

## Committee on the Application of Standards

Date: 16 May 2022

**Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 16 May 2022.**

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Philippines

##### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)**

The Government has provided the following written information.

The unwavering commitment to comply with the principles and letter of ILO Convention No. 87 is best demonstrated by the Philippine Government's openness to and active participation in examinations of the ILO supervisory mechanisms. In a letter dated 13 May 2022, the Philippine Government informed the ILO that the Office of the President interposed no objection to the acceptance of a high-level tripartite mission (HLTM) on 16–20 May 2022. However, in view of the need to complete the administrative preparations of the mission and the participation of the tripartite participants, the Philippine Government concurred with the alternative dates proposed by the ILO to have the HLTM immediately after the International Labour Conference, subject to final confirmation by ILO headquarters.

On civil liberties and trade union rights, the Philippine Government continues to undertake proactive measures to address and prevent reported violence in relation to the exercise of workers' legitimate activities.

The 16 Regional Tripartite Monitoring Bodies (RTMB) remain functional and were further strengthened with the designation of mediator-arbiters as focal persons, as well as the designation of the Undersecretary for Labor Relations and all Regional Directors as national and regional focal points, respectively, to assist aggrieved parties in accessing legal remedies available in cases of intimidation, harassment, and "red-tagging". The Department's interventions include securing the complainants' affidavits and endorsing the same to the appropriate office for verification and possible filing of a case, such as in the reported incidents of harassment and red-tagging of trade unionists in Alcophil Metal Inc. (ALCOPHIL) and Nexperia Philippines Inc. (NEXPERIA). Similar interventions were made in the cases involving union officer/s at F.Tech Inc. in Laguna, and Rose Bakeshop, Coca-Cola, Pepsi, Holcim Cement, Coco Davao and Sky Cable in Davao, among others.

As per RTMB monitoring, of the 43 reported cases during the 2019 International Labour Conference, 19 cases are currently being investigated; 18 cases are pending in court; 2 cases were dismissed due to insufficiency of evidence; 1 case was dismissed by the prosecutor for lack of probable cause; in 1 case, the suspect was killed in the implementation of the warrant; and in 2 cases, the suspects were identified but their relatives filed affidavits of disinterest.

There are also additional reports submitted by ACT Teachers Partylist, Nagkaisa! Labor Coalition and other labour groups involving 12 incidents of killing. Of the 12 incidents: 4 cases are pending in court; in 1 case the suspect is already dead; in 1 case relatives issued an affidavit of interest; and 6 cases are under investigation.

To further facilitate the effective investigation of cases, particularly those involving trade unions, the Department of Labor and Employment (DOLE) sits as member-observer in the meetings of the Administrative Order No. 35 Inter-Agency Committee (AO35 IAC). An ILO technical assistance programme was also conducted in 2021, aiming towards the incorporation of a labour lens into AO35 work.

The 2011 and 2012 Guidelines governing the conduct of concerned agencies in the exercise of trade union rights and activities are being reviewed together with the social partners. The output is a Guidelines that shall govern the conduct of not only the government stakeholders but workers and employers in the private sector as well, with emphasis on the provision that ALL requests for police and military assistance during labour disputes, even within the economic zones, should be coursed through and coordinated with the DOLE. The document has already been presented to social partners and is being deliberated upon.

On the specific cases of alleged extrajudicial killings reported by the Alliance of Concerned Teachers (ACT), RTMB monitoring showed that of the 8 cases of alleged extrajudicial killings reported by ACT: 3 cases are pending before the court, in 1 case a family member of the victim executed an affidavit of disinterest, in 1 case the identified suspect is already dead; and 3 cases are under investigation.

On the other hand, all cases mentioned by the International Trade Union Confederation (ITUC) in their September 2021 observation are already under RTMB monitoring, accounted under paragraphs 4–5 herein, by virtue of news reports and press statements that reached the attention of the Department, as well as reports coming from various labour organizations such as ACT Teachers Partylist, Nagkaisa! Labor Coalition, Center for Trade Union and Human Rights, and so on.

In relation to the labour groups' concerns about the cross-border issuance of "wholesale" search and arrest warrants, the Supreme Court issued Administrative Matter No. 21-06-08-SC on 29 June 2021, expressly limiting the power to issue search warrants as being within the bounds of one's territorial jurisdiction. This landmark development has met with positive responses from labour groups.

With the reservation of reporting labour organizations to participate in administrative investigations conducted by the police and military, the Philippine Government, through the DOLE, recommended to the investigating agencies to involve the DOLE Regional Offices as an intermediary between the parties. This is to assuage any threat or intimidation felt by the complainants, and at the same time allow the investigating authorities to conduct the necessary verification of complaints and proceed with investigation. As a positive development, the AFP in a letter dated 31 March 2022, acceded to this out-of-the-box recommendation.

Although no law specifically defines and penalizes the act of red-tagging per se, there exists a plethora of operational legal remedies and institutional mechanisms for the protection of personalities or groups that have been the subject of harassment committed in relation to red-tagging. These remedies include: (1) the filing of criminal cases for acts punished under the Revised Penal Code for grave threats, arbitrary detention, or delay in the delivery of detained persons; (2) Republic Act No. 9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity); (3) the writ of habeas corpus; (4) the writ of amparo; and (5) the writ of habeas data.

The effectiveness of these mechanisms is proven by success stories as exemplified in a recent case where the Regional Trial Court in Baguio City granted a petition for a writ of amparo and issued an order prohibiting the police from making social media posts and putting up tarpaulins branding four student activists as “communists-terrorists.” In 2019, the Supreme Court likewise issued writs of amparo and habeas data sought by advocate groups Karapatan, GABRIELA and the Rural Missionaries of the Philippines, which have complained about government harassment, threats, red-tagging and other forms of attacks on their members. In 2021, Mandaluyong Regional Trial Court dismissed the charges filed against a journalist, Lady Ann Salem, and union organizer Rodrigo Esparago who were accused of illegal possession of firearms and explosives and links to communist rebels on the ground that the evidence against them was inadmissible after finding and declaring “null and void” the search warrant used by the law enforcers.

Of equal importance are the existing administrative remedies to hold accountable government authorities and peacekeeping forces who committed violations of labour rights. These remedies are embodied in the *Guidelines on the conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities* issued in 2012. However, no one, including trade unions, has availed themselves of these remedies to date.

With regard to pending cases of alleged killings of trade union leaders, a criminal complaint relating to the killing of Rolando Pango was filed on 17 April 2015 against identified suspects with the Office of the Provincial Prosecutor of Negros Occidental, Bacolod City, but was dismissed by the prosecutor on 10 November 2015 for lack of probable cause. In the case of Florencio Romano, a PNP report dated 19 May 2022 stated that the police are still conducting follow-up investigations to identify the culprit. With regard to the killing of Victoriano Embang, a case was filed against the identified suspects before the RTC Branch 63, La Carlota City, Negros Occidental, docketed under CC No. 4480 (with no bail recommended). The two accused remain at large.

To further strengthen existing mechanisms and efforts, the Philippine Government welcomes and actively participates in technical assistance programmes by the ILO and European Union. As a way forward, the Philippine Government is gearing towards possibly availing itself of ILO technical assistance, especially on identifying gaps in the exercise of freedom of association, case conferences with the prosecutorial, investigative and monitoring arm of the government, enhancement of witness protection programmes, social services to the victims, their families and witnesses, and capacity-building activities, among others.

The Philippine Government is also formulating a tripartite road map on the promotion of freedom of association and civil liberties taking into consideration the recommendations in the report of the September 2021 Tripartite High-Level Virtual Meeting and the Committee on the Application of Standards' conclusions in 2019. Focusing on efforts towards prompt and effective investigation of allegations of killings and assaults against trade unionists, strengthening tripartite monitoring bodies and further operationalizing the AO35 IAC, and

ensuring effective protection of labour rights in ecozones, among others, the road map aims to bring forward evidence of tangible or sufficient progress on the remaining areas of concern identified by this Committee. The road map is the subject of ongoing deliberation by the tripartite partners.

On legislative matters, the proposed legislative measures filed in Congress for strengthening the right to self-organization by lowering the 20 per cent membership requirement for union registration, limiting the Secretary of Labor's power to assume jurisdiction over labour disputes, and allowing aliens to exercise their right to self-organization have been pending with their respective House and Senate Committees on Labor and Employment since 2019.

The subjects of the proposed measures, however, are already addressed in practice. For clarification, there is no required number of workers in an establishment before a union can be formed. Any number of persons may form a union, but for purposes of registration as a legitimate labour organization, an independent union must have members comprising at least 20 per cent of all the employees in the bargaining unit. Furthermore, article 241 of the Labor Code already makes registration much easier through the process called "chartering" or creation of a local chapter. Under article 241, a duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of a local chapter which shall be entitled to all other rights and privileges of a legitimate labour organization without the need to comply with the registration requirements set forth under article 240(c) of the Labor Code.

Moreover, despite the existing provision under the 46-year-old Code, assumption of jurisdiction was used sparingly. From July 2016 to April 2022, only 19 cases were assumed by the Secretary. In resolving labour disputes, parties are empowered through exhaustive conciliation-mediation as a preferred mode of dispute resolution by virtue of Republic Act No. 10396. Also, Department Order No. 40-H-13, "Harmonizing Essential Services Criteria with Industries Indispensable to National Interest Assumption of Jurisdiction" was issued in 2013. The Department Order provides an indicative list of industries indispensable to the national interest harmonized with the essential services criteria of Convention No. 87. These industries include the hospital sector, the electric power industry, water supply services (to exclude small water supply services such as bottling and refilling stations), and air-traffic control.

Lastly, it must be clarified that the requirement of prior approval from the Secretary of Labor before trade unions can receive foreign assistance pursuant to article 285 of the Labor Code, is not in violation of Article 3 of Convention No. 87. Article 285 of the Code regulates foreign assistance, but the burden of securing prior authorization is not imposed upon the trade unions; rather, this is imposed upon the foreign individual, organization or entity itself, before they may give any donation, grant or other form of assistance to any labour organization, group of workers, or auxiliary thereof.

The Philippine Government stands firm by its mandate to promote and protect workers' constitutionally guaranteed fundamental rights and welfare. Moreover, the Government recognizes the need for continuous cooperation and support coming from its social partners. Particularly, labour organizations are vital for effectively educating their members and bridging their access to the administrative and legal structures and remedies available for their protection.