



International Labor Rights Forum
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Pre-Hearing Brief and Notice of Intent to Testify
Petition of Dole Packaged Foods, LLC.
Accepted Case # 2008-08 and 2008-09
HTS Subheadings 2009.41.20 and 2009.49.20

October 3, 2008

ATTN:
Mrs. Marideth Sandler
Chairperson, GSP Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Room 514
Washington, DC 20508

Pursuant to 73 Fed. Reg. 53,054 (Sept. 12, 2008) and 15 CFR §2007.5, the ILRF files this pre-hearing brief related to the request by Dole Packaged Foods, LLC to expand the GSP preference program with the Philippines to add Pineapple Juice, not concentrated: HTS Subheadings 2009.41.20 and 2009.49.20. The ILRF requests that the USTR hold open the review and defer making a decision pending resolution of the outstanding disputes between Dole Philippines (Dolefil) and local union representing its workers, AK-NAFLU-KMU (Amado Kadena), where there are still dozens of outstanding legal disputes related working conditions and freedom of association violations. Also, we request the Committee to defer a decision on Dole's request pending implementation of fair labor practices by hiring full-time employees and ending the practice of contracting out its workforce to labor cooperatives.

Notice of Intent to Testify: Brian Campbell, Attorney, International Labor Rights Forum, hereby provides notice to the Committee of his intent to testify at the October 20, 2008 hearing related to this matter.

I. Introduction

Pursuant to 19 U.S.C. §2461, the USTR is directed to consider the impact extending benefits will have on the economic development on the island of Mindanao in the

Philippines.¹ Consequently, the petitioner contends in its request that granting benefits would allow them to expand operations in the Philippines, and therefore, promote the U.S. foreign policy goals of economic development and an end to terrorism. However, other than using conclusive statements, Dole has not explained exactly how its operations will promote American foreign policy in the Philippines.

Dole's business practices in Mindanao are very controversial. While its practices are intended to generate wealth for Dole Philippines (Dolefil) and its American-based sole shareholder, Dole Foods Inc, its business operations are not intended to promote the U.S. foreign policy goals of long-term, sustainable, broad-based economic development or, for that matter, bring an end to the war on terror. Dole violates international standards of freedom of association and collective bargaining, and it promotes anti-democratic policies. Also, Dole's practice of using contract labor for its pineapple production are intended to weaken local labor organizations and deprive most of its workforce of the full benefits of Dole's expansion and growth in contravention of U.S. foreign policy goals, and the goals of the GSP program.

Current US Government development-related policy is aimed encouraging economic development by promoting "conditions enabling developing countries to achieve self-sustaining economic growth with *equitable distribution* of the benefits."² To promote these objectives, Congress emphasized that "sustaining growth *with equity*" requires that a "majority of people in developing countries . . . participate in a process of equitable growth" by being able to "influence decisions that shape their lives."³ To achieve these goals, the US employs several different development related programs, including the GSP program, where the purpose is to promote US policy goals related to development through targeted trade benefits. In implementing these objectives, US Government policy recognizes the import role that free and independent trade unions play toward achieving these goals. For that reason, the US Congress specifically directed the United States Trade Representative to ensure that internationally recognized workers' rights are protected, including the freedom of association, when implementing the GSP program.⁴

Labor organizations are fundamental components to long-term, equitable development. Strong, democratic labor organizations are vital for promoting democratic change; improving labor laws, relations, policies and practices; expanding the social dialogue to encourage basic protections from the government; promoting sustainable development; and, of primary importance in the Philippine context, promoting good governance and combating corruption.

¹ The petitioner did not include any information relating to the impact of extending GSP benefits to all GSP beneficiary countries, and instead focused only on how it's own operations in the Philippines will be impacted. As a result, our comments will relate only to Dole's pineapple operations in the Philippines, and not in the other potential beneficiary countries, or to the operations of the other significant potential beneficiaries, such as Del Monte and its family of companies, which also are engaged in controversial business practices in the Philippines.

² See Foreign Assistance Act of 1961, PL 87-195 at Sec. 101(a)(2).

³ Id. at Sec. 102.

⁴ 19 U.S.C. §2467(4)

From an economic perspective, there is a strong correlation between the protection of core labor standards, including the right to freedom of association, and strong economic growth.⁵ Strong labor organizations play a key role in ensuring that the gains from global trade are shared across a broad spectrum of society, which promotes expansion of domestic markets and sustained economic development. Also, strong labor organizations play a key role in increasing domestic savings and investment and lessening the reliance on outside capital and keeping capital gains within a country.

II. Background on Dole Foods Inc.'s operations in the Philippines.

Working out of the headquarters of Dole Foods Inc. (Dole), petitioner Dole Packages Foods, LLC is a closely held subsidiary corporation responsible for importing pineapple products into the United States from Dole's three canneries in Asia. Dole's Worldwide Packaged Food Division operates two canneries in Thailand and one in the Philippines.⁶ These canneries supply North America, Europe, Asia, Australia and the Middle East. Dolefil, which manages Dole Foods' interest in the Philippines, is a wholly owned subsidiary of Dole Foods Inc. and produces much of the pineapples and pineapple juice that are the subject of this review. According to Dole, the pineapples used at these canneries are sourced from a large Dole-operated plantation and independent growers in the Philippines and from independent growers in Thailand.

Dolefil is **not** a publicly traded company. Most Filipinos cannot purchase shares in Dolefil and cannot share in the growth and development that Dolefil claims to bring to the Philippines, but which is actually intended to benefit its U.S.-based parent company.

Dole operates an industrial farm in Polomolok, Mindanao, that covers "approximately 24,000 leased acres in the Philippines. Approximately 17,000 acres of the plantation are leased to Dole by a cooperative of Dole employees that acquired the land pursuant to agrarian reform law. The remaining 7,000 acres are leased from individual land owners. A cannery, freezer, juice concentrate plant, a box forming plant and a can manufacturing plant, each owned by Dole, are located at or near the pineapple plantation."⁷ Dole's pineapple operations, which produces the pineapple juice and other pineapple products for export to the United States, has been designated a Special Economic Zone (SEZ) by PEZA and receives significant incentives and tax breaks by the Philippine government. Some of Dole's facilities in the SEZ are SAI 8001 certified for labor standards and ISO 14001 certified for environmental standards.⁸

⁵ See Organisation for Economic Co-operation and Development. (1996) *Trade, Employment and Labour Standards: A Study of Core Workers Rights and International Trade*. Paris: OECD. See also, Kucera, David. (2001) *The Effects of Core Workers Rights on Labour Costs and Foreign Direct Investment: Evaluating the "Conventional Wisdom"*. Geneva: International Institute for Labour Studies.; Dølvik, Jon Erik and Liv Tørrres. (2002) *Globalisation, Work, and Labour Standards*. Oslo: Fafo Institute for Applied Social Science.

⁶ See Dole's Website at <http://www.dole.com/CompanyInfo/About/Worldwide/Asia.jsp>.

⁷ See DOLE FOOD CO INC, 10-K. S.E.C. Filing 08679271. Mar 10 2008

⁸ Dole does not address on its website whether SAI 8001 certification applies beyond the processing facilities.

Dole has a total workforce of around 20,000 workers. Around 6,000 are regular employees of Dole. 14,000 are contract works engaged in flexible working arrangements. The regular workforce has been reduced by at least 3,000 since the early 1990s.

III. Dole Philippines has both skirted the law and abused the legal system to intimidate its workers and weaken their ability to collectively seek improved living standards.

Dole's strategy for making a profit in the Philippines prioritizes using contract laborers, cutting full time positions, and expanding production through one-sided lease-back agreements and contract farming. Dole Philippines engages in unfair labor practices and illegal firings to weaken the trade union that represents its employees, and it abuses the legal system to silence its critics.

Currently pending in courts are at least 24 cases alleging illegal acts by Dolefil against its workers, including illegal termination and illegal suspensions. In one recent case, Dole Philippines' pretext for firing a union leader was the criminal complaint for criminal libel that Dole itself filed against one union leader using arcane, colonial era criminal libel laws often used to severely punish criticism and curtail free speech. Additionally, for over 10 years, Dolefil specifically refused to abide by a Department of Labor and Employment ruling that they were using contract labor in violation of the law and ordering them to regularize their employment.

A. Criminal libel is a violation of the right to freedom of association.

Under Philippine law, a company can file charges with the police claiming that its reputation or image has been damaged by a person's public statements, often even if those statements are true. According to the Revised Penal Code, criminal libel is the "public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person . . ." (emphasis added).⁹

When charged with libel, the defendant is presumed to have made the statement with malicious intent and has the responsibility prove to the court otherwise.¹⁰ To defend himself, the defendant must prove a negative; that he was not "prompted by personal ill-will or spite" and that he was speaking "in response to duty" and not "simply to injure the reputation of the person who claims to have been defamed."¹¹ Because the defendant carries the burden of proof, defending a libel case can be extremely difficult.

⁹ See Philippines Revised Penal Code, Art 353. Available at <http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook2.htm>

¹⁰ See Philippine Penal Code Art. 354.

¹¹ See *Diaz v. Philippines*, G.R. 159787, Supreme Court of the Philippines, May 25, 2007.

Even if the alleged libelous statement was factually true, a person can still be arrested and convicted for libel.¹² Truth can be introduced as a part of the defense, but is not itself an absolute defense to criminal libel in all cases.

A person found guilty of criminal libel faces serious penalties, with jail terms ranging from 6 months to four year or more, and fines ranging from 200 to 6,000 pesos.¹³ A person convicted of criminal libel will also lose his right to hold public office, to follow a profession, and if he is incarcerated for more than 18 month, he will lose his right to vote.¹⁴ For those without a lot of resources, defending a libel charge can be an expensive and harrowing experience.¹⁵

Because criminal libel is difficult to defend, and the charges carry such heavy penalties, just the threat of prosecution can have a strong chilling effect on speech. For that reason, criminal libel is a violation of internationally recognized workers' rights, especially when used as a weapon to silence critical union leaders or workers.

The ILO Committee on Freedom of Associations has consistently held that “the right to express opinions through the press” is a fundamental right protected by the right to freedom of association.¹⁶ In order to exercise the right to freedom of association, the freedom of expression, the freedom to hold opinions without interference, and the ability to impart information and ideas through the media “constitute civil liberties which are essential for the normal exercise of” workers' rights.¹⁷

In the Philippines', politicians, public figures, and others with significant financial and political resources, commonly use criminal libel, as well as other SLAPP (Strategic Lawsuits Against Public Participation) charges such as conspiracy and sedition, to intimidate and threaten their critics and chill speech.¹⁸ In one recent case, Annie Geron, the Secretary-General of Public Sector Labour Independent Confederation (PSLINK) Philippines was charged with libel by the Director General of Technical Education and Skills Development Authority, Boboy Suyjuco, who was her boss. PSLINK had just filed charges against him with the President's Anti-Graft Commission for embezzlement and

¹² In *Vasquez v. Court of Appeals*, G.R. 118971, (Sept. 1999), the Philippine Supreme Court ruled that truth is an absolute defense when a public official charges someone with criminal libel, citing the “actual malice” standards of *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). This ruling does not appear to apply to *Dolefil*, which is a private corporate citizen.

¹³ See Philippine Revised Penal Code Art. 27 and Art. 355. available at <http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook1.htm>

¹⁴ See Philippine Revised Penal Code Art. 43.

¹⁵ The Supreme Court, under the leadership of Chief Justice Reynato Puno, issued Administrative Circular No. 08-2008 declaring that courts should use their discretion to impose fines instead of jail time for criminal libel verdicts. This is a non-binding circular. See http://www.supremecourt.gov.ph/circulars/2008/jan/admin%20circ%2008-2008_libel.pdf

¹⁶ ILO. Committee on Freedom of Association. Digest of Decisions. 2006 at ¶¶37,155.

¹⁷ Id at ¶38.

¹⁸ See *Pinoy Press*, “Libel Case versus Environmental Activist, Journalist Junked”, December 15, 2007. Available at <http://www.pinoypress.net/2007/12/15/philippines-libel-case-vs-environmental-activist-journalist-junked/>.

other corrupt practices.¹⁹ Soon after, Mrs. Geron was visited by two men, who introduced themselves as policemen and served the court subpoena. Mrs. Geron perceived this as an attempt to intimidate her since subpoenas are usually sent by registered mail.²⁰ Because of her stand against public corruption, Mrs. Geron still faces the possibility of going to jail for speaking out. Now, Mrs. Geron and the union must spend a significant amount of time and resources to defending themselves in court.

B. Dole Philippines uses charges of criminal libel to silence criticism and intimidate its workers.

Dole Philippines also employs criminal libel as an offensive tool to intimidate union leaders and silence any criticism. In 2006, when Dole Philippines (Dolefil) and the workers' union, AK-NAFLU-KMU (Amado Kadena), were engaged in contract negotiations, Dolefil filed charges of criminal libel against then Secretary of the Amado Kadena Dolefil workers' union, Mr. Oscar Serohijos.

On July 21, 2006, Dolefil management wrote a letter accusing the union secretary, Mr. Serohijos, of making a false and malicious statement against the company and threatened to fire him for committing "a crime or offense by the employee against the employer."²¹ In the letter, Dolefil's Manager for Industrial Relations, Robert Buranday, accused Mr. Serohijos of making false statements to a reporter concerning Dolefil's disposal of chemicals in a waste basin behind the facility. According to Mr. Buranday, the July 19 issue of *Periodico Banat* contained an article entitled "GenSan (General Santos City) at Risk From Chemicals from Polomolok." The reporter, who was covering a prayer rally conducted by the union outside the Dolefil facility in support of their on-going contract negotiations, reported that Mr. Serohijos had informed him that the "waste basin is a dumping area of all the wastes . . . including different chemicals,"²² and that the waste basin is allowed to overflow when it rains. The report also states that Dolefil uses banned chemicals. Finally, it attributes several other statements to Mr. Serohijos, including that the union may contact outside organizations, like Greenpeace, to come and investigate.

On July 23, Mr. Serohijos responded to Dolefil management by admitting that he had been interviewed during the prayer rally, but he denied that he had made those statements.²³ **Appendix 1** below is a set photographs taken of the "waste basin" and the stream into which it flows, which was the subject of the article in question. These photographs indicate that, whether Mr. Serohijos made the statement or not, there is evidence of the truth of the statement.

¹⁹ International Trade Union Confederation (ITUC), Annual Survey of Trade Union Rights 2007. available at <http://survey07.ituc-csi.org/getcountry.php?IDCountry=PHL&IDLang=EN>

²⁰ Committee on Freedom of Association, Philippines Case 2546, Public Services Labor Independent Confederation (PSLINK) supported by Public Services International (PSI), Report No. 349 (*Vol. XCI, 2008, Series B, No. 1*). Available at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?&PARA=8342&FILE=2571&hdoff=1&DISPLAY=CONCLUSION,BACKGROUND&LANG=EN>

²¹ Letter from R. Buranday, Manager of Industrial Relations, Dolefil to Mr. Serohijos, July 21, 2006.

²² *Id.* at 1

²³ Letter from Mr. Serohijos to Mr. Buranday, July 23, 2006. On file with the ILRF.

In the letter, however, Mr. Serohijos also described in detailed a series of incidents where employees had complained to Dolefil that they been exposed to chemicals, and data from the hospital that showed a rise in upper respiratory track infections that the he attributed to the constant exposure to chemical fumes in the facility.

Dolefil management, directed by Mr. Kevin Davis, decided to press charges anyway. Mr. Serohijos was arrested and held by police for 8 hours, and for two years now, has had criminal charges hanging over his head. He still faces the possibility of going to jail for multiple years if he is found guilty. Despite efforts to work through legal counsel to get the charges dismissed, the government prosecutor's office and Dolefil have ignored his requests.

Union leaders and members also faced illegal pressure tactics by Dolefil aimed at weakening the union during the collective bargaining negotiations in 2005 - 2006.²⁴ The union has alleged in court that Dolefil fired dozens of union members, and suspended hundreds of others, illegally and in retaliation for their union activities. They are currently seeking reinstatement of their colleagues. Dolefil and the Union agreed to a CBA in October 2007, nearly two years after the last agreement had expired, and they will be beginning a new round of mid-contract negotiations early in 2009.

Finally, as discussed more fully below in Section IV(B), Dole engages in business practices that the Philippine Supreme Court ruled were in direct contravention of Philippine labor laws, and that Dole had for years ignored orders by the Department of Labor and Employment to end these practices.²⁵

Dole's purposeful skirting of Philippine labor laws and abuse of the Philippine legal system cannot possibly be intended to promote U.S. foreign policy goals or the goal of the GSP program of sustained, equitable economic development.

IV. Dole's practice of using contract labor for its pineapple production is intended to deprive most of its workforce the benefits of regular work, freedom of association, and acceptable conditions at work.

Since the late 1980s, Dole's business model and expansion plans have relied on outsourced and contracted labor for the majority of its work. Dole's practice of using

²⁴ The Dolefil Union and Management were engaged in collective bargaining agreement (CBA) negotiations for nearly two years, as they had failed to reach agreement on several provisions. One of those provisions was a rice subsidy, whereby Dolefil had agreed in the previous CBA to provide the union with rice for their families and communities. The Union then sold the rice at below market rates to its members and their family, subsidizing the rising cost of food. Dolefil management, however, refused to agree to this provision again, arguing that they should only have to pay money towards rice. As Dolefil continues to expand production, replacing food crops with export crops, food security is a serious concern to the Union and the community, as was underscored by the rice shortage and dramatic rise in prices for rice over the past year. However, the union was unable to get Dolefil to agree to continue the rice subsidy, and have therefore been hit hard by the rising cost of rice.

²⁵ *Dole Philippines, Inc. v. Medel Esteva*, G.R. No. 161115, Philippine Supreme Court, November 30, 2006.

contract labor for its pineapple production, which is intended to deprive most of its workforce the benefits of freedom of association and acceptable conditions at work with respect to minimum wage and hours of work, are directly contrary to the development goals GSP program seeks to promote.²⁶ Unlike regular workers, these workers are underpaid, deprived of union benefits, and left in constant job insecurity.²⁷ Many have also been stripped of their lands²⁸.

Since the late 1980's, Dole has utilized the Comprehensive Agricultural Reform Program (CARP), a Filipino land reform program first instituted in 1988, as an instrument to obscure its relationship with its workforce, and to secure cheap land at the expense of poor farmers.²⁹ CARP, though officially instituted for the purpose of redistributing property to landless peasants, was highly influenced by politically connected landlords and a powerful agribusiness lobby.³⁰ Dolefil was the first large agribusiness affected by CARP, and, because it would be the model precedent for the rest of the country, all eyes were on how Dole implemented its obligation under CARP. Since that time, Dole has pioneered the development of "labor cooperatives" as a means to reduce its regular workforce and expand its use of contract labor to capture the benefits of disempowered, cheap labor.³¹

Under CARP, Dole's land was divided among its workers, and other who had long-standing land claims before Dole had taken control of their land when it arrived in the Philippines in the 1960's. The workers were provided nominal title to the land, but prevented by law from being able to control their land. Instead, they were obliged to form "labor cooperatives."³² While these cooperatives were intended as a way to ensure that workers had some influence over the use of their land, from the start, the cooperatives were really controlled by rich landlords.³³ Through its dealings with the cooperatives, Dole has been able to take advantage of a number of worker abuses: first, Dole has outsourced its labor force to contract labor and replaced full-time regular employment system in place before CARP.³⁴ Second, Dole has acted in flagrant disregard for Philippine labor law by continuing using contract labor from the cooperatives despite a

²⁶ 19U.S.C. section 2467(4)

²⁷ Field research conducted by ILRF partners in the provinces of Sultan Kudarat, South Cotabato and Saranggani between June 2006 and June 2007. Primary data-gathering included surveys, interviews, and focus group discussions with key informants such as union leaders, company officers, community leaders, government officials, plantation growers, land owners, and children. 91 individuals were interviewed.

²⁸ Borras, Saturino M. Jr. and Jennifer C. Franco. "Struggles for Land and Livelihood: Redistributive Reform in Agribusiness Plantations in the Philippines." *Critical Asian Studies* 37:3 (2005): 339.

²⁹ Flores-Obanil, Carmina B. and Mary Ann Manahan. "Leaseback Arrangements: Reversing Agrarian Reform Gains in the Philippines." *LRAN* (8 Feb. 2007) 4.

³⁰ Fuwa, Nobuhiko. "Politics and Economics of Land Reform in the Philippines: A Survey." Chiba University (May 2000): 23. <<http://www.h.chiba-u.jp/mkt/LANDREF.pdf>> Borras and Franco 337.

³¹ Flores-Obanil and Manahan 5.

³² Ofreneo, Dr. Rene E. "The LEASEBACK Mode of Agrarian Reform: Strengths, Weaknesses and Options." *Action for Economic Reforms* (Sept. 2000): 3.

³³ Sietze, Vellema. "Agribusiness Control in Phillipine Farm Contracting: From Formality to Intervention." *Wageningen University. International Journal of Sociology of Agriculture and Food* 8 (1999): 95.

³⁴ Field research conducted by ILRF partners.

finding by the Philippine government that this was illegal.³⁵ Third, Dole has extracted land from cooperative members in one-sided lease-back agreements which have deprived many Filipinos of the intended benefits of the CARP program.³⁶ Fourth, Dole takes advantage of exploitive labor practices by cooperative landlords.³⁷

A. Dole has illegally flexibilized its workforce under the labor cooperatives.

Dole has essentially subcontracted its workforce by creating the labor cooperatives; in other words, the company has effectively removed itself from its employees by one step in the supply chain, thus muddling the employer-employee relationship.³⁸ This has enabled the corporation to flexibilize its workforce. While some workers on cooperative lands continue to labor under regular employee status, the majority have been contractualized. In the treatment of its regular workers Dole complies with international labor standards³⁹; however, Dole has ensured that regular workers make up only a fraction of its workforce. Under CARP, Dole has systematically transferred over two thirds of its labor force into benefit-deprived contract labor arrangements.⁴⁰

In order to accomplish this, Dole retrenched over 3,500 of its regular workers from 1989 to 1998.⁴¹ The corporation forced less productive workers to retire, harassing many until they quit, and hired contract workers in their stead. Many of the retrenched workers were even re-hired as contract workers, with agreements stating that their employment was predicated on the company's "need of temporary workers to augment present manning" due to "abnormal increases in production requirements."⁴² By 2001 Dole employed a consistent 12,000 contract workers, unheard of before CARP.⁴³ While Philippine law dictates that workers must be regularized after six months, many of Dole's have now labored as contract workers for years.⁴⁴

Dole's contract workers are denied the same rights afforded to Dole's regular workers. They are refused the right to organize or benefits gained in negotiations by the regular union, and are consequently left with poor wages and permanent job-insecurity.⁴⁵ Contract workers are paid far less than regular employees, and even often receive below minimum wage. According to Dole Philippines, full-time employees make Php 410 (US\$10.00) per day including benefits, which is higher than the government mandated

³⁵ *Dole Philippines, Inc. v. Medel Esteva*, G.R. No. 161115, Philippine Supreme Court, November 30, 2006.

³⁶ Ofreneo 4.

³⁷ Ofreneo 6.

³⁸ Borrás and Franco 347.

³⁹ "Dole Philippines Facts." Dole Food Company, Inc. (2008). 3 Oct. 2008

<http://www.dole.com/CompanyInfo/DolePhilippinesFacts/DolePhilippinesFacts_Index.jsp>.

⁴⁰ Field research conducted by ILRF partners.

⁴¹ Borrás and Franco 348.

Ofreano 6.

Fuwa 6.

⁴² Dole contract labor agreement: from field research conducted by ILRF partners.

⁴³ Field research conducted by ILRF partners.

⁴⁴ Field research conducted by ILRF partners.

⁴⁵ Field research conducted by ILRF partners.

minimum wage of Php 229.50 (US \$5.60).⁴⁶ Contract workers in Dole’s labor cooperatives, on the other hand, are compensated by a quota system called “pakyawan.” These quotas are generally placed far above the average laborer’s eight-hour production capacity, and thus workers often receive below minimum wage. Pineapple harvesters, for example, are paid on average a mere Php 80 (US \$1.86) per day, nearly three times less than the minimum wage.⁴⁷

B. Dole has acted in flagrant disregard for Philippine labor law in its continuation of the use of contract labor within the cooperatives.

Dole’s contract labor scheme described above, though, has been implemented despite clear orders from the Department of Labor and Employment that Dole regularize its workforce. In 2006, the Philippine Supreme Court found that Dole Philippines had specifically disregarded a “cease and desist” order from the Philippines Department of Labor and Employment to end its relationship with illegal labor-only contracting cooperatives. The respondents, contractual Dole employees, claimed that they had essentially been illegally dismissed since Dole had failed to give them regular work by placing them on “stay at home status” for over six months. They also claimed that they were given a wage differential.

The Supreme Court found that Dole had violated Philippine laws by engaging contract labor in lieu of regular workers. The court was clear in its finding that Philippine laws prohibit the use of labor-only contracting precisely because it encourages circumvention of the provisions of the Labor Code on the workers' right to security of tenure and to self-organization.⁴⁸ The court then took the extraordinary step of chided Dole for clear defiance of a lawful order, issued nearly 10 year before by the Department of Labor and Employment ordering Dole to “cease and desist” its use of labor-only contracting. The Court then ordered that Dole reinstate the workers as regular employees.⁴⁹

C. Dole has extracted cheap land and labor at the expense of labor cooperative members through “lease-back” agreements.

Labor cooperatives have not only provided Dole with an inexpensive and illegal means to obtain labor, but have also secured Dole with long-term, cheap leases at the expense of cooperative members. Dole currently leases thousands of hectares of property, given to workers under CARP, at extremely low prices through a “lease-back” scheme.⁵⁰ As a result, workers are often effectively stripped of their land and sometimes of their jobs as well.⁵¹ In Bukidnon, for example, the corporation has leased 9,000 hectares of land which were awarded to the DOLEFIL Agrarian Reform Beneficiaries Cooperative, Inc. (DARBCI) under this lease-back scheme. DARBCI’s initial proposal was a fair price of

⁴⁶ “Dole Philippines Facts.” Dole Food Company, Inc. (2008). 3 Oct. 2008

<http://www.dole.com/CompanyInfo/DolePhilippinesFacts/DolePhilippinesFacts_Index.jsp>.

⁴⁷ Field research conducted by ILRF partners.

⁴⁸ *Dole Philippines, Inc. v. Medel Esteva*, G.R. No. 161115, Philippine Supreme Court, November 30, 2006.

⁴⁹ *Id.*

⁵⁰ Fuwa 23.

⁵¹ Borrás and Franco 338, 339.

P13,000 per hectare per year, based on the land acquisition cost. After bargaining, however, Dole was able to secure the land under a fixed ten year lease for the extremely low price of Php3,200 a year from the debt-ridden cooperative members.⁵² The term of lease was extended from 10 years in the 1988 agreement to 25 years in a 1998 agreement, which is subject to a review and/or renegotiation after the first 10 years and every five years thereafter. It is renewable for another 25 years upon agreement by DOLEFIL and DARBCI. The starting rental for the new agreement was fixed at P8,000 in the first year. According to the Bureau of Agriculture Statistics, Dole earns a net profit of around P125,000 per hectare⁵³ for a one-year cropping, nearly 15 times the price it pays in rent.⁵⁴

In these “lease-back” arrangements, Dole “allows” peasant farmers continue to work on their own lands, but as contract workers instead of as landlords⁵⁵. In some cases, however, the corporation has even later retrenched these workers as part of its systematic flexibilization scheme. In these cases Dole has stripped its workers not only of their lands, but even of the right to work their lands, leaving them jobless as well. 3,500 such cooperative workers were retrenched from DARBCI. These workers were then threatened by Dole with being “de-listed” from the land reform beneficiary role, since under CARP, beneficiaries are required to work.⁵⁶ This is essentially a land-grabbing scheme employed by Dole.

D. Dole has failed to protect employees in its supply chain from exploitive cooperative landlords.

Because of Dole business practice of outsourcing most of its workforce to cooperatives, landlords have record profits. A small number of landowning families dominate national politics; these landlords were a part of the creation of CARP and, like the multinationals, use the arrangement to their own profit.⁵⁷ In the first ten year period at DARBCI, officers retained 60% of the cooperative’s earnings, while distributing only 40% to members. In the ten-year period of the first LBA, the cooperative received at least P367.24 million. There are no records of any board reportings to members, or financial statements or annual reports since 1992. Indeed, the cooperative now has little to show for this money⁵⁸. Landlords on other cooperatives steal from workers through a number of other plots, including taking cooperative money allotted to the members for education and forcing workers to rent tools and other inputs supplied by Dole. They furthermore lend to members at exorbitant rates and withhold their cooperative ATM cards as collateral.⁵⁹ Dole does nothing to prevent its workers from being exploited, and has been frequently

⁵² Ofreneo 4.

⁵³ See Mataia and Soriano (2006), “The Potential for Rice Diversification in Key Rice Producing Regions: South Cotabato”, in Dawe, Moya and Casiwan, *Why Does the Philippines Import Rice? Meeting the Challenges of Trade Liberalization*, International Rice Research Institute. at 150 – 151.

⁵⁴ Ofreneo 9

⁵⁵ Flores-Obanil and Manahan 7-9.

⁵⁶ Borras and Franco 338.

⁵⁷ Fuwa 30.

⁵⁸ Ofreneo 4.

⁵⁹ Field research conducted by ILRF partners.

accused of using its influence and power to manipulate internal workings of these cooperatives

V. The Philippines is an increasingly unequal country that needs programs and investors who will promote sustainable, broad-based economic development.

By extending benefits for pineapple juice, Dole argues that it will acquire more land and labor to expand its operations in the Philippines. If so, Dole, its investors, and its subsidiaries, like Dole Philippines, will certainly benefit from the cost-savings provided by more duty free access to U.S. consumers. Dole may also enrich a handful of land owners who lease their property to Dole. However, by and large, a significant portion of Dole's workforce will continue to labor as contract workers, making poverty level wages in sweatshop-like conditions in the fields growing pineapples exclusively for Dole.

To ensure that Dole's expansion contributes to the growth and development of the local communities, Dole must fully respect for internationally recognized workers' rights. First, it must drop the criminal libel charges it filed against Mr. Serohijos. Freedom of speech, and respect for others ideas and opinions, is not simply a fundamental right, but a precondition for democratic reform. The Philippines Supreme Court even noted this in its landmark case, *Vasquez v. Court of Appeals*,⁶⁰ stating "As Justice Brandeis has said, 'public discussion is a political duty' and the 'greatest menace to freedom is an inert people.' Dole's abuse of the legal system to punish a union leader, and the always present threat that Dole could do it again to someone else, is one of the greatest menaces to freedom and democracy that Dole workers, and the people of Mindanao, face.

Also, Dole must reinstate the workers who were illegally fired during the last collective bargaining negotiation process. Amado Kadena, and all other democratically elected unions, are key stakeholders in efforts to ensure long-term, sustainable growth in Mindanao, where disenfranchisement and poverty are fueling conflict. Strong, democratic labor organizations are vital for promoting social and economic empowerment, equitable growth, and democratic reforms. To be effective, union members must be able to work together to bargain freely and have tools and power to promote the welfare of their communities. To do so, workers must be free from the threat or fear of retaliation.

Finally, Dole must end its system of contract labor that has come to replace its full-time, regular workforce. Through this scheme, workers are deprived by Dole of their ability to exercise their freedom of association, their union benefits and minimum wage, and they are left in constant job insecurity. These business practices, which seek to deny workers their fundamental rights, are "associated with low productivity, undermines the rule of law, and [does] not contribute to development in the long run."⁶¹

⁶⁰ See *Vasquez v. Court of Appeals*, G.R. 118971. Philippine Supreme Court, Sept. 1999.

⁶¹ Kimberly Anne Elliot, *Labor Standards, Development and CAFTA*, International Economics Policy Brief pb04-02, Peterson Institute and Center for Global Development, March 2004.

VI. Philippine Government is currently under review by the TPSC for serious violations of workers' rights.

Currently, the Philippines Government's status as a participant in the GSP is under review for allegations of widespread and systematic violence against trade unionists, including killings and disappearances of union leaders, military intervention in trade union activities, and arrests of trade union leaders because of their activities.⁶² The Kilusang Mayo Uno and its affiliated unions, like the Dolefil union, AK-NAFLU-KMU, have borne the brunt of the government's repressive measures.

Also, the Philippine Government, through its executive branch agencies such as the Philippines Economic Zone Authority (PEZA) and the Department of Labor and Employment, employs a heavy handed approach in its effort to end strikes by outright denying many workers the right to strike through assuming jurisdiction over labor disputes pursuant to Philippine Labor Code §263(g), which can lead to threats and violence against workers. PEZA is the government agency responsible for oversight of Dole's operations in Mindanao.

The International Labor Organization, acting on several complaints filed by Philippine unions, has officially requested that the Philippines accept an ILO high-level mission to investigate the allegations of union murders and disappearances, as well as other violations of internationally recognized workers rights. For years, the ILO has requested that the Philippines meet its responsibility to protect workers' rights, providing a long list of violations committed by the Philippine government. Despite request from both the ILO and the United States Trade Representative, the Philippine government is steadfast in its refusal to agree to the ILO's request to send a mission to examine these allegations.

Dole's actions in the Philippines have contributed to the Philippine Government's overall efforts weaken the KMU and other unions as a part of its economic development strategy. Until Dole ends these supportive efforts, the US should not extend any more benefits to Dole and its family of companies.

⁶²http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2008_Annual_Review/Section_Index.html

Appendix 1: Photos of the Dole Facilities in Polomolok, Mindanao



Image 1: Dole's Philippine operations have been designated a Special Economic Zone, and Dole receives significant tax and investment benefits from the Philippine government.



Image 2: Contract workers on the Dole plantation in Polomolok, Philippines near the Dole Processing facilities.



Image 3: Dole Philippines' waste basin before the water runs into a publicly accessible stream.



Image 4: Dole's waste water flowing out of the lower pond and into a creek bed.



Image 5: Dole's waste water creek just before merging with another creek.



Image 6: Dole's waste water is bright green in color and has a pungent smell.



Image 7: A local farmer brings his cow for a drink at the confluence where Dole's waste water joins a stream. Dole's wastewater is the stream on the right with the green color.



Image 8: Another view of the confluence.



Image 9: A small village located on the wastewater creek known as Aquino Gate Purok (One). There is another small village on hill on the opposite side of the creek as well.

