in Leyte (Samuel Bandilla) and in Sta. Rosa, Laguna (Mely ----). A big number or 19 percent of these cases attribute to assault at the picketlines such as the dispersal at General Milling Corp last October wounding 15 workers, and Oxford Garments - makers of GAP, Ralph Lauren etc -- in Bulacan in September 9 wherein 26 were unjustifiably arrested and more than 30 were injured. The most violent was the strike dispersal of farm and sugar mill workers at the Hacienda Luisita in November 16, which claimed nine lives. The Luisita massacre is also the most bloodied and most cruel attack on workers strike in the post Marcos dictatorship era.

Violations of Workers Civil and Political Rights Year 2003 and 2004				
Types of Violations	Number of Cases		Number of Victims	
	2003	2004	2003	2004
1. Harassments				
a. Arrest and Detention	1	5	3	5
b. Intimidation	11	15	1,044	276
c.. Sexual Harassment	2	2	3	5
d.. Coercion	6	5	309	260
e. Filing of Criminal Charges	1	6	3	34
2. Assault at the Picketlines	29	24	2,321	11,239
3. Physical Assault/Mauling	17	17	211	247
4. Grave Threats	12	6	933	10,002
5. Unjustified Arrest	10	11	50	58
6. Arbitrary Detention	3	8	35	189
7. Illegal Detention	1	1	7	200
8. Killing	1	2	1	2
9. Frustrated Killing	1	1	1	1
10. Divestment of Property		8		120
11. Arbitrary Arrest		6		160
12. Forced Labor		1		1
13. Massacre		1		9
14. Food Blockade		2		200
TOTAL	95	121	2,558	11,578

The number of victims affected is 11,578 workers, more than 300 percent increase compared with 2003 data (2,558 victims). The sharp increase primarily came from Hacienda Luisita, whose number of strikers and supporters bloated to more than 10,000 people before the massacre..

Like in the past years, the Philippine National Police (PNP) and its units like Regional Special Action Forces, (RSAF) - PNP elite counter-insurgency unit --, Special Warfare Action Group, (SWAG), Regional Mobile Groups (RMG), Special Weapons Action Team (SWAT) figured prominently in the violations. Often, their acts were being justified as acts to implement the law like a Return to Work Order accompanying DOLE's Assumption of Jurisdiction (AJ) Order. The most blatant way of implementing AJ, was when DOLE ordered the Armed Forces (Army and Air Force) to join the PNP in dispersing Hacienda Luisita strike. Not only was the move unconstitutional, but an open admission that the government is willing to tamper on the law to please big capitalist especially if s/he is a known personality.

Perpetrators	Number of Involvements In 63 incidents	
	2003	2004
PNP	27	33
Guards	21	18
Management	5	7
RSAF	5	2
RMG	2	5
Goons	4	5
Scabs	6	0
SWAT	1	8
Unidentified Intelligence Agents	0	0
PEZA Police	1	0
LGU	1	0
Tanod	1	0
NBI	0	0
Sheriff	0	0
Coast Guards	0	1
SWAG	0	2
AFP	0	4
Notes:		
1. Total combined PNP/SWAT/RSAF/RMG Involvements in Y2004 - 50 times or 79% of 63 incidents of assaults and other violations compared with 36 times or 68% of involvements in 2003.		
2. Total Involvements of company including guards, goons, scabs - is 48% of the total incidents of violations;		
3. In most cases, violations were carried-out by composite forces from PNP, and company guards, goons, scabs, and in the case of Hacienda Luisita, assaulting forces, include AFP (Army and Air Force)		

However there are instances, where police attacked strikes or organized workers protest activities even without such Order. In cases such as the General Milling Corporation (GMC) and in the first day of strike at Hacienda Luisita, PNP admitted that their move to disperse strikers was triggered by company management requests. Dispersal of rallies are explained as implementation of No Permit No rally policy, again, a policy that contravenes constitutional and internationally guaranteed basic right to freedom of assembly and of expression.

Militarizing industrial disputes

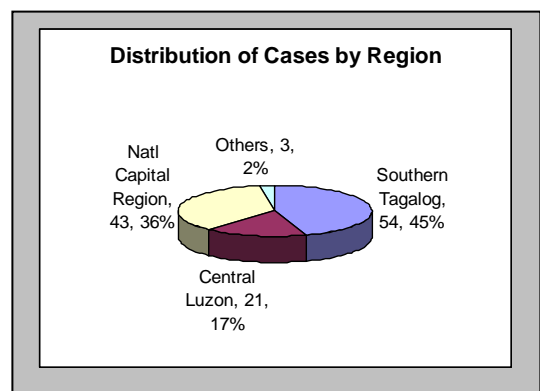
Violations occurred most in highly militarized regions. Southern Tagalog, which ranks second to Mindanao in terms of troops deployment and where President GMA on October 2001, declared that strikes terrorize companies, accounts for 45 percent of the cases. Southern Tagalog is host to 39 military battalions. Since 2001, this is the region where RSAF and PNP personnel camping out in factory gates became a common sight after strike dispersals like in the case of Nestle Philippines and Nissan Motors.

Legally, military has nothing to do with labor disputes but this prohibition remains only in papers. In Osmeña, Compostela Valley for instance, 20 elements of 36th Infantry Brigade of Philippine Army under M/Sgt. Iskarten have been conducting military operation since November 17,2004 against the NAMAOS or Nagkahiusang Mamumuo sa Osmeña (United Workers of Osmena)

Strikes in multinational companies or big companies that the government deems to be indispensable to the national interest received the most violent whipping. These are illustrated in the dispersals at Hacienda Luisita, South Tech Development Corporation - autoparts supplier for Honda and Nissan Cars --, Sulpicio Lines, Oxford Garments- makers of branded clothes such as Ralph Lauren - , General Milling Corporation - makers of snacks & noodles, and Lucio Tan's Asia Brewery.

AJ: Legalizing open attacks on workers and workers rights

At the height of peoples' outrage over Hacienda Luisita massacre, Assumption of Jurisdiction Order was highlighted. Calls for its repeal reverberated in various protest actions and in several congressional and senate committee hearings simultaneous to calls for resignation of Sec. Patricia Sto. Tomas. The media and the public became interested to know what power does labor department secretary has to order the Armed Forces of the Philippines - a job that constitutionally is exclusive to the President. That power emanates from a single provision of the Labour code, that is, Article 263 (g).



Article 263 (g) of the current Labor Code states "The Secretary of Labor and Employment issued an Assumption of Jurisdiction (AJ) order, when in his opinion; there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest... The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce them".

The specific article was formulated during the Martial Law years of then President Marcos. According to Atty. Amado `Gat' Inciong, former undersecretary of the Labor Department during Marcos, the provision was really meant to pre-empt industrial actions in the so-called strategic industries. There was no parameter of what constitute a strategic industry. He added that Martial Law has long been gone, and this provision should have been scrapped, except that then Sen. Ernesto Herrera - TUCP's secretary general sponsored RA 6715 or what is now called Herrera Law in 1989. The controversial provision on AJ was codified and strengthened and has been extensively used by the powerful Secretary of Labor Department..

The NCMB-DOLE data clearly speak that since 2001, AJ issued by the department were to pre-empt strikes or to compel striking workers to return to work within 24 hours. Nothing concerned about the pre-emption of an impending company lock-out even if such move will cause massive workers' lay-off and retrenchment. None that the data show that Order was issued and implemented to force the company to recognize legitimate and DOLE certified unions nor ordering a company to go back to negotiation table, particularly when CBA deadlock was the issue at hand. In cases where the order speaks of enjoining the company to go back to the negotiation, the DOLE never deputized the PNP or the AFP to compel the capitalists to abide by its orders.

So for many years, AJ both provided absolute power to the Secretary of Labor--no one could question what s/he likes to think -- and legal protection for capitalists' abuses that found convenient excuse in the law provision. It is not surprising therefore, that in the last four years beginning January 20, 2001, CTUHR documented 132 incidents of violent strike dispersals including that of Hacienda Luisita, 64 percent of which are directly attributed to the enforcement Sto. Tomas' Assumption of Jurisdiction Order issued in 27 companies. The PNP and AFP are the main responsible in the 94 % of strike dispersals. This does not include the number of unions whose right to organize and strikes was violated when they were barred to strike as their notices of strikes were assumed and certified for compulsory arbitration.

Looking at the record alone, which is more likely to be partial, organized and unorganized workers thus, have enough reasons to ask not only the resignation of for Secretary Sto. Tomas and an immediate repeal of Article 263 (g) of the Labor Code.

More belt tightening, if bodies are still standing

Mixed projections, new taxes and rounds of price increases greeted the workers and the poor this year. VAT proponents for example, are selling VAT increase with promises that noodles and dried fish will be VAT exempt. This is sort of saying, that ordinary people deserve only noodles and dried fish which they have been eating since that `food' came out of the market. Promises of jobs get dimmer as the government chokes on budget deficit and prioritize still, the debt payments and defense expenses. Migrant workers are being sent back from Malaysia, Japan and even UAE.

Planned and attempted protests are again being threatened with Anti-terrorism bill that is still unclear of its definition of what is terrorism, but clear on stamping-out perceived and open any anti-government actions, organizations and individuals. The year 2005, will be very important, as dissatisfaction of poor, middle class and even small businessmen closing shops due to competition over Arroyo government's performance and tiring grandstanding deepens. All groups, sectors and individuals looking for reprieve from political and economic whippings will find a common ground, and act together, maybe not just to oppose VAT but to oppose the Arroyo government. ☺