

Session 8

Workers' Remedies for Violations of Constitutional Guarantees, Human Rights and Labour Rights





Session snapshot

► Session 8

Contains lengthy **discussion on remedies available to workers in case of violations of constitutional guarantees, human rights and labour rights**, which can be at the international or national level. The several international remedies as provided under the ILO supervisory system are discussed in this session alongside national remedies:

- ▶ remedies available to workers in case of violations of constitutional guarantees, human rights and labour rights
- ▶ ILO supervisory system
- ▶ national remedies
- ▶ Regular labour dispute resolution mechanisms administered by DOLE



► Session 8



Estimated duration:
120 minutes



Required materials:
Usual presentation equipment and accessories





Facilitator's guide points

Facilitator's guide points



1. Introduce Session 8 indicating that it is one of, if not the longest, sessions under the third module and even throughout the manual as it tackles remedies for violations of rights relative to the exercise of FOA. Underscore that the available remedies can be at the international or the national level, and administrative, civil or criminal in nature, depending on type of the violations. Use the Overview content in further providing information about the session.



2. Proceed to the session proper and share the learning objectives with the participants. Deliver the session based on the provided Discussion Notes, with a view to adding/modifying/nuancing certain parts considering the audience group.





3. As the session covers different remedial pathways at the national and international level, the facilitator may choose which topics to specifically deliver to a given audience group. The covered topics are as follows:

- ▶ National Remedies for Violations of Constitutional Guarantees (Special Writs)
- ▶ National Remedies and Procedures for FOA-related Criminal Cases
- ▶ National Remedies for Violations Relative to the Conduct of Security Forces in the Exercise of FOA and Civil Liberties
- ▶ (National) Labour Dispute Resolution System
- ▶ International Remedies via the ILO Supervisory System



Facilitator's guide points



4. If the topic on the Special Writs is covered, conduct Activity M2-4 immediately after a discussion using the notes provided in this session. Activity M2-4 is a plenary exercise aimed at assessing whether and to what extent the participants understand the use of the writs as remedies for violations of constitutional guarantees.



5. By the end of the session, conduct Activity M2-5 for case studies requiring participants to identify which remedial pathway/s can be made available for violations given in such case studies.



6. Be mindful of the Key Learning Points as internal guide on messaging.





7. Deliver the Optional Discussion Point on ways to address the culture of violence and impunity which reinforces persistent human and labour right violations in the Philippines.



8. Occasionally engage participants, including by asking them if they have any questions or comments. Check if they can follow the discussion from time to time.



9. Conduct the quick recap exercise at the end of the session.





Learning objectives



Remedies

Identify the different **available remedies at the international and national level** for violations of constitutional guarantees, human rights and labour rights



Coverage of remedies

Determine the **coverage and procedures of the available remedies for violations** of constitutional guarantees, human rights and labour rights



Challenger

Understand the **possible limitations, challenges** or concerns in the access to and use of these remedies



Key learning points



There are several remedies available to workers and advocates in the event that their fundamental rights are violated in the exercise of FOA and related labour rights.

The remedies vary by level, coverage, procedures and intended outcomes, depending on the nature of the rights violated.



Definition of key terms



Appeal

Act of elevating a lower court's decision for review by a higher court



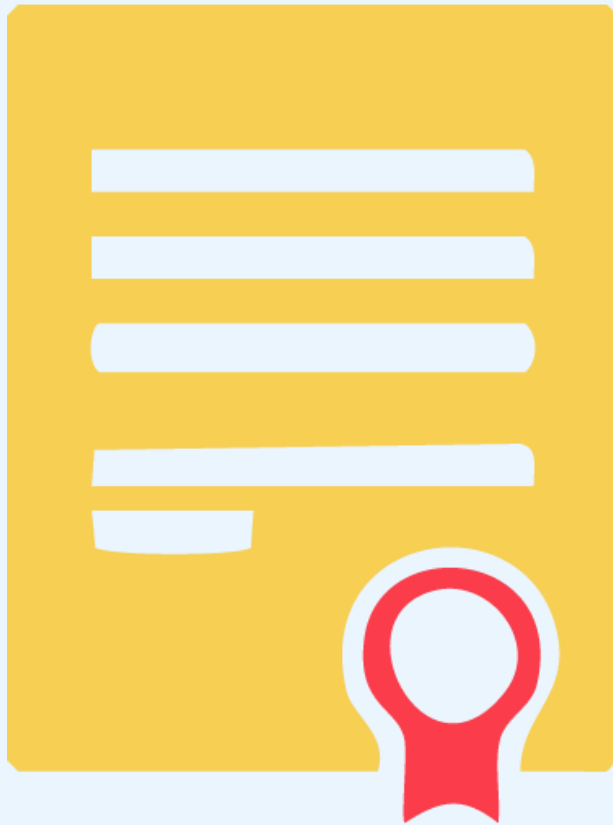
Arraignment

A mandatory requirement that seeks to give the accused the opportunity, at the first instance, to know why the prosecuting arm of government has been mobilized against him and to plead



Bail

The security given for the temporary release of a person in custody of the law



Complaints

An international remedy that can be sought by a Member State, a delegation to the International Labour Conference (ILC), or the ILO Governing Body itself against any Member State for ineffective observance of a ratified Convention, with the procedure outlined under Articles 26-29 and 31-34 of the ILO Constitution



Inquest

An informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court



Representation

An international remedy that can be sought by an employers' or workers' organization against any Member State for ineffective observance of a ratified Convention, with the procedure outlined under Articles 24 and 25 of the ILO Constitution



Trial

A judicial examination of the claims at issue in a case which are presented by the prosecution and defense to enable the court to arrive at a judgment pronouncing either the guilt or innocence of the accused



Writ of Amparo

A writ of protection, with its proceedings as summary in nature



Writ of Habeas Corpus

A local judicial remedy commanding the respondent to produce the person or the body in course, hence the reference to it as the writ of liberty



Writ of Habeas Data

Translates to “You should have the information,” with its proceedings as summary in nature



Session proper

Session 8

Philippine judicial remedies for violations of constitutional guarantee

Philippine remedies and procedure for FOA-related criminal cases

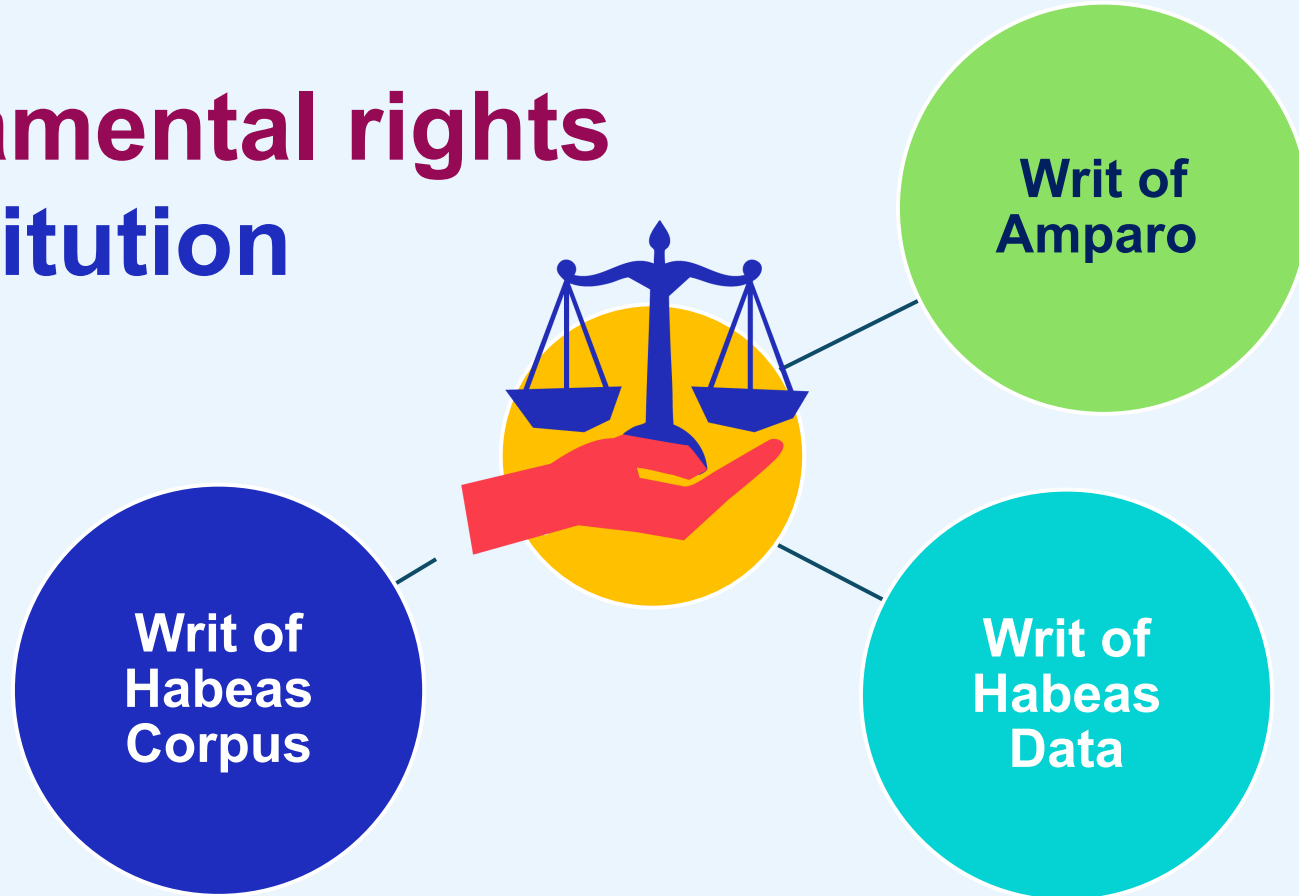
Philippine labour dispute resolution system

The National Monitoring Mechanism (NMM)

The Inter-Agency Committee (IAC) for the protection of the freedom of association and right to organize of workers (EO 23)

Philippine judicial remedies for violations of constitutional guarantees

Remedies for violation of fundamental rights under 1987 constitution



Writ of Habeas Corpus (Rule 102, Rules of Court)

- ▶ **judicial remedy commanding the respondent to produce the person or the body in course**, hence the reference to it as the writ of liberty.
- ▶ It is a **speedy and effectual remedy to relieve persons from unlawful restraint** and a defense of personal freedom (Velasco v. CA, G.R. No. 118644, 7 July 1995).



Writ of Habeas Corpus (Rule 102, Rules of Court)

- ▶ It **also secures to a prisoner the right to have the cause of his detention** examined and determined by a court of justice,
- ▶ to have **ascertained if he is held under lawful authority.** (Quintos vs. Director of Prisons, 55 Phil., 304, 306). Specific details on this Writ are outlined succeedingly.



Coverage of Writ of Habeas Corpus:

- ▶ All cases of illegal confinement or detention by which any person is deprived of his liberty. (Section 1, Rule 102, Rules of Court)
- ▶ Cases where rightful custody of any person is withheld from the person entitled thereto except as otherwise expressly provided by law. (Section 1, Rule 102, Rules of Court)
- ▶ Lack of jurisdiction of the court to impose the sentence or there is excessive penalty in case of deprivation of any fundamental or constitutional rights. (Parulan vs. Director of Prisons, G.R. No. L-28519, 17 February 1968)
- ▶ Invasion or rebellion

Writ of Habeas Corpus

When the Writ of Habeas Corpus is not allowed:

- ▶ The person is under the custody of an officer under process issued by a court of judge, or by virtue of a judgment or order of the court
- ▶ Jurisdiction appears after the writ is issued
- ▶ The person is charged with or convicted of an offense in the Philippines
- ▶ The person is suffering imprisonment under lawful judgment (Sec. 4, Rule 102, Rules of Court)

Writ of Amparo

- ▶ The Writ of Amparo is a writ of protection, the proceedings of which are summary in nature. Specific details on this Writ are outlined succeedingly.



Writ of Amparo

- ▶ **Extra-legal killings and enforced disappearances or threats thereof**
 - ▶ **Extra-legal killings are killings committed without due process of law, i.e. without legal safeguards or judicial proceedings.**
 - ▶ **Enforced disappearances are attended by the following characteristics:**
 - ▶ Arrest, detention, abduction, or any form of deprivation of liberty.
 - ▶ Carried out by or with the authorization, support or acquiescence of the State or a political organization.
 - ▶ Refusal by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the Amparo petition.
 - ▶ Intention for refusal is to remove the subject person from the protection of the law for a prolonged period of time. (Navia vs. Pardico, G.R. No. 184467, 19 June 2012).

Writ of Amparo

Parties who can file the petition:

- ▶ **Aggrieved party**
- ▶ **Any qualified person or entity in the following order:**
 - ▶ Any member of the immediate family of the aggrieved party, namely: the spouse, children, and parents.
 - ▶ Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity.
- ▶ **If there is no known member of the immediate family or relative of aggrieved party, any of the following:**
 - ▶ concerned citizen
 - ▶ concerned organization or association
 - ▶ concerned institution

Writ of Amparo

Parties who can be named as respondents in the petition:

- ▶ official or employee
- ▶ Private individual or entity

Jurisdiction, venue and enforceability

- ▶ Regional Trial Court of the place where the threat, act, or omission was committed or any of its elements occurred
- ▶ Sandiganbayan
- ▶ Court of Appeals
- ▶ Supreme Court (Enforceable anywhere in the Philippines)

Writ of Habeas Data

The Writ of Habeas Data translates to **“You should have the information.”**

Its proceedings are also summary in nature.



Coverage of Writ of Habeas Corpus:

- ▶ **All cases** Violation or threatened violation of the right to privacy in life, liberty or security by an unlawful act or omission of a public official, or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party

**The remedy does not cover violation or threatened violations of the right to privacy in property.*

Coverage of Writ of Habeas Corpus:

- ▶ **Extralegal killings and enforced disappearances or threats thereof**
- ▶ **Extralegal killings are killings committed without due process of law, i.e. without legal safeguards or judicial proceedings.**
- ▶ **Enforced disappearances are attended by the following characteristics:**
 - ▶ Arrest, detention, abduction, or any form of deprivation of liberty
 - ▶ Carried out by, or with the authorization, support or acquiescence of the State or a political organization
 - ▶ Refusal by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the Amparo petition
 - ▶ Intention for refusal is to remove the subject person from the protection of the law for a prolonged period of time. (Navia vs. Pardico, G.R. No. 184467, 19 June 2012)

Writ of Habeas Data

Parties who can file the petition:

- ▶ Aggrieved party
- ▶ In cases of extra-legal disappearances and enforced disappearances, by the following:
 - ▶ Any member of the immediate family of the aggrieved party
 - ▶ Any ascendant, descendant or collateral relatives of the aggrieved party within the fourth civil degree of consanguinity or affinity

Parties who can file the petition:

- ▶ Public official or employee who committed an unlawful act or omission.
- ▶ Private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party.

Writ of Habeas Data

Jurisdiction, venue and enforceability

- ▶ Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected, or stored, at the option of the petitioner.
- ▶ Sandiganbayan or Court of Appeals or Supreme Court when it concerns public data files of government offices.
 - ▶ *There is no definition yet on the term public data files.
 - ▶ Enforceable anywhere in the Philippines.

Burden of proof - Substantial evidence

Docket fees - Payment required; Indigents are immediately exempt

Appeal - Five working days from the date of notice of adverse judgment under



Activity

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



Methodology

Scenario analysis is much like a case study, although the facts are usually shorter and more straightforward. Based on a given scenario, the participants analyze the facts and any underlying assumptions thereof, prior to arriving at an answer to the exercise question/s.



Timing

This activity should be done immediately after the discussion on the judicial remedies or special writs available for cases involving violations of constitutional guarantees as outlined in Session 8. It should be brief only, in order to proceed right away to the next topics under the same session

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



Mechanics

1. In plenary, flash on the screen each given exercise scenario. Read it aloud or ask a volunteer to do so (see list below).
2. Instruct the participants to determine whether any of the special writs may be availed of in the provided case, and which of them.
3. Request them to do a thumbs up if a writ can be merited for the case or a thumbs down if not.
4. Ask for a volunteer to shortly explain his/her/their answer, and supplement with own inputs/insights based on the previous discussion points.

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



Mechanics

SCENARIOS/CASES:

A. A group of unidentified men barged into the office of a labour organization and took away the organization's laptops and documents containing the list of members of the organization.

[Answer: Thumbs down]

It cannot be subject of petition for Writ of Habeas Data because from the facts of the case it cannot be determined if the unidentified persons who barged into the office are public officials and employees or private individuals or entity engaged in data gathering and storing.

Case does not involve extra-legal killing or enforced disappearance.

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



Mechanics

B. A fire broke out at the provincial jail. In the midst of the chaos, an inmate surreptitiously left the grounds but before he could leave the main gate, he has been taken into custody by a jail officer.

[Answer: Thumbs down]

It cannot be the subject of Writ of Habeas Corpus because it does not involve a person who was illegally confined or detained.

The taking of custody by the jail officer upon the inmate who tried to escape was lawful. (Rule 102, Rules of Court).

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



Mechanics

A security guard made threatening statements against an employee in the workplace.

[Answer: Thumbs down]

It cannot be the subject of Writ of Amparo because the threatening statements do not fall under the coverage of Writ of Amparo. However, the acts of the guard may be subject of a case for misconduct in the workplace. (A.M. No. 07-9-12-SC)

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



Mechanics

During the Labour Day rally, some members of the police force entered the ranks of the rallying group and picked up two rallyists who were leading the chants. Said rallyists have been missing since the incident.

[Answer: Thumbs up]

It can be the subject of a petition for Writ of Amparo.

There was a violation on the right to life, liberty, and security of the rallyist.

It was carried out by agents of the State.

It may fall under a case of enforced disappearance as their whereabouts are unknown. (A.M. No. 07-9-12-SC).

Activity M2-4. Scenario analysis: Is there a merit for a Writ?



*Notes on
transition to
online session*

None (typical presentation equipment set)

Materials

As it only requires flashing on screen of the scenarios in text, the exercise is totally adaptable for online mode of delivery using presentation slides.

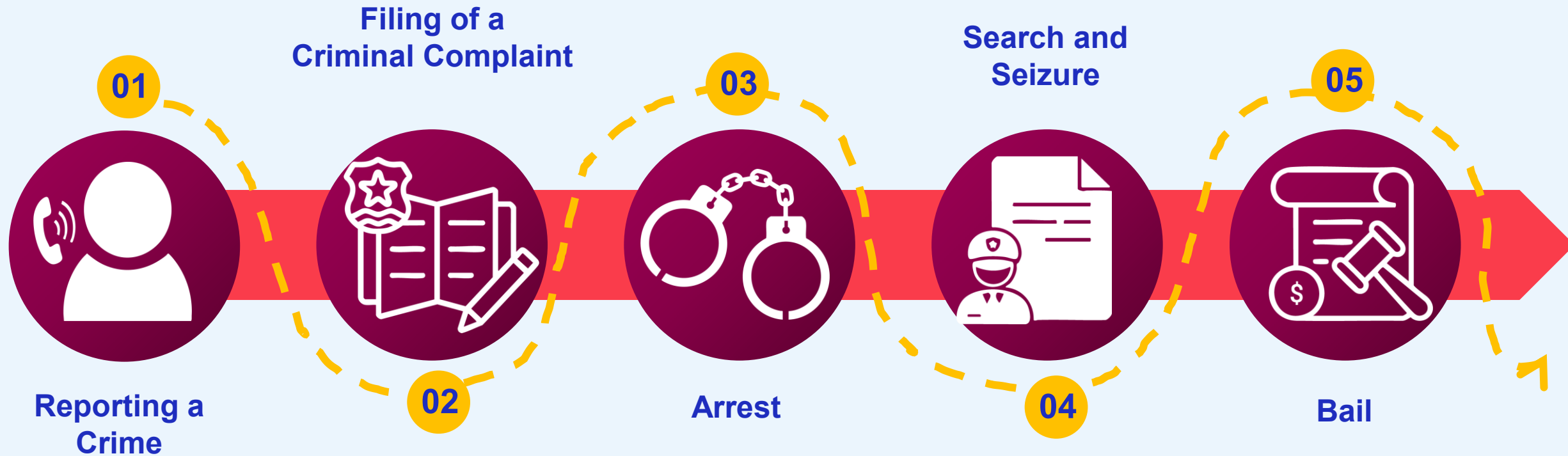
Philippine remedies and procedure for FOA- related criminal cases

Criminal Procedure

is the method prescribed by law for the apprehension and prosecution of a person accused of any criminal offense, including human rights violations in the exercise of FOA and other labour rights, and for their punishment, in case of conviction.



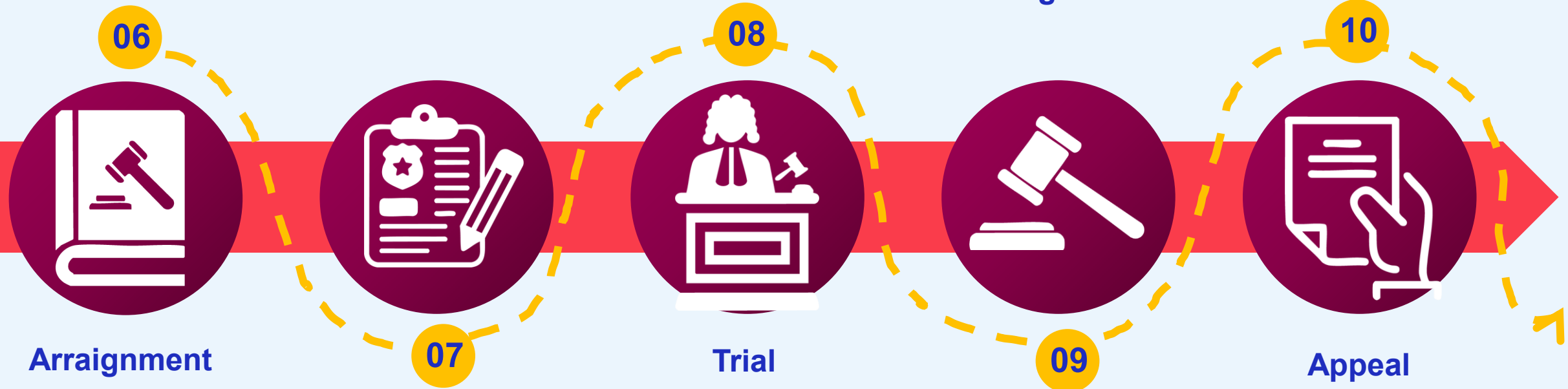
Criminal Procedure



Criminal procedure

Pre-Trial

Judgment





STEP 1:

Reporting a Crime to the Police

- ▶ Police may obtain information on the commission of a crime through their own observation or from a complaint by interested persons.
- ▶ police investigation is an inquiry conducted by a police investigator to determine whether probable cause exists for filing of a complaint against an accused with the Office of the Prosecutor for preliminary investigation.
- ▶ complaint is a sworn written statement charging a person with an offense and subscribed by the offended party, any peace officer or public officer charged with the enforcement of the law violated.



STEP 1:

Reporting a Crime to the Prosecutor

- ▶ Any interested person may file a criminal complaint with the prosecutor who shall conduct an inquest or preliminary investigation.
- ▶ Inquest. An inquest is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court.



STEP 1:

Reporting a Crime to the Prosecutor

- ▶ Commencement of inquest. An inquest is commenced upon the receipt by the Inquest Officer from the law enforcement authorities of the complaint/referral documents
- ▶ Termination of inquest. The inquest proceedings must be terminated within the following period:
 - ▶ 12 hours for light offenses
 - ▶ 18 hours for less grave offenses
 - ▶ 36 hours for grave offenses



STEP 1:

Reporting a Crime to the Prosecutor

- ▶ Preliminary investigation. A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof and should be held for trial.



STEP 2:

Filing a Criminal Complaint Prosecution of Offenses

- ▶ A criminal action is one by which the state prosecutes a person for an act or omission punishable by law.
- ▶ The following shall also be alleged in a complaint or information:
 - ▶ essential element of the offense;
 - ▶ the criminal intent of the accused and its relation to the act or omission complained of;
 - ▶ all qualifying and generic aggravating circumstances which are integral parts of the offense; and
 - ▶ all matters that are essential to the constitution of the offense, such as the ownership and/or value of the property robbed or destroyed; the particular knowledge to establish culpable intent; or the particular intention that characterizes the offense.



STEP 3:

ARREST

- ▶ Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense
- ▶ An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest.
- ▶ No violence or unnecessary force shall be used in making an arrest.



STEP 3: Arrest

Rights of a person under arrest



- ▶ A person arrested must be informed of the **cause of the arrest and the fact that a warrant of arrest** has been issued against him.



STEP 3: Arrest

Rights of a person under arrest

- ▶ He must also be informed in the **language known to and understood by him** of his right to remain silent and his right to have an independent and competent counsel preferably of his own choice, who shall at all times be allowed to confer privately with the accused. If he cannot afford to hire his own counsel, he shall be provided with one.

STEP 3:

ARREST



With a warrant of arrest – The officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity to inform him or when the giving of such information will imperil the arrest.



STEP 3: **ARREST**



Without warrant of arrest – The officer shall inform the person to be arrested of his authority and the cause of his arrest, unless the person to be arrested is then engaged in the commission of an offense or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the officer has opportunity to inform him, or when the giving of such information will imperil the arrest.



STEP 4:

SEARCH AND SEIZURE

A search is any physical entry by a peace officer of any authorized person into a protected or private place for the purpose of making an examination.

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STEP 4:

SEARCH AND SEIZURE

Search and seizure by virtue of a search warrant

- ▶ A search warrant is an **order in writing issued in the name of the Republic of the Philippines**, signed by Judge and directed to a peace officer, commanding him or her to search for personal property described therein and bring it before the court.



STEP 4:

SEARCH AND SEIZURE

Warrantless search

As a general rule, any search and seizure must be made by virtue of a search warrant. Therefore, warrantless searches and seizures are mere exceptions to the general rule. Pursuant to this, there should be only few instances when searched and seizures may be made without a warrant.



STEP 4: SEARCH AND SEIZURE

Effects of invalid searches and seizures

- ▶ Any **evidence obtained** shall be inadmissible in any court proceeding.
- ▶ **The officer who conducted the search** may be held liable for the crime of illegal search.
- ▶ **Damages may be claimed under Art 32 of the Civil Code** for the violation of a right included in the bill of rights guaranteed under the Constitution.



STEP 5:

BAIL

Bail is the security given for the temporary release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as required under the conditions hereinafter specified.

Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance. The right to bail is guaranteed by the Constitution



Kinds of bails:

- ▶ **Cash bond:** furnished by the accused.
- ▶ **Property bond:** furnished by the accused (e.g. real property that shall be given as security for the amount of bail).
- ▶ **Corporate surety:** posted by the surety company.



STEP 6:

ARRAIGNMENT

Arraignment is a **mandatory requirement that seeks to give the accused the opportunity, at the first instance,** to know why the prosecuting arm of government has been mobilized against him and to plead.

At the arraignment, **the accused may enter a plea of guilty or not guilty.** The plea is the reply of the accused to the charge. It raises the issue to be tried and on which the judgment/sentence of the court can be properly based.



STEP 6:

ARRAIGNMENT

Arraignment and plea is made:

- ▶ **The accused must be arraigned before the court where the complaint or information was filed** or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty.
- ▶ **The accused must be present at the arraignment** and must personally enter his plea.
- ▶ The **arraignment shall be held within 30 days** from the date the court acquires jurisdiction over the person of the accused.



STEP 7:

PRE-TRIAL

- ▶ It is a **mandatory conference between the parties**, with their counsel, held in the presence of the judge. The court orders this before commencing trial in order to expedite the proceedings or to simplify the issues without dispensing with justice.
- ▶ A pre-trial is a **process whereby the accused and the prosecutors in a criminal case work out, usually at the arraignment stage**, a naturally satisfactory disposition of a case subject to court approval in order to expedite the trial of the case.



STEP 8: **TRIAL**

A trial is a **judicial examination of the claims at issue in a case which are presented by the prosecution and defense to enable the court to arrive at a judgment pronouncing either the guilt or innocence of the accused.** It is an investigation process resulting in a judgment of a legal controversy or disputes.

- ▶ The object of a trial is to mete out justice, and to convict the guilty and protect the innocent.



STEP 8: TRIAL

Order of trial

The trial shall proceed in the following order pursuant to Section 3, Rule 119 of the Rules of Criminal Procedure:

The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.



The accused may present evidence to prove his defense, and damages, if any, arising from the issuance of any provisional remedy in the case.



The parties may then respectively present rebutting evidence only, unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.



Upon admission of the evidence, the case shall be deemed submitted for decision unless the court directs the parties to argue orally or to submit memoranda.



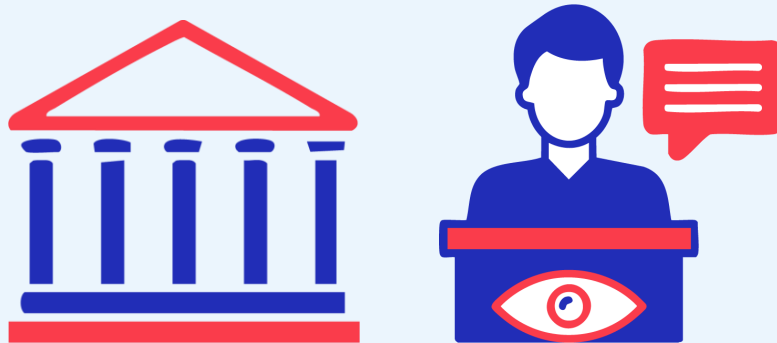
However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly.



STEP 8: TRIAL

The rule in the presentation of witnesses.

The order in the presentation of witnesses shall, as far as practicable, conform to the logical sequence of events obtaining in the case on trial in order to present a clear, organized and coherent picture to the court of the prosecution's evidence.





STEP 8: TRIAL

Steps in examining a witness:

1. direct examination
2. cross examination
3. re-direct examination
4. re-cross examination





STEP 9: **JUDGMENT**

- ▶ Judgment **is the adjudication by the court that the accused is guilty or not guilty of the offense charged** and the imposition on him of the proper penalty and civil liability, if any.



STEP 9: Judgment

A judgment of conviction shall state:

- ▶ The legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission.
- ▶ The participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact.
- ▶ The penalty imposed upon the accused.
- ▶ The civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.



STEP 10: **APPEAL**

Appeal is the act of elevating a lower courts decision for review by a higher court.

- ▶ An appeal is taken by filing a written notice of appeal which contains the judgment or decision of the lower court, the errors committed by said lower court, the appellants supporting arguments and the relief/s prayed for.

National Remedies for violations relative to the conduct of security forces in the exercise of FOA and civil liberties



► **The Omnibus Guidelines** provides for different remediation pathways based on which security actors are involved in the alleged violations.



For PNP Personnel

shall be processed and resolved in **accordance with the provisions of Republic Act No. 6975**, “Department of the Interior and Local Government Act of 1990”, as amended by R.A. No. 8551, “Philippine National Police Reform and Reorganization Act of 1998”.

A. All complaints or reports of violation/s against any personnel of the PNP may be filed before the PNP-Internal Affairs Service [PNP-IAS] for investigation and conduct of summary hearings.



For PNP Personnel

B. The filing of the complaint or report is without prejudice to criminal liabilities and the power or authority of the PNP-IAS to, *motu proprio*, conduct investigation on the following cases:

- ▶ incidents where a police personnel discharges a firearm
- ▶ incidents where death, serious physical injury or any violation of human rights occurred in the conduct of a police operation
- ▶ incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of police personnel
- ▶ incidents where a suspect in the custody of the police was seriously injured
- ▶ incidents where the established rules of engagement have been violated



For PNP Personnel

- C.** Any complaint by a natural or juridical person against any member of the PNP may be brought before the following offices: -
- Office of the Ombudsman
 - National Police Commission (NAPOLCOM) - Chief of Police, PNP Regional Directors, PNP Provincial Directors
 - Mayors
 - Human Rights Desk in all police stations
 - People's Law Enforcement Boards (PLEBs)



For PNP Personnel

D. Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable under the doctrine of “command responsibility”:

- if he/she has knowledge that a crime or offense is to or will be committed, is being committed, or has been committed by his/her subordinates, or by others within his/her area of responsibility. \
- For not taking preventive or corrective actions



For AFP Personnel

shall be processed and resolved in accordance with the provisions of Republic Act No. 7055, “An Act Strengthening Civilian Supremacy over the Military by Returning to Civil Courts the Jurisdiction over Certain Offense Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police.”

Complaints for violations of these Guidelines by any AFP unit or personnel may be filed directly before

- Office of the Provost Marshal General, or the respective Major Service Provost Marshal Office,
- the AFP Center for Law of Armed Conflict (AFP CLOAC),
- the respective major service of law of armed conflict offices, for endorsement to the appropriate office for the conduct of investigation.



For AFP Personnel

Members of the AFP and other persons subject to military law, including members of CAFGUs, **shall be tried by the proper civil court**, except when the offense, as determined before arraignment by the civil court, is service connected, in which case the offense shall be tried by court-martial under the military justice system.

For Private Security Personnel

In accordance with the 2023 Implementing Rules and Regulations of the RA 5487i, as amended – Revised Rules in the Investigation in the Administrative Cases involving security and training personnel

For Economic Zone Police/Personnel

Complaints against the police force security personnel shall be acted upon in accordance with Civil Service Rules and the mandate/charter of the concerned IPA.

Anti-terrorism council designation

Complaints against the police force/security personnel shall be acted upon in accordance with the Civil Service Rules and the mandate/charter of the concerned IPA.

In relation to the designation as terrorist by the Anti-Terrorism Council (ATC), **the Omnibus Guidelines outlines the following remedies available to workers and other individuals simply exercising FOA and their right to organize:**

- ▶ Any person or group of persons who are designated by the [ATC] as a terrorist, or against whom a freeze order is issued by the Anti-Money Laundering Council, may file a request with the ATC for delisting or file a verified petition for certiorari with the Court of Appeals for the removal of his/her/its/their name from the list of designated terrorists in accordance with the provisions of A.M. No. 22-02-19-SC or the Rules on the Anti-Terrorism Act of 2020 and Related Laws.

Source: Omnibus Guidelines, p. 22

Anti-terrorism council designation

- ▶ In case of labeling as a terrorist: the affected individual or organization may avail themselves of the appropriate protective writs as provided under the Rules of Court and other pertinent Rules issued by the Supreme Court.
- ▶ The filing of remedial measures 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 on the provisions of the Revised Penal Code

Source: Omnibus Guidelines, p. 22

Philippine labour dispute resolution system

For the Private Sector

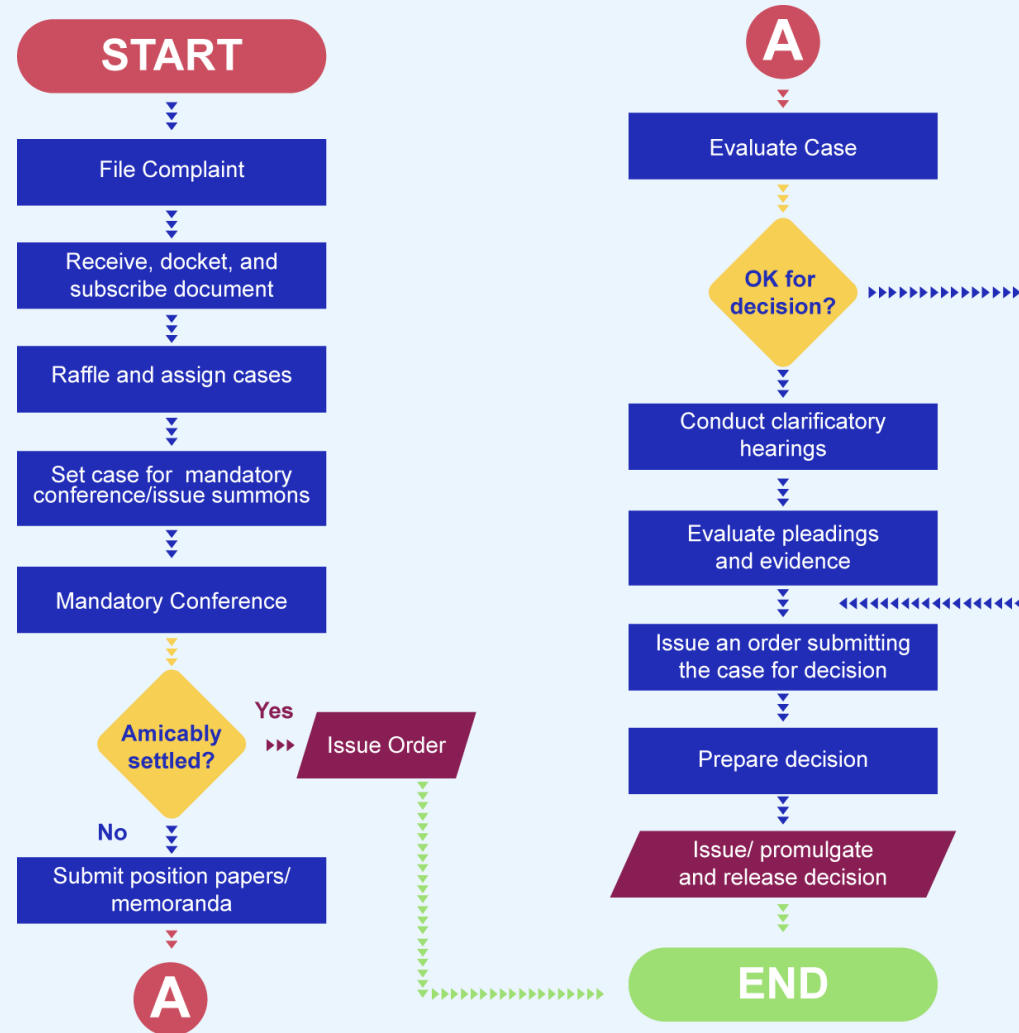


Complaints mechanism for illegal termination and money claims

Source: CHR and ILO.(2022) *Module on labour and human rights and international labour standards*, p.96

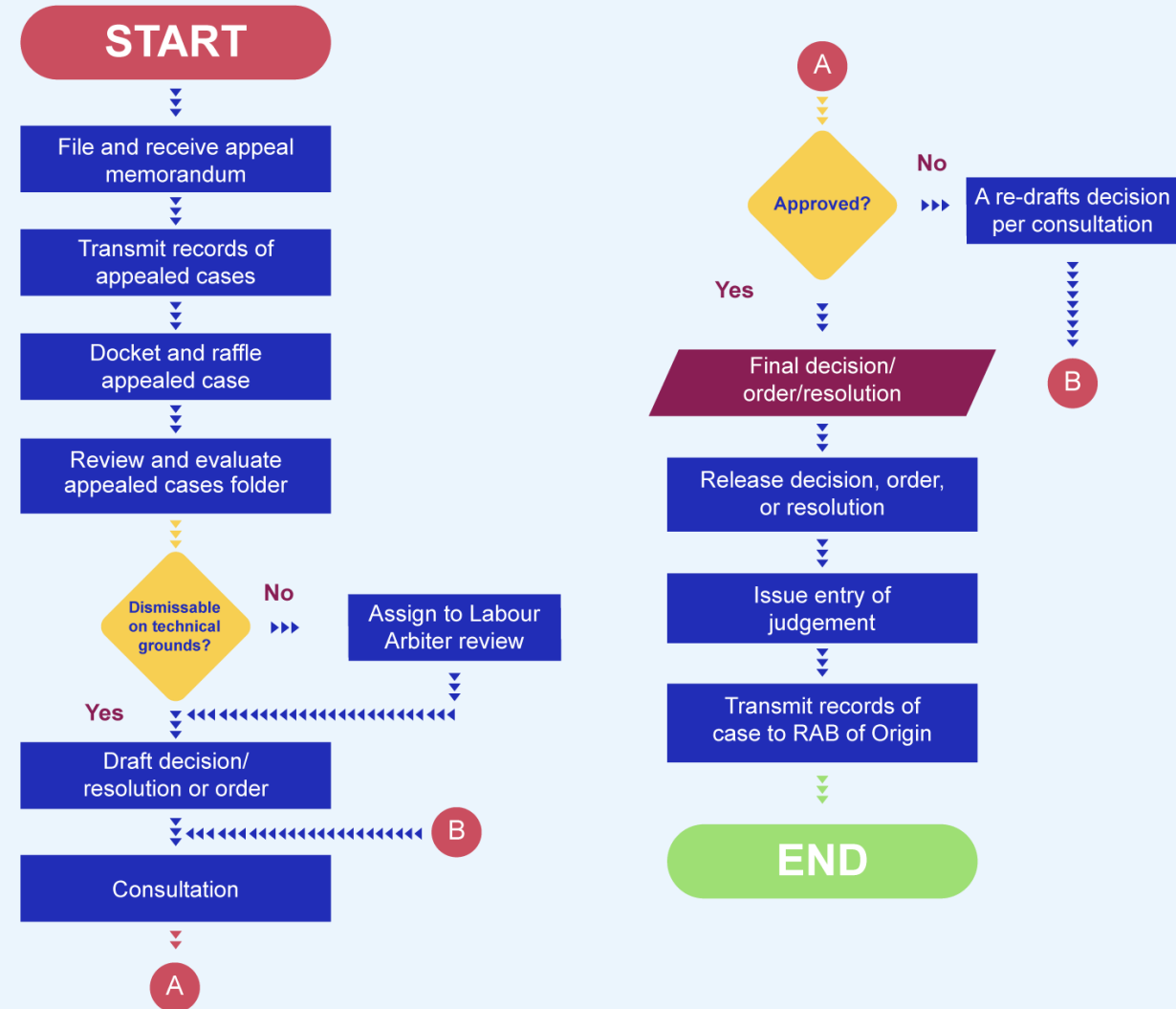
Case flow for arbitration of labour cases

Source: CHR and ILO. (2022), *Module on labour and human rights and international labour standards*, p. 94.

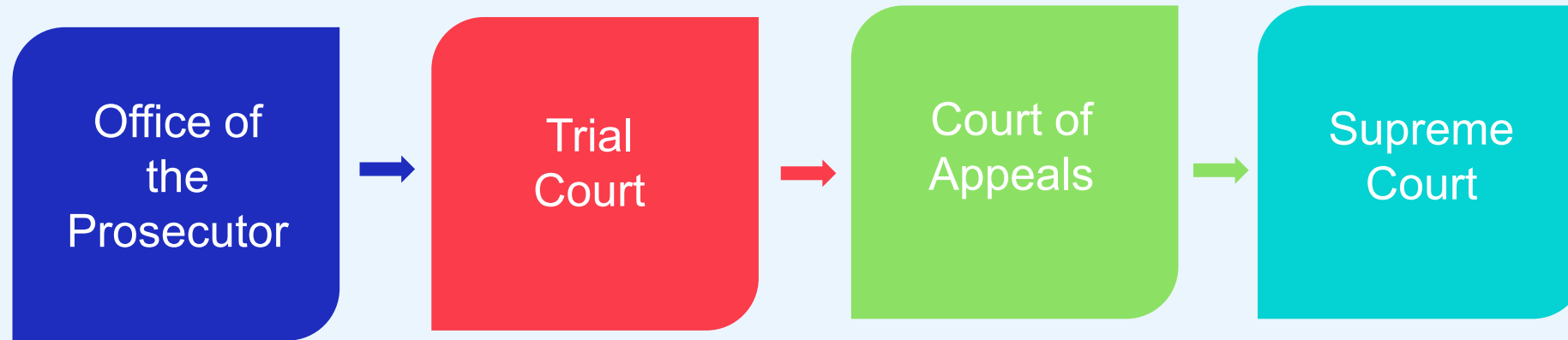


Case flow for appeal of labour dispute at NLRC

Source: CHR and ILO. (2022), Module on labour and human rights and international labour standards, p. 95.



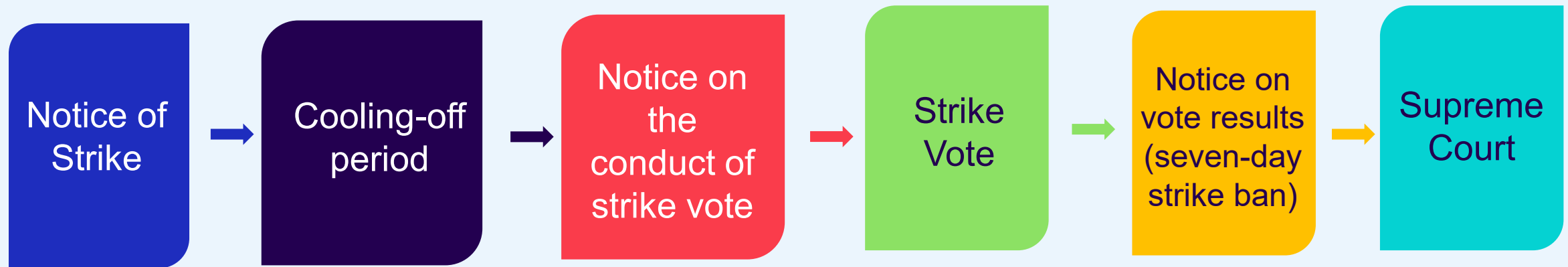
Criminal complaint – withholding wages



Complaints mechanism – withholding wages

Source: CHR and ILO.(2022) *Module on labour and human rights and international labour standards*, p.96

Strike – Unfair Labour Practice and Union Building



Procedure for Conduct of Strikes

Source: CHR and ILO.(2022) *Module on labour and human rights and international labour standards*, p.96

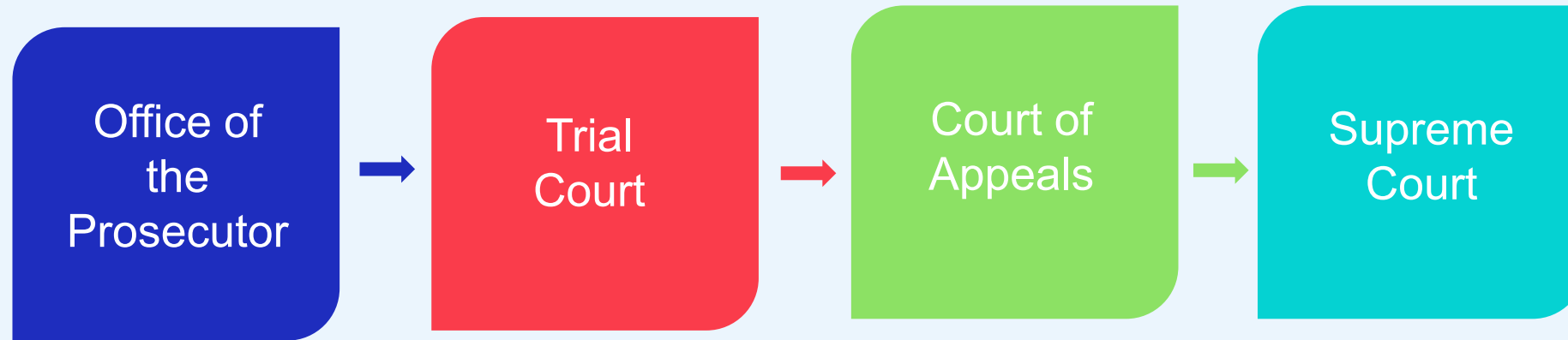
Labour complaint – illegal termination and unfair labour practice



Complaints mechanism for illegal termination and unfair labour practice

Source: CHR and ILO.(2022) *Module on labour and human rights and international labour standards*, p.96

Criminal complaint – unfair labour practice (*Criminal*)



Complaints mechanism for unfair labour practice (criminal)

Source: CHR and ILO.(2022) *Module on labour and human rights and international labour standards*, p.96



Activity

Activity M2-5. Case Studies of Labour and Human Rights Violations and Applicable Remedies



Methodology

Case study is a method allowing training participants to analyze a specific case, event or topic that reflects actual or hypothetical situations or a mix of both and utilizes a specific framework or perspective for analysis. It is an exercise that enables the immediate and nuanced application of lessons from a certain topic discussion while providing the participants a platform to generate their own lessons and realizations relative to the given case.



Timing

This activity immediately follows the discussion on the remedies available for labour rights violations as outlined at the last part of Session 8. This can be conducted in 20-25 minutes

Activity M2-5. Case Studies of Labour and Human Rights Violations and Applicable Remedies



Mechanics

1. Divide the participants into three groups.
2. Distribute printed copies of the three case studies that the groups will analyze (*see the full texts of the case studies on the next page*).
3. Flash each case on the screen and read, before the groups break out for their discussions.

Activity M2-5. Case Studies of Labour and Human Rights Violations and Applicable Remedies



Mechanics

4. Provide these guide questions to the groups for their discussions:

- ▶ Were the actions taken by the management in the case studies justifiable?
- ▶ What remedies can the workers take to address their grievances? Where can they report and/or file their complaints and charges?
- ▶ Does the case constitute a serious and grave form of human rights violations?

Activity M2-5. Case Studies of Labour and Human Rights Violations and Applicable Remedies



Mechanics

5. Inform the participants that they have 10 minutes to discuss their case studies. This will be followed by a quick plenary sharing of their key takeaways based on the provided guide questions, with each group given 3-5 minutes.

6. As facilitator, provide a short synthesis from the sharing, reiterating the points made and/or giving additional perspectives based on the discussion points contained in Session 8.

Activity M2-5. Case Studies of Labour and Human Rights Violations and Applicable Remedies



Materials

None (typical presentation equipment set)

*Notes on
transition to
online session*

Breakout groups can be made through online videoconferencing platforms such as Zoom, so this is easily adaptable for online session.



Activity

Proper



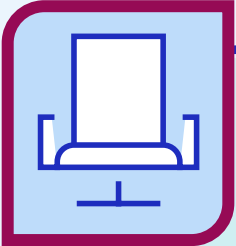
Case Study A: Maria vs. Sweet Delights

Maria works in Sweet Delights Corp. (Delights) in San Pedro every Monday to Saturday for ten hours a day. She receives PhP 500 a day as total compensation.

Under Delights Corp.'s policies, workers may eat candies within the premises of the company but may not bring them home.

One day, Maria inadvertently pocketed one piece of candy. On her way out, the company's security guard caught her. She was terminated immediately and her final pay withheld or forfeited.

Maria desires to file a complaint for illegal dismissal and money claims.



Case Study B: United Bolt Workers vs. Lightning Bolt

United Bolt Workers (UBW) is the exclusive bargaining representative for all rank-and-file employees in the San Roque manufacturing plant of Lightning Bolt Electronics Company (Bolt).

In two months' time, the management and the union will commence negotiations for a new collective bargaining agreement.

Due to supposed credible information that certain employees are stealing from Bolt, the company terminated them all.

Incidentally, all employees who were terminated are union officers of UBW.

UBW is aggrieved.



Case Study C: Super Employees' Union vs. Super Hotel

Super Hotel has announced that it will close and cease operations in two months, ostensibly to renovate the hotel for safety issues. This move will affect nearly a thousand workers for retrenchment, many of which are full-time and regular employees.

The workers comprising the Super Employees' Union meanwhile claim that the reasons for the closure lacks transparency and could well be a union-busting strategy of the Super Hotel management. They also believe that Super Hotel will reopen for business once the purported renovation and rebranding are done.

Super Employees' Union intends to challenge this decision, exploring options beyond staging a protest.



Recap exercises

1. In the event that a possible violation may have been committed by a police officer in the exercise of FOA by workers, complaints by any natural or juridical person can be filed to which of the following offices, as provided under the 2024 Omnibus Guidelines?

- a) DOLE
- b) Ombudsman
- c) AFP

2. This is one of the special writs effectively commanding the respondent to produce the person or the body in course, under covered circumstances such as all cases of illegal confinement or detention. It is a judicial remedy available to anyone losing his liberty illegally, such as for exercising the right to organize.

- a) Writ of Amparo
- b) Writ of Habeas Data
- c) Writ of Habeas Corpus

TRUE OR FALSE

3. Criminal complaints related to unfair labour practice can be appealed at the National Labor Relations Commission.

4. Under the ILO supervisory system, there are two main procedures through which a case can be brought against a Member State for failure to apply ratified Conventions. Which procedure can be utilized by the ILO Governing Body itself?

- a) Complaints
- b) Representation
- c) Grievance

5. For a worker or labour organizer labeled as “terrorist” by the Anti-Terrorism Council (ATC), remedies are available for delisting through the following bodies except for one:

- a) ATC
- b) Ombudsman
- c) Court of Appeals



Recap exercises

Answer keys

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