



Merchants of Menace

Repressing workers in India's new industrial belt

**Violations of workers' and trade union rights
at Maruti Suzuki India Ltd.**



International Commission for Labor Rights
Critical Assistance for Working People and Trade Unions Worldwide



International Commission for Labor Rights

ABOUT

The International Commission for Labor Rights, ICLR, is a 501(c)(3) non-profit that is based in New York, and coordinates the pro bono work of a global network of lawyers committed to advancing workers' rights through legal research, advocacy, cross-border collaboration, and the cutting-edge use of international and domestic legal mechanisms.

Our Principles

We believe that all working people have certain core rights, which we are committed to defending:

- to form and join unions, and to bargain collectively for better conditions at work
- to earn enough to support themselves and their families, so that children do not have to work
- to work freely, without force or coercion
- to be free from discrimination in the workplace

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Executive Summary

The human cost of the violations of workers' rights at Maruti Suzuki India Ltd is difficult to quantify. The economic hardship caused by job loss, the psychological strain caused by state persecution, the impact on physical health, and the social stigma of being branded criminals, are not being borne by workers alone. Among many interviews conducted by the delegation was one with the mother of a jailed worker, who struggles daily to secure justice for her son: "I do not know what keeps me going," she told us. "I was beaten up recently in the police violence at Kaithal on 19 May. It was with much pain and difficulty that I was able to return home. This is not the first time that the police has beaten us."

The International Commission for Labor Rights (ICLR) convened an international delegation to investigate alleged violations of workers' and trade union rights at the Manesar plant of Maruti Suzuki (MSIL). Activists had alleged that dozens of workers had been dismissed and detained without trial, merely for exercising their right to form and join a trade union of their choice. These rights are protected under Core Conventions of the International Labour Organization, regarding freedom of association and collective bargaining.

The delegation, which included labor lawyers and labor rights experts from the U.S., Japan, France, South Africa and India, met widely with workers and their families, civil society organizations including trade unions, the public authorities, and industry associations. MSIL, however, refused a meeting in spite of multiple requests.

The delegation found that auto workers at MSIL-Manesar had consistently raised labor rights issues with management, including:

- The physical and psychological strain associated with having to produce one car approximately every 45 seconds.
- The lack of adequate rest time for meals and bathroom breaks.
- A wage structure where up to half of monthly pay is based on productivity and other subjective factors, and where even taking a sick day will cost workers a quarter of this discretionary pay.
- An average of two hours of unpaid overtime a day.
- Reliance on a highly precarious workforce, where 75% of workers are contract labor, trainees, or apprentices. These workers earn dramatically less than full time workers and have no job security or benefits.

In response to these conditions, the workers at MSIL-Manesar chose to form an independent union, believing that the company-imposed "yellow" union did not represent their interests. After a long period of struggle to have their union recognized by the Labour Department of the state of Haryana, the union – the Maruti Suzuki Workers Union – was registered, but MSIL refused to negotiate in good faith.

On 18 July 2012, following two months of MSIL's refusal to bargain with the MSWU, and as a direct outcome of casteist invective hurled by a supervisor at a worker, violence broke out at the MSIL-Manesar facility. Furthermore, there are strong reasons to believe that MSIL management brought thugs known as "bouncers" into the workplace, dressed as workers, to instigate violence. One management official died in the conflict and many workers were in-

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jured. It remains the case, as of July 2013, that there has been no independent investigation of the violence, or of the underlying industrial dispute.

At this moment, 147 MSIL-Manesar workers remain in custody without charges or bail; many have been subjected to beatings and torture. Eleven others connected to the MSWU struggle – workers, family members and supporters – were recently arrested during a protest, and are still in custody. There are other troubling instances of illegal collective punishment: the delegation found that the police subjected the family members of workers to extensive harassment and even beatings, as a means of trying to force the workers themselves to surrender.

MSIL summarily dismissed 546 permanent workers and 1800 contract workers. The dismissals were in some ways utterly arbitrary: many of those who were terminated were not even present at the plant when the violence took place on July 18. On another level, however, they appear extremely calculated: a high percentage of those terminated were key trade union activists.

The delegation established that

- (1) The management of MSIL has engaged in significant violations of law with respect to the right to freedom of association, the right to collective bargaining and the right to equal pay for equal work, protected under ILO Conventions 87, 98 and 111.
- (2) The Labour Department has been ineffective in ensuring the rule of law
- (3) The Police has transgressed its powers in ways that amount to gross and inappropriate interference in industrial disputes, and yet failed to act to protect industrial peace when it should have.

To ensure that justice is not further or forever denied, the delegation recommends:

- Immediate release of the 147 MSIL workers currently detained in Bhondsi Jail (Gurgaon), as well as of the 11 detained at Kaithal Jail.
- A public commitment by the Haryana state police to cease and desist from the arbitrary arrests of workers seeking to defend their occupational interests. The police must also end the harassment of workers and their families.
- The constitution of an independent and impartial judicial inquiry to investigate the full scope of events that led up to the industrial violence on 18 July 2012, as well as subsequent events, including but not limited to the custodial torture of workers.
- The full reinstatement of all workers who were at MSIL-Manesar as of 17 July 2012, whether permanent or precarious workers.
- Enforcement of tripartite machinery – bringing together the state labor administration, employers' representatives and worker representatives – to ensure that MSIL enters into constructive good faith negotiations with the union of the workers' choice.
- The delegation also asks that the Haryana State Human Rights Commission act to investigate the abuses outlined above.

The members of the delegation expect to pursue these pressing issues of state and corporate abuse of Maruti Suzuki workers and their families. The government of India must ensure that the state of Haryana, as well as MSIL as a private actor, respect internationally-recognized labor and human rights. These include guarantees regarding the freedom of association and collective bargaining, under ILO Conventions 87 and 98 protecting trade union rights, as well as core civil rights – of speech, of protest, of freedom from arbitrary detention and from torture – protected by the International Covenant on Civil and Political Rights, as well as the Universal Declaration of Human Rights.



March 2012, the day the Maruti Suzuki Workers Union (MSWU) was officially registered.

Introduction

For well over a year, the secretariat of the International Commission for Labor Rights (ICLR) has been apprised of events at the Manesar plant of the auto company Maruti Suzuki India Limited (MSIL) located in the state of Haryana in north India. It has followed the emerging issues through regular updates from labor and human rights groups in India. The organization was particularly concerned about credible allegations that MSIL had colluded with the government of the state of Haryana to deny workers the internationally-recognized right to form and join a trade union of their choice, and to bargain collectively. In particular, groups pointed to an inert Labour Department that has failed to protect unionists from retaliation or to create frameworks for collective bargaining, and a criminal justice system that has consistently conflated legitimate worker protest and criminal activity.

147 Maruti Suzuki workers, arrested in the wake of industrial violence at the Manesar facility of MSIL on 18 July 2012, remain in detention. 546 permanent workers and 1800 contract workers were summarily dismissed. In addition, there are non-bailable warrants still pending against 66 workers. **Many of the workers arrested and terminated were core union activists, and the union has insisted that these members and leaders had tenuous connections – or no connections at all – to the events of 18 July. In any case, there has been no independent investigation of the violence, or of the underlying industrial dispute. None of those in prison has received bail, nor have they been charged with a crime. None of those dismissed has yet been granted a hearing at the labour court to challenge the termination.** As of the release of this report, 11 more workers and their supporters have been arrested and have been remanded to custody.

The decision to organize a delegation of experts from India and around the world, to investigate the allegations of worker rights and trade union rights violations, was made in consultation with labor and human rights groups and individuals in India. ICLR relied extensively on reports issued by the People's Union for Democratic Rights in New Delhi (PUDR).¹ In addition, it relied on input from trade unions and other civil society organizations. While the Maruti Suzuki Workers Union (MSWU) is independent and unaffiliated, the broader union movement – in India, across South Asia, and around the world – has come out in strong support of these workers, stressing the critical importance of a just resolution of the crisis at MSIL, not only for trade union rights in India but also for the global auto sector.

- All national trade union centers in India have expressed solidarity with the MSWU, emphasizing that the Indian labor movement has an enormous stake in the MSWU's demand that a large multinational corporation recognize them, and bargain with them in good faith.
- The MSWU issue was the focus of a strongly-worded resolution issued by the Asia-Pacific Regional General Council of the International Trade Union Confederation (ITUC) in November 2012.² The situation at MSIL places a spotlight on systemic problems in the entire region, including the failure of states to investigate and resolve industrial conflict, and the growing prevalence of precarious work.
- The Global Union Federation IndustriALL has repeatedly featured the repression of MSIL workers.³ For auto workers across the world, the intensity of work pressure and the erosion of working conditions at MSIL signals the real possibility that India will lead a “race to the bottom” in this sector, institutionalizing the use of cheap, disposable and non-union labor in global auto manufacturing.

Given this background, ICLR reached out to lawyers, trade unions and human rights groups from France, Japan, South Africa, the United States – as well as within India – to work together to investigate and report on the status of workers' and trade union rights at MSIL in Manesar. The report emphasizes international law and policy perspectives,

rather than replicating the work done by domestic groups – primarily PUDR – to document the facts as well as issues of Indian law. It also brings to bear important comparative perspectives on the company, given its current or emerging role in the global economy. In particular, MSIL has a parent company in Japan, substantial exports to Africa and Europe, a proposed assembly plant in South Africa, and an investor base in the United States. Thus, understanding the company's practices in India is an imperative for those committed to corporate accountability and sustainable development in jurisdictions outside India.



ICLR and its delegation of experts at a press Conference in Chandigarh.

The group was composed of the following:

- **Ashwini Sukthankar**, member of the Board, International Commission for Labour Rights
- **Chere Monaisa**, National Labour and Economic Development Institute of COSATU, South Africa
- **Franceline Lepany**, Labour Lawyer, France
- **Immanuel Ness**, Professor of Political Science, City University of New York, USA
- **Masuo Kato**, former chief of the International Bureau, Zenroren, Japan
- **N. Vasudevan**, New Trade Union Initiative, India
- **Ranjana Padhi**, People's Union for Democratic Rights, India
- **Yasuhisa Ota**, retired worker and trade unionist at Suzuki, Hamamatsu, and member of the Japanese Institute of Labour Movements

The delegation visited India from 25-31 May 2013. Its research has included:

- Meetings with members of the Committee of the MSWU, in custody at Bhondsi Jail in Gurgaon.
- Meetings with other terminated workers of the MSIL Manesar plant including members of the Provisional Committee of the MSWU as well as their families. Meeting with those in custody in Kaithal jail. The town of Kaithal was where police had violently suppressed a six-week protest by workers' families and other allies, on 19 May 2013, arresting over 100 protestors.
- Discussions with local, national and regional trade union representatives. The group met the national leadership of the All India Trade Union Congress (AITUC), the Centre of Indian Trade Unions (CITU), and Hind Mazdoor Sabha (HMS), and the South Asia Regional Director of the global union federation IndustriALL. It also met plant-level unionists from the Gurgaon-Manesar-Dharuhera industrial areas.
- Consultations with MSWU's legal counsel, Raghubir Singh Hooda and Rajendra Pathak. The delegation also met the lawyers representing those detained in Kaithal, Ishwar Badsikri and Krishan Lal Kashyap.
- Interviews with high-level administrative officials of the state of Haryana, including the Director General of Police in Chandigarh, the Commissioner of Police in Gurgaon, and the Joint Labour Commissioner in Chandigarh.
- Meeting with the Haryana State Human Rights Commission.
- Observation of a court hearing, where the 147 MSIL workers detained were produced before a judge. Charges were to have been filed at this hearing, but the matter was postponed to 6 July 2013.
- Meetings with representatives of the Confederation of Indian Industries (CII) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM). These were scheduled in lieu of an interview with the management of MSIL, since they refused to meet the group in spite of an extensive exchange of faxes and emails.
- Review of key documents related to the dispute between MSIL and the workers at its Manesar plant, including tripartite and bipartite agreements, court records and police reports.

This report has been written and circulated as a matter of urgency, given the risk of imminent harm to workers, their families, and the organization that they struggled to shape and defend. It is necessary to emphasize, both to MSIL and the government of India, that on each level – for the workers, their families and their union – the internationally-recognized principle of human rights and labor rights must apply: justice delayed is justice denied.

ICLR is grateful for the solidarity extended to the delegation by the Centre for Workers' Management in coordinating its meetings and the logistics involved.

ICLR is grateful to Kaori Taekeuchi, who translated and facilitated between Japanese, Hindi and English, and accompanied the delegation throughout.

Finally, ICLR would like to recognize the generosity of the Fondation des droits de l'homme au travail (FDHT) in supporting the research and this report.

1 See People's Union for Democratic Rights - Delhi, *Driving Force: Labour Struggles and Violation of Rights in Maruti Suzuki India Limited* (25 May 2013, available at <http://www.pudr.org/sites/default/files/pdfs/driving%20force%20for%20web.pdf>), *Freewheelin' Capital: Illegal Dismissals, Forced 'Voluntary' Retirement and Contractualisation of Workforce at Maruti Udyog Limited* (15 August 2007, available at <http://www.pudr.org/?q=content/freewheelin-capital-illegal-dismissals-forced-voluntary-retirement-contractualisation-workfo>) *Hard Drive: Working Conditions and Workers' Struggles at Maruti* (July 2001, available at http://www.pudr.org/sites/default/files/pdfs/hard_drive.pdf)

2 ITUC-AP Regional General Council, Resolution 6 (Denial of Workers' Rights in Maruti Suzuki India), adopted in Amman, Jordan, 2-3 November 2012

3 See e.g. "Dismissed Maruti Suzuki workers face state repression" (7 February 2013, available at <http://www.industrialunion.org/dismissed-maruti-suzuki-workers-face-state-repression>) See generally, website of IndustriALL at <http://www.industrialunion.org>.

Background on the Company

Suzuki Motor Co. in Japan's majority shareholding (54.3%) essentially enables it to dictate management decision-making, with relatively little accountability to other stakeholders in India.

1981 Maruti Udyog Limited (MUL) was created as a public sector enterprise.

1983 MUL entered into a license and joint-venture agreement with Suzuki Motor Co. Japan, which acquired 26% equity and brought in technology and management systems. MUL began production in 1984 at the mother plant of the company at Gurgaon, Haryana.

1987 Suzuki raised its equity stake in MUL to 40%.

1992 Suzuki was allowed through a shareholder agreement to raise its equity to 50%, following which MUL ceased to be a public sector enterprise.

2002 MUL was privatized, with the government selling the controlling interest to Suzuki. The first tranche of the government equity was sold through a public offer.

2003 Maruti was listed on the stock exchange.

2006 Second plant at Manesar set up.

2007 MUL changed its name to Maruti Suzuki India Limited (MSIL).

For what was once a company created in the public sector and under whose stewardship it acquired both the dominant market position and size it enjoys, the most noteworthy aspect of MSIL's corporate structure, for the purposes of this analysis, is the tight control exercised by the Suzuki Motor Co. in Japan. Suzuki's majority shareholding (54.3%) essentially enables it to dictate management decision-making, with relatively little accountability to other stakeholders in India – including other investors. This is all the more so since the vast majority of shares held by others in the company are by short-term investors including foreign institutional investors (FIIs) who rarely exercise their voting rights. Thus, if we take the FIIs shareholdings (21.5%) and shares held by mutual funds (2.9%) as non voting investors the effective majority control of Suzuki, as of 31 March 2012, was 71.7%. This is a brute majority. No other shareholder group is represented on the Board of the company.

It is also striking that the “value added” declined from 36% in 2001-02 (the financial year just preceding privatization) to 27% in 2011-12. The reduction could only be attributed to one or both of following factors: greater outsourcing of production, and/or greater proportion of purchased components in the company's output. Workers' interests are ill served by a decline in value added, since outsourcing is inevitably accompanied by a decline of labor regulation.

(Courtesy: Center for Workers Management. Copy of research on file)

Facts

Credible accounts of workers' rights violations at Maruti Suzuki (and the predecessor public sector company, Maruti Udyog, which was privatized in 2002) date back to the early 1980s. Many involve company interference with workers' right to form and join independent unions, suppression of strikes, and refusal to bargain in good faith.⁴ This report, issued by ICLR, is concerned with a more recent history, since the urgent priority was to identify and document *ongoing violations*, and to make appropriate recommendations for *remedy and compensation*, based on international law and global policy frameworks.



I. Trade union rights

According to interviews with several members of the Provisional Committee of the Maruti Suzuki Workers Union (MSWU), conducted over the course of the delegation's visit to India, the majority of union members were hired by the company in or after 2006, as trainees. MSIL employed (and continues to employ, to the best of our knowledge) a high percentage of precarious workers – up to 75% of the workforce consists of contract workers including those classified as trainees, and apprentices⁵ – who do not enjoy any degree of employment security. Thus, while the new workers were aware that they had the right *in law* to form and join a union before their employment status was regularized, they also recognized that *in practice*, their status as precarious workers rendered them extremely vulnerable to retaliatory dismissal and other forms of anti-union discrimination.

The MSWU activists testified that the formal process of forming a union of their choice began in 2011, when about half of the workers in the plant had been regularized by MSIL. Between 250 and 300 workers of the total of 800 permanent workers signed in the application for registration of a new, independent union at the Manesar facility. The primary reasons for such broad, immediate support for voice in the workplace, according to the MSWU committee members interviewed, was extreme dissatisfaction with working conditions, work intensity, and the amount and structure of wage payments and leave. This issue is explored in detail in the PUDR report, *Driving Force*, cited above. **But a brief summary of the concerns related by MSWU activists would include:**

- The physical and psychological strain associated with having to produce one car approximately every 45 seconds with use of *Kaizen* to reduce idle time.⁶
- The lack of adequate rest time, even for meals or using the bathroom.

4 See PUDR reports cited on page 5, footnote #1

5 The 2013 PUDR report *Driving Force* notes that "according to statistics compiled by the labour department of the district, there were 1054 regular or permanent workers (Maruti Associates), 416 'Technical Trainees' and 225 'Apprentices' and 2600 employed contractually at the Manesar unit, prior to the 18 July 2012 incident." (p.19)

6 *Kaizen* is a production method that employers use to remove 'waste' by increasing work intensity and therefore reducing idle time. See <http://www.thehindubusinessline.in/bline/2010/01/14/stories/2010011452960200.htm> and <http://wheelsunplugged.blogspot.in/2010/01/maruti-suzuki-to-adopt-kaizen-to.html>

- A wage structure that allowed up to 50% of monthly pay which is variable (and even discretionary) based on productivity and linked to attendance. Workers lost approximately 25% of this variable component just for taking a day off when they were sick or for other statutory leave, which they requested well in advance. The workers estimated that, between the overtime work required between shift changes, and for the correction of defects, they performed an average of two hours of uncompensated overtime per day, every year.

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In our meeting with Anupam Malik, the Joint Labour Commissioner (JLC) for the state of Haryana – a high-level official of the Labour Department – the delegation asked him if he had had any awareness of these workers’ concerns, either prior to or during their struggle to form a union. The JLC, who professed extensive familiarity with industrial relations and working conditions at the company, dating back to 1986, denied that workers faced any significant problems. The JLC’s comment of lack of ‘significant problems’ is at variance with the MSIL management’s own report of extensive disputes with labour dating back to as early as the year 2000.⁷ He did acknowledge that MSIL workers did not like the variable component in the wage structure, but pointed out that it was not a violation of law, and further downplayed its significance, asserting that it was no more than 30-40% of the total wage package. The delegation’s review of payslips supports the figures cited by the MSWU committee members.

With respect to unpaid and involuntary overtime, the JLC similarly dismissed the delegation’s concerns. He offered personal recollections of a worker on an assembly line, laboring to repair a defect half an hour after the conclusion of his shift, and cited this as an example of “the kind of dedication and loyalty the workers have for their company.”⁸

I.I Registration of the Union

On 3 June 2011, the union applied to the Labour Commissioner for registration, as the Maruti Suzuki Employees Union (MSEU). According to the union activists interviewed, the ensuing events strongly suggest that the Labour Commissioner’s office informed MSIL management immediately. The Provisional Committee members recounted that on the very next day, supervisors went to workers in each production line, demanding that they sign a paper affirming their membership in the Maruti Udyog Kamgar Union (MUKU), an entity that was set up through labor-management cooperation rather than workers organizing independently.

The Joint Labour Commissioner described MUKU as a union that had been “nurtured and developed by the management.” He explained that MUKU was formed at the mother plant of MSIL at Gurgaon. He further volunteered the information that MSIL had always wanted an “internal union with no outside influence.” (He clarified that “outside influence” referred specifically to national trade union centers such as the AITUC, which had supported the workers’ efforts to organize, and to which the MSEU had hoped to affiliate.) The Joint Labour Commissioner admitted, however, that the Manesar workers of MSIL were extremely resistant to MUKU, though he ascribed it to the difference in “maturity” between the Gurgaon MSIL workers, who are on average older than those at the Manesar facility.

There is little disagreement about the Manesar MSIL workers’ resistance to MUKU, both on 4 June and subsequently.

⁷ See Maruti Udyog Limited, Draft Red Herring Prospectus 2003 (pages 173-176) filed with the Securities and Exchange Board of India

⁸ Meeting with Anupam Malik, Joint Labour Commissioner, Haryana, 30 May 2013

The members of the Provisional Committee of the MSWU described near-universal opposition to signing the form that was being circulated by supervisors. The immediate issues – registration of the independent union, and MSIL's efforts to supplant it with the company union – directly affected only permanent workers, since neither union had attempted to include contract workers as members. However, according to the MSWU committee members, all categories of MSIL workers at Manesar – including apprentices, trainees and contract workers – stopped production in protest on 4 June, and began a sit-down strike in the facility. The unionists who spoke with the delegation described the management insisting that no “third party union” or “outsider union” would be tolerated.

On 5 June, with the sit-down strike underway, MSIL terminated all of the 11 workers whose names were on the union registration document that had been submitted to the Labour Commissioner. For 48 hours, the strike continued, with heavy police deployment. For the first 48 hours, workers were denied access to food, water, and even toilets and electricity was disconnected. Members of the MSWU Provisional Committee described management demanding that the 11 terminated union leaders be sent out of the factory, or the police would “break up” the strike. However, the strikers refused to surrender the 11 union leaders. The strikers inside the factory also found support from workers at neighboring factories, who joined protests at the factory gates. The strike ended after 13 days.

On 16 June, activists of the independent union signed their first agreement with MSIL. All 11 terminated workers were reinstated, and – according to the text of the agreement – workers and management agreed to cooperate with each other going forward without malice.⁹

The Provisional Committee asserted that this agreement was almost immediately violated. The company had committed that workers would have one day's wages deducted for the strike as penalty and they would not be penalized further. The workers had agreed that they would not be paid for the days that they were on strike, on the principle of “no work, no pay.” However, the Provisional Committee alleged that for every day of strike, two days of wages were deducted.

In August 2011, the Labour Commissioner rejected the MSEU's registration papers, citing technical grounds. The unionists interviewed described being told by the Labour Commissioner that they would first have to resign from the company union, MUKU, which they had all been pressured to join early in their work lives. Accordingly, the workers submitted letters of resignation en masse from MUKU.

On the evening of Sunday 28 August workers learned of a heavy deployment of police at the factory gate and the erection of “a nearly 500-metre-long aluminum wall covering the service lane, blocking the view from both inside and outside, and preventing entry to the premises. The gates where aluminum barricading was not possible were blocked by huge delivery vehicles.”¹⁰ On the morning of Monday, 29 August, management informed workers that they would not be permitted to enter unless they signed a “good conduct” bond, allegedly because they were

On the evening of Sunday 28 August workers learned of a heavy deployment of police at the factory gate and the erection of “a nearly 500-metre-long aluminum wall covering the service lane ... preventing entry to the premises.”

9 Agreement under Section 12(3) of the Industrial Disputes Act, 1947 between Maruti Suzuki India Ltd, Plot No. 1, Phase 3A, Sector 8, IMT Manesar (Gurgaon) and its permanent striking workers, 16 June 2011. Informal translation from Hindi. Copy on file.

10 <http://www.frontline.in/static/html/fl2821/stories/20111021282111400.htm>

The Provisional Committee said that the company hired goons – known locally as “bouncers” – to beat up those protesting in solidarity outside the factory gates.

sabotaging production through a go-slow, and were deliberately making defective cars.

The workers refused to sign the bond, and began a protest at the factory gate. The Provisional Committee members, however, told the delegation that management allegations were a pretext for what they described as a retaliatory undeclared lockout. According to them, following the resumption of production on 19 June 2011, management decided to slow the assembly line and took the decision not to order the repair of defective cars, but rather to let them pile up on the shop floor.

Four or five days into this “undeclared lockout,” the company began exerting multiple forms of pressure on workers to sign the bond and return to work. According to the Provisional Committee, MSIL announced over loudspeakers that 10 workers had broken with the group and had entered the factory for work. Later, the company resorted to strikebreakers: super-

visors from the MSIL facility in Gurgaon came with 200 workers from that plant, and 150 or more new recruits from outside the state of Haryana were brought in, on a casual basis.

The MSIL Manesar workers stayed out for 33 days. Workers of Suzuki Powertrain India Ltd, Suzuki Motorcycle India Pvt Ltd and Suzuki Castings, all in the Gurgaon-Manesar industrial belt, declared a strike on 14 September in solidarity with the Manesar workers, and joined their call for the regularization of contract workers. A return-to-work agreement was finally negotiated and signed on 30 September 2011, mediated by the labor department.¹¹ Despite the fact that the Manesar workers had refused to join MUKU, and there was no evidence that it had any membership at the Manesar plant, the labor department expressly rejected the charter of demands submitted by the Manesar workers, while accepting the “demand list” submitted by MUKU. The Provisional Committee alleged that even this agreement was breached almost immediately by MSIL. Under its terms, workers had agreed to cooperate with management, and management had pledged not to act with malice against the workers. In the agreement of 1 October 2011, MSIL had agreed to take back all 3000 workers including the 15 workers who were summarily dismissed. (The dismissals were to be converted to suspensions.) But when workers reported at the gate on the morning of 3 October 2011 to rejoin work, the management refused to allow the contract workers to enter. The management also discontinued the bus service that used to transport workers to and from the factory.

On 7 October, workers launched another sit-in protest demanding reinstatement of the contract workers. On 12 October, the labor department declared this protest to be an illegal strike. MSIL also approached the Punjab and Haryana High Court which directed the workers to vacate the plant premises and further ordered that they could not continue their demonstration within 100 meters of the plant premises. The Provisional Committee said that the company hired goons – known locally as “bouncers” – to beat up those protesting in solidarity outside the factory gates. A third agreement was concluded, on 19 October, in which MSIL agreed to “request” its labor contractors to restore the contract labor force to the status quo of 29 August 2011. (This essentially amounted to an agreement to reinstate all contract workers.)¹²

11 Agreement under Section 12(3) of the Industrial Disputes Act, 1947 between Maruti Suzuki India Ltd. Plot No. 1, Phase 3A, IMT Manesar, Gurgaon and its permanent employees and Maruti Udyog Kamgar Union, 30 September 2011. Informal translation from Hindi. Copy on file.

12 Agreement under Section 12(3) of the Industrial Disputes Act, 1947 between Company Messrs. Maruti Suzuki India Ltd., Plot No. 1, Phase 3 A, Sector 8, IMT Manesar (Gurgaon) and its permanent striking workers, 19 October 2011. Informal translation from Hindi. Copy on file



Indian workers outside a Maruti-Suzuki vehicle plant at Manesar, on the outskirts of New Delhi on October 14, 2011.

Thirteen key leaders of the union, then known as the MSEU, were illegally detained outside the factory immediately after this agreement, on 21 October. According to the Provisional Committee, these leaders were confronted by management, labour officials and police, and were forced to sign letters of resignation, with the threat of torture and imprisonment if they refused. The leaders were given severance payments by the company, and told never to return, with an explicit threat that they would be “locked up” if they did.

At this point, according to the Provisional Committee, the Deputy General Manager for Human Resources, Avanish Dev, stepped in and told workers that he would personally ensure that the union was registered, by serving as a conduit to both management and the state. He however asked the union to remain entirely independent of “outside influences,” and the workers kept to the bargain. According to interviews with the leadership of the AITUC¹³ – the national trade union center that had supported their organizing efforts earlier – as well as interviews with the workers’ lawyers, Mr. Pathak and Mr. Hooda,¹⁴ they had no contact whatsoever with MSIL-Manesar workers for over 10 months.

According to the Provisional Committee, Mr. Dev was actively involved in the process of applying for registration, even going to Chandigarh, the state capital, to facilitate the filing of papers. On 1 March 2012, the Maruti Suzuki Workers Union (MSWU) was registered with the Labour Department of the state of Haryana.

I.II Relationship between the MSIL management and the MSWU

From all accounts, MSIL management did not negotiate in good faith with the newly-registered MSWU. According

¹³ Meeting with Amarjeet Kaur, D.L. Sachdeva and G.L. Dhar, National Secretaries of the AITUC, 28 May 2013.

¹⁴ Meeting with Rajendra Pathak, 27 May 2013, and Raghubir Singh Hooda 28 May 2013.

to the Provisional Committee, the MSWU presented management with a Charter of Demands on 18 April, 2012, and while the union and management conducted between 10 and 12 face-to-face meetings over the next two months, there was absolutely no progress on any of the issues raised in the Charter.

The Joint Labour Commissioner did not deny that MSIL was essentially stonewalling the union during this period. However, he insisted that his agency had no obligation to promote collective bargaining, and that management was well within its rights to refuse to engage with a bargaining partner that it did not like. “It is not illegal to refuse to negotiate with an outsider. It is the management’s wish. It is the right of employers to refuse to negotiate,” he stated.¹⁵

A key element of the Charter of Demands presented to MSIL was that all contract workers be regularized as Technical Trainees entitled to all benefits available to permanent workers. According to the Provisional Committee, over 75% of workers at the factory are in a situation of precarious employment. Contract workers receive approximately a quarter of the wages paid to permanent workers, and are not entitled to benefits. The management was particularly resistant to discussing the issue of contract workers, asserting that since contract workers were not members of the union, the MSWU could not negotiate on their behalf. The Joint Labour Commissioner denied any pending Charter of Demands to negate the existence of any dispute at the plant after the Union was registered. The demands were widely reported in media reports,¹⁶ which the management has not refuted.

The Joint Labour Commissioner also downplayed the significance of contract labour as an issue at MSIL in his discussion with the delegation. He insisted that the percentage of contract workers was very low – “no more than 10%.” He also justified the contractualization process at MSIL, and denied that it was taking place in violation of domestic law, which bars the use of contract labour in perennial and core areas of work. MSIL’s production model is dependent on a high level of ancillarisation, according to the JLC, and so material handling was a key task at its plants. In a strike that took place in 2000, the material handlers played an important role, since their refusal to place components on the assembly line brought production to a complete halt. MSIL broke the strike by having engineers check the materials at the ancillary facilities, thus bypassing the material handlers. This job is now permanently sub-contracted, and has led to other contract labor arrangements. However, the JLC denied that this is a *prima facie* violation of domestic law, explaining that, “It is important to question if material handling is a core or a non-core area of work.”¹⁷ It should be noted here that, while Indian courts have debated whether the operation of canteens, private security services or grounds keeping are “core” areas of work, and have sometimes permitted these functions to be outsourced, contracts for labor inputs such as those discussed in the case of the MSIL-Manesar material handlers have generally not been deemed legal.

However, an important employers’ association, the Confederation of Indian Industries (CII), did recognize the implications of contract labor, for workers’ and trade union rights in general. In an interview with the delegation, a CII leader tasked with industrial relations issues agreed that contract workers have no ability to bargain. He noted that, while they can technically form a union, there are many obstacles in practice. The CII also recognized that there are few regulations of labor contractors, and the low standards and disjointed workforce that results from this practice “does not help anyone.”¹⁸

15 Meeting with Joint Labour Commissioner, *supra*.

16 See http://articles.economictimes.indiatimes.com/2012-07-26/news/32869356_1_maruti-suzuki-s-mansar-mansar-workers-maruti-udyog-kamgar-union

17 *Id.*

18 Meeting with Vineet Bhardwaj, Deputy Director in charge of Human Resources and Industrial Relations, Confederation of Indian Industry, 29 May 2013. Also see http://articles.economictimes.indiatimes.com/2012-07-26/news/32869493_1_contract-labour-labour-ministry-contract-workers

The coordinating committee of unions across the industrial area of Gurgaon, Dharuhera and Manesar also spelled out the reasons why contractualization has become a central issue for the labor movement in the region. In a meeting held with representatives of almost 30 unions across this industrial zone, they pointed out that the increasing number of contract workers has led to a dramatic decline in the bargaining strength of permanent workers, as their own numbers have dwindled. The wage differential between contract and permanent workers is so high that the situation is highly unstable, and the very future of permanent jobs seems tenuous. While plant-level unions have made efforts to reach out to contract workers, the levels of fear are very high in this precarious workforce, given the lack of any meaningful protection in law against dismissal.¹⁹

The unions also provided broader regional context for the struggle for trade union rights at MSIL-Manesar. Union leaders cited multiple instances of companies colluding with the authorities in the state of Haryana to ensure that workers are unable to form and register unions of their own choice. Management efforts to counter independent union organizing by registering company-sponsored unions with a compliant Labour Department, and then forcing workers to join, are also common. Across the region, a heavy police presence, as well as the presence of the management-sponsored goons known as “bouncers,” creates an atmosphere of fear that is not conducive to union organizing.

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According to the unions in the industrial area, the Suzuki family of companies presents an extreme face of anti-unionism, in a climate that is already very hostile. At Suzuki Powertrain, where car engines are made, the company has tried to dismember the registered Suzuki Powertrain Employees Union, and replace it with MUKU, on the pretext that, since the companies – Suzuki Powertrain and Maruti Suzuki – have merged, so should the unions. At both the Suzuki Powertrain and the Suzuki Two-Wheeler plants, union leaders remain suspended without pay, after the unions participated in a solidarity strike in support of the MSIL-Manesar workers.

I.III 18 July and After

According to the members of the Provisional Committee, by mid-July the management of MSIL had made it clear that they were not willing to negotiate on the Charter of Demands submitted by MSWU. The management's principal objection was to MSWU's demands regarding the regularization of contract workers. Given management's refusal to bargain in good faith the workers expressed their lack of willingness to undertake tasks outside shift timings that amount to unpaid overtime work.

During this period, according to the Provisional Committee, management was watching the union and its membership closely, and picking on them with the objective of trying to stir up trouble. The Provisional Committee also alleged that, on 18 July 2012, they noticed the presence of a large number of unfamiliar faces on the shop floor, dressed as workers but without name tags, claiming to be new recruits. Those interviewed conjectured that they were “bouncers” hired by MSIL management, brought in specifically to foment conflict, and to give management a pretext for further repression of the union.

19 Meeting with the Coordinating Committee of Gurgaon-Dharuhera-Manesar unions, 27 May 2013.



<http://www.thehindu.com>

Police at the MSIL-Manesar Suzuki plant in Manesar, July 19, 2012.

That morning, 18 July, a supervisor abused a worker in casteist terms²⁰ while raising a production-related issue during the 8:30AM tea break, and the worker involved was immediately suspended. The Union protested and demanded withdrawal of the suspension. Several meetings took place between the union and management over the course of the day. The management meanwhile had also called for police deployment, but even though large numbers of police had arrived at the factory gate by 2 PM, they were not allowed in by Mr Deepak Anand, Head of Vigilance, MSIL Manesar. They were kept waiting outside the factory gates. The Director-General of Police of the state of Haryana confirmed this element of the Provisional Committee's account, noting that the police waited for several hours.²¹

Both the Director-General of Police of Haryana state and the Commissioner of Police for Gurgaon emphasized that maintaining industrial peace is a key police function in Gurgaon. The Commissioner of Police pointed out that he does not wait for matters to escalate to violence, but tries to step in before they reach that point: "When we apprehend a breach of peace, we deploy force and take action," he explained, in an interview with the team.²² Given this, it is difficult to understand why the police waited – and were kept waiting by management – outside the factory gates, as tensions escalated. The police officials interviewed refused to discuss these details, given that the matter is currently sub judice.

At approximately 7 PM, according to the Provisional Committee, the union and management had begun to discuss

20 This incident is well documented in the media and accepted by the management of MSIL as well as the Government of Haryana. Caste abuse by management against workers occurred frequently at MSIL, according to the Provisional Committee. The unions we spoke with in the larger industrial region noted that the use of caste abuse by management against workers was a common method of subordination employed by other companies as well.

21 Meeting with Shrinivas Vashisht, Director General of Police, Haryana, 30 May 2013.

22 Meeting with Alok Mittal, Commissioner of Police, Gurgaon, 27 May 2013.

concrete proposals for a resolution of the conflict. But at the same time, they alleged, the “bouncers” began picking fights with workers inside Plant I of the Manesar facility, and these began to escalate. The Provisional Committee described “total confusion,” where “no one knew who was who” in the scuffle. The union leaders who were negotiating with the management rushed out. In the following minutes a fire broke out in the room where the

negotiations were taking place. The production areas and offices are monitored by closed-circuit TV and the police recovered the hard disk containing the footage on 18 July and media reports state that the police was reviewing it.



Photo by Sanjit Das/Bloomberg

A fire broke out in the room where negotiations were taking place at the MSIL-Manesar Suzuki plant in Manesar, July 18, 2012.

Since the violence was confined to one of the three plants at the Manesar facility, workers in the other two plants were initially unaware of what was taking place at Plant I. But as the violence escalated and the fire spread, workers began to rush out of their plants. The police forces were allowed to enter at this point, and they began to arbitrarily arrest workers from all three plants. These workers remain in custody even today. Many managers, workers and police officers were badly hurt in the violence. In the part of the office building which had caught fire, the Deputy General Manager for Human Resources, Avnish Dev, died. On 3 March 2012, the Medical Officer who conducted the post mortem examination made a deposition in the Court of the Chief Judicial Magistrate, Gurgaon, stating that the cause of death was asphyxiation due to smoke inhalation. There were external injuries on both legs, caused by a blunt object, but these appeared to have been inflicted by no more than one or two persons, according to the Medical Officer.

The origin of fire and the identity of those who attacked Mr. Dev are yet to be ascertained. It should be noted that, under company regulations, no worker is allowed to enter the plant premises with even a matchbox, and everyone is thoroughly searched by security guards at the gates.²³ The production areas and offices are monitored by closed-circuit TV, and police recovered the hard disk containing the footage on 18 July. This information should, presumably, have implicated some individuals and exonerated others relatively quickly. Indeed, contemporaneous media reports stated that the police had reviewed the footage and had begun making arrests based on this and other evidence.²⁴ However, four days later, according to media reports, the police claimed that the recovered CCTV hard drives were damaged, and that no images could be retrieved from them.²⁵

23 See Sections 6(12) and 6(9) Standing Orders for Workmen of Maruti Udyog Limited I.M.T. Manesar duly certified by the Certifying Officer, Government of Haryana on 21st March 2007.

24 See <http://in.reuters.com/article/2012/07/19/maruti-unrest-manesar-factory-idINDEE86I02320120719>

25 See <http://indiatoday.intoday.in/story/maruti-manesar-plant-unrest-accused-at-large/1/209613.html>

There are 147 MSIL workers in jail, accused of a premeditated act of murder. Among the 147 are workers from the two other plants in the Manesar facility, workers who were not present at the plant on 18 July. The state has made no apparent effort to determine which individuals, if any, were actually responsible for the death of Mr. Dev. The police have vigorously opposed bail for any of the 147 who were arrested. A broad swath of civil society organizations deplore the excesses of the criminal justice system, in this case. One of the employers associations representatives interviewed by the team, a Deputy Director of the CII, even volunteered his belief that “many of the workers who were arrested are innocent.”²⁶

At the level of the state authorities, those interviewed insisted that the violence was unilateral, with workers rioting. According to the Director-General of Police and the Joint Labour Commissioner, while 93 managers and 9 police personnel were injured, not a single worker was hurt.²⁷ The Provisional Committee of the MSWU vigorously disputed this, recounting to the team that there was a large number of injured workers, but there are no official records of their injuries as they were too terrified to go to hospitals or even local medical practitioners, given the mass arbitrary arrests and harassment of families that had already begun.

“From that day, we have been running scared,” explained members of the Provisional Committee who have been under the threat of arrest since then. The fact that police arrested key union organizers at each work station at all three plants strongly suggests that certain individuals were targeted at the behest of management – the police would not have possessed independent information regarding which workers were activists of the MSWU. One particularly troubling tactic employed by the police, and widely documented by human rights groups in the region, was to harass, threaten and beat the family members of any individual deemed to be absconding, until he surrendered..

On 24 January 2013, months after the incident, police arrested one member of the five-member Provisional Committee of the MSWU while he was waiting to address a press conference; according to the remaining Provisional Committee members, the police pretended to be journalists, and called him outside for an interview. “Management has hunted out all the people they wanted to get rid of,” alleged the Provisional Committee members. Only three of the five Provisional Committee members have managed to remain outside police custody. They continue to receive threatening calls from the local police.

The anti-union dimensions of the police actions have not been adequately reported, according to the Provisional Committee. They alleged that many MSIL workers were tortured during the first several days in custody, and were told explicitly to “stop this union organizing.” A lawyer for the workers, Mr. Pathak, applied to the court for a medical investigation to verify injuries due to custodial torture. Despite a Court order directing a medical examination, the jail authorities delayed for over a month. Even then, the medical examination revealed bruises.

On 22 August, MSIL summarily dismissed 546 permanent workers and 1800 contract workers, without any internal hearing or review by the Labour Department. When the delegation asked the Joint Labour Commissioner why he had not intervened in the matter, he claimed that not a single worker had raised a dispute challenging the legality of the termination, and he did not believe it appropriate to act *suo moto*. However, the delegation has reviewed the papers filed by workers in response to the company’s application to the Labour Court in Gurgaon for approval of the termination; in the papers, the workers have challenged their terminations and have sought reinstatement.

²⁶ *Id.*

²⁷ *Id.*

At the present time, there continues to be a heavy police presence throughout the industrial area in and around Gurgaon. The Provisional Committee also described a large number of police inside the MSIL-Manesar facility. This is a concern: a highly visible and intrusive police presence creates a climate of fear that is not conducive to workers associating and assembling freely. The Director-General of Police for Haryana agreed that there was a significant police presence throughout the industrial area, but insisted that they played a limited role. “We prefer a settlement between management and labour according to the philosophy of the management and expectation of the workers,” he commented. He refused to be specific when asked how many police were placed inside the MSIL-Manesar facility. He did not deny that there were indeed police there, but said they were merely “housed” there, and not “deployed.”

G.P. Srivastava, a senior advisor to the Associated Chambers of Commerce and Industry of India (ASSOCHAM), acknowledged that industry leaders had been extensively involved in discussions with the state of Haryana regarding the creation of a special industrial security force. However, he insisted that the focus of the 500-person unit would be on industrial peace, rather than on criminal law.²⁹

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The delegation awaits – and joins the call for – a prompt and independent investigation into the labor disputes and terminations, as well as into the industrial violence that left many injured and one person dead. However, given the urgency of the situation, we draw from the research and interviews summarized above to develop preliminary findings, grounded in international legal principles, and present recommendations to address the risk of irreparable harm to workers, their families, and their organization.

II. The broader context of civil liberties: rights of assembly and protest

In the wake of the brutal assault on the MSWU, families and communities have stood up to demand justice for the dismissed and detained workers. These demonstrations have, in turn, been suppressed violently. The delegation sought to understand the interconnections between the right of workers to associate, and basic civil rights of assembly and protest, in this case.

The MSWU planned a 2-day sit-in demonstration and hunger strike, along with their families, in front of the Deputy Commissioner’s Office in Gurgaon on 7 - 8 November 2012. Their demands included:

- an independent, impartial inquiry into the events of 18 July 2012
- release of all workers in jail
- an end to the harassment of family members and relatives
- reinstatement of all terminated workers.

The union was denied permission to hold a peaceful protest and at daybreak, Gurgaon police tore down their tent and detained 29 workers, including two members of the union’s Provisional Committee. In the midst of heavy police presence, the MSIL workers, along with workers from other plants in the area, continued their hunger strike. The 147 workers in custody also participated in the hunger strike, despite threats of further torture from police.

²⁹ Meeting with G.P. Srivastava, Associated Chambers of Commerce and Industry of India.



Police beat Kaithal protestors, May 2013.



<http://newsclick.in> / Pankaj Atreya

move the site of the demonstration to the Mini Secretariat, which is the office of the Deputy Commissioner/District Magistrate.

The administration was asked to respond to the demands by 19 May. A large gathering of workers, along with their families and members of the community, were expected to assemble for a rally on that day. But, instead of facilitating further dialogue as anticipated, the authorities imposed restrictions of the right of assembly on 18 May, and arrested 97 workers at 11.45 pm. Workers and their families, with support from the community, nevertheless gathered with the intention of protesting in front of the residence of the Industries Minister of Haryana State. They came together with the additional demand that the workers arrested the previous night at the site of the demonstration be released immediately. However, a massive deployment of police barricaded the road leading to the Minister's residence. The police brutally attacked the gathering with batons, leaving scores wounded. Eleven protestors were arrested, and face charges – even attempt to murder, under S.307 of the Indian Penal Code – which, according to workers and families interviewed, seem intended to deter further efforts to speak out.

From all accounts, the authorities used only force to address the industrial dispute and its broader repercussions. There appear to have been no efforts at dialogue or mediation.

When the Labour Department discontinued tripartite negotiations toward the reinstatement of the terminated worker, the MSWU organized a week-long “Justice Rally” through villages and cities across Haryana, beginning on 21 January 2013. The rally culminated in a sit-in demonstration in the town of Rohtak on 27 January. The workers participating in the rally were harassed, intimidated and finally forcibly detained by the police at Bilaspur and were explicitly threatened with arrest and torture if they entered Gurgaon. During this mobilization, on 24 January, a member of the Provisional Committee of the MSWU was arrested by police posing as journalists, just before he was to speak at a press conference. He remains in prison.

The MSWU began an indefinite sit-in demonstration on 24 March 2013, and an indefinite hunger strike on 28 March, in the town of Kaithal. They chose an empty plot of land in front of the residence of the Haryana State Industries Minister, R.S. Surjewala. The administration responded with a heavy deployment of police at the site. The police also filed cases against four workers, and 60 “others” who remain unnamed, alleging that they had issued death threats and had “captured” the land where the demonstration was underway. The protestors were forced to

III. Beyond the workplace: impacts on families and communities

The delegation met with the families and communities of imprisoned and terminated MSIL workers in several different contexts: in the Gurgaon District Court, when workers were to be produced on 25 May, in the Bhondsi Jail in Gurgaon, when we went to meet with those detained, and in their homes.

As of the date of release of this report, more than 10 months have passed since the arrests and the terminations took place, and there is little progress in either the criminal or the labor court cases. Not only workers, but also entire families and communities are bearing the costs associated with the delay in justice.

- **Economically**, the families of those terminated are in extreme hardship. On 22 August, MSIL summarily dismissed 546 permanent workers, and directly deposited three months pay (along with payment in lieu of any statutory leave that had not been used) into their bank accounts. Families told the delegation that, through extreme frugality, they had managed to stretch the amount to cover their needs for up to nine months, but, for all those interviewed, the money had run out. Covering basic expenses, including food, rent, medical bills and school fees, has become impossible for many. The plight of the families of contract workers, who received no compensation from MSIL can only be worse.
- **Psychologically**, it was clear that the families and friends of those in prison were experiencing severe stress, shock and/ or trauma. Much of the anxiety is rooted in the unexplained delays in justice, at the level of the criminal as well as the labor process. The delegation was unable to visit families of contract workers, since most are now untraceable. Their lives were vulnerable to begin with, and there is no telling where they may have gone in search of work.
- **Physically**, the impact on families of diminished access to food and medical care was immediately apparent. In addition, the strain of having to travel long distances to meet those in prison, or of spending long hours in protest rallies demanding release or reinstatement, had also affected the health of many family members. In some cases, women and the elderly have been severely injured in police violence against protestors.
- **Socially**, the bonds within and among the families of workers remain strong. Terminated workers, as well as some who still have their jobs, continue to provide moral support to the families of those in prison. Each family reasserted to the delegation that, despite the hardships, they understand that they have an important role to play in the struggle for justice for MSIL workers. Family members – women, children and the elderly – have participated in large numbers in all demonstrations and rallies. On the other hand, there is some alienation from the broader community. With the delays in the investigation and the judicial process, the workers have become the focus of some amount of blame and suspicion, as communities have begun to wonder whether the long periods of detention are an indication of guilt. However, the workers' struggle has received substantial support from the elected leaders of local governments throughout the region, which has been a significant source of strength for families as well.

Below are brief accounts of some of the family members interviewed and observed by the delegation.

- The delegation met the wife and the one-year-old daughter of a jailed union leader at Bhondsi Jail. They had traveled from Amritsar, almost 500 km from Gurgaon. The child was only two months old when her father, and other members of the newly-formed MSWU, had been forced to surrender to the Gurgaon police after the events of 18 July 2012. The wife tried to share as much as possible with her husband in the 10 minutes they had, speaking through two wire mesh screens, a foot apart. She was only able to meet him once in two months, given the distance and the expense of travel. Earlier that week, the child had met her father, being led by a policeman, when he, along with the other 146 workers in prison, was produced before the Gurgaon court. At that time, she had flinched in her mother's arms when the virtual stranger reached out to her.
- At the jail in Gurgaon, the wife of a worker from the neighboring state of Himachal Pradesh was waiting to

see him. They do not have children – she spoke with a palpable mix of pain and relief when she described having had a miscarriage just two months before the events of 18 July 2012. After her husband's arrest, she moved to Gurgaon to be close to him, living on her own in a one-room tenement and working as a data entry operator. Her husband was arrested on 19 July 2012 from the residence of his in-laws in the small town of Paonta Sahib in Himachal Pradesh, 300 km away from Gurgaon. However, his wife said, her husband had been in Paonta Sahib even on the previous day, when the violence took place at MSIL-Manesar. She conjectured that her husband was arrested because he was assumed to be one of the union leaders, with whom he shares a first name. The arrest papers claimed that her husband was arrested from Gurgaon.

- The delegation spoke with the uncle of a worker who – along with the worker's brother – had been arrested in the wake of 18 July 2012, in an illegal effort to pressure the worker into surrendering. The worker surrendered on 1 August 2012, and remains in detention. The worker's uncle explained that his nephew's wife had given birth to their son three months ago, and although the lawyer had appealed for interim bail, the young man was denied even a glimpse of the child. Prior to that, the worker's grandmother had died – on 23 January 2013 – and even then, he was refused bail to attend her funeral. This worker too was on leave on 18 July 2012, and so could not even have been in the factory when the violence took place.
- The uncle of another worker described his own harassment and detention, prior to his nephew's arrest. "I was detained from 19-24 July in jail," he told the delegation. "I was detained to pressure my nephew to come out of hiding and show up for court. But my nephew was not present at the time of the crime. He punched out at 9:46am." However, the uncle said, the worker was targeted because he was an active union member. He was the sole earning member for his wife and children, as well as for his mother and three younger brothers. The uncle added that the family was kept in the dark after the arrest. "They didn't tell us where he was for weeks. I kept asking them where he was and they did not tell me." The uncle was also extremely upset about the systematic targeting of family members, like himself. "If I had nothing to do with it why was I harassed and arrested?" he demanded.
- The sister of an arrested worker described him as the youngest of five brothers. The sister told us that the arrest had taken a toll on the whole family. She was especially concerned about her parents' health, which has been on the decline. At the same time, since the family can no longer rely on the young man's earnings, securing medical treatment for the parents has become onerous. While she expressed pride at the ongoing struggle waged by the workers, she was also conscious that many community members were less sympathetic. "In the first three months we were sure they would soon be out on bail. We waited. It is 10 months now. His in-laws too are wondering at the delay – they ask us why he is not getting bail. They doubt the workers' innocence." She said that even neighbors speculate, and this has eroded their social ties.
- The delegation visited the family of an imprisoned worker. The worker's mother was sitting with his daughter, aged two-and-a-half, asleep on her lap. The worker's father works as a night-shift security guard. He spends all of his daytime hours in meetings with the union or their lawyers, or mobilizing for protests. The entire family participates in events connected to the workers' struggle. "I do not know what keeps me going," the worker's mother told us. "I was beaten up recently in the police violence at Kaithal on 19 May. It was with much pain and difficulty that I was able to return home. This is not the first time that the police has beaten us." There have been both economic and psychological stresses also, she explained. "My daughter-in-law has been hospitalized twice as she has become so sick with constant worries. She has just been discharged from the hospital because we could not pay the medical bill, even though she required further treatment. My son's in-laws ask us, 'How come your son is not getting bail?' It is a great humiliation to our family. But what can we do? We have to fight for justice." The worker's father described the suffering of their son's little daughter, also. "Every day she prostrates herself on the ground, praying to God for her father to come back," he said. The worker's wife seemed both silent and distraught. She spoke very little but managed to smile feebly as the delegation left.

Findings

In the first place, the delegation finds that the lack of a prompt and impartial investigation of dismissals as well as of the industrial violence is in itself a serious concern with respect to workers' civil and trade union rights. The ILO's Committee on Freedom of Association (CFA) has consistently emphasized, with respect to complaints regarding lengthy legal proceedings, that "justice delayed is justice denied."³⁰ The CFA has focused, of course, on the impact on union organizing, noting that the critical importance of "expeditious, inexpensive and fully impartial"³¹ proceedings is that every delay renders a meaningful remedy further and further out of reach. "[T]he situation complained of has often been changed irreversibly, people may have been transferred, etc, to a point where it becomes impossible to order adequate redress or to come back to the status quo ante."³²

This is equally true for the individuals who have been dismissed or detained, and for their families. The physical, psychological and economic hardship imposed on them by a long, opaque process has already had an impact that will be difficult, if not impossible, to reverse – and further delays will only deepen the injustice.

I. The employer: Maruti Suzuki India Limited (MSIL)

The delegation finds that MSIL has been involved in egregious violations of trade union rights guaranteed by ILO Conventions 87 and 98.

- The establishment and propagation of MUKU, which conforms to all internationally-accepted definitions of a "yellow" or "puppet" union, contravenes Article 2 of Convention 98, which requires that workers' organizations must have total independence from employers in all their activities.
- MSIL's further efforts to undermine the union that workers freely chose to form and join also violate internationally-recognized norms. The Committee on Freedom of Association has condemned, in several cases, the practice of "bribes offered to union members to encourage their withdrawal from the union,"³³ as took place at MSIL, when the leaders of the first independent union there, the MSEU, were given large sums of money to leave their jobs and their organization.
- CFA decisions also speak to the impermissibility of MSIL's interference to prevent the plant-level union from consorting with "outsiders" – and, in particular, national trade union centers such as the AITUC. The CFA has said that "All workers should have the right to engage freely in the defence and promotion of their economic and social interests through the central organizations of their own choice."³⁴
- At multiple levels, MSIL acted contrary to core principles of bargaining in good faith, as set forth in Conventions 87 and 98, either by stonewalling in negotiations, or failing to comply with the terms of concluded agreements. As the CFA has noted, collective bargaining is not merely a crucial right – "genuine and constructive negotiations" are also a precondition for positive industrial relations at a broader level.³⁵ From that perspective, the industrial violence that took place on 18 July 2012 cannot be understood independently of MSIL's long history of bad faith in bargaining.
- Following from this point, MSIL's refusal to negotiate with the MSWU over the issue of contract workers does not appear justifiable, based on CFA jurisprudence regarding the parameters of what constitutes

30 Digest of Decisions, para. 104

31 Digest of Decisions, para. 820

32 Digest of Decisions, para. 821

33 Digest of Decisions, para 858

34 Digest of Decisions, para 724

35 Digest of Decisions, paras. 935 and 936

management prerogative. The MSWU's efforts to discuss the situation of contract workers could be construed as negotiations over the scope of the bargaining unit, or as bargaining in solidarity, or as bargaining over their own terms and conditions of work, since the expansion of contract labor has clear implications for the trade union rights and individual working conditions of permanent workers. In any one of these cases, we believe it would be covered in the scope of bargaining protected by Article 4 of Convention 98.

- The very introduction of contract workers at MSIL – as material handlers, when existing material handlers were terminated in retaliation for having participated in a strike – is deeply bound up in violations of core principles related to trade union rights. The CFA noted in one case that, “Subcontracting accompanied by dismissals of union leaders can constitute a violation of the principle that no one should be prejudiced in his or her employment on the grounds of union membership or activities.”³⁶ This CFA decision appears to apply to the facts at MSIL.
- In August 2012, MSIL acted summarily and without following due process of law when it dismissed 546 permanent workers, and terminated the services of over 1800 contract workers. The termination of these workers, who were known to be leaders, members or sympathizers of the Maruti Suzuki Workers' Union, constitutes impermissible retaliation against those exercising their right to form and join a union of their choice. The CFA has noted that “[t]he absence of guarantees of due process of law” creates the risk of individual unionists being penalized by “groundless” legal decisions, as well as the union as a whole being undermined by “a climate of insecurity and fear.”³⁷

II. The Public Authorities: Labour Department

The delegation finds that the Labour Department of the state of Haryana, both through its actions and its failure to act, violated several important, internationally-recognized principles of trade union rights.

- When the Registrar of Trade Unions refused to register the MSEU – the workers' first effort to organize an independent union of their choice – it contravened the principle that “conditions for the granting of registration” should not amount to “prior authorization from the public authorities for the establishment or functioning of a trade union.” Trade union registration in the state of Haryana has unquestionably moved beyond being a mere formality, to become a procedure where the authorities can and do indeed exercise the “inappropriate discretion” prohibited by the CFA.³⁸
- Even a cursory comparison of the Labour Department's attitude to the company-sponsored union MUKU and the MSWU leads to the conclusion that, in its dealings with MSIL and its workers, the Labour Department has improperly favored one over the other. The CFA has noted in one of its decisions that such discrimination “jeopardizes the right of workers set out in Convention No. 87, Article 2, to establish and join organizations of their own choosing.”³⁹
- The Labour Department failed in its duty to serve as an impartial and effective administrative and adjudicatory body regarding labor matters, especially those connected to industrial relations, as set forth in Conventions 87 and 98. Although domestic law protecting trade union rights and industrial relations may be quite robust, as the CFA has noted, “basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed.”⁴⁰

36 Digest of Decisions, para 790

37 Digest of Decisions, para 106

38 Digest of Decisions, para 294

39 Digest of Decisions, para 342

40 Digest of Decisions, para 818

- Most importantly, the Labour Department has utterly abdicated its responsibility to address the dispute regarding the summary dismissal of 546 permanent workers, and 1800 contract workers, in August 2012. As noted, many of these workers were known leaders, members or sympathizers of the union. When the CFA has dealt with similar instances of government failure to address acts of anti-union discrimination, it has recommended that the government carry out independent investigations, and ensure reinstatement of workers.⁴¹ As the CFA noted in another decision, the risks are significant: “inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking.”⁴²
- At the broadest level, the absence of mechanisms within the Labour Department that are capable of addressing complaints of anti-union discrimination in a manner that is “expeditious, inexpensive and fully impartial”⁴³ is a clear infringement of internationally-recognized principles of freedom of association.

III. The Public Authorities: Criminal Justice

The delegation finds that the criminal justice process in the state of Haryana heavily favored, and continues to favor, MSIL management interests over worker and trade union rights. The heavy-handed role of the police force, the lack of a transparent, impartial and effective investigative process, and the current roadblocks to securing bail or even a hearing at the level of the court only compound the underlying violations.

- The role of police, allegedly in maintaining industrial peace, clearly crossed the line into inappropriate interference with workers’ rights of assembly and association. Most troubling of all are the threats made by police to workers arbitrarily arrested and subsequently tortured, ordering them to suspend their trade union activity.
- In spite of the fact that both workers and managers were injured on 18 July 2012, only workers were arrested. This is highly indicative of bias, especially since no independent, impartial investigation has taken place to allocate responsibility. While the CFA has noted that trade unionists “cannot claim immunity in respect of the ordinary criminal law,” it has emphasized that “trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists.”⁴⁴
- The 147 workers have not received bail, and no charges have been framed. The CFA has stated strongly that “[t]he arrest and detention of trade unionists without any charges being laid or court warrants being issued constitutes a serious violation of trade union rights.”⁴⁵
- The CFA has recognized the centrality of a range of civil liberties to the exercise of associational rights, noting that “[a] genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty.”⁴⁶ These include, for example, protections for workers’ right to peaceful protest and demonstration.⁴⁷ The disproportionate use of force to disperse a protest, as was the case in the town of Kaithal, also infringes on the core civil liberties necessary for workers to be able to organize.⁴⁸

41 Digest of Decisions, para 846

42 Digest of Decisions, para 773

43 Digest of Decisions, para 820

44 Digest of Decisions, para 72

45 Digest of Decisions, para 69

46 Digest of Decisions, para 45

47 Digest of Decisions, para 133

48 Digest of Decisions, para 140. “The authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control.”

Recommendations

The members of the delegation expect to pursue the pressing issue of state and corporate abuse of Maruti Suzuki workers and their families, as detailed at right. We will be working both in our individual capacities, within our respective institutions, and together.

In view of the foregoing, the delegation recommends:

- Immediate release of the 147 MSIL workers currently detained in Bhondsi Jail (Gurgaon), as well as of the 11 detained at Kaithal Jail.
- A public commitment by the Haryana state police to cease and desist from the arbitrary arrests of workers seeking to defend their occupational interests. The police must also end the harassment of workers and their families.
- The constitution of an independent and impartial judicial inquiry to investigate the full scope of events that led up to the industrial violence on 18 July 2012, as well as subsequent events, including but not limited to the custodial torture of workers.
- The full reinstatement of all workers who were at Maruti Suzuki as of 17 July 2012, whether permanent or precarious workers.
- Enforcement of tripartite machinery to ensure that MSIL enters into constructive good faith negotiations with the union of the workers' choice.

The delegation also hopes that the Haryana State Human Rights Commission will act suo moto to investigate the abuses outlined above.

In the longer term, the delegation urges the public authorities to:

- Create an industrial relations system that enables an adequate firewall between the state's labor department and its police force.
- Seek technical assistance from the ILO to bring the labor administration and adjudication processes into compliance with international standards, in terms of a) the framework for union registration, recognition, and collective bargaining and b) protections for workers' right to form and join a union of their choice.

Conclusion

The members of the delegation expect to pursue the pressing issue of state and corporate abuse of Maruti Suzuki workers and their families, as detailed above. We will be working both in our individual capacities, within our respective institutions, and together.





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