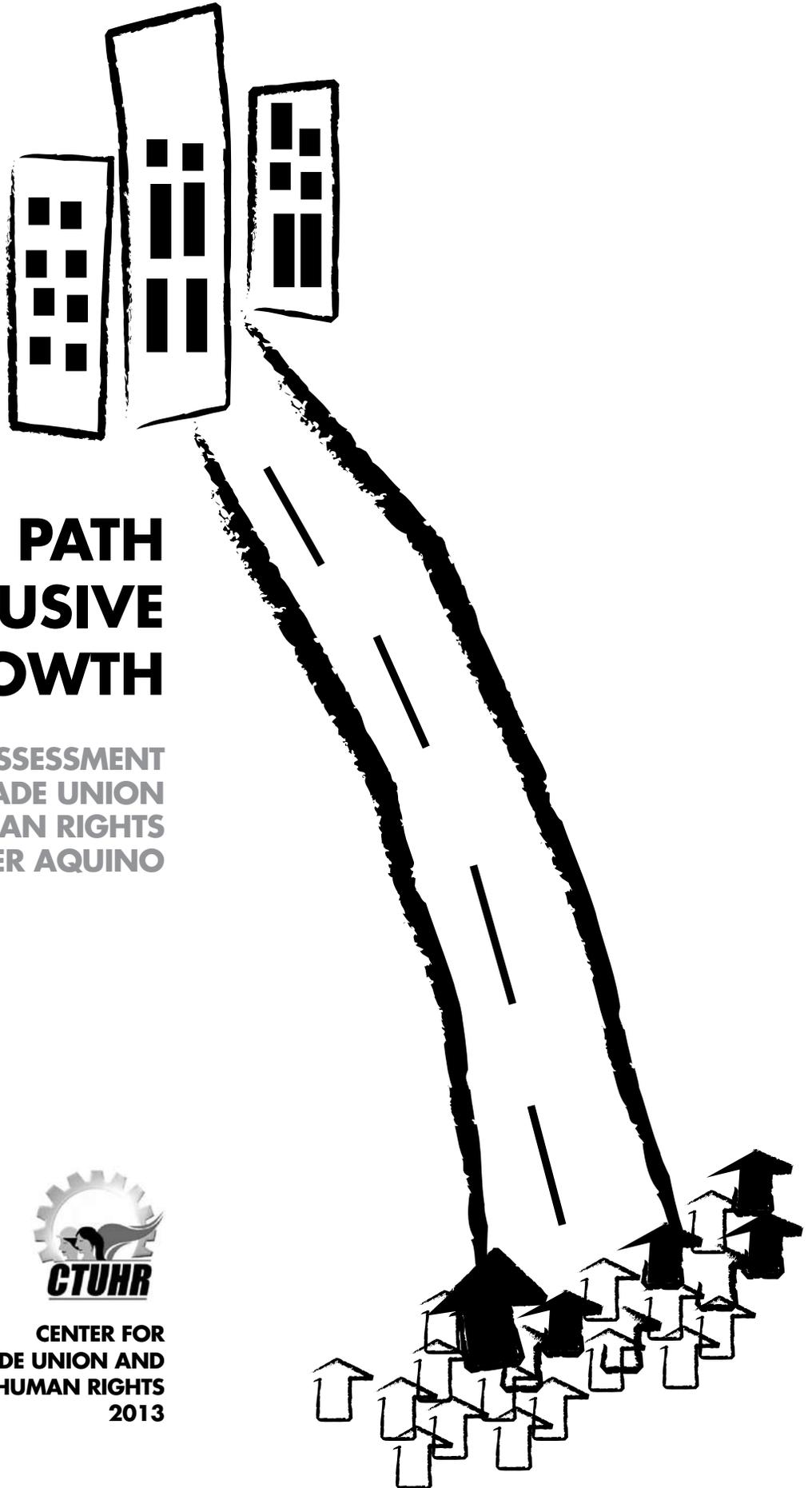


STRAIGHT PATH TO EXCLUSIVE GROWTH

A MIDTERM ASSESSMENT
OF THE TRADE UNION
AND HUMAN RIGHTS
SITUATION UNDER AQUINO



CENTER FOR
TRADE UNION AND
HUMAN RIGHTS
2013



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“The price of a 150-gm can of a common brand of sardines went up from P13.25 to P15.75, the cheapest commercial rice rose from Php 34.00 per kg. to P38.00 per kg. and a kilogram of tilapia (common man’s fish) spiked from P85 per kg. to somewhere between P100 to P120 per kg. We are paying more for water, electricity and often, we don’t have water, except when raining.”

This is what Nanay Inday, an urban poor from a community in Quezon City explained in Filipino, when asked by CTUHR to comment on President Aquino’s first three years in office.

“*Mas mahirap talaga ngayon, konti na lang ang nabibili sa sweldo namin,*” (It’s really more difficult now, we can buy less in the market from our salaries), lamented by a group of workers in response to the question if their lives are better now than three years previous.

The answers are plain, and do not require an economist to see that that so-called economic growth of 7.3 percent in gross domestic product (GDP) and good credit ratings that the Philippines achieved did not result to more and cheaper food, and better jobs for the country’s poor majority. The new labor and economic policies accompanying the Aquino government’s “straight path” persistently shun workers’ calls for better wages and decent secure jobs while privatizing the social services and public utilities that adds burden to the working majority.

Yet, there is no doubt that the growth benefitted the country’s richest as their income increased multifold. Henry Sy, owner of the Philippines largest mall chain where nearly all workers are contractual, gained from the economic surge. Sy’s estimated net worth rose to \$9.1 billion in 2011 from \$1.9 B in 2010. This is equivalent to 23 percent of the Aquino administration’s proposed P 2.268 trillion national budget for 2014. Sy is the country’s richest according to Forbes Magazine.

Attacks on civil and political rights as well as trade union rights perpetrated by government and/or capitalists continue. Neoliberal policies and trends that promote more flexible (and cheaper) labor persist undermining union growth as demonstrated by numerous cases of union busting. Killings, harassment remain, criminalization of unionists are even more prevalent, and human rights violations in the previous administrations remain unresolved.

The Aquino administration merely mouths neo-liberal policies in the guise of promoting inclusive growth, democratic participation among other popular concepts, but lacks a concrete and viable development policy and a clear road map to achieving a bright future for the majority. Thus, three years

into its six-year term, the Aquino administration’s “straight path” governance is sorely not enough to steer away the dark clouds of poverty of the many and the wealth accumulation of the few that has long covered Philippine society.

Job crisis amid economic growth

The Philippines posted 7.8 percent GDP growth, the highest in Asia in 2012. The much-lauded economic growth in the past three years however, failed to lift employment and cut underemployment in the country. On the contrary, the number of unemployed and underemployed Filipinos has been continually rising since President Aquino took office in 2010. Ibon Foundation (July, 2013) notes that the total number of unemployed and underemployed increased by 52 000 and 955 000 respectively in the past three years. This is aggravated by the number of new entrants to the labor force which outpaced the number of jobs created. From 2010 to 2013, the number of employed increased by only 1 million, from 10.9 M to 11.9 M. Job generation growth declines every year even as the economy registers a steady annual growth (ibid.).

Major sectors in decline. Government data also reveals that agriculture and manufacturing’s shares in employment are in decline since 2010. Manufacturing’s share in employment decreased from 8.6 percent to 8.4 percent while agriculture’s share in employment lowered from 32.5 percent to 31.3 percent. In April 2013, agriculture sector suffered 624 000 job losses compared to the previous year.

Moreover, industry sectors that benefitted from the economic growth had minimal increments in employment generation.

Of all the sectors that registered growth, only the subsector of hotel and restaurant had a significant increase in employment, adding 19.4 percent (265 300) employed in contrast to its 2.5 percent growth. Ibon however observed that average daily pay in this subsector is among the lowest: only P280.43 compared to the average pay of P326.93 across industries (ibid).

More unemployed youth and high school graduates. Young and low-skilled Filipinos are most affected by the job crisis as more Filipinos between 15 to 24 years old and more high school level and graduates become part of the unemployed population. From 2011, unemployed youth aged 15 to 24 years old increased by 51 000 while an additional 38 000 high school level and high school graduates are left jobless. Unemployment among college level and college graduates also increased by 30 000 in 2013 compared to 2012 although the total unemployed college level work force has declined by as much as 144 000 compared to 2011 data.

High unemployment compared to neighboring countries. The label “brightest spot in Asia” for the Philippines is utterly improper as job situation in the country remains dim when compared to neighboring countries. With a conservative unemployment rate of 7.5 percent¹, the country clearly lags behind in terms of addressing massive unemployment in comparison to nearby countries whose unemployment rates range from only 0.1 percent to 4.2 percent. Labor statistics becomes more anomalous (even scandalous) when the percentage of the population 15 years old above considered by the government as “not in the labor force” comprising 36 percent of the adult population is taken into consideration. Seventy percent of these are women.

Intensified labor export amid job crisis. Labor export remains a key employment policy under the Aquino administration. The deteriorating employment situation locally resulted to increased deployment of Filipino workers abroad. Before Aquino assumed office in 2010, Overseas Filipino Workers (OFWs) deployed abroad daily is estimated at 4,030. In 2012, the statistics grew to as much as 4,912 OFWs per day. Total number of OFWs according to Migrante International (Migrante) is as much as 15 M including undocumented OFWs. Official statistics from the Department of Labor and Employment (DOLE) estimates total number of OFWs at around 12 M.

Deployment of Filipinos steadily increased from 2010 to 2012 resulting to an increase in OFW remittance in 2012 totalling to \$21.4 M, equivalent to 8.5 percent of the GDP. The Philippines thus remains, the fourth biggest remittance-receiving country next to India, China and Mexico (Migrante, 2013 citing World Bank). The Philippine government’s heavy reliance on OFW remittances for foreign exchange revenues is the reason behind the Aquino’s government’s “desperation to further seek job markets abroad and intensify its labor export program” (ibid.).

Table 1 Growth rates vs. job generation, unemployment and underemployment rates

| PERIOD | GDP GROWTH RATE | JOB GENERATION RATE | UNEMPLOYMENT RATE | UNDER-EMPLOYMENT RATE |
|--------------|-----------------|---------------------|-------------------|-----------------------|
| 2011 | 4.6% | 4.0% | 7.2% | 19.4% |
| 2012 | 6.8% | 2.8% | 6.9% | 19.3% |
| 2013 (April) | 7.8% | -0.1% | 7.5% | 19.2% |

Source: Bureau of Labor and Employment Statistics (BLES)

Table 2 Growth rate and employment increment per sector

| SECTOR | GROWTH RATE | JOB GENERATION RATE |
|---|-------------|---------------------|
| Construction | 32.5% | 7.2% |
| Employment and financial intermediation | 13.9% | 1.9% |
| Manufacturing sector | 9.7% | 1.1% |
| Real estate | 15.5% | -9.4% |
| Wholesale and retail | 5.6% | -2% |
| Hotel and restaurant | 2.5% | 19.4% |

Source: Bureau of Labor and Employment Statistics (BLES)

¹ Ibon estimates unemployment at 10 percent, while SWS survey pegs unemployment at 27.2 percent.

Depressed wages to invite private investors

In the government's bid to attract more investors, the DOLE devised the two-tiered wage system (TTWS) which results to wage cuts and a 5-year wage hike moratorium. Under this new system, a mandatory floor wage is set (based on the regional poverty threshold and regional economic conditions) as the first tier. The second tier, which is merely voluntary, is computed against a firm's productivity. This new wage system ultimately results to wage cuts as in the floor wage computation in one of the economic-zone-rich regions, CALABARZON (Region IV-A). Current minimum wage rate in CALABARZON is P337 in contrast to the P225 computed floor wage under the TTWS.

In response to the worsening economic capacity of the working class, demands for substantial wage hikes intensified in the last three years. Different labor centers chorused in calling for legislated and significant amount of wage increase: Kilusang Mayo Uno (KMU) amplified its call for a P125 across the board wage hike; Trade Union Congress of the Philippines (TUCP) meanwhile proposed a P75 legislated wage increase. Sustained pressure from labor groups pushed the 15th Congress to make progress in hearing bills that would legislate significant wage increase.

Measly wage adjustments in Aquino's first three years were done only twice: first, was a P22 increase in basic pay in 2011 and a staggered P30 Cost of Living Allowance (COLA) added in 2012.

The Aquino government persistently shot down calls for substantial wage hikes arguing that significant wage hike will result to higher inflation. A study conducted by Ibon however refutes this claim saying that wage hikes as much as P125 need not be inflationary as such amount would only slash aggregate profits of companies by a mere 12 percent. (Ibon, 2013)

A third of the working population receives the lowest wage rates. Workers from the agriculture sector and private households which comprise 1/3 (34.2 percent) of the employed population in 2012 receive the lowest wage rates at P157.91 and P135.06 respectively. Moreover, increase in wage rates is also lowest in these job types. (See Table 5)

Rising prices of basic commodities and utilities depress real value of wages. Prices of basic commodities

Table 3 Profile of unemployed population 2011-2013 (youth and educational level)

| | 2013 | 2012 | 2011 | INCREMENT (2011-2013) |
|-----------------|-----------|-----------|-----------|--------------------------|
| 15-24 years old | 1,487,000 | 1,450,000 | 1,436,000 | 51,000 |
| High school | 1,318,000 | 1,247,000 | 1,270,000 | 38,000 |
| College | 1,105,000 | 975,000 | 1,249,000 | (-144,000) |

Source: Bureau of Labor and Employment Statistics (BLES)

Table 4: Unemployment in other Asian countries

| COUNTRY | UNEMPLOYMENT RATE |
|-------------|-------------------|
| Cambodia | 0.1% |
| Vietnam | 2.2% |
| Thailand | 0.89% |
| Singapore | 2.1% |
| Malaysia | 3.0% |
| South Korea | 3.8% |
| China | 4.0% |
| Taiwan | 4.2% |

Source: Trading Economics; Ibon Midyear Report 2013

and utilities steadily climbed in the last three years, still as a result of deregulation and privatization policies.

Prices of petroleum products constantly fluctuated with at least 40 price movements per year, usually more hikes than rollbacks. Gasoline prices were as low as P39.50 (2012) but rose to as much as P56.05 in 2013. Diesel prices recorded lowest in 2010 at P 37.20 but went as high as P 53.95 in (2012). Liquefied petroleum gas (LPG) was as low as P 611.00 and went as high as P814.00 in (2012).

Power rates and water services in the country are also way more expensive than its neighboring countries. Meralco rate is 9 percent higher than power rates in Singapore and three times more expensive than Vietnam, Indonesia, China and India (Ibon, 2012). In the last three years, Meralco rates went up by P0.46, from P8.95 in 2010 to P9.41 in 2013.

Since water services have been privatized in the late 1990s, rates increased by as much as 1 000 percent—from P4.96 per cubic meter to P32.92 (for Maynilad, in the west zone) and from P2.32 per cubic meter to P27.44 (for Manila Water, in the east zone).

This year, water concessionaires Manila Water and Maynilad Services are proposing increases of P5.83 and P8.58 per cubic meter respectively, which will increase the monthly water bill of a regular household from P60 to P85 (ibid).

The cost of public transportation in the Metro Rail Transit (MRT) and Light Railway Transit (LRT) is also expected to go up as the government already announced fare hikes as much as P10. This added burden to the public, mostly workers who use public—railways in their way to and from the workplace—is caused mainly by onerous contracts and the government's aim to entice private investors to bid the railways.

Measly wage increases combined with rising prices of basic needs and utilities has resulted to the erosion of wages with real wages even going down: compared to 2006 prices, real wages in 2013 is only between P156.76 (ARMM) and P367.51 (NCR).

There is also a widening wage gap between the nominal wage and the family living wage (FLW). Ibon estimates show that the wage gap increased from P555.84 in 2010 to P583.76 in 2013. (See Table 6)

Worsening poverty, concentration of wealth to richest

Despite economic growth, official statistics reveal that poverty incidence barely changed from 28.8 percent in 2009 to 27.9 percent in 2012. Ibon estimates that in actual terms, poor Filipinos increased by 3 to 4 M (around 26.8 M in total) in 2012 compared to the actual number of poor Filipinos in 2009 (23.1 M).

Poor is made poorer under Aquino. A new methodology approved in 2011 by the National Statistics Coordinating Board (NSCB) lowered the poverty threshold for computing poverty incidence in 2009. From P52, poverty threshold was lowered to P46 by cutting down costs on the daily food basket. This change in methodology removed 5.3 M Filipinos from the 2009 poverty statistics with no actual improvement in their quality of life. This also means that the quality of life of Filipinos who are considered poor by the government is much lower, poorer than before.

Richest continue to amass wealth. In contrast, top corporations and business tycoons benefit much from the strong economic performance, accumulating more wealth in the last four years. Net income of top Philippine Stock Exchange (PSE)-listed firms increased by over 40 percent, from \$360.6 B in 2009 to \$501.3 B in 2012.

Table 5 Share in Employment of Sectors with Wage Rates Below the Industry-all Average Wage (P326.0)

| SECTOR | WAGE RATE | | WAGE INCREMENT | SHARE IN EMPLOYMENT % (APR 2012) |
|--|-----------|----------|----------------|----------------------------------|
| | 2010 | 2012 JAN | | |
| Private households with employed person | 133.20 | 135.06 | 1.84 | 1.3 |
| Agriculture | 152.01 | 157.91 | 5.90 | 32.9 |
| Wholesale and retail trade | 274.54 | 273.84 | (0.70) | 25.4 |
| Mining and Quarrying | 252.78 | 278.59 | 25.61 | 0.7 |
| Hotels and restaurants | 280.76 | 280.43 | (0.33) | 3.6 |
| Other community, social and personal service | 316.89 | 301.02 | (15.87) | 6.4 |
| Construction | 285.08 | 304.80 | 19.72 | 6.1 |
| Manufacturing | 310.57 | 325.45 | 14.88 | 8.3 |

Source: Bureau of Labor and Employment Statistics

Table 6 Comparative wage gap 2010 and 2013 (in NCR)

| | 2010 | 2013 |
|--------------------------|--------|----------|
| Nominal wage | 404 | 456 |
| Family living wage (FLW) | 959.84 | 1,039.76 |
| Wage gap | 555.84 | 583.76 |
| NW / FLW | 44% | 40% |

Source: Ibon Foundation, 2013 Midterm Report

Wealth also became more concentrated to the fewer individuals as the net worth of 40 richest Filipinos multiplied four times from \$16.4 B in 2009 to \$64.4 B in July 2013. Ibon notes that combined income of the 40 richest Filipinos in 2012 which is \$47.4 B is equivalent to 21 percent of GDP for that year (ibid.).

PPP and 4Ps: Aquino's anti-development programs

Aquino's flagship programs namely PPP (public-private partnership) and 4Ps, *Pantawid Pamilyang Pilipino Program* (a form of conditional cash transfer) fail to advance real development and the same time cost Filipinos billions of debts from international financial institutions.

Public-private partnership deliberately upholds state abandonment and commercialization of basic services by selling out previously-owned government public utilities or service institutions such as hospitals. Aside from virtually privatizing social services (i.e. public hospitals) the government is also spending billions on infrastructure and capital outlay for these public utilities to make them more attractive for private investment. Filipinos stand to lose not only social services but also billions of their money to private companies as the Aquino government provided "sovereign guarantee" to those investing in PPP projects. This means that the government is allocating public funds to guarantee return of investments for investors in PPP projects.

From 2010 to 2013, government budget for the 4Ps program has dramatically increased from P21.2 billion in 2011 to P39.5 B in 2012 to P44.3 B in 2013. Despite over P150 billion spent on 4Ps, poverty incidence remain unchanged (as noted above). This

is mainly due to the program's failure to address root causes of poverty by giving out cash gifts to poor families for education and maternal health.

One common criticism to 4Ps is the expensive logistical costs incurred, both by the government and beneficiaries, in implementing the program. Another is the misidentification of beneficiaries of the program. Reportedly, there are families who receive cash gifts even if they do not belong to the poorest of the poor. Also, identification of beneficiaries and disbursement of cash grants can also be influenced by local and patronage politics. Patron-client culture is further enhanced by 4Ps despite many safeguards placed by the implementing agency.

But even when all these gaps in the process or implementation of 4Ps is addressed, the program still fails to address the need for public access to free basic services. In fact, 4Ps boosts and justifies, the Aquino government's plan to open up social services to private investment. Instead of building schools, health centers, and hospitals in remote areas that can possibly benefit a larger population, the government will only disburse cash to the poorest families so they can possibly gain access to these services.

Marginalization of women workers

Exploitation of women workers persists under the Aquino administration through intensified contractualization and flexibilization of work. According to the Center for Women Resources (CWR), jobs available to women are still very limited and low-skill in nature.

Labor participation rate of women is considerably lower than those of men which can indicate prevailing discrimination against women workers. Only five (5) out of 10 women join the labor force compared to seven (7) out 10 for men.

Women in vulnerable jobs. Although only 4 out of 10 unemployed Filipinos are women, women are mostly employed in vulnerable work and have no job security. Almost seven (7) out 10 women (68 percent) women workers are in the service sector where 85 percent are contractual workers whose jobs normally last for only three to four months.

Moreover, three (3) out of 10 women workers are employed as unskilled laborers receiving an average wage of P142.80 (2011). A big portion of women workers in the agriculture sector are employed as

unpaid family workers: 49.41 percent in agriculture, hunting and forestry and 69.47 percent in fishing.

Women employed in private households work the longest hours with mean hours of work per week at 50.8 hours but on the other hand receive very low average daily wage of only P140.

For young women workers aged 15 to 24 years, 30 percent are employed in wholesale and retail trade; 20 percent are employed in private households, 15 percent in agriculture and 10 percent in manufacturing. In terms of wages, this means that 75 percent of young women workers receive low wage rates from P140 to P261.00 per day.

According to the Philippine Overseas Employment Administration (POEA), majority (six out of 10) of the OFWs are women most of whom are employed as domestic helpers, cleaners, helpers, charworkers (2011).

Child labor situation

ILO reports that about 5 million children in the Philippines aged 5 to 17 years are working, most of them are found in places considered as worst forms of child labor, such as plantations, mining, fishing, prostitution.

In the palm oil industry, touted as a sunshine industry, CTUHR study (2012) reveals that 24 percent of those directly working in oil palm plantations in CARAGA are children. These children perform jobs similar to those performed by adults except for harvesting. Agusan del Sur, consistently occupies a spot in the country's 10 poorest provinces and reported to have received support under the 4Ps. It is also one of the target provinces in the government campaign to eliminate to child labor, except that the reality speaks of no decrease in number of children forced to work, but rather an alarming rise. Both the companies and government response are immediate and rather emotional as they both ban the employment of children, and opt to have streamers shouting of a "child labor free policy" hanged in conspicuous places, but without seriously addressing the very reasons why children are working: perennial poverty, unemployment, slave wage of plantation workers, and landless farmers turned long term casuals in the booming palm oil industry.

Labor law 'reforms': Boon to capitalists, bane to workers and unions

Aligning labor laws to globalization and international labor standards is a key element of P-Noy's 22-point labor agenda. Patently opposing items, they logically results to opposed situation: for neoliberal globalization is an anathema to decent work, living wage, security of tenure, and freedom to organize unions—the core elements of international labor standards.

Various legislative measures and administrative issuances relating to labor had been adopted by the Aquino regime since it took office in 2010. Six out of the 477 laws passed by the 15th Congress directly affect the plight of the workers in the country. There are also Department orders and issuances of the Department of Labor and Employment (DOLE) made as implementation of the Aquino government's 22-point labor agenda anchored more on improving labor market, productivity but short on rights. Key issuances and national laws passed have been criticized on several reasons, amongst them: 1) laws failed to boost basic workers rights to freedom of association, collective bargaining, and to strike as they had not stemmed the rapid decline in union membership; 2) laws improved not the economic and social conditions of workers, while administration of labor justice remained in turtle pace, negating whatever compensation, for instance, that the workers could get in filing complaints against violations of labor standards

1. RA 10395 "AN ACT STRENGTHENING TRIPARTISM, AMENDING FOR THE PURPOSE ARTICLE 275 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES"

Description and salient provisions. RA 10395 was passed and approved by the President on March 14, 2013. This law institutionalized tripartism through the National Tripartite Industrial Peace Council (NTIPC), which was previously reconstituted through DOLE Department Order 111-11 issued in 2011.

Art. 275. Tripartism, Tripartite Conferences, and Tripartite Industrial Peace Councils.

(a) Tripartism in labor relations is hereby declared a State policy. Towards this end, workers

and employers shall, as far as practicable, be represented in decision and policy-making bodies of the government.

(b) The Secretary of Labor and Employment or his duly authorized representatives may from time to time call a national, regional, or industrial tripartite conference of representatives of government, workers and employers, and other interest groups as the case may be, for the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with established priorities in economic and social development. In calling such conference, the Secretary of Labor and Employment may consult with accredited representatives of workers and employers.

(c) A National Tripartite Industrial Peace Council (NTIPC) shall be established, headed by the Secretary of Labor and Employment, with twenty (20) representatives each from the labor and employers' sectors to be designated by the President at regular intervals. For this purpose, a sectoral nomination, selection, and recall process shall be established by the DOLE in consultation with the sectors observing the 'most representative' organization criteria of ILO Convention No. 144.

Context. DO111-11 came out as an implementation of International Labor Organization's (ILO) High Level Mission recommendation to form a high level monitoring body that will look into the extrajudicial killings and other human rights and labor rights violations committed against trade unionists. The institutionalization of tripartite mechanisms is also in line with the PLEP's core principles of social dialogue, promoting democratic participation and industrial peace.

Criticisms. While the government projects tripartism as pro-labor by allowing participation of labor groups in policy-making, the government position in most, if not all, issues is generally in favor of those of the employers. The work of the NTIPC is far from the original intention when it was revived; Rather, it became a forum that provides seal of approval to the labor policies and programs that the current government is implementing, even if they are deemed anti-workers. The absence of genuine

tripartism in the country, and much criticized government co-option of the unions within the NTIPC make this body very weak if not less relevant with its impact hardly felt by the workers in terms of changing the situation on the ground.

2. RA 10396 AN ACT STRENGTHENING CONCILIATION-MEDIATION AS A VOLUNTARY MODE OF DISPUTE SETTLEMENT FOR ALL LABOR CASES, AMENDING FOR THIS PURPOSE ARTICLE 228 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED OTHERWISE KNOWN AS THE "LABOR CODE OF THE PHILIPPINES"

Description and salient provisions. Approved by the President on March 14, 2013, this law legitimizes and institutionalizes the Single Entry Approach (SENA) of the DOLE effected through DO 107 Series of 2010, whereby all issues affecting labor and employment shall be subjected to a mandatory conciliation-mediation for a period of 30 days. This means that unlike before, workers who would like to file complaints on issues of violations of labor standards (underpayment of wages, benefits, illegal dismissal etc) cannot directly file complaints at the labor court or the National Labor Relations Commission (NLRC). S/he would have to undergo mandatory conciliation for up to 30 days, when the case is not settled, it is only then that SEADS or Single Entry Assistance Desks will issue clearance to workers to file a formal complaint at the NLRC. The law also allows any of the party to preterminate the conciliation process before the completion of mandatory 30 days, but will still require a clearance from SEADO or SEAD Officer if they will pursue the case.

Context. One of the major problems that ails the labor relations is the many unresolved cases buried deeply in the NLRC and denial of justice due to horribly slow process of arbitration and resolution. Through this law, the government hopes to cut the number of cases filed and disposed (resolved) at the NLRC.

Criticism. Prior to the approval of RA 10396, trade unions severely criticized SENA approach, not because they do not agree that the number of cases has to be streamlined but because of putting another layer of bureaucracy in the already bureaucratic

arbitration process in resolving labor cases. The approach is more technical or mechanical, rather than substance that aims speedy delivery of labor justice. SENA in fact is unnecessary since the current arbitration proceeding in the NLRC already laid down a rule on a two-time mandatory preliminary conference wherein the labor arbiter can mediate and help settle issues between workers and employers. This mechanism of preliminary conference in the NLRC is a sufficient venue to avoid too many cases filed, making SENA's function redundant. Workers interviewed on their experiences of SENA attest that the process puts additional burden to them, in terms of time and resources, while delaying further possibility of getting relief.

3. **DOLE DEPARTMENT ORDER (DO) 18-A: LAW ON CONTRACTING AND SUB-CONTRACTING**

Description. D.O. 18-A was issued by the DOLE on November 14, 2011 and took effect on December 5, 2011. DOLE says that this law aims to strike a balance between the need of business for numerical and functional flexibility, on one hand, and observance of labor standards and workers' rights, on the other. It also intends to recognize sub-contracting as a legitimate business undertaking and to regulate it to induce legitimate, responsible and ethical subcontracting, with enterprise competitiveness enhancement and decent jobs in mind. The law covers the operations of contractors and sub-contractors and their contracted workers but also defines the trilateral relationship between the principal, contractors and workers.

The main thrust of DO 18-A is the registration of all labor contractors and legalization of their operation. Once labor contractors are duly registered, they are deemed to be the principal employers of its workers. With this kind of arrangement the principal company is only deemed as a non-party to the employment relationship of the contractor and the workers, while contractual relationship exists between the principal and the contractor

Context. Companies have aggressively resorted to massive retrenchment and outsourcing to cut costs and maximize profits. This became more pronounced in the case of Philippine Airlines where almost 3000 workers were dismissed when the company spinned off some of its operations. Malacanang and the Department of Trade and

Industry openly supported the move invoking "management prerogative" to outsource functions and company operations, dimming the workers' hope to protect their right to security of tenure. On November 2011, DOLE issued DO 18-A repealing its precedent DO 18-02 on "Contracting out and Sub-contracting".

Criticisms. DO 18-A, Strengthens and legalizes flexible labor (employment of temporary workers, outsourcing etc.) which consequently weakens and slowly but effectively removes workers' right to security of tenure. It provides the company the legal bases of what were previously illegal practices of contracting out functions and operations desirable to the principal business of a certain company. Though the provisions state that contractors must respect and implement labor standards, these according to critics are empty words, as even with its precedent DO 18-02, rampant violations were common. The temporary status of employment, which strengthened and encouraged by this law, deprives contractual workers of opportunity and right to join trade unions, putting the union growth in peril. If there is something that you can call a window for holding the principal company' liable to the contracted workers by contractor, it is the provision on trilateral relationship. The provision clarifies that should the contractor violate labor standards (wages, benefits, etc), the principal shall be "solidarily liable" to the contracted employees of the contractor.

4. **TWO-TIERED WAGE SYSTEM (TTWS)**

Description. This new wage system consisting of two levels was introduced. The Regional Tripartite Wages and Productivity Board (RTWPB) determines the first tier or the floor wage (1) based on the regional poverty threshold while the second tier is based labor productivity in a particular firm. On October 26, 2012 NWPC through Guideline No. 02-2012 (Guidelines on the Implementation of the Two-tiered Wage System) institutionalized the system. It is projected to be fully-implemented throughout the country by 2016.

Context. The 2TWS conforms to the global trend of wage flexibilization, a 'reform' on the system of wage adjustment introduced by the government. At present, 13 of the 17 regions of the country through the RTWPB adopted the new wage fixing policy of the DOLE. According to DOLE, a total of 300

companies are already complying with the current system.

Criticism. The TTWS gravely attacks workers right to decent work and to have decent life. It is a scheme that further presses down wages to attract more investors by lowering labor costs. As noted earlier, the floor wage under the new scheme can be lower than the current minimum wage rate (as in CALABARZON where the computed floor wage is P255 pesos, which is 25 percent less compared to the current minimum wage of P337). Workers who already receive wages above the floor wage should also not expect any wage increase for a period of five years. Those receiving below P255 on the other hand can receive hikes from P2 to P90 until their wages reach the floor wage. However, such increase is split into tranches that will be given in a period of five years.

Only the floor wage is mandatory while the second tier, also called the productivity wage, is voluntary and computed against the productivity of both the employer and employee. This means that workers can hardly rely on the second tier. The productivity wage is determined by a biparty agreement between worker and management. Using the economic viability of the employer as the basis of the increase, the fixing of wage based on this second tier is under the discretion of the employer. Given the penchant of companies to avoid paying the prescribed and more defined minimum wages, the new system will provide them more flexibility and excuses to avoid paying proper wages.

The new wage system further split the already varied and multi-level wage rates system in the country. When fully implemented, more divisive wage rates will exist in different workplaces, industry, and areas resulting to more confusions among workers on how to determine the adequate and actual amount of compensation. Monitoring of labor standards compliance by the employers will also be more difficult.

Rapidly declining trade unionism under Aquino: Alarming but not surprising

Since the late 1980s, there has been a continuous decline in unions formed, union membership and union activities brought about by the implementation of neoliberal policies and programs, particularly

labor flexibilization and anti-union laws. This trend persists during Aquino's first three years in office as reflected in the number of strikes. In 2011, DOLE recorded only two strikes and three strikes in 2012 making a total of 13 strikes under Aquino's first half-term. In Jan-March, 2013, DOLE prides of having no strike and views as an indicator of peaceful industrial climate favorable to foreign investment. However, it must be underlined that the absence of strikes does not mean that workers rights are upheld and improved workplace conditions.

In fact, it is apparent that the drastic decline in strike activities coincides with the decline of unionization rate. Twelve years ago, 26.7 percent of employed workers were organized into unions. When Aquino assumed office in 2010, unionization rate was at 8.73 percent. It gradually fell down to 8.66 percent (1.77 M) in 2011 and decreased further to 8.54 percent (1.83 M in 2012, though numerically shows an increase. This is due to increase in the number of wage and salaried workers—the traditional base of unionism.) The harrowing reality is that a mere 12 percent of these unionized workers are covered by collective bargaining agreements (CBAs) a barometer for measuring union economic gains. The country has an estimated workforce of about 39 million people, and less than 2 million are in unions still divided by the differing principles. A percentage of this unionized workforce is consulted by the government in policy making through the NTIPC.

Total number of unionized workers can be even lower than that what official statistics show. This is because, the latter often only reflects newly-established unions, but does not de-list unions busted in the course of their struggle or due to company closures and relocation.

Multi-faceted attacks on unions

The decline in unionization is also an offshoot of multi-faceted attacks on the workers movement. In the recent years, two major forms of union busting are being carried out both by the government and capitalists against unions and workers. One is the less obvious but shrewd form of union busting done through "voluntary" dismissal of unionized workers, closures. Protesting workers are pacified by offers of hefty retirement or separation pay, livelihood projects and other monetary benefits and when workers accept these offers, they are immediately

replaced by contractual workers.. Another is the direct attack or even blatant violence against unions through harassment, illegal dismissal, criminalization, arrest and the like. These two practices are used by capitalists and state agents to ultimately bust unions.

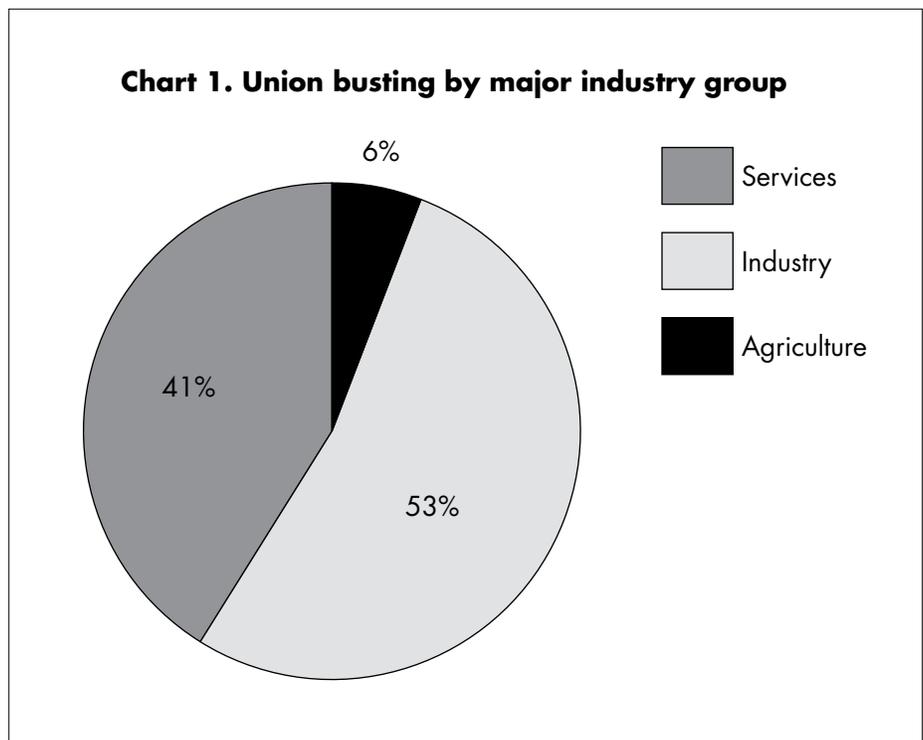
“Killing me softly” approach

Capitalists seem to be generous every time they implement an early retirement program on workers to avoid paying more, when due retirement time comes. They persuade workers to accept an amount 200-300 percent above what is legally prescribed by the Labor Code or the CBA for workers to surrender their jobs. At first glance, this looks favorable to both capitalist and workers, but in fact is not. It is because, as unionized workers continue to be employed, s/he also continue to enjoy the benefits of unions while increasing the possible amount of retirement benefits under the law and under the CBAs. Such is more costly for capitalists. With this scheme, capitalists can do away with regular unionized workers earlier, as well as cut the cost from union’s CBA.

Among the corporations that systematically practice this union busting scheme are the San Miguel Group of Companies. Lito Fadriquelan,

President of Ilaw at Buklod ng Manggagawa (IBM, a federation of workers union in the San Miguel Conglomerate), narrated how their unions was busted and its membership trimmed by thousands through this scheme. In San Miguel Yamamura Packaging Corporation (Metal Closure and Lithography Plant), Fadriquelan fears that once the CBA negotiation starts in August, their union membership will be reduced into only three (3) members. Only last year, their membership was still above 100, but it started to dwindle when the management implemented a series of early retirement programs which consists of 200 percent worth of the legally-mandated retirement pay for workers with 11 to 19 years of tenure; 225 percent for 20 to 29 years; and 250 percent for 30 years and more. This program was offered and implemented by the management when mass retrenchments affecting 54 workers in 2011 was effectively confronted and prevented by the union.

Antonio Pascual of National Federation of Labor Unions (NAFLU-KMU), called this form of attack a ‘killing me softly’ approach. Because of its deceptive nature, workers can hardly resist the monetary offer. Pascual cited that when the union in Unilox Industrial Corporation: was established, 40 out of more than 80 workers are members. But due to frequent offer of early retirement programs, the



union ended up having only three (3) workers as its members. When the company decided to close its Metro Manila factory in 2012, the weakened union was not able to prevent the closure even if they saw it to be malicious and unwarranted. Pascual also cited that the union in Andres Manufacturing experienced this kind of scheme before it closed down in 2012. The workers used to have 30 union members when it was first established but this was reduced to nine (9) members before its closure.

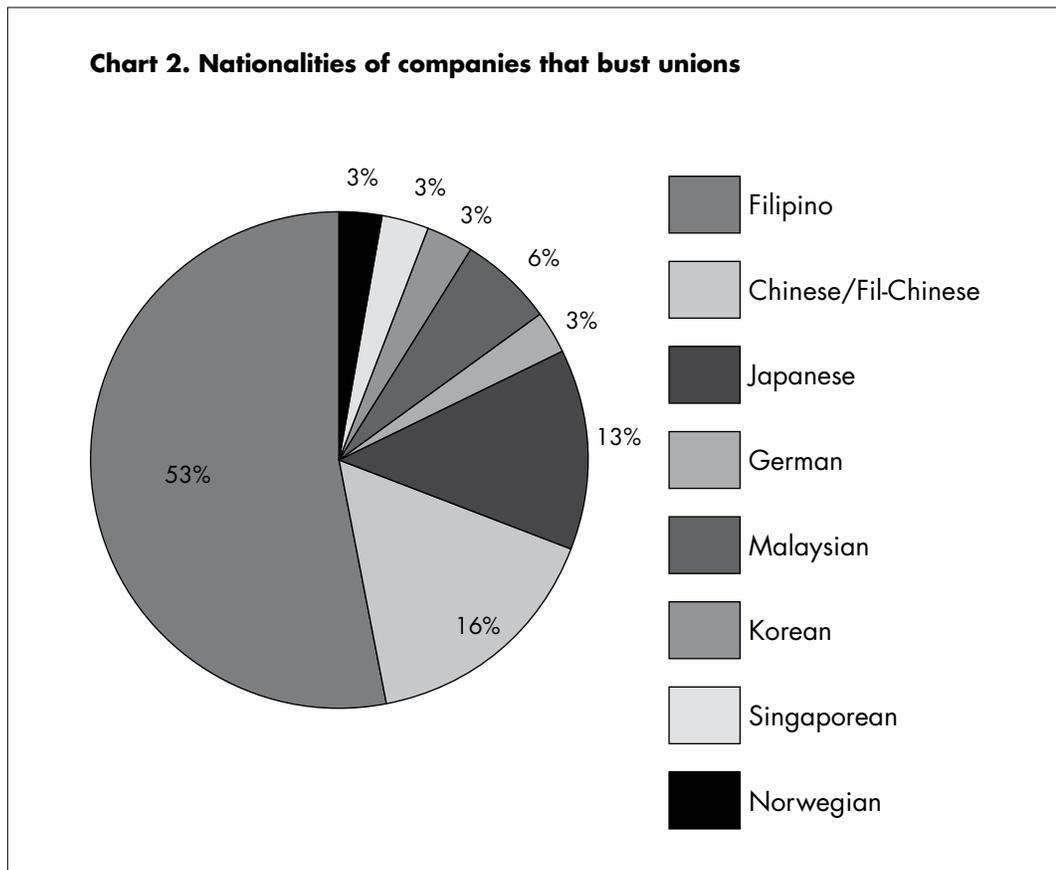
At Agusan Plantation Inc. in Trento, Agusan del Sur, economic pacification is more systematic. Plantation management connived with the DOLE officials to smoothly implement its plan to dismiss 104 workers affiliated with PIGLAS MAPAPI-NAFLU-KMU. The connivance started when DOLE received a letter on April 8, 2013 from the management signifying its intention to dismiss the 104 workers. Without inquiry about the justness of the company’s planned dismissal, DOLE provincial officials invited the workers to an emergency meeting to prepare for their dismissal. In the said meeting, which was held on April 11, no less than DOLE Regional Director Mr. Joel Gonzales

himself justified the closure of the API. The affected workers raised the issue of saving their jobs. But the exchange of words about this issue went nowhere as the government announced that the closure is already inevitable. To appease the workers, the government agency brought along with them an official from Technical Education and Skills Development Authority (TESDA) to discuss possible livelihood programs that the workers may enter into once their dismissal has taken effect. Various promises of cash stipend, seed capital and other monetary offers were presented to the workers if they accept their dismissal. On May 2, 2013, the management pushed through with its retrenchment program.

Twenty-five (25) retrenched workers of Shakeys Pizza, and another 25 from Bacolod Sack Supply in Bacolod City had a similar experience with their company and the DOLE when they were found out to be forming unions.

Direct repression

Direct repression of the workers movement and incidents of violence against unionists persists under Aquino. Since July 2010, a total of 392 cases of trade



union rights violations affecting 30 578 workers are documented by CTUHR.

Union busting through retrenchment and other means. Closure, retrenchment and intimidation of unionists are commonly employed by management to break unions. Based on CTUHR monitoring of 34 companies, half of these companies (17) either closed down, dismissed active union members and/or intimidated workers that forced the latter to discontinue their union activity.

Last February 2013, 210 workers of Bleustar Manufacturing and Marketing Corp. (Advan) lost not just their union but their jobs after the management announced its closure due to alleged financial losses. Their union that was established on October 2, 2007 had struggled against many attacks before it successfully secured a CBA. It was recognized on September 22, 2008 after a 53-day strike. Forty-three (43) of its members were dismissed and later reinstated in the process. They are about to negotiate for the extension of their CBA this July when the management irrevocably declared its decision to cease its operation.

Five hundred workers of Digital Telecommunications Philippines Inc. were retrenched following the merger of their company to the PLDT. These workers who are all members of the Digital Employees Union (DEU) were declared redundant by their new employer and denied them of absorption to the newly-organized corporation. This was despite the hiring of new contractual workers who are going to fill in their vacated positions.

Undue interference and harassments. A certification election on an auto parts manufacturing company inside the Carmelray 1 Industrial Park in Calamba, Laguna was marred with fraud when an official of DOLE allegedly used its power to rig the result of the election. Marivic B. Martinez, Supervising Labor Executive Officer of the DOLE Laguna Provincial Office (LPO) was allegedly spotted by the workers of Philippines Auto Components Inc. inserting a total of 30 ballots containing “no union” votes inside the ballot box. After the voting precinct closes, one union member saw Martinez drop a ballot on the floor. Afterwards, the DOLE representative knelt down to pick the dropped ballot. However, while she is picking the piece of paper, her one hand was seen pulling out

folded papers underneath her ankle inside her shoe. The paper was then mixed by Martinez with other legitimate ballots. After the vote has been counted, the union lost the election by a margin of 17 votes.

In their effort to compel their employer to recognize their union, they filed a petition for annul the election results and to hold another election. On July 19, a decision by DOLE Bureau of Labor Relations (BLR) Med Arbiter Maureen Zena Tongson granted the workers’ petition and directs the conduct of certification election.

Workers collective bargaining rights grossly violated. CTUHR’s documentation in the last three years, notes that 6 504 workers from 25 companies were deprived of CBA while another 5, 056 CBA-covered workers were deprived of the benefits of their own CBA.

In Davao City, 64 faculty members and employees of Brokenshire College decried the non-implementation of their CBA. Brokenshire College Faculty and Employees Union (BCFEU) has a CBA that took effect last November 2012 is yet to significantly enjoy its benefits when the management of the tertiary school deferred the implementation of the economic provisions. Among those deprived benefits are: signing bonus of P500; monthly rice allowance of P550; a pro-rated scholarship or discount to 17 union beneficiaries amounting to P147 500; and a pro-rated vacation leave starting March 2012. On March 8, eleven (11) union members were dismissed by the management for alleged redundancy. Seeing these events as unjust, the workers were force to go on strike since May 3, 2013.

The employees under BCFEU organized a union on October 2012 because of years of meager wages without increases. Prior to their union organizing, their salary was only P285 per day.

Assault on workers’ civil and political rights stays and intensifying

Nine trade unionists killed under Aquino
Since 2010, nine trade unionists have been killed due to their trade union activity and advocacy. The latest victim was Antonio Petalcorin, a leader of the transport workers group Network of Transport Organization (NETO) in Davao City. Petalcorin was killed last July 2 in front of his house. Initial

investigation shows that his killing is related to their group's campaign against the corruption in LTFRB. Prior to Petalcorin's killing, his colleague Emilio Rivera, a former chairman of Matina Transport Corporation was also killed. Death threats against a NETO affiliate, Toto Cirilo also occurred. In a report received by the CTUHR different unidentified persons hurled, on two different instances, a hand grenade in front of Cirilo's house last April.

Petalcorin's killing was the third verified case of extrajudicial killing against transport leaders during the Aquino administration. On 2012, Feliciano Infante, president of Pandan-Angeles Drivers Operators Association and Felix Cultura, president of Federation of Van Transport and Allied Services of Caraga who are both affiliate of transport workers federation PISTON were killed in two separate incidents. (See Table 6 on page 16)

Arrests and Abduction

Twenty-four workers were unjustly arrested while another five workers were abducted by state agents since June 2010. Among the abducted victims, three are still missing.

On July 19, 2011, farmworkers Michael Celeste, Gerald Abale and Jully Devero were abducted on three separate places in Magalona, Negros Occidental by armed men belonging to the RPA-ABB. Devero was nabbed in front of his wife and son while staying at their home. After an hour, Gerald Abale, was held and taken at gunpoint also inside his house. While the second abduction is happening, another group of armed men took Celeste from his house.

The victims' families suspect that the RPA-ABB is behind the incident. Prior to the incidents, the victims receive threats from members of the armed group. Celeste, an active member of the National Federation of Sugar Workers was even tortured and questioned by members of the RPA-ABB in 2007.

Criminalization

One hundred twenty six (126) workers and trade union leaders were accused of various crimes: from theft, libel, perjury to grave coercion, and murder. Out of this number, four (4) trade union leaders are detained while another two are forced to go into hiding.

Randy Vegas and Raul Camposano, both union organizers of Confederation for Unity, Recognition

Advancement of Government Employees (COURAGE), have been detained since December 2012 at the Camarines Norte Provincial Jail for alleged involvement in an NPA ambush in Labo, Camarines Norte last April 29, 2012. Vegas and Camposano who are both residents of Metro Manila and were full time organizers of government employees union CORAGE strongly denied the charges and decried the illegality of the court proceeding for denying them due process to respond to the accusations before it was heard by the trial court. They believe that the criminal charges (five counts of murder frustrated murder and theft) against them are meant to prevent them from performing their organizing work.

Alliance of Concerned Teachers (ACT) Cagayan organizer Rene Boy Abiva and Pagkakaisa ng Samahan ng Tsuper at Operation Nationwide (PISTON) Cagayan Valley coordinator Virgilio Corpuz have also been in detention since December 28 and January 4 respectively at Ifugao province for 12 counts of murder after being allegedly involved in another NPA ambush in Tinoc, Ifugao which reportedly happened April 25, 2012.

In Quezon City, criminal charges against 12 members and a supporter of Pentagon Steel Corp. Workers Union at the Quezon City Prosecutor's office by the Philippine National Police (PNP). Criminal charges are starting to pile up since April 13, when the unionists started picketing outside the factory over management's illegal lockout and dismissal of 130 workers. Pentagon management and police officers headed by Maj. De Vera from the Quezon City Police District (QCPD) Station 1 charged the workers with frustrated murder, direct assault, grave coercion and resistance and disobedience.

Clearing: Displacement of the poor for 'development' projects

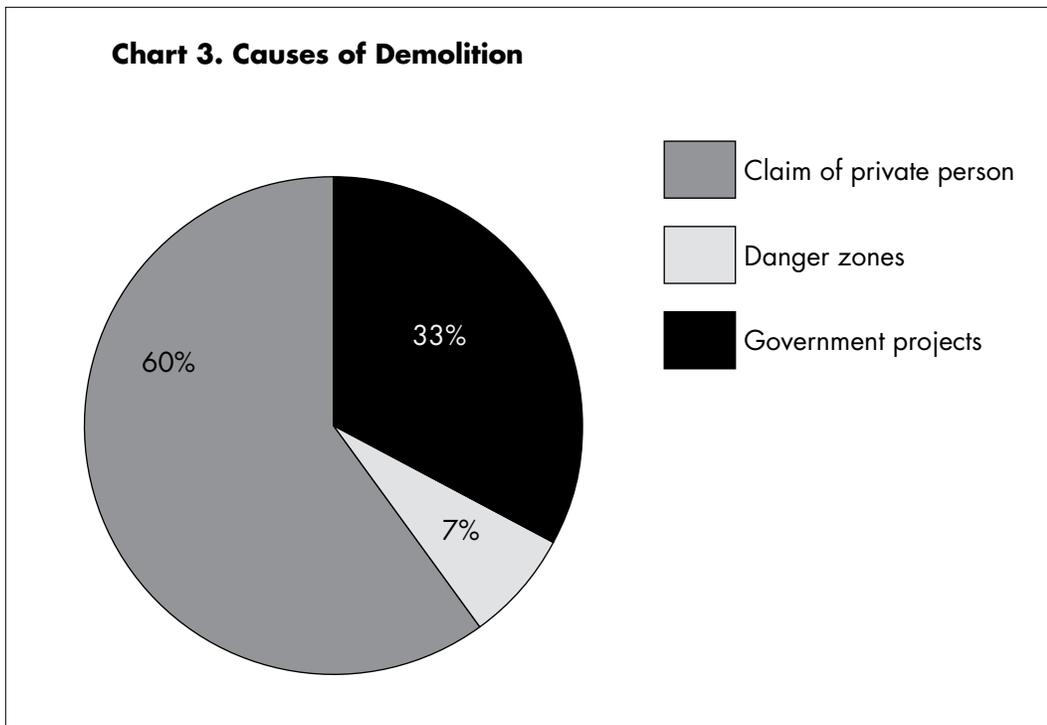
Forced evictions and demolition of urban poor dwellings were also amongst the hardships that the workers had to contend with during Aquino's first three years. Of the 36 demolition cases recorded by the CTUHR, claim of private developers or landowners are pointed as main causes of state implemented demolitions, followed by the implementation of government infrastructure projects and the removal of dwellers from danger zones. (See Chart 3 p. 17) These demolitions affected 55 356 families.

Table 6. Trade unionists killed (July 2010 - June 2013)

| VICTIM(S) | DATE KILLED | POSITION / ORGANIZATION / OCCUPATION | PLACE |
|--------------------|-------------|--|-------------------------------|
| Mark Francisco | 9-Jul-10 | Member, Alliance of Concerned Teachers (ACT) | Palanas, Masbate |
| Edgar Fernandez | 9-Jul-10 | Public school teacher | Masbate City, Masbate |
| Carlo Rodriguez | 12-Nov-10 | President, Nagkakaisang Lakas ng Manggagawa sa Calamba Water District | Calamba, Laguna |
| Celito Baccay | 8-Mar-11 | Board member, Maeno Giken Workers Organization | Dasmariñas, Cavite |
| Jojo Malinao | 9-May-11 | Guard at Mt. Makiling, Laguna | Bay, Laguna |
| Santos Manrique | 12-Apr-11 | President, Federation of Miners' Association in Pantukan | Pantukan, Compostela Valley |
| Felix Cultura | 6-May-12 | Leader, Pagkakaisa ng mga Samahan ng Tsuper at Operators Nationwide PISTON Caraga | Butuan City, Agusan del Norte |
| Feliciano Infante | 3-Sep-12 | Leader, Pagkakaisa ng mga Samahan ng Tsuper at Operators Nationwide PISTON, Pampanga | Angeles City, Pampanga |
| Antonio Petalcorin | 2-Jul-13 | President, Network of Transport Organizations | Davao City |

Table 7. Urban Poor Killed (July 2010-June 2013)

| VICTIM | DATE KILLED | POSITION / ORGANIZATION | PLACE |
|---------------------|-------------|--|------------------------------|
| Antonio Homo | 16-Mar-11 | Campaign Officer, Nagkakaisang Samahan sa Kadiwa (NASAKA) | Navotas City, Metro Manila |
| Soliman "Sol" Gomez | 23-Jul-11 | Local leader, Bayan Muna (Pangarap Chapter); Member, Pangarap Village Tricycle Operators and Drivers Association | Caloocan City, Metro Manila |
| Rommel Fortade | 23-Jul-11 | Auditor, Batang Malacañang (a Homeowners Association); Media Officer, Coalition of Neighborhood Associations | Caloocan City, Metro Manila |
| Simeon Bayogbog | 30-Oct-11 | President, Kacsa Association Inc. (organization of residents in the area) | Rodriguez, Rizal |
| Arnel Leonor | 23-Apr-12 | resident of Silverio compound | Paranaque City, Metro Manila |
| Ernesto Gulfo | 30-May-12 | Chairperson, Alyansa Kontra Demolisyon sa Malabon | Malabon City, Metro Manila |
| John Cali Lagrimas | 2-Oct-12 | supporter of residents of Bgy. San Roque, Tarlac City | Tarlac City, Tarlac |
| Marilou Valle | 22-Jul-12 | President, Samahan sa Sitio Damayang Nananambakan-Kadamay | Manila, Metro Manila |



Eight (8) urban poor members, leaders killed

In the course of the urban poor’s struggle for the right to adequate housing, eight (8) members and urban poor leaders were extra-judicially killed; 104 were arrested and 86 continue to face various criminal charges in various courts. (See Table 7 on page 16)

Aquino’s policies entrench anti-union climate, inhumane working and living conditions

Aquino’s policies, be they in the realm of the economy, trade, labor, justice system, social development, peace, or counter-insurgency, contribute to perpetuating and deeply-entrenching an anti-union climate and inhumane working and living conditions in the country.

No popular and eloquent pronouncements in the vernacular can hide the government’s adherence to the interests of the elite. Its economic policies and corresponding department orders, and executive rulings clearly reveal the preference for flexible work, only to invite more investors. And this has adversely impacted on trade unions and workers organization such that capitalists in the last three years have used all means—both soft and hard approaches as described above—to replace

regular and/or organized workers with contractual workers.

Government uses popular concepts such as democratic participation, social dialogue, inclusive growth in order to make its policies and actions acceptable to the workers and the people. Particularly in the labor sector, the Aquino administration cunningly maximized tripartite formations and all other sorts of social/stakeholder dialogues to undermine workers resistance against unjust capitalist, binds those who participate into concessions and ‘negotiate a middle ground’ or a so-called win-win agreement. However, in the long run, workers organizations are put to peril and workers’ fight for tenure, decent wages and recognition are reduced to livelihood or monetary claims.

From workplaces to dwellings, quality improvements are absent for the majority, whom President Aquino continues to profess as his “concern” in front of inquiring public or foreign guests.

Even the blind, the hungry blind could see that the government failed to achieve inclusive growth; economic policies proved to be exclusive to a few—not merely because of inefficient tax collection or ineffective governance—but because of sheer absence of a real development framework based on people’s rights and interests.

While Aquino promised to end extrajudicial killings at the beginning of his term, impunity prevails and civil and political rights violations are still prevalent among unionists and activists. And this can be attributed still, to a large extent, to the government's counter-insurgency program, Oplan Bayanihan and failure to prosecute and send to jail even a single perpetrator. The notorious, Gen. Jovito Palparan, wanted for kidnapping, disappearances and killings of activists and trade unionists during the Arroyo administration, remains at large. All of these weaken workers and peoples' resistance, spreading a culture of fear, injustice and hopelessness.

Prospect and challenges to workers

The remaining years of the Aquino administration bring more challenges to the workers and the people as policies laid down in the last three years clearly subscribes to neoliberal globalization favoring capital and foreign investment over people's issues.

In the next years, the Aquino administration and its allies in Congress will, at the maximum, push charter change to allow full foreign ownership of business enterprises and land. When they fail to tinker the Constitution, they will resort to legal maneuver, courtesy of the administration's dominated Congress. In the minimum, it will push through with its policies—maximizing powers of different branches of government—to legitimize, legalize and propagate the neoliberal agenda.

In this context, workers and the poor should expect heavier blows on their rights to decent work, just wages, free unions, decent dwellings and access to social services. Resistance from the workers and the people will naturally ensue and the government will try to suppress dissent through pacification and direct violence.

At the same time, opportunities for people to rise up and be heard are in the offing. The government anti-corruption campaign is starting, rapidly starting to blow on their own faces, as exposés of corruption came in succession, involving billions of people's money, the same time that the working men and women are being squeezed from additional taxes, contributions and encouraged to further tighten their belts. The wealth accumulation of the few in the government will be enough a scandal to send even the sleepy to a good waking time and move.

The challenge thus lies in the workers and the people's resolve to grab these opportunities, to push for a better society by strongly opposing policies and practices that long tied the Filipino majority to biting poverty and exploitation. Unity among workers and the people should become broader and firmer in pushing for alternatives that promote social justice, genuine democracy and national liberation.

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About CTUHR

The Center for Trade Union and Human Rights (CTUHR) is an independent non-government organization (ngo) based in Quezon City, Philippines. It is primarily engaged in documentation and monitoring of human rights violations committed against workers and urban poor. It also conducts education, training, research and investigations. It regularly publishes reports and analyses on the state of workers and human rights in the Philippines. It supports campaign and advocacy and builds networks

at the national and international level for workers' and human rights promotion and protection.

CTUHR assists unions, workers and community organizations in building human rights (HR) committees at the local and regional level and facilitates the dispatch of quick response teams (QRTs). It maintains a network of HR correspondents in various parts of the Philippines.

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STRAIGHT PATH TO EXCLUSIVE GROWTH
MIDTERM REPORT AQUINO

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