

Training guide for freedom of association trainers in the Philippines

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Country Office for the Philippines
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Introduction

This training guide for freedom of association trainers in the Philippines is produced for use by officials of the Department of Labor and Employment (DOLE) and the Philippines Economic Zone Authority (PEZA) in training final user trainees in international labour standards (ILS), and in particular standards and principles on freedom of association and the right to collective bargaining. The guide was prepared by a former ILO Official, Mr. David Tajzman. Former DOLE Undersecretary Mr Benedicto Bitonio, ILO officials and the trainers using the guide themselves made substantive contributions to it.

The final user trainees targeted for this guide are a diverse group including workers and workers' representatives, employers and employers' representatives, government officials including persons employed in the army and police, students, among others. The ultimate training for which this guide is intended is likewise diverse, expected to deal usually with local labour and industrial relations matters, with international labour standards being presented as background and context in which national practices are understood. The orientation of the guide intends for the training user to complement its international content.

The guide content is presented in modules, each of which deals with a single subject. Modules can be grouped together to fill the typical four sessions that comprise a training day, that is, two sessions before and after lunch, each with a coffee break. They may as well be grouped to fit any other training time framework. Sample training programmes constructed from the training modules are offered in Annex II. Indicative training programmes constructed from modules.

The guide aims to add value to a very large body of existing jurisprudence and reference materials on ILS, and in particular rights and principles concerning freedom of association and collective bargaining by presenting content concisely, in a Philippine context, giving onward citation to relevant reference materials. The guide does not attempt to answer all questions about ILS, FoA and CB rights and principles. It does aim to give its trainer users the guidance needed to find answers and to craft training in a manner appropriate to final user trainees.

Arrangement of contents

Each module in the guide contains a set of *icons* showing at a glance the module's timing, character, target groups, and training method. In addition, the text of each module indicates:

- Its *importance* for the target group – why the target group should know the content of the module.
- Its substantive *content* – what the trainer should convey to the target group.
- Its *method* – how a trainer might present the substance.
- Points for *clarification* – nuances, shadings or comparative refinements on the substance.
- *References* – documentation to which the trainer can refer for learning the substance of the module.

Each module contains a short set of training assessment questions composed of five multiple-choice questions and two short answer questions. These questions can be posed verbally or in a written exercise by the trainer; short answer questions can be used as a basis for discussion in plenary or in groups.

The modules are presented in four groups:

1. International labour standards (ILS) contains general modules on the ILS system, with highlight modules dealing with ILS and technical cooperation, the obligations flowing to public and private actors from ILS, and the distinction between ILS and the principles they reflect.
2. ILS and principles on freedom of association contains modules flowing from C87, with highlight modules dealing with the negative FoA right, FoA and contract workers, FoA and industrial peace, FoA and consultative bodies, among others.
3. ILS and principles on collective bargaining contains modules flowing from C98, with highlight modules on the promotion of collective bargaining.
4. Tripartite declaration of principles concerning multinational enterprises and social policy contains modules on this private sector targeted declaration.

Icons

Character of content



Content is substantively concrete and objective in character.

Content is conceptual in character.

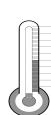
Indication of potential interest



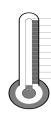
Subject matter of technical interest for specialist groups.



Subject matter of some interest for general audience.



Subject matter of usual interest for general audience or general audience of target groups.



Subject matter of particular or high interest for general audience of all target groups.

Relevance with particular Philippine target groups

Virtually all the modules have a relevance for each of the three target groups. Where appropriate, however, target group icons have been lightened to indicate a potential for lesser relevance to the particular target group.



Module is relevant for government target groups.



Module is relevant for workers target groups.



Module is relevant for employers target groups.

Methods



Potential for presentation through group work activity.



Potential for presentation using brainstorming or questioning.



Potential for presentation involving role-play.



Presentation, assuming potential for dialogue and questioning.



Potential for traffic light exercise where participants in plenary or group indicate "go", "caution" and "stop" in respect of substance in the exercise.

Reference materials

The substantive content of training on the matters dealt with in these training modules is drawn from existing ILO and Philippine documentation. A list of the documents can be found in Annex 1. Reference materials. The list of abbreviations below is used in the modules for some of those documents.

FoA trainers are strongly urged to review, compare and contrast these materials. The trainer will find that each of these materials have their own characteristics and suitability for different purposes. Some give detailed legalistic presentations, others offer more layperson terminology, and others still use pedagogical methods of different types.

References made in this guide to substantive obligations under principles of FoA and/or CB are derived from the work of the CEACR or the CFA.

CFA50	The Committee on Freedom of Association: Its impact over 50 years (2001)*
D2006	Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO digest (2006)
Dec1998	1998 Declaration on Fundamental Principles and Rights at Work
DecMNE	Tripartite declaration of principles concerning multinational enterprises and social policy
DPPG	Joint DOLE-PNP-PEZA guidelines in the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes (2011)
EPZ	Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms (2007)
FoAL	ILO law on freedom of association: Standards and procedures (1995)
GA	International labour standards: A global approach (2002)
GS2012	Giving globalization a human face: General survey on the fundamental conventions (2012)
Guide	Guide to international labour standards (2008)
GWR	Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP, and PNP relative to the exercise of workers' rights and activities (2012)
HoP	Handbook of procedures relating to international labour conventions and recommendations (2012)

LM	International labour law and domestic law: A training manual for judges, lawyers and legal educators
LRP	Labour relations in the public and para-public sector (2007)
PC	Philippine constitution (1987)
PLC	Philippines labor code
RoG	Rules of the game (2009)
UG	Freedom of association: A users' guide (2000)

*CFA50 is unique for its follow-up examination of cases of success or improvement in respect for FoA and CB principles. This is very useful for giving a sense of the operation of the CFA in practice.

Abbreviations

The following abbreviations are used throughout the modules.

APPL	Tripartite Committee on the Application of Standards of the International Labour Conference
PC1987	1987 Constitution of the Republic of the Philippines
C	Convention (followed by its number)
CB	Collective Bargaining
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Governing Body's Committee on Freedom of Association
CSR	Corporate Social Responsibility
FoA	Freedom of Association
FPRW	Fundamental Principles and Rights at Work
ILC	International Labour Conference
ILS	International Labour Standards
R	Recommendation (followed by its number)

1. International labour standards

This Session 1 presents modules on the ILO's system of ILS generally. At least some of the basic information and knowledge contained in these modules will need to be presented in virtually any training on a subject touching on ILS, no matter how specific that training aims to be.

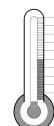
Reference can be made to the RoG or the ILO website (www.ilo.org) if a few words are needed in training on what the ILO is, its background, origin, mandate and history.

The modules presented in this part can be seen as a selection from a much wider range of matters dealing with the ILO, and ILS as one of its primary means of action. The selection is made on the basis of local interest as contributed by the trainers of this material. Additional subjects include:

- The decent work agenda
- Submission to the competent national authorities
- Details of obligations to report on ratified and non-ratified ILO conventions
- The substance of all ILS

The interested trainer should see the abundant reference materials for details with a view to preparing any needed training on these or other matters.

Module 1. What are ILS?



(5 minutes)

Importance Establish an understanding of the most basic jargon of ILS, i.e. what they are.

Content The presenter should train that ILS are:

- Conventions that are binding on ratification.
- Recommendations that complement conventions as non-binding guidelines are not open to ratification.
- Protocols that supplement conventions on ratification.

Method Ask participants to name the kinds of international standards they are aware of, listening to hear if ILO standards are known. Follow on with module content.

Clarify ... the following points:

- Other normative ILO documents, such as technical guidelines are not ILS in the true sense of this term.
- CSR standards such as company or industry codes of conduct factory accreditation standards, ISO standards are not ILO standards.
- ILO standards have unique tripartite origin.
- Declarations are not ILS.

References Content is based on:

- HoP, ¶ 1, p. 2
 - RoG, p. 14

Additional Notes: _____

Learning Assessment

Q1. ILS are:

- A. Conventions.
 - B. Recommendations.
 - C. legal instruments.
 - D. All of the above.

Q2. The ILO makes Recommendations:

- A. as stand alone instruments.
 - B. to complement Conventions.
 - C. to give guidance on implementing Conventions.
 - D. All of the above.

Q3. ILS are:

- A. adopted by governments.
 - B. ratified by the employers, workers, and governments at the International Labour Conference.
 - C. binding instruments.
 - D. a means used by the ILO to promote social justice.

Q4. Protocols are:

- A. adopted by governments.
 - B. ratified by the employers, workers, and governments at the International Labour Conference.
 - C. binding instruments that are related to a previously adopted ILO Convention.
 - D. guidance instruments that supplement Recommendations.

05. Declarations:

- A. are not ILS.
 - B. are solemn expressions of intent or understanding adopted by members of the ILO.
 - C. are few in the ILO, having been adopted only a handful of times.
 - D. All of the above.

Short answer questions:

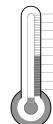
What is the difference between a Convention and a Protocol?

What is the difference between a Convention and a Declaration?

Answers to multiple choice questions in this module

Question 1	Question 2	Question 3	Question 4	Question 5
D	D	D	C	D

Module 2. The intended role of ILS?



(30 minutes)

Importance Understand the reason for ILS, the purpose they are intended to serve.

Content The presenter should train on ILS as:

- Measures designed to reduce and remove the root causes of social unrest leading to national and international conflict.
- A model for national legislation and practice.
- A foundation for sustainable development.
- An international minimum for social standards, preventing competition between nations on the basis of lower standards.

Method To test the degree of prior sensitization of participants, ask them to say what they imagine the point ILS is, and follow on with module content. Giving examples to concretize each point of content. Close with discussion of the actual role played by ILS in the Philippines.

Clarify ... the following points:

- ILS must be seen and understood within the mandate and purpose of the ILO, in accord with its Constitution; improvement of conditions of work and life, not merely resolution of conflict between capital and labour.
- ILS are minimum standards, intrinsically normative in their character.
- ILS use as the basis of standards used in CSR initiatives is a recent development, as is the linkage between arrangements for international trade and ILS.
- ILS on FoA and CB have a particular importance because they enable robust independent voice at the workplace and in civil society.
- ILS exist, with these objectives, at the will of ILO members; declining union membership, flexibilization in the organization of work, while real challenges, are in a way beside the point insofar as standards themselves can take up these matters to the extent membership is willing to do so.

References Content is based on:

- RoG, p. 20-23

Additional Notes: _____

Learning Assessment

Q6. ILS help prevent competition between nations on the basis of labour costs by:

- A. setting minimum wages.
- B. setting agreed minimum international standards.
- C. helping form national trade unions.
- D. helping form national employers' organizations.

Q7. To achieve their objectives, ILS must set realistic, universally achievable standards.

- A. True
- B. False
- C. Depends on the standard

Q8. Critical for a private organization to be best suited to set international labour standards, it:

- A. should not charge to use the standard.
- B. is tripartite like the ILO.
- C. is a regional organization.
- D. should set universal standards based on the work of experts.

Q9. As a means of action for the ILO to achieve its mandate, ILS are helped in achieving their objectives by:

- A. technical assistance.
- B. surplus national production.
- C. globalization.
- D. strong governments.

Q10. ILS have achieved their objectives and thus they are no longer needed.

- A. True
- B. False

Short answer questions:

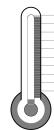
How would ILS targeting the elimination of discrimination in employment and occupation contribute to "reducing and removing" a root cause for social unrest and international conflict?

Give an example of how ILS serve as a model for the casting of national legislation.

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	B	A	B

Module 3. Fundamental and technical conventions



(5 minutes)

Importance

Understand the reason for and implications of categorizing ILS conventions, with fundamental conventions (C. 29, 105, 87, 98, 100, 111, 138 and 182) taking the forefront since 1998.

Content

The presenter should train on certain international labour conventions having been categorized:

- Since the 1970s as a way of distinguishing between instruments for promotional and administrative purposes.
- As "fundamental", by way of the 1998 Declaration on Fundamental Principles and Rights at Work.
- As "fundamental", "governance" and "technical" for purposes of promotion and ratifying country reporting.

Method

Ask the participants: (a) if they have heard of "fundamental" ILO conventions; (b) if they know what that means; and (c) where the categorization comes from. Follow on with module content. Following module content ask what Philippine legislation implements fundamental and technical conventions.

Clarify

... the following points:

- These categories should be known/understood because ILO constituents have and continue to use them nationally and internationally to prioritize matters of concern.
- Categorization is a: (a) policy decision by; and (b) tripartite representatives of the ILO members.
- "Priority" and "governance" conventions are the same; the terminology was changed to reflect a shift from "priority for implementation and ratification" to subject matter dealing with "labour market governance".
- This categorization is not the same as categorization as "up-to-date" or "obsolete", which deal with the currency of instruments.

References

Content is based on:

- RoG, pp. 14-15
- GA, Chapter entitled "ILO standards policy" p. 11

Additional Notes:

Learning Assessment

Q11. Which of the following groups of convention numbers does not belong with the others?

- A. 87, 98
 - B. 81, 122
 - C. 100, 111
 - D. 138, 182
-

Q12. Priority and governance conventions:

- A. are the same.
 - B. are not the same.
 - C. should be the same.
 - D. would not be the same.
-

Q13. ILO members could decide that additional Conventions be designated as fundamental.

- A. True
 - B. False
-

Q14. The classification of Conventions and Recommendations is useful because:

- A. it designates ILO Conventions that member States must ratify.
 - B. it helps distinguish between an otherwise unwieldy number of ILS instruments.
 - C. doing so links Conventions to Recommendations.
 - D. it is stylish to do so.
-

Q15. ILO members could decide that no more Conventions be designated fundamental.

- A. True
 - B. False
-

Short answer questions:

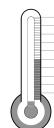
How many fundamental conventions have been ratified by the Philippines?

How many priority conventions have been ratified by the Philippines?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	A	B	A

Module 4. The distinction between ILS and principles



(15 minutes)

Importance

These terms are used deliberately to signify two sets of normative values in this field; knowing this distinction assures clarity in understanding relevant texts of CEACR, CFA, APPL and similar.

Content

The presenter should train that:

- ILS are the binding contents of conventions, and the guidelines found in recommendations; these are "standards".
- Principles are norms based upon the content of provisions of the ILO Constitution, relevant conventions, recommendations and resolutions of the organization.
- The distinction is particularly important in the area of freedom of association and collective bargaining because the tripartite Committee on Freedom of Association is constantly engaged in developing the ILO's principles on the subject.

Clarify

... the following points:

- Distinction is needed to assure difference between norms applied as a result of ratification ("standards") and norms being applied by virtue of ILO membership ("principles").
- The distinction is used with reference to all ILS.

Method

Begin with module content. Then ask for analogous metaphors and concrete example to assure target audience understanding. Concretize by:

- If the Philippine Decent Work Country Programme is given as a reference document, participants may be asked: What are the standards and what are the principles included in the Country Programme?
- Develop and present example of a standard and its corresponding principle (may be difficult to do practically speaking). Discuss with group.

References

Examples of the use of this content:

- Digest 2006, p. 3, p. 5
- Dec1998
- DecMNE, ¶ 8

See also:

- CFA Case No. 102, South Africa (CFA Report No. 15, 1955), ¶¶128-131

Additional Notes:

Learning Assessment

Q16. The idea of "principles" relative to ILO ILS can be said to be one of soft law.

- A. True
 - B. False
-

Q17. It could be said that the right to strike is seen as a "principle" where:

- A. no specifics are laid down about what reasonable limitations may be imposed.
 - B. it is absolute and its exercise is without consequence.
 - C. it excludes strikes called with less than seven days' notice.
 - D. its exercise is consistent with national law.
-

Q18. It could be said that an international labour standard can be distinguished from a principle insofar as:

- A. the first sets down enforceable rights, but the second does not.
 - B. the first is the subject of obligations, but the second is not.
 - C. the first can be ratified, but the second cannot.
 - D. All of the above.
-

Q19. Principles need to be distinguished from standards in the ILO because its members agree on the one hand that normative ideas on FoA and CB are needed to complement standards, but that a distinction needs to be made from the norms set down in the conventions that are legally binding on ratification.

- A. True
 - B. False
-

Q20. FoA principles are based on C87, as understood by the CFA.

- A. True
 - D. False
-

Short answer questions:

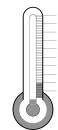
Why is it so important for the ILO to have normative principles on FoA and CB applicable to all its members?

Why is membership alone a viable basis for binding ILO members to FoA and CB principles?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	A	C	A	A

Module 5. Where do ILS come from?



(30 minutes)

Importance Since ILS are the results of tripartite negotiation and based on prevailing national practices, they are intrinsically valid and practical.

Content The presenter should train that ILS are:

- Based on analysis of existing law and practice to find international commonalities.
- The result of negotiation between employers', workers' and governments' representatives.
- Adopted by 2/3-majority vote in ILC.
- ILS are constant tripartite review for modern day relevance.

Method Ask participants to describe the process of making national labour law; inquire on the frequency of reforms in areas where there is great divergence of opinion. Follow on with module content, making analogy to ILS making all along.

Clarify ... the following points:

- The body of ILS is decidedly the result of negotiation inherent in the adoption process; they are not standards "cooked up" by administrators.
- ILS on FoA and CB are relatively limited in number of instruments and text in instruments partially on account of the adoption process.

References Content is based on:

- RoG, pp. 16-18, 19
- HoP, ¶¶ 1-5

Additional Notes: _____

Learning Assessment

Q21. Who adopts ILS?

- A. ILO Officials.
 - B. ILO member States.
 - C. delegates to the ILC.
 - D. All of the above.
-

Q22. On adoption, an ILO Convention:

- A. is open for ratification by member States.
 - B. is open for ratification only by members States that have voted to adopt.
 - C. must be used by member States to effect change in national legislation.
 - D. is translated into all UN languages.
-

Q23. A Convention and Recommendation on the same subject:

- A. are always adopted at the same time.
 - B. are never adopted at the same time.
 - C. may be adopted at the same time.
 - D. are today almost always adopted at the same time.
-

Q24. ILO standards are adopted:

- A. by a 2/3 majority of votes cast by delegates present.
 - B. by a simple majority vote.
 - C. by a 2/3 majority vote of ILO member States.
 - D. by a 2/3 majority of each of the tripartite groups.
-

Q25. The ILO Constitution requires that:

- A. due regard be taken of different conditions of member States in framing Conventions.
 - B. due regard be taken of different conditions of member States in framing Conventions and Recommendations.
 - C. the lowest common denominator be used as a guide for framing Conventions.
 - D. the lowest common denominator be used as a guide for framing Conventions and Recommendations.
-

Short answer questions:

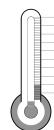
Under what circumstances would the ILO make Recommendation and not a Convention?

Under what circumstances would the ILO make a Protocol and not a Convention?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	C	A	B

Module 6. International labour conventions are binding on ratification



(15 minutes)

Importance Understand: (a) that ratification is the litmus test for an international standard; and (b) that an ILO convention is legally binding on a State that ratifies it.

Content The presenter should train that:

- Only ILS conventions are open to ratification.
- Ratification obliges the State to implement the Convention in law and practice and report on steps being taken to implement.

Method Ask participants if they have seen any consumer product they thought was a good one but could not personally see any usefulness in having the product. Point out that they had likely not purchased the product. And the reverse is likely the case. Analogize this with ratification, i.e. for the ILS product (conventions) to be successful ratifications are needed, and follow on with module content.

Clarify ... the following points:

- The viability of any international standard depends on its acceptance by countries; in the case of ILS, through ratification.
- Ratification makes possible regular international supervision, but the CFA supervises FoA and CB principles regardless of ratification.
- Ratification is entirely voluntary, but all ILO member States have ratified ILO conventions.
- Ratifications can be denounced, voluntarily and *de jure*. Thus, although a Convention may have been ratified, it may no longer be in force for the country concerned.

References Content is based on:

- RoG, p. 18
- HoP, ¶¶ 19-33

Additional Notes: _____

Learning Assessment

Q26. Ratification of an ILO convention:

- A. is required by ILO member States.
 - B. obliges an ILO member State.
 - C. is applied by an ILO member State.
-

Q27. Once ratified, an ILO Convention must be:

- A. reported.
 - B. practiced.
 - C. applied.
-

Q28. Ratification of an ILO Convention:

- A. obliges the ratifying country to send reports on measures taken to apply the convention in law.
 - B. obliges the ratifying country to send reports on measures taken to apply the convention in practice.
 - C. obliges the ratifying country to take steps to apply the provisions of the convention in law.
 - D. All of the above.
-

Q29. Although principles concerning freedom of association and collective bargaining can be supervised in its absence, ratification of the conventions concerned:

- A. makes a heightened level of supervision possible.
 - B. makes it possible to invoke supervisory procedures under the ILO Constitution.
 - C. is a sovereign decision of ILO member States.
 - D. All of the above.
-

Q30. Ratified ILO Conventions are:

- A. applicable to the entire territory of the ratifying ILO member State.
 - B. relevant to the entire territory of the ratifying ILO member State.
 - C. applicable to that part of the territory of the ratifying ILO member State to which it applies.
-

Short answer questions:

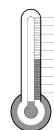
How many Conventions have been ratified by the Philippines, and how many are currently in force?

How are ILO Conventions ratified by the Philippines?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	C	D	D	A

Module 7. Regular system for supervision of ratified conventions



(20 minutes)

Importance Understand that ratifying States benefit in implementing ILS from a system of periodic objective and independent international supervision. They are also obliged to report following ratification.

Content The presenter should train about the regular system of ILS supervision, telling about:

- The obligation of periodic reporting.
- The mechanism for dialogue between States and the CEACR and APPL (direct requests and observations).
- The role and function of the CEACR and APPL.

Method Ask participants how they would imagine supervision of ratified ILS takes place. Through visits to the country? Relying on complaints? Follow on with module content. Conclude with review of supervisory content dealing with Philippines, potentially using NORMLEX database in groups. Report group discussion to plenary and discuss.

Clarify ... the following points:

- The supervisory system is based on moral suasion and not sanctions; its effectiveness is demonstrable.
- The value added of the CEACR's work is its independence, objectivity, impartiality, transparency and tenacity.
- The value of the APPL is its dynamism and tripartite character.
- The unique results used of the regular system are used by other governments, national and international social partner organizations in relations with the governments being supervised in, for example, trade relations and campaigns to promote respect for human and labour rights.
- All members of the ILO are equally subject to the system of supervision; they all likewise equally able to make use of the system to help assure respect of ILS by other members.

References Content is based on:

- RoG, pp. 80 – 83
- HoP, ¶¶ 34-43
- For successful results of the supervisory system, find "cases of satisfaction" in the General Report section of a CEACR report.

Additional Notes: _____

Learning Assessment

Q31. The CEACR:

- A. is a tripartite committee of the ILC whose task it is to examine reports on ratified ILO conventions.
 - B. is a tripartite committee of experts whose task it is to examine reports on ratified ILO conventions.
 - C. is a committee of independent experts whose task it is to examine reports on ratified ILO conventions.
 - D. makes binding decisions on the application of ILO conventions.
-

Q32. The comments made by the CEACR:

- A. are the basis for consideration by the Conference Committee on the Application of Standards.
 - B. take the form of published observations and requests sent directly to the countries involved.
 - C. are not binding decisions.
 - D. All of the above.
-

Q33. Regular supervision of ratified ILO Conventions:

- A. is based on reports made by countries that have ratified the conventions concerned.
 - B. is based on ad hoc allegations of non-compliance made by ILO member States.
 - C. contributes to discussions in the Committee on the Application of Standards.
 - D. All of the above.
-

Q34. The Conference Committee on the Application of Standards:

- A. is a tripartite committee of the ILC whose task it is to examine reports on ratified ILO conventions.
 - B. is a tripartite committee of experts whose task it is to examine reports on ratified ILO conventions.
 - C. is a committee of independent experts whose task it is to examine reports on ratified ILO conventions.
 - D. makes binding decisions on the application of ILO conventions.
-

Q35. The report of the CEACR:

- A. includes texts of published observations and the direct requests of the Committee.
 - B. is received by the Conference Committee on the Application of Standards.
 - C. is comprised of six volumes.
-

Short answer questions:

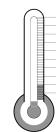
What are the benefits of having both an expert and tripartite aspect to supervision of ratified ILO Conventions?

What points are served by employers' and workers' organizations being given the right to send comments on the application of ratified Conventions directly to the CEACR?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	D	A	A	B

Module 8. Special system for supervision of ratified conventions



(20 minutes)

Importance Additional "special" systems for supervising ILS are available and used by ILO member States and social partners.

Content The presenter should train about the special system of ILS supervision, telling about:

- Representations under article 24 of the ILO Constitution.
- Complaints under article 26 of the ILO Constitution.
- Examples, case quantities and results.

Method Ask participants how they would imagine supervision of ratified ILS takes place. Through visits to the country? Relying on complaints? Follow on with module content. Conclude with review of supervisory content dealing with Philippines, potentially using NORMLEX database in groups.

Clarify ... the following points:

- Representations and complaints can only be brought where the Convention concerned has been ratified; a reason why ratifications are important.
- Special supervision procedures should be seen and understood in the context of regular mechanisms, as potential "extension" where lacking implementation is longstanding, for example

References Content is based on:

- RoG, pp. 80 – 83
- HoP, ¶¶ 34-43
- UG §§ 2.6 and 2.7

Additional Notes: _____

Learning Assessment

Q36. Representations can be made only by:

- A. one government against another.
 - B. industrial organizations of employers and workers.
 - C. delegates to the International Labour Conference.
 - D. All of the above.
-

Q37. Complaints can be made by:

- A. one government against another, where both have ratified the ILO convention concerned.
 - B. employers' and workers' delegates to the International Labour Conference.
 - C. All of the above.
-

Q38. A tripartite committee of the Governing Body:

- A. may examine representations.
 - B. examines complaints.
 - C. must examine both representations and complaints.
-

Q39. A Commission of Inquiry must be established:

- A. upon a complaint having been made.
 - B. by decision of the ILO Governing Body.
 - C. Both of the above.
-

Q40. When a country refuses to implement the recommendations of a Commission of Inquiry:

- A. the ILC imposes sanctions.
 - B. the Governing Body can invoke article 33 of the ILO Constitution.
 - C. the International Court of Justice must review the case.
-

Short answer questions:

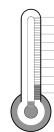
What role does the CEACR play in respect of the special supervisory mechanisms?

What role does the Governing Body play in respect of each of the special supervisory mechanisms?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	C	A	B	B

Module 9. Special system for supervision of principles of FoA and CB



(20 minutes)

Importance Additional "special" systems for supervising FoA and CB standards and principles is available notwithstanding ratification of relevant ILO Conventions.

Content The presenter should train about the special system for supervision of FoA, telling about:

- The reason why there is a special system of supervision entirely for FoA and CB standards and principles.
- The function, composition and operational premises of the CFA.
- The basis upon which there can be international supervision without the ratification of the relevant ILO Conventions.

Method Begin with module content. Ask participants if they agree with the justification of CFA jurisdiction. Conclude with review of supervisory content dealing with Philippines, potentially using NORMLEX database in groups.

Clarify ... the following points:

- The unanimity of CFA conclusions and recommendations make them extremely authoritative.
- Extension of the logic for CFA jurisdiction was unsuccessfully proposed in respect of other FPRW in the mid-1990s.
- The CFA has taken pains to emphasize that its function is to secure and promote the right of association of workers and employers, and has thus, emphasized that its function does not involve leveling charges at or condemning governments.

References Content is based on:

- RoG, pp. 80 – 83
- HoP, ¶¶ 85-89
- CFA50, pp. 1-17, 21-25
- UG § 2.5

Additional Notes: _____

Learning Assessment

Q41. In 1951, the ILO set up a Committee on Freedom of Association (CFA):

- A. as a tripartite committee of the ILO Governing Body.
 - B. for the purpose of examining allegations of violation of freedom of association principles.
 - C. for the purpose of examining allegations of violations of freedom of association principles by an expert committee of the ILO Governing Body.
 - D. Both A and B above.
-

Q42. Ratification of ILO conventions concerning freedom of association principles:

- A. would be required for a finding that allegations made to the CFA involve government actions that are not consistent with the requirements of the ratified convention.
 - B. is not required for the CFA to receive and consider on allegations concerning freedom of association principles made to it.
 - C. implies regular supervision of application of the relevant convention by the Committee of Experts on the Application of Conventions and Recommendations.
 - D. All of the above.
-

Q43. The membership of the CFA:

- A. has included an independent expert since 1978 as chair.
 - B. is made up of independent experts.
 - C. changes with each case heard to assure that the panel has knowledge of the country involved.
 - D. is decided by the International Labour Conference.
-

Q44. Recommendations of the CFA:

- A. are legally binding on the government involved.
 - B. are suggestions to the government involved for improving the respect of freedom of association principles.
 - C. are flexible and subject to negotiation.
-

Q45. The CFA:

- A. meets five times a year.
 - B. meets once a year.
 - C. meets three times a year.
-

Short answer questions:

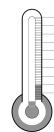
What role does the CEACR and the APPL play in respect of recommendations of the CFA?

How can the members of the CFA achieve consensus in their conclusions and recommendations?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
D	D	A	B	C

Module 10. Technical cooperation and ILS



(20 minutes)

Importance Understand that assistance is available in support of implementing ILS.

Content The presenter should train that:

- Public and private actors, national and international, make financial and technical supports available to establish and develop systems, institutions and knowledge in areas covered by ILS.
- Technical cooperation is a means of action for the ILO to achieve its mandate to promote decent work and social justice.

Method Begin with module content. Ask participants if they are familiar with any ILO technical cooperation in the Philippines. Make link to ILS and discuss.

Clarify ... the following points:

- Technical assistance does not automatically flow from ratification of ILS, indication of willingness to ratify, or the existence of difficulties in implementation of ratified conventions.
- Technical assistance becomes available, in practice, on an *ad hoc* basis insofar as it is dependent on human and financial resources, and political will of both recipients and donors.
- ILO technical cooperation in a country is coordinated and presented in a Decent Work Country Programme.

References For use in Method:

- HoP, ¶¶ 91-93
- RoG, pp. 91-92
- UG, § 2.8

Additional Notes: _____

Learning Assessment

Q46. Which of the following would be considered ILO technical cooperation related to ILS?

- A. A project to develop actuarial basis for a social security programme.
 - B. A training programme on ILS.
 - C. The provision of a device to measure airborne chemicals in factory workplaces.
 - D. All of the above.
-

Q47. When it comes to remedying a gap in the application of a ratified ILO convention, who must request ILO technical assistance?

- A. The ILO.
 - B. The government of the country involved.
 - C. The potential donor of the assistance.
 - D. The ILC.
-

Q48. Who typically makes an in kind contribution to ILO assistance?

- A. The recipient country involved.
 - B. The ILO.
 - C. Donor governments or other financial agencies.
 - D. International financial institutions.
-

Q49. Which countries can benefit from ILO technical assistance related to ILS?

- A. All countries.
 - B. All ILO member States.
 - C. Countries that have ratified the relevant ILO conventions involved.
 - D. Developing countries.
-

Q50. Which of the following is usually done by an ILO Official?

- A. Direct contact mission.
 - B. Serve as delegate to the ILC.
 - C. Serve as chair of the APPL.
 - D. Conduct formal evaluation of ILO technical cooperation.
-

Short answer questions:

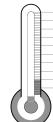
Describe how virtually all ILO technical cooperation can be related to ILS?

What technical assistance – involving ILS or otherwise – has the Philippines received from the ILO?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
D	B	A	A	A

Module 11. Obligations inuring from the international standards: Public and private actors



(15 minutes)

Importance

Principles concerning rights found in ILS are in practice used by private actors (private sector) to set norms for their own behavior. This requires a rendering of principles, since ILS are written with States as their object. Clarity follows from knowing this relationship.

Content

The presenter should train that ILS:

- Oblige States to substantive standards.
- Often imply norms for behaviour of private/corporate actors.
- Care needs to be taken rendering ILS to private norms.

Method

Participants quickly examine the text(s) of available instruments to answer the opening question: "who is obliged under the instrument?" Participants identify a handful of obligations. Follow on with module content, and move to close by asking "what principles can private actors draw from the obligations you earlier identified?"

Method

Form an even number of small groups. Give each set of groups the same ILS, working from the *Guide*. Ask one group to identify the obligations for the public actor, the other group for private actor. Follow on with module content.

Clarify

... the following points:

- This discussion has its foundation in the CSR movement's search for international standards for private corporate conduct.
- Since ILS are not written specifically for private actors, this caveat needs to be understood in any attempt to apply them to private actors.

References

For use in Method:

- C. 87, Art. 2, 8
- C. 98, Art. 1, 2, 4
- C. 135, Art. 1, 2; R. 143, ¶ 6(2), Part. IV
- *Guide*, select appropriate ILS

Additional Notes:

Learning Assessment

Q51. What minimum private standard might be rendered and used by a private employer from an international standard that says "Cash benefits shall be provided... to women who are absent from work on [maternity] leave" (C183, Art. 6, para. 1)?

- A. Pay wages to employees on maternity leave.
 - B. Pay some cash benefit to employees on maternity leave.
 - C. Do not terminate the employment of an employee on maternity leave.
 - D. Do not employ persons who may be going on maternity leave.
-

Q52. What private standard can best be rendered and used by a private employer from an international standard that says "Measures should be taken to promote employment opportunities for disabled persons which conform to the employment and salary standards applicable to workers generally" (R168, para. 10)?

- A. Offer disabled persons the same jobs and wages as other persons.
 - B. Hire disabled persons to the same jobs and at the same wages and benefits as other persons.
 - C. Actively look to employ disabled persons in the same jobs and at the same wages and benefits as other persons.
 - D. Actively recruit disabled persons to the same jobs and at the same wages and benefits as other persons.
-

Q53. Which of the following would not be a private standard rendered and used by a private employer from an international standard that says "Members should develop ... effective measures aimed at removing incentives to disguise an employment relationship" (R198, para. 17)?

- A. Remunerate persons working as independent contractors amounts that can be assimilated to that paid to employees doing the same work under the same conditions of supervision.
 - B. Establish a policy not to use independent contractors to do work that could be done by persons in an employment relationship.
 - C. Remunerate persons working as independent contractors' amounts that are higher than those paid to employees doing the same work under the same conditions of supervision.
 - D. Do not use independent contractors to do work that could be done by employees'.
-

Q54. ILS provisions have private parties as the object of their obligations.

- A. True
 - B. False
-

Q55. The behavior of private actors, as regulated by national law, is the ultimate object of some of the standards set in ILS.

- A. True
 - B. False
-

Short answer questions:

Why have companies operating internationally turned to ILS for guidance as to standards of behavior in labour and employment matters?

Where besides ILS could companies operating internationally turn for guidance as to standards of behavior in labour and employment matters?

Answers to multiple choice questions in this module

Question 1	Question 2	Question 3	Question 4	Question 5
B	D	D	B	A

2. ILS and principles on freedom of association

This part deals with the ILO standards and principles on freedom of association.

The trainer will almost certainly want to start with all the encompassing point that C87: (a) establishes the fundamental right of freedom of association for all (except armed forces and policy); and (b) is aimed at State interference of that right to associate, establish and join freely employers' and workers' organizations.

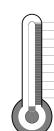
The references to PLC are for instructional purposes only. In some cases, the CEARC or CFA have commented on these provisions; the trainer should be *au jour* with the status of comments dealing with PLC provisions.

Many of the learning assessment questions come directly from actual CFA cases, as reflected in the *2006 Digest*, thus providing a basis for discussion for appropriate final user training groups.

Module 12. Freedom of speech, of assembly and other civil liberties, and the right to organize



(15 minutes)



Importance

Understand that civil liberties like those guaranteed by the Philippine Constitution are essential to the normal exercise of freedom of association rights, and appreciate that infringement in this area compromises full respect for freedom of association.

Content

The presenter should train on:

- The freedoms and rights that compose civil liberties.
- The idea that freedom of association in respect of workers and employers and their organization cannot be fully exercised in the absence of civil liberties.

Method

Ask for a volunteer participant to play the role of a workers' representative/trade unionist. His/her instructions are given verbally in class: The player is to leave the room and prepare on a piece of paper notes of at least ten fictitious but realistic workers' workplace demands/concerns. The player leaves the room to prepare. Follow with introduction to module content, saying demonstration will follow. Player returns and is asked to address the class with

the demands. Trainer considerately applies a gag to the player, explaining that this is the effect of constraint on freedom of speech. Removing the gag, and asking the player to continue, the trainer considerately takes the notepaper from the player, asking him or her to continue. When the player complains that he/she cannot remember the details, the trainer explains that this is the effect of search and seizure of trade union premises/documents. Returning the notes, the player is asked to continue. After a moment the trainer considerately motions for the player to turn his/her back to the room, to continue speaking, and then leads the player to a corner in the training room. The player finishes. Trainer asks for observations from the group. The trainer explains that this is the effect of constraint on freedom of assembly. Follow on with module content.

Clarify

... the following points:

- civil liberties should not normally be infringed
- all arms of the State – including police and military personnel – have the obligation to assure full respect of civil liberties
- Local guidelines have been developed to clarify the roles and functions of all relevant State actors to assure better assure respect for and protection of civil liberties.

References

Content is based on:

- GS2012, ¶¶ 59-60
- D2006, ¶¶ 30-208
- UG§ 1.2

In further developing more detailed training, reference should be made to:

- DPPG
- GWR

Additional Notes:

Learning Assessment

Q56. The full exercise of the right to freedom of association:

- A. depends on the existence of strong workers' and employers' organizations.
 - B. depends on respect for basic civil liberties.
 - C. depends on international human rights.
-

Q57. Under international human rights law, basic civil liberties:

- A. are subject only to the law of the land.
 - B. include the rights to freedom of expression, association, and peaceful assembly.
 - C. are set out in ILO Conventions Nos. 87 and 98.
-

Q58. Since police and military are instrumentalities of the State, they:

- A. have a responsibility to respect freedom of association principles.
 - B. are to protect individuals and groups from infringements of freedom of association principles.
 - C. are to fulfill through positive actions freedom of association rights in practice.
 - D. All of the above.
-

Q59. According to international FoA principles, police in the Philippines should be permitted to forcibly disburse a picket line of workers:

- A. despite it being entirely peaceful, even if conducted unlawfully, without appeal.
 - B. if it failed to be peaceful.
 - C. if it was not caused by an industrial conflict.
 - D. if it has political objectives loosely aimed at improving conditions of the poor and not industrial conflict.
-

Q60. Are restrictions on the exercise of freedom of association rights justified by the general infringement of civil liberties in geographical areas suffering from civil unrest?

- A. No, insofar as those general infringements should be avoided.
 - B. Yes, although those restrictions could be avoided.
 - C. No, insofar as public authorities should make efforts to avoid those restrictions.
 - D. Yes, insofar as freedom of association is part and parcel of other civil liberties.
-

Short answer questions:

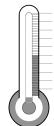
Are there labour laws and regulations that support the protection of workers' civil liberties in the Philippines?

How would the right to public trial of those accused of a crime be a civil right necessary for the full exercise of freedom of association?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	B	D	B	C

Module 13. Freedom of association applies to workers and employer without distinction whatsoever



(15 minutes)

Importance Understanding the breadth of freedom of association right under C87 helps assure that it will be respected.

Content The presenter should train on:

- The fundamental right, held by all workers and employers, to freedom of association and right to organize.
- The term "no distinction whatsoever" is to be understood literally; includes EPZ workers, contract workers.
- The unique exception of *bona fide* military and police.

Method Ask participants which workers should not or do not have the right to organize, and why. If the issue of supervisory staff comes up, discuss current Philippine practice, in particular resulting from amendments enacted through RA 9481, and follow on with module content.

Clarify ... the following points:

- The right to strike and collective bargaining is distinct from the right to organize; the latter is broader.
- Freedom of association is required *de jure* and *de facto*; relevant to EPZs.
- Exceptions of military and policy is strictly and narrowly interpreted.
- Persons should be able to be a member of a trade union even if they are not in employment.
- Coverage by a collective bargaining agreement is not an issue of the freedom to join a trade union.

References Content is based on:

- GS2012, ¶¶ 63-81
- D2006, ¶¶ 209-271
- PLC Art. 245, as amended
- UG§ 1.3
- PEZA Law, Chapter IV
- EPZ, pp. 1-2, 31-32, 49-50, §2.1.1
- CFA50, pp. 32-34

Additional Notes: _____

Learning Assessment

Q61. Which groups of workers do not have a right to freedom of association under Convention No. 87?

- A. firefighters.
 - B. police.
 - C. domestic workers.
 - D. self-employed persons.
-

Q62. According to international standards, persons employed by the military who do not have responsibility for the internal or external security of the State:

- A. should benefit from the freedom of association.
 - B. should not benefit from freedom of association because they are employed by the military.
 - C. may benefit from freedom of association if national law provides.
-

Q63. Security personnel who carry a weapon on the job:

- A. enjoy the right to freedom of association under international standards.
 - B. are not automatically excluded from the right to freedom of association under international standards.
 - C. do not have the right to freedom of association under international standards.
 - D. None of the above.
-

Q64. Is it an infringement of a worker's freedom of association for a freely negotiated collective bargaining agreement to exclude probationary employees from its coverage?

- A. Yes, if the agreement also prohibits probationary employees from becoming a member of the union.
 - B. Yes, because freedom of association requires that all employees be covered by the collective bargaining agreement regardless of probationary status.
 - C. No, as long as the worker has is able to join a trade union of his or her own choosing.
 - D. No, because probationary employees are excluded from Convention No. 87.
-

Q65. Persons employed in EPZ should have exactly the same rights to freedom of association as other persons.

- A. True
 - B. False
 - C. True, provided that other persons have rights that are consistent with ILS.
 - D. False, because special rules can be applied to them.
-

Short answer questions:

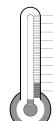
Why is a private employer's harassment of workers for engaging in freedom of association rights a violation of freedom of association rights the State is obliged to protect?

Does PLC Art. 277(c) have any implication for application of C87's guarantee of freedom of association?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	A	C	C

Module 14. Understand international FoA standards by studying international supervision of national FoA regulation



(10 minutes)

Importance

As a result of the intentionally sparse wording of ILS on FoA and CB, we know what these standards mean as a result of ILS supervisory bodies' handling of cases alleging their violation. Understanding this permits clarity in understanding the roles of these bodies and their jurisprudence.

Content

The presenter should train that:

- ILS on FoA and CB have meager but meaningful provisions that leave space for the infinite variations found in State regulation.
- To understand what FoA and CB standards require we look to see what supervisory bodies have permitted.
- The work of supervisory bodies thus has taken on a great importance.

Method

Select a single provision of C87 or C98, a related provision of PLC, and where relevant, a comment from the CEACR dealing with application of the provisions. Use these to illustrate the point and animate discussion of module content.

Clarify

... the following points:

- universality of ILS requires sparse wording of ILS
- ILS supervisory bodies are quasi-judicial, not judicial; yet their views are the basis for tripartite supervision of the instruments

References

Content is based on:

- D2006, p. 5, ¶¶ 1-14
- CFA50, p. 68

Additional Notes:

Learning Assessment

Q66. If a country requires that only persons who have never been arrested may be members of a trade union, has the country made an unacceptable "distinction" in respect of joining an organization in terms of C87, Art. 2?

- A. Yes
 B. No
-

Q67. If a country requires that only employers who have never been subject to tax authority investigation may be members of an employers' organization, has the country made an unacceptable "distinction" in respect of joining an organization in terms of C87, Art. 2?

- A. Yes
 B. No
-

Q68. If the law of the land says that every employer and worker must receive a pictured identification card on membership to an employers or workers organization, has the land interfered with the right of these organizations to organize their administration in full freedom, according to C.87, Art. 3?

- A. Yes
 B. No
-

Q69. If the law of the land says that no employer and worker may resign from their membership in an employers or workers organization for the duration of a declared industrial conflict, has the land interfered with the right of these organizations to organize their administration in full freedom, according to C.87, Art. 3?

- A. Yes
 B. No
-

Q70. If a country regulates that worker complaints of anti-union discrimination be sworn to before a judge, and in practice judges are deign to swear such complains, is the regulation consistent with C98, Art. 1 requirement that workers enjoy adequate protection against acts of anti-union discrimination?

- A. Yes
 B. No
-

Short answer questions:

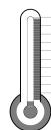
Why is it useful to appreciate that the meaning of ILS on FoA and CB can only be practically understood by considering it in terms of national legislation?

What provision of ILS on FoA or CB do you think is easiest to understand and implement, and why?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	A	A	A	B

Module 15. Freedom of association and the negative right



(20 minutes)

Importance ILS permit individual countries to decide if they want to guarantee workers a right not to join workers' organizations or to authorize union security clauses.

Content The presenter should train that ILS are:

- C87 preparatory work makes clear the neutral position under ILS.
- Condition for union security clauses is that they result from CB.
- Legally imposed compulsory financial contributions are contrary to ILS.

Method Begin with module content. In the light of the ILS position, ask participants to discuss the impact of national regulation favoring or disfavouring a negative right and/or union security provisions for industrial relations climate, establishing and building between the parties, capacity for representation, etc.

Clarify ... the following points:

- National position on a negative right will have an impact on industrial relations climate.
- National policy choice must be seen in broad context; this is not an isolated technical/legal point.
- Labour management council – a body established under law or at the initiative of the employer – is not an exercise of FoA, nor an exercise of a negative right.

References Content is based on:

- GS2012, ¶ 99
- LCP, Arts. 243-245
- D2006, p. 5, ¶¶ 363-368

Additional Notes: _____

Learning Assessment

Q71. The negative right to freedom of association is guaranteed by C87.

- A. True
- B. False
- C. It is neither guaranteed nor prohibited.

Q72. National law can prohibit or permit union security provisions and still be in conformity with FoA standards and principles.

- A. True
- B. False

Q73. The negotiation of a closed shop agreement is unlawful in the Philippines.

- A. True
- B. False

Q74. Employers in the Philippines may, without violating FoA principles, require as a condition of employment that the job applicant not be a trade union member.

- A. True
- B. False

Q75. Employers in the Philippines may, without violating FoA principles, require as a condition of employment that the job applicant be a trade union member (or pay the equivalent for union dues to a union).

- A. True
- B. False

Short answer questions:

Does the Philippines recognize a right to not exercise the freedom of association, or are union security provisions permitted and recognized as valid?

What justification can you find for FoA standards and principles position on the negative right to freedom of association?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	B	B	A

Module 16. Freedom to establish and join organizations of their own choosing without previous authorization



(15 minutes)

Importance

Understand that ILS set limits on formalities States can require for the establishment of workers' and employers' organizations; permits an understanding of scope for crafting acceptable national regulation.

Content

The presenter should train that:

- Most States set formalities for establishing employers'/workers' organizations.
- National regulation must not amount to "previous authorization," give discretionary refusal powers, or amount to impossible-to-surmout obstacles.
- Few limits can be placed on the right to establish or join any organization; legislated monopoly organizations are not consistent with FoA principles, for example.

Method

Begin with module content. Present a single relevant provision of the PLC to illustrate module content and animate discussion. Use where relevant, a comment from the CEACR dealing with the provision's application. Ask what the exercise of FoA without "prior authorization" (in the form of relevant regulations) might be like, keeping in mind the distinction between ILS requirements and choices in national law/policy.

Clarify

... the following points:

- That "informal", unincorporated, voluntary organizations are often permitted to exist, but practical difficulties obliging compliance with formalities often arise when such organization in their own name seek to enter contracts for offices, equipment, etc., and seek recognition from employers for purposes of CB.
- A distinction is drawn between formalities needed for forming an organization (legal personality) and those needed for establishing an organization as a representative for CB.

References

Content is based on:

- PLC Art. 234(c)
- GS2012, ¶¶ 82-88
- D2006, ¶¶ 272-308
- CFA50, pp. 35-38, 39-41

Additional Notes:

Learning Assessment

Q76. The phrase "without previous authorization" refers to the idea that:

- A. governments may not set rules for trade unions without previous authorization.
 - B. workers' and employers' organizations have the right to form their organizations without previous authorization.
 - C. workers may not strike without previous authorization from government.
 - D. All of the above.
-

Q77. Government approval of a meeting by employers to form an association of employers:

- A. is contrary to international standards if the meeting is illegal without that approval.
 - B. may be consistent with international standards if the meeting is to plan interference with workers' right to organize.
 - C. is necessary according to international standards.
-

Q78. The CFA has found that a provision which requires ten or more employers engaged in the same industry to establish an employers' association imposes an excessively high minimum number and violate the right of employers to establish organization of their own choosing.

- A. True
 - B. False
-

Q79. A requirement to receive government approval of a draft constitution in order to form a workers' organization is not consistent with FoA principles.

- A. True, if the requirement is exercised at the discretion of the public authority.
 - B. False, if the approval is entirely an administrative formality.
 - C. Both of the above.
-

Q80. The idea of "without previous authorization" includes:

- A. practices that specifically require previous authorization.
 - B. requirements that amount in practice to previous authorization.
 - C. requirements that amount in practice to outright prohibition of organizations.
 - D. All of the above.
-

Short answer questions:

What types of legal or regulatory requirements for the establishment of employers' or workers' organizations would be consistent with FoA principles?

Why does the availability of appeal to judicial authorities against a refusal by the government to grant an authorization to establish a trade union not excuse a regulation that otherwise amounts to previous authorization, contrary to FoA principles?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	A	C	D

Module 17. Organizations' right to draw up constitutions and rules



(10 minutes)

Importance Understand that the independence of organizations, and hence their ability to serve their intended function, depends on their being permitted to draw up their own rules.

Content The presenter should train that:

- Public authorities shall refrain from any interference that would restrict the right to draw up rules/constitutions independently.
- Most states have some rules on the content of constitutions and/or by-laws; they must be limited to formal requirements.

Method Refer to C87, Art. 3 and a related provisions of the PLC, and where relevant, a comment from the CEACR dealing with application of the provisions. Use these to illustrate the point and animate discussion of module content.

Clarify ... the following points:

- Regulations may be set with regard to the need to follow democratic processes and to ensure members' right to appeal.
- Model constitutions and by-laws may be offered but must in no way be obligatory.

References Content is based on:

- C87, Art. 3
- GS2012, ¶¶ 100
- PLC, Art. 241
- D2006, ¶¶ 369-387

Additional Notes: _____

Learning Assessment

Q81. Any law or regulation setting requirements for the internal functioning of workers' or employers' organizations that has as an objective protecting the interests of members and guaranteeing the democratic function of organizations is consistent with FoA principles.

- A. True
 - B. False
-

Q82. Requirements for the content of workers' or employers' organizations constitutions or rules would be consistent with FoA principles if:

- A. they lay down only formal requirements.
 - B. they lay down requirements that may help ensure democratic functioning of the organization.
 - C. they lay down only formal requirements and do not subject the constitutions or rules to prior approval.
 - D. All of the above.
-

Q83. Does drafting by the public authorities themselves of the constitutions of central workers' organization constitute a violation of the principles of FoA?

- A. Yes
 - B. No
-

Q84. Is a law that requires secret and direct voting by members on matters within the trade union organization on its face contrary to FoA principles?

- A. Yes
 - B. No
-

Q85. Public authorities preparation of model constitutions for possible use by employers' and workers' organizations is compatible with FoA principles provided there is no requirement that the model be used.

- A. True
 - B. False
-

Short answer questions:

Would it be inconsistent with FoA principles for government to try to influence the constitutions and internal rules of organizations of workers and employers to the greatest degree possible without actually infringing on FoA principles – that is seemingly staying *just* within the bounds of the principles requirements?

If a legal provision that union rules shall comply with national statutory requirements is not inconsistent with FoA principles, under what circumstances would it become inconsistent with FoA principles?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	D	A	B	A

Module 18. Organizations' right to elect representatives in full freedom



(10 minutes)

Importance Understand that the independence of organizations, and hence their ability to serve their intended function, depends on the ability of members to freely elect their representatives.

Content The presenter should train:

- Public authorities shall refrain from any interference that would restrict the right of organizations to elect their representatives in full freedom.
- Most states have some rules; they should be limited to formal requirements.

Method Refer to Art. 3 of C87 and ask participants to brainstorm examples of national regulation that might be incompatible with the reference to "full freedom". Record responses and follow on with module content.

Clarify ... the following points:

- ILS promote democratic institutions.
- Supervisory bodies have pinpointed specific, particular types of provisions that are incompatible with ILS.

References Content is based on:

- C87, Art. 3
- GS2012, ¶¶ 101-107
- PLC, Art. 241(c), (f)
- D2006, ¶¶ 388-453
- CFA50, pp. 41-44

Additional Notes: _____

Learning Assessment

Q86. Does the imposition by legislative means of a direct, secret and universal vote for the election of trade union leaders raise problems regarding the principles of FoA?

- A. Yes
 - B. No
-

Q87. Would legal provisions requiring registered organizations to elect their officers by postal vote infringe the freedom to elect trade union leaders?

- A. Yes
 - B. No
-

Q88. The CFA has said that legislation which minutely regulates the internal election procedures of a trade union is not consistent with C87. Would that include fixing the precise date for the annual general assembly?

- A. Yes
 - B. No
-

Q89. Following FoA principles, should employers' organizations be left to set the period of terms of office of their officers?

- A. Yes
 - B. No
-

Q90. Is the requirement that a trade union officer resign his/her position if he/she leave the employment of the enterprise where the trade union is organized contrary to C87?

- A. Yes
 - B. No
-

Short answer questions:

Under what circumstances, consistent with FoA principles, may legislation disqualify persons from trade union office solely because of their political beliefs?

Under what circumstances, consistent with FoA principles, may conviction of a crime constitute grounds for disqualification from holding trade union office?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	B	A	A	A

Module 19. Organizations' right to organize their administration and activities, and formulate their programmes



(10 minutes)

Importance

Understand that the ability of organizations to serve their intended function depends on their ability to freely decide their activities, programmes and means of administration.

Content

The presenter should train that:

- Public authorities shall refrain from any interference that would restrict the right of organizations to organize their administration and activities, and formulate their programmes.
- Most States have some rules; they should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations.
- Appeal must be possible.

Method

Refer to Art. 3 of C87 and related provisions of the PLC, and where relevant, a comment from the CEACR dealing with application of the provisions. Use these to illustrate the point and animate discussion of module content.

Clarify

... the following points:

- The strike is understood to as a programme and activity of workers' organization.

References

Content is based on:

- C87, Art. 3
- GS2012, ¶¶ 108-116
- PLC, Art. 241, various paragraphs.
- D2006, ¶¶ 454-519
- CFA50, pp. 41-44

Additional Notes:

Learning Assessment

Q91. Is it consistent with FoA principles for elected leaders of employers' or workers' organizations to be prohibited from receiving remuneration of any kind?

- A. Yes
- B. No

Q92. Would it be consistent with principles of FoA for a Minister of Labor to be granted in law discretionary authority to investigate the internal affairs of an employers' organization merely if he or she considers it necessary in the public interest to do so?

- A. Yes
- B. No
- C. Depends on the seriousness of the allegations in the particular case.

Q93. Would it be consistent with principles of FoA for the financing of a trade union movement to be dependent on a public body?

- A. Yes
- B. No
- C. No, provided it could be shown that the financing effects the independence of the trade unions.

Q94. Would it be consistent with principles of FoA for organization by-laws to stipulate that membership dues be used exclusively for the benefit of any political party with which that trade union is affiliated?

- A. Yes, because that is how trade unions dues ought to be used.
- B. No, because principles of FoA require that the organizations themselves should decide how their finances are used.

Q95. Legal provisions that require annual auditing of employer organization books of accounts are acceptable in terms of principles of FoA if:

- A. auditing is conducted by an independent government agency.
- B. auditing is conducted by an independent auditor possessing the required professional qualifications.
- C. auditing is conducted by an auditor possessing the required professional qualifications employed by an government agency.
- D. None of the above; no legal provision requiring annual auditing is acceptable.

Short answer questions:

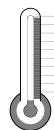
When are political activities, for example, expressing views and providing financial and other supports to political candidates or issues of political interest within the country, considered to be "programmes and activities" in terms of principles of FoA?

Under what circumstances would it be consistent with FoA principles for organizations of workers and employers to join voices in opposition of government policies?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	B	B	A	B

Module 20. The right to strike as a programme and activity of workers' organizations



(15 minutes)

Importance

Insofar as there is no reference of a right to strike in ILS, it is useful to have an understanding of the origin and content of the principle of a right to strike.

Content

The presenter should train on:

- The absence of an explicit right to strike in ILS; the "right to strike in accordance with law" is found in Section 3, PC1987.
- The progressive development by the CEACR and CFA of the principle of a right to strike flowing from C 87, Arts. 3 and 10.
- The logic of a right to strike related to the promotion of collective bargaining as compared with collective begging.
- The CEACR has summarized the conditions needed for legitimate exercise of the right to strike.
- ILO supervision of the right to strike focuses, in practice, on law and practice that overly restricts the strike.

Method

Ask participants what motivates parties to reach agreement in collective bargaining. The threat of strike or lockout should be named. Continue with module content.

Clarify

... the following points:

- The right to strike applies to peaceful strikes; there is no right to strike for violent strikes.
- National restrictions are permitted in respect of wildcat strikes, public servants exercising authority in the name of the State (denial is permissible subject to limitations), essential services in the strict sense of the term, situations of acute national or local crisis, and wholly political strikes.
- Employer lockouts is not inconsistent with FoA principles; they may be permit, regulated or prohibited by national law as the country itself decided.

References

Content is based on:

- GS2012, ¶¶ 117-161
- GS2012, ¶ 122 for summary of conditions for exercise of the right to strike
- PLC, Title VIII
- D2006, ¶¶ 520-676
- LRP, pp. 21-25
- CFA50, pp. 44-48
- EPZ, § 3.3

Additional Notes: _____

Learning Assessment

Q96. The right to strike:

- A. is mentioned in Convention No. 87 but not Convention No. 98.
 - B. is mentioned in the 1998 Declaration on Fundamental Principles and Rights at Work.
 - C. is not mentioned in any international labour standard of the ILO.
-

Q97. According to ILO supervisory bodies, the right to strike:

- A. is an essential means available to workers and their organizations to protect their interests.
 - B. is a right held by individuals, not trade unions.
 - C. should never be subjected to conditions.
 - D. None of the above.
-

Q98. A general prohibition of strikes in national law:

- A. is consistent with international freedom of association standards.
 - B. is not consistent with international freedom of association standards.
 - C. is consistent with international freedom of association standards if it is established as a means to promote social justice.
-

Q99. The setting of conditions for the lawful exercise of a right to strike is consistent with international labour standards on freedom of association:

- A. only to the extent the conditions are imposed to protect the life, personal safety or health of the whole or part of the population.
 - B. provided they do not have the effect of making it impossible to conduct a lawful strike.
 - C. provided they do not have the effect of making a lawful and meaningful strike impossible in practice.
-

Q100. The finding of a national court that a strike is unlawful under national law:

- A. should be consistent with international standards in order for the prohibition to be consistent with international standards.
 - B. is always and unconditionally accepted by international supervisory bodies, since they respect the sovereignty of states' judicial system.
 - C. can never be second guessed by international supervisory bodies.
-

Short answer questions:

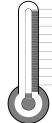
What function does a right to strike serve in respect of collective bargaining processes?

How is it that the right to strike in one country can be different from that in another country, and still be consistent with principles of FoA?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	B	C	A

Module 21. Reducing strike actions by designating essential services in the strict sense of the term



(30 minutes)

Importance Designating services as "essential" has long been a method for restricting strikes. To be consistent with ILS, the services designated as "essential" must be so in the strict sense of the term.

Content The presenter should train that:

- The CEACR and CFA accept restrictions only on services "the interruption of which would endanger the life, personal safety or health of the whole or part of the population."

Method Begin with module content. Engage in discussion on the motivational purpose of the strike and the idea that robust collective bargaining processes rely on this motivation, accepting the disrupting quality of strikes.

Clarify ... the following points:

- The CEARC and CFA have been given the opportunity to elaborate services that are essential in the strict sense of the terms and those that are not.
- Industries found to be "indispensable to national interest" are not essential within the strict sense of the term.

References Content is based on:

- GS2012, ¶ 134: Activities not considered as essential services; ¶ 135: Activities considered as essential services
- PLC, Art. 263(g); DO No. 40-G-03
- UG§ 1.4, pp. 20-25
- D2006, ¶¶ 581-594

Additional Notes: _____

Learning Assessment

Q101. A prohibition of a strike is:

- A. consistent always with ILS and principles on FoA.
 - B. consistent with ILS and principles on FoA to the extent the strike involves services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.
 - C. inconsistent with ILS and principles on FoA.
-

Q102. Essential services within the strict sense of the term are:

- A. those where a strike would pose a clear and imminent threat to the life, personal safety or health of the whole or part of the population.
 - B. any where life may be threatened if there were a strike.
 - C. any which are determined in legislation to be so.
 - D. All of the above.
-

Q103. According to the CFA, does what is meant by essential services in the strict sense of the term depend to a large extent on the particular circumstances prevailing in a country?

- A. Yes
 - B. No
-

Q104. Which of the following, according to the CFA, have been considered essential services in the strict sense of the term?

- A. the petroleum sector.
 - B. the hospital sector.
 - C. ports.
 - D. refuse collection services.
-

Q105. Which of the following, according to the CFA, have been considered not to be essential services in the strict sense of the term?

- A. the provision of food to pupils of school age and the cleaning of schools.
 - B. banking services.
 - C. air traffic control.
 - D. telephone services.
-

Short answer questions:

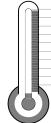
How could a strike that began in services that are not essential in the strict sense of the term become essential in the strict sense of the term?

How can legislation properly defining essential services in the strict sense of the term, and restricting strikes in those services be a better way of respecting FoA principles than legislating to dampen the impact of strikes by specifically naming service and restricting strikes therein?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	A	B	B

Module 22. Reducing disruption caused by strikes by promoting negotiated minimum services



(30 minutes)

Importance

Seen in terms of ILS, only very limited restrictions may be placed on exercise of the right to strike. This module trains on the regulatory technique "negotiated minimum services" and illuminates under what conditions it is consistent with ILS.

Content

The presenter should train that:

- The requirement that negotiated minimum services be maintained despite a labour dispute is consistent with ILS provided that certain conditions are met.
- Negotiated minimum services may only be required in three situations: (a) *bona fide* essential services; (b) any service "in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population"; and (c) in public services of fundamental importance.
- Where the first situational requirement is met, any negotiated minimum service must be: (a) genuinely and exclusively be a minimum service; and (b) workers' organizations should be able to define the service.

Method

Begin with module content. Divide participants into small groups to discuss how negotiated minimum services could be used to replace the arrangements seen in PLC Art. 263(g) and DO No. 40-G-03. Report back in plenary and discuss.

Clarify

... the following points:

- It is perfectly acceptable to replace overly broad strike restrictions with restrictions that are designed to – and actually do in practice – operate in conformity with ILS.

References

Content is based on:

- GS2012, ¶¶ 136-139
- PLC, Art. 263(g), ¶ 2, DO No. 40-G-03
- UG§ 1.4, pp. 20-25
- D2006, ¶¶ 604-627

Additional Notes:

Learning Assessment

Q106. When would a mandatory minimum service imposed by the State be consistent with ILS and FoA principles?

- A. When it involves essential services in the strict sense of the term.
 - B. When it involves essential services.
 - C. When the quantity of services mandated as minimum services is not so much to make the strike ineffective.
 - D. Never.
-

Q107. If minimum services are defined by a workers' organization, they are:

- A. automatically acceptable because they represent a forfeiture of the strike for those workers.
 - B. not acceptable under ILS and FoA principles because they may not involve an essential service.
 - C. not acceptable as long as the employer has not agreed to them.
 - D. must be accepted by the government before they are valid.
-

Q108. What benefit is there to requiring that minimum services be negotiated in an essential service in the strict sense of the term?

- A. It builds the ability and confidence of the parties in collective bargaining.
 - B. It avoids having the government prohibit the strike in an essential service in the strict sense of the term.
 - C. It promotes the possibility of reaching agreement of the underlying dispute over terms and conditions through collective bargaining.
 - D. All of the above.
-

Q109. Are all employees in a hospital engaged in an essential service in the strict sense of the term?

- A. Yes
 - B. No
 - C. Possibly, depending on the duration of the strike.
-

Q110. Would the frequency of strikes in a particular sector or service warrant a requirement for negotiated minimum services?

- A. Yes
 - B. No
-

Short answer questions:

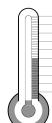
What is the justification for permitting an obligation to negotiated minimum service in essential services within the strict meaning of the term?

What effect would there be on collective bargaining if negotiated minimum services were mandated wherever a strike was threatened, regardless of the character of the services/work being struck?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
D	A	D	C	B

Module 23. Organizations' not liable to dissolution or suspension by administrative authority



(30 minutes)

Importance Organizations of workers and employers can only operate properly if they are free from fear of dissolution without adequate legal safeguards.

Content The presenter should train that:

- Convention 87, Art. 4 prohibited administrative dissolution; judicial dissolution subject to conditions of due process of law are required.

Method Start with module content. Divide participants into small groups to discuss current Philippine practice, in particular resulting from amendments enacted through RA 9481, and their conformity to ILS requirements. Report back in plenary and discuss.

Clarify ... the following points:

- Administrative order dissolving or suspending a trade union may be issued, but its execution should be automatically stayed pending appeal.
- CFA has emphasized that cancellation of registration of an organization by the registrar of trade unions is tantamount to dissolution by administrative authority.
- The reasons for dissolution should be narrowly drawn; dissolution of an entire organization because of illegal activities of leaders constitute a clear violation of the principles of FoA.
- Amendments made by RA 9481 (2007) were negotiated thru a tripartite process, in response to observations of the CEACR.

References Content is based on:

- GS2012, ¶ 162
- D2006, ¶¶ 677-709
- PLC, Art. 238-9
- D2006, ¶¶ 677-709
- CFA50, pp. 49-51

Additional Notes: _____

Learning Assessment

Q111. The suspension or dissolution of an employers' or workers' organization, under international labour standards:

- A. may never be finally ordered by administrative authorities.
 - B. may never be executed by administrative authorities.
 - C. may never be executed by the police, on order of a court of law.
-

Q112. Laws and/or regulations for the suspension or dissolution of employers' and workers' organizations:

- A. must give the possibility for the hearing of a defense against such action.
 - B. must be made prior to their execution.
 - C. must provide for the right to appeal against such action.
 - D. All of the above.
-

Q113. Laws and/or regulations for the suspension or dissolution of employers' and workers' organizations:

- A. may permit a dissolution order by administrative authorities.
 - B. may permit a dissolution order by administrative authorities, provided there is the possibility of appeal to a judicial authority.
 - C. may permit a dissolution order by administrative authorities, provided there is the possibility of appeal to a judicial authority and execution of the order is stayed pending appeal.
-

Q114. Protections in international freedom of association standards against arbitrary dissolution or suspension by administrative authorities:

- A. does not grant workers' or employers' organizations exemption from the law of the land.
 - B. does not grant workers' or employers' organizations immunity from the law of the land.
 - C. does not grant workers' or employers' organizations immunity from the law of the land, provided that law is not such as to impair, nor applied as to impair guarantees provided for in international standards.
-

Q115. Permitting dissolution of an organization because of the illegal activities of its leader or leaders:

- A. is an overly broad remedy that dramatically infringes on FoA rights and principles.
 - B. is acceptable in terms of FoA and CB standards and principles if it can be shown that a majority of workers in the organization were aware of the illegal activities.
 - C. is always justified in terms of FoA and CB standards and principles.
 - D. None of the above.
-

Short answer questions:

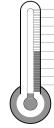
Why it is generally not acceptable in terms of ILS and FoA principles for legislation to be enacted ordering the dissolution of a workers' or employers' organization?

Why would it not be acceptable in terms of ILS and FoA principles to permit dissolution of workers' or employers' organizations for any reason as long as it is by judicial order?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	D	C	C	A

Module 24. Organizations' right to establish and join federations, confederations and international organizations



(30 minutes)

Importance Employers' and workers' organizations are authorized and have the right to defend the interests of their members. Doing so means being able to join together as organizations.

Content The presenter should train that:

- C87, Art. 5 recognizes explicitly the right of organizations to join together in federations, confederations, etc.
- States may not interfere with this right.

Method Start with module content. Divide participants into small groups to discuss whether Philippine practice conforms to ILS requirements; the CEACR says it does not. Report back in plenary and discuss.

Clarify ... the following points:

- The CEARC and CFA have examined interventions by public authorities found to unacceptably interfere with FoA standards and principles.
- The tripartite CFA has said that the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with C87, Art 5 and with the principles of freedom of association.

References Content is based on:

- GS2012, ¶ 163
- D2006, ¶¶ 710-768
- PLC, Art. 237(a)
- CFA50, pp. 40-41

Additional Notes: _____

Learning Assessment

Q116. Is it consistent with principles on FoA to establish in law a minimum number of trade union needed to establish a higher-level organization?

- A. Yes
 - B. No
 - C. Yes, but the number should not be so excessive as to make establishment impossible.
-

Q117. Is legislation that prevents the establishment of federations bringing together trade unions of different activities in a specific locality or area incompatible with C. 87?

- A. Yes
 - B. No
-

Q118. Is it compatible with principles of FoA for the Minister of Labor to be able to veto the affiliation of a trade union with a federation on the grounds of national security?

- A. Yes
 - B. No
-

Q119. Would it be compatible with principles of FoA for national law to prohibit organizations of public servants affiliating with federations or confederations of workers in the private sector?

- A. Yes
 - B. No
-

Q120. Would it be compatible with principles of FoA for national law to require government permission for the international affiliation of a trade union?

- A. Yes
 - B. No
-

Short answer questions:

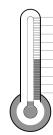
Are there any circumstances consistent with principles of FoA that would permit public authorities to ban national employers' organizations from receiving financial assistance or other benefits from international organizations to which they are affiliated?

What are the limits to national security being used as defense to interfere with international activities of organizations of employers and workers, consistent with principles of FoA?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	B	B	B

Module 25. Contract workers and freedom of association



(15 minutes)

Importance

The guarantee of FoA to all workers and employers is literal. No group of workers should thus be excluded, and no seemingly neutral factor, including short term contracting, should effectively make it impossible to form or join a workers' or employers' organization.

Content

The presenter should train that:

- Neutral factors can have the effect, in combination facts and/or law, to make it impossible for workers to organize.
- Remedial measures can be taken, in law and in practice, to minimize or eliminate these discriminating effects; multi-employer collective bargaining and agreements, for example.
- Examples include: Short-term employment contracting practices that enable easy camouflaging of anti-union discrimination; rules for constituting employee lists used in certification elections have effect of disenfranchising more workers than may be acceptable in terms of ILS where, for example, the workers are sub-contractors.

Method

Start with module content. Divide participants into small groups to:
(a) identify up to three examples of neutral factors impeding FoA rights; and
(b) possible remedial action in respect to each. Report back in plenary and discuss.

Clarify

... the following points:

- The analytical approach to this problem is the same as that used to establish indirect discrimination in terms of race, sex, etc.
- PLC, Art. 248(c) on its face deals with direct discrimination.
- PLC, Art. 277(c) does not prohibit membership.

References

Content is based on:

- GS2012, ¶ 77
- PLC, Art. 248(c), Art. 277(c)
- D2006, ¶ 255

Additional Notes:

Learning Assessment

Q121. What is "indirect" discrimination?

- A. Employment action taken on neutral grounds that have a disproportionate effect on a protected group, i.e. trade union members.
 - B. Employment action taken on neutral grounds that have a disproportionate effect on a protected group, i.e. trade union members, unless the practice can be objectively justified by a legitimate aim.
 - C. Both of the above.
-

Q122. Would asking applicants for short term employment whether they are members of a trade union be inconsistent with principles of FoA?

- A. Yes
 - B. No
-

Q123. Would it be consistent with principles of FoA for trade union membership to be a consideration in determining whether the employment of individual workers should be terminated during a redundancy round?

- A. Yes
 - B. No
-

Q124. At what stage during a worker's employment could the issue of FoA principles and short-term contracting arise?

- A. recruitment.
 - B. termination.
 - C. promotion.
 - D. All of the above.
-

Q125. Do employers face *bona fide* market pressures that justify the employment of workers on short-term contracts?

- A. Yes
 - B. No
-

Short answer questions:

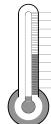
What can trade unions and employer's organizations do to minimize the possibility of short-term contracting being used defeat the exercise of FoA rights?

What facts would be relevant in showing anti-union discrimination in the termination of short-term contract employees?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	B	D	A

Module 26. Industrial peace and industrial relations under international standards



(30 minutes)

Importance

The application of FoA and CB standards and principles do not guarantee industrial peace. Only the parties involved can act to make this possible. However only with full respect for FoA and CB rights can the prerequisites for industrial peace be established.

Content

The presenter should train that:

- Industrial peace and a constructive industrial relations environment is based on human interactions, for which there are no guarantees.
- Only by setting up the prerequisites for industrial peace and constructive industrial relations is there hope that the parties will respond and act favourably.
- Suppression of fundamentals, such as representation, or reticence to recognize for collective bargaining, can give short-term solutions but not long term industrial peace.
- Industrial peace and sound industrial relations may require culture shift where it does not already exist.

Method

Ask participants to brainstorm industrial peace indicators (signs that show, evidence of). Absence of strikes as well as productive and satisfied workers should be included. Discuss what would be needed to establish these signs sustainably. Representation, mutual recognition, consultation, should be included. Follow on with module content. Conclude by discussing if/how industrial peace is challenged by contention over collective bargaining status.

Clarify

... the following points:

- This module contains arguments; examples can be mustered to support.
- Notice that much of what this module deals with is well within the norms set down in FoA principles and respect for the spirit of FoA principles is something that often goes beyond staying within the bounds of what is permissible under FoA principles.
- Employers and workers should benefit from the exercise of FoA and CB principles as a matter of right, not of privilege.
- The "business case" may make it easier to convince doubters of FoA and CB rights, but cannot be seen as a condition for their respect; this would imply that the absence of a business justification warrants disrespect of these rights.

References

Content is based on:

- PLC, Art. 211
- D2006, ¶¶ 176, 475, 655, 656, 934, 941, 971, 1045 (indicative)

Additional Notes: _____

Learning Assessment

Q126. Which of the following assumptions are made as a foundation for the proposition that respect for principles of FoA and CB helps guarantee industrial peace?

- A. That both employers' and workers' representatives are indeed representative of their constituents' interests.
 - B. That both employers' and workers' representatives enter into industrial relations in good faith, respectful of each others' rights and obligations.
 - C. That principles of FoA and CB need to be fully respected in law and in practice, including the right to strike.
 - D. All of the above.
-

Q127. Which of the following assumptions may be made as a foundation for the proposition that failure to respect principles of FoA and CB is justifiable?

- A. That the employer alone can know and judge what will satisfy workers' interests.
 - B. That workers can be satisfied without having an independent voice in determining terms and conditions of employment.
 - C. That the industrial relations climate at the enterprise does not reflect or influence broader social environment and therefore should be seen in isolation from broader social objectives.
 - D. All of the above.
-

Q128. This module has posited that respect for principles of FoA and CB improve the possibility for long term industrial peace and industrial relations, and that building the necessary foundations contribute to sustainable development.

- A. True
 - B. False
-

Q129. This module has posited respect of FoA and CB principles is obliged as a matter of right.

- A. True
 - B. False
-

Q130. This module has posited that industrial peace:

- A. can never be guaranteed, under any circumstances.
 - B. flows automatically from respect for FoA and CB principles.
 - C. is assured by restriction of resort to legal strikes.
 - D. All of the above.
-

Short answer questions:

Once principles of FoA and CB are fully respected in law, what can be done to help ensure that the employers' and workers' representatives' make choices that move toward industrial harmony?

How often should a check be made of whether respect for principles of FoA and CB are contributing to industrial peace?

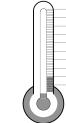
Answers to multiple choice questions in this module

Question 1	Question 2	Question 3	Question 4	Question 5
D	D	A	A	A

Module 27. Subordination of national law to international standards: The case of C87



(10 minutes)



Importance Understand that "the laws of the land" are subordinated to ILS on FoA.

Content The presenter should train that:

- C87, Art. 8 specifically provides first that workers and employers and then their organizations shall exercise their rights in accordance with the law of the land, and secondly that the law of the land may not impair the guarantees provided for in the Convention.
- The guarantees of C87 would be meaningless without the condition that the law of the land not contravene them.

Method Ask participants what remedy is available if the law of the land conflicts with C87 – assuming that C87 is ratified. Specific identified issues of FoA application in the Philippines can be used to make the discussion concrete. Continue with module content.

Clarify ... the following points:

- This principle applies explicitly to all the guarantees of C87.
- This principle assures recourse to the ILO for infringements on FoA rights and principles.
- This principle applies in respect of all ILS to the extent States are obliged through ratification to implement their provisions in national law.

References Content is based on:

- C87, Art. 8
- D2006 ¶¶ 340, 1005

Additional Notes: _____

Learning Assessment

Q131. Under international standards, freedom of association must be exercised in accordance with the law of the land.;

- A. provided the law of the land is consistent with international standards.
 - B. even if the law of the land is not consistent with international standards.
 - C. despite the law of the land being inconsistent with international standards.
-

Q132. In a case where ILS on FoA have not been ratified, when is it acceptable for the law of the land of an ILO member State affecting FoA to be inconsistent with the ILO's FoA principles?

- A. When it is justified by national security.
 - B. Anytime, because the member State is not bound by C87 or C98.
 - C. In principle, never; the CFA may pronounce on a challenge to national law.
 - D. Never, provided that the CFA actually decides on a challenge to national law.
-

Q133. For citizens of the country involved, would it be appropriate:

- A. to respect the law of the land until it is duly challenged.
 - B. to consider ignoring the law of the land in order to raise the facts needed for a legal challenge.
 - C. to respect the law of the land insofar as C87 and the CFA has recognized that workers and their organization have an obligation to respect the law of the land, but to consider ignoring the law of the land in order to raise the facts needed for a legal challenge.
 - D. Any of the above.
-

Q134. Art. 8 of C87 applies to all the provisions of C87.

- A. True
 - B. False
-

Q135. Would a domestic challenge to national law based on C87, Art. 8 be sufficient to estop jurisdiction in the CFA?

- A. Yes
 - B. No
-

Short answer questions:

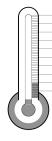
Why is C87, Art. 8 critically important for the exercise of FoA rights?

What mechanisms are there within the ILO to help assure that the principle establish in C87, Art 8 is applied to countries even in the absence for ratification of ILS on FoA and CB?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	C	D	A	B

Module 28. Incorporation of ILS into national law: The case of Conventions Nos. 87 and 98



(15 minutes)

Importance

The State has the obligation, on ratification, to assure incorporation of C87 and C98 into national law. This is done in a manner appropriate to the system of law of the country involved.

Content

The presenter should train that:

- For countries with a monist legal tradition, ratified international treaties are automatically incorporated into national law, i.e. domestic legal actions can be based on the law of the treaty.
- Countries with dualist legal traditions must enact national laws to give effect to the requirements of the international treaty.
- Most provisions of C87 have a negative content and typically require incorporation by abstinence of action by the State.
- Most provisions of C98 cannot be literally incorporated, they are not self-executing; even in countries with monist traditions, positive State action is needed.

Method

Guide participants to the texts of C87 and C98, and ask how these provisions are to be given effect. Follow on with module content.

Clarify

... the following points:

- A monist legal tradition directly incorporates international obligations into domestic law, giving a direct cause of action in domestic courts for violation of rights created thereby.
- A dualist legal tradition sees international obligations as separate from the content of domestic law, requiring that any right created by international obligations be specifically created in domestic law before they can be enforced domestically.
- Countries' legal traditions can be a blend of monist and dualist, depending on several factors including the source of international obligations and the nature of the rights they create, i.e. whether they *prima facie* self-executing.

References

Content is based on:

- LM, Part 1
- Provisions obliging abstinence: C87, Arts. 2, 3, 4, 5, 7
- Positive action provisions: C98, Arts. 1, 2, 3, 4

Additional Notes:

Learning Assessment

Q136. Do countries with a monist legal tradition need to enact national legislation to fully implement C87?

- A. Yes
 - B. No
-

Q137. Do countries with a monist legal tradition need to enact national legislation to fully implement C98?

- A. Yes
 - B. No
-

Q138. What is a self-executing provision of an international treaty?

- A. A provision that can be enforced immediately, without intervening legislative, executive, or judicial action.
 - B. A provision that leads to a person's execution.
 - C. A provision that is executed by the international organization.
 - D. None of the above.
-

Q139. Are ILO conventions generally self-executing?

- A. Yes
 - B. No
-

Q140. How often does an ILS provision have to be executed?

- A. as often as is needed for the ILS to be implemented in law.
 - B. once.
 - C. never in a country with a monist legal tradition.
 - D. None of the above.
-

Short answer questions:

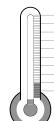
Which provisions of C87 are self-executing?

Which provisions of C98 are self-executing?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	A	B	A

Module 29. The co-existence of rights: Limits of opposition, property and economic rights, etc.



(15 minutes)

Importance Understand that the rights and guarantees from ILS and principles on FoA and CB imply an accommodation of the rights of the parties.

Content The presenter should train that:

- FoA and CB rights are exercised in a context. An aspect of that context is the inherent dependency of workers on employers and the *potential* for exploitation of that relationship.
- The right to unrestrained operation of an enterprise has long been subordinated to other rights, relative to the world of work and other contexts as well.
- The CFA has, for example, said that the right to free expression of anti-union sentiment can have a harassing and/or intimidating effect, and that where this right is exercised it has to be done without competing with the right to organize.

Method Ask participants to brainstorm (in groups or in plenary) what rights employers and workers have in respect of their relationship to each other as well as to others that are relevant to their relationship. Explore which rights are believed to override others and how others can be exercised in tandem with each. Follow on with module content.

Clarify ... the following points:

- The right to work has also been recognized by the CFA. The CFA has acknowledged that picketing accompanied by coercion of non-strikers in an attempt to interfere with their freedom of work constitutes a criminal offence in many countries, and that this is a different case from picketing and firmly but peacefully inciting other workers to keep away from their workplace – which cannot be considered unlawful.
- Management has the right to hire workers, discipline them (warning letters, suspension, demotion, etc.), and to terminate their employment in accordance with the law if they do not meet the employer's needs. It has the right to manage its workforce, again within the limits set by law, to achieve productive results; it has no "right" to a productive workforce as such.
- Accepting the fact of erosion of absolute management rights and its *bona fides* is an essential foundation upon which a win-win industrial relations climate can be built; without its acceptance, a positive climate is likely impossible to develop.
- Under ILS, the extent of management prerogative may be a subject for collective bargaining; or it may be excluded by law as a subject for

bargaining. In either case, management rights are not absolute in the face of FoA principles. The right to expression is a good example of this.

References

Content is based on:

- GS2012, ¶¶ 215-216
 - CFA Case No. 2683, ¶¶ 584-585
 - D2006 ¶ 651 (indicative)

Additional Notes:

Learning Assessment

Q141. According to the module, in which of the following is there inconsistency that cannot be reconciled?

- A. the right to manage an enterprise and principles of FoA and CB.
 - B. absolute management prerogative and principles of FoA and CB.
 - C. freedom of expression and freedom of association.
 - D. All of the above.

Q142. FoA and CB principles and rights can only be fully exercised when civil and political liberties are fully respected.

- A. True
 - B. False

Q143. Since the CFA has recognized a right to work held by workers – which limits actions by picketers to those that would be consistent with FoA and CB principles – could it also find in certain cases that use of the lock out in industrial disputes is not consistent with FoA and CB principles?

- A. Yes
 - B. No
 - C. Maybe

Q144. Rights are almost never absolute.

- A. True
 - B. False

Q145. Which of the following is not an example of an accommodation of rights?

- A. workers' right to strike and workers' the right to work.
 - B. managements' right to expression and workers' the right to organize.
 - C. the full exercise of civil liberties and the freedom of association.
 - D. employers' management rights and workers' right to collectively bargain.

Short answer questions:

Why is it important to acknowledge the relationship between respect of certain rights and that of others?

What relationship is there between social- and self-interest in acknowledging and respecting the accommodation of rights?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	C	A	C

Module 30. Consultative bodies and freedom of association



(20 minutes)

Importance Understand that to the extent they are creations of the employer, consultative bodies set up in enterprises are not an expression of freedom of association.

Content The presenter should train that:

- The exercise of FoA means that the resulting workers' and employers' organizations exist because of workers' and employers' choice and activity, exercised independently of each other.
- Bodies created by management or under law for consultative purposes such as joint worker/management committees or workers' councils are not exercises of freedom of association.

Method Ask participants to describe consultative bodies present in enterprises they are familiar with. Follow on with module content, comparing and contrasting with the examples offered by the group.

Clarify ... the following points:

- Consultative bodies are not inherently contrary to FoA; they may contribute to good industrial relations and communications within the enterprise.
- Consultative bodies may be venues for the discussion of workers' benefits, rights, and welfare. However, as long as the discussion is not between independent representatives of the employer and the workers it is not an exercise of FoA.
- An inherent potential for interference with the right to organize does exist where consultative bodies are created with the purpose of undermining independent representation.

- Joint consultative bodies should be distinguished from "yellow unions" or workers' organizations under the domination and control of employers. These types of organizations, with all the trappings of a trade union, are clearly contrary to FoA ILS and principles.

References

Content is based on:

- R129, in particular Part I, ¶¶ 2-4
- PLC, Art. 255
- UG§ 1.8
- D2006 ¶¶ 871-879 (indicative)

Additional Notes:

Learning Assessment

Q146. What is the critical element to determine if a body/group/organization is an exercise of freedom of association?

- A. formation of the body is the result of independent action and decision of employers or workers.
 - B. the financing of the organization is predominantly from its members.
 - C. the financing of the organization does not compromise its independence.
 - D. All of the above.
-

Q147. Is the existence of a consultative body as such contrary to principle of FoA and CB?

- A. Yes
 - B. No
-

Q148. When is the existence of a consultative body inconsistent with principles of FoA and CB?

- A. when it has the effect of undermining the formation of a workers' organization independent of the employer.
 - B. when it is created to undermine the exercise of freedom of association.
 - C. when it takes up matters that are reserved under law either to management decision or decision reached through collective bargaining between an independent organization of workers and the employer.
 - D. All of the above.
-

Q149. Can law require the formation of consultative bodies without infringing principles of FoA and CB?

- A. Yes
 - B. No
-

Q150. A system of industrial relations that provides for handling of matters of interest to workers via a consultative body mandated by law and trade union representation independently selected by workers is called:

- A. single channel system.
 - B. dual channel system.
 - C. consultation/trade union system.
 - D. the French system.
-

Short answer questions:

What can be done at the national level to assure that a consultative body does not have the effect of undermining the exercise of FoA and CB rights?

What can be done at the enterprise level to assure that a consultative body does not have the effect of undermining the exercise of FoA and CB rights?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
D	B	D	A	B

3. ILS and principles on collective bargaining

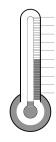
This Section deals with the ILO standards and principles on collective bargaining.

The trainer will almost certainly want to start with the all encompassing point that C98 on the Right to Organise and Collective Bargaining focuses on state action to: (a) protect employers and workers from interference with each other's rights; and (b) the promotion of voluntary collective bargaining.

The references to PLC are for instructional purposes only. In some cases, the CEARC or CFA have commented on these provisions; the trainer should be *au jour* with the status of comments dealing with PLC provisions.

Many of the learning assessment questions come directly from actual CFA cases, as reflected in the *2006 Digest*, thus providing a basis for discussion for appropriate final user training groups.

Module 31. Adequate protection against acts of anti-union discrimination



(15 minutes)

Importance FoA cannot exist without adequate protection from acts of anti-union discrimination.

Content The presentation should be organized along 2 lines, acts covered and adequacy of protection:

- Anti-union discrimination entails: (i) making employment subject to the condition of joining or not joining a union; and/or (ii) prejudicing a worker by reason of union membership or participation in union activities

outside of working hours or, with the consent of the employer during working hours.

- Engaging in blacklisting, non-renewal of contracts, transfer, relocation, demotion, withdrawal of benefits or restrictions of all kinds taken or adopted for anti-union reasons are contrary to C98 and FoA principles.
 - "Adequate" protections as required by C98, are understood by the CEACR to be: (a) effective and rapid procedures, coupled with; and (b) sufficiently dissuasive sanctions.

Method Present module content. Divide participants into groups. Noting that protective legislation appears to be in place, ask groups to identify types of anti-union discrimination and give examples of best practice methods actually used to avoid or remedy them.

Clarify ... the following points:

- An employer can insist on trade union activities not taking place during working hours.
 - CEACR and CFA have commented on the adequacy of specific protective mechanisms.

References Content is based on:

- C98, Art. 1
 - GS2012, ¶ 176-193
 - UG, p. 33
 - PLC, Art. 248(a)-(c), (e)-(f)
 - D2006 ¶ 769-854
 - EPZ, § 3.5

Additional Notes:

Learning Assessment

Q151. In following the spirit of FoA principles, security guards:

- A. have the right to reflect management attitudes toward trade unions and workers seeking to organize trade unions, whatever they may be.
 - B. should be neutral in respect of workers' exercise of legitimate freedom of association rights, including to form and join organizations of their own choosing.
 - C. should be neutral in respect of workers' exercise of freedom of association rights, including to form and join organizations of their own choosing, on the condition that they can fulfil their responsibility to protect the property and other interests of their employers.
 - D. All of the above.
-

Q152. Is there a legitimate purpose to be served by private security personnel spying on the legitimate trade union activities of workers?

- A. Yes
 - B. No
 - C. Maybe
-

Q153. Which of the following can be an act of anti-union discrimination?

- A. termination of employment.
 - B. denial of promotion.
 - C. physical harassment.
 - D. All of the above.
-

Q154. When may an action prejudicing a worker in employment be an act of anti-union discrimination?

- A. when at least part of its motivation is to undermine exercise of FoA rights.
 - B. when its entire motivation is to undermine the exercise of FoA rights.
 - C. when it has the effect of undermining exercise of FoA rights.
 - D. All of the above.
-

Q155. The principle to be drawn from C98, Art. 1(1) is that:

- A. no prejudice should come to workers who engage in union activities.
 - B. no prejudice should come to workers who engage in union activities at the hand of an employer.
 - C. if a worker who engages in union activities is prejudiced because of those activities, adequate protection should be available.
 - D. All of the above.
-

Short answer questions:

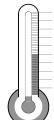
What effect on the exercise of FoA rights is there as a result of adequate protections, besides simply providing a remedy to prejudiced workers?

Why is reinstatement an important element of adequacy in protection against anti-union discrimination?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	B	D	D	D

Module 32. Adequate protection against acts of interference by each other's organizations and its principle for employers, workers and their organizations



(15 minutes)

Importance The proper operation of workers' and employers' organizations depends on their functioning independently from each other.

Content The presenter should train:

- Freedom from interference with organizations applies to their:
(a) establishment; (b) functioning; and (c) administration.
- The establishment of "yellow unions" or "company unions", workers' organizations under the domination of company management are clear examples of the interference.

Method Ask participants to brainstorm conduct that would amount to interference. Follow on with module content, comparing and contrasting with the results of the brainstorm.

Clarify ... the following points:

- Interference includes favoritism between organizations.
- Affording trade union's facilities to promote their capacity as a social partners is not inherently contrary to FoA standards or principles as long as it does not have the effect of allowing the employer control over the union or favoring one union over another.
- CEACR and CFA have commented on the adequacy of specific protective mechanisms.

References Content is based on:

- C98, Art. 2
- GS2012, ¶¶ 194-197
- D2006, ¶¶ 855-879
- PLC, Art. 248(d)
- CFA, pp. 54-55

Additional Notes: _____

Learning Assessment

Q156. Which of the following would constitute interference of an employer with a workers' organization?

- A. Employer payment to workers' representatives conditioned on their following employer instructions.
 - B. A party held for trade union leaders, in order to influence the positions taken by the leaders.
 - C. Security personnel telling workers that the employer would give 5 days of paid leave to workers who became members of one union instead of another.
 - D. All of the above.
-

Q157. Does an employer interfere with a workers' organization if it offers the organization an office at the employer's factory?

- A. No
 - B. Maybe
 - C. Yes
-

Q158. Could an employer's intervention to promote the constitution of the executive board of a trade union be considered an act of interference?

- A. No
 - B. Yes
-

Q159. Would it be sufficient in terms of principles of FoA and CB for legislation to prohibit acts of interference, without being accompanied by efficient procedures to ensure their implementation in practice?

- A. Yes
 - B. No
-

Q160. Would the membership of the leader of a trade union which represents several categories of workers employed by the State in government, as a minister, create possibility for violation of C98, Art. 2?

- A. Yes
 - B. No
-

Short answer questions:

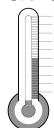
Why does the financial contribution of an employer to the operation of a trade union constitute interference in terms of C98, Art. 2?

Could there be a situation where employer financial contribution to the operation of a trade union would not constitute interference in terms of C98, Art. 2?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
D	B	B	B	A

Module 33. Protective machineries appropriate to national conditions



(30 minutes)

Importance While protective machineries are to be appropriate to national conditions, they need to be adequate, i.e. effective and rapid with sufficiently dissuasive sanctions.

Content The presenter should train that:

- The adequacy of protective machineries is a wide spread challenge.
- Challenges can have a unique national character, i.e. far flung territory that makes enforcement difficult, a tight labour market which undermines the perceived need for protection (because jobs are readily available), the presence of production enclaves and investment policies with effects undermining protections.
- Objective measures of adequacy can be considered.

Method Begin with module content. Divide participants into two groups. Ask each group to decide criteria for protective machineries that are effective and rapid, and produce sufficiently dissuasive sanctions. Compare those criteria to those currently used.

Clarify ... the following points:

- Government policy is to promote and protect freedom of association and promote collective bargaining; private actors should respect the principles; remedies need to be available to offended parties.

References Content is based on:

- C98, Art. 3
- GS2012, ¶¶ 176-197
- D2006 ¶¶ 813-836

References Content is based on:

- C98, Art. 3
- GS2012, ¶¶ 176-197
- D2006 ¶¶ 813-836

Additional Notes: _____

Learning Assessment

Q161. Does an excessively delayed remedy to anti-union discrimination defeat protections from such discrimination given in law?

- A. Yes
- B. No

Q162. Law enabling the "paying off" of persons discriminated against because of union activities, i.e payment in lieu of reinstatement or finding that anti-union discrimination has occurred in law, is inconsistent with FoA principles regardless of the quickness with which payment is accomplished or its quantity.

- A. True
- B. False

Q163. The requirement of "sufficiently dissuasive sanctions" is a principle of adequate protection, anchored in:

- A. the need to protect members of the public in general from anti-union discrimination by dissuading discriminatory conduct.
- B. the need to protect workers in general from anti-union discrimination by dissuading discriminatory conduct.
- C. the need to protect a person having suffered anti-union discrimination from further discrimination by dissuading future conduct by the same employer.
- D. All of the above

Q164. Under what circumstances would an enterprise tribunal consisting of workers and employer representatives charged with hearing, deciding, and remedying cases of anti-union discrimination be adequate in terms of C98?

- A. None
- B. All
- C. If it could be shown that the enterprise tribunal was effective, rapid and able to issue sufficiently dissuasive remedies.

Q165. According to FoA principles, should the remedy of reinstatement be available to those who are victims of anti-union discrimination?

- A. Yes
- B. No

Short answer questions:

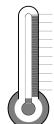
What are the essential elements of "adequate" protective mechanisms?

What would be possible considerations for arguing that a protective mechanism operated by PEZA would or would not be "adequate"?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	A	D	C	A

Module 34. Machinery and procedures of conciliation, mediation and arbitration seen in the light of promoting voluntary CB



(25 minutes)

Importance

Collective bargaining is a fundamental right under the 1998 Declaration on FPRW, to be respected, promoted and realized in good faith. C98 obliges the promotion of CB. Processes of conciliation, mediation and arbitration should be seen in these lights.

Content

The presenter should train that:

- To conform to FoA and CB standards and principles, the industrial relations processes of conciliation, mediation, and arbitration need to promote voluntary collective bargaining; they should not be seen *solely* as a means of concluding disputes/strikes.
- The compulsory intervention of public authorities in the processes of collective bargaining can have dampening effect on voluntary collective bargaining; this includes compulsory conciliation and mediation.
- Compulsory arbitration is generally contrary to principles of CB; arbitration accepted voluntarily by deadlocked parties is always legitimate.
- The CEACR has identified only 4 situations where it finds compulsory arbitration acceptable.

Method

A. Begin with module content. Divide participants into small groups to discuss how provisions used to replace the arrangements seen in Philippine Labor Code (DO No. 40-G-03), relate to ILS obligations. Report back in plenary and discuss.

B. Form two three-person group. One group member in each group plays employer, trade union, and government/arbitrator. Each group is told that the employer and trade union are in a negotiation, and that all parties are negotiating in good faith. The trade union in one group, however, is free to call a strike, or to ask for arbitration. The trade union in the other group is not free to call a strike, and must go to arbitration if there is no agreement. The negotiation takes place for the duration of ten flips of a coin. The coin flip controls the negotiation in both teams. If the coin shows heads, the employer offers a 1 per cent pay raise. If the coin flips tails, 1 per cent is deducted from what is on the table. The trade union and the employer in both groups are able to "reach agreement" at any time during the ten flips. At the end of ten flips, the trade union in the strike group will go on strike if an agreement has not been reached; the strike will be decided by a final flip of the coin, winner taking all, either as a pay increase or a pay deduction. If not the agreement is reached in the arbitration group, the arbitrator takes jurisdiction and decides the dispute on how the "negotiations" were conducted, i.e. how "greedy" each of the parties appeared during the coin flips. The arbitrator decides who takes all. Play the game three times. Conclude with module content, observing the difference in motivation for resolving the negotiations. [To be tested.]

Clarify ... the following points:

- The four situations involve: (a) essential services in the strict sense of the term; (b) in disputes involving public servants engaged in the administration of the State; (c) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; and (d) in the event of an acute crisis.
- Voluntary conciliation, mediation, and arbitration can be part of a strategy to promote collective bargaining.

References	<p>Content is based on:</p> <ul style="list-style-type: none">▪ C98, Art. 4▪ GS2012, ¶¶241-250, particularly ¶ 247 listing situations of acceptable compulsory arbitration▪ R92▪ C163▪ Department Order No.40-G-03, Series of 2010▪ UG§ 1.4▪ D2006 ¶¶ 549-551, 603, 932-933
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Additional Notes: _____

Learning Assessment

Q166. The principle of promoting voluntary collective bargaining implies that government:

- A. should not impose compulsory arbitration in cases where the negotiating parties are at impasse.
 - B. should not require government approval of results of negotiations in order for the collective bargain to come into force.
 - C. Both of the above

Q167. Does Recommendation No. 92 suggest that if a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award?

- A. Yes
 - B. No

Q168. Are machineries for conciliation, mediation or arbitration required by standards and/or principles on FoA and CB?

- A. Yes
 - B. Maybe
 - C. No
-

Q169. Under what circumstances would private mechanisms for conciliation, mediation, or arbitration most likely be compatible with standards and principles of FoA and CB?

- A. Where the mechanisms have the confidence of and are voluntarily accepted by the parties.
 - B. Where the government supports the procedures.
 - C. Where the employer supports the procedures.
 - D. Where the government, employers and workers involved support the procedures.
-

Q170. Is the principle of bargaining in good faith important as a principle of FoA and CB?

- A. Yes, because without it the relationship needed for constructive collective bargaining cannot be developed.
 - B. No, because the parties have the right to disagree about what they are negotiating about
-

Short answer questions:

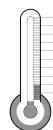
Why would it be correct to say that the frequency with which parties have recourse to voluntary third-party mediation and conciliation procedures is not a proper measure of industrial harmony, with more use being a sign of disharmony?

Why would it be correct to say that the frequency with which parties have recourse to voluntary third-party mediation and conciliation procedures is a proper measure of industrial harmony, with more use being a sign of disharmony?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	C	A	A

Module 35. What can be done to promote collective bargaining?



(10 minutes)

Importance

For the State, promoting collective bargaining means action to promote voluntary negotiation by autonomous parties. For private actors, a commitment to respect fundamental workers' rights means good faith willingness to respect workers' right to organize, to select their bargaining representative, and to actually bargain in good faith.

Content

The presenter, focusing on the obligation of the State to promote voluntary collective bargaining should train:

- Promoting CB means assuring that all workers have the right to collectively bargain over their conditions of work.
- Promoting CB means permitting voluntary agreements to stand; public authorities should not intervene.
- Promoting CB can mean offering facilitation services including voluntary conciliation, mediation and arbitration services; imposing an obligation to bargain in good faith; or providing for extension of CB agreements under certain conditions.

Method

Begin with module content. Divide participants into small groups to discuss how provisions for a Single Entry Approach to conciliation-mediation for all labour and employment cases seen in DO No. 107-10, relate to ILS obligations. Report back in plenary and discuss.

Clarify

... the following points:

- The State is to promote *voluntary* CB, taking into account the rights of the parties to, for example, organize for the purpose of collective bargaining.
- Under ILS, as understood by the CEACR, CB is seen as a means for setting terms and conditions of employment that should not be trumped by the individual setting of those conditions.

References

Content is based on:

- GS2012, ¶¶198-223
- PLC, Art. 3, 211
- EPZ, § 3.6
- D2006, ¶¶ 925-943

Additional Notes:

Learning Assessment

Q171. National legislation requiring parties to bargain in good faith:

- A. is required by the obligation to promote collective bargaining because it helps assure that the social partners do not frustrate a bargaining process by blocking agreement for its own sake.
 - B. is consistent with the obligation to promote collective bargaining because it helps assure that the social partners do not frustrate a bargaining process by blocking agreement for its own sake.
 - C. has nothing to do with the obligation to promote collective bargaining.
-

Q172. Creation, maintenance and operation of a public conciliation and mediation services:

- A. is consistent with the obligation to promote collective bargaining because it helps develop the confidence of the social partners in the collective bargaining process as a way of actually reaching an agreement on terms and conditions of employment.
 - B. is required by the obligation to promote collective bargaining because it helps develop the confidence of the social partners in the collective bargaining process as a way of actually reaching an agreement on terms and conditions of employment.
 - C. has nothing to do with the obligation to promote collective bargaining.
-

Q173. Following ILS, would it be appropriate for public authorities to provide assistance to workers' and employers' organizations, at their request, for training of their negotiators in collective bargaining?

- A. Yes, in accordance with C98.
 - B. Yes, in accordance with R163.
 - C. No
-

Q174. Following ILS, should bodies and procedures for the settlement of labour disputes be so conceived as to contribute to the promotion of collective bargaining?

- A. Yes, in accordance with C98
 - B. Yes, in accordance with C154
 - C. Yes, in accordance with R163
 - D. No
-

Q175. Following ILS, should the measures taken with a view to promoting collective bargaining not be so conceived or applied as to hamper the freedom of collective bargaining?

- A. Yes, in accordance with C98.
 - B. Yes, in accordance with C154.
 - C. Yes, in accordance with R163.
 - D. No
-

Short answer questions:

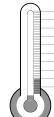
What example of national law or practice would be contrary to the principle that collective bargaining should be voluntary?

Why would it be contrary to FoA and CB principles for legislation to prohibit clauses in collective agreements that provide for employer collection of union dues?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	A	B	B	B

Module 36. Machinery for the recognition of organizations for the purposes of collective bargaining



(20 minutes)

Importance

For the State, promoting collective bargaining can mean setting up systems to make orderly parties' recognition of each other for the purposes of collective bargaining.

Content

The presenter should train:

- An employer's unjustified refusal to recognize the most representative workers' organization for purposes of collective bargaining is inconsistent with principles of collective bargaining, even where the State offers a mechanism for determining representative status.
- Systems for determining representative, where they are established, are consistent with the principles of FoA, if they result in exclusive representational rights or membership representation rights.
- Where national law provides for a compulsory procedure for recognizing unions as exclusive representatives, the CEACR has developed jurisprudence for compatibility with FoA and CB standards and principles. Safeguards should be in place for such a system.

Method

Begin with module content. Divide participants into group to discuss the degree to which existing procedures for deciding recognition contribute to the promotion of collective bargaining. Report group conclusions to the plenary. Discuss.

Clarify

... the following points:

- There is variation in national mechanisms for determining recognition; it can be argued that the least legalistic and most voluntary both reflect and promote a mature industrial relations climate.
- CEACR jurisprudence has grown case by case, from the need to decide compatibility of many systems, with a wide range of features.

References

Content is based on:

- R163
- GS2012, ¶¶224-240
- PLC, Art. 255-259
- UG, p. 38-39
- D2006 ¶¶ 956-991
- EPZ, pp. 52-53

Additional Notes:

Learning Assessment

Q176. Do ILS require that a system for determining the representational status of a workers' organization be established in law?

- A. Yes
 - B. No
-

Q177. Where a system for determining representation status is established, ILS require that:

- A. pre-established and objective criteria with regard to the organizations' representation character be used.
 - B. pre-established and objective criteria with regard to the organizations' representation character be used, in consultation with representative employers' and workers' organizations.
 - C. Neither of the above
-

Q178. According the principles of FoA and CB, what criteria are to be applied in determining whether an organization has the capacity to be the sole signatory to collective agreements?

- A. representativeness and independence.
 - B. objectivity and independence.
 - C. independence, impartiality and objectivity.
 - D. representativeness and objectivity.
-

Q179. According to principles of FoA and CB, should minority workers' organization in an enterprise be permitted to carry out their activities and to have the right to speak on behalf of their members and to represent them, even if a proper system for exclusive representation exists?

- A. Yes
 - B. No
-

Q180. Following principles of FoA and CB, if there is no union covering more than 50 per cent of the workers in a unit, should collective bargaining rights nevertheless be granted to the union in this unit, at least on behalf of their own members?

- A. Yes
 - B. No
-

Short answer questions:

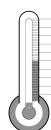
Under what circumstances would a system that leaves recognition of workers' representative(s) for collective bargaining entirely to the employer be consistent with ILS and principles on FoA and CB?

Would it be consistent with the promotion of collective bargaining to permit challenges to representational status of a workers' organization at any time?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	B	A	A	A

Module 37. Collective bargaining rights of public servants



(20 minutes)

Importance

Under ILS all workers have the right to collectively bargain, with the exception of the armed forces, the police and public servants engaged in the administration of the State.

Content

The presenter should train that:

- The scope of workers covered by the right to CB is literal: All, private and public workers, excluding the exceptions. The exceptions are the armed forces, the police and public servants engaged in the administration of the State.
- The subjects for collective bargaining under ILS are as broad as those for other workers.

Method

Ask participants to identify groups of public servant who are engaged in the administration of the State, starting with public servants who act as agents of the State. Follow on with module content.

Clarify

... the following points:

- Recognition of the principles of FoA and CB in the cases of public servants does not necessarily imply the right to strike; the right to strike may be restricted or prohibited only for "public servants exercising authority in the name of the State."
- Officials working in the administration of justice and the judiciary, customs officials, and similar are officials who "exercise authority in the name of the State" and may have no right to strike, according to the CFA and CEACR.
- Compensatory guarantees should be provided to resolve industrial disputes in the case of employees in the public service who are legitimately deprived of the right to strike.

References

Content is based on:

- C98, Art. 4, 5 and 6
- C151, R159
- GS2012, ¶ 209, 211-214
- LRP, pp. 16,
- Section 13 of Executive Order No. 180, limiting terms and conditions not otherwise fixed by law to be potential subjects of negotiation between public sector employees' organizations and government authorities

Additional Notes:

Learning Assessment

Q181. Do public servants engaged in the administration of the State have the right to collectively bargain under C98?

- A. Yes
 - B. No
-

Q182. Would it be consistent with principles for the promotion of CB in the public sector, for the legislative branch to be given the authority to modify or reject an agreement previously concluded between the public authorities and public employees' organizations?

- A. Yes
 - B. No
-

Q183. In the view of the CFA and the CEACR, the prohibition of the right to strike in the public service should be limited to –

- A. public servants exercising authority in the name of the State.
 - B. public servants engaged in services the interruption of which would endanger the personal safety, health of part or all of the population.
 - C. Either or both of the above
-

Q184. Compensatory guarantees in the event of justifiable prohibition of the right to strike are –

- A. adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.
 - B. conciliation and arbitration proceeding that lead to a final legislative determination of the dispute.
 - C. impartial and speedy arbitration proceedings that recommend a resolution to the employer.
 - D. Any of the above
-

Q185. Have the ILO supervisory bodies found inconsistencies between Philippine law and practice concerning public servants and principles of FoA and CB?

- A. Yes
 - B. No
-

Short answer questions:

Would it be correct to start a discussion of the FoA and CB principles applicable to public servants by saying that they have all the rights of other workers, with certain limited exceptions applicable to police, military, public servants engaged in the administration of the State, persons engaged in essential services in the strict sense of the term, and persons who exercise authority in the name of the State?

Who in the Philippines are: (a) public servants engaged in the administration of the State; (b) persons engaged in essential services in the strict sense of the term; and (c) persons who exercise authority in the name of the State?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	B	C	A	A

4. Tripartite declaration of principles concerning multinational enterprises and social policy

The Tripartite Declaration is a universal normative instrument that speaks directly to enterprises. It stands alongside the OECD Guidelines for MNEs as the two most frequently cited universal standards addressed to the private sector of their kind. In urging voluntary respect for the principles of social responsibility it sets out, the Declaration was pioneering in 1977 the ideas of social responsibility we see espoused by tens of thousands of enterprises around the world today. It offers guidelines also to governments, employers and workers organizations, with its provisions reinforced by certain ILO Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible.

Today, the guidance given in the Tripartite Declaration can be used particularly in enterprise training in the context of corporate social responsibility initiatives undertaken by the enterprise. The ILO's Internet-based Helpdesk for Business on International Labour Standards has answered practical questions posed by business in applying the DecMNE, which are drawn on in the guide.

Since the DecMNE is intended as a guidance instrument, a traffic light exercise can be used in respect of virtually all the substantive modules in this Section. In working through an exercise, groups would apply "go" to DecMNE guidance that could be taken by the enterprise, "caution" to guidance the group has doubts about, and "stop" to guidance the group would not want to accept. Explanations could be requested on conclusions. For this same reason, multiple choice and short answer questions are not included.

It is assumed that this Section, it will be of interest to an ultimate target group of enterprise representatives. The modules are written with this in mind. Thus, although workers and government target groups may have a significant interest in training on the DecMNE, their interest icons are lightened.

Module 38. ILO's tripartite declaration of principles concerning multinational enterprises and social policy: Historical departure point



(5 minutes)

Importance

DecMNE was adopted by the ILO GB in 1977 at a moment when the volume of MNE activity and presence began to increase, potential benefits and detriments for social policy were perceived.

Content

The presenter should train that:

- Other international actors had engaged in normative activities, including the OECD and the UN Commission on Transnational Corporations (now defunct). OECD work resulted in the OECD Guidelines for Multinational Enterprises.
- ILO work resulted in DecMNE, with unique value in its tripartite origin and substantive roots in ILS.
- The DecMNE has been updated to take the December 1998 and recent ILS into account.

Method

Presentation of module content.

Clarify

... the following points:

- These initiatives were historic as global guidelines for the operation of enterprises relative to social policy.
- Both OECD Guidelines and DecMNE are operational today. The follow-up mechanisms of each are different, with more use/activity at the OECD.
- In June 2011, the UN launched important Guiding Principles on Business and Human Rights. Although not standards as such, they set important principles for enterprise behavior.

References

Content is based on:

- ILO Helpdesk for Business on International Labour Standards on the Internet

Additional Notes:

Learning Assessment

Q186. How many times has the text of the DecMNE been updated (not it's Annex)?

- A. Twice, in 2000 and in 2006.
 - B. Once, in 2000.
 - C. Once, in 2006.
 - D. Never.
-

Q187. Which body adopted the Tripartite Declaration?

- A. ILC
 - B. ILO
 - C. GB
 - D. ILO member States
-

Q188. The ILO adopted its Tripartite Declaration in November 1977 and the OECD adopted its Guidelines for Multinational Enterprises in 1976.

- A. True
 - B. False
-

Q189. In the event of disagreement over the application of the DecMNE, the parties may submit a request to the ILO for an interpretation of the meaning of its provisions using a procedure instituted in 1981.

- A. True
 - B. False
-

Q190. Does the ILO DecMNE complement or replace the OECD Guidelines?

- A. complement.
 - B. replace.
-

Short answer questions:

What is the inherent advantage of the ILO making guidelines on multinational enterprises and social policy as compared, for example, to the OECD?

What occasioned the earliest amendment to the DecMNE?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
A	C	A	A	A

Module 39. ILO's tripartite declaration of principles concerning multinational enterprises and social policy: Functional departure point



(5 minutes)

Importance With an important target group of enterprise operations, the DecMNE can be seen as having a slightly more operational character than the ILS on which they are based. CSR initiatives can thus more easily use their norms.

Content The presenter should train that:

- The MNE Declaration "adds value" to the norms set out in ILO standards, particularly in its recommendations to enterprises.
- The MNE Declaration does not define MNE; its recommendations can be read and used by any enterprise that deems it appropriate.

Method Ask participants to review the text of the DecMNE. Follow on with module content.

Clarify ... the following points:

- Although the DecMNE is a document with normative value, it is not an ILS and at most could be said to reflect the principles of the relevant ILS.

References Content is based on:

- ILO Helpdesk for Business on International Labour Standards on the Internet

Additional Notes: _____

Learning Assessment

Q191. Are multinational companies obliged to implement the content of the DecMNE?

- A. Yes
- B. No

Q192. What relationship could exist between a company's CSR policy and the DecMNE?

- A. the DecMNE can inspire implementation of a CSR policy.
- B. the DecMNE can contribute content to a CSR policy.
- C. the DecMNE can be ignored by a CSR policy.
- D. All of the above.

Q193. Does the ILO promote the DecMNE?

- A. Yes
- B. No

Q194. Is the purpose of the procedure to interpret the provisions of the Declaration available when a disagreement needs to be resolved about the meaning of provisions of the Declaration, arising from an actual situation, between parties to whom the Declaration is commended?

- A. Yes
- B. No

Q195. Since 1981, 5 interpretations of the Declaration have been given.

- A. True
- B. False

Short answer questions:

What would cause a multinational enterprise to give effect to the DecMNE?

How does the ILO promote the DecMNE?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
B	D	A	A	A

Module 40. The tripartite declaration: Rendering ILS and principles to standards for enterprise conduct



(15 minutes)

Importance The issue of converting standards for public actors into those for private actors is revisited here, in the context of the DecMNE.

Content The presenter should train that:

- ILS are written and addressed to governments, but have implications for private actors insofar as governments are obliged to act in ways that impact private actors.
- Where enterprises wish to discern appropriate conduct for their own behavior, they must render the essence of the relevant ILS and apply it to their own actions. Similarly for principles on FoA and CB.
- The MNE Declaration gives an authoritative "head start" in rendering ILS for use by enterprises.

Method Begin with module content. To illustrate the point, display provisions of the DecMNE and ask participants to render consider what ILS they are rendered from (see Learning Assessment questions). Be ready with the relevant ILS and able to draw distinctions. Discuss.

Clarify ... the following points:

- The use of ILS as normative instruments for application directly by enterprises is voluntary and subject to variances that voluntary action implies.

References Content is based on:

- C87, Art. 2 (read very carefully)
- R129, Part II, any of the paragraphs therein

See related:

- **Module 11. Obligations inuring from the international standards: Public and private actors.**

Additional Notes: _____

Learning Assessment

Q196. What standards are reflected by the DecMNE recommendation that enterprises should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour and should take immediate and effective measures within their own competence to secure the prohibition and elimination of the works forms of child labour as a matter of urgency?

- A. ILS on forced labour, C29 and 105.
 - B. ILS on equality, C100 and 111.
 - C. ILS on child labour, C138 and 182.
 - D. ILS on OSH, C155.
-

Q197. What standards are reflected by the DecMNE recommendation that wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned?

- A. ILS on labour clauses in public contracts, C89.
 - B. ILS on minimum wages, C131.
 - C. ILS on equal remuneration, C100.
 - D. ILS on migrant workers, C97.
-

Q198. What standards are reflected by the DecMNE recommendation that where multinational enterprises provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard?

- A. ILS concerning conditions of employment of plantation workers, C110 and R 110.
 - B. ILS concerning Workers' Housing, R115.
 - C. ILS concerning medical care, R69.
 - D. All of the above.
-

Q199. What standards are reflected by the DecMNE recommendation that multinational enterprises as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure?

- A. ILS concerning the examination of grievance within the undertaking, R130.
 - B. ILS concerning protection of the right to organize, C98.
 - C. ILS concerning termination of employment, C158.
 - D. All the above.
-

Q200. What standards are reflected by the DecMNE recommendation that in multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining?

- A. ILS concerning consultation, cooperation and communication at the level of the undertaking, R94 and R129.
 - B. ILS concerning FoA and CB, C87 and 98.
 - C. Both of the above.
-

Short answer questions:

What steps would need to be taken if recommendations in the DecMNE were to be used and made operational?

What relevance is there between the substantive recommendations found in the DecMNE and those found in other initiatives such as the UN Global Compact?

Answers to multiple choice questions in this module

<i>Question 1</i>	<i>Question 2</i>	<i>Question 3</i>	<i>Question 4</i>	<i>Question 5</i>
C	A	D	D	C

Module 41. The tripartite declaration on employment promotion



(5 minutes)

Importance Employment creation is perhaps the most important aspect of MNE operations; DecMNE guides to optimize this benefit and to harmonize MNE employment creation with national policy.

Content The presenter should train that the DecMNE asks enterprises to:

- Endeavour to increase employment opportunities and standards, taking the employment policies and objectives of governments into account.
- Give priority to the employment, occupation development, promotion and advancement of nationals in the host country.
- Use technologies which general employment, both directly and indirectly.
- Build linkages with local enterprises by sourcing local inputs, promoting the local processing of raw materials and local manufacturing of parts and equipment.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

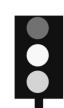
- There are significant positive employment benefits the DecMNE seeks to promote, which might not obviously seem to be in the immediate benefit of the enterprise.

References Content is based on:

- DecMNE, ¶¶ 13-20; C122, R122, R169, R189
- Qs and As on business and employment promotion:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_EP_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 42. The tripartite declaration on equality of opportunity and treatment



(5 minutes)

Importance Operationalizes the principles of equality and non-discrimination, tying it directly to employment decisions based on merit and work related criteria.

Content The presenter should train that the DecMNE asks enterprises to:

- Recruitment, place, train and promote on the basis of qualifications, skills and experience.
- Extend equality of opportunity and treatment in employment.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

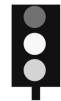
- The DecMNE takes account of possible positive discrimination policies.
- The updating in 2007 included reference to ILO Codes of Practice on HIV/AIDS; there is now R200 on the subject.

References Content is based on:

- DecMNE, ¶¶ 21-23; C111, C 100
- Qs and As on business, discrimination and equality:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 43. The tripartite declaration on security of employment



(5 minutes)

Importance Security of employment should be a consideration in enterprise employment policy.

Content The presenter should train that the DecMNE asks enterprises to:

- Endeavour to provide stable employment through active manpower planning.
- Assume a leading role in promoting security of employment, providing reasonable notice of intended changes in operations and avoiding arbitrary dismissal.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

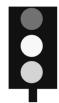
- The employers' group in the ILO have resisted the promotion of the Termination of Employment Convention, (No. 158) as a modern ILS. It is the only ILS without a "status" of up-to-date or out-of-date.

References Content is based on:

- DecMNE, ¶ 24-28; R119, C158
- Qs and As on business and employment security:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_SOE_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 44. The tripartite declaration on training



(5 minutes)

Importance MNEs can help develop local human resources and can do so in collaboration with public authorities and other actors.

Content	The presenter should train that the DecMNE asks enterprises to: <ul style="list-style-type: none">▪ Provide training for all levels of employees to meet needs of enterprises as well as development policies of the country.▪ Participate in programmes to encourage skill formation and development.▪ Afford opportunities within MNEs for local management to broaden their experience.
----------------	--

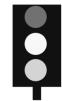
Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

- In some ways, these provisions may seem somewhat dated insofar as the quality of human resources currently available in many countries in which MNEs operate.

References Content is based on:
▪ DecMNE, ¶29-32; C142, R195

Module 45. The tripartite declaration on wages, benefits and conditions of work



(5 minutes)

Importance MNEs should not undermine local conditions and should provide the best employment conditions.

Content The presenter should train that the DecMNE asks enterprises to:

- Provide wages, benefits and conditions of work not less favourable than those offered by comparable employers in the country concerned.
- Provide the best possible wages, benefits and conditions of work, within the framework of government policies, to meet basic needs of employees and their families.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

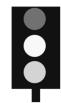
- The DecMNE sets both a minimum standard and an upward pushing standard for conditions.

References Content is based on:

- DecMNE, ¶¶ 33-35; R116, C110, R110, R115, R69, C130, R134
- Qs and As on business, wages, and benefits:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_WAG_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 46. The tripartite declaration on minimum age



(5 minutes)

Importance Reiteration of obligations not to employ children, and to work to eliminate the worst forms of child labour.

Content The presenter should train that the DecMNE asks enterprises to:

- Respect the minimum age for admission to employment or work and take immediate and effective measures within their own competence to prohibit and eliminate the worst forms of child labour.

Method Begin with module content. Ask participants to refer to the DecMNE text, with focus on worst forms of child labour, and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

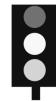
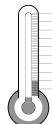
- Keep in mind that the worst forms of child labour involve more than hazardous work. They include trafficking of children for labour exploitation.
- Keep also in mind CSR commitments to assure that an entire value chain does not make use of child labour. Important efforts can be made alone on that issue.

References Content is based on:

- DecMNE, ¶ 36, C138, C182
- Qs and As on business and child labour:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CHL_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 47. The tripartite declaration on safety and health



(5 minutes)

Importance MNEs should have high standards of safety and health at work.

Content The presenter should train that the DecMNE asks enterprises to:

- Maintain highest standards of safety and health at work.
- Examine the causes of industrial safety and health hazards, provide information on good practice observed in other countries, and effect necessary improvements.
- Engage, where appropriate, with representatives of workers and their organizations to incorporate matters relating to safety and health in agreements.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

- Safety and health issues are the most apparent of work rights violations and because of this they have a particular place in CSR/code of conduct enforcement.

References Content is based on:

- DecMNE, ¶¶ 37-40
- Qs and As on business and occupational safety and health:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_OSH_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 48. The tripartite declaration on industrial relations



(5 minutes)

Importance MNE enterprises should observe standards of industrial relations not less favorable than those observed by comparable employers in the country concerned.

Content The presenter should train that:

- DecMNE guidance on IR is nested in guidance on FoA, CB, consultation, examination of grievances and settlement of disputes.
- The one general "no less favorable conditions" guideline should be read with that advise governments not to offer incentives to attract foreign investment that limit workers' freedom of association or the right to organize and bargain collectively.

Method Open with module content. Plenary or group discussion can follow on the question of general conditions under which MNEs manage their industrial relations as compared with national enterprises.

Clarify ... the following points:

- Recall that the field of industrial relations is one specifically targeted in the last paragraph of the DecMNE Training Section, for development of human resources in cooperation with government.

References Content is based on:

- DecMNE, ¶¶ 41, 32, 46

Additional Notes: _____

Module 49. The tripartite declaration on freedom of association and the right to organize



(5 minutes)

Importance MNE enterprises should respect the principles set out in ILS on FoA.

Content The presenter should train that:

- The DecMNE reiterates much of C87, implying that enterprises should not act in a contrary manner.
- Where appropriate, in the local circumstances, multinational enterprises should support representative employers' organizations.
- Representatives of the workers in MNEs should not be hindered from meeting for consultation or exchange of views among themselves, provided operations are not prejudiced.

Method Begin with module content. Ask participants to refer to the DecMNE text, and discern the guidance to enterprise behavior in plenary or groups. Review and discuss results.

Clarify ... the following points:

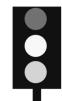
- Note language in this part of the DecMNE as compared with others, i.e. the absence of language directed to MNEs.

References Content is based on:

- DecMNE, ¶ 42 and 48
- Qs and As on business and freedom of association:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang-en/index.htm

Additional Notes: _____

Module 50. The tripartite declaration on collective bargaining



(5 minutes)

Importance MNEs are guided on conducting collective bargaining, including in regard to important elements of information, facilities, and negotiation tactic.

Content The presenter should train that the DecMNE asks enterprises to:

- Respect FoA and the right to CB, providing the facilities and information required for meaningful negotiations.
- Enterprises should provide workers' representatives with necessary facilities to assist in the development of effective collective bargaining.
- MNEs should not threaten to use a capacity to transfer the whole or part of an operating unit from a country to influence unfairly collective negotiations.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

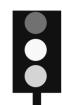
- This section of the DecMNE reflects C135 as well as C98; C135 and particularly its associated R143 are highly practical instruments that offer very operation guidance.

References Content is based on:

- DecMNE, ¶¶ 49-56; C135, R143
- Qs and As on business and collective bargaining:
http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm

Additional Notes: _____

Module 51. The tripartite declaration on consultation



(5 minutes)

Importance MNEs are guided very briefly on the subject of consultation.

Content The presenter should train that the DecMNE asks enterprises to:

- Provide for regular consultation on matters of mutual concern.
- Consultation should not be a substitute for collective bargaining.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

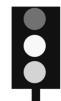
- The DecMNE reiterates the important distinctive difference between collective bargaining and consultation.

References Content is based on:

- DecMNE, ¶ 57; R129

Additional Notes: _____

Module 52. The tripartite declaration on examination of grievances



(5 minutes)

Importance Employees have the right have grievances heard without prejudice.

Content The presenter should train that the DecMNE asks enterprises to:

- Examine the grievances of workers(s), pursuant to an appropriate procedure.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

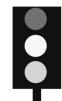
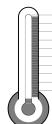
- Reference is made to the particular importance of enterprises' handling grievances of employees in countries where fundamental principles and rights at work are not respected.

References Content is based on:

- DecMNE, ¶ 58; R130

Additional Notes: _____

Module 53. The tripartite declaration on settlement of industrial disputes



(5 minutes)

Importance Guides employers and workers to establishing and using voluntary conciliation machinery to assist in preventing and settling industrial disputes.

Content The presenter should train that the DecMNE asks enterprises to:

- Seek jointly with national enterprises and the representatives and organization of the workers whom they employ, to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.

Method Begin with module content. Ask participants to refer to the DecMNE text and do a traffic light exercise in plenary or groups. Review and discuss results.

Clarify ... the following points:

- Enterprise support for compulsory mechanisms for settlement of industrial disputes is not consistent with DecMNE.
- The voluntary procedures are to be appropriate to national conditions, not their very establishment (or not) altogether.

References Content is based on:

- DecMNE, ¶ 59
- PLC, Art.

Additional Notes: _____

LIST OF ANNEXES

Annex 1. Reference materials

The comments about individual reference materials were given by participants in the training of trainers course held in January 2013 in Manila.

About the ILO's system of international labour standards:

ILO, *Rules of the Game* (2009), download at:

http://www.ilo.org/global/publications/WCMS_084165/lang--en/index.htm



Comments:

"The *Rules of the Game* provides a basic information and foundation on the generally and internationally accepted values and principles on International Labour Standards."

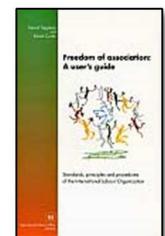
"Sharing the *Rules of the Game* would be convenient and easy because ILS is presented in the most logical, concise and interesting manner."

"This document will certainly be useful to explain these technical topics to non-practitioners."

About ILO freedom of association standards (in lay terms):

Tajgman, D. and Curtis, K., *Freedom of Association: A user's guide* (2000), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087990/lang--en/index.htm



Comments:

"This document can help readers to analyze a given set of facts to determine violation of the right to FoA."

"The material appears to be simple and user-friendly."

About freedom of association, in full detail, most recently, from the CEACR:

ILO, *Giving globalization a human face, General Survey on the fundamental Convention* (2012), download at:

http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm



Comments:

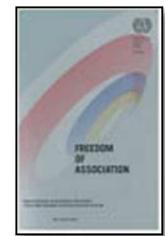
"A necessary materials to build a stock knowledge."

"A very good reference materials to cite examples."

About actual cases of the Committee on Freedom of Association:

ILO, *Freedom of association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006), download at:

http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/WCMS_090632/lang--en/index.htm



Comments:

"Digest of cases is a good reference material on the application of ILS and principles."

"Material may be used in discussing sample actual cases, and how decisions were arrived at."

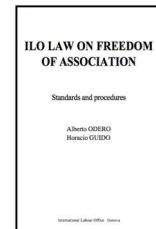
"This is a good document for reference in deciding violations to FOA."

"Considering the mandate of the BLR, digested cases play an important role in dispute resolution and promoting the right to FOA."

About ILO freedom of association standards:

Odero, A. and Guido, H., *ILO Law on Freedom of Association: Standards and procedures* (1995), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087994/lang--en/index.htm



Comments:

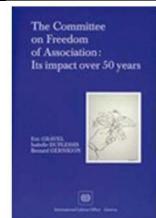
"May be studied for added knowledge."

"This document will help all stakeholders in the respective role/duty in the implementation and monitoring of compliance with the Conventions where the Philippines is a signatory."

About the Governing Body Committee on Freedom of Association:

Gravel, E., Duplessis, I., and Gernigon B., *The Committee on Freedom of Association: Its impact over 50 Years* (2002), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087814/lang--en/index.htm



Comments:

"The material may be mentioned and briefly discussed."

"This document will help me understand the background and function of the Committee on Freedom of Association. How CFA implemented and interpreted the application of the Conventions."

"Probably the parts on how the CFA interprets the application of conventions will help the other stakeholders to understand the reason why we need to comply with the conventions and how it is interpreted by the Committee."

A collection of the 8 fundamental ILO Conventions and the text of the 1998 Declaration on Fundamental Principles and Rights at Work:

The *International Labour Organization's Fundamental Conventions* (2004), download at:

http://www.ilo.org/declaration/info/publications/WCMS_095895/lang--en/index.htm



About the relation between human rights and freedom of association:

Swepton, L. *Human rights law and freedom of association: Development through ILO supervision*, in **International Labour Review**, Vol. 137 (1998), No. 2, download at:

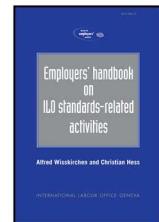
<http://www.ilo.org/public/english/revue/download/pdf/swepton.pdf>



A view of the ILS system from the employers' perspective:

Wisskirchen, A., Hess, C. *Employers' handbook to ILO standards-related activities* (2001), download at:

<http://www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm>



Comments:

"The material is good in understanding the machinery of ILO supervision."

"The material is good in understanding the machinery of ILO supervision."

"This document will help the leader understand that Employer's too can organize."

Provides summaries of the contents of ILO Conventions and

Recommendations by subject matter:

ILO, *Guide to International Labour Standards* (2008), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_086223/lang--en/index.htm



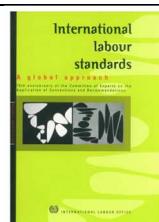
Comments:

"Can serve as a primer or simplified explanation on the conventions."

Describes the main content of all ILS which respond to current needs:

International Labour Standards: A global approach (2002), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087692/lang--en/index.htm

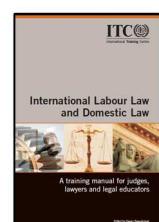


The most legal of texts offered here, dealing with many issues of technical interest to this target group, from a domestic law perspective:

Beaudonnet, X. (ed.), *International Labour Law and Domestic Law: A training manual for judges, lawyers and legal educators* (2010)

Can be ordered from:

http://publications.itcilo.org/test/catalogo/scheda.php?id=148&lingua_scheda=1



Comments:

"As a lawyer, this material is useful for me."

"Manual may be mentioned for information purposes so that those interested may check it."

"This document will capacitate judges, lawyers and educators with better understandings of the principles of FOA, CB and ILS. Consequently, their better understanding of these principles shall be incorporated in their orders/decisions, pleadings and lessons."

Publication aims to highlight the pivotal role of freedom of association in fostering and maintaining sustainable development:

ILO, *Freedom of Association and Development* (2011), download at:

http://www.ilo.org/declaration/info/publications/freedomofassociation/WCMS_160208/lang--en/index.htm



Comments:

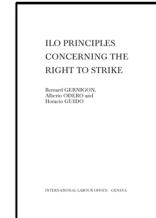
"A good material for discussion of FoA."

"It provides deeper understanding of FOA and labour market development such as the importance of positive business environment and cooperation."

Publication aims to highlight the pivotal role of freedom of association in fostering and maintaining sustainable development:

Bernard Gernigon, Alberto Odero and Horacio Guido, *ILO principles concerning the right to strike* (1998), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087987/lang--en/index.htm



Comments:

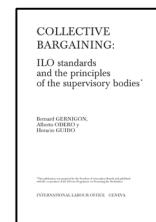
"A good material on strike, and how to appreciate it."

"Material is good for discussion on right to strike."

Provides an analysis of the observations made by the CEACR in 1998 and 1999 on the application C98 and related ILO standards.

Bernard Gernigon, Alberto Odero and Horacio Guido, *Collective Bargaining: ILO standards and the principles of the supervisory bodies* (2000), download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087931/lang--en/index.htm



Comments:

"A good material for study."

"This document will help both employer and worker understand the process of collective bargaining and effective negotiation."

Discusses the principles of the CEACR and recommendations and the CFA concerning the FoA and CB rights of workers in EPZs, the recommendations made by them and the measures taken by the governments of EPZ-operating countries pursuant to such recommendations.

Ramapriya Gopalakrishnan, *Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms* (2007), download at:
http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087917/lang--en/index.htm



Comments:

"The paper is very much relevant to PEZA officers."

"This will help me understand FOA within the economic zones."

Discusses in detail ILS on the FoA and CB rights of workers employed in the public sector, ranging from "public servants exercising authority in the name of the State" to workers employed in ordinary enterprises that are owned by public authorities.



Bernard Gernignon, *Labour relations in the public and para-public sector* (2007),
download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_088529/lang--en/index.htm

Comments:

"This material is relevant in my work as public servant."

"This document will help me understand deeper FOA as exercised in the public service."

"This document will help the stakeholders to understand that it is not only labour relations in the private sector that is being protected. It is also important to emphasize that workers in the public service, subject to exemptions, are also entitled to FOA and CB."

Annex II. Indicative training programmes constructed from modules

A number of set training programmes are outlined below. Their subject matter and content was vetted for discussion and conclusions at the training of trainers' course held in January 2013.

ILS application issue solving training

Some modules can provide a particular basis for social partner consultation with a view to remedying challenges in the application of ILS or an issue raised by the social partners relevant to ILS. For example:

Importance Designating services as "essential" has long been a method for restricting strikes. To be consistent with ILS, the services designated as "essential" must be so in the strict sense of the term.

Content The presenter should train that:

- The CEACR and CFA accept restrictions only on services "the interruption of which would endanger the life, personal safety or health of the whole or part of the population."

Method Begin with module content. Engage in discussion on the motivational purpose of the strike and the idea that robust collective bargaining processes rely on this motivation, accepting the disrupting quality of strikes.

Clarify ... the following points:.

- The CEARC and CFA have been given the opportunity to elaborate services that are essential in the strict sense of the terms and those that are not.
- Industries found to be "indispensable to national interest" are not essential within the strict sense of the term.

References Content is based on:

- GS2012, ¶ 134: Activities not considered as essential services; ¶ 135: Activities considered as essential services
- PLC, Art. 263(g); DO No. 40-G-03
- UG§ 1.4, pp. 20-25
- D2006, ¶¶ 581-594

Module 22. Reducing disruption caused by strikes by promoting negotiated minimum services

Module 23. Organizations' not liable to dissolution or suspension by administrative authority

Seeing ILS from the national perspective

Several FoA trainers suggested particular subject areas for training, about which ILS have something to say. The ILS contribution can be used to enrich discussion of the broader subject of training. For example, if the issue is:

- Dispute resolution, see:
Module 26. Industrial peace and industrial relations under **international standards**
Module 35. What can be done to promote **collective bargaining?**
Module 50. The tripartite declaration on **collective bargaining**
Module 52. The tripartite declaration on examination of **grievances**
Module 53. The tripartite declaration on settlement of **industrial disputes**
- Workers' right to strike under Philippine law, see:
Module 20. **The right to strike as a programme and activity of workers' organizations**

Importance Designating services as "essential" has long been a method for restricting strikes. To be consistent with ILS, the services designated as "essential" must be so in the strict sense of the term.

Content The presenter should train that:

- The CEACR and CFA accept restrictions only on services "the interruption of which would endanger the life, personal safety or health of the whole or part of the population."

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- The CEACR and CFA have been given the opportunity to elaborate services that are essential in the strict sense of the terms and those that are not.
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- D2006, ¶¶ 581-594

Module 22. Reducing disruption caused by strikes by promoting negotiated minimum services

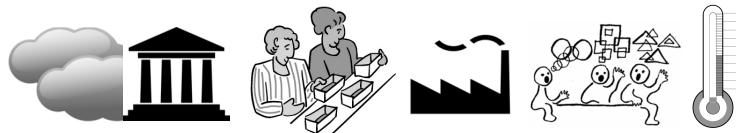
- Police interference or application of the GWR or DPPG, (*See training materials produced in 2012 entitled: "Freedom of association and the right to collective bargaining: Training and training materials for military, police and security forces in the Philippines".*)

- Comparative mechanisms for recognition of trade unions, see:
Module 36. Machinery for the recognition of organizations for the purposes of collective bargaining
- Management reticence to negotiation with trade unions, see:
Module 29. The co-existence of rights: Limits of opposition, property and economic rights, etc.
- Registration and cancelation of registration of unions ("fly-by- night-unions", see:
Module 23. Organizations' not liable to dissolution or suspension by administrative authority
- Mandatory conciliation and arbitration.
- Giving a 30 minute training on ILS, its legal basis, impact, and obligations, see:

Module 1. What are ILS?

Module 2. The intended role of ILS?

Importance



(30 minutes)

Importance Understand the reason for ILS, the purpose they are intended to serve.

Content

The presenter should train on ILS as:

- Measures designed to reduce and remove the root causes of social unrest leading to national and international conflict.
- A model for national legislation and practice.
- A foundation for sustainable development.
- An international minimum for social standards, preventing competition between nations on the basis of lower standards.

Method

To test the degree of prior sensitization of participants, ask them to say what they imagine the point ILS is, and follow on with module content. Giving examples to concretize each point of content. Close with discussion of the actual role played by ILS in the Philippines.

Clarify

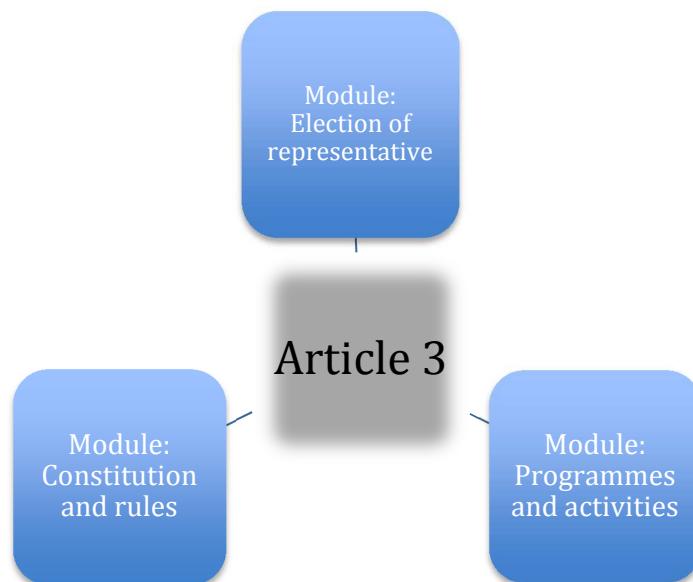
... the following points:

- ILS must be seen and understood within the mandate and purpose of the ILO, in accord with its Constitution; improvement of conditions of work and life, not merely resolution of conflict between capital and labour.
- ILS are minimum standards, intrinsically normative in their character.
- ILS use as the basis of standards used in CSR initiatives is a recent development, as is the linkage between arrangements for international trade and ILS.
- ILS on FoA and CB have a particular importance because they enable robust independent voice at the workplace and in civil society.

- ILS exist, with these objectives, at the will of ILO members; declining union membership, flexibilization in the organization of work, while real challenges, are in a way beside the point insofar as standards themselves can take up these matters to the extent membership is willing to do so.
- Module 5. Where do ILS come from?
 Module 6. International labour conventions are binding on ratification
 Module 7. Regular system for supervision of ratified conventions
 Module 8. Special system for supervision of ratified conventions
 Module 11. Obligations inuring from the international standards: Public and private actors

General notes

Cluster 1. Unless there are particular localized reasons for separating them: **Module 17. Organizations' right to draw up constitutions and rules; Module 18. Organizations' right to elect representatives in full freedom; and Module 19. Organizations' right to organize their administration and activities, and formulate their programmes** would be treated together as they all appear in C87, Art. 3. The exceptional case is where the group is discussing an identified problem in application.

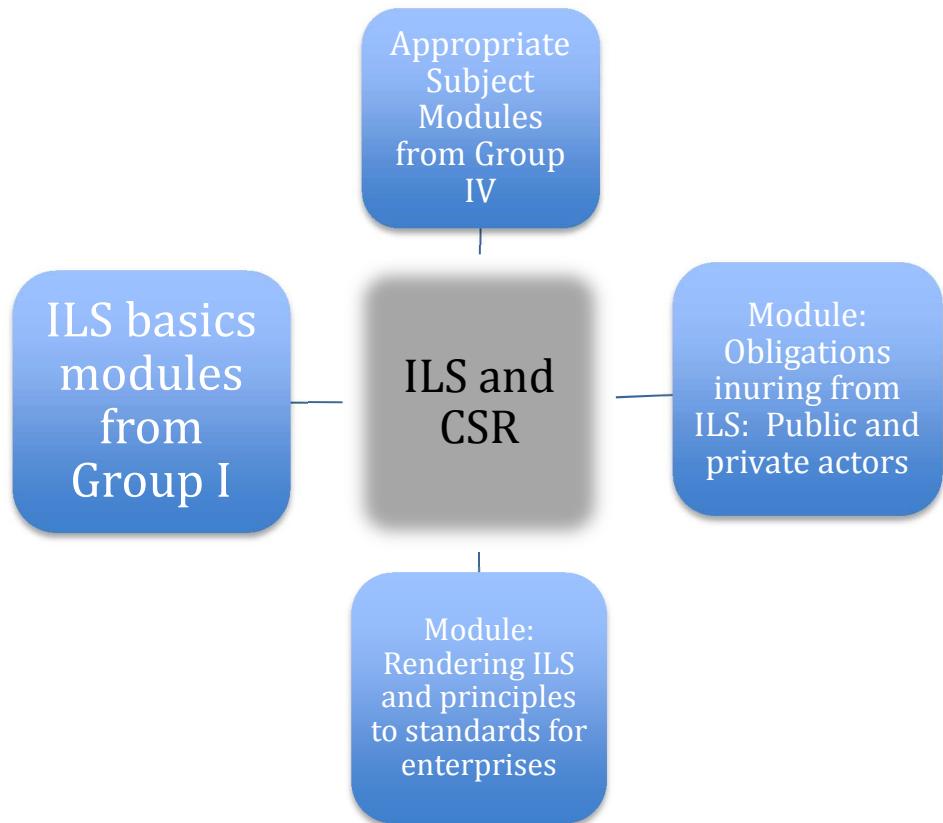


Cluster 2. For an audience of legal professionals, in addition to the ILS substance and FoA and CB principles, general legal issues can be brought together as illustrated below: **Module 11**.

Obligations inuring from the international standards: Public and private actors; **Module 14.** **Understand international FoA standards by studying international supervision of national FoA regulation;** **Module 28.** Incorporation of ILS into national law: The case of Conventions Nos. 87 and 98; and **Module 40.** The tripartite declaration: Rendering ILS and principles to standards for **enterprise conduct.**



Cluster 3. For groups interested in ILS and CSR, the following cluster would be appropriate.



Annex III. Texts of Conventions Nos. 87 and 98, and the tripartite declaration of principles concerning multinational enterprises and social policy

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Part I. Freedom of Association

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

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 authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall

not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Part II. Protection of the Right to Organise

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall

not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

(adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) as amended at its 279th (November 2000) and 295th Session (March 2006))

(Government and enterprise actors are shown in **bold** in the text below. *Ed.*)

The Governing Body of the International Labour Office;

Recalling that the International Labour Organization for many years has been involved with certain social issues related to the activities of multinational enterprises;

Noting in particular that various Industrial Committees, Regional Conferences, and the International Labour Conference since the mid-1960s have requested appropriate action by the Governing Body in the field of multinational enterprises and social policy;

Having been informed of the activities of other international bodies, in particular the UN Commission on Transnational Corporations and the Organization for Economic Cooperation and Development (OECD);

Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments, workers' and employers' organizations, and multinational enterprises themselves;

Recalling that it convened a Tripartite Meeting of Experts on the Relationship between Multinational Enterprises and Social Policy in 1972, which recommended an ILO programme of research and study, and a Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy in 1976 for the purpose of reviewing the ILO programme of research and suggesting appropriate ILO action in the social and labour field;

Bearing in mind the deliberations of the World Employment Conference;

Having thereafter decided to establish a tripartite group to prepare a Draft Tripartite Declaration of Principles covering all of the areas of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries,

All the while bearing in mind the recommendations made by the Tripartite Advisory Meeting held in 1976;

Having also decided to reconvene the Tripartite Advisory Meeting to consider the Draft Declaration of Principles as prepared by the tripartite group;

Having considered the Report and the Draft Declaration of Principles submitted to it by the reconvened Tripartite Advisory Meeting;

Hereby approves the following Declaration which may be cited as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, and invites governments of States Members of the ILO, the employers' and workers' organizations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein.

1. Multinational enterprises play an important part in the economies of most countries and in international economic relations. This is of increasing interest to governments as well as to employers and workers and their respective organizations. Through international direct investment and other means such enterprises can bring substantial benefits to home and host countries by contributing to the more efficient utilization of capital, technology and labour. Within the framework of development policies established by governments, they can also make an important contribution to the promotion of economic and social welfare; to the improvement of living standards and the satisfaction of basic needs; to the creation of employment opportunities, both directly and indirectly; and to the enjoyment of basic human rights, including freedom of association, throughout the world. On the other hand, the advances made by multinational enterprises in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.

2. The aim of this Tripartite Declaration of Principles is to encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the establishment of a New International Economic Order, as well as subsequent developments within the United Nations, for example, the Global Compact and the Millennium Development Goals.

3. This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by cooperation among the governments and the employers' and workers' organizations of all countries.

4. The principles set out in this Declaration are commended to the governments, the employers' and workers' organizations of home and host countries and to the multinational enterprises themselves.

5. These principles are intended to guide the governments, the employers' and workers' organizations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.

6. To serve its purpose this Declaration does not require a precise legal definition of multinational enterprises; this paragraph is designed to facilitate the understanding of the Declaration and not to provide such a definition. Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned. Unless otherwise specified, the term "multinational enterprise" is used in this Declaration to designate the various entities (parent companies or local entities or both or the organization as a whole) according to the distribution of responsibilities among them, in the expectation that they will

cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.

7. This Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organizations and multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

GENERAL POLICIES

8. All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.

9. **Governments** of States which have not yet ratified Conventions Nos. 29, 87, 98, 100, 105, 111, 122, 138 and 182 are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 35, 90, 111, 119, 122, 146, 169, 189 and 190.¹ Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy.

10. **Multinational enterprises** should take fully into account established general policy objectives of the countries in which they operate. Their activities should be in harmony with the development priorities and social aims and structure of the country in which they operate. To this effect, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organizations concerned.

11. The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.

12. **Governments** of home countries should promote good social practice in accordance with this Declaration of Principles, having regard to the social and labour law, regulations and

¹ Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention (No. 105) concerning the Abolition of Forced Labour; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 122) concerning Employment Policy; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour; Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer; Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 146) concerning Minimum Age for Admission to Employment; Recommendation (No. 169) concerning Employment Policy; Recommendation (No. 189) concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises; Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

EMPLOYMENT

Employment promotion

13. With a view to stimulating economic growth and development, raising living standards, meeting manpower requirements and overcoming unemployment and underemployment, **governments** should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.²

14. This is particularly important in the case of host country governments in developing areas of the world where the problems of unemployment and underemployment are at their most serious. In this connection, the general conclusions adopted by the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour (Geneva, June 1976),³ and the Global Employment Agenda (Geneva, March 2003)⁴ should be kept in mind.

15. Paragraphs 13 and 14 above establish the framework within which due attention should be paid, in both home and host countries, to the employment impact of multinational enterprises.

16. **Multinational enterprises**, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.

17. Before starting operations, **multinational enterprises** should, wherever appropriate, consult the competent authorities and the national employers' and workers' organizations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies. Such consultation, as in the case of national enterprises, should continue between the multinational enterprises and all parties concerned, including the workers' organizations.

18. **Multinational enterprises** should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organizations of these workers and governmental authorities.

19. **Multinational enterprises**, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.

20. To promote employment in developing countries, in the context of an expanding world economy, **multinational enterprises**, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local

² Convention (No. 122) and Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 169) concerning Employment Policy; and Recommendation (No. 189) concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises.

³ ILO, World Employment Conference, Geneva, 4-17 June 1976.

⁴ ILO Global Employment Agenda, 2003, ILO, Geneva.

processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration.

Equality of opportunity and treatment

21. All **governments** should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.⁵

22. **Multinational enterprises** should be guided by this general principle throughout their operations without prejudice to the measures envisaged in paragraph 18 or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment.⁶ Multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.

23. **Governments** should never require or encourage multinational enterprises to discriminate on any of the grounds mentioned in paragraph 21, and continuing guidance from governments, where appropriate, on the avoidance of such discrimination in employment is encouraged.

Security of employment

24. **Governments** should carefully study the impact of multinational enterprises on employment in different industrial sectors. Governments, as well as multinational enterprises themselves, in all countries should take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises.

25. **Multinational enterprises** equally with national enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.

26. In considering changes in operations (including those resulting from mergers, takeovers or transfers of production) which would have major employment effects, **multinational enterprises** should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.

27. Arbitrary dismissal procedures should be avoided.⁷

28. **Governments**, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated.⁸

⁵ Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 100) and Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

⁶ See the two following ILO codes of practice: HIV/AIDS and the world of work, ILO code of practice, 2001, ILO, Geneva; Managing disability in the workplace, ILO code of practice, 2002, ILO, Geneva.

⁷ Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer.

⁸ Ibid.

TRAINING

29. **Governments**, in cooperation with all the parties concerned, should develop national policies for vocational training and guidance, closely linked with employment.⁹ This is the framework within which **multinational enterprises** should pursue their training policies.

30. In their operations, **multinational enterprises** should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise as well as the development policies of the country. Such training should, to the extent possible, develop generally useful skills and promote career opportunities. This responsibility should be carried out, where appropriate, in cooperation with the authorities of the country, employers' and workers' organizations and the competent local, national or international institutions.

31. **Multinational enterprises** operating in developing countries should participate, along with national enterprises, in programmes, including special funds, encouraged by host governments and supported by employers' and workers' organizations. These programmes should have the aim of encouraging skill formation and development as well as providing vocational guidance, and should be jointly administered by the parties which support them. Wherever practicable, multinational enterprises should make the services of skilled resource personnel available to help in training programmes organized by governments as part of a contribution to national development.

32. **Multinational enterprises**, with the cooperation of governments and to the extent consistent with the efficient operation of the enterprise, should afford opportunities within the enterprise as a whole to broaden the experience of local management in suitable fields such as industrial relations.

CONDITIONS OF WORK AND LIFE

Wages, benefits and conditions of work

33. Wages, benefits and conditions of work offered by **multinational enterprises** should be not less favourable to the workers than those offered by comparable employers in the country concerned.

34. When **multinational enterprises** operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies.¹⁰ These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.¹¹

35. **Governments**, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.

⁹ Convention (No. 142) concerning Human Resources Development and Recommendation (No. 195) concerning Human Resources Development: Education, Training and Lifelong Learning, recalling the voluntary nature of the substance and levels of collective bargaining.

¹⁰ Recommendation (No. 116) concerning Reduction of Hours of Work.

¹¹ Convention (No. 110) and Recommendation (No. 110) concerning Conditions of Employment of Plantation Workers; Recommendation (No. 115) concerning Workers' Housing; Recommendation (No. 69) concerning Medical Care; Convention (No. 130) and Recommendation (No. 134) concerning Medical Care and Sickness Benefits.

Minimum age

36. **Multinational enterprises**, as well as **national enterprises**, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour and should take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.¹²

Safety and health

37. **Governments** should ensure that both multinational and national enterprises provide adequate safety and health standards for their employees. Those governments which have not yet ratified the ILO Conventions on Guarding of Machinery (No. 119), Ionising Radiation (No. 115), Benzene (No. 136) and Occupational Cancer (No. 139) are urged nevertheless to apply to the greatest extent possible the principles embodied in these Conventions and in their related Recommendations (Nos. 118, 114, 144 and 147). The list of occupational diseases and the codes of practice and guides in the current list of ILO publications on occupational safety and health should also be taken into account.¹³

38. **Multinational enterprises** should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards. They should also make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers' and employers' organizations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises, should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.

39. **Multinational enterprises** should cooperate in the work of international organizations concerned with the preparation and adoption of international safety and health standards.

40. In accordance with national practice, multinational enterprises should cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations.

INDUSTRIAL RELATIONS

41. **Multinational enterprises** should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.

Freedom of association and the right to organize

42. Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without

¹² Convention No. 138, Article 1; Convention No. 182, Article 1.

¹³ Recommendation (No. 194) concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases. The ILO Conventions and Recommendations referred to are listed in the Catalogue of ILO Publications on Occupational Safety and Health, ed. 2000, ILO, Geneva.
See also <<http://www.ilo.org/public/english/protection/safework/publicat/index.htm>>

previous authorisation.¹⁴ They should also enjoy adequate protection against acts of anti-union discrimination in respect of their employment.¹⁵

43. Organizations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.¹⁶

44. Where appropriate, in the local circumstances, **multinational enterprises** should support representative employers' organizations.

45. **Governments**, where they do not already do so, are urged to apply the principles of Convention No. 87, Article 5, in view of the importance, in relation to multinational enterprises, of permitting organizations representing such enterprises or the workers in their employment to affiliate with international organizations of employers and workers of their own choosing.

46. Where **governments** of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively.

47. Representatives of the workers in multinational enterprises should not be hindered from meeting for consultation and exchange of views among themselves, provided that the functioning of the operations of the enterprise and the normal procedures which govern relationships with representatives of the workers and their organizations are not thereby prejudiced.

48. **Governments** should not restrict the entry of representatives of employers' and workers' organizations who come from other countries at the invitation of the local or national organizations concerned for the purpose of consultation on matters of mutual concern, solely on the grounds that they seek entry in that capacity.

Collective bargaining

49. Workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their own choosing recognized for the purpose of collective bargaining.

50. Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.¹⁷

51. **Multinational enterprises**, as well as **national enterprises**, should provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements.¹⁸

52. **Multinational enterprises** should enable duly authorized representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation.

53. **Multinational enterprises**, in the context of bona fide negotiations with the workers' representatives on conditions of employment, or while workers are exercising the right to

¹⁴ Convention No. 87, Article 2.

¹⁵ Convention No. 98, Article 1(1).

¹⁶ Convention No. 98, Article 2(1).

¹⁷ Convention No. 98, Article 4.

¹⁸ Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers' representatives or the workers' exercise of their right to organize.

54. Collective agreements should include provisions for the settlement of disputes arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.

55. **Multinational enterprises** should provide workers' representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and practices, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.¹⁹

56. **Governments** should supply to the representatives of workers' organizations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process. In this context, **multinational** as well as **national enterprises** should respond constructively to requests by governments for relevant information on their operations.

Consultation

57. In **multinational** as well as in **national enterprises**, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.²⁰

Examination of grievances

58. **Multinational** as well as **national enterprises** should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.²¹ This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour and to forced labour.²²

¹⁹ Recommendation (No. 129) concerning Communications between Management and Workers within the Undertaking.

²⁰ Recommendation (No. 94) concerning Consultation and Co-operation between Employers and Workers at the Level of Undertaking; Recommendation (No. 129) concerning Communications within the Undertaking.

²¹ Recommendation (No. 130) concerning the Examination of Grievances within the Undertaking with a View to their Settlement.

²² Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention (No. 105) concerning the Abolition of Forced Labour; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour; Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 146) concerning Minimum Age for Admission to Employment, and Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Settlement of industrial disputes

59. **Multinational** as well as **national enterprises** jointly with the representatives and organizations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.²³

²³ Recommendation (No. 92) concerning Voluntary Conciliation and Arbitration.

Annex IV. Joint DOLE-PNP-PEZA guidelines on the conduct of PNP personnel, economic zone police and guards, company security guards and similar personnel during labour disputes



**JOINT DOLE-PNP-PEZA GUIDELINES
IN THE CONDUCT OF PNP PERSONNEL, ECONOMIC ZONE POLICE AND
SECURITY GUARDS, COMPANY SECURITY GUARDS AND SIMILAR
PERSONNEL DURING LABOR DISPUTES**

In order to promote public interest and safety, industrial peace and stability, and to ensure that the right to peaceful picketing, strikes and concerted activities by workers and lockout by employers is respected at all times, this Guidelines is hereby prescribed to govern the official conduct of all members of the Philippine National Police (PNP), Economic Zone Police and security guards, company security guards and similar personnel during labor disputes, including the necessary coordination with other concerned relevant government agencies.

I. GENERAL POLICY

1. It is the understanding by the parties that labor disputes are within the sole jurisdiction of the Department of Labor and Employment (DOLE) and/or through its appropriate agencies pursuant to the Labor Code, as amended, while matters involving peace and order are under the exclusive jurisdiction of the Department of Interior and Local Government (DILG) through the Philippine National Police (PNP) pursuant to Republic Act No. 8551, or the "Philippine National Police Reform and Reorganization Act of 1998", and within the economic zones, the mandate to ensure peace and order is lodged with the Philippine Economic Zone Authority (PEZA) through the PEZA Police and Security Guards as provided in Republic Act No. 7916, or the "Special Economic Zone Act of 1995".

Further, it is understood that all labor and employment cases shall be governed by the Single Entry Approach prescribing a 30-day mandatory conciliation-mediation services pursuant to DOLE Department Order 107-10, Series of 2010, issued by virtue of Section 3, Article XIII of the 1987 Constitution on the preferential use of voluntary modes of dispute settlement, Article 211 of the Labor Code, as amended, the Alternative Dispute Resolution (ADR) Act of 2004 and Executive Order No. 523 instituting the use of ADR for speedy resolution of all disputes before all administrative bodies of the Executive Department, and TIPC Resolution No. 3, Series of 2010.

It is also a generally accepted principle that labor disputes have peace and order implications; therefore, there should be close coordination between and among DOLE, PNP, and PEZA as prescribed in the following Guidelines:



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COMPANY SECURITY GUARDS AND SIMILAR PERSONNEL DURING LABOR DISPUTES**

II. DEFINITION OF TERMS

2. The terms used in this Guidelines shall mean:
 - a. "**Company Security Guard**" refers to company security guard posted or assigned by a licensed company security force of the client-company or locator in the economic zone.
 - b. "**Economic Zone Police**" refers to employee of PEZA clothed with police authority and in charge of the peace and order and the enforcement of laws, rules and regulations inside the PEZA economic zone.
 - c. "**PEZA Security Guard**" refers to security guard of the private security agency contracted by PEZA and deployed to the PEZA economic zone.
 - d. "**Private Security Guard**" refers to any person posted by a licensed private security agency to client-company or locator in the economic zone.
 - e. "**Similar Personnel**" used herein in relation to security guards, refers to an employee of the private security agency entrusted to oversee, supervise or exercise similar functions performed by security guards to the client-employer or locator in the economic zone.
 - f. "**Strike area**" refers to the establishment, warehouse, depots, plants or offices, including the sites or premises used as runaway shops of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exit from said establishment.
 - g. "**Labor Dispute**" refers to any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

**III. REQUEST FOR PNP/ECONOMIC ZONE POLICE/PEZA SECURITY GUARDS ASSISTANCE
DURING LABOR DISPUTES**

3. Any request for PNP/Economic Zone Police/PEZA Security Guards assistance made by DOLE and/or its appropriate agencies shall be in writing, specifying the acts to be performed or conducted by PNP/Economic Zone Police/PEZA Security Guards, and shall be addressed to:
 - a. For PNP Assistance – PNP Regional Director or the City Police Director in the case of highly urbanized cities, or the Provincial Director in the case of municipalities and component cities.
 - b. For Economic Zone Police/PEZA Security Guards Assistance – Head/Responsible Officer of the concerned Economic Zone Office. The PEZA Security Guards referred to in this Guidelines shall act as agents of persons in authority in the enforcement of the

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Labor Code inside the zones during strikes, lockouts or labor disputes in the economic zone.

4. Any request for PNP assistance by the parties to the labor dispute, including those within the economic zone, shall likewise be in writing and shall be coursed through the DOLE and/or its appropriate agencies or through PEZA.

In case of actual violence, the PNP or PEZA can respond during strike, lockout or labor disputes even without the written request from DOLE.

5. In economic zones, labor or management may request in writing the Economic Zone Office for zone police assistance. The Economic Zone Office shall coordinate with the DOLE and/or its appropriate agencies of such request.

IV. SERVICE OF LAWFUL ORDERS / WRITS ISSUED BY DOLE, COURTS OR DULY CONSTITUTED AUTHORITIES

6. The service of lawful Order/Writ issued by the DOLE is the primary concern of the DOLE's duly authorized representative and/or sheriff. Before service of the Order/Writ, the DOLE representative and/or sheriff shall:

a. Coordinate and dialogue with the leaders of the workers and the representatives of management and explain the nature and content of the Order/Writ to be enforced including possible consequences of any defiance thereto;

b. Coordinate with PNP when violence is imminent;

c. In economic zones, coordinate with the concerned Economic Zone Office for the orderly and peaceful implementation of the Order/Writ.

7. Where PNP assistance is sought in the service of the Order/Writ issued by courts or other duly constituted authorities in relation to or arising out of labor disputes, it shall be the duty of the PNP to observe this Guidelines and to coordinate with the DOLE and/or its appropriate agencies of the service of the Order/Writ.

V. PEACE-KEEPING ASSISTANCE

8. The involvement of PNP personnel during strikes, lockouts and labor disputes in general shall be limited to the maintenance of peace and order, enforcement of laws, and implementation of legal orders of the duly constituted authorities.

9. A PNP peace-keeping team shall be assigned in a picket/strike/lockout area when requested in writing by the DOLE or PEZA, and subject to the following conditions:

a. The peace-keeping team shall stay at least 50-meter radius away from the picket/strike/lockout area. In case the 50-meter radius includes a public thoroughfare, traffic police shall ensure the free flow of traffic.

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- b. In the exercise of their peace-keeping functions, members of the team shall at all times be in proper uniform, without lethal weapons and firearms, and with properly displayed nameplate. They shall:
- i. Exercise maximum tolerance and when called for by the situation or when all other peaceful and non-violent means have been exhausted, may employ as a last resort only such means as may be necessary and reasonable to prevent or repeal an aggression;
 - ii. Observe courtesy and strict neutrality, bearing in mind that the parties to the labor dispute are not their adversaries but their partners in the quest for industrial peace and human dignity;
 - iii. Not deliberately inflict any physical harm upon strikers and/or picketers or any person involved in the strike /lockout;
 - iv. Not fraternize with any of the parties involved in the controversy, and shall not accept any invitation from management personnel or union officials/personnel involved in the controversy;
 - v. Ensure that the strike-bound area is a gun-free zone, to include civilians and police personnel; and
 - vi. Respect the Constitutional guarantee on the right of the people to be secured from unreasonable searches and seizures.

10. In the economic zones, Zone Police and PEZA Security Guards peace-keeping team may be formed to ensure peace and order during strikes, lockouts or labor disputes. They shall likewise observe the above conditions governing the engagement of PNP peace-keeping team, except the provision on maintaining the 50-meter distance from the picket/strike/lock-out area.

VI. TECHNICAL WORKING COMMITTEE

11. A Technical Working Committee (TWC) composed of the DOLE, PEZA and PNP shall be created to ensure compliance with this Guidelines. The TWC shall be headed by the DOLE Undersecretary for Labor Relations with the following as members: National Conciliation and Mediation Board (NCMB), National Labor Relations Commission (NLRC), PEZA, and PNP. The Department of Interior and Local Government Peace and Order Unit shall be invited as member. The NCMB, NLRC and the Bureau of Labor Relations (BLR) shall act as the Secretariat of the TWC. The TWC shall meet regularly to monitor, coordinate, assess, and address concerns/ issues/problems arising from the implementation of this Guidelines. In the exercise of its functions, the TWC shall promote full respect for workers' right to freedom of association and, in economic zones, shall ensure that the Industrial Relations Office's proactive mechanisms and processes are operational.

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pointed instruments) in violation of Batas Pambansa Blg. 6, or possession of firearms or explosives in violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294, the person arrested shall be delivered to the nearest police station and accordingly be charged in court.

The arresting officer shall notify the DOLE within twenty-four hours after the arrest was made.

Any person who is not a worker of the company/business establishment on strike but has joined the striking workers in their picket or strike shall be treated by the law enforcers in the same manner as the strikers/picketers.

IX. ROLE OF COMPANY SECURITY GUARDS AND SIMILAR PERSONNEL

15. Pursuant to Sections 1, 2 and 3 of Rule XVIII of the 2003 Implementing Rules and Regulations of Republic Act No. 5487 or the "*Private Security Agency Law*", the following shall be observed by company security guards and similar personnel of the private security agency during picket/strike/lockout:

Private Security Personnel

- a. All private security personnel in direct confrontation with strikers, marchers, or demonstrators shall not carry firearms. They may, at best, carry only night sticks (*ibatata*) which may or may not be provided with tear gas canister and dispensers. Private security personnel of strike-bound establishments not in direct confrontation with the strikers may carry in the usual prescribed manner their issued firearms.
- b. Private security personnel shall avoid direct contact, either physically or otherwise, with the strikers.
- c. Private security personnel shall stay only within the perimeter of the installation which they are protecting at all times.
- d. Private security personnel, in protecting and securing the assets and persons of their clients, shall use only sufficient and reasonable force necessary to overcome the risk or danger posed by strikers or hostile crowds.
- e. Private security personnel shall refrain from abetting or assisting acts of management leading to physical clash of forces between labor and management. These hostile acts include breaking of the strike; smuggling in of scabs and preventing strikers from conducting peaceful pickets.
- f. Private security personnel shall not enforce the provisions of the Labor Code, as amended, pertaining to strikes/lockouts.
- g. Private security personnel on duty must at all times be in complete uniform with their names and agency's name shown on their shirts above the breast pockets.

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Private Security Agencies/Company Security Force Chief Security Officers

- a. Upon declaration of a strike, or upon the establishment of a picket line or mass action at the vicinity of a firm/establishment, the Detachment Commander or the Chief Security Officer of the company guard force, shall immediately collect all firearms of the guards in direct or about to have a direct confrontation with the crowd and deposit these firearms in their vault; or reissue these firearms to other private security personnel not issued firearms but assigned to and performing guard duties away from and not visible to strikers or the crowd as may be required by the circumstances.
- b. The Detachment Commander or Security Director shall account for all the firearms in a logbook.
- c. In instances where there is no Detachment Commander or Security Director, as in a compound where there are only a few guards, the agency operator or Security Officer in the case of company security forces, shall immediately be informed by the guards of the declaration of strike or about the approach of strikers or a crowd; whereupon the agency operator/security officer shall immediately assess the situation and take appropriate action to forestall violence, but at the same time insuring security of the premises.
- d. The Detachment Commander or Security Director shall maintain constant contact with the management and if he notices or observes the strikers or the crowd to be up to something unlawful, or are clearly violating the provisions of the Labor Code, as amended, the Revised Penal Code and/or local ordinances, this information shall be reported to the Commander of the Peace Keeping Force for his appropriate action.
- e. If it becomes unavoidable for private security personnel to talk to strikers or member of the crowd, only the Detachment Commander or Security Director shall talk to the leader or leaders of the strikers or crowd. What transpires in this dialogue shall be reported to the management immediately. At no instances shall private security personnel negotiate with the strikers or unfriendly crowd in relation to the labor-management dispute. This is a function of management.
- f. If the situation worsen or becomes untenable for the private security personnel to cope with, the Detachment Commander or Security Director, the guard on post, shall immediately advise the management to request for PNP security assistance.
- g. The Detachment Commander and Security Director shall publish emergency telephone numbers (Police, Fire, Hospital) at all guards posts and detachments.

Inter-relationship between Private Security Personnel and members of the PNP

- a. Private security personnel are always subordinate to members of the PNP on matters pertaining to law enforcement and crime prevention. They cannot enforce any provision of the law except in executing citizen's arrest and/or conducting initial investigation of a commission of a crime. In such case, any arrested person shall be turned over immediately to the nearest PNP unit/station.

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- b. Criminal investigation is the responsibility of the PNP. All results of initial investigation conducted by private security personnel and all evidence gathered by them shall be turned over to the PNP unit/station concerned as a matter of course without delay.
- c. Responsibilities of Private Security Personnel:
 - i. Private security personnel are responsible purely for enforcing company policies, rules and regulations of management and clients with the ultimate objective of providing security to the assets and persons of clients.
 - ii. Private security personnel are authorized and empowered by law to act as such and in the manner prescribed by the Chief PNP on within their specifically assigned areas to be secured, as provided for in the contract between the client and the private security agency, and, in the case of company security services, as specifically stated in their private security firm licenses.

Acts or omissions of private security personnel arising out of or in connection with the implementation of this Guidelines shall be proceeded in accordance with the 2003 Implementing Rules and Regulations of Republic Act 5487, as amended, and PNP Memorandum-Circular 2008-001 "*Revised Rules in the Investigation in the Administrative Cases Involving Security and Training Personnel, Security Agencies and Training Institutions*".

Any complaint may be filed with the Complaint and Investigation Section, Supervisory Office and Security Investigation Agencies (SOSCIA), PNP-Civil Security Group (CSG), for acts or omission committed in the National Capital Region. In all other cases, the complaint shall be filed with the PNP-Regional Firearms, Explosives, Security Agencies and Guards Section (FESAGS) where the complainants' workplace or the respondents' principal office is located.

The filing of any administrative action shall be without prejudice to the filing of civil and criminal complaints when appropriate.

X. ADMINISTRATIVE REMEDIES

- 16. Any violation/s of this Guidelines shall be dealt with as follows:
 - a. PNP – Acts or omission arising out of or in connection with their participation in the implementation of this Guidelines shall be processed and resolved in accordance with the provisions of Republic Act No. 8551, or the "*Philippine National Police Reform and Reorganization Act of 1998*". Accordingly, all complaints/reports of violation/s against any personnel of the PNP shall be filed before the PNP-Internal Affairs Service for investigation and conduct of summary hearings.

The filing of the complaint or report is without prejudice to the power or authority of the PNP-IAS to, *motu proprio*, conduct investigation on the following cases:

- i. incidents where a police personnel discharges a firearm;

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- ii. incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of a police operation;
- iii. incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of police personnel;
- iv. incidents where a suspect in the custody of the police was seriously injured; and
- v. Incidents where the established rules of engagement have been violated.

Any complaint by a natural or juridical person against any member of the PNP may also be brought before the National Police Commission (NAPOLCOM), Chief of Police, Mayors, Women's and Children's Protection Desks in all police stations, the People's Law Enforcement Boards (PLEBs).

Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "neglect of duty" under the doctrine of "command responsibility" if he/she has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his/her subordinates, or by others within his/her area of responsibility and, despite such knowledge, he/she did not take preventive or corrective action either before, during or immediately after its commission.

- b. Economic Zone Police/Personnel – Complaints against economic zone police/personnel shall be acted upon in accordance with the PEZA Law and Civil Service Rules.
 - c. DOLE Personnel - Complaints shall be processed in accordance with the *DOLE Manual on the Disposition of Administrative Cases and Uniform Rules on Administrative Cases in the Civil Service*.
17. The foregoing shall be without prejudice to the filing of civil or criminal actions, which could be separately, alternately, simultaneously or successively initiated before the appropriate courts for violation of the provisions of the Revised Penal Code, specifically Titles 2 and 7, on *Crimes Against the Fundamental Laws of the State* and *Crimes Committed by Public Officers*, respectively; or for violation of Republic Act No. 3019, or the "Anti-Graft and Corrupt Practices Act"; or under Republic Act No. 6713, or the "Code of Conduct and Ethical Standards for Public Officials and Employees".

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XI. REPEALING CLAUSE

18. The provisions of the 26 August 1997 Guidelines in the Conduct of PNP Personnel, Private Security Guards and Company Guard Forces During Strikes, Lockouts and Labor Disputes in General, and all guidelines, rules and regulations inconsistent herewith are hereby superseded.

XII. EFFECTIVITY

19. This Guidelines shall take effect immediately upon publication in a newspaper of general circulation.

Manila, Philippines. May 23 2011

FOR THE DEPARTMENT OF LABOR
AND EMPLOYMENT

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Annex V. Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the exercise of workers' rights and activities



GUIDELINES ON THE CONDUCT OF THE DOLE, DILG, DND, DOJ, AFP AND PNP RELATIVE TO THE EXERCISE OF WORKERS' RIGHTS AND ACTIVITIES

To promote the effective exercise of workers' and trade union rights and to address violence and threats against workers and trade unionists, including the reports and/or allegations of militarization of workplaces and impunity, this Guidelines is hereby prescribed to govern the official conduct of all members/personnel/officers of the following government agencies/units:

- 1) Department of Labor and Employment (DOLE);
- 2) Department of the Interior and Local Government (DILG);
- 3) Department of National Defense (DND);
- 4) Department of Justice (DOJ);
- 5) Armed Forces of the Philippines (AFP) including the CAFGU Active Auxiliaries (CAAs) and the Special CAFGU Active Auxiliaries (SCAAs);
- 6) Philippine National Police (PNP) including its Supervisory Office for Security and Investigation Agency (SOSIA); and
- 7) Barangay Tanod/Barangay Public Safety Officer (BPSO).

All its members/personnel/officers are required to conduct themselves in accordance with the provisions of the 1987 Philippine Constitution; Labor Code of the Philippines, as amended; Republic Act No. 7160, Local Government Code of the Philippines; United Nations Universal Declaration of Human Rights; International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); ILO Protocols and Recommendations and International Labour Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organize (No. 87) and ILO Convention on the Right to Organize and Collective Bargaining (No. 98); International Humanitarian Law (IHL); Presidential Memorandum No. 393; Joint Circular 2-91 (Directing the AFP and the PNP to Reaffirm their Adherence to the Principles of Humanitarian Law and Human Rights in the Conduct of Security/Police Operations); and the Social Contract with the Filipino People of President Benigno S. Aquino III.

I. GENERAL POLICY

Workers and employers have the right to life, liberty and property and enjoy the right to political dissent within the bounds of law. The absence of these civil liberties removes all meaning from the concept of workers' and employers' rights, which are better exercised in a climate that is free from violence, pressure or threats of any kind. It is incumbent upon the

		<p style="text-align: center;"><u>GUIDELINES ON THE CONDUCT OF THE DOLE, DILG, DND, DOJ, AFP AND PNP RELATIVE TO THE EXERCISE OF WORKERS' RIGHTS AND ACTIVITIES</u></p>
		<p>government to ensure that this principle is respected and for workers' and employers' organizations to guarantee that these rights are not abused.</p> <p>Workers' rights are human rights. The right to form and to join unions for the protection of his/her interests are constitutionally guaranteed pursuant to Article 23 of the UDHR and provided in the ICCPR. Thus, a system of democracy and respect of fundamental human rights are essential to full and genuine observance of the rights of all workers particularly, freedom of association and civil liberties.</p> <p>In order to ensure observance of workers' rights, it is hereby emphasized that labor disputes are within the sole jurisdiction of the DOLE and/or through its appropriate agencies pursuant to the Labor Code of the Philippines, as amended, while matters involving peace and order and law enforcement are under the jurisdiction of the DILG through the PNP pursuant to Republic Act No. 6975, "Department of the Interior and Local Government Act of 1990", as amended by Republic Act No. 8551, "Philippine National Police Reform and Reorganization Act of 1998" and the protection of the people and the State and securing the sovereignty of the State and integrity of the national territory are under the jurisdiction of the AFP pursuant to Article II, Section 3 of the 1987 Philippine Constitution.</p> <p>II. WORKERS' RIGHTS RELATIVE TO THE EXERCISE OF FREEDOM OF ASSOCIATION</p> <p>Workers' rights relative to the exercise of freedom of association shall be respected and protected at all times. These include:</p> <ol style="list-style-type: none"> 1) The right to establish and join organizations without discrimination to include the right of trade unions/workers' organizations or their leaders or members not to be prejudiced by reason of their actual or potential membership in a political party that is in opposition to a political party in power; 2) The right to life and personal safety shall include the right of trade unions and workers' associations to carry out their activities in full freedom in accordance with labor and other related laws and to be protected from threats of or actual violence committed by persons or organizations opposed to their trade union activities; 3) The right to freedom and security from arbitrary arrest and detention shall include the right of persons and properties of trade unions and workers' associations to be secured from unreasonable and unlawful searches and seizures and to due process of law; 4) The right to freedom of opinion and expression shall include the right of every worker/trade unionist to freely and publicly express his/her personal opinions, orally or in writing, on matters affecting his/her rights; and 5) The right to freedom of assembly shall include the right of workers and trade unions to engage in peaceful concerted actions in accordance with law and the International Labour Standards.

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III. SCOPE AND COVERAGE

This Guidelines shall be applicable to all cases of exercise of workers' rights particularly, freedom of association, collective bargaining, concerted actions and other trade union activities in relation to the involvement/mobilization of the members of the AFP, including CAAAs and SCAAs, the PNP, the Local Chief Executives, company security personnel/security guards and the Barangay Tanod/BPSO thereat.

IV. DEFINITION OF TERMS

- 1) Actual Violence – refers to an ongoing and intentional use of physical force or power, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death or destruction of or damage to property.
- 2) Area of Operations – refers to geographical areas assigned to unit commanders of the PNP and AFP for which they have responsibility and in which they have authority to conduct police and military operations respectively.
- 3) Certification Election – means the process of determining, through secret ballot, the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit, for purposes of collective bargaining.
- 4) Community – refers to a body of people having common rights, privileges or interests, or living in the same place under the same laws and regulations.
- 5) Concerted Actions – refer to activities undertaken by two or more persons arising from a labor dispute or in the exercise of constitutionally guaranteed rights and freedoms.
- 6) Conflict Group – refers to any armed group or force formed not for the purpose of advancing interests or causes of workers that is in clash with or in a state of opposition to the armed forces/state.
- 7) Counter-insurgency – refers to comprehensive civilian and military efforts, strategies, plans and programs undertaken to address insurgency and its root causes and to halt or extinguish an organized movement aimed at the overthrow of a duly constituted government through the use of subversion and armed conflict.
- 8) Freedom of association – refers to the right of workers and employers to form or join an organization of their own choosing, without prior authorization, to collectively protect and promote their economic and social interests.
- 9) Harassment – refers to the manifestly physical or verbal or systematic and/or continued unwarranted action of one party or group, including threats and demands.

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		<p>10) Labelling and/or Tagging and/or Red Baiting – refers to the act of accusing, denouncing, attacking or persecuting an individual or organization as a communist or communist sympathizer without legal basis and due process of law.</p> <p>11) Labor Dispute – refers to any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.</p> <p>12) Labor Federation – means any labor organization registered with the DOLE as labor federation.</p> <p>13) Labor Organization – means any union or association of employees which exist in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.</p> <p>14) Lockout - means the temporary refusal of an employer to provide work as a result of an industrial or labor dispute.</p> <p>15) Militarization – for purposes of this Guidelines, refers to military intrusion, involvement or presence in a workplace or in trade union campaigns.</p> <p>16) Military Operation – refers to planned activities undertaken independently or in coordination with civilian entities in support to the accomplishment of AFP mission to gain popular support and weaken the will of the enemy to fight. It is characterized by activities that influence the beliefs, emotion, behaviors, attitudes and opinions of selected target audience; it establishes and maintains good relations between military forces, civil authorities and the civilian populace to facilitate military operations in support to the accomplishment of the AFP mission.</p> <p>17) National Security Threat – refers to a situation and/or environment where the nation's fundamental values defined in the Philippine Constitution and the way of life of Filipinos, its institutions, and its socio-economic-political interests are actually or potentially threatened.</p> <p>18) Picketing – means the right of workers to freedom of expression, peaceful assembly, and concerted actions consisting of the marching to and fro before the premises of an establishment involved in a labor dispute, generally accompanied by the carrying and display of signs, placards or banners with statements relating to the dispute.</p> <p>19) Security situation – refers to a condition or position with respect to the degree of protection against any danger, damage, loss and crime.</p> <p>20) Strike – means any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labor dispute, or to express positions on socio-economic matters affecting workers' interests.</p>

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21) Strike-bound Area – refers to the 50-meter radius from the establishment, warehouse, depots, plants or offices, including the sites or premises used as runaway shops of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exit from said establishment.

22) Workplace – refers to the office, premise or worksite where a worker is temporarily or habitually assigned. Where there is no fixed or definite workplace, the term shall include the place where the worker actually performs regular work, or where he/she regularly reports to render service or to take an assignment.

V. CONDUCT OF THE AFP/PNP RELATIVE TO THE EXERCISE OF WORKERS' RIGHT TO FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING, CONCERTED ACTIONS AND OTHER TRADE UNION ACTIVITIES

- 1) Labor disputes shall be under the primary and sole jurisdiction of DOLE and/or its appropriate agencies. Members of the AFP, PNP and other law enforcement agencies, including Barangay Tanod/BPSO and company security personnel/security guards shall not intervene in labor disputes. The AFP and PNP may intervene only in the following cases:
 - a) Expressly requested in writing either through mail, email, fax or any similar means by the DOLE, through its Regional Offices, or
 - b) A criminal act has been committed, is being committed, or is about to be committed through overt acts in accordance with Rule 113 of the Revised Criminal Procedures whether or not it arises out of the labor dispute, or
 - c) In cases of actual violence arising out of a labor dispute.
- 2) Request for presence of AFP personnel/units in a workplace where strike, picketing or lockout has been declared and in progress should be based on a security situation, and only for the purpose of extending support to the PNP, or in the extreme situation when no other law enforcement agency in the area is available to perform the following:
 - a) Maintain peace and order within the community/general vicinity of the labor-dispute area;
 - b) Provide security for both workers and management;
 - c) Prevent violence or prevent escalation of ongoing violence;
 - d) Prevent the commission of other crimes, the nature of which are not related to the labor dispute on hand; and

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