



International
Labour
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Freedom of association and collective bargaining:



**National
action plan,
2017-2022**

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Abbreviations

AFP	Armed Forces of the Philippines
CAS	Committee on the Application of Standards
CB	Collective Bargaining
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CHR	Commission of Human Rights
CSC	Civil Service Commission
DCM	Direct Contact Mission
DFA	Department of Foreign Affairs
DILG	Department of Interior and Local Government
DND	Department of National Defense
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DTI	Department of Trade and Industry
ECOP	Employers' Confederation of the Philippines
EU-GSP+	European Union-Generalized Scheme of Preferences Plus
FOA	Freedom of Association
ILO	International Labour Organization
<i>LEDAC</i>	<i>Legislative-Executive Development Advisory Council</i>
MCLE	Mandatory Continuing Legal Education
NEDA-SDC	National Economic and Development Authority-Social Development Committee
NCBC	National Conciliation and Mediation Board
NCIP	National Commission on Indigenous Peoples
NLRC	National Labor Relations Commission
NMM	National Monitoring Mechanism
NTIPC	National Tripartite Industrial Peace Council
<i>NUWHRAIN-HHMSC</i>	<i>National Union of Workers in Hotel Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter</i>
NTIPC-MB	National Tripartite Industrial Peace Council-Monitoring Body

PAFLU	Philippine Association of Free Labor Unions
OECD	Organisation for Economic Co-operation and Development
OPAPP	Office of the Presidential Adviser on the Peace Process
PEZA	Philippine Economic Zone Authority
PNP	Philippine National Police
RTIPC	Regional Tripartite Industrial Peace Council
RTMB	Regional Tripartite Monitoring Body
SC	Supreme Court
Sulong CARHRIHL	Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law
TIPC	Tripartite Industrial Peace Council
TWG	Technical Working Group
UN-SDGs	United Nations-Sustainable Development Goals

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1. Introduction

As a signatory to the International Labour Organization (ILO) Convention Nos. 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining), the Philippines is under obligation to implement the principles embedded therein, both in law and in practice, and is obliged to report regularly on measures taken to progressively implement the Conventions, subject to the review by the ILO supervisory mechanisms.

As early as 1966, the Philippines, through the Supreme Court (SC) in *Philippine Association of Free Labor Unions (PAFLU) vs. Secretary of Labor*, puts into proper application the principles enunciated in ILO Convention Nos. 87 and 98. In succeeding cases, the SC has consistently applied these principles. In 2011, in *Heritage Hotel Manila vs. National Union of Workers in Hotel Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHMSC)*, the SC reinforced the right of workers to self-organization and collective bargaining under the Labor Code of the Philippines and ILO Conventions Nos. 87 and 98.

However, according to the ILO High Level Mission in 2009, workers' exercise of their fundamental rights to Freedom of Association (FOA) and Collective Bargaining (CB), were characterized by violence, intimidation, threat and harassment, absence of convictions in relation to those crimes and obstacles to the effective exercise in practice of trade union rights. As reported, the past administrations have been faced with challenges in the form of extra-judicial killings, harassment and abduction of trade unionists and labour advocates. Justice for the victims is reportedly weighed down by legal and administrative impediments, and gaps in law and in practice.

Taking off from the 2009, ILO High Level Mission's findings and recommendations, the Philippine Government has already achieved substantial progress in its commitments¹ towards the promotion and protection of workers' rights to FOA. Nevertheless, during the 105th Session of the International Labour Conference, the Conference Committee on the Application of Standards (CAS) adopted several conclusions and recommendations to address the remaining gaps in the Philippine application of ILO Convention No. 87, particularly on the allegations of

¹The Philippine Government's four areas of commitment: (a) creation of a high level tripartite monitoring committee within the ambit of the National Tripartite Industrial Peace Council (*NTIPC*), chaired by the Secretary of Labor and Employment, with clear terms of reference as to its mandate and whose membership shall come from federations and national unions regardless of affiliations; (b) expeditious investigation, prosecution and resolution of pending cases concerning alleged harassment and assassination of labour leaders and trade union activists; (c) work closely with the ILO, its social partners from labour and employers' sectors, and other stakeholders, to establish a Technical Cooperation Programme that will raise awareness and strengthen the capacity of all relevant government institutions, including the social partners in the promotion and protection of labour rights; and (d) work on the proposed legislative reforms to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights.

anti-union violence and the lack of progress in the investigation of many such cases, as well as on long-standing requests for various legislative reforms towards improved application of the Convention. The CAS called for the Philippine Government's acceptance of a Direct Contact Mission (DCM) that would follow-up on the CAS Conclusions, which eventually took place on 6-10 February 2017.

Following the ILO DCM to the Philippines where a comprehensive list of recommendations has been generated to address these gaps, the Department of Labor and Employment (DOLE), ILO Country Office for the Philippines (CO-Manila) and European Union-Generalized Scheme of Preference (EU-GSP+) have embarked on a two-year ILO Project on "Support GSP+ Beneficiary Countries to Effectively Implement International Labour Standards and Comply with Reporting Obligations" which aims to further improve the capacity of labour, employers and the government towards better implementation and application of the right to FOA and CB in the country. Under the Project, a National Action Plan was formulated by the tripartite partners composed of government, employers and workers' organizations in identifying key result areas and strategies to further improve the application of FOA and CB principles in the Philippines, taking into consideration the observations and recommendations made by the ILO supervisory mechanisms, through DCM, on these areas:

2. Civil liberties and trade union rights

The Philippine Government, through the DOLE, has established national and regional tripartite monitoring mechanisms tasked to: (a) facilitate innovative feasible solutions to long-standing Committee on Freedom of Association cases; (b) monitor and report progress of labour cases lodged before international bodies; (c) report violations to the concerned authorities and recommend appropriate action; and (d) facilitate gathering of relevant information on complaints submitted to the ILO and evaluate and recommend appropriate action/s. They particularly play an active role in helping ensure the full and swift investigation and resolution of the alleged acts of killings, harassment and abduction of trade union leaders and members through the active involvement of workers' and employers' representatives in the monitoring of cases.

Apart from the continuous inventory and monitoring of cases by these tripartite mechanisms, the Philippine Government has likewise re-established and strengthened inter-agency coordination to expedite the investigation and prosecution of cases of alleged extrajudicial killings and enforced disappearances through the creation of the *Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and other Grave Violations of the Right to Life, Liberty and Security of Persons*, tasked to investigate old and new cases of extrajudicial killings, enforced disappearances, torture and other grave human rights violations, and all cases of killings of labour leaders and labour advocates (and even those mistaken to be so).

The operational capability of the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) to foster an enabling environment for the enjoyment of constitutionally guaranteed civil liberties and trade union rights has been strengthened through undertakings such as the revision/updating/formulating of guidelines and/or manuals, conduct of capability building activities, infrastructure developments and distribution of advocacy materials.

Nevertheless, there remains issues and concerns encountered by the various monitoring and investigative mechanisms rendering the slow resolution of pending cases on the violations of civil liberties and trade union rights of workers. Moreover, the need to strengthen these mechanisms through continuous and sustained capacity-building is emphasized. Taking these into consideration, the National Action Plan includes activities geared towards achieving the following outcomes:

Outcomes	Activities	Lead agency
1. Operationalization and coordination between existing monitoring and investigative mechanisms, including sectoral representatives, on case handling strengthened and improved.	Convene the technical working group (TWG) drafting the Operational Guidelines for National Tripartite Industrial Peace Council-Monitoring Body (NTIPC-MB) and Regional Tripartite Monitoring Body (RTMB) for the finalization of the Guidelines.	DOLE
	Get an external collaborator to review and analyze National Monitoring Mechanism (NMM) processes or existing guidelines to find out where are the areas for improvement in terms of monitoring, investigation and resolution of cases.	ILO
2. Improved capacity of police, military and other security forces on FOA and CB as embodied under the PNP and AFP Guidelines, as well as on all existing monitoring and investigative mechanisms.	Get an external collaborator to review and analyze Administrative Order 35 processes or existing guidelines to find out where are the areas for improvement in terms of monitoring, investigation and resolution of cases.	ILO
3. Improved capacity of sectoral representatives on case building and monitoring.	Conduct capacity-building activities for regional/local trade union participants on case build-up and documentation.	DOLE and ILO
4. Labour rights and standards (i.e. FoA and CB) integrated in standardized police and military training curriculum.	Conduct Multi-Sectoral Orientation/ Training Workshop on the Different Guidelines re: Labour-Related Cases (including the Department of Justice [(DOJ)] prosecutors, PNP and court judges).	DOLE
	Conduct/facilitate roundtable discussions between unions/labour groups and PNP/AFP on familiarization about labour movement and PNP/AFP operations to remove stereotypes (confidence building).	DOLE
	Simplify information, education and communication materials on AFP and PNP Guidelines by creating a flowchart and frequently asked question and legal	DOLE

Outcomes	Activities	Lead agency
	templates, for dissemination to stakeholders.	
	Include in the Mandatory Continuing Legal Education (MCLE) the Operational Guidelines and Administrative Order 35.	Judicial Academy, DOJ and MCLE Office
	Request/lobby for labour and employer representatives to the National Peace and Order Councils of the PNP.	Labour groups, PNP and Local Government Units
	Review existing curriculum design (i.e., PNP Training Curriculum, AFP Career Courses) of training academies/ institutions to incorporate subjects/ topics pertaining to FOA and CB.	Hanns Seidel Foundation of Germany, Commission on Human Rights (CHR), International Committee of the Red Cross, National Commission on Indigenous Peoples (NCIP), Police Regional Offices and Alternative Law Group
	Conduct mandatory trainings (Junior Leadership Course, Public Safety Senior Leadership Course, Officer's Orientation Course, among others).	Training commands (Associated Press, Philippine Navy, Philippine Air Force), Air Education Training and Command, Naval Education and Training Command, Sulong-Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), Office of the Presidential Adviser on the Peace Process (OPAPP), DOLE, ILO, Philippine Military Academy, Officer Candidate

Outcomes	Activities	Lead agency
		School, Reserve Command and National Research Initiative Programme
	Conduct specialized trainings (Criminal Investigation Course, Finance Officers Course).	
	Conduct training of trainers.	
	Conduct human rights refresher seminars/workshops.	
	Conduct regular community-based trainings.	

3. Legislative issues

Another commitment by the Philippine Government is to work on proposed legislative reforms to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights. Towards this end: (a) the 20 per cent membership requirement for local chapter registration has been removed; (b) the power to administratively cancel union has been removed and the grounds for cancellation of union registration have been restricted; (c) the pendency of petition for cancellation of union registration has been excluded as ground to suspend certification election; (d) the prohibition for supervisors and rank-and-file to join the same federation/national union has been removed; (e) the inclusion of employees outside the bargaining unit as union members has been removed as ground for cancellation of union registration; and (f) the “employer bystander rule” in certification election has been re-affirmed. The strengthening of social dialogue and tripartism, as well as the institutionalization of conciliation-mediation as mandatory in resolution of labour disputes/cases, through legislative reforms, are also deemed as means to further strengthen trade unionism and to minimize, if not remove, obstacles to the effective exercise of labour rights.

Interim administrative measures were likewise adopted to: (a) reduce the percentage of membership requirement for purposes of registration of government employees’ organization from 30 per cent to 10 per cent; (b) provide clear guidelines in the exercise of assumption of jurisdiction by the Secretary of Labor; and (c) to provide an indicative list of industries indispensable to the national interest harmonized with the essential services criteria of ILO Convention No. 87.

Notwithstanding the foregoing, further reforms are being recommended by the ILO Supervisory Mechanism (i.e., *Committee of Experts on the Application of Conventions and Recommendations* [CEACR] and CAS) on the following areas: (a) requirement of government permission for foreign assistance to trade unions; (b) reduction of registration requirement from ten to five duly recognized bargaining agents or local chapters, and of excessive minimum membership requirement for independent unions; (c) allow currently excluded classes of public servants to associate freely; (d) equal rights of aliens to organize; (e) limit government intervention in compulsory arbitration to “essential services”; and (f) removal of penal sanctions for participation

in illegal strikes. It is said that legislative gaps and slow action on policy reforms remain to continually challenge the realization of a climate conducive to the effective implementation of FOA and CB. Taking these into consideration, the National Action Plan includes activities geared towards achieving the following outcome:

Outcomes	Activities	Lead agency
<p>1. Legislative amendments to relevant laws anchored on recommendations and comments from ILO supervisory bodies (i.e. CEACR) revisited in DOLE priority legislative agenda, filed and monitored.</p>	<p>Support the passage/enactment of the following bills (i.e., attend meetings, hold briefings, submit position papers, among others):</p> <ul style="list-style-type: none"> • Revision of Article 263 (g) • Security of Tenure Bills • <i>National Labor Relations Commission (NLRC) Bill</i> (Speedy Resolution; NLRC to SC; Special Division for Labour in the SC) • Public Sector Labour Relations Act in compliance with ILO Convention No. 151 • Bill on Contracting Out of Jobs in the Public Sector • Security on workplaces • Bills in re: workers in the informal economy: Transitioning Bill; Representation of informal workers in tripartite formation; Security of informal workplaces; Informal Economy Bill 	<p>Congress of the Philippines, <i>Legislative-Executive Development Advisory Council (LEDAC)</i>, DOLE, <i>Department of the Interior and Local Government (DILG)</i>, Civil Service Commission (CSC) and other concerned offices/agencies</p>
	<p>Improve policies on FOA and CB:</p> <ul style="list-style-type: none"> • Issue policy on industry-wide unionism and collective bargaining. • Issue policy to require labour education for management as a requirement for accreditation of bargaining unit. 	<p>DOLE</p>
	<p>Improve policies on tripartism and social dialogue:</p> <ul style="list-style-type: none"> • Amend the National Economic and Development Authority-Social Development Committee (NEDA-SDC) Resolution on the creation of Sub-Committee of the Workers in the Informal Sector to the 	<p>Congress of the Philippines, DOLE and NEDA-SDC</p>

Outcomes	Activities	Lead agency
	effect of changing the representatives from trade unions to informal sector association.	
	Conduct capacity-building activities for DOLE to enhance their capacities in reviewing/revisiting laws, rules and policies.	DOLE

4. Promotion of climate conducive to Freedom of Association

The Philippine Government has been closely working with its social partners from labour and employers' sectors, as well as other stakeholders, towards awareness-raising and strengthening the capacity of all relevant government institutions, including the social partners in the promotion and protection of labour rights.

As early as 2009, these engagements with stakeholders have resulted in the formulation and development of key documents governing the engagement of the social partners, particularly the DOLE, police and military during labour disputes, namely: (a) the Joint DOLE-PNP-PEZA or Philippine Economic Zone Authority Guidelines (PNP Guidelines, for brevity), signed on 23 May 2011; (b) the DOLE Administrative Order No. 104, Operational Guidelines on Inter-Agency Coordination and Monitoring of Labour Disputes (DOLE Implementors' Dos' and Don'ts), signed on 27 February 2012; and (c) the Guidelines on the Conduct of the DOLE, DILG, Department of National Defense (DND), DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities (AFP Guidelines, for brevity), signed on 07 May 2012. These Guidelines established the framework for the police and the military, along with key government agencies, for their respective roles and coordination to respect workers right to freedom of association, collective bargaining, right to concerted action and other trade union activities, and to address violence and threats against workers and trade unionists.

From 2010-2017, over 70 capacity-building activities have been conducted toward raising awareness and strengthening the capacity of all relevant government institutions, including the social partners, in the promotion and protection of labour rights. Numerous stakeholders were oriented and capacitated not only on International Labour Standards (particularly on FOA and CB), but also on the observance of tripartite-developed instruments governing the engagement of social partners, including the police, military and key government agencies, during labour disputes. These undertakings highlighted respect for workers' right to FOA, CB, concerted actions and other trade union activities.

Nevertheless, there are still observed gaps in the institutionalization of preventive mechanisms for the better application and promotion of a climate conducive of FOA and CB. Thus, a more proactive National Action Plan that includes activities geared towards achieving the following outcome:

Outcomes	Activities	Lead agency
1. Empowered workers and employers' organizations effectively apply FOA and CB principles as embodied in Labor Code, international labour standards, PNP and AFP Guidelines.	Training manual on capacity-building activities for workers and employers, as well as concerned government agencies/offices designed and rolled-out.	ILO
	Review existing curriculum for secondary and tertiary education to incorporate Labour Relations Education; to be conducted by independent training institutions (i.e., <i>University of the Philippines-School of Labor and Industrial Relations</i>).	Commission on Higher Education, Department of Education and DOLE
2. Social dialogue to prevent escalation of grievances into full blown labour disputes strengthened and institutionalized.	Accreditation mechanisms in re: compliance with FOA and CB established in all/key industries (i.e., similar with the accreditation process in the garment industry).	DOLE and DTI
	Review existing policies and issuances on business permits to require mandatory labour education and compliance with labour standard for labour and management prior to business renewal.	DTI, DILG and DOLE
3. Improved employers' programme better apply social dialogue based on business and human rights framework to prevent violations of workers' civil liberties and trade union rights in the context of the PNP and AFP Guidelines (in critical areas or identified industries).	Conduct tripartite roundtable discussions on principles, standards and mechanisms of FOA and CB.	DOLE, NTIPC, Regional Tripartite Industrial Peace Councils (RTIPCs) and other concerned agencies
	Conduct yearly assessment of compliance with FOA in private and public institutions (i.e., best practices on FOA and CB; similar to the concept of Productivity Olympics).	DOLE and CSC
4. Improved awareness of government agencies involved in advancing inclusive growth (i.e., PEZA, Department of Trade and Industry [DTI], Department of Foreign Affairs [DFA], DOLE) on FOA and CB in the context of promoting compliance vis-à-vis advancing trade, investment and inclusive growth.	Conduct promotional and educational activities promoting workers' rights in the public sector.	CSC
5. Improved efficiency in resolving disputes related to FOA and CB.	Conduct of regular performance assessment of management in the public sector in re: protection and promotion of workers' rights.	CSC
6. Trade investments linked to labour rights.		

Outcomes	Activities	Lead agency
	Conduct regular capacity-building activities for <i>TIPCs</i> .	DOLE
	Create/strengthen Industry Tripartite Councils and train them on creation/formulation of industry standards.	DOLE and DTI
	Create tripartite bodies in every PEZA.	DOLE and PEZA
	Conduct DOLE-PEZA dialogues.	DOLE
	Forge a Memorandum of Agreement on promoting decent work, FOA and CB among CHR, DOLE, DTI, state enforcers and fire brigade.	DOLE, DTI, DILG, AFP, PNP and CHR
	Conduct annual NTIPC summit (include DTI, PEZA, state enforcers and CHR) to discuss its achievements, resolved and unresolved issues.	DOLE (with other concerned agencies)
	Formulate and issue a Department Order relative to the constitution and operationalization of tripartite quick response teams on possible and existing labour problems.	DOLE, National Conciliation and Mediation Board (NCMB), NLRC and labour employer
	Intensify promotion of labour policies and implementation of Memorandum of Understandings.	DOLE (with other concerned agencies)
	Create a TWG that would review and amend, if necessary, the existing Guidelines on the conduct of the DOLE, DILG, DND, DOJ, PNP and AFP relative to the Exercise of Workers' Rights and Activities.	DOLE (with other concerned agencies)
	Review Socially Responsible Corporate Business Practices based on international standards (i.e., UN Global Compact, UN-Sustainable Development Goals (UN-SDGs), UN Business and Human Rights, ILO Fundamental Principles on the Rights of Workers, Organisation for Economic Co-operation and	<i>Employers' Confederation of the Philippines (ECOP)</i>

Outcomes	Activities	Lead agency
	Development (<i>OECD</i>) Guidelines on multinational enterprises).	
	Conduct seminar-orientations for employers, especially small and medium enterprises, about UN Declaration on Business and Human Rights.	ECOP
	Conduct thematic bipartite meetings or conferences.	ECOP
	Align company policies on union organizing with the principles of FOA and CB.	ECOP

5. Tripartite manifesto of commitment on Freedom of Association

On 13 September 2017, multi-stakeholder and tripartite participants of the ILO EU GSP+ Project, launched and signed a Manifesto of Commitment to observe and promote FOA and CB principles (see illustration in the next page). The multi-stakeholder participants include representatives from DOLE, DOJ, DILG, DTI, PEZA; representatives of trade unions and employers' groups; law enforcement agencies; and civil society groups.

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