

# **The Labour and Environmental Situation in Philippine Banana Plantations Exporting to New Zealand**

**Center for Trade Union and Human Rights  
Nonoy Librado Development Foundation**

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## I. Background of the Study

### A. Philippine Banana Industry and the Philippine Economy

The Philippines is largely an agricultural economy and subsists from exporting mostly its agricultural produce to other countries. This export-oriented economic system could be traced back from the country's long history of colonial rule by the Spaniards and then later, the Americans. The *hacienda* system developed during the Spanish colonial rule transformed for example, large estates by *hacenderos* (land owners) into single-crop production for trade abroad. When the Americans came in 1899 and directly ruled the country until 1946, the system of export-oriented farming was not only maintained but strengthened. Even before World War II, US-owned multinational companies (MNCs) started coming to the Philippines. This [entry of MNCs] saw the transformation of most lands owned by the colonial government into plantations of fruit crops such as pineapple and bananas. After Philippine independence in 1946, the succeeding Philippine presidents not only maintained but broadened the outward orientation of agricultural development in the country.

The export of Philippine bananas to other countries intensified in the 1960s when the plantations particularly in the Davao region, established decades earlier, continued to expand. By 2007, the Philippines became the third largest Cavendish-banana producing country next to Ecuador and Costa Rica (Digal, 2007). At the same time, the production of the Señorita variety for export also began to increase.

Bananas produced in the country are sold to markets in the following countries: Japan, New Zealand, South Korea, Western Asia (Saudi Arabia) and China. From 2003 to 2007, export demand for Cavendish bananas rose to as much as 3 percent every year (ibid). In addition, official government data shows that banana plantations in three provinces of Davao del Norte, Compostela Valley and North Cotabato (areas subject for this research) have continuously expanded over the last decade (See Table I-1 and I-2).

TABLE I-1: Areas Planted with Banana in Three Provinces in Mindanao (in Has.)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Davao del Norte</b>	20,694	21,882	23,178	25,591	26,226	29,756	32,751	33,623	34,970	35,359
<b>Compostela Valley</b>	15,340	15,421	16,862	18,291	18,291	19,461	20,047	20,573	21,943	22,323
<b>North Cotabato</b>	8,912	12,416	12,516	13,528	14,054	15,087	15,420	15,568	15,253	15,263

From the Bureau of Agricultural Statistics

**TABLE I-2: Areas Planted with Banana Cavendish in Three Provinces in Mindanao (in Has.)**

	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Davao del Norte</b>	18,071	19,025	20,705	21,250	23,940	26,452	27,132	28,359	28,664
<b>Compostela Valley</b>	10,828	10,953	11,603	11,603	12,103	12,253	12,483.	12,983	13,333
<b>North Cotabato</b>	2,000	2,100	2,433	2,742	3,730	4,000	4,037	3,770	3,770

From the Bureau of Agricultural Statistics

The banana industry involves different actors in the production, selling, and consumption of bananas. They are:

**Institutional buyers** – These are big companies that have access to the international market. They buy bananas from growers or produce bananas through leased lands from landowners and sell them to the end-user market. In the Philippines, there are at least four existing institutional buyers of Cavendish and other bananas for export: Dole-Dole-Stanfilco, Del Monte, Sumifru, and Unifrutti.

**Corporate growers** – these are companies that manage wide areas of banana farms and sell their produce to institutional buyers.

**Small to medium scale growers** – small to medium scale growers cultivate their own banana farms but sell their produce to buyers. Growers are landowners (though some where farmers previously producing other cash crops) who use their land for growing bananas. Growers can own as small as 0.2 hectares of land or as big as 100 hectares of land. The size of land area being cultivated by growers also determines the number of workers they employ to do the processes involved in banana cultivation. Some small growers do all those processes on their own to cut on labor expenses.

**Cooperatives** – Cooperatives are groups that combine individuals (usually coming from one sector/class) to better facilitate and/or manage economic or business activities. Cooperatives in the Philippines are governed by cooperative law and not by the labor code. Cooperatives in the Philippines' banana industry are either comprised of workers (labor cooperatives), growers (growers' cooperatives) or both (grower-labor cooperatives). Growers cooperatives are group of banana growers, normally small to medium scale growers, that come together to maximize their economic resources and benefits. They sell their produce to institutional buyers and they also engage in other small and medium-scale enterprises. Labor cooperatives have workers as "members," however, labor cooperatives in the banana industry have not grown organically from the workers themselves. Instead, workers have been recruited or have joined these cooperatives to become part of the "labor pool" (pool of labor) of big growers and of Dole-Stanfilco as in the case of Asiapro.

**Middlemen** – middlemen are those who mediate between laborers and growers. They employ a group of workers whom they deploy to different growers when the latter requires.

**Workers** – workers supply labor in various stages of the banana production. They can be categorized according to their employment contract. Generally, workers in the

banana industry are either rank-in-file/regular or contractual/seasonal workers. These workers are either employed by the institutional buyers, labor cooperatives or manpower agencies, middlemen, or growers themselves.

**Consumers** – they are the end user/buyer of bananas in the banana-importing countries mentioned above. A certain percentage of production also goes to the domestic market.

### **B. Issues Surrounding the Banana Industry in the Philippines**

The banana industry in the Philippines is surrounded by a number of issues which include agrarian reform, labor rights violations, environmental degradation, sustainable development and food security. Past studies have focused mainly on agrarian reform and the situation of contract growers after the implementation of the Comprehensive Agrarian Reform Program following the Philippine revolution in 1986.

The issues surrounding the banana industry in the Philippines, to a large extent can be rooted in the practices and manner by which international companies have managed the banana industry. Despite the growing liberalization of the industry which saw the entry of new institutional buyers other than Dole and Del Monte, the price determination of bananas for export has remained under the control of big institutional buyers.

Reported cases of labor rights violations (specifically union rights) in the banana industry have become prominent in the last decade. Recent scientific studies combined with increasing public awareness about the ill-effects of aerial spraying have brought to focus the issues of health, sustainable development and environmental effects in areas where there are banana plantations.

However, recently there is a growing concern and push from multinational companies to acquire certification of compliance with international standards.

It is against this backdrop this research is being undertaken.

### **C. Research Objectives and Significance<sup>i</sup>**

This study was commissioned by Oxfam New Zealand to the Center for Trade Union and Human Rights in order to understand some of the social, economic and environmental impacts of large-scale banana production by multinational corporations, in relation to the people and families that live and work in the banana industry.

New Zealand is said to be the biggest per capita consumer of Cavendish bananas, which amounts to 18 kg per capita, next to Japan, which consumes 12 kg per capita (ibid). This study aims to shed light on the source of New Zealand's bananas and the production models employed in the Philippines. It will help New Zealand consumers to gain a better understanding of the ethical business practices employed by large corporations importing bananas in New Zealand.

The study will allow readers to compare the banana production methods described with different production models, such as Fairtrade and small scale and organic farming, to better understand the outcomes they deliver for workers and their families.

It is also being undertaken as part of Oxfam New Zealand's (ONZ) GROW campaign to explore the impact of large corporate dominance and the impact it is having on local communities and small producers.

It will provide preliminary information to inform further exploration on the assumptions and understandings New Zealand consumers make when exercising conscious buying behavior.

In addition, the findings will be made available to interested NGO groups in the Philippines.

As an exploratory research, this study will inform further research and communication.

#### **D. Scope and Limitations**

As an exploratory study, this research does not aim to provide a representative data or a comprehensive study on the experiences of the workers directly and indirectly employed in the three provinces of Compostella Valley, North Cotabato and Davao del Norte. This research however will give an overview, but nonetheless clear indications of the types of labor relations and environmental practices as well as other pertinent issues confronting workers in plantations in three provinces at present and previous years. In addition, the study will provide a relatively solid basis for a more thorough study of all banana production operations in Mindanao Island as well as recommending possible actions in aid of improving labor conditions in its entire operations.

#### **E. Definitions of Terms**

**barangay** – village. (*abbrev. bgy.*)

**cooperatives** – refers to groups of individuals (either growers or workers or both) that engage in legitimate business within the banana industry.

**Labor cooperatives** - refer to cooperatives that are comprised of workers (at times with grower members. Labor cooperatives in this study refer to Asiapro and Magrow who both also serve as labor agency.

**Code of Good Practices** – refer to the Voluntary Code of Good Practices on Decent Work in Region XI.

**DOLE** – refers to the Department of Labor and Employment in the Philippines.

**Dole-Stanfilco** – refers to the Philippine subsidiary of Dole Foods Incorporated that grows, buys, produces, and sells bananas. It is different from DoleFil which is the Philippine subsidiary of Dole Foods Inc. for pineapple plantations.

**Dole-Stanfilco plantations** – refers to land owned by banana contract growers that sell exclusively to Dole-Stanfilco, to land managed directly by Dole-Stanfilco. It also refers to areas where Dole-Stanfilco production plants, plastic plant and port services are installed.

**FOBs** – (Freight on Board) refer to banana-grown lands owned and managed by banana contract growers.

**growers** – refers to contract growers that are currently or have previously grown and sold bananas.

**growership** – may also be referred to as *growers' collective*. This pertains to the group of growers before the shift to FOB farming. In this system, growers are provided with some agricultural inputs by Dole-Stanfilco.

**Labor Code or Code** – refers to the Philippine Labor Code or Presidential Decree 442.

**law** – refers loosely to all laws, Constitution, Republic Acts, Department Orders etc., promulgated in the Philippines.

**managed-farms** – refer to banana-grown land areas that are directly managed and supervised by Dole-Stanfilco.

**middlemen** – refer to individuals the provide human resource to contract growers.

**principal** – refers to Dole-Stanfilco otherwise stated.

**rank and file workers** – refers to all workers that are directly employed by the principal.

**unions** – group of workers that are presently, previously or aims/aimed to become a legitimate bargaining agent with the principal.

**workers** – refer to all workers that engage in activities in banana plantations.

## **F. List of Acronyms**

<b>AFP</b>	Armed Forces of the Philippines
<b>AMS</b>	Alberto M. Soriano Group of Companies
<b>ANAD</b>	Alliance for National Democracy
<b>APL</b>	Alliance of Progressive Labor
<b>CBA</b>	Collective Bargaining Agreement
<b>CE</b>	Certification Election
<b>COC</b>	Codes of Conduct
<b>DOLE</b>	Department of Labor and Employment
<b>DILG</b>	Department of Interior and Local Government
<b>DND</b>	Department of National Defense
<b>DOJ</b>	Department of Justice
<b>ICFTU</b>	International Confederation of Free Trade Unions
<b>ILO</b>	International Labor Organization
<b>FILU</b>	Federation of Integrated Labor Union
<b>FARM Coop</b>	Foundation of Agrarian Reform Beneficiaries in Mindanao Cooperative
<b>FBAC</b>	Fresh Banana Agricultural Corporation (FBAC)
<b>KMU</b>	Kilusang Mayo Uno (May First Movement)
<b>MaGrow</b>	Maragusan Growers Cooperative
<b>MDSLU</b>	Maragusan Dole-Stanfilco Labor Union
<b>MILSI</b>	Mindanao Integrated Logistic Services Incorporated
<b>MUWU</b>	Maragusan United Workers Union
<b>PCE</b>	Petition for Certification Election
<b>PILLU-TUCP</b>	Philippine Integrated Industries Labor Union - Trade Union Congress of the Philippines
<b>PNP</b>	Philippine National Police
<b>PPPLU</b>	Panabo Plastic Plant Labor Union
<b>SA 8000</b>	Social Accountability 8000
<b>SAI</b>	Social Accountability International



## **II. Research Design and Methodology**

This research is an exploratory study on labor and environmental practices in banana production in the Philippines. It specifically investigates whether the labor and environmental practices adhere to ethical standards.

For the purposes of this research, current labor and environmental conditions in the plantations are compared with recognized standards to evaluate whether the operations are ethical.

The standards used are as follows:

- The Labor Code of the Philippines as well as other relevant laws (ie. Republic Acts, Executive Orders, Department Orders etc) as promulgated by the Philippine State.
- Voluntary Code of Good Practices of the Banana Industry in Region XI for which Dole-Stanfilco is one of the signatories
- International Labor Organization (ILO) core conventions for which the Philippines is a signatory
- Other standards as advised by Banana Link or Fair Fruit used in previous studies (such as SA 8000)

This exploratory research uses qualitative methods to look at the social, economic and environmental impact of banana production in the Philippines. Personal interviews with respondents and key informant interviews were primarily used as source of data. Respondents come from workers and contract growers who work and grow bananas in Dole banana plantations in the areas:

- 1) Maragusan, Compostela Valley;
- 2) Kapalong, Sto. Tomas and Panabo Davao del Norte; and
- 3) Makilala, North Cotabato.

Key informant interviews were conducted with leaders of three labor centers and one cooperative seller who was involved in business operations in North Cotabato, Davao del Norte and Compostella Valley, as well as one former local government official of Davao City. This data was analyzed, compared, and contrasted to the above-mentioned standards, which are all public documents and are readily available on the internet.

Secondary data was sourced from:

- 1) government statistics;
- 2) websites, online news articles, press releases of concerned groups and organizations;
- 3) previous studies on banana industry practices in this country.

## **A. Who conducted the research?**

The Center for Trade Union and Human Rights (CTUHR) was commissioned by Oxfam New Zealand to implement this research in the Philippines (see annexes).

Formed in 1984, the Center for Trade Union and Human Rights is a Manila-based non-governmental organization that primarily documents human rights and labor rights violations against workers in the Philippines. It is also engaged in education and research to further develop its campaign and advocacy work to end human rights violations against workers and contribute in pushing for a more labor rights-friendly environment in the Philippines.

The CTUHR regularly releases its annual report in addition to the statements on the state of labor rights in the Philippines. Often, these reports and studies are sought not only by labor and human rights organizations in the Philippines and abroad but also by foreign governments, international non-governmental organizations as well as multi-lateral institutions. CTUHR is also an official consultant to trade unions in the Philippines that filed complaints at the International Labour Organizations and work in partnership with US-based labour rights organization (International Labor Rights Forum) in pursuing complaints at the United States of America (USA) Trade Representative on matters relating to the Generalized System of Preferences (GSP) accorded by the US to the Philippines.

In implementing the research in Mindanao, the CTUHR partnered with Nonoy Librado Development Foundation, Incorporated (NLDFI), a Davao-based labour rights organization.

CTUHR Executive Director Daisy Arago directly supervised and was hands-on with the research implementation. Field interviews were carried out by the research team composed of the following:

- Wilmelyn D. Gambong, is field researcher and currently works as staff member of the Women's Studies and Resource Centre-Southern Mindanao Region. She finished Bachelor of Science in Psychology in Holy Cross of Davao College.
- Kenette Jean I. Millondaga is a part-time staff researcher of the NLDFI. She finished Bachelor of Arts in Anthropology at University of the Philippines-Mindanao and is currently studying Masters of Arts in Applied Social Research in Ateneo de Davao University.
- Jane Alexandra A. Siwa is the public information and education program coordinator of CTUHR. She finished Bachelor of Arts in Political Science in the University of the Philippines-Diliman. She's been with CTUHR for almost three years.

The field research team was assisted on the ground by teams of volunteers from the Nonoy Librado Development Foundation (NLDFI). Writing of this research report is done by the CTUHR.

## **B. How was the research conducted?**

Soon after the agreement between CTUHR and Oxfam NZ was finalized, initial mapping of target areas was done to facilitate the research implementation. Prior to actual interviews, CTUHR held a pre-field research workshop and planning in Davao city involving the field research teams, volunteers and coordinators to discuss the objectives, the interview questions and all necessary area preparations (technical, logistical and security) to ensure that everyone has a common understanding of the project as well as the required processes that the project has to accomplish. Following the workshop, a number of questions were added to the interview questions provided by Oxfam NZ. The new set of interview questions was then translated into the local language.

Interview questions for individual workers covered the themes related to labour standards and environmental issues such as: workers' pay, working conditions, women and children, job security, access to union representation, occupational health, schooling and environmental issues. A different set of questions was asked to trade union leaders, focusing on the union's particular experience on compliance with labour standards particularly on freedom of association. Separate sets of questions were also used for contract growers, growers co-operative and former local government official focusing on their relation with the company and their observed and perceived environmental impact of it's operations.

The interviews were conducted from February 14 – March 30, 2012 in the provinces of North Cotabato, Compostela Valley and Davao del Norte. These three provinces represent a perfect mix of old and newly-established banana farms. Dole-Stanfilco operated in Davao del Norte in the early 1960s, in Compostella Valley in the early the 1990s and in North Cotabato in the early 2000s.

However, it must be noted that operations are not limited to these provinces in Mindanao but there are also relatively newer plantations in Bukidnon, Sultan Kadarat, and new expansion areas in Surigao provinces.

The interviews involved a cross section of 69 individuals. Majority of the respondents are workers (51) and a few number are contract growers (12). Key informant interviews were from three leaders come from three labor centers involved in the organizing workers, two are executives of a labor cooperative who previously sold bananas to Dole Dole-Stanfilco and a former local government official of Davao City.

Interviews with respondents who agreed to a recorded interview were videotaped. However, a considerable number of the respondents refused to have the interviews recorded. In these cases, the interviewer instead wrote down the interviewees' responses as verbatim as possible. Respondents who were adamant to provide information were assured by the research team that full confidentiality of the interviewee's identity shall be protected. The names of all interviewees have therefore been altered to protect their identity.

In order to validate the information coming from worker respondents, several respondents from one sector and one category of worker were done in order to verify the similarity or differences in experiences and perception of respondents coming from the same group.

Data culled from the interviews are categorized according to themes and are analyzed and evaluated based on the standards mentioned earlier. Statistical data (i.e. age, wage rates etc) are presented in this study in range instead of means and averages.

Other than the primary data gathered from interviews, the study uses existing secondary data from previous studies, websites concerned groups, entities and government agencies about the labor conditions and environmental conditions in the banana industry in the Philippines.

### III. Findings, Discussion, and Analysis

#### A. Operations in Mindanao

*This section describes a brief history and overview of operations in Mindanao. Data used in this section came from published articles and studies, information gathered from workers and grower respondents, key informant interviews with Foundation of Agrarian Reform Beneficiaries in Mindanao Coop (FARM Coop), and government data and statistics.*

*Data in this section is useful first in understanding 1) the scope of operations in Mindanao 2) Relations with workers, growers, cooperatives and other actors in the banana industry and 3) the role of workers in the growing and production process of bananas for export.*

Standard Philippine Fruits Company or Dole Stanfilco, one of Asia's largest fruit producer, is a subsidiary of Dole Foods Company that grows and processes bananas in the Philippines. It is also considered one of the largest institutional buyers of bananas in the country. Bananas grown, bought and processed are mostly Cavendish of different varieties. The Señorita banana was recently introduced and is now being grown in some plantations. These bananas are exported to China, Japan, South Korea, Saudi Arabia, Australia and New Zealand.

Three workers working in the port services for Dole-Stanfilco, Panabo, Davao del Norte noted that shipments of bananas, about 250,000 boxes, are made to New Zealand every two weeks and go to Christchurch, Wellington, Auckland, Littleton.

Dole Stanfilco grows or buys and processes bananas in plantations in many provinces of Mindanao including Bukidnon, SOCSKSARGEN or Region XII (South Cotabato, Sultan Kudarat, Saranggani, and General Santos), Davao City, Davao del Norte, Compostela Valley and North Cotabato (Region XI). Recently, it also expanded in Surigao del Norte (Region XIII) (Figure III-1).

It claims to generate an average of 29,000 direct and indirect jobs across six provinces in Mindanao (Payuyo, 2011).

#### *1. Overview of Operations in the Provinces of Compostela Valley, North Cotabato, and Davao del Norte*

Plantations in this study refer to all land areas used for cultivation and processing of bananas that are either managed by or bought by the company. These include: 1) **managed farms** or farms directly managed by Dole-Stanfilco; 2) **private farms** or farms

of independent growers that sell their produce *exclusively* (as per contract) to the company. Workers in Maragusan, Compostela Valley refer to type of farm as **FOBs** or **Freight on Board** and; 3) Production plants where the processing and packaging of bananas take place.

Operations in the provinces of Compostela Valley, Davao del Norte and North Cotabato (See Figure III-2) cover a huge area of agricultural lands in the said provinces. Except for North Cotabato, there is no official data on the exact number of hectares of land occupied by plantations. Interviews with individual workers and the Federation of Integrated Labor Union reveal the following range of figures:

<b>Table III-1: Estimated Area of Dole Stanfilco Banana Plantations in the areas covered by the research</b>			
<b>Town, Province</b>	<b>Area of Banana Plantation (in hectares)</b>	<b>Type of farm</b>	<b>Number of production plants</b>
Maragusan, Compostela Valley	~10,000	10-20 percent managed farms 80-90 percent FOBs	2 big plants 6 small plants
..., Davao Del Norte in Luna Zone, within the towns of Kapalong, Sto. Tomas and Asuncion	~2,400	All are FOBs	12 plants
..., North Cotabato	1,731.45*	All are managed farms	
Kidapawan City	84.69*		
Magpet	541.42*		
Makilala	1,105.34*		
<b>Total</b>	<b>~ 14,131.45</b>		

\*Official data from Cotabato Provincial Government as of 2011

Dole-Stanfilco began its operation in Davao del Norte in the early 1960s through direct subsidiary plantations and the growership system. The growership system is a group of small landowners who agreed to enter into a contract to sell a certain amount of bananas within a certain period of time. The bananas bought from the farms of the growers' collective under the growership system are processed in production plants.

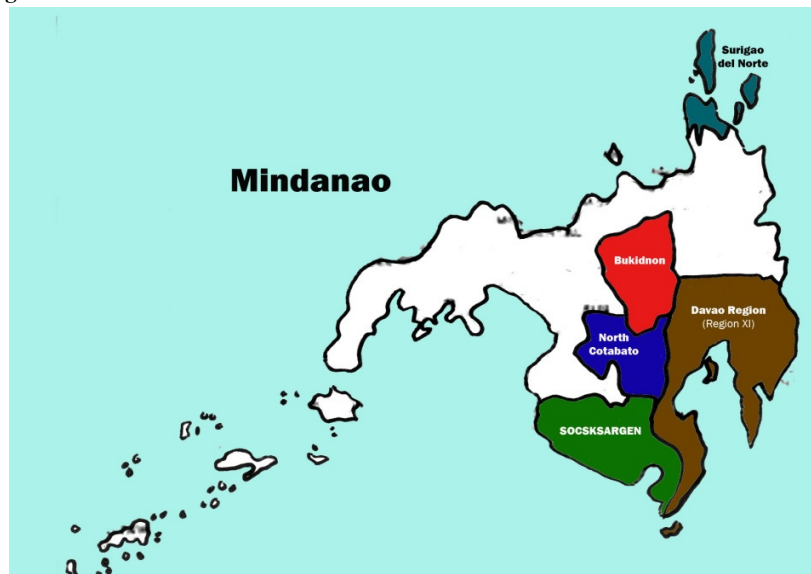
Prior to the implementation of the Comprehensive Agrarian Reform Law in 1989, Dole Stanfilco had four subsidiaries including 700-hectare Diamond Farms, 689-hectare Checkered Farms and 464-hectare Golden Farms. These were Filipino-owned corporations formed with House of Investments, a joint venture with Stanfilco. Later, Stanfilco became a division of Dole Philippines and the company became Dole-Stanfilco (AFRIM, 2009).

In 1996, both Diamond and Checkered Farms were subjected to agrarian reform and ownership of the land was transferred to the banana farm-workers. Subsequently, the

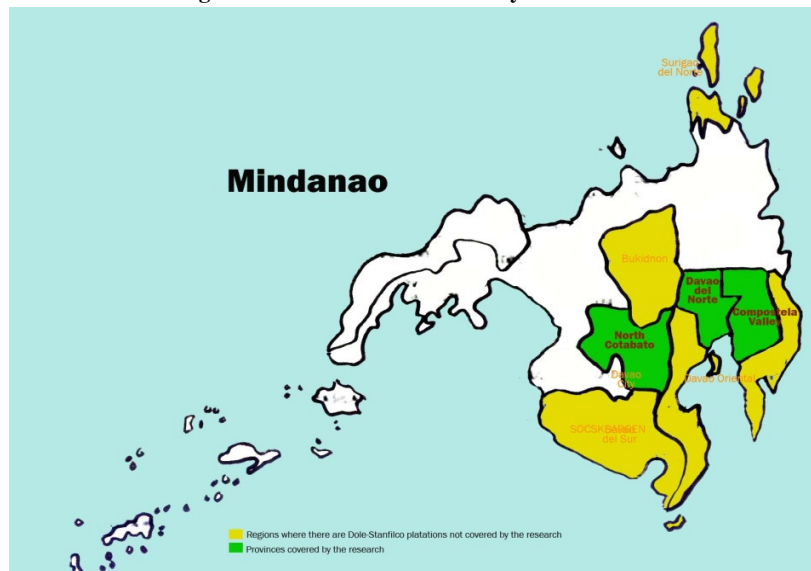
farm workers of the four plantations organized themselves into cooperatives (not to be confused with the labor co-operatives mentioned elsewhere in this report). but the company retained the ownership of the plantation, roads, the packing sheds, and the complicated network of cables needed to support the trees and transport the bananas. These assets are basic, leaving cooperatives with no options but to accept the terms in the contract including low buying price of banana produce at the quality standard set by the buyers. It immediately welcomed this scheme and insisted on arrangements in which they subsidized part of the production cost (fertilizers, chemicals, etc) and paid net proceeds to the cooperatives (that they used to pay for the land amortization) and leave other expenses to the cooperatives (Bacon, 1998). By late 1998, the growership system was transformed into individual grower farms.

At present, Dole-Stanfilco banana plantations are found in Davao del Norte's three adjacent towns of Sto. Tomas, Kapalong, and Asuncion. The series of interviews with workers revealed that about 90 percent of the banana growers in these three towns are still selling their produce exclusively to Dole-Stanfilco which runs 12 production plants.

**Figure III-1: Areas in Mindanao where Dole-Stanfilco's Banana Plantations are found**



**Figure III-2: Provinces covered by the research**



Dole-Stanfilco's plastic plant and port services are located in Panabo City, Davao del Norte.

In Compostela Valley, the company started its operation in 1992, again a through growership system in the towns of Maragusan and Compostela. The company used to run five packing plants in Compostela, Compostela Valley until it decided to shift from growership system to Freight on Board (FOB) system in the said town in 2000.

By 2002, all the banana farms in the town of Compostela were turned into FOBs and the ownership of the production plants was transferred to the Fresh Banana Agricultural Corporation (FBAC), under the Alberto M. Soriano (AMS) Group of Companies, one of the biggest corporate sellers of bananas in Mindanao. By 2004, the bananas produced in Compostela, Compostela Valley are bought by Sumitomo Fruit Company or Sumifru when it invested US\$16 million in AMS (Davao Today [DT hereon], 2006).<sup>ii</sup>

In Maragusan, the shift from growership system to FOBs happened in 2010. Interviewed workers said that at present, only 10 to 20 percent of the banana farms in Maragusan are Dole-Stanfilco managed farms. The rest of the banana farms are already FOBs owned by private growers who have signed contracts to sell exclusively to Dole-Stanfilco for at least 10 years.

At present, there are two big production plants (Plant 79 and 97) and six smaller production plants in Maragusan, all run by Dole-Stanfilco.

In North Cotabato, Dole-Stanfilco's operation started in 2002 and at present, its operations are found in Kidapawan City and in the town of Makilala. Workers attest that unlike in other provinces, the farms in North Cotabato are directly managed-farms.



In Davao del Norte and North Cotabato, banana plantations produce Cavendish bananas of different varieties while plantations in Maragusan, Compostela Valley produce both Cavendish and Señorita. The latter is a local banana variety which is smaller in size and the Señorita farms, according to the respondents, are mostly directly managed-farms.

## 2. Stages in Banana Production

Banana production involves three stages: cultivation, harvesting, and processing. Four departments are involved in these production stages namely: Banana Gardening (BG), Agriculture Services (AS), Engineering (Eng’g) and Production (Prod’n) (See Figure III-3)

**Figure III-3 Stages and Departments involved in Banana Production**

Stages in the banana production in Dole-Stanfilco plantations	1 <b>Cultivation</b>	2 <b>Harvesting</b>	3 <b>Processing</b>	4 <b>Shipping for Export</b>
Departments involved in every stage	Banana Gardening Agricultural Services Engineering	Banana Gardening or Production	Production	Port Services

Cultivation involves planting and growing of banana trees until they bear fruits. In this stage, **BG**, **AS** and **Eng’g** departments are all involved.

Banana Gardening (BG) includes various processes needed in cultivation, such as:

- Planting
- 101 or 202 injection into banana flowers and fruit bunches
- Bagging
- Sanitizing
- Deleafing
- Propping
- Weeds control
- Deflowering and Defingering
- Application of fertilizer

Agriculture Services (AS) is responsible for all chemicals/medicines’ application to prevent and to cure the banana plant/fruit diseases.

Engineering (Eng’g) is responsible for the land preparation and infrastructures’ installation needed during the cultivation and processing of bananas.

Harvesting involves the gathering of banana fruits from the trees/plantations and bringing them to the production plant. In managed farms, the production department takes care of the harvesting. In private farms run by growers, harvesting is part of the BG department performed by the growers themselves or outsourced to middlemen.

Processing involves every process that banana fruits go through after harvesting until they are packed, boxed and loaded onto trucks for shipping and export. Processing is done by the Production Department where bananas are checked for quality, segregated according to size and variety, treated for timely ripening, weighed and packed before they are placed in boxes and loaded into trucks for shipment.

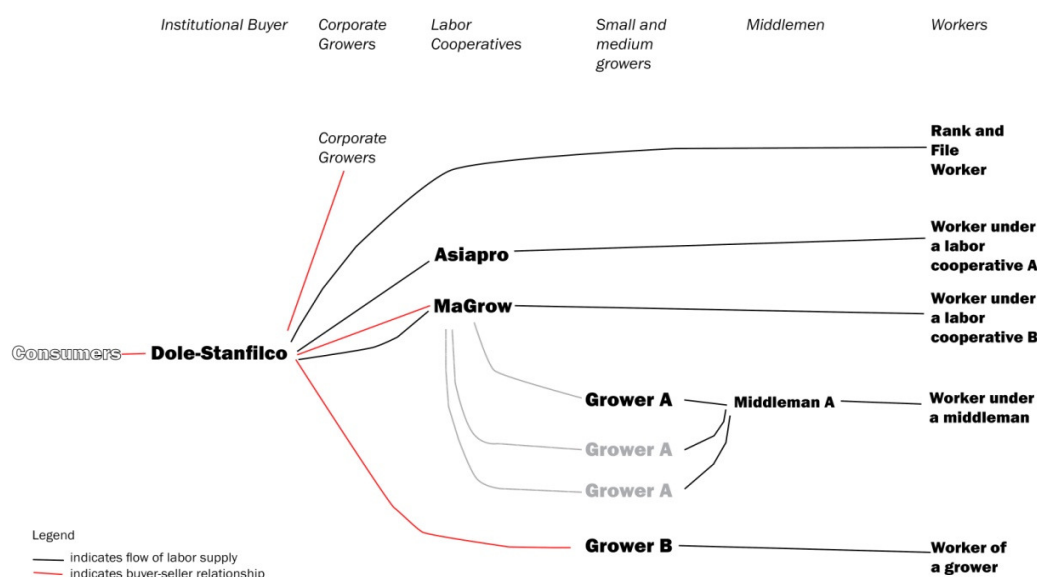
Aside from these major operations, Dole-Stanfilco also operates a plastic plant that supplies the plastics used for bagging of banana fruit bunches in the field and for wrapping and packing the bananas produced.

From the banana packing plants, the boxes of bananas are brought to Panabo City in Davao del Norte where they are loaded into cargo ships for shipping to other countries.

### 3. Actors in Banana Plantations in the selected three provinces

Production of bananas in plantations directly or indirectly related to Dole-Stanfilco involves the following actors: 1) corporate growers, 2) small and medium growers, 3) co-operatives and 4) workers. The relationship between workers and other actors in Dole-Stanfilco banana plantations is illustrated below (*Figure III-4*).

**Figure III-4 Relationships of actors in Dole-Stanfilco plantations**



The AMS Upland Ventures Corporation under the AMS Group of Companies is a corporate grower of Cavendish bananas that sells to Dole-Stanfilco. It developed the midland area of Brgy. Kisante in the town of Makilala, North Cotabato ([www.ams.com.ph](http://www.ams.com.ph))

Following a shift from collective growership system to FOBs, small to big private growers became important actors in the company's business operations, particularly in the plantations found in the towns of Maragusan, Kapalong and Sto. Tomas. Field data show that these private growers own lands as small as 0.2 hectares to as wide as 100 hectares. As contract growers, they agreed to sell their produce exclusively to the company for a certain period of time.

Field research found that there are three types of co-operatives that exist. Asiapro is the most dominant labor co-operative in all towns and provinces. In Maragusan, the Maragusan Dole Banana Growers Cooperative or MaGrow - another cooperative exists. MaGrow has both growers and workers as members. These two cooperatives are in fact labor pool or manpower agencies supplying workers for Dole-Stanfilco production plants and managed farms. Apart from the two, there are also cooperatives exclusively providing workers to growers. One of them is the SBA, a group of 40 banana growers in Maragusan.

Field research also revealed the presence of middlemen in banana plantations in Davao del Norte. Various types of workers in the plantations in the three provinces covered by the study were found, classified based on the entity that directly hires/manages them, such as:

1. **Regular workers** – also known as rank and file. These are workers directly employed by Dole-Stanfilco to perform work in various stages of banana production.
2. **Manning or Labor pool** – these are workers under a labor cooperative that work in Dole managed farms or in Dole production plants. They are usually employed on a contractual basis and have lesser benefits than regular workers.
3. **Contracted workers** – these are workers handled/employed by middlemen that are deployed to different growers depending on the latter's human resources needs.
4. **Workers of Growers** – these are workers directly employed by private growers and are not handled by a middle person or a third party (i.e a manpower agency or cooperative).
5. **Help-out** – these are workers who work on a very seasonal or on-call basis. They substitute or fill-in the labor force of small growers when the “original” workers are absent or they need an extra hand in order to meet their quota.

#### *4. Workforce in Dole-Stanfilco banana plantations*

There is no official data on the exact number of workers in the banana plantations in the towns and provinces of Compostela Valley and Davao del Norte. The complex and varied types of employer-employee relationships that exist in these plantations add to the difficulty of knowing the precise population of workers within the banana plantations.

Considering the estimated number of production plants, Dole-Stanfilco-managed farms, port services and plastic plants combined, workers' respondents and key informant from the Federation of Integrated Labor Union (FILU) there are about 9,000 to 12,000 ranks and file and contractual workers employed in the towns covered by the research. FILU is the dominant labor center with local unions in almost all local plants

The number of workers employed by growers and middlemen are equally difficult to estimate. Industry players note that a ratio of four workers in one hectare of plantations is employed (Voluntary Codes of Good Conduct). With shift to FOBs, respondents noted that a ratio of one worker to a hectare of land is more appropriate. Thus, it can be approximated that around 11,400 workers work for independent growers which are either small or medium scale.

## **B. The Condition of Workers in Banana Plantations in the Selected Towns in the Provinces of Compostella Valley, Davao del Norte and North Cotabato**

*This section discusses the condition of workers in banana plantations in the areas covered by the research. Data is presented, discussed and analyzed according to themes of labor rights and standards such as worker pay, worker contract, health and safety, union rights among others.*

*Data presented in this section came from several sources: First, data gathered from the three sets of interview-questions for workers from Maragusan, Sto. Tomas, Kapalong, Panabo and Makilala; second, data from key informant interview with representatives from three labor centers namely Alliance of Progressive Labor (APL), Federation of Integrated Labor Union (FILU), Kilusang Mayo Uno (KMU); third, from previous studies and articles on the condition and issues of workers in Dole-Stanfilco plantations and; from CTUHR documentation of previous cases of violations of union rights among workers in plantations.*

*There are 51 worker respondents from five local areas namely i. Maragusan Compostela Valley (20), ii. Kapalong and Sto. Tomas, Davao del Norte (15), iii. Panabo, Davao del Norte (6) and iv. Makilala North Cotabato (10).*

*Of these respondents, 23 are rank and file employees, 19 are under labor-cooperatives, 6 are growers-hired and 3 are hired by middlemen.*

*Data from respondents were used to provide a picture of the situation of workers according to several themes regarding workers rights. Additional information from key informant interviews, past articles and studies as well as CTUHR documentation were used to provide more factual information on recent and not-so-distant past experiences of workers in banana plantations.*

*These data are then discussed and analyzed (also according to themes) using the standards of the ILO, SA 8000, the Philippine Labor Code and the Voluntary Codes of Conduct to evaluate whether Dole-Stanfilco complies with these standards or not.*

### *1. Socioeconomic Profile of Worker Respondents*

Activities where workers and people are engaged in banana plantations cut across age groups – from children below 15 years of age to workers beyond 50 years old.

Workers, except those in Maragusan, were born and raised in the towns where the banana plantations started and developed. Banana plantation workers in Maragusan, were mostly migrants, but have lived in the town for two decades or so. Original inhabitants of

Maragusan, Compostella Valley belonged to the Mankayas—a subgroup of Lumads, a national minority group in Mindanao.

Most of the workers interviewed are married and high school graduates. Younger workers tend to have higher educational attainment than older workers.

Majority of the workers interviewed have less than 10 members in their household comprised of their immediate family: husband, wife and children whose ages are often below 16 years old.

Most of the workers who live in the plantations own their houses – standing in a land area between 100-300 square meters – which are often inherited from their parents. Workers living outside the plantations and closer to the city or town center own mortgaged houses which they amortize monthly. Some workers have relatives or parents who own less than one hectare or a few hectares of land that are either leased to Dole-Stanfilco or planted with bananas and sold to the former.

## *2. Workers Contract, Employment Status and Modes of Hiring*

The manner of Dole-Stanfilco operations, contract arrangements and managed-farms and plants, also determines the types of workers, their employment status and relationships with the company.

The study shows that different types of workers and relationships exist in the operations: 1) rank and file employees who are considered regular workers of Dole-Stanfilco, 2) contractual workers under labor cooperatives, 3) contracted workers by middlemen. and 4) workers directly employed by growers.

The banana industry in Region XI in its Voluntary Codes of Good Practices forged with other stakeholders calls this multi-dimensional production and employment relationship among and between the individual growers, associations, cooperatives and corporations, necessary to promote dynamic, healthy and sustainable economic relationships among key players in the industry.<sup>iii</sup>

However, industry players did not say the extent, ratio and limits of these relationships. In the plants, departments and managed farms for example, it is difficult to identify the actual ratio of rank and file workers vis-à-vis contract workers under labor cooperatives except that it varies according to places or town where the company operations exist.

In Maragusan, Dole-Stanfilco directly employs both rank and file workers and contract workers mostly supplied by Maragusan Growers and Asiapro labor cooperatives in its four departments. Interview results indicate that the ratio of rank and file workers to contractual workers is 1:3. This means that for every rank and file employees, there are three contracted workers supplied by labor cooperatives in Plant 79 and Agri-services department. This means that 75 percent of the workers are from the labor cooperatives while 25 percent are rank and file employees.

In Davao del Norte, ratio of rank and file workers to contractual workers working in the plants is approximately 7:2. That translates to about 22 percent contractual workers and 88 percent rank and file employees.

In the village of Kisante, in the town of Makilala, North Cotabato worker respondents in a managed farm said that all the workers (approximately 170) or 100 percent of the workforce is supplied by Asiapro. Thus in the areas covered by the research, approximately 65 percent of the workers in plants, departments and managed farms are contractual workers under labor cooperatives while 35 percent are rank and file employees.

Worker respondents noted that in FOBs, a 1:1 worker to hectare of land ratio applies. Considering that approximately 90 percent of plantations in Maragusan are now FOBs, it can be deduced that the same percentage of workers work for individual growers. In Kapalong and Sto. Tomas, all farms are under FOBs thus all workers in the banana gardening operations are employed by individual growers.

#### a. Job types

Regardless of employment status and modes of hiring, workers' tasks performed in the field are distinguished as either single task or multi-tasks. Single task for a wider area means that a worker does a specialized task, for instance a deleafer covering 6.3 hectares of land which need to be covered twice a week. Single tasking for workers is prevalent in the managed-farms. Multiple tasks for a "smaller" area means that a worker has to do several operations from deleafing, application of 101 and 202 chemicals, deflowering and defingering (DND) for a smaller set area of land usually below 2.0 hectares. Multiple tasking for workers in the field is dominant in FOB farms run by growers. The number of workers vis-à-vis the tasks performed also explained why the ratio of 1:1 (one worker to a hectare) is used in calculating the estimated number of workers involved in Dole-Stanfilco plantations.

#### b. Length of service and employment status

Article XIII of the 1987 Philippine Constitution guarantees the workers' right to just wages, security of tenure, humane conditions at work and right to self-organization and collective bargaining including the right to strike. Article 280 of the Labor Code of the Philippines (LCP) describes different types of employment namely: regular, casual, project or seasonal. These distinctions are important because some rights and benefits are attached only to regular employees, especially the right to security of tenure.<sup>iv</sup>

The most common type of employment now is the fixed-term employment or contractual. Most companies prefer this to save on labor costs because if they hire regular employees, they cannot terminate their employment expediently without valid and legal cause and without payment of separation pay and other benefits (Business Accent, 2009)

The study reveals the lack of workers' security of tenure in various Dole-Stanfilco operations. The workers have varying lengths of service ranging from one year to as long

as 30 years but are not all considered rank and file or regular employees. Some of the workers aged forty (40) and above have worked in the plantation since they were children. However, though most of the interviewed workers have worked in the plantations for several years or decades, they did not work for a single employer but have changed employers (growers, labour cooperatives, the company itself) over time. This reflects the precariousness of their employment status and uncertainty of benefits accompanying the length of service as provided by law like seniority pay, service incentive leaves and retirement benefits. Some workers especially those below 30 years old, were able to graduate from their contract with MaGrow or Asiapro labour cooperatives and became rank and file employees after some years. Some help-out workers have become contractual workers under the labor cooperative.

However, older workers who used to work in the growership system said that the shift from the growership system to FOBs altered the employment status of workers particularly in the plantations in Maragusan, Kapalong and Sto. Tomas. For example, some workers previously working under the growership system in Maragusan were absorbed by as rank and file workers but their length of service was reverted to zero. Unless the worker voluntarily signed an agreement or voluntarily consented to this arrangement, this practice is contrary to law. In Kapalong and Sto. Tomas, those workers previously under the growership system now work for growers as lead men who supervise and train younger workers in the field. Both groups of workers however lament the decrease in wages and benefits following the shift to FOBs (to be discussed further later).

Article 279, 282 and 283 of the Labor Code state that all workers regardless of employment status should enjoy security of tenure and could only be dismissed on two grounds: just cause or authorized cause. Dole-Stanfilco pledged to adhere to these provisions of the law under the Codes of Good Practices.

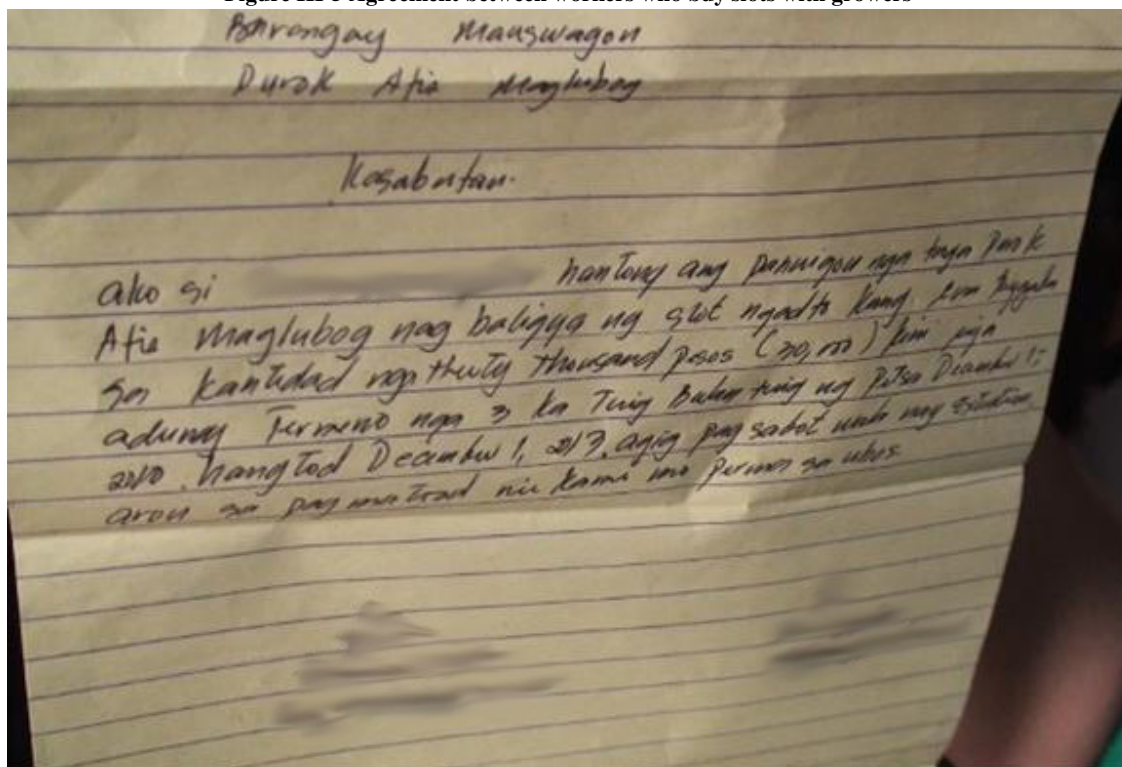
Contractual workers under a labor cooperative on the other hand, do not have a written contract. However, some of them noted that they do have an “agreement” about the length of service and do’s and don’ts when being hired by these labor cooperatives.

In Maragusan for instance, interviewed workers shared that they buy “slots” from growers to be included in a shortlist of Asiapro’s list of labor pool. Their paid slot determines their length of service as contractual workers under Asiapro. Workers for instance, pay PHP 5000.00 (USD 118.29) for a slot from growers for a 5-month work contract and as much as PHP 30,000.00 (USD 709.75) for a three year work contract. However, buying a slot does not guarantee a job because there are times when slots bought by workers surpass the actual number of jobs available. Moreover, once these workers have signed an agreement as workers under Asiapro and are deployed, they must abide by the rules set by the labor cooperative which include prohibition from joining unions, ability to meet quota requirement, etc. Otherwise, they can still be terminated from their work even before the work-slot contract is completed. Contractual workers,



specifically those under MaGrow, also suffer from compressed workweek whenever demands for banana are low.

Figure III-5 Agreement between workers who buy slots with growers



(Above text reads: "Agreement. I, Amado, of legal age residing in Pook Atis is selling a slot to Cristina for thirty thousand peso (Php 30,000.00) for a term of three years from December 17, 2010 to December 1, 2013 without extension. As proof of our understanding, we are affixing our signature below.")

In North Cotabato, contractual workers under Asiapro said that their initial agreement secures them a job in the farm for at least one year. They can stay in the job as long as their job is "good" after their first year. In Davao del Norte, interviewed workers under a labor cooperative have stayed in their work for as long as six (6) years.

In contrast, workers directly employed by growers or middlemen are not guaranteed security of tenure. They are employed as long as there is work to do and they are able to do their jobs properly. Some of these workers are also seasonal or on-call, which means that they work when they are called to work for a specific period of time, but without a defined time when the call will come.

It can be argued that it is acceptable that the banana industry employs multi-dimensional employment relationships which involve employment of contract workers, labor cooperatives and associations. The practice is also recognized and strengthened by the Department of Labor and Employment (DOLE) Department Order (DO) No. 18-02 in 2002 and an updated DO-18-released last year (2011)<sup>v</sup> (See Appendices 1 & 2) .

Although there may be legal basis to employment of contract workers and the practice of contracting-out and sub-contracting of labor, the law has consistently received strong criticism from various trade union centers and labour rights organizations for its violations of workers' rights to security of tenure under Universal Declaration of Human Rights, ILO Conventions and the Philippine 1987 Constitution.

Regardless, nowhere in the provisions of DOLE DO No. 18-A does it allow a practice of asking workers to voluntarily resign after certain number of years only to be re-hired as new employees. In fact under Section 7, para A, 2.ii, "it is prohibited to require a worker/employee to sign, as precondition to employment or continuous employment, an antedated resignation letter, blank payroll, waiver of labor standard including minimum wages, social or welfare benefits; quitclaim releasing the principal, contractor from any liability of payment of future claims".

DOLE DO No. 18-A also expressly prohibits labor only contracting under Section 6 and Section 7, including the use of in-house agencies. A job contractor should either "carr[y] on a distinct and independent business..." *or* a "contractor has substantial capital investment," which under DOLE DO 18-A is equivalent to PhP 3,000,000.00 (US\$69,879.20). The law also provides that job types considered "desirable and necessary" to the principal's business operations should be operated by the principal employer and must not be contracted out to third party contractors.

If having the substantial capital investment is used as ground, labor cooperatives such as Asiapro and MaGrow can qualify as legitimate job contractors. However, several provisions of the same Section 7, DO 18-A prohibited repeated hiring of employees under a contract shorter than the Service Agreement, contracting out jobs "necessary and desirable" to the principal business operations and others, which Dole-Stanfilco practices in the cases of jobs contracted out to workers of Asiapro and MaGrow some plants in Maragusan and North Cotabato. As indicated in the approximate percentages of contractual workers in relation to the regular workers, the supply of labor force by Asiapro and MaGrow effectively reduced the number of directly employed regular workers especially in banana plantations in Maragusan and North Cotabato. In our reading of DO 18-A (see Appendix 1), the above practices by Dole-Stanfilco constitute several violations of the law.

Banana gardening operations for example, such as deleafing, deflowering and defingering performed by contractual workers in Dole Stanfilco-managed farm in Barangay Kisante, Makilala and North Cotabato fall into works considered "desirable and necessary" to the cultivation of bananas and thus, in strict sense cannot be sub-contracted to an independent contractor, such as Asiapro or Magrow.

The status of middlemen as legitimate job contractors for growers is more questionable; first: because harvesting bananas for growers is not necessarily a distinct and independent business and second: because it cannot be verified whether these middlemen have substantial capital investment or have definite Service Agreements with the principal (Dole-Stanfilco).

Apart from application of DO-18-A, SA 8000 certification prohibits the “use of labor-only contracting, short-term contracts...to avoid legal obligations to personnel.” The short term contract of five months—the slots of which workers still need to buy from growers—of workers under Asiapro clearly violates this provision of SA 8000.<sup>vi</sup>

Dole Foods, a parent company of Dole-Philippines and Stanfilco, withdrew from Social Accountability International in 2011, after SAI found that Dolefil (Dole’s pineapple division in Polomok, South Cotabato) violated SA 8000 standards on the right to freedom of association through the use of military and extensive employment of contract workers through the labor cooperatives. However Dole Stanfilco, as a separate division of Dole Foods, continues to be registered to SA 8000 and has been since November 2007.

**Figure III-6 SA8000 Certified Facilities: As of June 30, 2012**

<b>Company</b>	<b>Date of Initial Certification</b>	<b>Country</b>	<b>Address of Head Office</b>	<b>Address of other locations, if multiple site</b>	<b>Scope</b>	<b>Industry</b>	<b>Certification Body</b>
STANFILCO, A Division of Dole Phils. Dole Valley Zone, Maragusan, Compostela Valley Province North Skyland Zone, Malaybalay City, Bukidnon South Skyland Zone, Valencia C	08-Nov-07	Philippines	Stanfilco Head Office, Belisario Heights Subdivision, Lanang, Davao City	1. DOLE VALLEY ZONE, MARAGUSAN, COMPOSTELA VALLEY PROVINCE 2. NORTH SKYLAND ZONE, MALAYBALAY CITY, BUKIDNON 3. VEGETABLE FARM, BRGY. KUBAYAN, IMPASUG- ONG, BUKIDNON 4. SOUTH SKYLAND ZONE, VALENCIA CITY, BUKIDNON 5. NORTH COTABATO ZONE, MAKILALA, NORTH CO	Planting, growing, harvesting, packing and van loading of fresh bananas, fresh pineapples and high valued vegetables Planting, growing, harvesting and van loading of fresh papayas, vapor heat treatment of mango and papaya for export Packing of asparagus,	Agriculture	Bureau Veritas Certification

### *3. Worker Pay*

The Philippines, by virtue of Republic Act 6727, or Wage Rationalization Act, implements around 500 wage levels system, broadly determined by region, (subdivided into urban, semi-urban, growth and new growth areas) and economic sector, such manufacturing, service, agriculture. Agriculture is subdivided according to plantation and non-plantation and further divided into number of workers employed. How each region, province or towns is defined as urban or not, is not very clear.

The regionalized wage levels mean that the wages of workers in banana plantations differ from one province to another, even if they work for the same company. Philippine law prescribes the minimum wage through regional wage boards.

Article 106 of the Labor Code on contractors or subcontractors, prescribes that whenever an employer enters into a contract with another person to perform the former’s work, the employees of the contractor and of the latter’s subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his/her employees in accordance with this Code, the employer shall be jointly and severally

liable with his contractor or subcontractor to the employees to the extent of the work performed under the contract, in the same manner and extent that he/she is liable to employees directly employed by him.

Looking at rank and file workers and/or those under the labor cooperatives, wages are close to, equivalent to or a little more than those prescribed by the regional wage boards. Workers employed by individual growers and middlemen however receive much lower wage rates, which can be as low as Php 100 (US\$2.35) a day and are sometimes based on piece-rate basis instead of daily wage (See Table III-2).

In Maragusan, Compostela Valley, a woman worker who performs almost all operations in banana gardening in a grower-owned 1.9-hectare farm earns only Php 175.00 (USD 4.14). Meanwhile, a 14-year old child harvester, working under a middleman in Kapalong, Davao del Norte is paid Php 5.50 (USD 0.13) per bunch of banana harvested. Interviews also revealed that payments based on quotas are also practiced.

A group of 14 harvesters for instance are dispatched by a middleman and given a quota of 500 bunches of banana to harvest per day in different FOB farms. The middleman actually gets Php7.00 (USD 0.17) per bunch as payment from the growers, but s/he will only pay his/her workers Php 5.50 per bunch harvested. When multiplied with the quota of 500 bunches and divided among the 14 harvesters, this means that on average, each harvester will only receive Php 196.00 (USD 4.64) per day while the middleman earns as much as Php 2,750.00 (USD 65.06).

<b>Table III-2: Wages of Workers in Three Provinces in Mindanao</b>						
<b>Region</b> Province	<b>Government mandated minimum wage rate*</b>		<b>Actual Wages</b>			
	<b>Agricultural Workers</b>	<b>Non-Agricultural Workers</b>	<b>Rank and File</b>	<b>Workers under a Cooperative</b>	<b>Workers under a Middleman</b>	<b>Workers employed by Growers</b>
<b>Region XI</b> Davao Del Norte Compostela Valley	Php 281.00**	Php 291.00	Php 274.00 -Php 310.00	Php 260.00 -Php 281.00	~Php 160.00	~Php100.00 -Php250.00
<b>Region XII</b> North Cotabato	Php 240.00	Php 260.00	Unknown	Php 240.00	N/A	N/A

\*National Wages and Productivity Commission

\*\* US\$1.00 = Php 42.27 as of June 2012

#### a. Other monetary benefits

Apart from the regular salaries, rank and file workers and workers under labor cooperatives receive the legally required 13<sup>th</sup> month pay which most workers mistook as an incentive rather than a wage.

Rank and file workers in Kapalong and Sto. Tomas said that they are given by the union, Federation of Integrated Labor Union, a bonus of Php 3,000 (USD 70.98) every

three years. They are made to sign an acknowledgement list opposite their name. Some workers suspect that this list is used by FILU as proof of ratification of the renewed Collective Bargaining Agreement with Dole-Stanfilco management (to be discussed at length later).

Other than these instances, interviewed rank and file workers in Maragusan, Kapalong and Sto. Tomas as well as workers under labor cooperatives in all areas stated that they do not receive any other monetary incentive. Interviewed rank and file workers in the plastic plant in Panabo, Davao Del Norte stated that they do receive a production incentive bonus if they exceed the quota set by the management.

Interviewed workers employed by a middleman or a grower stated that they do not receive any form of incentive or bonus from their employers.

#### b. Sufficiency of wages as perceived by respondents

All the workers, even those receiving the minimum wage, expressed that their income cannot support an adequate standard of living for their families. Workers in Compostela Valley and Davao del Norte suggest that their daily income should be between Php 400.00 (USD 9.46) to Php 800.00 (USD 18.93) depending on the number of family household members so they can afford their daily needs. Those from North Cotabato said that Php 350.00 to Php 500.00 daily wage is needed to live decently.

Workers defined a fair wage as sufficient to support three decent meals a day for their family, school expenses for children until s/he graduates from college (between 16-20 years old), other household expenses (such as energy, water, rent or housing amortization if the worker does not own the house) and a small amount of savings in times of emergency (and medical needs).

A symptom of the insufficiency of wages—even among those who receive the mandated minimum wage rates—is the prevailing practice of pawning one's ATM (Automated teller machines) cards to lenders to advance their salaries before the payday. This practice was seen most prevalent in Makilala, North Cotabato. During family emergencies or during school enrolment, contractual workers under Asiapro often pawn their ATM cards for as much as Php20,000 (USD 473.17). This means that their ATM cards are surrendered to the lender and every payday, the latter withdraw a certain amount of the worker's salary plus a calculated 7 percent monthly interest. Thus, worker-borrowers are left with Php1,000.00 (USD 23.66) or less for their expenses. In some cases, the small amount left to worker-borrowers, forces them to borrow another Php 1,000.00 (USD 23.66) from the lender which will be added to their original debt. For the workers, this means that their ATM cards will remain in the hands of their lender. Some of these workers actually expressed that their indebtedness is also one reason why they cannot leave their job in the Dole-Stanfilco plantations. They are anxious that they might not be able to go out of such cycle of debt.

In terms of standard of living, researchers also observed that quite a number of households in Maragusan, Compostella Valley combine a 150-gram can of sardines with

a 500-gram pack of vermicelli noodles and water as viand to feed a family of five members.

#### c. Prices of bananas

When asked whether they are aware of the price per box of banana, workers from plantations in Davao del Norte and Compostela Valley said that Dole-Stanfilco buys a 13-kg box of Cavendish bananas from growers for US\$2.60 or between Php 120.00 to Php 150.00 per box (depending on the exchange rate). While, interviewed workers from North Cotabato had no idea how much is paid to growers for bananas, perhaps because all farms in the North Cotabato are Dole-Stanfilco managed farms.

Meanwhile, only a handful of workers have an idea— much less are certain – of how much each box/kg/piece of banana is sold for in the market or to the end consumer. Likewise, none of the workers knew whether the bananas are taxed or not.

In 2011, Dole Philippines (both pineapple and banana divisions) registered a gross income of PHP 26,037,108,743.00 <sup>1</sup>(US\$609,614,329.82). The scale of annual income seems to indicate that Dole Philippines should be able to pay its workers a living wage.

#### d. Minimum wages versus living wages

Dole-Stanfilco can justify its wages based under RA6727 and not the Constitution. Nonetheless, Article 106 of the Labor Code, on matters pertaining to contractors and sub-contractors' employees, does place Dole-Stanfilco as solidarily liable to the wages - far below the minimum - that its growers pay their workers.

ILO Convention 131, which the Philippines is a signatory mandates all member states to provide their workers *living wage* rates to ensure a decent life. Minimum wages as described “must cover the living expenses of the employee and his/her family members. Moreover it must relate reasonably to the general level of wages earned and the living standard of other social groups.”<sup>1</sup>

In the Philippines, the minimum wages across all regions represent only a small fraction of the family living wage. Dole-Stanfilco has a SA 8000 certification, which prescribes that certified companies “respect [the workers’] right to living wages.”

In Region XI for instance, the National Economic Development Authority (NEDA) pegged the family living wage in 2008 at Php787.00 (USD 18.62). In Region XII where North Cotabato is found, family living wage in 2008 was placed at Php781.00 (USD 18.48). This means that given 2008 prices, the current wage rates received by interviewed rank and file workers and labor cooperative workers only represent 39.2 percent of the family living wage in Region XI and 30.7 percent in Region XII.

Wage rates received by workers employed by middlemen and contract growers that sell exclusively to Dole Stanfilco, both violate the prescribed minimum wage and the family living wage rates in the two regions. Salaries received by workers of growers only amount to 12.7% - 31 % of the mandated minimum wage (See Table 4).

<b>Table III-3: Workers Wage Rate vs. Family Living Wage</b>					
<b>Region</b> Province	<b>Type of Worker</b>	<b>Wages received by workers</b>	<b>Family Living Wage (2008)</b>	<b>Deficit</b>	<b>Ratio of Wage/Family Living wage</b>
<b>Region XI</b> Davao Del Norte Compostela Valley	<i>Rank and file</i>	Php 274.00 – Php 310.00	Php 789.00	Php 478.00 – Php 515.00	34.7% - 39.3 %
	<i>Workers under labor coop</i>	Php 260.00 – Php 281.00		Php 508.00 – Php 529.00	33% - 35.6%
	<i>Workers employed by middlemen</i>	Php 160.00		Php 629.00	20.3%
	<i>Workers of growers</i>	Php 100.00 – Php 250.00		Php 539.00 – Php 689.00	12.7% - 31.7%
<b>Region XII</b> North Cotabato	<i>Workers under Asiapro</i>	Php 240.00	Php 781.00		30.7%

#### 4. Working Conditions

##### a. Days and hours of work

Rank and file workers and workers under labor cooperatives work six (6) days a week for at least eight (8) hours a day. Some interviewed workers under MaGrow, however, are employed for only three days a week when production is low. Rank and file and workers under a labor cooperative receive the mandated overtime pay if they exceed eight (8) hours. Rank and file workers get paid during holidays, provided they report to work the day before the official holiday. They receive double pay if they are required to work during holidays. Interviewed workers under Asiapro and MaGrow working in Maragsusan reported that they do not receive holiday pay because the policy of ‘no-work no-pay’ applies, while workers under Asiapro in Kapalong, Sto. Tomas and Makilala stated that they receive pay during holidays.

Workers employed by growers or middlemen are in an entirely different situation. They often work on seasonal basis (i.e. during harvest time or whenever is needed). Some of them work seven (7) days a week to meet the production quota. If a worker for a grower has to take a day off, a help-out worker will replace him/her and will receive the salary for the day due to the contract worker. Usually, their work is for 8 hours a day, but others are asked to work in flexible time schedules which means, they work up to 14 hours a day without overtime pay. They do not receive holiday pay either and the policy of ‘no-work no-pay’ also applies to them.

These practices are in breach of SA 8000 standards on working hours. The standards stipulate that employers should comply with laws and industry standards and assign workers a “normal workweek,” which should not exceed 48 hours, excluding overtime. Workers should also be given “one (1) day off following every 6 consecutive

work days, with exceptions,” and “overtime is voluntary, not regular, not more than 12 hours per week.” Along similar lines, ILO Convention 106 (Weekly Rest Convention) states that workers are “entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.” This is also re-affirmed by the Labor Code of the Philippines.

Examining the data presented above, it could be argued that Dole-Stanfilco as well as labor cooperatives to a certain extent comply with the standards. However, workers of middlemen and growers, again which comprise around 65% of the Dole-Stanfilco’s workforce, do not enjoy these rights as some of these workers, are forced to work overtime to meet their quota and some are not even given a single day of rest each week.

The Labor Code is clear that workers who work beyond eight hours should receive at least 25 percent more than the hourly rate. It also entitles workers, without prejudice to status of employment, to compensation on regular holidays even if they do not work on that day. Workers should receive 130 percent of their compensation if they work on special holidays and 200 percent of their daily wage if they work during these holidays.

In some areas in Maragusan and North Cotabato, labor cooperatives do not comply with the law by insisting on the ‘no-work no-pay’ policy to some workers and requiring them to work a day before the regular holiday to get the holiday compensation. In addition, gross violations of both holiday and overtime payments also exist amongst workers of middlemen in FOBs and contract growers.

#### b. Workload

Most of the workers expressed that having a job is better than being jobless, but noted that the work load given to all workers is physically draining. Some workers both in the fields and in the production plants, complain of the difficulty of their jobs and the volume of work they have to fulfill in order to meet the quota. Workers in the fields, whether under a labor cooperative, a middleman or a grower, have to fulfill very heavy physical tasks. As stated in the previous section, other workers in the banana gardening department of Dole-managed farms have to do single task for multiple hectares of land. A woman worker under Asiapro working as a deleafer in a Dole-managed farm in Maragusan, said that she has to deleaf a 4.0-hectare land all by herself, twice a week. In order to keep her job, her grade must not go below 78 percent. Otherwise, she will be relieved from work. Thus, in order to meet the grade requirement, she sometimes works beyond the prescribed time and even when aerial spraying is ongoing.

Another worker, also under Asiapro, and working as a calibrator (someone who determines whether banana bunches are ready for harvesting) for a company managed farm in Maragusan, narrated that he and two other calibrators have to calibrate banana in



farms approximately 80.0 hectares wide. This means that on average, each one of them have to cover 26.0 hectares of land.

Workers, mostly women, in the production plant said that they are only allowed to sit during break time which occurs only after 4 hours.

Harvesters working for middlemen do not use any machine in harvesting so they have to carry bunches of bananas weighing between 12 to 20 kilos on their shoulders using a pad. They also have to walk as much as three (3) kilometers (kms) from the farm to load the bananas onto the truck. As discussed in the previous section, workers of growers in FOB farms are normally required to do almost all the banana gardening operations in a relatively smaller area of land, 2.0 Has. One woman worker of a grower said that she needs to implement at least seven (7) banana operations on all the banana trees in a two-hectare farm including planting, bagging, sanitizing, deleafing, propping, weeds control, and deflowering and de-fingering. Her male counterpart does the application of 101 and 202 because it entails carrying a gallon of chemicals on his back.

A separate interview with a worker from Asia Pro, noted that one of the policies of the agency, for workers who are baggers is a quota of bagging/wrapping 80 banana bunches in 8 hours, if 80 are wrapped in less than eight hours, he/she will be transferred to another operation until 8 hours is completed. If the worker cannot reach the 80 bunches quota he/she will be suspended for 6 days. He added that he was suspended when he was a wrapper. Currently, as cutter, his quota is 5 hectares per 8 hours for cutting, if he fails to complete the quota, he will be suspended for 6 days (Personal Communication, 2012).

While there is no written standard or guideline to measure how just and humane work conditions are in terms of workload—as this criterion is normally operationalized in terms of work hours instead of the amount of work done—it is our view that the amount of workload assigned to workers especially in FOB farms and Dole-Stanfilco managed farms is far too heavy for a person's normal physical capacity. Despite the heavy workload, workers are forced to accept the conditions to avoid joblessness.

What is apparent though, is with reduction of workforce and simultaneous implementation of multi-tasking for workers, the FOBs and contract growers are able to complete the whole process of operations in a reduced production cost. This [multi-tasking] also provides FOB and contract growers, a high degree of flexibility to assign and re-assign the workers in any operations without compromising skills required for such operations at the minimum cost, though it could be detrimental to the workers health. This overworked condition or locally known as intensified labour input, in fact manifest in the physical ailments that most workers complain about.

### *5. Worker Health and Safety*

Book IV of the Philippine Labor Code which concerns Health, Safety and Social Benefits of Workers mandates that all employers to “adopt administrative policies on

safety” and enumerating a list of minimum occupational health and safety requirement which include the following: i) appropriate seats, lighting and ventilation; ii) adequate passageways, exits and fire-fighting equipment; iii) separate facilities for men and women; iv) appropriate safety devices like protective gears, masks, helmets, safety boots, coats or first-aid kits; v) medicines, medical supplies or first-aid kits; vi) free medical and dental services and facilities.

In addition, the law mandates the employer to take steps for the training of a sufficient number of employees in first-aid treatment.

In case of Dole-Stanfilco, SA8000 certification gives them, not only a seal but responsibilities to comply. However, it must be said, that generally, the right to a healthy and safe working conditions is the most neglected and violated. One factor to the general weakness is that only a handful of workers are aware of these particular rights and responsibilities of the companies. At Dole Stanfilco for instance, only a handful of workers could identify the specific names of the certification that carries with it the company’s obligation.

#### a. Health and safety policies and practices

Like in other labour standards, the multi-dimensional or multi-layered employment relationship that exists at Dole-Stanfilco operations also determines the quality and nature of health and safety policies and practices.

At the Dole-Stanfilco managed farm in Makilala, North Cotabato, production plants in Maragusan, Compostela Valley, Kapalong and Sto. Tomas Davao del Norte and plastic plant in Panabo City Davao del Norte, most of the rank and file workers affirmed that Dole-Stanfilco has a written policy for health, safety and hygiene procedures that are posted on bulletin boards. Only a few noted that they are not aware of such policies. They were issued protective items such as gloves and boots. However, most of them complain that these items were not regularly replaced as prescribed (i.e. once a quarter for gloves) or as needed by the workers when the items have worn out. Usually, the workers have to wait weeks – even months – before the items are replaced. Workers in the Dole-managed farm in Makilala are not given masks even if they think it is necessary to keep them from inhaling the chemicals sprayed onto the bananas.

Workers under labor cooperatives were also aware of the Dole-Stanfilco’s health and safety policies. The company (Dole-Stanfilco) issued them with protective gear such as gloves, hairnets and boots. These items however, are replaced only once a year.

Unlike the abovementioned workers, those hired by middlemen and growers in FOB farms are not aware of the health and safety policies of Dole-Stanfilco. They either buy their own protective gear such as boots, masks, gloves or they do not use any protective gear at all. Those working in banana cultivation are not even allowed to use gloves, as they were told that gloves may stain the banana’s skin. Harvesters are provided though, with harvesting pads for carrying bananas.

No one mentioned about receiving free dental services.

#### b. Health facility and personnel

At the managed farms, production plants, port services and plastic plants directly managed by Dole-Stanfilco, respondents said that there is either a clinic and a health personnel or only a health personnel (a registered nurse and/or a doctor) in their workplace. The same goes for interviewed workers under a labor cooperative in production plants in Maragusan and Kapalong.

Workers under Asiapro in the managed farm in Makilala, North Cotabato however said that there is only a health coordinator if an accident occurs. They added that there are no qualified health personnel inside the farm and there is no clinic, only a first aid kit with medicines such as paracetamol, betadine, loperamide among others. They further explained that if workers meet an accident in the farm, victims either bring themselves to the hospital or are helped by co-workers if needed.

There is no health facility or health personnel to attend to the needs of workers under middlemen in FOB farms. The same is the case for most workers hired by Dole-Stanfilco growers, except for one worker respondent in Kapalong who mentioned that the grower whom he works for knows a doctor whom workers can go to once they get sick or meet an accident during the course of their work.

#### c. Health trainings

Respondents of the study said that health and safety trainings are conducted for select rank and file workers. A majority of the workers, both rank and file and under labor cooperatives, said they only receive health and safety briefings and not “actual” trainings. Workers noted that briefings focused on the need to wear gloves or mask but these trainings lacked information about the possible effects of chemicals used or inhaled. Workers of middlemen and growers in FOB farms said that they do not get health trainings or briefings at all.

#### d. Health and safety concerns

Occupational health and safety standards are applicable not only to workers directly employed by the employer (Dole-Stanfilco) but also to other workers employed by the contractors and sub-contractors (growers and FOBs). As their work is directly related to principal’s operations, the principal is also *solitarily liable* in the absence of health and safety policies and practices of its growers and sellers.

In terms of work hazards, the Philippine laws also set a standard to “protect the workers from death, injury or sickness,” “limit his/her exposure to hazards” and “maintain sound state of the body and mind” to allow him/ her to continue do his/her job normally. The law also identifies workplaces that are considered hazardous.

The banana plantations are not included in the highly hazardous workplaces unlike mining or other more accident-prone workplace like construction sector. However, workers’ prolonged exposure to chemicals and the lack or absence of adequate protection

in the plantations expose them to both short-term and long-term health effects which are not only observed but experienced by plantation workers on themselves and on their co-workers.

For example, workers in production plants—whether rank and file workers or under a labor cooperative—are concerned about: prolonged exposure to chlorine that causes headaches, sore throats and skin irritations. As mentioned in the previous section, women workers in the production plants also complain of fatigue after long hours of standing. Some of these women workers already complain of varicose veins.

**Figure III-7: Skin irritations of a woman worker in a Dole managed farm. She cleans plastic bags used for bagging bananas**



Regardless of employer type and line of work, workers who work in the field of Dole-Stanfilco plantations experience skin irritations, pain in the eyes, difficulty in breathing and respiratory ailments which they attribute to aerial spraying and other chemicals used in the field.

Some workers in both the field and production plants also reported of accidents causing minor to serious wounds. In Maragusan, some rank and file workers of Dole Stanfilco reported of obtaining cuts while doing their jobs in the field. Another worker under Asiapro in Makilala shared the experience of her co-worker who seriously wounded her head while deleafing a banana plant using a sickle.

Plantation worker respondents who have worked in the banana industry for less than a decade said that other than stress, they do not yet show any symptoms of any other health problems. However, most of them have observed that workers who have worked in banana plantations for atleast a decade or more, who have experienced watery eyes, weakened lungs, and varicose veins.

*(The specific effects of chemicals used are discussed in later section)* There is of course a need to do a deeper study or an update to some preliminary studies conducted on the impact of chemicals to banana workers and their families, to be able to come up with clearer and objective analysis on the topic.

#### e. Accident or sickness compensation

The provision of sickness allowances and payment of wages during sick leave as mandated by law are clear.

However, testimonies from rank and file workers and workers of labor cooperatives revealed that if they get sick or meet an accident in the workplace, they are not given compensation by either Dole-Stanfilco or the cooperatives. Rather their health insurance—PhilHealth (a semi-government health insurance company for mandatory health insurance to all employees/workers) for those under the labor cooperatives and Maxicare (private health insurance company) for rank and file workers of Dole Stanfilco—cover their medical expenses. But when their hospital expenses exceed their health insurance coverage, these workers have to pay the hospital bills and medicines from their own pocket. A few of the workers said that Asiapro gives health assistance worth Php500.00 (USD 11.83) to workers who get sick or meet an accident at work.

Respondents among workers of middlemen and growers in FOBs said that workers who get sick and/or meet accidents during work do not get any compensation from the middlemen or growers or even Dole-Stanfilco. ‘No work no pay policy’ applies even in case of sickness or emergencies.

### *6. Social Security and Worker Benefits*

#### a. Social security insurance

The Philippine Labor Code mandates that all employers regardless of capitalization must enlist their employees, and pay their contribution to the Social Security System (SSS), PhilHealth and Home Development Mutual Fund (PAG-IBIG) - a government-financed fund and savings for housing needs. Both employees and employers contribute, and contributions are remitted to the agencies in the prescribed period.

Book IV of the Labor Code also guarantees, under the social welfare benefits that family members or dependents must receive of any benefits in case of workers’ disability (inability to work), retirement or death related to work. These provisions conforms with the ILO 102, 121, 128, 130, and 168 which mandate that workers should enjoy pension rights, avail dependents’ benefits in case of death and receive minimum and affordable medical care for himself/herself and his/her family.

Differences in implementation of the above-mentioned social security insurance are stark between rank and file workers, workers under labor cooperatives, and those employed by independent growers and middlemen. Rank and file workers are enlisted in the government-mandatory Social Security System (SSS) and Home Development Mutual Fund (PAG-IBIG). They are also enlisted in Maxicare Health insurance, a privately-run health insurance agency. Workers under a labor cooperative are also insured in SSS and PAG-IBIG and their health insurance is under PhilHealth. Workers of growers do not receive any form of social security or health insurance except when they

enroll themselves voluntarily as self-employed in any of the abovementioned social insurance schemes. This means that they need to pay for the total amount of the required contributions.

#### b. Paid leaves and other incentives

The Philippine Labor Code guarantees 5 days service incentive leave to workers who have rendered at least one year of service in a company. Under the Omnibus Rules, the unused service incentive leave is commutable to its monetary equivalent at the end of the year.<sup>1</sup>

In Maragusan, Kapalong, Panabo, and Sto. Tomas, Dole-Stanfilco abides by the law by providing its rank and file workers at least five (5) to as much as eight (8) days vacation leave per year. However, this paid leave is not convertible to cash if workers are not able to use them through the year. Workers under a labor cooperative are given least five (5) days of vacation leave after their second year of employment. Workers of middlemen and banana growers do not receive any paid leave.

Interviewed rank and file workers in Maragusan also noted that they receive a yearly rice allowance worth Php 1,500.00 (US\$35.30). Unlike in Maragusan, rank and file workers in Kapalong and Sto. Tomas do not receive any form of incentive except for the Php3,000 (USD 70.98) bonus after signing the collective bargaining agreement every three years (discussed in section 3).

In the plastic plant in Panabo City, rank and file workers said that they receive production incentives but did not specify. Other than these, there appears to be no other incentive given to rank and file workers based on productivity and/or good performance. Workers in banana plantations under MaGrow and Asiapro also do not receive production incentives or bonuses either from the cooperative or Dole-Stanfilco. However, workers under MaGrow said that they receive yearly dividends for being “associate members” of the cooperative amounting to 7.5 percent of Php5,000.00 (USD 118.29) minimum capital share. Workers of growers and middlemen in FOB farms also do not receive any kind of incentives or bonuses.

#### c. Job Satisfaction

Majority of the workers said they are not happy with their jobs because of the difficult conditions, exposure to chemicals and insufficient wages, but they are still thankful that at least they have a job and have some income for their daily needs.

When asked if they would recommend working at the plantations, most of the workers said no—if there are other employment options available. In our view, the very minimal income they get is not commensurate for a rather difficult and tiring work combined with their daily exposure to many kinds of chemicals.

## 7. Women, Children and Schooling

### a. Women workers

The ILO Convention No. 183 provides that “pregnancy or motherhood should not constitute a source of discrimination in access to employment” and that “tests for pregnancy or certification of non-pregnancy should not be required of a woman applying for employment, except where national laws or regulations restrict the employment of pregnant or nursing women in specific situations, for instance work deemed hazardous to the mother or the child.” This is also echoed by Article 137 of the Labor Code.

Women, be they are applicants or pregnant are treated differently.

Women who are first time applicants for work directly under Dole-Stanfilco plantations or who are enlisted in a labor cooperative for job placement at plantations are subjected to pregnancy tests. Sixteen of the 51 worker respondents for instance, noted that they are required to take pregnancy tests. In Maragusan, all the seven female respondents noted that if a woman is applying for a job in the banana plantation, she is required to take the pregnancy test. If they are found to be pregnant the applicants are not hired.

Rank and file women workers or those who have been under a labor cooperative for some time, are not subjected to pregnancy tests. When they report their pregnancy to the management, 30 respondents said, pregnant women are assigned to lighter jobs and those in the production plants are allowed to sit.

Maria, a rank and file worker, said: “When [an employee is] pregnant, she is allowed to sit down and only put stickers on.... For contractual [workers], when they are already 5 months pregnant, they are made to take a leave without pay.”

A recorded interview with Marisa, an FOB worker in Maragusan, detailed how pregnant women workers in FOBs are being treated.

#### **Transcript of a recorded interview with Marisa, FOB worker in Maragusan:**

**Q:** *Are pregnant women treated differently?*

**L:** *You stop.*

**Q: *You stop working?***

L: If you are pregnant, you are afraid to go up and down the stairs, you might fall because you need to go up and down the stairs ... and you might catch an accident in the banana fields.

**Q: *On which month of your pregnancy are you asked to stopped to work?***

L: Five, when it is big already

**Q: *But when you are just one month pregnant, is the load of work the same?***

L: Yes, just the same.

**Q: *Ahh so it is just the same as before? There is no difference?***

L: None

**Q: *When pregnant, does she receive any assistance?***

L: None

**Q: *Do men and women have the same wage rates?***

L: Just the same. There is only a difference with those who apply 202 but the difference is very little.

**Q: *How much do those who inject receive?***

L: P185, only 5-peso difference!

In Kapalong and Sto. Tomas, four workers (2 rank and file, and 2 labor cooperative workers) also noted that women are required to take pregnancy tests. At least 10 workers expressed that pregnant women are treated differently. Lucita, 49, a rank and file worker in Dole-Stanfilco in Sto. Tomas said: “[the company] do not hire pregnant women. [But when women workers] get pregnant, they are allowed to sit to put stickers.”

In North Cotabato, four of the 10 respondents (all under a labor cooperative) said workers are indeed required to take a pregnancy test. In Panabo, a male worker in the plastic plant and another in the port services confirmed that women in the area are also required to take pregnancy tests. Another five respondents said they do not know.

As regards wages, respondents offer differing answers. Four of the 51 respondents in Maragusan and one in Kapalong and Sto Tomas, said that there is a wage difference between men and women. Three of them noted that female workers working for a grower have a 10-peso wage difference from male workers because of the difference in nature of their work.

Other than that, workers in Panabo and in North Cotabato, noted that there are no wage differences between men and women.

Women workers employed by contract growers are not subjected to pregnancy tests and are allowed to work on their assigned tasks (including climbing a stair to reach the top of banana plant) as long as they can (usually until 5 months of pregnancy). Pregnant workers are not given special treatment in these cases. Interviewed women workers employed by these contract growers in Maragusan reportedly receive wages Php10 less than wages of male workers because the work assigned to males is considered



more difficult. Male workers in the banana gardening apply 202 and 101 chemicals which entails carrying several gallons of liquid chemicals on their backs to be applied onto each banana plant covering at least 2.0 Ha of land.

Six workers said that female workers are required to take pregnancy tests. Nine said the tests are not required while 5 of them said they do not know.

The Voluntary Codes of Good Practices that Dole-Stanfilco signed with the other stakeholders also affirmed that they will, under the conditions of work, ensure the rights of working women to protect their health, safety and general welfare. However, compliance to the provisions of the law and the Code of Good Practices is limited to rank and file employees, and to a certain extent to the workers of labour cooperatives.

Applications differ to those who are working under FOB or individual growers, even if there is an equal recognition to the role they play in the banana industry. As shown by the interviews, the work in FOB farms for women workers involves all operations, pregnant women are not given special attention by growers as long as the women themselves are able to work, including climbing a ladder in their fifth month of pregnancy. This practice runs counter to the provision of the labour law and the code of good practices.

#### b. Child laborers

In 1998, the use of child labour in supplier /grower plantations was also highlighted by a trade union investigation and widely published by then International Confederation of Free Trade Unions or ICFTU (ICFTU, 1998).

However, some banana growers still hire children below 15 years of age. Out of the 51 workers interviewed for example, 8 workers mentioned that they know of FOB farms that sell exclusively to Dole-Stanfilco who hire children 15 years of age and below. One of the respondents is in fact a child laborer. A 14-year old harvester who works for a middleman that provides labor to banana growers. The child worker said that they indeed have co-harvesters that are below 15 years of age.

The child worker, 14 years of age, narrated that his wage is based on piece rate and he earns an average of Php196.00 per day. He works from eight (8) to twelve (12) hours a day and works at least five days a week. He said that sometimes he also works for another middleman (contractors) and receives Php300 wage per day. He contributes half of his earnings to the daily household expenses and the other half for buying his personal needs. He further narrated that he has stopped studying since he finished primary 4 due to his family's economic condition.

He is the eldest among seven siblings and although both his parents are working, their combined wages are not sufficient for their entire household. Going to school, according to him, has also become very tiring. He has to walk several kilometers (for at

least 30 minutes) from their house (located inside the banana plantation) to school as there is no available public transport. His family does not own a motorcycle which other families use to send/fetch their children to/from the school.

When he was asked about his future he just said, “No more. [I am] embarrassed to go [back] to school.” He said he would have wanted to study a computer course when he grows up.

Two (2) out of the 20 workers respondents in Maragusan (1 is a rank and file employee and the other from a labor cooperative) mentioned that they know of banana farms that currently hire child workers below 15 years of age.

Cristina, 32, a deleafer under Asiapro affirmed that there are children working for growers as part of family work.

However, three rank and file workers and 1 labor cooperative worker who has worked in the banana industry for more than 15 years affirmed that Dole-Stanfilco used to hire child laborers when it was starting its operations in Maragusan in the early 90s. Dennis, 42, a rank and file worker of Dole Stanfilco in Maragusan recalls, “In 1993, there were still children working [in the banana plantation]).”

In Kapalong and Sto. Tomas, six workers out of the 15 workers interviewed mentioned that they know that there are child laborers in FOB farms in the banana plantations. Two of these workers work under a labor cooperative, 3 work for middlemen and one works for a contract grower. One of them is a child laborer, only 14 years of age.

Also, one worker who works for a grower and two other rank and file workers of Dole-Stanfilco in Kapalong noted that the company used to hire child laborers when it started in the area in the late 1960s. Renato, 44, narrated that he started working in the banana plantation when he was just 11 years old. Carlos, 45, and Gloria, 47, both rank and file workers of Dole-Stanfilco also said that they started working in the growers’ collective very young, 13, and 14 years old respectively.

Renato, in affirming that there are indeed child laborers in some FOB farms, narrated: “There are 3 child laborers. In the Talomo area, there are children, 17 years old and below.” Another worker with initials JIM, 27, also said: “child workers are paid P5.00 to carry bananas.”

There are respondents however, from the Dole-Stanfilco plastic plant (3), MILSI port services (3) in Panabo Davao del Sur and in Dole-managed farm in Makilala, North Cotabato (10), who also said that they do not know of any child labor in the company.

Employment of minors below 15 years of age is prohibited by law, except in a condition where a minor is under the sole responsibility of the parent/s or guardian and that employment does not interfere in the normal development of the child.

### c. Schooling of children

Children of banana plantation workers, regardless of the latter's employment type, normally go to school at the age of 6 or 7 years old. Most of the worker respondents, state that they can only send their children up to high school (15-16 years old) where state-run elementary and secondary schools exist. When their children reach college (16-21 years old), workers said they can no longer afford their children's education due to high cost of tertiary education especially in relation to their wages.

Three of the total 51 interviewed workers mentioned that Dole-Stanfilco provides scholarships. These three respondents are rank and file employees in Dole-Stanfilco Kapalong (1) and Dole-Plastic Plant in Panabo (2) area. The rest of the interviewed rank and file workers of Dole Stanfilco in Kapalong, Sto. Tomas, Maragusan, have heard no mention of scholarships given away by Dole-Stanfilco to "qualified" children of Dole-employees.

The information on scholarships given by Dole is apparently not known to most of the workers interviewed. Most interviewed workers said that they do not receive any kind of educational support from the company although some rank and file workers and workers under Asiapro and Magro noted that school loans are available from the company or the labor cooperative before the beginning of the school year (usually May or June).

All interviewed workers of middlemen and growers said they are unable to receive any form of support for the schooling of their children from their employers.

## *8. Access to Union Representation and Labor Relations*

### i. Union membership and union elections

Trade unions in the Philippines are enterprise-based, that is, only one union is allowed to represent the entire workforce in a company or enterprise. When elected and certified as the sole and exclusive bargaining agent (SEBA) it has the right to negotiate a collective bargaining agreement with the company management for a term of five-years. By law, the economic provisions (wages and economic benefits) of the CBA are subject to renegotiation after three years of its implementation. Most union organizers refer this phase, as an addendum to the CBA. At the end of five years, which is legally known as the freedom period, new union/s can challenge the incumbent union by filing a petition for certification election (PCE) as intervener. The freedom period often lasts for 90 days, and in normal process the Department of Labor and Employment (DOLE) orders for the conduct of the certification election or CE. In CE, workers are supposedly given the

chance to vote freely to choose the union that will represent them in the next five years, from amongst the incumbent union, new union/s or even to vote for no union. CE is often supervised by the representatives from the DOLE.

Article 211 of the Labor Code re-affirms the constitutional right of all workers to join union of their choice, to collectively bargain and to strike according to law. There is no legal prohibition for non-regular workers to join unions, although the letters of the law are far different from practice.

In Dole-Stanfilco banana plantations, only rank and file workers are union members. Contractual workers under labor cooperatives are not unionized. All workers under Asiapro (regardless of length of service) stated that prohibition to join a union is a part of their employment agreement with Asiapro; and otherwise may be terminated from their employment. Workers of middlemen and growers are also not unionized although it was not part of their employers' policy. However, their flexible work arrangements practically dissuade them from unionizing.

The Federation of Integrated Labor Union or FILU is the only union recognized by the management in nearly all the areas covered by the research. Interviewed rank and file workers, however, consider FILU as management-organized. Some of them even refer to FILU as "company labor."

FILU claims to have a total of 11,000 members in 34 local unions in different plants and farms (*See Table III:4*). FILU's central office is found in Davao City and its local unions can *only* be found in Dole-Stanfilco plantations and production plants and not in any other company or industry. FILU's Vice President and Administrative Officer, Mr. Edgardo Jumawan, himself a retired human resource employee of Dole-Stanfilco, said that this (FILU's presence only in Stanfilco) is because they have yet to consolidate their ranks before expanding to other companies and/or industries. FILU was founded in 2002.

<b>Table III-4: Scope of FILU's local unions</b>		
<b>Province</b>	<b>Number of FILU Local Unions</b>	<b>Areas of Dole-Stanfilco</b>
Bukidnon	13 locals	managed farms
North Cotabato	2 locals	managed farms
Socsksargen	4 locals	managed farms
Davao City	2 locals	managed farms (incl. Kalinan)
Davao del Norte	10 locals	MILSI (port and stevedoring), Production plants
Compostela Valley	3 locals	Managed farms, Production plants
<b>Total</b>	<b>34 local unions</b>	

Nearly all rank and file workers of production plants in Kapalong expressed that they do not really have freedom to choose their own union because FILU is the only

union they have known. Most of these workers can hardly recall when the last union election was held. But they have also noted that they have not heard a case where a regular worker was forced to join FILU, they just instantly became union members. However, FILU reportedly has been less than transparent by hiding or obscuring the date of freedom period (the time when possible opposing unions can register itself and its intention to participate in the certification elections). This happened twice in two FILU local unions, one in a production plant in Davao City and the other in a production plant in Maragusan.

In 2011, Philippine Integrated Industries Labor Union – Trade Union Congress of the Philippines (PIILU-TUCP) filed a petition for certification election (PCE) in one of FILU-organized production plants in Bgy. Kilanan, Davao City under the pretext that it was already the freedom period as stated in the collective bargaining agreement (CBA) between the Dole-Stanfilco management and FILU. FILU however, questioned the PCE at the (DOLE) asserting that the CBA between FILU and Dole-Stanfilco originally from 2006-2011 has been extended to another five years after its first three years of implementation. No one from the general membership seemed to be aware of this and it surfaced only when PIILU-TUCP came out to contest in the election. Union organizers from other labor centers think that extending the CBA was intended to hide the freedom period. Mr. Jumawan of FILU however, describes the CBA extension as an “accelerated” CBA.

In the decision issued by Department of Labor and Employment (DOLE) with regard to this PIILU-TUCP versus FILU case, DOLE upheld the original freedom period and ordered to conduct the union election. FILU appealed DOLE’s decision to a higher court questioning the legality of PCE. Meanwhile, PIILU-TUCP won over FILU at the union election held. However, FILU asserted that pending the issuance of decision by higher court on its appeal, the results of the union elections cannot be implemented and FILU will remain as the SEBA to represent rank and file workers in Bgy. Kilanan, Davao City. So FILU continues to sit as incumbent union.

A similar case happened in Maragusan. Late last year (2011), twelve (12) rank and file workers were suspended for refusing to sign Dole-Stanfilco’s Code of Conduct (to be discussed further in the following sections). Whilst questioning the suspension, they have also consulted with lawyers and found out that FILU’s CBA with management would expire in January 2012 and that the freedom period starts then. The suspended workers, who were former members of the dissolved Maragusan United Workers Union (MUWU), gathered signatures to form a new union, the Maragusan Dole-Stanfilco Labor Union (MDSLUI). They were able to gather sufficient number of signatures (20 percent of total rank and file workers) and by January 26, they filed a petition for certification election (PCE). Upon learning of the PCE, FILU-Maragusan insisted that the CBA between FILU and management was extended from 2010 to 2014. This means that the original freedom period which lasted in February 2012 was extended to 2014 without the

knowledge of FILU's mass membership. FILU-Maragusan's CBA took effect in 2007 and by law will expire in 2012. To date, the issue remains pending at the regional labor court.

Artemio Robilla, one of the 12 suspended rank and file workers of and a former member of MUWU, was charged with perjury in February 12, 2012 by ten co-workers before the village council after he led the filing of MLU's union registration before the Department of Labor upon knowing that FILU's CBA was about to expire. In an interview with Robilla, he said that those who filed the perjury case against him were actually part of those who signed the MDSLU's registration. He also suspected that the workers who had filed a case against him were coerced by the management to withdraw their support to the budding union. The village council however dismissed the perjury case more than a week later due to a lack of substance.

In Panabo City in Davao del Norte, interviewed rank and file workers at the plastic plant said that the workers were indeed forced in 2006 to vote for FILU on penalty of dismissal. Another rank and file worker attested that they automatically become members of FILU. Workers in the Mindanao Integrated Logistic Services Incorporated (MILSI), the port services provider of Dole-Stanfilco in Panabo City, on the other hand confirmed that regular workers are "obliged" to become members of MILSI Union which is also under FILU.

#### b. Union discrimination and military intervention

FILU and its local union affiliates, according to Mr. Jumawan have not experienced any form of harassment from management and from the military. However, former members of Maragusan United Workers Union (MUWU) have reported continually experiencing harassment from members of the military and anti-communist groups since 2010.

All of the 23 rank and file workers interviewed in Maragusan and Davao del Norte said that they are affiliated with a union, FILU and MILSI Union, and that the company organizes their union. Thirteen of them categorically said they are NOT able to join the union of their choice because they become members of FILU by default. Some of them even mentioned that there is no election.

Lucita, 49, rank and file worker in Kapalong noted: "Seems like I was not forced to join [the union], but there was no [other] choice...". Gloria, 47, also said: "There was no election. We only signed and then we were given P 1,000 for joining the union."

A total of 22 of the 51 worker respondents said that they know of someone being harassed by the management and/or the military. Seventeen (17) of these are rank and file workers of Dole-Stanfilco (21) and MILSI (2) while the five others are workers of

growers (2) and labor cooperatives (3). It must be noted though that not all these 22 workers were directly harassed but they all shared information that they know someone who have been harassed by the military.

A few of them testified on forms of harassment made:

*“Gi-house to house [og military] para dili pa-apil sa KMU,”* ([The military] went house to house telling the workers not to join KMU),”

**Greg, 33, a worker Dole-Stanfilco plastic plant in Panabo.**

Fernando, 47, a worker at the Dole-Stanfilco Maragusan said that because of the experience of his co-union members in MUWU and in Maragusan Dole Stanfilco Workers’ Union, he fears for his job security: “I am afraid of getting laid off, the management might file a termination case against me.”

Artemio Robilla, 50, a rank and file worker of Dole-Stanfilco Maragusan also testified on his experience of military and company harassment.

Below is an excerpt of the interview:

**Q: Do you know any farms where workers are being harassed?**

AR: They are always harassing the workers

**Q: In what manner?**

AR: They often threaten that I’ll get laid off or they will file a case against me, or terminate me and I won’t receive [separation] pay if I don’t sign the COC. Those are their ways of harassing workers here in Dole-Stanfilco Maragusan.

**Q: Why did you form a new union when there is already FILU?**

AR: Like what I said before, if we have problems, FILU did not take any action because it is being controlled by the management. There is FILU, but it is for the management. Now, it is the freedom period, so we put up a new union because their CBA has already expired in Jan 30, 2012....

**Q: In your view, does the management treat you fairly or ethically?**

AR: No, because they suspended me. The [management] really assailed me.

**Q: Why were you fought?**

AR: Because I am running as the president of Maragusan Dole Stanfilco Workers’ Union...they assailed me even more. They filed a case against me.

**Q: On what charge?**

AR: perjury

**Q: What did they say you had done?**

AR: They accused me of signing the petition for certification elections for all [of the signatories]. I cannot do that. The only one I can sign is my name. But I am not afraid. I will face them because I did not do anything wrong. These are mere accusations... mere accusations against me.

**Interview with: Artemio Robilla, 50, a rank and file worker of Dole-Stanfilco Maragusan**

In an interview with Felisa Pernito, another rank and file worker of Dole-Stanfilco in Maragusan she narrated how she was held at gunpoint by the military because of their union activities: An excerpt of the interview:

**Q: *Where you forced by the management to join the union?***

F: Ah, that is part of the package already when you sign the COC, you are already member of the union.

**Q: *Do you know anyone who was dismissed or harassed due to union affiliation?***

F: Yes, our former union

**Q: *How?***

F: The military harassed us.

**Q: *How? House to house***

F: Yes. But they did not reach our home. One time, when we had an operation sabit (hanging of streamers with calls), I was held at gunpoint.

**Q: *By the military? Why were you held at gunpoint?***

F: Because they had an orientation among the workers that they should not join MUWU because MUWU is member of the NPA (New People's Army)<sup>vii</sup>. So when we held an OS along the bridge, they removed our streamers and they followed us to the hangar. There, I was held at gunpoint.

**Q: *Were they wearing uniforms?***

F: Only pants, they're wearing civilian shirts

**Q: *They are wearing camouflage pants?***

F: Yes

**Q: *Did you identify them?***

F: No, there was no namecloth. They were only wearing plain tops.

**Q: *What did you feel then?***

F: I looked at my companion. They did not run, if they did, I would have run. Then I heard a cry, "Arrest them, Arrest them..." We were going in circles, only to find they are just behind us. They bought a vehicle.

**Q: *A military vehicle?***

F: Yes. But it has no plate number. But it belonged to the 66<sup>th</sup> IB really. And they are always using that vehicle to harass us because they were based here before. [I told them,] 'why would you arrest us?' 'We are workers,' one my companions said. 'You are workers? Where are you working,' asked one of the military. 'At 97 in the banana plant,' I answered. I would have taken photos, but I already trembled in fear. It was only their vehicle which we were able to photograph and then they loaded the streamers [on their vehicles].)

**Interview with Felisa Pernito, rank and file worker of Dole-Stanfilco.**

MUWU was the union for workers in Dole-Stanfilco Maragusan plantation under the growership system.<sup>1</sup> Its members actually worked and continue to work in production plants and are subject to the company's rules and regulations. Workers maintained their



membership to MUWU until the union was “busted” following Dole-Stanfilco production shift to FOB scheme.

Prior to the shift to FOB, the company offered the MUWU members separation pay and “49egularization” which means that they will be “absorbed” as rank and file workers of Dole-Stanfilco. MUWU found this offer a little absurd because even during the growership system, they believed that there was an employer-employee relationship between members of MUWU and the company. The management however, refused to recognize the employer-employee relationship between them and persuaded the MUWU members to accept the separation pay and the regularization scheme, which will revert their years of service to the company back to zero. MUWU was restless about the shift to FOB and the separation pay offered to them.

At the onset of the dispute between MUWU and Dole-Stanfilco, members of the military from 66<sup>th</sup> Infantry Battalion of the Armed Forces of the Philippines as well as the Alliance for National Democracy (ANAD) Partylist, began their campaign against MUWU, branding the latter as communist fronts (See Annex D). Since 2010 members of the military camped in Maragusan town center near the plantation and regularly went around the town’s neighborhood to make their presence more conspicuous to the residents.

Elements from the military reportedly visited the houses of active MUWU members and threatened their family—wives, children, parents—to disaffiliate from Kilusang Mayo Uno and accept Dole-Stanfilco’s regularization offer. It is alleged that one of the MUWU officers, Felisa Pernito, had a gun pointed at her head by a military official at the height of MUWU’s campaign against the “49egularization” offered by Dole-Stanfilco. Pernito recalls that she was hanging sacks with painted “calls” and “slogans” along the town center, when a member of the military approached her and told her to stop what she was doing at gunpoint.

The incident caused fear not only to Pernito but to other MUWU members. As a result, they were forced to accept the “49egularization” offer even if it was tantamount to nullifying their long years of service under the growership system. In accepting to be “absorbed” as regular rank and file workers, MUWU in effect was dissolved and its members, by default become members of FILU-Maragusan. Consequently, they also lost several other benefits that MUWU has negotiated for in their many years of CBA with the growers’ collective and Dole-Stanfilco (*See Table III-5*).

**Table III-5 MUWU members benefits vs. “regular” rank and file under FILU**

	<b>Benefits of workers when they were still under MUWU</b>	<b>Benefits of workers after “regularization”</b>
Daily wage	Php 366.00	Php 288.00
Paid leave	Can be converted to cash when not used	Is not convertible to cash when not used

Other benefits

One sack of rice whatever the price is

Php 1500 rice allowance (fixed)

Military intervention in union activities in Dole-Stanfilco operations was not only recorded in 2010 but as early as 1997 and 1998 at the workers strike of Diamond Farms and Checkered Farms in Davao del Norte. The strike was in protest against the low price of bananas that Dole-Stanfilco bought from them resulting to the decrease in farmers' income and indebtedness of both farms to the company. Until 1996, both Farms were direct subsidiaries of Dole-Stanfilco and workers were directly paid by the company. Ownership of both farms was transferred to the farm workers by virtue of the government's land reform program. The farm workers later organized themselves into cooperatives and entered into an agreement—which the farmworkers considered too complicated - to sell bananas to Dole-Stanfilco. Later, the farm workers came to believe that the agreement was beneficial only to the company.

In an article written by David Bacon, he narrated how the members of 432<sup>nd</sup> Infantry Battalion of the Philippine Armed Forces, commanded by Major Sakam, along with local police and guards from Timog Agricultural Corp., a division of Dole Asia, Inc attacked the picketline, open fired and hit Mr. Roberto Sabanal, one of the strikers (Bacon, 1998).

Unlike in Compostela Valley, military's involvement in the trade union affairs in Panabo city, Davao del Norte took a different route. On October 8, 2007, 270 workers of Davao International Transport Facilities, Inc (DITFI) suddenly found themselves thrown out of jobs after two months of negotiation for a collective bargaining agreement. The management with the presence of representatives from the Department of Labor and Employment (DOLE-Region XI) called for a general assembly and declared a closure effective immediately. The management cited contract termination between DITFI and Dole-Stanfilco as the reason. DITFI was subsidiary of Dole-Stanfilco providing hauling services for the latter's export products (CTUHR, 2007).

Workers belonging to United Workers of DITFI (NAMADITFI) decried the move as plain union busting aimed at avoiding the negotiation for a new collective bargaining agreement (CBA) that started in August that year. They sought the assistance of the City Council to intervene, but failed. To get public support, the workers and their families barricaded the entrance to the yard on October 22, 2007.

Around 30 members of the military were quick to arrive at the scene as workers refused to allow any more hauling trucks and refrigerated vans to enter and leave the container yard. Suspicious men in plain clothes were also seen some meters away from the picket line (DT, 2006). In addition, Major Medel Aguilar of 5<sup>th</sup> Civil Relations Group of the Armed Forces of the Philippines in a statement published in a local daily accused the Kilusang Mayo Uno (KMU) Labor Center to be behind the "closure" of Davao International Transport Facilities, Inc (DITFI). NAMADITFI decried the statement as

unfair, insisting that even without the KMU prodding, they will seek for higher wages. NAMADITFI was not an affiliate of KMU but sought its assistance after its former labour federation opposed the union's disaffiliation and chose to register independently.

Protesting workers also reported visits of suspicious men in their houses at the time of their protest. Fearful of what they called as harassments and surveillance, the workers lifted their picketline, some members accepted separation pay in less than a month. Simultaneous to their outright dismissal from work, their union, NAMADITFI also ceased to exist.

Early this year (2012), some 12 rank and file workers who were previously members of MUWU were suspended for refusing to sign Dole-Stanfilco's Code of Conduct (COC). The 12 workers found the COC suspicious because of its blank pages. Upon consulting a lawyer on what they deem as an unjust disciplinary action, imposed on them, the 12 workers also found out that FILU's CBA with Dole-Stanfilco Maragusan was about to expire. This prompted them to form a union and file a petition for certification election as discussed in the previous section.

Other than this, all other workers in plantations in Maragusan said there was no case of worker dismissal because of union affiliation.

Interviewed rank and file workers in Kapalong also said that they have not known anyone dismissed because of union affiliation. Some of them explained that there is no reason for the company to dismiss unionized workers because the union is "company labor," which means that it was organized by the management.

Workers in the plastic plant and MILSI also stated that they have not known any individual who was dismissed because of union affiliation. However, interviewed workers in the plastic plant recalled that at first before the union election in 2006, some members of the "Kidlat death squad" which the workers perceive as part of the military intelligence unit, were at initially asking them to vote for FILU while brandishing metal rods. Later on, these men visited and harassed rank and file workers who used to be members of the dissolved Panabo Plastic Plant Labor Union (PPPLU) coercing them to vote for FILU asserting that PPPLU was already "dead". Interviewed workers at MILSI also relayed that there used to be "lecturers and goons" that visit MILSI workers' residences telling them not to join Kilusang Mayo Uno.

Some interviewed workers under Asiapro in the managed farm in North Cotabato narrated that in 2010, when their farm used to be managed by AMS Farms and not by Dole-Stanfilco, they tried to form an independent union, the United Workers of AMS. They registered their union in October 2010 and was about to file for PCE when AMS Farms management announced that it was going bankrupt and would soon be selling the farm to Dole-Stanfilco. In February 2011, Dole-Stanfilco took over the farm and all the

rank and file workers under the AMS Farms were absorbed by the new owners but not as regular employees, but as contractual employees under Asiapro.

#### c. Union functions and workers' rights

With regards to union function, most of the rank and file workers said that only FILU leaders meet on a regular basis while ordinary members hardly know when and what they talk about during meetings. Meetings are held as frequently as twice a year in Maragusan or quarterly in the plastic plant and as rarely as once every new signing of CBA which occurs every three years. The union, according to most of the unionised workers, is unable to meet during working hours.

Rank and file workers in Davao del Norte are reluctant to say that FILU enforces their rights because they feel that their economic conditions have not improved despite being members of the union. Some of them also feel that their grievances against abusive superiors are not taken seriously.

In Maragusan, rank and file workers are more categorical in saying that they do not believe that FILU enforces their rights. They added that since MUWU was dissolved in 2010 and they became members of FILU, their wages were reduced from Php336 a day to P288 a day. They also feel that their grievances are not given proper attention, as the experience of workers who were suspended following their refusal to sign the Company Code of Conduct proves. They pointed to the case of the 12 suspended workers, where FILU should have acted to defend the rights of the workers instead of simply allowing the management to immediately suspend them.

With regard to training on labor standards, only a handful of workers attested having attended few sessions sponsored by the company. Training sessions are rare even for unionised workers. In fact, most workers noted that in their several years in the banana industry, they attended trainings only once or twice, and these trainings were provided by the union.

#### d. Collective bargaining agreement

FILU local chapters have collective bargaining agreements with their respective local Dole-Stanfilco management. Mr. Jumawan noted that workers under their union receive “above minimum wages”, annual rice allowance worth Php 1700 (USD 40.22), and life insurance worth Php 100,000 (USD 2365.84) in case of death. In terms of workers health and safety, Mr. Jumawan added that under the CBA, the management shall provide them with personal protection equipment and other safety gear, depending on a worker's particular job.

**Figure III-8 Front and Back Cover of FILU-Kapalong CBA with Dole-Stanfilco**



Interviewed workers in Kapalong and Sto. Tomas noted that “perhaps” the CBA is being implemented but they are barely familiar with its contents. Some of them do not even remember ratifying a CBA. A few of them even suspect that their signatures for accepting the Php 3,000.00 signing bonus for the renewal of CBA is being used by FILU as a form of ratification. There is nonetheless a CBA handbook distributed by FILU to its members. Some of the workers even showed their copy of the CBA handbook which is printed in English (Figure III-8).

Workers in the plastic plant on the other hand said that the CBA is “ready-made” and that there was no proper consultation made among the members. In Maragusan, most of the workers said that they are not satisfied with the contents of the CBA as their benefits under FILU were reduced compared to MUWU (*refer back to Table III-5*).

#### e. Discussion and analysis

Dole-Stanfilco is SA 8000 certified<sup>1</sup>. In signing the Voluntary Codes of Good Practices in November 2011 it reaffirmed its commitment to promote and uphold the SA 8000 standards as well as international labour standards (ILO Core Conventions) in all its areas of operations.

Looking at the result of the study, it is apparent that SA 8000 standard on respect to the right to form and join trade unions freely and bargain collectively including the non-interference in workers’ organizations or collective bargaining, freedom from retaliation, allowing workers to elect their representatives freely appear not to be complied with.

The ILO Convention Nos. 87 and 98 also guarantees every worker’s right to freedom of association and protection of their right to organize and collectively bargain.

<sup>1</sup> SAI website. List of SA8000 Certified Facilities: As of June 30, 2012  
[http://www.saasaccreditation.org/certifaclists/2012\\_Q2/Q2%20SA8000%20Certs%20List,%20Public%20List.pdf](http://www.saasaccreditation.org/certifaclists/2012_Q2/Q2%20SA8000%20Certs%20List,%20Public%20List.pdf)

Article 2 of ILO C87 clearly states that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.”

In Maragusan and Davao del Norte—harassments and grave threats by members of the military, ANAD and other paramilitary elements against MUWU members directly violates both SA 8000 standards and ILO Conventions. So were the experiences of NAMADITFI. It is worthy to note that military intervention in union affairs was one of the primary issues investigated by the ILO High level Mission to the Philippines in 2009.<sup>1</sup> Workers and union members of AMADO-KADENA NAFLU-KMU, the workers union at the time at Dole Philippines (pineapple division), testified against the military’s campaign against their union since 2006.<sup>2</sup>

Similarly, the use of military, labor cooperatives and management organising a rival union to undermine incumbent union (AMADO-KADENA-NAFLU KMU) was also the object of the SGS (SAI auditor at Dole Philippines, following a complaint filed by the International Labor Rights Forum in Washington on behalf of AMADO-KADENA. In a letter by SGS to Atty Brian Campbell- counsel to the union, SGS confirmed the military intervention at union affairs at DOLE Philippines, as partially quoted below:

Although the ISF training is requested by the Philippine Military as part of the insurgency program of the Philippine government, only Dole Philippines Inc. is paying additional equivalent three days salary to encourage the workers to attend the said training even Dole Philippines Inc. management knows that the content of this training material is anti-KMU. This information was gathered to all workers interviewed during Visit 5 and Visit 6 audit who attended the said ISF training.

**The copy of the letter is attached to this report as reference.**

Except for an open tolerance of Dole-Stanfilco to FILU, the management’s direct relationship to FILU (if there is any), still needs to be thoroughly investigated. It must be noted that the workers’ identification of FILU as a company-organised union (or “company labor” in the workers’ own language)—as well as the rather irregular, if not undemocratic, practice of drafting/ratifying the CBA as well as the workers’ general perception that FILU does not uphold their rights, is difficult to dismiss when it comes to examining FILU’s independence from Dole-Stanfilco management. However, the naked prohibition of Asiapro and MaGrow as part of employment condition to its workers directly violates not only the ILO Conventions but the Philippine Constitution.

### *9. Prospects of working in banana plantations*

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<sup>2</sup> Reports of the Committee on Freedom of Association, 356th Report of the Committee on Freedom of Association. ILO Governing Body, paras 1117-1193

Most of the workers expressed that life is harder today than 5 to 10 years ago due to increasing cost of commodities as against their very low wages. While some are quite optimistic because they still have jobs, the majority of the workers see that the situation will worsen if the working conditions in the banana industry do not improve soon.

Most of them expressed uncertainty about the future of their children. Nearly all of the workers with children said that they will try to support the education of their children as long as they can, until college (16-21 years old) if possible. The majority also expressed that they are hoping that their children will no longer be working in the banana plantations, as the work is very difficult, tiring and does not promise a bright future. Some of the workers said that with their salary, they were unable to send their children to college so they stopped studying after finishing high school (16-17 years old) and are now working or looking for jobs outside the plantation.

When asked about Dole-Stanfilco, the workers noted that while they themselves become more and more impoverished, they believe that the company is growing richer as it continues to expand its operations inside and outside the existing areas

### **C. Environmental Conditions in Banana plantations in the towns of Maragusan Compostela Valley, Kapalong and Sto. Tomas, Davao del Norte, and Makilala, North Cotabato.**

*Data from this section came from several sources: First, data gathered from the three sets of interview-questions for growers and workers from Maragusan, Sto. Tomas, and Kapalong; second, data from key informant interview with Dr. Romy Quijano and a former Davao City Councilor Nenito Orcullo; third, from previous published articles and; last from product labels of known agricultural chemicals used in Dole-Stanfilco banana plantations.*

*Data from respondents were gathered to provide evidence on the effects of aerial spraying and agro-chemical use on the people working and/or residing in banana plantations. This set of data also provides preliminary information on the changes that they have witnessed in biodiversity within the plantations over time.*

*Key informant interview with Dr. Quijano provides scientific information on the ill effects on humans and other organisms on the use of the certain chemicals while an interview with former Davao City Councilor Nenita Orcullo provides insights on why and how aerial spraying, through the city ordinance, have been banned in Davao City. Product labels of known agro-chemicals as well as existing studies were used to provide information on the hazards on health and biodiversity when using such chemicals.*

#### *1. Aerial Spraying and Agricultural Chemical Use*

Dole-Stanfilco does not allow its plantation workers to enter the fields within 30 minutes to one hour after aerial spraying of chemicals. But some workers, especially those working for growers and the labor cooperatives do not follow the prescribed time clearance. They usually stay in the field working in order to meet their quota.

Nine worker respondents noted that there was no lead time when workers are allowed to enter the field after aerial spraying, 24 worker respondents said at least 30 minutes should lapse before workers are allowed to enter while 8 other workers said at least an hour. The rest of the worker respondents said they do not know.

Seventeen worker respondents said there are people allowed to enter the field even during aerial spray while 26 others said people are not allowed to enter the field during spray. The rest of the workers said they do not know.



Pedro, a 21 year old harvester for a grower in Kapalong, said: *“The aerial spray did not matter, business as usual. We are always caught in the middle of an aerial spraying because there is no warning.”*

Ricardo, 26, another worker for a grower in Kapalong affirmed this saying: *“Anytime, you can go inside the field. We only go under the leaves whenever we feel the spray is reaching us. The plane has no warning. And even if you just bike [along the field], you will be caught by the spray.”*

Plantation workers feel that aerial spraying has adverse effects on their health as well as to those living in the community and on the environment. Workers complained of skin irritations and sore eyes after getting exposed to aerial spray. They also fear that respiratory diseases might develop, not only among workers, but children living inside the plantations. Workers also observed that leaves of coconut trees fall off when sprayed with fungicides used to kill sigatoka, a common fungus that infests banana trees.

Artemio Robillo, a regular worker in Maragusan confirmed that there is aerial spraying every day. *“Sometimes we are sprayed ourselves, when the airplane comes we run and hide under banana leaves. There are times our skin becomes reddish and have an allergic reaction, and whitish, like we have eczema. It is very irritating to our eyes, our eyes become reddish. Some of our coworkers have become semi-blind, their vision is badly affected”* (Personal Communication, 2012).

Other workers also complained of difficulty in breathing, headaches and developed rashes that get worse when they eat salty food.

Twenty one of the 40 worker respondents residing in areas within or near the banana farms showed concern over skin allergies being developed because of aerial spraying. Eleven workers said that aerial spraying is also painful to their eyes while and other 8 workers said that they are worried of respiratory ailments such as colds, coughs, chronic bronchitis and tuberculosis, which they have witnessed, caught by other workers and children.

The fumigation for sigatoka and other herbicides and pesticides identified by the workers were: Dithane, Furadan/Puredan, Roundup, Gramoxone and Lorsban.

**Dithane** is a fungicide that is used to kill sigatoka. It is “best” applied by aerial spraying. Dithane’s product label reads that workers should not be allowed to enter areas treated with Dithane within 24 hours after spray. Mixers and loaders of Dithane should also be wearing 1) coveralls and long sleeves 2) waterproof gloves 3) shoes with socks 5) protective eyewear 6) chemical resistant apron. Dithane’s label also warns of it being toxic to fish and that runoff from treated areas may be hazardous to aquatic organism in neighboring areas.

**Gramoxone**, previously known as Paraquat before its patent protection expired, is one of the most widely used herbicides, and held the largest share of the global herbicide market until recently overtaken by glyphosate. At spray strength, Paraquat is of relatively low acute toxicity but regular use, such as required on plantations, leads to health problems.<sup>1</sup>

Dr. Romy Quijano, Department of Pharmacology, University of the Philippines maintained that Paraquat is a highly toxic pesticide and should be completely removed from the market. In a documentation trip with him to interview workers affected by Paraquat (in a palm oil plantation in Agusan del Sur last May 9, 2012) he explained “the immediate visible effect of long exposure to Paraquat is the loss of melanin manifested by the appearance of white spots on the skin. “This, [pointing to the victims being interviewed while explaining to CTUHR representative] black fingernails and white spots, these are from paraquat exposure.. when they spread in the skin, this is an indication of a serious poisoning of the skin).”

As interviews were conducted while on the road, Dr. Quijano also advised the CTUHR to visit Pesticide Action Network (PAN-Philippines) website. The factsheet on Paraquat, lists some of the more dangerous effects of Paraquat to humans and environment. Paraquat damage can harm the lungs, heart, kidneys, adrenal glands, central nervous system, liver, muscles and spleen, causing multi-organ failure. Its chronic effects include Parkinson’s disease, cancer and lung disease among those exposed for prolonged periods.<sup>3</sup> In the European Union paraquat use has been forbidden since 2007.

**Lorsban** is an insecticide that fights banana scab moth, banana weevil borers and caterpillars. It is applied on plants through aerial spray. The product label reads that re-entry into the fields of humans after spraying must not be allowed until the spray has dried up on the treated plants. It is “very highly” toxic to fish and other marine and aquatic organisms and “highly” toxic to reptiles. Product label also warns that it must not contaminate any waterways, streams or rivers, and human dwellings. Among its effects on humans when exposed are skin and eye irritations with repeated minor exposure leading to a “cumulative poisoning effect.”

**Furadan** is an insecticide/nematicide also called as Carbofuran in the form of red and purple granules. Overexposure to Furadan, through inhalation of its dust, may result to headache, light-headedness, weakness, abdominal cramps, nausea, excessive salivation, perspiration, blurred vision, tearing, pin-point pupils, blue skin color, convulsions, tremor and coma. It is said to have a moderate degradation effect to soil.

**Round up** is a herbicide. Its label writes that it has only “slight” toxicity when inhaled and/or brought into contact with skin and eyes. It is also “slightly to moderately”

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<sup>3</sup> <http://www.panap.net/sites/default/files/pesticides-factsheet-hhps-paraquat.pdf>

toxic to aquatic organisms. To avoid skin and eye irritations, those who have contact with Round up should wear all-cover up clothes (long sleeves and gloves) and must wear chemical splash goggles when mixing and pouring the herbicide.

None of these five chemicals contains chemical or chemical compounds that are currently listed in New Zealand's list of substances prohibited from use as agricultural compounds or as ingredients in agricultural compounds. Furadan, however has long been banned in Canada and some European states. The United States Environmental Protection Authority (EPA), in June 2010, also announced a *full* ban the use of Furadan, meaning not only ban on the use and sale of Furadan but also the importation of all products that uses Furadan, because the insecticide is said to kill birds "in massive amounts."

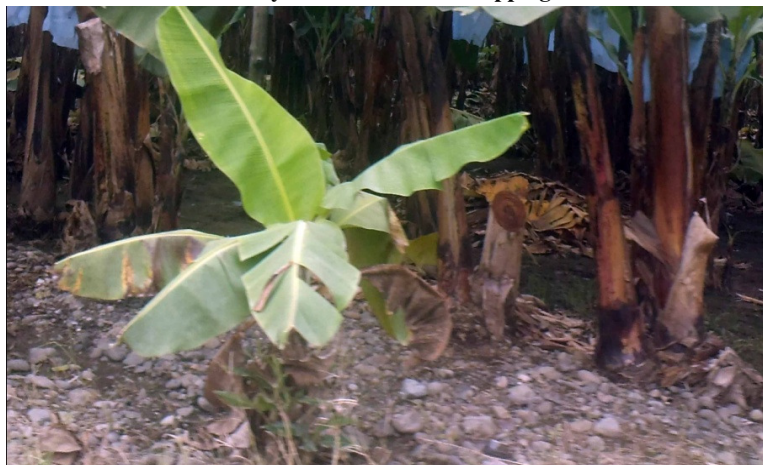
## *2. Effect on Waterways, Soil, and Biodiversity*

Workers and community residents inside and close to plantations are also concerned of the degradation of their waterways. In Kapalong, Davao del Norte, water from the well around the residences of workers inside the banana plantations are no longer potable and most households living inside the plantation have to buy purified water for drinking.

Eighteen worker-respondents said that they no longer depend on their deep well for their drinking water. They have to buy mineral water. Worker Teresita, 48, a rank and file employee of Dole-Stanfilco in Maragusan said: *"We seek other sources of drinking water, because taking the fresh water will taste foul."*

Gloria, 47, also said, *"We can no longer drink the water [in the well]. The color of the water is yellow. We have to buy our water."*

**Figure III-9: Rocky soil develops in banana plantations possibly due to many decades of mono-cropping**



The lands in Dole-Stanfilco banana plantations especially those found in Davao del Norte are dry, as though soil nutrients have already been depleted, and rocks are

coming out of the soil. FARM Coop noted that if a grower who has been growing bananas for institutional buyers, stops growing bananas for some reason even for a month, it will take six months to recover the soil and be able to produce bananas again. This is because the land is practically dead and that it is only able to grow bananas due constant supply of fertilizers and synthetic nutrients. Residents, small growers and workers who own land in the Dole-Stanfilco plantations are afraid that soon their land might be converted to commercial/residential use because it will no longer yield sufficient produce to cover the expenses of synthetic land inputs. This has been the case in one of the banana plantations in a village in Davao City.

The workers who have lived in the plantations for some years, narrated how rich the ecosystem was before its conversion to banana plantations. In Maragusan, fruit bearing trees (coffee, lanzones, durian, pine trees etc) used to abound the place and wild animals (monkeys, boars, deer etc) also used to inhabit the area. After the plantation occupied the area, none of these wild animals were seen in the valley anymore. Residents even joke that neither frogs nor bees can survive in the plantations because of the strong chemicals used. In Kapalong and Sto. Tomas, workers said that most of the land area that used to be rice fields or woods of fine logs (narra, molave etc.) was already gone.

At least 19 workers of the 51 worker respondents complained of either deforestation or change in ecosystem, from rice fields, coconuts trees, other fruit-bearing trees and rubber trees to banana fields. A few of them noted:

*“When the banana plantation expands, they cut trees”, said **Jose, 49, a worker under Asiapro in Maragusan.***

*“The outlet of their waste is the Agusan River....When they started their expansion in the 1990s, they cut many trees and they converted it into banana plantation.... There used to be many kinds of trees here, marang, jackfruit, manggo, pomelo... now, they are just names of sub-villages. It was full of forest before and the fog, it used to be very low. Before, if you are talking to someone five meters away, you cannot see that person [because of the fog], but now, the fog is only there in the mountains. There were also plenty of animals [before], monkeys, wild boars, birds. Now, there are none. Even frogs cannot survive the banana farms.” **Roberto, 47, a rank and file employee in Maragusan.***

*“Before, this place used to be forested, there were many trees, and coconut trees....[there were also many animals], carabaos, cows, monkeys, now they’re gone.” **Lucita, 49, a rank and file employee in Kapalong***

Three workers in Maragusan also shared that there used to be many fish in the river but now there are very few fish left.

#### **D. The Condition of Banana Growers in Plantations in the towns of Maragusan, Compostela Valley and Kapalong and Sto. Tomas, Davao del Norte**

*Data from this section is culled from three sources. First, data gathered from the three sets of interview questions for growers from Maragusan, Sto. Tomas, and Capalong. Second, data from key informant interview with an officer of the Non-Governmental Organization (NGO) Foundation of Agrarian Reform Cooperatives in Mindanao (FARM COOP). Third and last, came from previous published articles and studies on the history of banana growers and growership system in Dole-Stanfilco banana plantations.*

*Data from respondents were gathered to shed light to the current growers' conditions in the two provinces of Davao del Norte and Maragusan. The researchers deemed it important to review the previous studies made and published by various individuals and organizations to provide a historical background on the situation of growers and come up with better understanding of the context of current growers' conditions, the extent of their relationship with Dole-Stanfilco, and how these two factors concretely affect the labor and environmental conditions discussed in the previous sections.*

Banana growers are the most basic actor in the production of bananas especially in the light of privatized (FOB) farming. Previously, growers/landowners leased their lands to institutional buyers such as Dole-Stanfilco and the latter took the responsibility for growing bananas. Today, growers are the “actual producers” of bananas in FOB farms. This means that growers in the FOB system bear the cost involved in all processes of banana growing from planting to harvesting. This is true not only for the provinces of Davao del Norte and Compostella Valley but for all other plantations where the system of FOB exists.

##### *1. Profile of grower respondents and FARM COOP*

Interviewed respondents are small banana growers in the towns of Maragusan (Compostella Valley), Kapalong, Sto. Tomas, and Panabo (Davao del Norte) who presently sell or previously sold their produce exclusively to Dole-Stanfilco. Interviewed growers own lands as small as 0.2 ha to as wide as 4.0 ha. Most of them also engage in the cultivation of bananas while employing a few workers. A small grower with 2.0 ha normally employs 2-3 workers (usually relatives) to help him/her in the cultivation process. The grower either contracts out the harvesting to Dole-Stanfilco itself, to a middleman or hires help-out workers.

The key informant for this section are Mr. Ricardo Merced and Atty. Coronado Apusen of Foundation of Agrarian Reform Cooperatives in Mindanao (FARM Coop), a group of banana growers' cooperatives that used to sell their produce exclusively to Dole-Stanfilco (1998-2008). In 2008, FARM Coop, did not renew its contract and instead entered into a five-year contract with Unifrutti because of the latter's alleged better contract terms.

## *2. Historical background on the growers system in Dole-Stanfilco plantations*

A study in 2008 (Quitorriano) dates commercial growing of bananas in the Philippines in Davao after the World War II. The postwar Philippine Government established the Land Settlement and Development Corporation, a government agency mandated to acquire lands for resettlement and private business. It was through these agencies that government leased or rented out the acquired agricultural lands in Mindanao to Davao Abaca Plantation Company (DAPCO), Panabo Hemp Corporation (PAHECO), and Davao Agricultural Hemp Corporation (TADECO). In the late 1960s, optimizing the leasehold arrangements, US companies like Del Monte and Dole Foods began their operations in Davao and Cotabato by contract arrangements. This saw those abaca plantations shifting to growing Cavendish bananas. Dole<sup>1</sup> in particular negotiated the large-scale use of the 8,000 hectare Davao Penal Colony (DAPCO) for Cavendish banana production in the mid 1960s which subsequently led to the establishment of its local subsidiary, Dole-Stanfilco (ibid.)

### a. Background on growers in Davao del Norte

Grower respondents from Davao del Norte said that as early as 1969 Dole-Stanfilco started its operation in the province. In the late 1990s however, the manner of operations of banana plantations drastically changed when workers under its subsidiaries such as Diamond Farms and Checkered Farms petitioned that the farms be distributed to the farmers by virtue Comprehensive Agrarian Reform Program (CARP). In 1996 land ownership was transferred to the workers of both farms and other Dole-Stanfilco's subsidiaries but ownership of roads, cable system and other infrastructure required in banana growing was retained. This development was welcomed by Dole-Stanfilco as favourable as farm inputs had to be covered by the growers themselves (Bacon, 1998).

Thus, Dole-Stanfilco were able to convince the agrarian reform beneficiaries to sign "lease back agreements" (dela Rosa et al, Year unknown) and tied them to at least 10 year-contract to sell their banana produce exclusively to the company. With no other options, the agrarian reform beneficiaries accepted to become banana growers exclusively for the company.

At that time, according to FARM Coop, the price per box of bananas was pegged in pesos at Php 28.00 that sent most growers to bankruptcy due to expensive farm inputs

among others. FARM Coop narrated that these “onerous” contracts between Dole-Stanfilco and the agrarian reform beneficiaries prompted a big strike that gained ground even in the international community. As farm workers and growers persisted in their struggle, the company gave in and agreed to peg the price per box of banana in dollars, raising the price to US\$2.10 per box.

To date, banana growers in Davao del Norte, particularly in Kapalong remain tied to those contracts. Some have decided to sell their produce to other buyers after their 10-year contract expired. Others have joined the cooperatives like FARM Coop and sell their produce according the cooperatives’ decision or plan.

#### b. Background on growers in Compostella Valley

Respondents from Maragusan narrated that it was only between 1992 and 1993 that Dole-Stanfilco came to their town and “convinced” the farmers and landowners to convert to planting bananas. Farmers in Maragusan used to plant and earn from fruit bearing trees. Both worker and grower respondents revealed that Dole-Stanfilco convinced the farmers and landowners that growing commercial bananas for export would increase their produce and income.

In the province of Compostela Valley, (both in the towns of Maragusan and Compostela) Dole-Stanfilco started its operations through a growership system. In this system, a group of banana growers who own a relatively small area of land (>1.0 – 16.0 ha) form a growers collective. The company then rents the land from the growers from 10 to 20 years and hires the growers themselves as workers to work either in the field or in the production plants. Under the growership system, the growers can recommend 1-5 workers per hectare to work in the plantation. This opportunity to earn wages as farm-workers also enticed the farmers living in the said towns to convert to growing Cavendish bananas.

Respondents refer to these farms as managed farms or relay cropping. This means that Dole-Stanfilco subsidizes the growers’ collective in terms of farm inputs, pest control systems, and other important infrastructures.

In the year 2000, Dole Stanfilco however, decided to shift to Freight on Board (FOB) system in Compostela, Compostela Valley as part of cost cutting measures that multinational companies like Chiquitta, Del Monte and Dole Foods were doing at the international level as a response to the crisis (Arias et al, 2003). This shift to FOB system resulted to higher cost for growers as the company stopped the subsidy for farm inputs and the relationship between the grower and the company was reduced to a buyer-seller relation except that the growers are bound by a contract that runs for 10-25 years to sell their bananas exclusively to Dole-Stanfilco. Ten years later, the shift was also made in Maragusan.

### *3. Terms of contract between Dole-Stanfilco and growers*

Under the FOB system, growers provide the land, cover all the expenses for labor cost in cultivation, chemical applications including aerial spraying, putting up “posts” and other infrastructure relevant to the cultivation of bananas. Some growers till the land on their own and hire relatives as farm workers to cut costs. Some of them turn to middlemen for workforce.

Chemicals and engineering services needed by the growers are supplied by Dole-Stanfilco at the rate or price determined by the latter according to the size of the land. Payments for these inputs are deducted from the sales amount of bananas sold by the grower after harvest.

Under the contract, the company will buy the bananas from growers, providing growers with assured market for their produce. However, buying rate is fixed at US\$2.60 per 13.5 kg- box of Cavendish. There is no provision for price increase per box even if prices of inputs increase. Thus, since the early 2000s, prices of bananas sold to Dole-Stanfilco remain at the same price and changes in prices only happen as dollar to peso exchange rate changes.

Apart from these, the contract restricts the growers from selling their produce to third party buyers. Otherwise, the growers face financial and legal liability.

### *4. Current conditions and issues of banana growers*

#### a. Low selling price and high cost of growing bananas

FARM Coop estimates that at current price levels of agricultural inputs and other operational expenses, a small grower actually spends US\$3.20 (minimum) per box of banana produced. This is 23 percent higher than the US\$2.60 per box of bananas that Dole-Stanfilco pays the growers.



**Figure III-10 A small grower puts fertilizer on his banana plants**



In addition, all grower respondents expressed concern over the rising cost for growing bananas over time as prices of farm inputs increased steadily. Cost of aerial spraying for instance is as high as Php 750.00 per hectare per spray and farms are sprayed twice a week. Inputs and other services (agricultural services and engineering), according to grower respondents, are more expensive if taken from Dole-Stanfilco compared to prices by outside service providers and suppliers. Two growers in Kapalong for example noted that the installation of posts (where banana plants are tied to) for a hectare of land only costs Php80,000 from third party providers while the company's rate stands at Php120,000. However, these growers added that they are forced to use the services from Dole-Stanfilco on two reasons: first, the latter considers the work of third party providers "substandard" that might result to lower qualities of bananas; second, that Php80,000 is already a huge amount for small growers to pay in cash when payments could be deducted directly from their banana sales.

Three growers in Maragusan also expressed that Dole-Stanfilco supplies farm inputs to growers in prices that are far more expensive than those bought from outside sources. And since most growers (especially the small ones) do not have cash capital, they get inputs from Dole-Stanfilco on a loan basis, which add to their indebtedness. Thus, the big growers who can afford to buy inputs on cash basis from outside are the only ones who are able to earn more.

Freddie, a grower for Dole-Stanfilco in Kapalong said: *"If you depend on the chemicals from the company, you'll loose. If you buy box, plastic, bagging ribbon, plastic cost is P150, but you can buy it outside for P80)."*

Consequently, two growers in Kapalong who have completed their contract with Dole-Stanfilco have decided not to renew their agreement with the latter as they often are in the losing end. Their sales are not enough to pay for the expenses including inputs. These two grower respondents complained that there are many unexplained expenses charged to them and they feel that they are being cheated about the real number of boxes of bananas they have harvested. Growers reportedly are not allowed to enter the plant premises where their harvested bananas are weighed for pricing.

Even FARM Coop has decided not to renew their contract after it ended in 2008. They now sell their bananas to a Middle Eastern company, UNIFRUTI, whom they say has offered them better contract terms. For instance, UNIFRUTI pays \$3.72 per box. And despite the fixed price in the contract, the buyer allows for an increase in prices for buying bananas beyond the contract terms.

Low prices are not the only concerns that arose from the shift to FOB. Both workers and growers agree that the contract favours Dole-Stanfilco more, and that growers are on the losing end of the relationship. But for majority of the workers, the shift to FOB releases the company from employer-employee obligations to its workers, as farm workers in FOBs are no longer direct workers of Dole-Stanfilco but of individual growers.

#### b. Consequences of “closed contracts”

The harvest depends on the season, but generally in the areas surveyed, the respondents reported that they usually harvest 30-70 fruit bunches (a bunch could weigh between 8-20 kilos) per week per hectare. Bananas are bought per box which weighs 13.5 kg for the Cavendish variety, while growers from Maragusan report that the box of the Señorita variety weighs 7 kg.

Considering the production costs, the small growers reported to have an average net income of Php 5,000 to 15,000 a month in the said area. In Maragusan, small growers can earn a gross income of Php 25,000-Php 40,000 (USD 593.12 –USD 948.99) a month but deductions for production expenses slashes their net income to only Php 10,000 (USD 237.25) per month.

The relatively low price per box of banana paid has forced some growers in Davao del Norte to secretly engage in “pole-vaulting” or the selling of banana to outside buyers who pay them as much as Php250.00 (US\$6.00) per box. Three grower respondents and three other workers respondents in Kapalong revealed that growers caught pole-vaulting are “sanctioned”. This “sanction” means that instead of preventing these bananas from being sold outside, Dole-Stanfilco brings the bananas owned by the “pole-vaulter” in the town center and leaves them to rot, so the violator cannot earn anything from his/her produce. Pole vaulting is considered an “illegal” practice by Dole-

Stanfilco as it violates the terms of contract that growers should exclusively sell their produce to the latter.

Doming, 44, a grower in Kapalong said that he has witnessed how other growers caught pole-vaulting are being sanctioned. Despite this, he continues to sell some of his produce outside of Dole because he gets a better price for it.

Pole-vaulting however, is not as prevalent in Maragusan compared to Kapalong. However, a grower-respondent from Maragusan narrated her experience of having charged by Dole-Stanfilco with a Php 1.25 million (USD 29,655.99) qualified theft suit after she sold her bananas to another buyer. She explained that the company initially refused to buy her bananas as her produce did not meet the CLASS A standard. To recover her expenses, the grower decided to sell the bananas to another buyer as the latter accepts CLASS B bananas. Upon learning what she did, the company charged the grower for alleged stealing of bananas and selling them to another buyer.

#### c. Economic impact of FOBs to growers

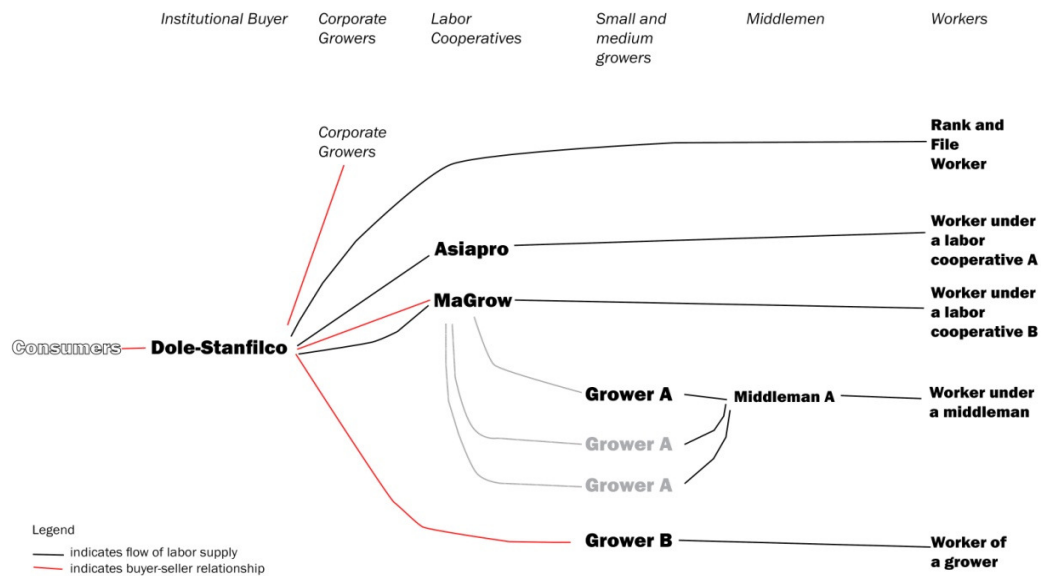
The shift from growership system to FOB farming is, in our opinion, a major blow not only to the workers but more importantly to the small growers who have to shoulder all the costs for cultivating bananas.

The closed contract places the company to a more favorable position: as an established and arguably a monopoly-buyer of bananas in the towns covered by the study, it is able to set prices not only for bananas but also of services, other agricultural inputs and infrastructure,.

## IV. Summary and Conclusion

To recap, the relationships between workers and other actors in Dole-Stanfilco banana plantations can again be illustrated in the following diagram:

**Figure IV-1 Relationships of actors in Dole-Stanfilco plantations**



The following opinions are based on the evidence gathered as part of this research. Workers are at the heart of various production processes. Although their relationship with Dole-Stanfilco, which the company described as ‘multi-dimensional and multi-level’ varies according to employer-type they are bound by a common factor: that is, their employers are legally bound to grow, produce and pack bananas exclusively for Dole-Stanfilco, largely for export in other countries like New Zealand. Regardless of terms describing the relationships between the principal, the cooperatives, associations or growers and workers, they work exclusively for one company, i.e. Dole-Stanfilco, which by virtue of Department Order 18-A, makes it *solidarily liable* for the full implementation of labour standards in all its operations.

The employment of this multi-level and multi-dimensional relationship in fact gave and continues to give it numerous advantages, to cut on costs while optimizing the gains and profits of production expansion, at the expense of the growers and workers. The varying ways of applications of labour standards that exist in Dole-Stanfilco operations to a certain extent make it appear that it is compliant to the set of standards (both labour and environment), when in fact, a bigger part of its operations comes and a

product of low-wage and less protected workers and in what the growers called as one-sided contract growing agreements /arrangements..

In spite of the limitations of the study, it is able to show key differences in Dole-Stanfilco's labour practices that are partly compliant but largely in violations of the prevailing standards that it pledged to adhere.

- 1) In relation to its rank and file employees (directly-hired), which comprise a minority workforce, it is our view that Dole-Stanfilco is *nominally* compliant with the prescribed minimum wage rates, sickness and vacation leaves, social security insurance and other government-mandated benefits such as 13<sup>th</sup> month pay. To a certain extent, it also applies the same practice for workers under labor cooperatives.
- 2) It is our opinion that violations of minimum wages and other benefits are rampant in FOB farms, growers and middlemen. Wages of workers in these operations who comprised the majority of workers in Dole-Stanfilco operations, appear to be way below minimum wage rates; they also do not enjoy benefits such as paid leave, 13<sup>th</sup> month pay and social security. We believe that their situation also keeps them from forming unions neither are they guaranteed with security of tenure. However, the discussion on the situation of small growers in banana plantations also sheds light to the plight of small growers.
- 3) Under the same principle of *solidary liability*, Dole-Stanfilco appears to tolerate the wages far below the minimum paid by FOB farms, growers and middlemen supplying and growing bananas for the company to its workers. We believe that it is interesting to note, that the low buying price of banana and other provisions in the agreement that growers consider disadvantageous to them, somehow explain the contract growers' incapacity to comply with basic economic standards but not a justification for non-compliance. We believe that the law is clear that the least the workers must receive for an 8-hour work is the prescribed minimum wage, which does not happen in the cases of contract growers.
- 4) In terms of compliance to the right to security of tenure and freedom of association, there appears to be a history and continuing practice of violating these rights. It is our opinion that the compressed workweek and workers prolonged contractual employment status bode ill to implementing these rights. The experience of MUWU workers who have been forced to retire and were re-absorbed as new workers, does not only violate the law and rights, but an apparent way of skirting legal obligations to workers. The verbal but nonetheless binding policy of prohibiting workers under labor cooperatives to join unions ignores the Philippine Constitution and violates the right to freedom of association as embodied in the ILO Conventions (that Dole-Stanfilco pledged to adhere). The recent case of perjury against Robilla of MDSL and the history of union harassment as experienced by MUWU, PPPLU and

NAMADITFI in the last six years present disturbing practices with regard to labour relations. Moreover, the respondents' non-recognition of a democratic election of FILU as the union that duly represents as well as other reported tactics of FILU to hide or obscure the freedom period indicates the lack of the workers' enjoyment of their right to freely associate with any union. It will be interesting to monitor in the days to come, if the military will again intervene in any affairs relating to the workers exercise of their union rights.

- 5) It is our opinion that, regarding workers' health and safety, compliance in relation to rank and file employees appears to be neither exceptional nor commendable. As workers narrated, the replacement of protective gear is not readily available when needed. Workers (of all types) also seem not to be fully cognizant of the hazards of chemicals they use or are exposed to whether inside the plants and in the fields. Thus, despite warnings not to enter the plantations after aerial spraying, workers especially those working in the field continue to do so.
- 6) A majority of the land (90 percent in Maragusan and 100 percent in Kapalong and Sto. Tomas) are now FOB farms run by individual growers or contract growers, thus their operations are integral to Dole-Stanfilco's business. In this context, it can be argued that Dole-Stanfilco is 'solidarily liable' to the violations of standards committed by third party actors such growers, middlemen and labor cooperatives.
- 7) It is our view that, in the web of relationship illustrated above, Dole-Stanfilco appears to be the organization that benefits the most: First, we believe that it sets the price of bananas they buy from growers at very low levels and also dominates, if not monopolizes, the supply of agricultural inputs needed by growers (see for example, the allegations made by the three Maragusan workers and the cost comparison for necessary equipment bought from the company, as opposed to outside suppliers); Second, in relation to its rank and file workers, it is our belief that the minimum standards set by the government, to which Dole-Stanfilco complies, helps keep costs low; Third, labor cooperatives as discussed in the previous chapter were utilized mainly to subcontract operations, which are arguably necessary and desirable to Dole-Stanfilco operations, and appear to be used to avail of even cheaper and more flexible labor which therefore translates to maximized profits for the company.
- 8) With regard to environmental impact of operations in the areas covered by the study, it appears that biodiversity, soil and waterways have degraded over time especially in the areas of Maragusan and Davao del Norte wherein the company has been operating for two (2) and four (4) decades respectively. The continued use of chemicals such as Gramoxone, which has been banned in EU and Furadan which has been banned for use on any food crops in the US, seems to indicate a disregard for environmental hazards. As mentioned earlier, there is a need however to deepen the study on this aspect, and in order to investigate the

impact of the use of certain chemicals, it is best to include a study in places where operations are just starting such as in Surigao, or in relatively newer places in Soccsargen.

- 9) In a country like the Philippines where opportunities for employment is scant, we believe that Dole-Stanfilco's presence is a welcome contribution to employment generation. In terms of socio-economic impact, however, it is our view that Dole-Stanfilco's operations did not significantly contribute to the upliftment of most families of workers and growers from poverty. A testament to this is that no single respondent has said that their lives are better off today than prior to their employment in the banana industry. If there are changes, these are focused on having some or little cash that they regularly received from wages, compared to the non-regular income when they were farming. More respondents also complain that they are merely taking the jobs in the plantations because there is no other choice.
- 10) Finally, it is our view that the people living within and nearby the plantation have grown dependent on the banana industry as a whole. Aside from growing bananas, there appears no other viable and sustainable economic activity particularly in Davao del Norte and Maragusan. This dependence on mono-crop plantations is dangerous for future generation as massive degradation of soil can lead to unproductive yield in the future and thus become unsustainable. It also puts into peril the region's food security. More importantly, as banana production relies heavily on export market, it is also highly vulnerable to changes of outside market, which logically impact on the livelihood of thousands of farm workers and economic standing of host regions. The imposition of stricter import control placed by China on Philippine banana export is a case in point.
- 11) We believe that, the obvious lack of infrastructure such as roads and other important services such as education and health services will continue to limit the access of growers and workers to other possible markets and economic other activities as well as opportunities to uplift their conditions. This will also strengthen the continual dependence on banana industry.
- 12) The last two however, concerns not only Dole-Stanfilco but the Philippine government's broader and clearer policy formulation and stricter enforcement of laws particularly in areas where there are multinational corporations.

## V. Recommendations

Having said the above, this study is recommending the following for future research and courses of action in relation to Oxfam's campaign to promote ethical and fair-trade particularly in the banana industry.

For future research:

- 1) A scientific study on the impact on health of workers who have worked at Dole-Stanfilco banana plantations for the last decade.
- 2) Environmental impact assessment to measure the level of degradation of land, air, water and biodiversity especially in the areas of Davao del Norte and Compostela Valley where Dole-Stanfilco have been in operating for more than a decade and to compare it with areas where it's just starting operations.
- 3) A thorough investigation (possibly quantitative study) of the social and economic impact of Dole-Stanfilco operations in the communities inside and near the plantations. At a broader perspective, this will also serve as background on multinational companies' contribution to socio-economic condition of the host country.
- 4) A study that will mainly focus on the dynamics of labor-relations, unionism and the implementation of Banana Tripartite Industrial Council in the Dole-Stanfilco banana plantations. In this regard, it is highly recommended that close monitoring on the implementation of the Voluntary Codes of Good Practices, though not legally binding serves as both political and moral guidelines for companies and government to observe.

**In terms of campaign, this study recommends to:**

- 1) Support the campaign of workers in the country to push for a legislated and substantial wage hike that will help workers in Dole-Stanfilco plantations to obtain wages higher than those prescribed by wage boards.
- 2) That there should be transparency in the contract agreements and arrangements that Dole-Stanfilco has signed particularly with individual growers
- 3) Respect and compliance to the right to freedom of association by workers under the labour cooperatives and end in the prohibition of this right as a condition of employment.



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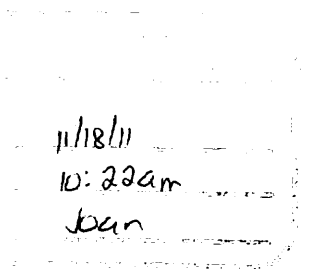
## ***Endnotes***

- <sup>i</sup> This section was lifted from the Terms of Reference between Oxfam NZ and CTUHR
- <sup>ii</sup> The shift from growership to FOBs and change in ownership in production plants has gravely affected workers rights and unionism in Compostela, Compostela Valley. Ten years later, a similar experience will happen to unionized workers in Maragusan. To be discussed at length later in this study (DT, 2006).
- <sup>iii</sup> Paragraph 1.3 Voluntary Codes of Good Practices in the Banana Industry in Region XI. On December 20, 2010, various stakeholders of the banana industry, including Dole-Stanfilco signed a Voluntary Codes of Good Practices in the banana Industry in Region XI. The Code re-affirms that the industry will be guided and will comply with Philippine Constitution, Philippine Labor Code and international standards such as those set by ILO Conventions and Certification like SA 8000.
- <sup>iv</sup> Article 280 of the Labor Code states that “all employment shall be deemed to be regular where an employee has been engaged in necessary and desirable in the usual business or trade of the employer, except when an employment is fixed for a specific project .... or the work performed is seasonal in nature and the employment is for the duration of the season..”
- <sup>v</sup> DO-18-A series of 2011, Rules Implementing Articles 106 to 109 of the Labor Code, as Amended governing contracting and sub-contracting arrangements as allowed by law but prohibiting the practice of labor only contracting
- <sup>vi</sup> Item Number 8, on Remuneration, of the Social Accountability 8000 Standards,
- <sup>11</sup> Being less acutely toxic at spray strength, the greatest risk to workers of fatal and serious accidents is during mixing and loading. Studies show high incidence of paraquat-related ill-health. For example a study in Guápiles, one of the main plantation regions of Costa Rica, identified 284 accident cases caused by paraquat between 1988 and 1990, including 123 cases of systemic poisonings, burns, eye injuries and fingernail damage.
- <sup>vi</sup> It was in fact Castle and Cook or Chiquita that acquired these agricultural lands which will later become Dole-Stanfilco banana plantations through the LASEDECO. In 1966, Chiquita bought 55 percent of Standard Fruit Company or Dole.
- <sup>vii</sup> The New People’s Army is the military wing of the Communist Party of the Philippines (CPP), the NPA is a Maoist group formed in March 1969 with the aim of overthrowing the government through protracted guerrilla warfare. Although primarily a rural-based guerrilla group, the NPA has an active urban infrastructure to conduct terrorism and uses city-based assassination squads. It derives most of its funding from contributions of supporters in the Philippines, Europe, and elsewhere and from so-called revolutionary taxes extorted from local businesses and politicians. *Source: www.fas.org*

## **Appendix 1: Department of Labour and Employment Order 18-A**

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

DEPARTMENT ORDER NO. 18-A  
Series of 2011



**RULES IMPLEMENTING ARTICLES 106 TO 109  
OF THE LABOR CODE, AS AMENDED**

By virtue of the power vested in the Secretary of Labor and Employment under Articles 5 and 106 to 109 of the Labor Code of the Philippines, as amended, the following regulations governing contracting and subcontracting arrangements are hereby issued:

**Section 1. Guiding principles.** Contracting and subcontracting arrangements are expressly allowed by law and are subject to regulations for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization and collective bargaining. Labor-only contracting as defined herein shall be prohibited.

**Section 2. Coverage.** These Rules shall apply to all parties of contracting and subcontracting arrangements where employer-employee relationships exist. It shall also apply to cooperatives engaging in contracting or subcontracting arrangements.

Contractors and subcontractors referred to in these Rules are prohibited from engaging in recruitment and placement activities as defined in Article 13(b) of the Labor Code, whether for local or overseas employment.

**Section 3. Definition of terms.** The following terms as used in these Rules, shall mean:

(a) **"Bond/s"** refers to the bond under Article 108 of the Labor Code that the principal may require from the contractor to be posted equal to the cost of labor under contract. The same may also refer to the security or guarantee posted by the principal for the payment of the services of the contractors under the Service Agreement.

(b) **"Cabo"** refers to a person or group of persons or to a labor group which, in the guise of a labor organization, cooperative or any entity, supplies workers to an employer, with or without any monetary or other consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor.

(c) **"Contracting" or "Subcontracting"** refers to an arrangement whereby a principal agrees to put out or farm out with a contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.

(d) **"Contractor"** refers to any person or entity, including a cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services,

skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement.

(e) “**Contractor’s employee**” includes one employed by a contractor to perform or complete a job, work, or service pursuant to a Service Agreement with a principal.

It shall also refer to regular employees of the contractor whose functions are not dependent on the performance or completion of a specific job, work or service within a definite period of time, i.e., administrative staff.

(f) “**In-house agency**” refers to a contractor which is owned, managed, or controlled directly or indirectly by the principal or one where the principal owns/represents any share of stock, and which operates solely or mainly for the principal.

(g) “**Net Financial Contracting Capacity (NFCC)**<sup>1</sup>” refers to the formula to determine the financial capacity of the contractor to carry out the job, work or services sought to be undertaken under a Service Agreement. NFCC is current assets minus current liabilities multiplied by K, which stands for contract duration equivalent to: 10 for one year or less; 15 for more than one (1) year up to two (2) years; and 20 for more than two (2) years, minus the value of all outstanding or ongoing projects including contracts to be started.

(h) “**Principal**” refers to any employer, whether a person or entity, including government agencies and government-owned and controlled-corporations, who/which puts out or farms out a job, service or work to a contractor.

(i) “**Right to control**” refers to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

(j) “**Service Agreement**” refers to the contract between the principal and contractor containing the terms and conditions governing the performance or completion of a specific job, work or service being farmed out for a definite or predetermined period.

(k) “**Solidary liability**” refers to the liability of the principal, pursuant to the provision of Article 109 of the Labor Code, as direct employer together with the contractor for any violation of any provision of the Labor Code.

It also refers to the liability of the principal, in the same manner and extent that he/she is liable to his/her direct employees, to the extent of the work performed under the contract when the contractor fails to pay the wages of his/her employees, as provided in Article 106 of the Labor Code, as amended.

(l) “**Substantial capital**” refers to paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00) in the case of corporations, partnerships and cooperatives; in the case of single proprietorship, a net worth of at least Three Million Pesos (P3,000,000.00).

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<sup>1</sup> Refers to the formula set out in the Implementing Rules and Regulations of Republic Act No. 9184, or An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes.

(m) **“Trilateral Relationship”** refers to the relationship in a contracting or subcontracting arrangement where there is a contract for a specific job, work or service between the principal and the contractor, and a contract of employment between the contractor and its workers. There are three (3) parties involved in these arrangements: the principal who decides to farm out a job, work or service to a contractor; the contractor who has the capacity to independently undertake the performance of the job, work or service; and the contractual workers engaged by the contractor to accomplish the job, work or service.

**Section 4. Legitimate contracting or subcontracting.** Contracting or subcontracting shall be legitimate if all the following circumstances concur:

(a) The contractor must be registered in accordance with these Rules and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor has substantial capital and/or investment; and

(c) The Service Agreement ensures compliance with all the rights and benefits under Labor Laws.

**Section 5. Trilateral relationship in contracting arrangements; Solidary liability.** In legitimate contracting or subcontracting arrangement there exists:

(a) An employer-employee relationship between the contractor and the employees it engaged to perform the specific job, work or service being contracted; and

(b) A contractual relationship between the principal and the contractor as governed by the provisions of the Civil Code.

In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there exists a solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract.

However, the principal shall be deemed the direct employer of the contractor's employee in cases where there is a finding by a competent authority of labor-only contracting, or commission of prohibited activities as provided in Section 7, or a violation of either Sections 8 or 9 hereof.

**Section 6. Prohibition against labor-only contracting.** Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:

(a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or

(b) The contractor does not exercise the right to control over the performance of the work of the employee.

**Section 7. Other Prohibitions.** Notwithstanding Section 6 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

A. Contracting out of jobs, works or services when not done in good faith and not justified by the exigencies of the business such as the following:

- (1) Contracting out of jobs, works or services when the same results in the termination or reduction of regular employees and reduction of work hours or reduction or splitting of the bargaining unit.
- (2) Contracting out of work with a "Cabo".
- (3) Taking undue advantage of the economic situation or lack of bargaining strength of the contractor's employees, or undermining their security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:
  - (i) Requiring them to perform functions which are currently being performed by the regular employees of the principal; and
  - (ii) Requiring them to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or from any liability as to payment of future claims.
- (4) Contracting out of a job, work or service through an in-house agency.
- (5) Contracting out of a job, work or service that is necessary or desirable or directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent.
- (6) Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Art. 248 (c) of the Labor Code, as amended.
- (7) Repeated hiring of employees under an employment contract of short duration or under a Service Agreement of short duration with the same or

different contractors, which circumvents the Labor Code provisions on Security of Tenure.

- (8) Requiring employees under a subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement.
- (9) Refusal to provide a copy of the Service Agreement and the employment contracts between the contractor and the employees deployed to work in the bargaining unit of the principal's certified bargaining agent to the sole and exclusive bargaining agent (SEBA).
- (10) Engaging or maintaining by the principal of subcontracted employees in excess of those provided for in the applicable Collective Bargaining Agreement (CBA) or as set by the Industry Tripartite Council (ITC).

B. Contracting out of jobs, works or services analogous to the above when not done in good faith and not justified by the exigencies of the business.

**Section 8. Rights of contractor's employees.** All contractor's employees, whether deployed or assigned as reliever, seasonal, week-end, temporary, or promo jobbers, shall be entitled to all the rights and privileges as provided for in the Labor Code, as amended, to include the following:

- (a) Safe and healthful working conditions;
- (b) Labor standards such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13<sup>th</sup> month pay, and separation pay as may be provided in the Service Agreement or under the Labor Code;
- (c) Retirement benefits under the SSS or retirement plans of the contractor, if there is any;
- (d) Social security and welfare benefits;
- (e) Self-organization, collective bargaining and peaceful concerted activities; and
- (f) Security of tenure.

**Section 9. Required contracts under these Rules.**

(a) Employment contract between the contractor and its employee. Notwithstanding any oral or written stipulations to the contrary, the contract between the contractor and its employee shall be governed by the provisions of Articles 279 and 280 of the Labor Code, as amended. It shall include the following terms and conditions:

- i. The specific description of the job, work or service to be performed by the employee;
- ii. The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual employee; and
- iii. The term or duration of employment that must be co-extensive with the Service Agreement or with the specific phase of work for which the employee is engaged.

The contractor shall inform the employee of the foregoing terms and conditions of employment in writing on or before the first day of his/her employment.

(b) Service Agreement between the principal and the contractor. The Service Agreement shall include the following:

- i. The specific description of the job, work or service being subcontracted.
- ii. The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost.
- iii. Provisions ensuring compliance with all the rights and benefits of the employees under the Labor Code and these Rules on: provision for safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13<sup>th</sup> month pay and separation pay; retirement benefits; contributions and remittance of SSS, Philhealth, PagIbig Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure.
- iv. A provision on the Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost.
- v. A provision on the issuance of the bond/s as defined in Section 3(m) renewable every year.
- vi. The contractor or subcontractor shall directly remit monthly the employers' share and employees' contribution to the SSS, ECC, Philhealth and Pag-ibig.
- vii. The term or duration of engagement.

The Service Agreement must conform to the DOLE Standard Computation and Standard Service Agreement, which form part of these Rules as **Annexes "A" and "B"**.

**Section 10. Duties of the principal.** Pursuant to the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting of labor to protect the rights of the workers and to ensure compliance with the provisions of the Labor Code,



as amended, the principal, as the indirect employer or the user of the services of the contractor, is hereby required to observe the provisions of these Rules.

**Section 11. Security of tenure of contractor's employees.** It is understood that all contractor's employees enjoy security of tenure regardless of whether the contract of employment is co-terminus with the service agreement, or for a specific job, work or service, or phase thereof.

**Section 12. Observance of required standards of due process; requirements of notice.** In all cases of termination of employment, the standards of due process laid down in Article 277(b) of the Labor Code, as amended, and settled jurisprudence on the matter<sup>2</sup>, must be observed. Thus, the following is hereby set out to clarify the standards of due process that must be observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code, the requirement of two written notices served on the employee shall observe the following:

(A) The **first written notice** should contain:

- (1) The specific causes or grounds for termination;
- (2) Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice;
- (3) The company rule, if any, that is violated and/or the ground under Art. 282 that is being charged against the employee; and
- (4) A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

"Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult a union official or lawyer, gather data and evidence, and decide on the defenses against the complaint.

(B) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 277(b) of the Labor Code, as amended.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit

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<sup>2</sup> King of Kings Transport, Inc., Claire dela Fuente, and Melissa Lim, vs. Santiago O. Mamac, G.R. No. 166208, (29 June 2007); and Felix B. Perez and Amante G. Doria v. Philippine Telegraph and Telephone Company and Jose Luis Santiago, G.R. No. 152048, (7 April 2009), (*en banc Decision*).

evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(C) After determining that termination of employment is justified, the employer contractor shall serve the employee a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) the grounds have been established to justify the severance of their employment.

The foregoing notices shall be served on the employee's last known address.

II. For termination of employment based on authorized causes defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate regional office of the Department of Labor and Employment at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination.

III. If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of a probationary employee to meet the reasonable standards of the employer, which was made known to the employee at the time of his/her employment, it shall be sufficient that a written notice is served upon the employee within a reasonable time prior to the expiration of the probationary period.

**Section 13. Effect of termination of employment.** The termination of employment of the contractor employee prior to the expiration of the Service Agreement shall be governed by Articles 282, 283 and 284 of the Labor Code.

In case the termination of employment is caused by the pre-termination of the Service Agreement not due to authorized causes under Article 283, the right of the contractor employee to unpaid wages and other unpaid benefits including unremitted legal mandatory contributions, e.g., SSS, Philhealth, Pag-ibig, ECC, shall be borne by the party at fault, without prejudice to the solidary liability of the parties to the Service Agreement.

Where the termination results from the expiration of the service agreement, or from the completion of the phase of the job, work or service for which the employee is engaged, the latter may opt for payment of separation benefits as may be provided by law or the Service Agreement, without prejudice to his/her entitlement to the completion bonuses or other emoluments, including retirement benefits whenever applicable.

**Section 14. Mandatory Registration and Registry of Legitimate Contractors.** Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor to protect the rights of workers, it shall be mandatory for all persons or entities, including cooperatives, acting as contractors, to register with the Regional Office of the Department of Labor and Employment (DOLE) where it principally operates.

Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Accordingly, the registration system governing contracting arrangements and implemented by the Regional Offices of the DOLE is hereby established, with the Bureau of Working Conditions (BWC) as the central registry.

**Section 15. Requirements for registration.** The application for registration as a contractor shall be filed at the DOLE Regional Office in the region where it seeks to principally operate. The applicant shall provide in the application form the following information:

- (a) The name and business address of the applicant and the areas where it seeks to operate;
- (b) The names and addresses of officers, if the applicant is a corporation, partnership, cooperative or a labor organization;
- (c) The nature of the applicant's business and the industry or industries where the applicant seeks to operate;
- (d) The number of regular workers and the total workforce;
- (e) The list of clients, if any, the number of personnel assigned to each client, if any, and the services provided to the client;
- (f) The description of the phases of the contract, including the number of employees covered in each phase, where appropriate; and
- (g) Proof of compliance with substantial capital requirement as defined in Section 3(l) of these Rules.

The application shall be supported by:

- (a) A certified true copy of a certificate of registration of firm or business name from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI), Cooperative Development Authority (CDA), or from the DOLE if the applicant is a labor organization;
- (b) A certified true copy of the license or business permit issued by the local government unit or units where the contractor operates;
- (c) A certified listing, with proof of ownership or lease contract, of facilities, tools, equipment, premises implements, machineries and work premises, that are actually and directly used by the contractor in the performance or completion of the job, work or service contracted out. In addition, the applicant shall submit a photo of the office building and premises where it holds office;

(d) A copy of audited financial statements if the applicant is a corporation, partnership, cooperative or a labor organization, or copy of the latest ITR if the applicant is a sole proprietorship; and

(e) A sworn disclosure that the registrant, its officers and owners or principal stockholders or any one of them, has not been operating or previously operating as a contractor under a different business name or entity or with pending cases of violations of these Rules and/or labor standards, or with a cancelled registration. In case any of the foregoing has a pending case, a copy of the complaint and the latest status of the case shall be attached.

The application shall be verified. It shall include a DOLE certification of attendance to orientation seminar on these Rules and an undertaking that the contractor shall abide by all applicable labor laws and regulations.

**Section 16. Filing and processing of application.** The application with all supporting documents shall be filed in triplicate in the Regional Office where the applicant principally operates. No application for registration shall be accepted unless all the requirements in the preceding Section are complied with.

**Section 17. Verification inspection.** Within two (2) working days upon receipt of the application with complete supporting documents, the authorized representative of the Regional Director shall conduct a verification inspection of the facilities, tools, equipment, and work premises of the applicant.

**Section 18. Approval or denial of the application.** The Regional Office shall deny or approve the application within one (1) working day after the verification inspection.

Applications that fail to meet the requirements set forth in Section 15 of these Rules shall be denied.

**Section 19. Registration fee.** Payment of registration fee of Twenty-Five Thousand Pesos (P25,000.00) shall be required upon approval of the application.

Upon registration, the Regional Office shall return one set of the duly-stamped application documents to the applicant, retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from registration.

**Section 20. Validity of certificate of registration of contractors.** The contractor shall be deemed registered only on the date of issuance of its Certificate of Registration.

The Certificate of Registration shall be effective for three (3) years, unless cancelled after due process. The same shall be valid in the region where it is registered.

In case the contractor has Service Agreements or operates outside the region where it is registered, it shall request a duly authenticated copy of its Certificate of Registration from the registering Regional Office and submit the same to the DOLE Regional Office where it seeks to operate, together with a copy of its Service Agreement/s in the area, for purposes of monitoring compliance with these Rules.

**Section 21. Renewal of registration.** All registered contractors shall apply for renewal of their Certificates of Registration thirty (30) days before the expiration of their registration to remain in the roster of legitimate service contractors. The applicant shall pay a registration renewal fee of Twenty-Five Thousand Pesos (P25,000.00) to the DOLE Regional Office.

Copies of all the updated supporting documents in letters (a) to (e) of Section 15 hereof shall be attached to the duly accomplished application form, including the following:

(a) Certificate of membership and proof of payment of SSS, Philhealth, BIR, ECC and Pag-Ibig contributions for the last three (3) years, as well as loan amortizations; and

(b) Certificate of pending or no pending labor standards violation case/s with the National Labor Relations Commission (NLRC) and Department of Labor and Employment (DOLE). The pendency of a case will not prejudice the renewal of the registration, unless there is a finding of violation of labor standards by the DOLE Regional Director.

**Section 22. Semi-annual reporting.** The contractor shall submit in triplicate its subscribed semi-annual report using a prescribed form to the appropriate Regional Office. The report shall include:

(a) A list of contracts entered with the principal during the subject reporting period;

(b) The number of workers covered by each contract with the principal;

(c) Proof of payment of remittances to the Social Security System (SSS), the Pag-Ibig Fund, Philhealth, Employees Compensation Commission (ECC), and Bureau of Internal Revenue (BIR) due its employees during the subject reporting period and of amortization of declared loans due from its employees; and

(d) A certified listing of all cases filed against the contractor before the NLRC and DOLE.

The Regional Office shall return one set of the duly-stamped report to the contractor, retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from receipt thereof.

**Section 23. Grounds for cancellation of registration.** The Regional Director shall, upon a verified complaint, cancel or revoke the registration of a contractor after due process, based on any of the following grounds:

- (a) Misrepresentation of facts in the application;
- (b) Submission of a falsified or tampered application or supporting documents to the application for registration;
- (c) Non-submission of Service Agreement between the principal and the contractor when required to do so;
- (d) Non-submission of the required semi-annual report as provided in Section 22 (Semi-annual reporting) hereof;
- (e) Findings through arbitration that the contractor has engaged in labor-only contracting and/or the prohibited activities as provided in Section 7 (Other Prohibitions) hereof;
- (f) Non-compliance with labor standards and working conditions;
- (g) Findings of violation of Section 8 (Rights of contractor's employees) or Section 9 (Required contracts) of these Rules;
- (h) Non-compliance with SSS, the HDMF, Pag-Ibig, Philhealth, and ECC laws; and
- (i) Collecting any fees not authorized by law and other applicable rules and regulations.

**Section 24. Due process in cancellation of registration.** Complaint/s based on any of the grounds enumerated in the preceding Section against the contractor shall be filed in writing and under oath with the Regional Office which issued the Certificate of Registration.

The complaint/s shall state the following:

- (a) The name/s and address/es of the complainant/s;
- (b) Name and address of the contractor;
- (c) The ground/s for cancellation;
- (d) When and where the action complained of happened;
- (e) The amount of money claim, if any; and
- (f) The relief/s sought.

Upon receipt of the complaint, the Regional Director shall direct the contractor, with notice to the complainant, to file a verified answer/counter affidavit within ten (10) calendar days without extension, incorporating therein all pertinent documents in support of his/her defenses, with proof of service of a copy to the complainant. Failure to file an answer/counter affidavit shall constitute a waiver on the part of the respondent. No motion to dismiss shall be entertained.

The Regional Director or his duly authorized representative may conduct a clarificatory hearing within the prescribed ten (10) calendar days within which to file a verified answer/counter affidavit.

Within the said ten (10) calendar days period, the contractor shall make the necessary corrections/rectifications on the violations that are immediately rectifiable upon its own initiative in order to be fully compliant.

The Regional Director may avail himself of all reasonable means to ascertain the facts of the case, including conduct of inspection, where appropriate, and examination of informed persons.

The proceedings before the Regional Office shall be summary in nature.

The conduct of hearings shall be terminated within fifteen (15) calendar days from the first scheduled clarificatory hearing. The Regional Director shall resolve the case within ten (10) working days from the date of the last hearing. If there is no necessity to conduct a hearing, the case shall be resolved within ten (10) working days from receipt of the verified answer/counter affidavit.

Any motion for reconsideration from the Order of the Regional Director shall be treated as an appeal.

**Section 25. Appeal.** The Order of the Regional Director is appealable to the Secretary within ten (10) working days from receipt of the copy of the Order. The appeal shall be filed with the Regional Office which issued the cancellation Order. The Office of the Secretary shall have thirty (30) working days from receipt of the records of the case to resolve the appeal. The Decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the Decision shall be entertained.

**Section 26. Effects of cancellation of registration.** A final Order of cancellation shall divest the contractor of its legitimate status to engage in contracting/subcontracting.

Such Order of cancellation shall be a ground to deny an application for renewal of registration to a contractor under the Rules.

The cancellation of the registration of the contractor for engaging in labor-only contracting or for violation of any of the provisions of these Rules involving a particular Service Agreement will not, however, impair the validity of existing legitimate job-contracting arrangements the contractor may have entered into with other principals

prior to the cancellation of its registration. Any valid and subsisting Service Agreement shall be respected until its expiration; thereafter, contracting with a delisted contractor shall make the principal direct employer of all employees under the Service Agreement pursuant to Articles 106 and 109 of the Labor Code.

**Section 27. Effects of finding of labor-only contracting and/or violation of Sections 7, 8 or 9 of the Rules.** A finding by competent authority of labor-only contracting shall render the principal jointly and severally liable with the contractor to the latter's employees, in the same manner and extent that the principal is liable to employees directly hired by him/her, as provided in Article 106 of the Labor Code, as amended.

A finding of commission of any of the prohibited activities in Section 7, or violation of either Sections 8 or 9 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended.

**Section 28. Retaliatory measures.** Pursuant to Article 118 of the Labor Code, as amended, it shall be unlawful for the principal, contractor, or any party privy to the contract or services provided to refuse to pay or reduce the wages and benefits, and discharge or in any manner discriminate against any worker who has filed any complaint or instituted any proceeding on wages (under Title II, Book III of the Labor Code), labor standards violation, or has testified or is about to testify in such proceedings.

**Section 29. Enforcement of labor standards and working conditions.** Consistent with Article 128 (Visitorial and Enforcement Power) of the Labor Code, as amended, the Regional Director through his/her duly authorized representatives, shall conduct routine inspection of establishments engaged in contracting arrangement regardless of the number of employees engaged by the principal or by the contractor. They shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of the Labor Code and of any labor law, wage order, or rules and regulations issued pursuant thereto.

The findings of the duly authorized representative shall be referred to the Regional Director for appropriate action as provided for in Article 128, and shall be furnished the collective bargaining agent, if any.

Based on the visitorial and enforcement power of the Secretary of Labor and Employment in Article 128 (a), (b), (c), and (d), the Regional Director shall issue compliance orders to give effect to the labor standards provisions of the Labor Code, other labor legislation, and these Rules.

**Section 30. Duty to produce copy of contract between the principal and the contractor.** The principal or the contractor shall be under an obligation to produce



a copy of the Service Agreement in the ordinary course of inspection. The contractor shall likewise be under an obligation to produce a copy of any contract of employment when directed to do so by the Regional Office Director or his/her authorized representative.

**Section 31. Tripartite implementation and monitoring of compliance; Use of registration fees.** A region-based tripartite monitoring team on the observance of labor standards in contracting and subcontracting arrangements shall be constituted as a subcommittee of the Regional Tripartite Industrial Peace Council (RTIPC) within fifteen (15) days from the effectivity of these Rules. It shall submit a quarterly regional monitoring report to the DOLE Secretary and to the National Tripartite Industrial Peace Council (NTIPC). The Bureau of Working Conditions (BWC) shall ensure the implementation of this provision, and shall conduct capacity building to the members of the regional tripartite monitoring team.

For this purpose, a portion of the collected registration fees shall be used in the operation of the region-based tripartite monitoring team, including in the development of an internet-based monitoring system and database. It shall likewise be used for transmittal of the monthly report of all registered contractors to the Bureau of Local Employment (BLE), and in generating labor market information.

**Section 32. Oversight function of the National TIPC.** The National Tripartite Industrial Peace Council (NTIPC) as created under Executive Order No. 49, Series of 1998, as amended, shall serve as the oversight committee to verify and monitor the following:

- (a) Engagement in allowable contracting activities; and
- (b) Compliance with administrative reporting requirements.

**Section 33. Collective bargaining and/or Industry Tripartite Council (ITC).** Nothing herein shall preclude the parties in collective bargaining agreements (CBAs) to determine the functions that can or cannot be farmed out or contracted out to a legitimate contractor, including the terms and conditions of the workers' engagement under the arrangement, provided the provisions of these Rules are observed.

In industries with established Industry Tripartite Councils (ITCs), the tripartite partners may agree, through a voluntary code of good practices, on the functions or processes that can or cannot be contracted out to a legitimate contractor.

**Section 34. Financial Relief Program; Tripartite Co-Regulation Engagement.** A Financial Relief Program or Unemployment Assistance Fund shall be established for employees under a Service Agreement or employees in transition from one Service Agreement to the next. For this purpose, the National Tripartite Industrial Peace Council (NTIPC), upon the effectivity of this issuance, shall constitute a Local Service Provider Tripartite Working Group (LSP-TWG) composed of representatives of the stakeholders in the industry. The LSP-TWG shall:

(a) Recommend the mechanics and details in setting up the Financial Relief Program or Unemployment Assistance Fund with proposed funding sources before end of June 2012; and

(b) Draw-up the terms of a Tripartite Co-Regulation Engagement in ensuring full compliance with labor laws for approval/endorsement by the NTIPC, including a proposed Table of Progressive Rate of Increases in the minimum capitalization requirement at reasonable intervals to ensure that only legitimate contractors can engage in subcontracting arrangement.

**Section 35. Enrollment in DOLE programs on improving compliance with labor standards.** For purposes of ensuring compliance with labor standards, the principal and subcontractors covered by these Rules are encourage to enroll and participate in the DOLE Kapatiran Work Improvement for Small Enterprise (WISE)-TAV Program (Department Advisory No. 06, dated 07 March 2011) and/or in the Incentivizing Compliance Program (Department Order No. 115-11).

**Section 36. Contracting or subcontracting arrangements in the Construction and Other Industries.** Contracting or subcontracting arrangements in the Construction Industry, under the licensing coverage of the Philippine Construction Accreditation Board (PCAB), shall be covered by the applicable provisions of these Rules and shall continue to be governed by Department Order No. 19, Series of 1993 (*Guidelines Governing the Employment of Workers in the Construction Industry*); Department Order No. 13, Series of 1998 (*Guidelines Governing the Occupational Safety and Health in the Construction Industry*); and DOLE-DPWH-DILG-DTI and PCAB Memorandum of Agreement-Joint Administrative Order No. 1, Series of 2011 (on coordination and harmonization of policies and programs on occupational safety and health in the construction industry).

In industries covered by a separate regulation of the DOLE or other government agency, contracting or subcontracting therein shall be governed by these Rules unless expressly provided otherwise.

**Section 37. Prohibition on DOLE officials or employees.** Any official or employee of the DOLE or its attached agencies is prohibited from engaging or having any interest in any contracting or subcontracting business.

**Section 38. Non-impairment of existing contracts; Non-diminution of benefits.** Subject to the provisions of Articles 106 to 109 of the Labor Code, as amended, the applicable provisions of the Civil Code and existing jurisprudence, nothing herein shall impair the rights or diminish the benefits being enjoyed by the parties to existing contracting or subcontracting arrangements.

The effectivity of Certificates of Registration acquired under Department Order No. 18, Series of 2002, issued on 21 February 2002, shall be respected until expiration.

**Section 39. Supersession.** All rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provisions of these Rules are hereby superseded.

**Section 40. Separability Clause.** If any provision or portion of these Rules are declared void or unconstitutional, the remaining portions or provisions hereof shall continue to be valid and effective.

**Section 41. Effectivity.** This Department Order shall be effective fifteen (15) days after completion of its publication in a newspaper of general circulation.

Manila, Philippines, 14 November 2011.

  
**ROSALINDA DIMAPILIS-BALDOZ**  
Secretary

STANDARD COMPUTATION  
(For Skilled or Unskilled Workers)

		Daily Rate	
		Day Shift	Night Shift
Daily Basic Salary Rate			
Number of Days per Month			
REIMBURSABLE COSTS:			
(A) Payable Directly to Servicemen			
a. Basic Salary – at daily rate for the equivalent of			
No. of days per month			
b. Night Differential Premium Pay – 10% of basic salary			
c. Emergency cost of living allowance			
d. 13 <sup>th</sup> month pay – 1/12 of basic salary			
e. Service Incentive Leave Pay – 5 days per year			
at basic salary rate			
	Subtotal A		
	Subtotal B		
(B) Payable to the government Employee Share of:			
a. Social Security Premiums			
b. Philhealth Premiums			
c. ECC Insurance Premiums			
d. Pag-Ibig Fund Contribution			
	Subtotal C		
TOTAL REIMBURSABLE COSTS – B+C			
ADMINISTRATIVE COST   10%			
CONTRACT / BILLING RATE – per month			
CONTRACT / BILLING RATE – per day			
CONTRACT / BILLING RATE - per hour			

1. ABOVE RATES ARE EXCLUSIVE OF VALUE ADDED TAX

2. UNWORKED REGULAR HOLIDAYS WILL BE BILLED AT ABOVE RATE FOR 8 HOURS REGULAR WORK DAY AS AND WHEN SUCH HOLIDAY DO OCCUR

## SERVICE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This agreement made and entered into by and between:

\_\_\_\_\_, a corporation / partnership / sole proprietorship / cooperative duly organized and existing under Philippines laws, with plant addresses at \_\_\_\_\_ represented by its President, \_\_\_\_\_, hereinafter referred to as the "PRINCIPAL".

- and -

\_\_\_\_\_, a corporation / partnership / sole proprietorship / cooperative duly organized and existing under Philippine laws, with office address at \_\_\_\_\_ represented by \_\_\_\_\_, hereinafter referred to as the "SERVICE PROVIDER or CONTRACTOR".

### WITNESSETH

WHEREAS, the CONTRACTOR, duly registered with Certificate of Registration No. \_\_\_\_\_ issued by DOLE Regional Office No. \_\_\_\_ on \_\_\_\_\_, is an independent service provider with substantial capital, equipment, and expertise, primarily engaged in the business of providing \_\_\_\_\_ services;

WHEREAS, the PRINCIPAL is need of a SERVICE PROVIDER or CONTRACTOR to \_\_\_\_\_;

WHEREAS, the CONTRACTOR has offered its service and expertise to perform specific and/or specialized jobs/services/work for the PRINCIPAL and the PRINCIPAL has accepted the offer;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

#### A. Description of the Job, Work or Service

*The Service Agreement should state in as much detail as necessary what the Principal/User enterprise expects the subcontractor to do. The work description should include all relevant requirements, such as any time periods involved, deadlines, contingencies and milestones.*

#### B. Place of Work; Compliance with Labor Standards and Occupational Health and Safety, and Administrative Fee

*The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost shall be provided.*

*Compliance with all the rights and benefits of the employees under the Labor Code and Department Order No. 18-A, Series of 2011, on: safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13<sup>th</sup> month pay and separation pay; retirement benefits; contributions and remittance of SSS, Philhealth, Pagibig*

*Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure, must be provided.*

*The contractor or subcontractor shall directly remit monthly the employers' share and employees' contribution to the SSS, ECC, Philhealth and Pag-ibig.*

**C. Capacity to Carry Out the Contract**

*The Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost as defined in Section 3(g) of Department Order No. 18-A, Series of 2011, must be stated.*

**D. Payment**

*The Service Agreement should state in detail the terms of payment. In case of periodic payment, the agreement should state the dates payments are due and the amount due at each date. The Agreement can also include the method of payment and the applicable charges/penalty in case of delay by either party.*

**E. Bond**

*The issuance of the bond/s as defined in Section 3(a) of DO 18-A, Series of 2011, renewable every year, as agreed upon by the parties, shall be stated.*

**F. Term or duration of the Service Agreement**

IN WITNESS WHEREOF, the parties have signed these presents at \_\_\_\_\_ on \_\_\_\_\_.

**Appendix 2: Department of Labour and Employment Q and A on  
Department Order 18-A**

Republic of the Philippines  
**DEPARTMENT OF LABOR AND EMPLOYMENT**  
 Regional Office No. I (Ilocos Region)

Arnel Building, Mabini St., Catbangan, San Fernando City, La Union  
 Tel. No. (072) 607-8114 \* Fax: (072) 700-2520 \* E-mail: dole\_ro1@yahoo.com

## Projects and Services

### Q AND A on DOLE DEPARTMENT ORDER NO. 18-A, s. 2011

#### What is a legitimate subcontractor?

It is an independent employer who meets the following:

- 1) Minimum capitalization of at least P3 Million
  - fully paid up capital for corporation, partnership and cooperative;
  - net worth for single proprietorship
- 2) Proof of ownership or lease agreement on tools, equipment, machineries and work premises
- 3) Payment of P25,000.00 registration fee
- 4) Proof of financial capacity to pay the wages and benefits of its workers using the Net Financial Contracting Capacity (NFCC) formula in government procurement
- 5) Control over the performance of the work of the employee deployed or assigned to render the contracted work or services
- 6) Not engaged in labor-only contracting arrangement as provided in Section 6  
Certificate of Bank Deposits
- 7) Not engaged in prohibited activities enumerated in Section 7
- 8) Observes the rights of the workers as provided in Section 8
- 9) Observes the required contracts under Section 9
- 10) Not delisted from the registry of legitimate contractor/subcontractor

#### What is the capital requirement for Corporations, Partnerships or Cooperatives?

Paid-up Capital: subscribed and fully-paid up capital stocks

##### Acceptable Proof:

1. audited financial statements
2. income tax return
3. SEC Certification of Capitalization
4. CDA Certification of Capitalization

EXCLUDE corporate assets or properties

#### What is the substantial capital requirement for single proprietors?

NET WORTH: Total Assets minus Total Liabilities

##### Acceptable Proof:

1. Audited financial statements
2. Income tax return
3. BIR Certificate of title/proof of ownership of real property with assessed fair market value
4. Stock Certificate on its face value
5. Certificate of Bank Deposits
6. DTI Certificate of Capitalization

#### Is there a difference of legitimate subcontracting from labor-only contracting?

Legitimate subcontracting is allowed while labor-only contracting is not allowed.

#### Definition of labor-only contracting (LOC)?

Contractor/ subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and the following elements are present:

- a) contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and
- b) employees recruited, supplied or placed are performing activities directly related to the main business of the principal; or
- c) contractor does not exercise the right to control over the performance of the work of the employees.

#### Effect of labor-only-contracting?

[NEWS ARCHIVE](#)
[LABOR ADVISORIES](#)
[INVITATION TO BID](#)
[MINIMUM WAGES](#)
[DOWNLOADABLE FORMS](#)
[CALENDAR OF EVENTS](#)
[SITE MAP](#)

**Dir. Grace Y. Ursua**

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Reset



1. The subcontractor will be treated as the agent of the principal, and representations by the subcontractor to the employees will bind the principal.
2. The principal will become the employer as if it directly employed the workers, and will be responsible for all their entitlements and benefits under the labor laws.
3. The principal and the subcontractor will be solidarily treated as the employer.
4. The employees will become employees of the principal, subject to the classifications of employees under Article 280 of the Labor Code.

#### **Difference between a subcontractor and a private recruitment and placement agency (PRPA)?**

PRPA merely recruits workers for placing them with an employer or company. It is not the employer of the workers it recruited and placed.

A subcontractor directly undertakes a specific job or service for a principal, and employs its own workers. The four-fold test of E-E relationship should be satisfied by the subcontractor in relation to the employees it engages. The subcontractor is also referred to as independent contractor.

#### **Is there a difference between an ordinary employer-employee relationship and subcontracting?**

In an ordinary ER-EE relationship, two parties involved are the employer (directly hires the employee), and the employee.

In subcontracting, three parties are involved: the principal, the subcontractor, and the employees.

#### **What If the legitimate Subcontractor cannot pay the wages of its employees?**

A principal has two types of liability in relation to the employees of the subcontractor.

1. limited liability: The mere inability of the subcontractor to pay wages will only make the principal jointly and severally liable with the subcontractor for payment of the employees' wages to the extent of the work performed under the contract.
2. absolute & direct liability: Arises when there is labor-only contracting. The principal shall be responsible to the workers in the same manner and extent as if it directly employed these workers.

#### **What is the hiring practice of repeated "5-5-5" or "endo" workers that are prohibited by DO 18-A, S. 2011?**

It is the hiring practice deliberately resorted to prevent workers from acquiring regular status done through repeated short-term arrangements (e.g., "5 months, 5 months", "5-5-5", or less)

- a) by one principal through the same contractor, or under different contractors, or
- b) through a Service Agreement of short duration under the same contractor, or different contractors.

Repeated hiring of the same workers shows that he/she is performing functions that is usual and necessary to the trade or business of the employer.

On the other hand, the 5-5-5 working arrangement that is not repeated has been declared as a violation of public policy as it has been shown to have been resorted to prevent regular employment.

#### **Who are covered by DO18-A?**

1. manpower service cooperatives
2. janitorial and security agencies

#### **What are the rights of an employee of the contractor?**

A contractor's employees, whether deployed or assigned as reliever, seasonal, week-ender, temporary, or promo jobbers, are entitled to all

- (a) safe and healthful working conditions;
- (b) labor standards such as service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay as may be provided in the Service Agreement or under the Labor Code;
- (c) retirement benefits under the SSS or retirement plans of the contractor, if there are any;
- (d) social security and welfare benefits;
- (e) self-organization, collective bargaining and peaceful concerted activities; and
- (f) security of tenure.

#### **Remedy of worker against a subcontractor or principal who violates the provisions of DO 18-A?**

They can file a complaint for cancellation of the contractor's registration before the DOLE Regional Office. DO18-A provides for grounds for cancellation of contractor's certificate of registration, and the procedure.

#### **How will DO18-A eliminate the practice of contractors of "race to the bottom" when bidding for service contracts?**

It sets a standard administrative fee of at least ten percent (10%) to prevent the "race to the bottom" competition to the detriment of workers' wages and benefits.

The standard administrative cost is based on the total contract cost, and not the total contract price. It is derived by first computing the amount required for the payment of wage- and wage-related benefits including employees' social welfare benefits. Next, the standard administrative cost is obtained by computing 10% of total contract cost. The resulting summary of the total contract cost PLUS the standard administrative fee of 10% accounts for the total contract price. VAT and other taxes are NOT included in total contract price.

**If the Regional Wage Board issues a Wage Order at any time of a subsisting Service Agreement, who is responsible for the resulting wage differentials?**

The principal /client shall bear the cost of any required wage increases plus the standard 10% administrative cost. But if the principal/client fails, the contractor is deemed jointly and severally liable.

FOR FURTHER CLARIFICATION, please contact the nearest DOLE Field Office or the Regional Office:

Ilocos Norte: (077)7720727

Ilocos Sur: (077)6320022

La Union: (072)7003122

Eastern Pangasinan: (075)5148098

Central Pangasinan: (075)5152590

Western Pangasinan: (075)5514525

Regional Office: (072)7002520

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