



International
Labour
Organization



Workers' training manual on freedom of association

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International Labour Organization
Country Office for the Philippines
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Foreword

The Workers Training Manual on Freedom of Association (FOA) intend to capacitate workers to actively engage with stakeholders in the investigation and monitoring of cases on violations of workers civil liberties and trade union rights, specifically on FOA and Collective Bargaining (CB) rights. The training manual can be utilized to train trainers from the labour groups or can be integrated to workers' education modules of trade unions based on their needs. Overall, the training manual seeks to enhance knowledge of workers on international labour standards, promote freedom of association and collective bargaining principles and increase participation of workers representatives in investigative and monitoring mechanisms addressing impunity on FOA cases.

In the last decade, the ILO Committee on the Application of Standards (CAS) has discussed the Philippines in 2007, 2009, 2016 and 2019. Numerous comments and recommendations from ILO supervisory bodies have been submitted to improve Philippines' application of Convention No. 87 (Freedom of Association) and Convention No. 98 (Right to Collective Bargaining). The recommendations came from the Committee of Experts in the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA), as well as from the 2009 High Level Mission and the 2017 Direct Contacts Mission reports. In their reports, they highlighted concerns over reported cases of anti-union violence, the lack of progress in the investigation of these cases, and the need for legislative reforms.

From these comments and recommendations, the Philippine government established mechanisms such as the National Tripartite Industrial Peace Council-Monitoring Body (NTIPC-MB); Regional Tripartite Monitoring Bodies (RTMB), the Administrative Order 35 Inter-Agency Committee, and the National Monitoring Mechanism (NMM) to address the issues of workers and participate meaningfully in the investigation and monitoring of FOA cases.

The Manual contains four inter-related modules: (a) basic principles and Philippine policies on FOA and CB; (b) mechanisms on FOA cases; (c) judicial remedies on FOA cases; and (d) skills training on case documentation and monitoring. We enjoin the Philippine labour organizations to utilize this manual to further capacitate themselves and strengthen their participation in addressing violations of workers' civil liberties and trade union rights.

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The ILO CO-Manila would like to express sincere gratitude to the representatives from the major national labour centre who participated in the training programme, who shared their inputs and contributions in the validation workshop, and have helped in the conduct of pilot-training towards the development of this training module.

Table of contents

Foreword.....	iii
Acknowledgements.....	iv
Abbreviations.....	vi
1. Introduction.....	1
2. Module 1: Basic principles and Philippine policies on freedom of association (FOA) and collective bargaining (CB).....	2
2.1 Session I: Basic principles of the rights of workers to FOA and CB.....	2
2.2 Session II: Guidelines for state agents in the exercise of workers' rights to FOA	18
3. Module 2: Mechanisms on freedom of association (FOA).....	34
3.1 Session III: ILO's supervisory mechanisms on FOA and CB.....	34
3.2 Session IV: Philippine domestic mechanisms on workers' FOA.....	47
4. Module 3: Judicial remedies on freedom of association (FOA) cases.....	66
4.1 Session V: Remedies for violation of constitutional guarantees.....	66
4.2 Session VI: Procedure for criminal cases.....	74
5. Module 4: Skills.....	97
5.1 Case studies.....	97
5.2 Session VII: Legal interview.....	100
5.3 Session VIII: Case analysis.....	104
5.4 Session IX: Evidence.....	107
5.5 Session X: Affidavit-making.....	116
References.....	125
Annex A: Sample pre- and post-test questions.....	127

Abbreviations

AFAID	Asian Federation Against Involuntary Disappearances
AFP	Armed Forces of the Philippines
AHRC	Ateneo Human Rights Center
ALG	Alternative Law Groups
AO	Administrative Order
BJMP	Bureau of Jail Management and Penology
BPSO	Barangay Public Safety Officers
CAS	Committee on the Application of Standards
CB	Collective Bargaining
CBA	Collective Bargaining Agreement
CCTV	Closed-Circuit Television
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CHR	Commission on Human Rights
CIDG	Criminal Investigation and Detection Group
CSC	Civil Service Commission
DFA	Department of Foreign Affairs
DILG	Department of the Interior and Local Government
DND	Department of National Defense
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DSWD	Department of Social Work and Development
EDs	Enforced Disappearances
EJKs	Extra Judicial Killings
ELKs	Extra Legal Killings
ENDO	End of contract
HDMF	Home Development Mutual Fund
IAC	Inter-Agency Committee
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ILC	International Labour Conference
ILO	International Labour Organization
ILS	International Labour Standard
LGU	Local Government Unit
MCTC	Municipal Circuit Trial Courts
METC	Metropolitan Trial Courts
MTC	Municipal Trial Courts
NAPOLCOM	National Police Commission
NBI	National Bureau of Investigation
NCIP	National Commission on Indigenous Peoples
NCMB	National Conciliation and Mediation
NLRC	National Labor Relations Commission
NMM	National Monitoring Mechanism
NPS	National Prosecution Service
NTIPC-MB	National Tripartite Industrial Peace Council-Monitoring Body
OPAPP	Office of the Presidential Adviser on the Peace Process
PAHRA	Philippine Alliance of Human Rights Advocates
PAO	Public Attorney's Office

PAPA	Presidential Adviser for Political Affairs
PAPP	Presidential Adviser on the Peace Process
PEZA	Philippine Economic Zone Authority
PhilHealth	Philippine Health Insurance Corporation
PHRC	Presidential Human Rights Committee
PLEB	People's Law Enforcement Board
PNP	Philippine National Police
RA	Republic Act
RTC	Regional Trial Courts
RTICP	Regional Tripartite Industrial Peace Council
RTMB	Regional Tripartite Monitoring Board
SALIGAN	Sentro ng Alternatibong Lingap Panlegal
SITEC	Special Investigation Teams for Existing/Current Cases
SITN	Special Investigation Teams for New Cases
SITUs	Special Investigation Teams for Unsolved Cases
SOT	Special Oversight Team
SSS	Social Security System
TWG	Technical Working Group
UDHR	Universal Declaration of Human Rights
UN	United Nations

Workers' training manual on freedom of association

1. INTRODUCTION

The Philippines' compliance with the International Labour Organization (ILO) Convention No. 87 on Freedom of Association has been discussed by the ILO Committee on the Application of Standards (CAS) in 2007, 2009, 2016, and 2019. The ILO supervisory bodies have submitted numerous comments and recommendations to improve the Philippines' compliance with ILO Convention No. 87, including the Committee of Experts in the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA), as well as the 2009 High Level Mission and the 2017 Direct Contacts Mission. In their reports, they highlighted concerns over reported cases of anti-union violence, the lack of progress in the investigation of these cases, and the need for legislative reforms.

The Philippines adopted a number of mechanisms that seek to address the issues of workers' freedom of association (FOA). These mechanisms opened an opportunity for the workers to participate in the investigation and monitoring of FOA cases. This Manual aims to empower the workers to constructively engage with stakeholders, and meaningfully participate in the investigation and monitoring of FOA cases.

The Manual contains four inter-related modules: (a) basic principles and Philippine policies on FOA and collective bargaining (CB); (b) mechanisms on freedom of association cases; (c) judicial remedies on FOA cases; and (d) skills. There are ten sessions. While each module or session may be facilitated on its own depending on the need of the participants, it is advised that the entire Manual be given to have better results. A pre- and post-test¹ is also suggested with Modules 1, 2 and 3, while Module 4 is measured by the final output of drafting a sworn statement.

Lastly, this Manual is drafted for workers. While the topics are relevant to other stakeholders, such as the duty-bearers or government agencies, other methodology may be more apt for them.

¹See Annex A on sample pre- and post-test questions.

2. MODULE 1: BASIC PRINCIPLES AND PHILIPPINE POLICIES ON FREEDOM OF ASSOCIATION (FOA) AND COLLECTIVE BARGAINING (CB)

2.1 Session I. Basic principles of the rights of workers to FOA and CB

2.1.1 Introduction

The rights of workers to FOA and CB are guaranteed under international human rights instruments, treaties and conventions and the Philippine Constitution. As a member of the ILO and signatory to ILO Conventions Nos. 87 and 98, the Philippines is duty-bound to adopt policies and practices in compliance thereof.

2.1.2 Objectives

- a) Understand that workers' right to organize and collectively bargain are human rights.
- b) Establish the legal bases of the workers' rights to FOA and CB:
 - i. The Universal Declaration of Human Rights, and accompanying conventions
 - ii. The International Labour Organizations Core Labour Standards
 - iii. The ILO Convention No. 87
 - iv. The ILO Convention No. 98
 - v. The 1987 Philippine Constitution
 - vi. The Labor Code of the Philippines
 - vii. The Civil Service Rules on Public Sector Employees
 - viii. The 2018 CEACR Recommendations

2.1.3 Key learning points

- a) Workers' rights to organize and collectively bargain are human rights.
- b) These rights are part of the core international human rights principles, and the Philippines is duty-bound to apply these principles as a member of the United Nations (UN) and ILO, as well as by virtue of having ratified the relevant international human rights treaties and labour Conventions.
- c) The Philippines has concomitant obligation to adopt policies and practices under the Conventions, and pursuant to the 2018 CEACR recommendations.

2.1.4 Session guide

- a) Activity 1. Interactive lecture
 - Time: 45 minutes
 - Methodology: Lecture discussion
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts
- b) Activity guide:
 - The facilitator will give an input guided by the attached lecture notes (Annex A).
 - After the input, the facilitator will entertain questions from the participants.

c) Lecture notes. Basic principles of the rights of workers to FOA and CB:

i. *FOA and CB: Fundamental rights and means to decent work*²

- FOA – Not just a fundamental human right but also a development policy:
 - FOA and CB are not just about workers' rights but also are instruments of State policy to achieve objectives of social justice and for promoting sustainable economic growth.
 - Role in economic development – promotes sharing in growth, improves workers' purchasing powers and thereby widens domestic markets and demand – putting money in workers' pockets helps domestic growth.
- Right to organize and right to bargain are fundamental rights of workers because they:
 - Promote voice, representation, and participation.
 - Facilitate representative social dialogue.
 - Help reach mutually agreeable solutions between employers' and trade unions while respecting each other's needs.
- “FOA and the right to organize and collective bargaining can be powerful instruments to establish decent terms and conditions of work and achieve harmony between workers and employers in the workplace. More broadly, these instruments can also help enhance productivity, reduce inequality and equitably redistribute income and wealth, make growth more inclusive and promote industrial peace, progress, and social justice”³.
- Fundamental does not mean absolute. Under specific circumstances, they can be subject to restrictions and conditions.

ii. *Trade union rights in relation to civil liberties*

- Universal Declaration of Human Rights (UDHR), further elaborated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR):
 - Articles 20: (a) Everyone has the right to freedom of peaceful assembly and association; (b) No one may be compelled to belong to an association.
 - Article 23: (a) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; (b) Everyone without discrimination, has the right to equal pay for equal work; (c) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by

²Kumar, Arun (May 2018) *Freedom of Association and Collective Bargaining*.

³International Labour Organization Country Office for the Philippines (October 2017) *Decent Work Country Diagnostics: Philippines 2017* (p. 72).

other means of social protection; and (d) Everyone has the right to form and to join trade unions for the protection of his interests.

- ILO 1970 Resolution – recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil and political freedoms enunciated in the UDHR and ICCPR. Absence of these liberties removes all meaning from the concept of trade union rights.
- Civil liberties essential to the normal exercise of trade union rights:
 - The right to life and personal safety
 - The right to freedom and security of person from arbitrary arrest and detention
 - Freedom of opinion and expression
 - Freedom of assembly (before or at the time of meetings)
 - The right to fair trial by an independent and impartial tribunal
 - The right to protection of the property of trade union organizations

iii. International Labour Organization (ILO)

- FOA, as early as 1919, was mentioned in Article 427 of the 1919 Peace Treaty of Versailles: "... they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit. Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:
First. x x x
Second. The right of association for all lawful purposes by the employed as well as by the employers".
- In 1919, the preamble to the ILO Constitution mentions the urgent need to improve the conditions of labour, including through the recognition of the principle of freedom of association.
- In 1944, the Declaration of Philadelphia, supplementing the ILO Constitution of 1919, reaffirmed the fundamental principles on which the ILO is based, including freedom of expression and of association, which are essential to sustained progress. The Declaration also recognized the obligation of the ILO to further programmes which will achieve "the effective recognition of the right to collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".
- ILO core labour standards:
 - FOA and the effective recognition of the right to collective bargaining (Conventions Nos. 87 and 98).
 - The elimination of all forms of forced and compulsory labour (Conventions Nos. 29 and 105).
 - The effective abolition of child labour (Conventions Nos. 138 and 182).

- The elimination of discrimination in respect of employment and occupation (Conventions Nos. 100 and 111).

iv. ILO Convention No. 87: Freedom of association and protection of the right to organise

- Adopted in 1948 in the 31st International Labour Conference (ILC) session; entered into force in 1950.
 - Right of workers' and employers' to organize and protection of workers' and employers' organizations against potential restrictions or infringements by the State.
 - Four principles of the convention:

*** *Right of all workers and employers to set up and join organizations of their own choosing without previous authorization.***

- Article 2: Workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, join organizations of their own choosing without previous authorization.
- Applies to all workers without distinction whatsoever, including: civil servants, firefighters, prison staff, teachers, workers in a managerial position, self-employed, agricultural workers, workers in the informal economy, workers in export processing zones, temporary, and outsourced workers.
- Applies irrespective of nationality, political opinion, and age.
- Permissible exceptions: armed forces and the police (Article 9).
- The authorities should not impose requirements that would amount to authorization and should not have discretionary power to refuse the establishment of an organization; registration should be a simple formality.
- In the Philippines, it wasn't until after the 1987 Constitution and the issuance of Executive Order 180 also in 1987 (and its Implementation Rules and Regulations in 2004) that the right of government workers to organize was recognized. The exercise of this right when it comes to concerted action is limited by the Civil Service Rules (Republic Act 6713 or the Code of Conduct and Ethical Standards of Public Officials and Employees). However, this executive order specifically excluded members of the armed forces, police officers, policemen, firemen, and jail guards.
- Aside from these groups, managerial employees are not eligible to form, join or assist any labour union for purposes of collective bargaining. Alien employees may exercise their right to self-organization only if the Department of Foreign Affairs (DFA)

certifies that they are nationals of countries granting the same or similar rights to Filipino workers.

*** *Right of organizations to freely decide on their internal matters:***

- Article 3: Organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. Public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.
- Right to draw up constitutions and rules: national legislation should only provide for formal requirements for trade union constitutions and the authorities may only verify these formal requirements (the authorities may not draw up constitutions and rules or require formal approval of such rules).
- Right to elect their representatives in full freedom, therefore, prohibits:
 - (i) Control over election procedure or subjecting election results for approval by the authorities;
 - (ii) Providing restrictions to eligibility of representatives, like nationality, age, literacy, political views, or criminal record; and
 - (iii) Removal from office by the authorities.
- Right to organize their administration, therefore, prohibits:
 - (i) Imposing the obligation to provide a registry of membership; and
 - (ii) Broad discretionary power to intervene in internal matters, including financial management, carry out inspection without justifying any grounds, enter premises, request documents, or interrogate officers.
- Right to formulate their activities and to formulate their programmes, therefore, prohibits: Interference in union meetings and in access to places of work and legislative provisions which establish a close relationship between trade unions and political parties but also those that prohibit all political activities.
- Right to strike, therefore: (i) Restricts compulsory arbitration to services that are essential in the strict sense of the term, in circumstances that qualify as acute national emergency and for public servants who exercise authority in the name of the State; (ii) Prohibits blanket prohibition of strikes in the public sector; and (iii) Prohibits penal sanctions for participating in peaceful strikes; penalties of imprisonment are also contrary to ratified ILO Convention No. 105.

*** *Protection of organizations against suspension or dissolution:***

- Article 4: Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.
- Prohibited: Dissolution on the ground that activities are contrary to its objectives, or jeopardizing national economy or security, or against public order or good moral.

*** *Right to establish and join federations and confederations, and right to affiliate with international organizations:***

- Article 5: Workers' and employers' organizations shall have the right to establish and join federations and confederations any such organization, federation, or confederation shall have the right to affiliate with international organizations of workers and employers.
- Prohibited: (i) Restrictions such as requirement of same employer or same category of business; (ii) Prohibition on state enterprise unions from joining private sector federations; (iii) Restrictions on the scope of union activities or confederations; and (iv) Excessive minimum number of unions to establish a federation.

- The Convention applies to all workers' and employers', including public servants engaged in the administration of justice. The only permissible exclusions are the police and the armed forces.

v. *ILO Convention No. 98: Protection of workers against anti-union discrimination, independence of workers' and employers' organizations from each other and promotion of collective bargaining*

- Adopted in 1949 in the 32nd ILC session; entered into force in 1951.
- Fundamental principles:
 - Protection of workers against acts of anti-union discrimination from employers:
 - * Article 1, Paragraph 1: Workers shall enjoy adequate protection against acts of anti-union discrimination in respect to their employment.
 - * Prohibited: Acts calculated to (i) Make the employment of worker subject to the condition that he/she does not join a union or relinquish membership thereof; and (ii) Cause the dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities (Article 1, Paragraph 2).

- Protection of workers' and employers' organizations against acts of interference by each other:
 - * Article 2, Paragraph 1: Workers' and employers' organizations 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.
 - * Prohibited: (i) Promotion of the establishment of workers' organization under the domination of employers; and (ii) Granting financial support to place the union under the control of the employer (Article 2, Paragraph 2).
- Promotion of collective bargaining:
 - * Article 4. Measures appropriate to national conditions shall 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.
 - * Machinery of voluntary negotiation includes: (i) Recognition of representative unions; (ii) Procedures to facilitate bargaining through mediation, conciliation or voluntary arbitration; and (iii) Procedures to ensure that collective agreements have the force of law for the parties.
 - * Examples of practices considered contrary to the convention by the ILO supervisory bodies: (i) Restrictions as to the level of bargaining; (ii) Restrictions to the scope of negotiable issues; (iii) System of official approval to validate an agreement or to cancel it; and (iv) Compulsory arbitration.

vi. The 1987 Philippine Constitution

- Section 4 Article III of the Bill of Rights. No law shall be passed abridging the freedom of speech, of expression or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.
 - The right to assemble is not subject to prior restraint. It may not be conditioned upon the prior issuance of permit or authorization from government authorities⁴.

⁴Nachura, Antonio B. (2002) *Outline Reviewer in Political Law* (p. 114).

- If the assembly is to be held in a public place, a permit for the use of such place, and not for the assembly itself, may be validly required⁵.
- The right to free assembly and petition prevails over economic rights⁶.
- Section 8 Article III of the Bill of Rights. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.
- Section 2(5), Article IX-B on the Civil Service Commission (CSC). The right of self-organization shall not be denied to government employees.
- Section 3 Article XIII. The State shall afford full protection to labour, local and overseas, organized and unorganized and promote full employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labour to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

- Limitations⁷:
 - Members of the civil service may not declare a strike to enforce economic demands.
 - The ability to strike is not essential to the right of association.
 - The right of the sovereign to prohibit strikes or work stoppages by public employees was clearly recognized at common law.

⁵Nachura, Antonio B. (2002) *Outline Reviewer in Political Law* (p. 114). “But the power of local officials in this regard is merely one of regulation, not of prohibition (*Primicias v. Fugoso*, 80 Phil 71; *Reyes v. Bagatsing*, *supra*). This, in B.P. 880 (Public Assembly Act of 1985), a permit to hold a public assembly shall not be necessary where the meeting is to be held in a private place, in the campus of a government-owned or operated educational institution, or in a freedom park. Where a permit is required, the written application shall be filed with the Mayor’s Office at least five days before the scheduled meeting and shall be acted upon within two days, otherwise the permit shall be deemed granted. Denial of the permit may be justified only upon clear and convincing evidence that the public assembly will create a clear and present danger to public order, safety, convenience, morals or health. Action on the application shall be communicated within 24 hours to the applicant, who may appeal the same to the appropriate court. Decision must be raised within 24 hours. The law permits law enforcement agencies to detail a contingent under a responsible officer at least 100 meters away from the assembly in case it becomes necessary to maintain order”.

⁶Nachura, Antonio B. (2002) *Outline Reviewer in Political Law* (p. 115).

⁷Nachura, Antonio B. (2002) *Outline Reviewer in Political Law* (p. 123-124).

- Article 245 of the Labor Code which makes managerial employees ineligible to join, assist or form a labour union, does not violate Section 8 Article XIII of the Constitution.

vii. Labor Code of the Philippines

- Declaration of policy includes FOA and CB (Article 218)⁸.
- Article 252: Coverage and employees' right to self-organization. All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labour organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers, and those without any definite employers may form labour organizations for their mutual aid and protection.
- Article 253: Rights of employees in the public service. Employees of the government corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. All other employees in the civil service shall have the right to form associations for purposes not contrary to law.
- Article 261: Duty to bargain collectively in the absence of collective bargaining agreements. Collective bargaining or negotiations towards collective agreement is a democratic framework to stabilize the relation between labour and management to create a climate of sound and stable industrial peace. It is a mutual responsibility of the employer and the union and is their legal obligation⁹.
- Article 262: Meaning of duty to bargain collectively. The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously and in good faith for the purpose of

⁸**A.** (a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labour and industrial disputes;
 (b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;
 (c) To foster the free and voluntary organization of a strong and united labour movement;
 (d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;
 (e) To provide an adequate administrative machinery for the expeditious settlement of labour or industrial disputes;
 (f) To ensure a stable but dynamic and just industrial peace; and
 (g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

B. Article 218 (B): To encourage a truly democratic method of regulating the relations between the employers and the employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.

⁹Azucena, C.A. (2013) The Labour Code with Comments and Cases Volumes II-A and II-B (p. 355).

negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.

- Article 256: Non-abridgement of the right to self-organization. It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employers and workers in their exercise of the right to self-organization. Such right shall include the right to form, join or assist labour organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection, subject to the provisions of Article 264 of this Code.

viii. Public sector employees

- In the public sector, the following employees can form, join or assist employees' organizations, and also form labour-management committees, work councils and other forms of workers' participation schemes:
 - All employees in agencies of the national government and their regional offices, attached agencies and their regional offices.
 - All employees in state universities and colleges.
 - All employees in government-owned or controlled corporations with original charters.
 - All employees in local government units¹⁰.

Temporary government employees may also organize¹¹.

- Under national law, the following employees are not eligible to form, join, or assist any employees' organization for purposes of collective negotiations:
 - Members of the Armed Forces of the Philippines
 - Members of the Philippine National Police
 - Firemen
 - Jail guards
 - Other personnel who, by nature of their functions, are authorized to carry firearms, except when there is express written approval from management¹²

¹⁰Executive Order No. 180, Series of 1987, Providing Guidelines for the Exercise of Government Employees, Creating a Public Sector Labour-Management Council and For Other Purposes (June 1, 1987).

¹¹Pamantasan ng Lungsod ng Maynila vs. Civil Service Commission, et. al., G.R. No. 107590, February 21, 1995.

¹²Civil Service Commission Resolution No. 2, Series of 2004, CSC Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organise (September 25, 2004).

High level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature are not allowed to join the organization of rank-and-file government employees.¹³

- Prohibition on Strike: Under national law, employees in the public sector may not engage in strikes. While the Constitution recognizes the right of government employees to organize, they are prohibited from staging strikes, demonstrations, mass leaves, walk-outs, and other forms of mass action which will result in temporary stoppage or disruption of public services. The right of government employees to organize is limited only to the formation of unions or associations, without including the right to strike¹⁴.

ix. Observations and recommendations of the CEACR arising from the country's implementation of ILO Conventions Nos. 87 and 98¹⁵

- In relation to FOA, the government has been requested, among others:
 - To reply to allegations of assassination of trade union leaders in 2016, targeted arrests of KMU labour organizers in 2017 and police violence and arrests during peaceful strike action.
 - To provide detailed information on the progress of the Tripartite Validating Teams, the NTIPC-MB and other relevant bodies in ensuring collection of necessary information to bring pending cases of violence to the courts.
 - To provide detailed information on any progress on investigations into the serious allegations of killings of trade union leaders and ongoing judicial proceedings and to pursue in appropriate investigations the remaining alleged cases of violations of trade union rights.
 - To provide information on legislative amendments on the following: the grant of right to organize to all workers residing in the Philippines, including aliens; formation of organizations and membership of all workers, including those in managerial positions or with access to confidential information, firefighters, prison guards, and other public sector workers, temporary, and outsourced workers and workers without employment contract (other than the armed forces and the police as determined by national law), without distinction, to defend their occupational interests; reduction of minimum membership requirements so that establishment of organizations is not hindered; restriction of government intervention leading to compulsory arbitration to essential services; no penal sanctions for workers carrying out a peaceful strike; removal of government permission for foreign assistance to trade unions;

¹³Executive Order No. 180, Series of 1987, Providing Guidelines for the Exercise of Government Employees, Creating a Public Sector Labour-Management Council and For Other Purposes (June 1, 1987).

¹⁴Bangalisan, et al. vs. Court of Appeals, et. al., G.R. No. 124678, July 31, 1997.

¹⁵Observations of the CEACR adopted in 2018 and published in the 108th ILC Session in 2019 (www.ilo.org)

and lowering of excessively higher registration requirement for federation.

- To provide information on progress made within the framework of the DOLE-ILO-EU-GSP+ Development Cooperation Project to improve the capacity of labour, employers', and government on the better implementation of FOA and collective bargaining.
- The Committee took note of the following efforts of the Philippine government:
 - Progress of the DOLE-ILO-EU-GSP+ Development Cooperation Project resulting in the signing of a Tripartite Manifesto of Commitment and Collective Effort to Sustain Observance and Further Improvement on the Application of the Principles of Freedom of Association and Collective Bargaining.
 - Ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151) and indication to develop a labour relations framework in the public sector aligned to the Convention No. 151.

2.1.5 Presentation

Basic Principles Rights of Workers to FOA and CB



FOA and CB are not just
fundamental human rights but
also a developmental policy.

Trade union rights and civil liberties

- The right to life and personal safety;
- The right to freedom and security of persons from arbitrary arrest and detention;
- Freedom of opinion and expression;
- Freedom of assembly;
- The right to fair trial by an independent and impartial tribunal;
- The right to protection of property of trade union organizations

ILO Core Labour Standards

1. Freedom of association and effective recognition of the right to collective bargaining;
2. The elimination of all forms of forced and compulsory labour;
3. The effective abolition of child labour; and
4. The elimination of discrimination in respect of employment and occupation.

ILO Convention No. 87: Freedom of association and protection of the right to organize

- Adopted in 1948, Entered into force in 1950
- Protection of freedom of workers and employers against potential restrictions or infringements by the State.
- Convention applies to all.

Four Principles of ILO Convention No. 87

1. Right of all workers and employers to set up and join organizations;
2. Right of organizations to freely decide on their internal matters;
3. Protection of organizations against suspension or dissolution; and
4. Right to establish and join federations and confederations, and right to affiliate with international organizations.

Right of all workers and employers to set up and join organizations

- Article 2: Workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, join organizations of their own choosing without previous authorization.
- Applies to all workers, EXCEPT armed forces and the police.

Right of organizations to freely decide on internal matters

- Article 3: Organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. Public authorities should refrain from any interference which would restrict this right to impede the lawful exercise thereof.

Right of organizations to freely decide on internal matters

- Right to elect their representatives in full freedom, prohibits:
 - Subjecting election results to registration;
 - Providing restrictions to eligibility like nationality and age;
 - Removal from office by authorities

Right of organizations to freely decide on internal matters

- Right to organize their administration, prohibits:
 - Imposing the obligation to provide a registry of membership;
 - Having broad discretion to carry out internal matters, carry out inspection without justifying any grounds, enter premises, request documents, or interrogate officers.

Right of organizations to freely decide on internal matters

- Right to formulate their activities and to formulate their programs, prohibits:
 - Exclusion from union activities those activities “related to politics”.

Right of organizations to freely decide on internal matters

- Right to strike, prohibits:
 - Compulsory arbitration imposed on services that are not essential in the strict sense of the term, and in circumstances that do not qualify as national emergency;
 - Blanket prohibition of strikes in the public sector;
 - Penalties of imprisonment for participating in strikes.

Protection of organizations against suspension or dissolution

- Article 4: Workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.
- Prohibition:
 - Dissolution on the ground that activities are contrary to its objectives, or jeopardizing national economy or security, or against public order or good moral.

Right to establish and join federations and confederations, and right to affiliate with international organizations

- Article 5: Workers’ and employers’ organizations shall have the right to establish and join federations and confederations, and any such organization, federation, and confederation shall have the right to affiliate with international organizations of workers and employers.

Right to establish and join federations and confederations, and right to affiliate with international organizations

- Prohibitions:
 - Restrictions such as requirements of same employer or same category of business;
 - Prohibition on state enterprise unions from joining private sector federations;
 - Restrictions on the scope of union activities or confederations;
 - Excessive minimum number of unions to establish federation

ILO Convention No. 98

- Adopted in 1949, Entered into force in 1951
- Fundamental principles:
 1. Protection of workers against acts of anti-union discrimination from employers;
 2. Protection of workers’ and employers’ organizations against acts of interference by each other;
 3. Promotion of collective bargaining

Protection of workers against acts of anti-union discrimination from employers

- Article 1: Workers shall enjoy adequate protection against acts of anti-union discrimination in respect to their employment.
- Prohibitions:
 - Make the employment of worker subject to the condition that he/she does not join a union or relinquish membership thereof;
 - Cause the dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities.

Protection of employers' and workers' organizations against acts of interference by each other

- Article 2: Workers' and employers' organizations 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.
- Prohibitions:
 - Promotion of the establishment of workers' organization under the dominion of the employer;
 - Granting financial support to place the union under the control of the employer.

Promotion of collective bargaining

- Article 4: Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Promotion of collective bargaining

- Machinery of voluntary negotiation includes:
 1. Recognition of representative unions;
 2. Procedures to facilitate bargaining through mediation, conciliation or voluntary arbitration;
 3. Procedures to ensure that collective agreements have the force of law for the parties.

Promotion of collective bargaining

- Examples of contrary practices:
 1. Restrictions as to the level of bargaining;
 2. Restrictions to the scope of negotiable issues;
 3. System of official approval to validate an agreement or to cancel it;
 4. Compulsory arbitration.

Philippine Constitution on FOACB

- Freedom of speech and the right to peaceful assembly (Section 4, Article III);
- Right of the people to form unions (Section 8, Article III);
- Right of government employees to self-organization (Section 2.5, Article IX-B);
- Right of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law (Section 3, Article XIII).

Philippine Constitution on FOACB

- Limitations:
 - Members of the civil service may not declare a strike to enforce economic demands;
 - The ability to strike is not essential to the right of association;
 - The State can prohibit strikes or work stoppages by public employees;
 - Managerial employees are ineligible to join, assist or form a labor union.

- Both private and public sector workers may form, join, and assist labor organizations:
 - Private sector workers: purposes of collective bargaining;
 - Public sector workers: only for the furtherance and protection of their interests

Labor Code on FOACB

- State policy includes freedom of association and collective bargaining (Article 218);
- All workers have the right to self-organization (Article 252);
- Public service employees have the right to form associations (Article 253);
- Duty to bargain collectively of employers and workers' organizations (Article 262);
- Non-abridgement of the right to self-organization (Article 256).

Civil Service Rules on FOA

- All public sector employees may form, join or assist employees' organizations for purposes of collective negotiations, except:
 - High-level, highly confidential and co-terminous employees;
 - Members of the AFP, PNP, and other uniformed and armed personnel
- Salary, allowances and other benefits specifically provided under the law are non-negotiable.

2016 CEACR's Observations and Recommendations

- In relation to FOA, the Philippine government has been requested:
 1. To investigate alleged violations of trade union rights and civil liberties by persons in authority;
 2. To ensure that the implementation of the Human Security Act shall not suppress legitimate trade union activities;
 3. To continue observing the guidelines on the role of the AFP and PNP in labor disputes.

2016 CEACR's Observations and Recommendations

- Amend Labor Code provisions, such as:
 1. Recognize the rights of aliens and all workers to organize;
 2. Lower the minimum membership requirement for the formation of union;
 3. Ensure non-interference of public authorities in union administration and activities;
 4. Restrict government intervention in determining essential services;
 5. Allow trade unions to receive foreign assistance without DOLE's permission;
 6. Lower the minimum number of unions required to federate or confederate.

2016 CEACR's Observations and Recommendations

- Expand the rights of public sector workers:
 1. To organize and negotiate collectively terms and conditions of employment;
 2. To ensure that bargaining agreements shall not be ratified other than by those provided for in law.

2.2 Session II: Guidelines for state agents in the exercise of workers' rights to FOA

2.2.1 Introduction

The Philippines, as a state-party to ILO Conventions Nos. 87 and 98 has adopted a mechanism that clarifies and coordinates the role of state forces and authorities in cases of FOA and CB.

2.2.2 Objectives

At the end of the session, participants are expected to:

- a) Understand the instances, procedures, and limitations where law enforcement agencies are called upon to respond to labour disputes and concerted actions.
- b) Know the role of different government agencies in addressing labour dispute issues.

2.2.3 Key learning points

- a) The Constitutional guarantee of workers' right to FOA and concerted actions, such as pickets and strikes, is part of the basic human right to free speech, hence, it should be respected and protected at all times.
- b) Labour disputes shall be under the primary and sole jurisdiction of Department of Labor and Employment (DOLE).
- c) Other government agencies, including security forces, should not intervene, except with authority from DOLE.
- d) Workers and independent agencies may conduct monitoring and investigation in FOA cases.

2.2.4 Session guide

- a) Activity 1: Structured learning exercise on the concepts of concerted actions and the involvement of state agents.
 - Time: 15 minutes
 - Methodology: Structured learning exercise (TEPOK-BUHAY)
 - Materials needed: Cases, TEPOK-BUHAY cards, laptop, projector
- b) Activity guide:
 - The participants will be divided into groups with five members each. Each group will be given the TEPOK-BUHAY cards. They will be instructed to flash TEPOK if the case/statement presented is wrong, and BUHAY if it is correct. The facilitator will then proceed to read each of the five cases/statements. Processing follows after every item. The facilitator will be guided by the attached lecture notes in the discussion.
 - Cases
 - In order to determine the sole collective bargaining union in Tablea Company, a certification election is being conducted. Batirol Union is one of those being considered. Being a member of a national federation of unions, supporters of the Batirol Union who are not employees of Tablea Company peaceably assembled outside the premises of Tablea Company. Tablea Company said that the gathering was illegal because it is akin to strike. Is Tablea Company correct?

- Employees of the Di Tayo Pares food chain want to end contractualization in the establishment. Everyday, at the end of their shift, a group of employees would gather at the Plaza near Di Tayo Pares branches and they would hold placards containing the phrase “End ENDO”. Customers of the food chain would often stop by the picket areas and listen to the employees. The management of the branch in the municipality of Magkapares was alarmed and sought the help of the Mayor, who then called upon the Philippine National Police (PNP) to disperse the gathering. Is the Mayor correct?
 - On the anniversary of the President’s assumption of office, workers from across the country marched to Malacanang in what they dubbed as “welga ng bayan”, to demand for, among others, security of tenure and right to living wage, which are some of the President’s campaign promises. Some opined that they conducted an illegal strike because they did not comply with the procedures laid down by law. Is “welga ng bayan” similar to strike under the law?
 - To protest the indifference of the management in the ongoing labour dispute in a five-star hotel, Jopet Ong, a hotel attendant, shaved his head as a sign of protest. The management did not allow him to enter the premises and alleged that he is on strike. Support groups from several other labour unions held a picket outside the premises of the Hotel. The Management called the Armed Forces of the Philippines (AFP) for assistance and said that the support groups are members of the left and are members of conflict armed groups. The AFP then issued an invitation to the organizers for investigation. Is this allowed?
 - After ten days of strike, the DOLE issued a return to work order for the striking workers of Hippie and Cool Garments Factory. The management refused to follow the order the blocked the entry of the workers. The Philippine National Police (PNP) was requested by the workers to remove the barricades and ensure that they will be able to enter the premises and commence work. Can the PNP do that?
- c) Activity 2: Interactive lecture
- Time: 30
 - Methodology: Lecture discussion
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts
- d) Activity guide:
- The facilitator will give an input guided by the attached lecture notes (Annex A).
 - After the input, the facilitator will entertain questions from the participants.
- e) Lecture notes. Guidelines for state agents in the exercise of workers’ rights to FOA.
- i. Notes on the case studies:*
- In order to determine the sole collective bargaining union in Tablea Company, a certification election is being conducted. Batirol Union is one of those being considered. Being a member of a national federation of unions, supporters of the

Batirol Union who are not employees of Tablea Company peaceably assembled outside the premises of Tablea Company. Tablea Company said that the gathering was illegal because it is akin to strike. Is Tablea Company correct?

Note to facilitator: The gathering does not constitute strike. Strike is any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labour dispute, or to express positions on socio-economic matters affecting workers interests. It is a way of influencing the management to accede to the legitimate demands of the workers. Philippine law is explicit that strikes should be based on two grounds only: (i) Unfair labour practice; or (ii) Collective bargaining agreement (CBA) deadlock. Support groups of unions may peaceably assemble to show support. The involvement of PNP personnel during picketing, strikes, lockouts and labour 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.

- Employees of the Di Tayo Pares food chain want to end contractualization in the establishment. Everyday, at the end of their shift, a group of employees would gather at the Plaza near Di Tayo Pares branches and they would hold placards containing the phrase “End ENDO” (end of contract). Customers of the food chain would often stop by the picket areas and listen to the employees. The management of the branch in the municipality of Magkاپares was alarmed and sought the help of the Mayor, who then called upon the PNP to disperse the gathering. Is the Mayor correct?

Note to facilitator: Public assemblies held in freedom parks or on private property do not need a permit for the activity. Public assembly with permit or one held in a freedom park or private property shall not be dispersed as long as it remains peaceful and no incidence of violence occurs. A public assembly held in a public place must have permit, otherwise, it may be peaceably dispersed. However, labour disputes shall be under the primary and sole jurisdiction of DOLE and/or appropriate agencies. Any request for AFP or PNP assistance made by the local government unit (LGU) shall be coursed through the DOLE regional office and it shall be in writing specifying the acts to be performed.

- On the anniversary of the President’s assumption of office, workers from across the country marched to Malacanang in what they dubbed as “welga ng bayan”, to demand for, among others, security of tenure and right to living wage, which are some of the President’s campaign promises. Some opined that they conducted an illegal strike because they did not comply with the procedures laid down by law. Is “welga ng bayan” similar to strike under the law?

Note to the facilitator: In the Biflex Case¹⁶, the Supreme Court ruled that a “welga ng bayan” is in the nature of a general strike. Employees who have no labour dispute with their employer but who, on a day they are supposed to work, refuse to work so as to join instead “welga ng bayan” are committing illegal work stoppage. In this case, however, the “welga ng bayan” is held on a holiday. While the ILO supervisory bodies consider that general strikes and sympathy strikes fall within the protection of freedom of association, Philippine jurisprudence have consistently rules that strikes should be based on two grounds only: (i) Unfair labour practice; or (ii) Collective bargaining agreement (CBA) deadlock.

¹⁶Biflex vs. Filflex, GR No. 155679, December 19, 2006.

- To protest the indifference of the management in the ongoing labour dispute in a five-star hotel, Jopet Ong, a hotel attendant, shaved his head as a sign of protest. The management did not allow him to enter the premises and alleged that he is on strike. Support groups from several other labour unions held a picket outside the premises of the Hotel. The Management called the AFP for assistance and said that the support groups are members of the left and are members of conflict armed groups. The AFP then issued an invitation to the organizers for investigation. Is this allowed?

Note to the facilitator: In the conduct and exercise of AFP internal peace and security operations/PNP operations, they shall not stigmatize/label workers' organizations/associations, labour leaders, members or organizers as front or members of certain conflict armed groups. Also, they shall not issue invitation to workers, organizer or union officials on their alleged links or support to certain armed groups. However, the PNP, in furtherance of criminal investigations, may invite them to shed light. This should be read together with Republic Act (RA) 10973, amending RA 6975, granting subpoena powers to the PNP Chief and Criminal Investigation and Detection Group (CIDG) Director. The other issue in the case (Dusit case) where this situation drew inspiration is the fact that the Supreme Court has ruled with finality that the shaving of heads by workers is deemed a strike. The ILO Committees considered this a mere expression of discontent (albeit contrary to the grooming standards of the hotel), peacefully and lawfully exercised. Thus, equating such act with a strike is a violation of the FOA and expression.

- After ten days of strike, the DOLE issued a return to work order for the striking workers of Hippie and Cool Garments Factory. The management refused to follow the order the blocked the entry of the workers. The PNP was requested by the workers to remove the barricades and ensure that they will be able to enter the premises and commence work. Can the PNP do that?

Note to the facilitator: The service of lawful Order/Writ issued by the DOLE is the primary concern of the DOLE's duly authorized representatives and/or sheriff. It is the DOLE who should seek assistance for the service of the Order/Writ. In doing so, it is the duty of the AFP/PNP to observe relevant guidelines.

- ii. *Workers' rights are human rights. The right to form and join unions for the protection of his/her interests is guaranteed under the UDHR, the ICCPR, ICESCR, the 1987 Philippine Constitution, and the Philippine Labor Code. Thus, 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.*
- iii. *Labour 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 or employee.*

*iv. Concerted actions*¹⁷:

- Activities undertaken by two or more persons arising from a labour dispute or in the exercise of constitutionally guaranteed rights and freedoms. In most cases, the collective action is directed toward management to convey issues on workers' welfare. In some cases, collective action can also be directed toward other groups or individuals, such as government agencies, for their advocacies.
- Types of concerted actions:
 - Demonstrations
 - Petitions
 - Open letters
 - Publication of grievances
 - Campaigning for members
 - Boycott
 - Symbolic undertakings
 - Pickets
 - Strikes
- Concerted action is legal:
 - It is part of the right of the workers to free speech and association.
 - The reason for the action is communicated to the management.
- Concerted action is illegal:
 - If the purpose is illegal
 - If the means used is illegal
- Purposes of concerted action:
 - Improve the conditions of workers
 - Security of tenure
 - Union security
 - Management to acknowledge the union
 - Right to collective bargaining agreement

*v. Jurisdiction*¹⁸

- Labour disputes shall be under the primary and sole jurisdiction of DOLE and/or its appropriate agencies. The role of other government agencies and instrumentalities are governed by various policies, primarily, the Guidelines on the Conduct of the DOLE, Department of Interior and Local Government (DILG), Department of National Defense (DND), Department of Justice (DOJ), AFP and PNP Relative to the Exercise of Workers' Rights and Activities (7 May 2012).

¹⁷Manual ng Manggagawang Paralegal (SALIGAN, 2014).

¹⁸Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities (7 May 2012).

- The DOJ has to secure clearance from the DOLE and/or the Office of the President before taking cognizance of complaints for preliminary investigation and the filing in court of corresponding information of cases arising out of or related to labour dispute¹⁹.
 - The Commission on Human Rights (CHR) can conduct investigative monitoring of incidents and/or conditions which are violative of civil, political, economic, social, and cultural rights²⁰.
 - Members of the AFP, PNP and other law enforcement agencies, including the Barangay Tanod/Barangay Public Safety Officers (BPSO) and company security personnel/security guards shall not intervene in labour disputes.
 - Local Chief Executives or their authorized representatives may assist in settling any labour dispute in their respective LGUs but shall always coordinate with DOLE and/or its Regional Offices. Any request for PNP or AFP assistance made by the LGU shall be coursed through the DOLE Regional Offices and it shall be in writing specifying the acts to be performed.
 - DOLE shall remain in the vicinity of the strike/picket/lockout area to ensure the observance of the Guidelines, until such time that peaceful situation is ensured with the parties' agreement.
 - The service of lawful Order/Writ issued by the DOLE is the primary concern of the DOLE's duly authorized representatives and/or sheriff. Before service of the Order/Writ, the DOLE representative and/or sheriff shall:
 - 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.
 - Coordinate with PNP when violence is imminent.
- vi. *Conduct of AFP/PNP relative to the exercise of workers' right to FOA, CB, concerted actions, and other trade union activities*²¹
- The AFP and PNP may intervene only in the following cases:
 - Expressly requested in writing either through mail, email, fax, or any similar means by the DOLE, through its Regional Offices.
 - 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 labour dispute.

¹⁹Reiteration for Compliance with "Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities" dated 7 May 2012 (DOJ M.C. No. 016, 22 April 2014).

²⁰CHR Resolution No. A95-069.

²¹Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities (7 May 2012).

- In cases of actual violence arising out of the labour dispute.
- Peace-keeping assistance by the PNP²²
 - The involvement of PNP personnel during picketing, strikes, lockouts, and labour disputes in general shall be limited to the:
 - * Maintenance of peace and order
 - * Enforcement of laws
 - * Implementation of legal orders of the duly constituted authorities
 - A PNP peace-keeping team or Civil Disturbance Unit shall be assigned in a picket/strike/lockout area when requested in writing by the DOLE or Philippine Economic Zone Authority (PEZA), and subject to the following conditions:
 - * The peace-keeping team shall stay at least 50-meter radius (*strike-bound area*) 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.
 - * In the exercise of their peace-keeping functions, members of the team shall at all times be in proper uniform (battle dress uniform or patrol uniform) and with properly displayed nameplate. They shall:
 - Ensure that the strike-bound area is gun-free and other deadly weapon and explosive-free zone.
 - 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.
 - Observe courtesy and strict neutrality, bearing in mind that the parties to the labour dispute are not their adversaries but their partners in the quest for industrial peace and human dignity.
 - Not deliberately inflict any physical harm upon strikers and/or picketers or any person involved in the strike/lockout.
 - Not fraternize with any of the parties involved in the controversy, and shall not accept any invitation from the management personnel or union officials/personnel involved in the controversy.
 - Respect the Constitutional guarantee on the right of the people to be secured from unreasonable searches and seizures and illegal arrests and detention.

²²Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities (7 May 2012).

vii. Presence of AFP personnel/units²³

- 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:
 - Maintain peace and order within the community/general vicinity of the labour-dispute area.
 - Provide security for both workers and management.
 - Prevent violence or prevent escalation of ongoing violence.
 - Prevent the commission of other crimes, the nature of which are not related to the labour dispute on hand.
 - Provide emergency assistance during post-incident situations.
- The AFP personnel/units shall stay away from the strike-bound area, except when:
 - 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 labour dispute.
 - In cases of actual violence arising out of the labour dispute.
- Respect for worker's rights during AFP internal peace and security operations/PNP operations²⁴:
 - In the conduct and exercise of AFP internal peace and security operations/PNP operations, the workers' rights, and civil liberties must be respected, protected, and advanced at all times, and thus, AFP and PNP.
 - Shall not stigmatize/label workers' organizations/associations, labour leaders, members, or organizers as front or members of certain conflict armed group/s.
 - Shall not hold or assist in any manner whatsoever in the conduct of information drive or seminars, inside or outside the company premises especially during the 60-day freedom period until the actual conduct of certification election, to dissuade workers from organizing a union or participating in the certification election campaign or from voting/supporting a specific trade union organization.
 - Shall not issue invitation to workers, organizers, or union officials on their alleged links or support to certain armed group/s; however, the PNP, in furtherance of criminal investigations, may invite them to shed lights.
 - Shall not force them to renounce membership in their trade union organization.

²³*Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities* (7 May 2012).

²⁴*Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities* (7 May 2012).

- Shall not introduce or escort any individual who seeks to replace the strikers in entering or leaving the premises of the strike area, or work in place of strikers²⁵.
- Shall not arrest nor detain union members or union organizers without prior clearance from DOLE, except on grounds of national security and public peace or in case of commission of a crime²⁶.

viii. Disputes in economic zones²⁷

- Zone Police and PEZA Security Guards peace-keeping team may be formed to ensure peace and order during strikes, lockouts, and other disputes. They shall observe the conditions governing the engagement of PNP peace-keeping team, except the provision on maintaining the 50-meter distance from the picket/strike/lockout area.
- Relationship of private security personnel and the PNP:
 - 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.
 - Private security personnel are authorized and empowered by law to act as such and in a 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 licenses.
 - 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.
 - 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.
- Role of private security personnel:
 - Those in direct confrontation with strikers, marchers, or demonstrators shall not carry firearms. They may, at best, carry only night sticks (batuta) which may or may not be provided with tear gas canister and dispensers. Private

²⁵Article 278, *Labor Code of the Philippines*.

²⁶Article 280 (266), *Labor Code of the Philippines*.

²⁷*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* (23 May 2011).

security personnel of strike-bound establishments not in direct confrontation with strikers may carry in the usual prescribed manner their issued firearms.

- Avoid direct contact, either physically or otherwise, with the strikers.
- Stay only within the perimeter of the installation which they are protecting at all times.
- 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.
- Refrain from abetting or assisting acts of management leading to physical clash of forces between labour and management. These hostile acts include breaking and preventing the strikers from conducting peaceful pickets.
- Shall not enforce the provisions of the Labor Code pertaining to strikes and lockouts.
- Those in duty must, at all times, be in complete uniform with their names and agency's names shown on their shirts above the breast pockets.
- Role of private security agencies and company security force chief security officers:
 - Upon the declaration of strike or occurrence of other mass action, all firearms of guards in direct confrontation with the crowd has to be collected and accounted for.
 - The deputy commander shall be in close contact with the management and shall report to the commander of the peacekeeping force any untoward incident or violation in the strike area or picket line.
 - Immediately advise the management to request for PNP assistance if the situation becomes untenable.
 - Publish emergency telephone numbers at all guard posts and departments.

*ix. Remedies in cases of violations*²⁸

- For PNP Personnel: PNP-Internal Affairs Service²⁹, Office of the Ombudsman, National Police Commission (NAPOLCOM), Chief of Police, PNP Regional Directors, PNP Provincial Directors, Mayors, Human Rights Desks in all police stations and the People's Law Enforcement Board (PLEB).

²⁸*Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities* (7 May 2012).

²⁹RA No. 6975, as amended by RA No. 8551.

- For AFP Personnel: Court martial, if service-connected, or civil courts³⁰.
- For elected or appointed officials or employees in the LGUs: *Local Government Code*.
- For DOLE Personnel: *DOLE Manual on the Disposition of Administrative Cases* and the *Uniform Rules on Administrative Cases in the Civil Service*.
- For Economic Zone Police/Personnel: PEZA Law and Civil Service Rules.
- For private security personnel: 2003 Implementing Rules and Regulation of Republic Act No. 5487, as amended, and the PNP Memorandum Circular No. 2008-001 on the *Revised Rules in the Investigation in the Administrative Cases Involving Security and Training Personnel, Security Agencies and Training Institutions*.
- Other independent investigations:
 - The CHR can conduct investigative monitoring of incidents and/or conditions which are violative of civil, political, economic, social, and cultural rights³¹.
 - The Tripartite Monitoring Body on the Freedom of Association and Protection of the Right to Organise³².

³⁰RA No. 7055.

³¹CHR Resolution No. A95-069.

³²*Operational Guidelines of the National and Regional Tripartite Monitoring Body on the Application of International Labour Standards, in particular, ILO Convention on Freedom of Association and Protection of the Right to Organise (No. 87) (DOLE A.O. No. 32, Series of 2018).*

2.2.5 Presentation

Guidelines for State Agents in the Exercise of Workers' Rights to FOA

Workers rights are human rights.

- Guaranteed under international laws, the Constitution, and the Labor Code.
- Democracy ensures freedom of association and civil liberties.

TEPOK O BUHAY

In order to determine the sole collective bargaining union in Tablea Company, a certification election is being conducted. Batirol Union is one of those being considered. Being a member of a national federation of unions, supporters of the Batirol Union who are not employees of Tablea Company peaceably assembled outside the premises of Tablea Company. Table Company said that the gathering was illegal because it is akin to strike. Is Tablea Company correct?

Employees of the DiTayoPares food chain want to end contractualization in the establishment. Everyday, at the end of their shift, a group of employees would gather at the Plaza near DiTayoPares branches and they would hold placards containing the phrase "End ENDO". Customers of the food chain would often stop by the picket areas and listen to the employees. The management of the Magkapares branch was alarmed and sought the help of the Mayor, who then called upon the PNP to disperse the gathering. Is the Mayor correct?

On the anniversary of the President's assumption of office, workers from across the country marched to Malacanan in what they dubbed as "welga ng bayan", to demand for, among others, security of tenure and right to living wage. Some opined that they conducted an illegal strike because they did not comply with the procedures laid down by law. Is "welga ng bayan" similar to strike under the law?

To protest the indifference of the management in the ongoing labor dispute in a five-star hotel, Jopet Ong, a hotel attendant, shaved his head as a sign of protest. The management did not allow him to enter the premises and alleged that he is on strike. Support groups from several other labor unions held a picket outside the premises of the Hotel. The Management called the AFP for assistance and said that the support groups are members of the left and are members of conflict armed groups. The AFP then issued an invitation to the organizers for investigation. Is this allowed?

After 10 days of strike, the DOLE issued a return to work order for the striking workers of Hippie and Cool Garments Factory. The management refused to follow the order and blocked the entry of the workers. The PNP was requested by the workers to remove the barricades and ensure that they will be able to enter the premises and commence work. Can the PNP do that?

Labor Dispute

- Any controversy of matter concerning (1) terms and conditions of employment, or (2) 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 employer.

Concerted actions

- Activities undertaken by two or more persons arising from a labor dispute or in the exercise of constitutionally guaranteed rights and freedoms.
- Types: demonstrations; petitions; open letters; publication of grievances; campaigning for members; boycott; symbolic undertakings; pickets; and strikes.

Labor disputes shall be under the primary and sole jurisdiction of DOLE.

Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP relative to the Exercise of Workers' Rights and Activities (2012);

Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards and Similar Personnel During Labor Dispute (2011)

Therefore:

- DOJ has to secure clearance from the DOLE or OP before taking cognizance of a case;
- CHR can conduct investigative monitoring of incidents or conditions
- Local chief executives may assist in settling labor disputes but always in coordination with DOLE.
- RTMB can conduct monitoring, investigation and processing of complaints

Therefore:

- Members of the AFP, PNP, and other law enforcement agencies shall not intervene in labor disputes.
- DOLE shall remain in the vicinity of the strike/picket/lockout area.
- Service of lawful order/writ issued by the DOLE is the primary concern of the sheriff.

AFP and PNP may intervene ONLY when:

1. Expressly requested in writing by the DOLE; or
2. A criminal act has been committed, is being committed, or is about to be committed, through overt acts, whether or not it arises out of the labor dispute; or
3. In cases of actual violence arising out of the labor dispute.

PNP Peace-keeping team or CDU:

- Maintain distance from the strike-bound area.
- Be in proper uniform with nameplates.
- Ensure that the strike-bound area is gun-free and other deadly weapon and explosive-free zone.
- Exercise maximum tolerance.

PNP Peace-keeping team or CDU:

- Observe courtesy and strict neutrality.
- Not deliberately inflict any physical harm.
- Not fraternize with any of the parties involved.
- Respect the rights of the people against unreasonable searches and seizures and illegal arrests and detention.

Presence of AFP Personnel/Units:

- Based on the 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.

The workers' rights and civil liberties must be respected, protected and advanced at all times.

Thus, the AFP and the PNP:

- Shall not stigmatize or label workers, the organizations, and their leaders.
- Shall not dissuade workers from organizing or participating in legitimate activities.
- Shall not unlawfully invite workers, or their leaders for "questioning".
- Shall not force the workers to renounce membership in trade union organizations.

EZPs/PEZA Security Guards

- **Agents of** persons-in-authority;
- **Cannot enforce labor laws;**
- **Not authorized to negotiate for the company;**
- **Avoid direct contact and shall not carry firearms.**

Remedies in cases of violation:

- For PNP Personnel: PNP IAS, Ombudsman, NAPOLCOM, PNP Chief, RDs, and PDs, Mayor, HR Desks, PLEB
- For AFP Personnel: Court-martial, or civil courts
- For LGU officials and employees: LGC or CSC Rules
- For DOLE Personnel: DOLE Manual and CSC Rules

- For Economic Zone Police/Personnel: PEZA Law and Civil Service Rules
- For private security personnel: 2003 Implementing Rules and Regulation of R.A. No. 5487, as amended, and the PNP Memorandum Circular No. 2008-001

Other independent investigations:

- The Commission on Human Rights
- The National and Regional Tripartite and Monitoring Body

2.2.6 References

a) Laws and jurisprudence

International Labour Organization Conventions Nos. 87 and 98.

1987 Philippine Constitution.

Labor Code of the Philippines.

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CSC Resolution No. 2, Series of 2004, Civil Service Commission Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize (25 September 2004).

Executive Order No. 180, Series of 1987, Providing Guidelines for the Exercise of Government Employees, Creating a Public Sector Labour-Management Council, and For Other Purposes (1 June 1987).

Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities (7 May 2012).

Reiteration for Compliance with "Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities" dated 7 May 2012 (DOJ M.C. No. 016, 22 April 2014).

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Biflex vs. Filflex, GR No. 155679, December 19, 2006.

Pamantasan ng Lungsod ng Maynila vs. Civil Service Commission, et. al., G.R. No. 107590, February 21, 1995.

b) Literature

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3. MODULE 2: MECHANISMS ON FREEDOM OF ASSOCIATION (FOA)

3.1 Session III: ILO's supervisory mechanisms on FOA and CB

3.1.1 Introduction

The ILO is a tripartite body and a specialized agency of the UN. It has established a complex supervisory system consisting of several mechanisms to monitor and supervise the compliance of member States with its conventions and recommendations.

3.1.2 Objectives:

- a) Familiarize with the ILO, the core labour standards and its functions.
- b) Understand the responsibilities of the Philippines as a member of the ILO and within the Conventions it ratified.
- c) Know the different supervisory mechanisms within the ILO and enable the worker to access them:
 - i. Regular supervision
 - ii. Special supervision (Representation, complaints, FOA)

3.1.3 Key learning points:

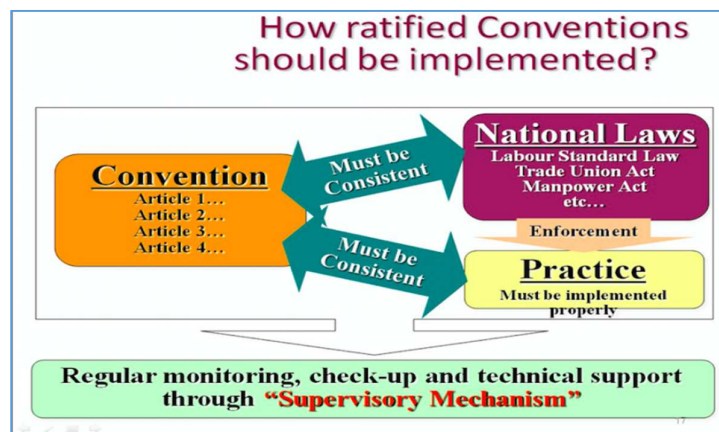
- a) Workers can access the ILO supervisory mechanisms to seek redress for their grievances.
- b) Present examples of cases filed and resolved within the ILO supervisory mechanisms.

3.1.4 Session guide

- a) Activity 1. Interactive lecture
 - Time: 45 minutes
 - Methodology: Lecture discussion
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts
- b) Activity guide:
 - The facilitator will give an input guided by the attached lecture notes. (Annex A).
 - After the input, the facilitator will entertain questions from the participants.
- c) Lecture notes. ILO's supervisory mechanisms on FOA and CB.
 - i. *The International Labour Organization*³³
 - A specialized agency of the UN devoted to advancing decent work for women and men. It is the only tripartite organization in the UN with employers and workers having equal voices with that of the government. Currently, it has 187 member States and 40 field offices.

³³Respall, Diane (February 2018) *Presentation on ILO, ILS and Supervisory Mechanisms*.

- Two main international labour standards instruments:
 - Convention – international treaties; legally binding when ratified; sources for domestic laws; covers many topics (fundamental rights, technical, or promotional conventions); 190 conventions to date.
 - Recommendation – not open to ratification; not legally binding; provides general or technical guidelines for national action; 206 recommendations to date.
 - Other instruments – (a) Protocol; (b) Declaration; (c) Guidelines; (d) Resolution; and (e) Memorandum.
- Ratification is the official commitment of a State to be bound by the requirements of the convention under international law. It is a political decision and cannot involve reservations. Ratification commits the state to implement the convention, both in law and in practice, and places it under regular oversight by the ILO supervisory mechanisms.
- Process of compliance with the ratified ILO conventions



ii. *International labour standards (ILS)*³⁴

- The ILO sets forth ILS. Since 1919, it has adopted 190 conventions and 206 recommendations. As of June 2019, 78 conventions (+ 6 protocols) and 86 recommendations are up-to-date, while others are up for revision, abrogation, or review.
- Characteristics of standards:
 - Universality – standards are set at the global level and are applicable to countries of different contexts.
 - Flexibility – the standards are set in the spirit of realism and effectiveness.
 - Tripartism – reflects tripartite international consensus.

³⁴Respall, Diane (February 2018) *Presentation on ILO, ILS and Supervisory Mechanisms*.

- All matters related to work are covered by ILS, such as: (a) FOA, CB, and industrial relations; (b) forced labour; (c) equality of opportunity and treatment; (d) labour administration and inspection; (e) occupational safety and health; (f) tripartite consultation; (g) wages; (h) maternity protection; (i) social security; (j) employment policy and promotion; and (k) migrant workers.
- ILS are used as: (a) models and targets of labour law; (b) guidelines for social policy; and (c) some other areas of influence, such as: (i) corporate social responsibility; (ii) international framework agreements; (iii) other international organizations; and (iv) free trade agreements.

*iii. Conventions on ILS*³⁵

- Fundamental conventions: Eight are up-to-date fundamental conventions, setting standards on four fundamental principles at work (Declaration on Fundamental Principles and Rights at Work, 1998):
 - FOA and CB
 - Elimination of forced or compulsory labour
 - Abolition of child labour
 - Elimination of discrimination at work
- Governance conventions:
 - Employment policy
 - Labour inspection (two conventions)
 - Tripartite consultation

*iv. International labour standards and the Philippines*³⁶

- Philippines is a member of the ILO since 1948. It has ratified a total of 38 conventions, including all the Fundamental Conventions, and two of the Governance Conventions (ILO Conventions Nos. 122 and 144). It has not ratified Conventions on Labour inspection in Industry and Commerce (Convention No. 81); and Labour Inspection in Agriculture (Convention No. 129).
- The Philippines has ratified 27 of 177 technical conventions covering accidents compensation, medical examinations of young persons, night work of young persons, employment service, labour clauses in public contracts, protection of wages, migration, and minimum wage machinery.

³⁵Respall, Diane (February 2018) *Presentation on ILO, ILS and Supervisory Mechanisms*.

³⁶Respall, Diane (February 2018) *Presentation on ILO, ILS and Supervisory Mechanisms*.

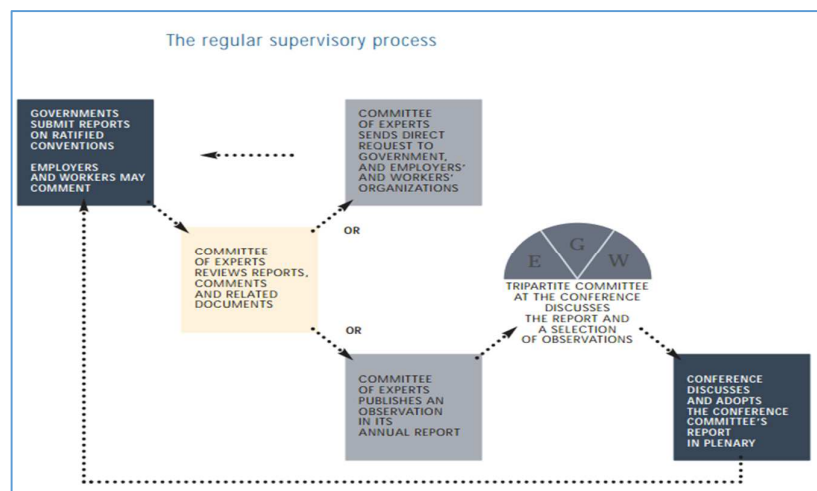
v. ILO supervisory mechanisms³⁷

- Regular system of supervision: Examination by two ILO bodies of reports on the application in law and practice sent by member States and on observations in this regard sent by workers' organizations and employers' organizations. There are two stages:
 - The Committee of Experts on the Application of Conventions and Recommendations (CEACR)³⁸:
 - * Government reports. Every three years governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four governance conventions they may have ratified. For all other conventions, reports must be submitted every six years.
 - * Comments of employers' and workers' organizations. Governments are required to submit copies of their reports to the most representative employers' and workers' organizations. These organizations may comment on the governments' reports. In addition, they, but also other national or international organizations, may send comments on the application of conventions directly to the ILO.
 - * CEACR comments. When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: *observations* and *direct requests*. Observations contain comments on fundamental questions raised by the application of a particular Convention by a State. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned and are available on the ILO website.
 - * CEACR report. The Committee's annual report consists of three parts. Part I contains a general report, which includes comments about member States' respect for their constitutional obligations. Part II contains the observations on the application of ILS, while Part III is a general survey.

³⁷ <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>
last accessed: 15 June 2018 10:28

³⁸The Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified Conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards in ILO member States.

- The Conference Committee on the Application of Standards (a tripartite standing committee of the ILC)³⁹:
 - * Conference Committee examines report. The annual report of the Committee of Experts, usually adopted in December, is submitted to the ILC the following June. The social partners select 24 countries for detailed examination by the Conference Committee (CAS).
 - * Government's response. The government referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question.
 - * Issuance of concluding recommendations. The Conference Committee draws up conclusions recommending that government take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.
- Illustration on the process for regular supervision



- Impact of the regular supervisory system⁴⁰

³⁹A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion.

⁴⁰Since 1964, the Committee of Experts has kept track of the number of *cases of progress* in which it noted changes in law and practice which improved the application of a ratified convention. To date, nearly 3,000 cases of progress have been noted.

In recent years, in response to comments it has made, the Committee noted such changes as the following:

- Samoa adopted the Labour and Employment Relations Act of 2013 (LER Act of 2013). In section 51(2) of the LER Act of 2013, children under 18 years of age are prohibited from being employed on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child.

○ Important notes on regular supervision⁴¹

- * Constitutional obligation of the government to communicate copies of information and reports sent to the ILO to the most representative organizations (Article 23, Paragraph 2, of the ILO Constitution).
- * Allows these organizations to transmit their own views, to the government and/or to the ILO.
- * Any organization of employers or workers (not only the most representative ones) can make comments on the application of ratified conventions:
 - At any time, not only when report is due.
 - Whether they have been consulted on the Government's report or not.

-
- Ukraine adopted a Law on Ensuring Equal Rights and Equal Opportunities of Women and Men which entered into force on 1 January 2006. The Law is aimed at ensuring equality of women and men in all spheres of society, including employment, through enforcement of equal rights, the elimination of gender discrimination and positive action to address the existing inequalities between men and women. Under section 17, equal rights and opportunities shall be granted to women and men in the field of employment, job promotion, skills development and retraining.
 - Lebanon adopted Decree No. 8987 of 2012 on the prohibition of the employment of minors under the age of 18 in works that may harm their health, safety or morals. According to this decree, minors under the age of 18 shall not be employed in prohibited types of work and activities which, by their nature, harm the health, safety or morals of children, limit their education and constitute one of the worst forms of child labour included in Annex 1 of the Decree. Moreover, minors under the age of 16 shall not be employed in such types of hazardous work which are listed in Annex 2 of the Decree, and which include work in agricultural activities; work in factories that manufacture tiles, rocks, and the like, work in building, demolition, excavation, construction, and heights climbing and working in commercial and industrial enterprises.
 - The United Republic of Tanzania has repealed the Industrial Court of Tanzania Act (No. 41 of 1967), which contained provisions prohibiting strikes contrary to the procedure under the Act, enforceable with penalties of imprisonment (involving an obligation to perform labour).

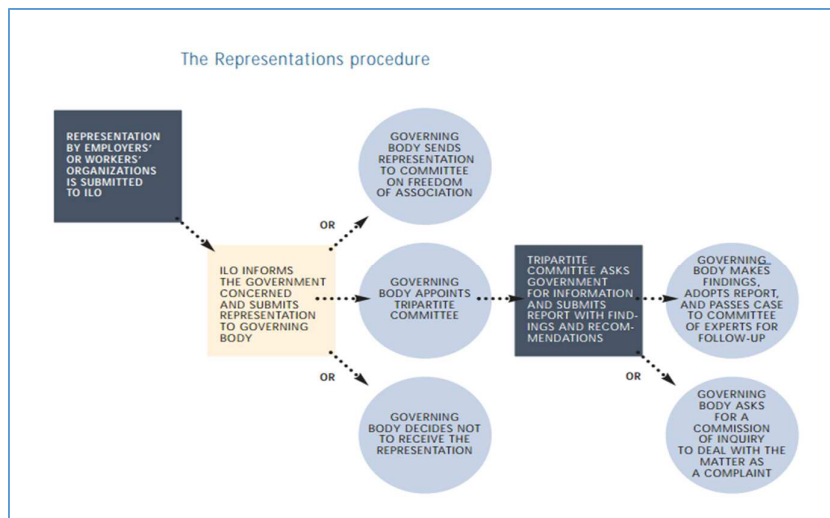
The impact of the regular supervisory system is not just limited to cases of progress. The Committee of Experts each year examines whether member States have fulfilled their obligation to submit adopted instruments to their legislative bodies for consideration. Even if a country decides not to ratify a Convention, it may choose to bring its legislation into conformity with it. Member States regularly review the Committee's comments on the application of a Convention in other countries and may amend their own legislation and practice so as to avoid similar problems in the application of a standard, or in order to emulate good practices. Where a Convention has been ratified, the Committee often makes direct requests to governments, pointing to apparent problems in the application of a standard and giving the countries concerned time to respond and tackle these issues before any comments are published in its report. The Committee's interventions facilitate social dialogue, requiring governments to review the application of a standard and to share this information with the social partners, who may also provide information. The ensuing social dialogue can lead to further problem-solving and prevention.

The reports of both the Committee of Experts and the Conference Committee are available on the Internet to millions of users. Governments and the social partners thus have an even greater incentive to solve problems in the application of standards in order to avoid critical comments by these bodies. Upon request by member States, the International Labour Office provides substantial technical assistance in drafting and revising national legislation to ensure that it is in conformity with international labour standards. In these ways, the supervisory bodies play an important role in preventing problems in the application of standards from arising in the first place.

⁴¹Kumar, Arun (2018) *Presentation on ILO Supervisory Mechanism for Application of International Labour Standards*.

- Without any formal requirements (just indicate the Convention dealt with), by a letter to the Director General of the ILO.
- * When organizations make comments on the application of ratified conventions, these comments are:
 - Transmitted to the government, which is asked to provide its own views.
 - Submitted to the CEACR.
 - Mentioned in the report and often reflected in the comments of the CEACR.
- * Beyond supervision. Reporting on non-ratified conventions and recommendations:
 - Constitutional obligation to report on the effect given to instruments selected by the Governing Body.
 - Reports due before end of February.
 - Basis for general surveys.
 - Subject matters aligned with the recurrent discussions under the 2008 Declaration on Social Justice for a Fair globalization.
- Special procedures. Unlike the regular system of supervision, the three special procedures are based on the submission of a representation or a complaint.
 - Representation procedure:
 - * The representation procedure is governed by articles 24 and 25 of the ILO Constitution.
 - * Representations may be made by national and international employers' and workers' associations. Individuals cannot make representations directly to the ILO but can pass on relevant information to their workers' or employers' organization, as applicable.
 - * Ground. A member State "has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party".
 - * A three-member tripartite committee of the Governing Body may be set up to examine the representation and the government's response. The report that the committee submits to the Governing Body states the legal and practical aspects of the case, examines the information submitted, and concludes with recommendations. Where the government's response is not considered satisfactory, the Governing Body is entitled to publish the representation and the response.

* Illustration of the representation procedure



* Example of representation procedure⁴².

* Notes on representation procedure⁴³:

- Can be made by any organization, even without direct interest to the issues.
- Minimal formal requirements.
- If receivable, examined by a tripartite committee set up by the Governing Body.
- Conclusions and recommendations adopted by the Governing body can be published.
- Often, follow-up by the Committee on Experts.

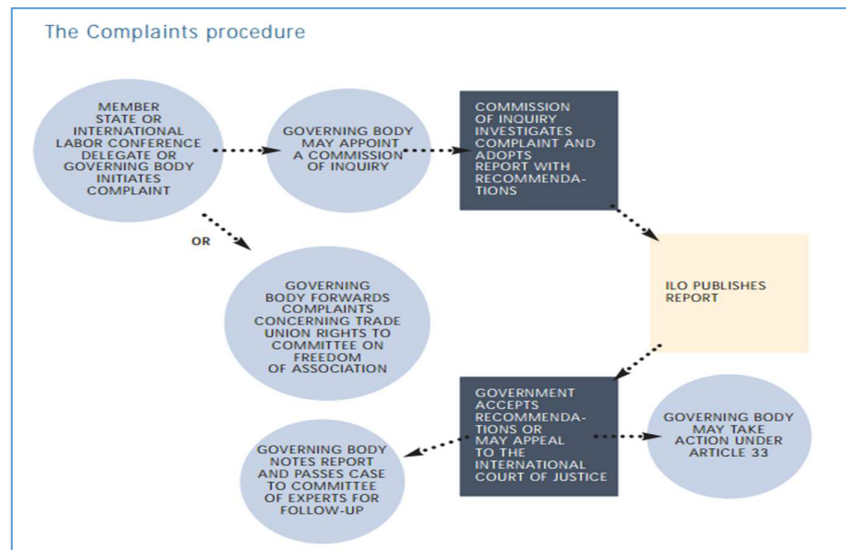
○ Complaints procedure:

- * The complaint procedure is governed by articles 26 to 34 of the ILO Constitution.
- * A complaint may be filed against a member state for not complying with a ratified convention by another member State which ratified the same convention, a delegate to the ILC or the Governing Body in its own capacity.

⁴²Greece ratified the Labour Inspection Convention, 1947 (No. 81) in 1955. In 1994 it passed a law which decentralized the labour inspectorate and placed it under the responsibility of the autonomous prefectural administrations. The Federation of the Associations of the Public Servants of the Ministry of Labour of Greece (FAMIT) subsequently made a representation to the ILO claiming that the law contravened the principle of Convention No. 81 that labour inspection should be placed under the supervision and control of a central authority. The tripartite committee set up to examine this representation agreed, and urged the Greek government to amend its legislation to comply with the convention. In 1998, the Greek government adopted new laws, bringing the labour inspectorate under a central authority once again. The same year, the Committee of Experts commended the Greek government for its "diligence and close attention" to the recommendations made by the tripartite committee.

⁴³Kumar, Arun (2018) *Presentation on ILO Supervisory Mechanism for Application of International Labour Standards*.

- * Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry ⁴⁴, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint.
- * When a country refuses to fulfil the recommendations of a Commission of Inquiry, the Governing Body can take action under Article 33 of the ILO Constitution⁴⁵.
- * Illustration of the complaints procedure



- * Example of cases using complaints procedure⁴⁶

⁴⁴A Commission of Inquiry is the ILO's highest-level investigative procedure; it is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 13 Commissions of Inquiry have been established, the latest one following an article 26 complaint filed against the Government of Venezuela in 2015.

⁴⁵ This provision states that "In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith." Article 33 was invoked for the first time in ILO history in 2000, when the Governing Body asked the International Labour Conference to take measures to lead Myanmar to end the use of forced labour. An article 26 complaint had been filed against Myanmar in 1996 for violations of the Forced Labour Convention (No. 29), 1930, and the resulting Commission of Inquiry found "widespread and systematic use" of forced labour in the country.

⁴⁶Poland ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in 1957. When martial law was declared in the country in 1981, the government suspended the activities of the Solidarnosc trade union and detained or dismissed many of its leaders and members. After the case had been examined by the Committee on Freedom of Association, delegates at the 1982 International Labour Conference filed a complaint under article 26 against Poland. The resulting Commission of Inquiry found grave violations of both conventions. Based on the Commission's conclusions, the ILO and numerous countries and organizations put pressure on Poland to redress the situation, and in 1989 the Polish government

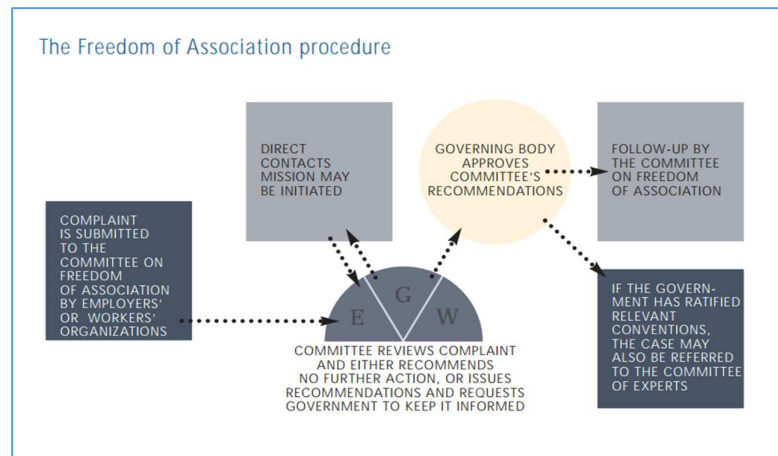
- Notes on complaint procedure⁴⁷:
 - * Lodged by a member State bound by the same convention or a delegate to the conference or the Governing Body in its own capacity.
 - * Governing Body may set up a Commission of Inquiry of three independent members.
 - * Recommendations must either be fulfilled or challenged before the International Court of Justice.
 - * Failure to comply may lead to action under Article 33 of the ILO Constitution.
- Special procedure for complaints regarding FOA (Committee on [Freedom of Association \[CFA\]](#))⁴⁸.
 - Complaints may be brought against a member State by employers' and workers' organizations or by a government.
 - The CFA is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers', and workers'. If the case is receivable, the CFA establishes the facts in dialogue with the government concerned.
 - If it finds that there has been a violation of FOA standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied.
 - Governments are subsequently requested to report on the implementation of its recommendations. In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts. The CFA may also choose to propose a "direct contacts" mission to the government concerned to address the problem directly with government officials and the social partners through a process of dialogue.

gave Solidarnosc legal status. Lech Walesa, Solidarnosc leader and later President of Poland, noted that "the Commission of Inquiry created by the ILO after the imposition of martial law in my country made significant contributions to the changes which brought democracy to Poland".

⁴⁷Kumar, Arun (2018) *Presentation on ILO Supervisory Mechanism for Application of International Labour Standards*.

⁴⁸Freedom of association and collective bargaining are among the founding principles of the ILO. Soon after the adoption of [Conventions Nos. 87](#) and [98](#) on freedom of association and collective bargaining, the ILO came to the conclusion that the principle of freedom of association needed a further supervisory procedure to ensure compliance with it in countries that had not ratified the relevant conventions. As a result, in 1951 the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant conventions.

- Illustration of the CFA procedure



- Cases on the CFA procedure⁴⁹

- Notes on CFA procedure⁵⁰:

- * Complaint can be lodged against the government even in the absence of ratification of the relevant conventions.
- * By a national employers' or workers' organization demonstrating a direct interest in the matter; an international organization having consultative status with the ILO; other international organizations where the allegations directly affect their affiliated organizations; or a government.

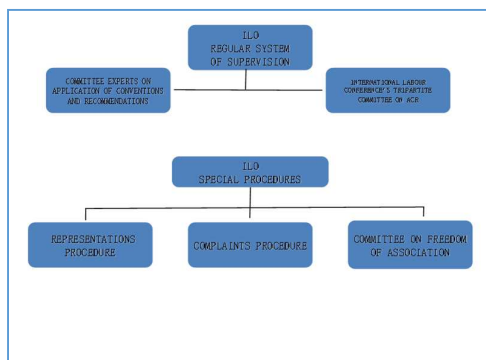
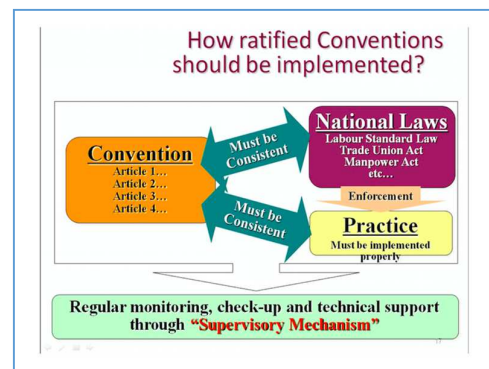
⁴⁹In more than 60 years of work, the [CFA has examined over 3,000 cases](#). More than 60 countries on five continents have acted on its recommendations and have informed it of positive developments on freedom of association during the past 35 years.

In 1994, the International Confederation of Free Trade Unions (ICFTU) filed a [complaint against the Government of Indonesia](#) for violations of trade union rights, including the denial of the workers' right to establish organizations of their own choosing, the persistent interference by government authorities, the military and employers in trade union activities, ongoing restrictions in collective bargaining and strike action, as well as very serious allegations concerning the arrest and harassment of trade union leaders, together with the disappearance and assassination of workers and unionists. Among the numerous trade union leaders detained during this period were Dita Indah Sari, labour activist of the Democratic Peoples Party and chairwoman of the Centre for Indonesian Workers Struggle, and MuchtarPakpahan, chairman of the Indonesian Prosperity Trade Union (SBSI). Through the CFA, the international community kept up the pressure on Indonesia for the release of trade union leaders detained because of their trade union activity. MuchtarPakpahan was released in 1998, followed by Dita Sari one year later, whereupon she was unanimously elected Chairperson of the National Front for Indonesian Workers struggle, the FNPBI. Indonesia's engagement with the ILO marked a turning point for labour rights in the country. In the years since then Indonesia has taken significant steps to improve protection of trade union rights, and has ratified all eight fundamental Conventions. The case of Dita Sari is not unique. In the last few decades, several hundred trade unionists worldwide were released from prison after the CFA examined their cases and formulated recommendations to the governments concerned.

⁵⁰Kumar, Arun (2018) *Presentation on ILO Supervisory Mechanism for Application of International Labour Standards*.

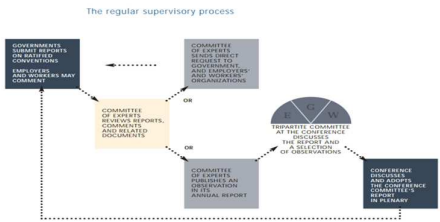
- * Examined by the CFA, a tripartite nine-member standing Committee of the Governing Body which meets three times a year (March, May-June, and October-November).
- * Conclusions and recommendations adopted by the governing body.
- * Follow-up of legislative issues by the Committee of Experts when a relevant convention is ratified.
- CFA special characteristics⁵¹:
 - * Chaired by an independent person
 - * Members sit on their individual capacity
 - * Not subject to prior exhaustion of national remedies
 - * Examination even without the government's reply
 - * Not bound by national decision
 - * Decisions taken unanimously

3.1.5 Presentation



⁵¹Kumar, Arun (2018) *Presentation on ILO Supervisory Mechanism for Application of International Labour Standards*.

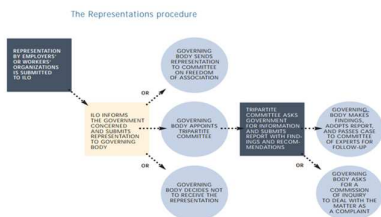
REGULAR SYSTEM OF SUPERVISION



REPRESENTATIONS PROCEDURE

- Right for association of employers or workers to present to the ILO Governing Body vs. Member State which failed to observe any Convention to which it is a party.
- Tripartite Committee will examine the representation and government's response.
- Governing Body is entitled to publish the representation and the government's response if the latter is unsatisfactory.
- For matters on ILO 87 and 98, these are referred to the the Committee on Freedom of Association.

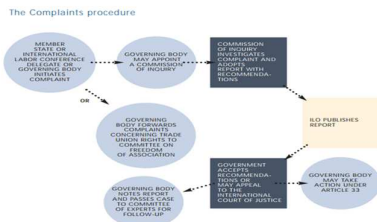
REPRESENTATIONS PROCEDURE



ILO COMPLAINTS PROCEDURE

- Member State vs. Member State for failure to comply with same ratified convention.
- Commission of Inquiry to carry out full investigation.
- Failure to comply with the Commission's recommendations, the Governing Body may recommend to the Conference to secure compliance by the Member State.

COMPLAINTS PROCEDURE



COMMITTEE ON FOA PROCEDURE

Examines complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant conventions.

Complaints may be brought against a member state by employers' and workers' organizations.

If it decides to receive the case, it establishes the facts in dialogue with the government concerned.

If there has been a violation of FOA standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied.

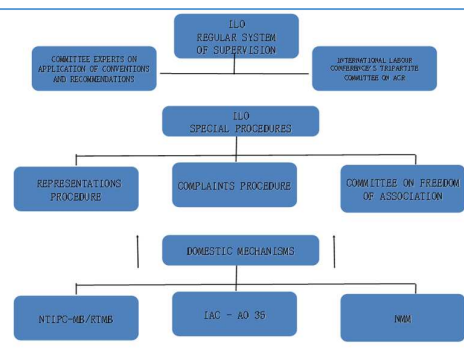
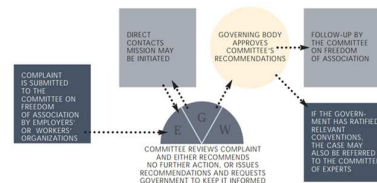
Governments to report on the implementation of its recommendations.

In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts.

"Direct contacts" mission to the government concerned may be resorted to address the problem directly with government officials and the social partners through a process of dialogue.

COMMITTEE ON FOA PROCEDURE

The Freedom of Association procedure



3.2 Session IV: Philippine domestic mechanisms on workers' FOA

3.2.1 Introduction

The Philippines has established mechanisms that may be resorted to when confronted with issues or cases on FOA. These are the: (a) National Tripartite Industrial Peace Council (NTIPC) and Regional Tripartite Monitoring Board (RTMB); (b) Inter-Agency Committee (IAC) for extra-legal killings (ELKs), enforced disappearances (EDs), torture and other cases of grave human rights violations; and (c) National Monitoring Mechanism (NMM).

3.2.2 Objectives

- a) Know the domestic mechanisms available for cases on freedom of association.
- b) Know the objectives, the coverage and the procedure for each mechanism.
- c) Enable the workers to access the mechanisms and participate in its proceedings.

3.2.3 Key learning points

- a) Jurisdiction and processes of the domestic mechanisms.
- b) Venue for the participation of workers and trade unionists, in relation to other mechanisms in place.

3.2.4 Session guide

- a) Activity 1: Interactive lecture
 - Time: 1 hour and 30 minutes
 - Methodology: Lecture discussion
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts
- b) Activity guide:
 - The facilitator will give an input guided by the attached lecture notes.
 - After the input, the facilitator will entertain questions from the participants.
- c) Lecture notes. Philippine domestic mechanisms on workers' FOA

i. The National and Regional Tripartite Monitoring Board on FOA

- Bases and guiding principles
 - Administrative Order (AO) No. 32, Series of 2018: Operational Guidelines of the National and Regional Tripartite Monitoring Body on the Application of International Labour Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organise (No. 87).
 - Guiding principles:
 - * Ensure that workers and employers are able to exercise freely the right to establish and join organizations of their own choosing for the furtherance of their interests.

- * Shall not substitute existing rules and procedures in the investigation and prosecution of crimes and other offenses under the law enforcement and criminal justice system.
- Coverage and sources of information
 - Coverage:
 - * Pending cases before the ILO
 - * Labour-related extra-judicial killings
 - * Violation/interference to the exercise of FOA (i.e.: harassment and abduction)
 - * Violation of the AFP and PNP guidelines⁵²
 - Sources of information:
 - * International Labour Organization
 - * Trade unions, employer organizations, media, and other stakeholders
- The NTIPC Monitoring Body (NTIPC-MB). The National Tripartite Industrial Peace Council (NTIPC) was constituted as the High Level Tripartite Monitoring Body through TIPC Resolution No. 1, s. 2010, and institutionalized pursuant to Republic Act No. 10395 or the Tripartism Law.
 - Composition:
 - * Chairperson: Secretary, DOLE; Alternate chairperson: Undersecretary for labour relations.
 - * Same composition as the NTIPC.
 - * Agencies that may be invited: National Conciliation and Mediation (NCMB), National Labor Relations Commission (NLRC), AFP, PNP, CHR, DOJ, CSC, DILG, and other relevant agencies.
 - * Secretariat: Bureau of Labor Relations.
 - Functions:
 - * Monitor and report progress of labour cases lodged before international bodies.
 - * Facilitate innovative feasible solutions to long standing CFA cases.
 - * Report violations to authorities and recommend appropriate action.
 - * Facilitate gathering of relevant information on complaints and evaluate and recommend appropriate action/s.

⁵²Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards and Similar Personnel During Labour Disputes (PNP Guidelines) and the Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP, and PNP Relative to the Exercise of Workers' Rights and Activities (AFP Guidelines), which include the observance of DOJ Memorandum Circular No. 16, series of 2014, on the requirement of DOLE Clearance prior to taking cognizance of complaints for preliminary investigation.

- NTIPC-MB process:
 - Receipt, assignment, and referral of information, report, complaint, and case.
 - Consolidation and evaluation of RTMB reports and observations/ comments from other sources.
 - Convening of the NTIPC Monitoring Body.
 - Deliberation, adoption, submission of NTIPC MB resolution.
- Special cases:
 - Ongoing actual violations of the PNP and AFP Guidelines⁵³. DOLE Secretary shall direct the DOLE Regional Director, as head of the RTMB, to immediately intervene and ensure the observance of said Guidelines.
 - Other urgent and extreme cases. NTIPC-MB may direct the DOLE Regional Director to convene the RTMB within 24 hours to evaluate the information, report, complaint and case, deliberate and adopt its report on the same day of the meeting.
- The Regional Tripartite Monitoring Body (RTMB). RTMBs, created through AO 263-11 and institutionalized pursuant to R.A. No. 10395, are counterparts of the NTIPC-MB at the regional level, with the primary function of ensuring the application and implementation of ILS, particularly ILO Convention No. 87, in the regions.
 - Composition:
 - * Chairperson: DOLE Regional Director.
 - * Equal number of representatives from the workers' and employers' sector, to be determined by the RTIPC.
 - * May also be extended in the provincial, city or municipal level as the RTIPC may deem necessary.
 - * Agencies that may be invited: NCMB, NLRC, AFP, PNP, CHR, DOJ, CSC, DILG, and other relevant agencies.
 - Functions:
 - * Ensure the application and implementation of ILS in the regions.
 - * Conduct monitoring and processing of complaints.
 - * Gather relevant information from the regional authorities and/or Courts, including comments from the social partners.
 - * Verify and/or document allegations of threats, intimidation, and harassment of trade unionists in the regions.
 - * Prepare case/complaint profiles and reports to be submitted to the NTIPC-MB as may be necessary.

⁵³Examples: interference in the conduct of certification election, presence of police and military in strike-bound area without the request from DOLE.

- RTMB process:
 - * Receipt and referencing of information, report, complaint, and case:
 - DOLE Regional Office receives the case/complaint and forwards the same to the Secretariat.
 - Secretariat assigns reference number to the case/complaint.
 - Secretariat forwards case/complaint to members of the RTMB, parties involved and concerned government agencies.
 - Members of the RTMB, parties involved, and concerned government agencies submit comment. Remark or observation.
 - Secretariat consolidates comments, remarks, and observations.
 - * Profiling of information, report, complaint, and case:
 - Secretariat prepares the profile of the case/complaint and shall act as the repository of all documents.
 - Secretariat provides members of the RTMB and concerned government agencies with the profile of the case/complaint, together with the consolidated comments, remarks, and observations.
 - * Convening, evaluation and reporting of the RTMB:
 - Secretariat prepares/drafts the report.
 - Criteria to be used in evaluating case/complaint:
 - The alleged facts, if proved, would not constitute an infringement of the exercise of trade union rights.
 - The allegations made are so basically or obviously political in character that it is undesirable to pursue the matter further.
 - The allegations made are too vague to permit a consideration of the case on its merits.
 - The complainant has not offered sufficient evidence to justify the allegations on the matter.
 - * Deliberation, adoption, and submission of report:
 - Regional Director reconvenes the RTMB to deliberate on the report and adopt the same for approval through consensus.
 - Regional director submits the report to the NTIPC-MB, copy furnished the members of the RTMB, parties involved and concerned government agencies.
- The Tripartite Validating Team. Whenever cases or complaints profiled and monitored by RTMB require further validation and/or review, the Secretary may create a Tripartite Validating Team.

- Composition:
 - * One representative from DOLE.
 - * Equal number of representatives from the workers' and employers' sectors.
 - * May request assistance from the AFP and PNP.
- Functions:
 - * Review reports submitted by the RTMB and evaluate the sufficiency of information provided therein, and identify what further information is needed to substantiate the case or complaint.
 - * Gather and/or verify information with the following:
 - Union organization to which the alleged victim is affiliated.
 - Victim's family and/or relatives.
 - Company/management involved in the case or complaint.
 - Investigative and prosecutorial arms of the government.
 - Local government units.
 - Other concerned agencies such as the Supreme Court, Court of Appeals, DOJ, National Bureau of Investigation (NBI), PNP, CHR, DILG, including the military when needed.
 - * Submit a comprehensive report and recommendations to the NTIPC-TEC Monitoring Body relative to the results of their case validation.
- Case profile
 - Basic information:
 - * Complainant
 - * Name of victim
 - * Affiliation to the victim
 - * Nature of the case
 - * Circumstances based on complaint/report
 - Information gathered from PNP, DOJ, CHR, victim's affiliation and others:
 - * Date and time of incident
 - * Place of incident
 - * Circumstances surrounding the incident (based on investigation)
 - * Possible motive
 - * Alleged perpetrators
 - * Witness/es
 - * Case filed
 - * Others

ii. *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*⁵⁴

- Context, legal bases and objective. AO-35: Creating 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 (November 2012).
 - Context:
 - * Validated reports of violations of the Constitutional guarantees created a culture of impunity, wherein security establishments of the State and non-state forces have been accused of silencing, through violence and intimidation, legitimate dissent and opposition raised by members of civil society, cause oriented groups, political movements, people's and non-government organizations, and by ordinary citizens.
 - * Most of these violations remain uninvestigated and unsolved, with the perpetrators unidentified and unprosecuted, giving rise to more impunity.
 - * There is a need to revisit these unsolved cases of grave violations of the right to life, liberty and security of persons, whether committed as part of an apparent government policy in the past or as recurring cases of unsanctioned individual abuse of power and authority by State and non-State forces.
 - Legal bases:
 - * International human rights instruments and treaties.
 - * 1987 Constitution:
 - Section 11, Article II: The State values the dignity of every human person and guarantees full respect for human rights.
 - Section 1, Article III: No person shall be deprived of life, liberty, or property without due process of law.
 - Section 2, Article III: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable.
 - Section 12(1), Article III: Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice.

⁵⁴Section 1, A.O. No. 35.

- Section 12(2), Article III: No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him, and that secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
- Section 14(1), Article III: No person shall be held to answer for a criminal offense without due process of law.
- Section 18(1) No person shall be detained solely by reason of his political beliefs and aspirations.
- Objective:
 - * Establish an institutional legacy of efficient, coherent, and comprehensive government machinery dedicated to the resolution of unsolved cases of political violence in the form of extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons.
- Composition⁵⁵
 - * Chairperson: Secretary, Department of Justice (DOJ)
 - Eight members:
 - Chairperson, Presidential Human Rights Committee (PHRC)
 - Secretary, DILG
 - Secretary, DND
 - Presidential Adviser on the Peace Process (PAPP)
 - Presidential Adviser for Political Affairs (PAPA)
 - Chief of Staff, AFP
 - Director General, PNP
 - Director, NBI

The Chairperson and the members thereof may designate representatives whose rank is not lower than Assistant Secretary, or General or Chief Superintendent in AFP or PNP.

- * Observers and resource persons:
 - Chairperson, Commission of Human Rights (CHR)
 - Ombudsman
 - In 2014, IAC was opened to labour sector representatives to act as observers. This is after several dialogues with the then Secretary of Justice relative to reported killings of trade union leaders and/or members⁵⁶.
- * Technical Working Groups (TWGs) may be organized from offices of the different committees and a secretariat as designated by the Chairperson.

⁵⁵Section 1, A.O. No. 35.

⁵⁶DOLE Presentation on A.O. No. 35 (April 2018).

- * Observations⁵⁷:
 - Unlike other monitoring mechanisms (i.e.: NTIPC-MB and RTMBs lodged within DOLE), the AO-35 IAC membership is purely composed of representatives from government offices with investigative and prosecutorial functions.
 - No members from sectoral organizations and civil society organizations.
- Coverage
 - For purposes of the focused mandate of AO-35, killings related to common criminals and/or the perpetration of their crimes shall be addressed by other appropriate mechanisms within the justice system⁵⁸.
 - State and non-state agents:
 - * State agents. A person who, by direct provision of law, popular election or appointment by competent authority, takes part in the performance of public functions in the government, or who performs in the government or in any of its branches, public duties as an employee, agent or subordinate official, of any rank or class⁵⁹.
 - * Non-state agent. Any other person who does not fall under the definition of state agent.
- Extra-legal and extra-judicial killings (ELKs and EJKs):
 - The victim was: (a) a member of, or affiliated with an organization, to include political, environmental, agrarian, labour, or similar causes; (b) an advocate of above-named causes; (c) a media practitioner; or (d) a person(s) apparently mistaken or identified to be so.
 - The victim was targeted and killed because of the actual or perceived membership, advocacy, or profession.
 - The perpetrator is a state agent or non-state agent.
 - The method and circumstances of attack reveal a deliberate intent to kill.
- Enforced disappearances⁶⁰. There is an arrest, detention, abduction or any other form of deprivation of liberty committed by State agents or by persons or groups of persons acting with the authorization, support or acquiescence of the State followed by refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

⁵⁷DOLE Presentation on A.O. No. 35 (April 2018).

⁵⁸Article I-1 of the A.O. 35 Operational Guidelines.

⁵⁹Sec. 3, Anti-Enforced Disappearance Act.

⁶⁰Sec. 3, R.A. 10353.

- Torture. Intentional infliction of severe pain or suffering, whether physical or mental, for the purpose of: (a) obtaining from him/her or a third person information or a confession; (b) punishing him/her for an act he/she or a third person has committed or is suspected of having committed; (c) intimidating or coercing him/her or a third person; or (d) for any reason based on discrimination of any kind; by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority.
- Other grave human rights violations:
 - Acts that grossly violate an individual's right to life, liberty, and security of persons and/or their physical or mental integrity and dignity.
 - Those identified by the IAC as grave human rights violations.
- Mechanisms⁶¹
 - Inventory of cases:
 - * Sources:
 - Government sources: Investigative and prosecutorial government offices, such as National Prosecution Service (NPS), the Ombudsman, CHR, PNP, NBI, AFP Inspector General, PLEB, NAPOLCOM, PNP Internal Affairs Service, and the Judiciary.
 - Non-government sources: Independent and non-partisan international and national human rights organizations and groups:
 - Labour groups may be sources of information.
 - The RTMB may forward case profiles to the IAC.
 - * IAC shall establish guidelines on cases to be included in the inventory, with primacy given to: (a) the political complexion of the offense committed; and (b) participation of State or non-state forces in the commission of the human rights violation.
 - * Categorize the cases as follows:
 - Unsolved cases
 - Cases under investigation
 - Cases under preliminary investigation
 - Cases under trial
 - Unsolved cases:
 - * Cases which were not even filed for purposes of preliminary investigation due to a number of reasons such as insufficient evidence, or unwillingness of witnesses to cooperate.
 - * Special Investigation Teams for Unsolved Cases (SITUs). Composite teams of prosecutors and investigators, headed by an AO-35 Prosecutor, that conduct re-evaluation and re-investigation of

⁶¹Section 2, AO. No. 35.

unsolved AO-35 cases. SITU conducts further investigation on unsolved AO-35 cases for the possible identification of the perpetrators. It may:

- Reviews case file/records
- Interviews victim's relatives
- Conducts ocular inspection of crime scene
- Interviews possible witnesses
- Exerts all efforts to identify perpetrators

* Special Oversight Team (SOT) for Unsolved Cases. Composite teams of investigators and prosecutors that evaluate and oversee SITU reinvestigations, supervise the management of unsolved AO-35 cases, and regularly report and submit recommendations to the IAC. SOT evaluates and recommends to IAC:

- Case be filed immediately with prosecution office.
- Case be further reinvestigated.
- Case be declared closed (vital witnesses unable to testify or cannot be located, total lack of evidence, suspects, already dead).
- Not an AO-35 case.

* Resolution:

- IAC may adopt, modify or overturn SOT's recommendations, create another team to reinvestigate anew, or take any other appropriate action.

- Filing and endorsement of AO-35 case. If the IAC adopts the recommendation for filing of a complaint, the SITU shall file the corresponding complaint before the appropriate prosecution office. The complaint shall contain an endorsement signed by the AO-35 Investigator who is a member of the SITU, indicating that the investigation was conducted pursuant to AO-35 and these Guidelines.

- Closed cases not to be delisted. Whenever the IAC resolves to close an unsolved case reinvestigated by the SITU due to the impossibility of obtaining sufficient evidence to move it forward, the same shall not be delisted from the inventory of alleged AO-35 cases.

○ Cases under investigation, preliminary investigation and trial

* Special Investigation Teams for Existing/Current Cases (SITEC). Investigate, prosecute, and monitor existing or current cases that are actively being investigated or prosecuted in court. Duties and responsibilities:

- To identify witnesses and assist in the preparation of their sworn statements.

- To recommend the immediate or provisional coverage of witnesses and/or their immediate families under the Witness Protection Programme of the Department of Justice (DOJ).
 - To evaluate the scene of the crime report and other physical or object evidence necessary in the filing of the case with the prosecution office.
 - To invite the participation of other government agencies as maybe deemed necessary or beneficial to the investigation.
 - To ensure the proper preservation and custody of all the evidence collected.
- * Special Oversight Teams (SOTs). Monitor and supervise the investigation and prosecution of new and existing cases, and to regularly report and submit recommendations to the IAC.
 - * Other matters:
 - Closed cases not to be delisted. Whenever the IAC resolves to close a case due to the impossibility of obtaining sufficient evidence to move it forward, the same shall not be delisted from the inventory of alleged AO-35 cases.
 - Continued monitoring and reporting. Notwithstanding the referral of the case to the prosecution office, the SITEC shall continue to convene for the purpose of evaluating and gathering of additional evidence necessary to further strengthen the case. The SITEC shall likewise continue to monitor and periodically report the progress of the preliminary investigation to the IAC Secretariat.
 - New cases:
 - * Special Investigation Teams for New Cases (SITN). Investigate, prosecute and monitor new cases or incidents that occurred after AO-35 took effect on 22 November 2012, and oversee, supervise, and monitor the investigation by local law enforcers.
 - Cases with CHR or Ombudsman shall be monitored by these teams.
 - If still under investigation, the special team can conduct concurrent investigation with the CHR and the Ombudsman.
 - In case of torture, the Special team shall ensure that the investigation is conducted within 60 days as mandated by Section 9(a) of RA 9745 (Anti-Torture Act) by the DOJ, Public Attorney's Office (PAO), PNP, NBI, and the AFP.

- Duties and responsibilities:
 - To identify witnesses and assist in the preparation of their sworn statements.
 - To recommend the immediate or provisional coverage of witnesses and/or their immediate families under the Witness Protection Programme of the DOJ.
 - To evaluate the scene of the crime report and other physical or object evidence necessary in the filing of the case with the prosecution office.
 - To invite the participation of other government agencies as maybe deemed necessary or beneficial to the investigation.
 - To ensure the proper preservation and custody of all the evidence collected.
- * Special Oversight Team for New and Existing Cases. Monitor and supervise the investigation and prosecution of new and existing cases, and to regularly report and submit recommendations to the IAC. SOT may direct the SITN:
 - That the case be immediately filed with the appropriate prosecution office.
 - That the case be further reinvestigated by the SITN.
 - Delist the case on the ground that the same is not an AO-35 case.
- * Resolution: IAC action. Acting on the recommendations of the SOT for new/existing cases to close the case, the IAC may adopt, modify, or otherwise overturn the same, or altogether create another team to reinvestigate the case anew.
 - Regular reporting to the President. The IAC shall submit report to the president every 6 months, with recommendations.
- Notes:
 - The primary duty of the IAC is the investigation and the prosecution of the cases covered. It is for this reason that the Chair is the DOJ and the members thereof, including the observers, are those involved in the investigation and prosecution. The case still has to undergo trial before the RTC or the Sandiganbayan.
 - Other cases not within the jurisdiction of the IAC under AO-35 will go through the regular investigation and prosecution as mandated by law. Not categorizing the case as falling under AO-35 does not mean that the case will not undergo the regular proceeding.

iii. The Commission on Human Rights' National Monitoring Mechanism

- Mandate of NMM:
 - National monitoring mechanism shall monitor the nation's progress on the resolution of human rights violations and/or cases.
 - Coordinate among its members, provision of services (legal services) in promoting, protecting and addressing the rights of the victims and/or members of their families.
 - May request assistance from any individual, organization, the academe, the private sector, the media, or any other institution to further protect and promote human rights.
- Definition of terms:
 - Extra-legal killings (ELK) or extra-judicial killings (EJK)

Refer to killings wherein:

- * The victim was:
 - a member of, or affiliated with an organization, to include political, environmental, agrarian, labour, or similar causes;
 - an advocate of above-named causes;
 - a media practitioner; and
 - person(s) apparently mistaken or identified to be so.
- * The victim was targeted and killed because of the actual or perceived membership, advocacy, or profession.
- * The person/s responsible for the killing is a state agent or non-state agent.
- * The method and circumstances of attack reveal a deliberate intent to kill.

Nota bene: "ELK" are 'killings committed without due process of law, i.e., without legal safeguards or judicial proceedings". (Mison Case, G.R. No. 210759, G.R. No. 211403, G.R. No. 211590, June 23, 2015).

- Enforced or involuntary disappearance – refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

- Torture – refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:
 - * obtaining from him/her or a third person information or a confession;
 - * punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or
 - * intimidating or coercing him/her or a third person or for any reason based on discrimination of any kind.

When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

- Monitoring – includes consensus-building, as well as validation and assessment of cases of human rights violations; proposing policies, measures and recommendations to prevent the occurrence, and for the effective resolution of said cases; tracking and resolution of said cases in courts and tribunals; and intervening, where appropriate actions are wanting.
- Objectives of NMM:
 - Effectively monitor human rights violations.
 - Address human rights violations by the immediate provision of legal and non-legal services to human rights victims and/or their families.
 - Develop an effective monitoring and coordination mechanism that will ensure that justice is served to human rights victims and/or their families.
 - Strengthen institutional mandates, capabilities and engagements in effectively resolving human rights violations.
 - Provide a venue, both at the national and local levels, where victims or their relatives can report cases, seek assistance, request immediate investigation, request for protection or seek psychosocial services.
 - Raise public awareness and understanding of cases involving EJKs, EDs, and torture to deter, minimize, and prevent future incidents.

- Composition of NMM:
 - CHR (Convenor)
 - National Government Agencies (Members)
 - * PHRC – Presidential Human Rights Commission
 - * DOJ – Department of Justice
 - * DILG – Department of Interior and Local Government
 - * DND – Department of National Defense
 - * AFP – Armed Forces of the Philippines
 - * PNP – Philippine National Police
 - * DOLE – Department of Labor and Employment
 - * DSWD – Department of Social Work and Development
 - * NCIP – National Commission on Indigenous Peoples
 - * OPAPP – Office of the Presidential Adviser on the Peace Process
 - * BJMP – Bureau of Jail Management and Penology
 - Civil Society Organizations (Members)
 - * Asian Federation Against Involuntary Disappearances
 - * ALG – Alternative Law Groups
 - * AHRC – Ateneo Human Rights Center
 - * Balay Rehabilitation Center, Inc.
 - * Families of Victims of Involuntary Disappearances
 - * PAHRA – Philippine Alliance of Human Rights Advocates

Composition may be increased through formal application of an applicant institution, duly endorsed by two members. An applicant will be accepted upon a majority vote of the members present.

- Meetings:
 - Regular meetings of the NMM shall be held quarterly, on the third Wednesday of January, April, July, and October, while Special meetings may be called as needed.
 - Shall be convened by the Lead Convenor or by a majority of the membership of the NMM.
- Structure:
 - CHR as the lead convener
 - TWG – CHR, PHRC Secretariat, CSO Representative and other interested members
 - Working committees
 - Local monitoring mechanisms
- Programmes:
 - Referral and monitoring:
 - * NMM may refer cases to the concerned government/civil society organizations, for their appropriate action.
 - * NMM will thereafter monitor the actions taken by the concerned government or civil society organizations with regard to the referred cases.

- * NMM shall also monitor compliance of government agencies of their mandated duties under existing laws and policies.
- Case conferences:
 - * Each NMM member is expected to provide the NMM Secretariat with the list cases that it is taking cognizance of, with detailed information and updated status of the cases.
 - * NMM shall thereafter conduct case conferences to facilitate the effective resolution of cases through information-sharing and cooperation among the members of the NMM.
 - * NMM may call on the complainants, the concerned parties, and the other stakeholders concerned as resource persons during the case conferences.
- Provision of services:
 - * NMM shall coordinate among its members and concerned agencies for the provision of services to the victims and/or their families.
- Information dissemination:
 - * NMM shall develop a communications plan which will inform the public, stakeholders and concerned agencies of issues concerning EJK/ELK, ED, and torture cases.
- Capacity-building:
 - * NMM shall consult its members and develop programmes that shall strengthen both the mechanism and individual institutions in effectively addressing and preventing human rights violations.

3.2.5 Presentation

Philippine Domestic Mechanisms on Workers' Freedom of Association

- National Industrial Peace Council and the Regional Tripartite Monitoring Board (A.O. No. 32-2018)
- Inter-agency Council for Extra-Legal Killings, Enforced Disappearances, Torture, and Other Grave Abuse of Human Rights Violations (A.O. No. 35-2012)
- National Monitoring Mechanism of the Commission on Human Rights (2015)

Jurisdiction

NTIPC-RTMB	IAC-EJK	NMN
*Pending cases before the ILO Labor-related extra-judicial killings Violations/interference in the exercise of FOA (i.e.: harassment & abduction) Violation of the AFP and PNP Guidelines	Extra-Legal/Extra-Judicial Killings Enforced Disappearances Torture	Extra-Legal/Extra-Judicial Killings Enforced/Involuntary Disappearances Torture Other Grave Human Rights Violations

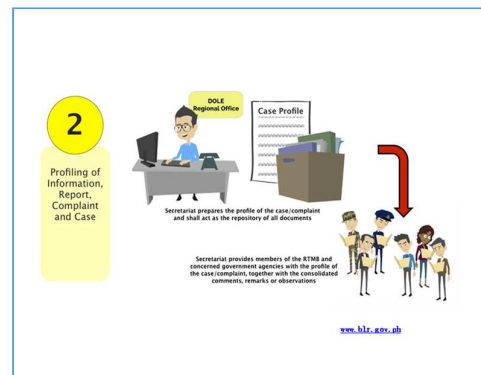
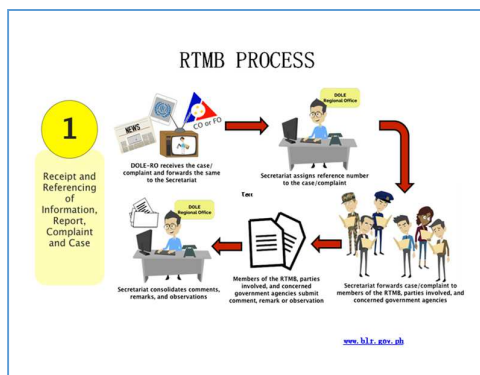
Composition

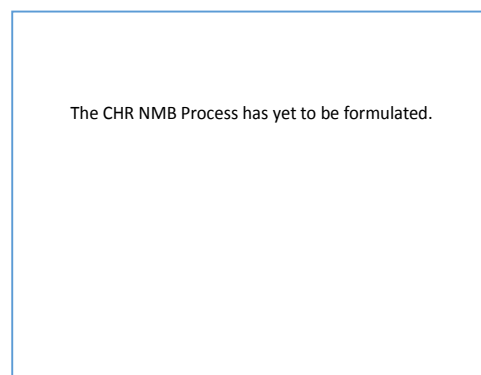
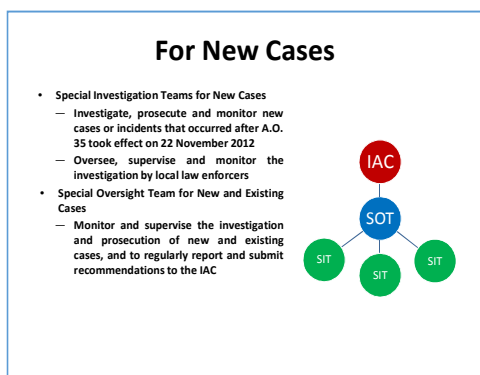
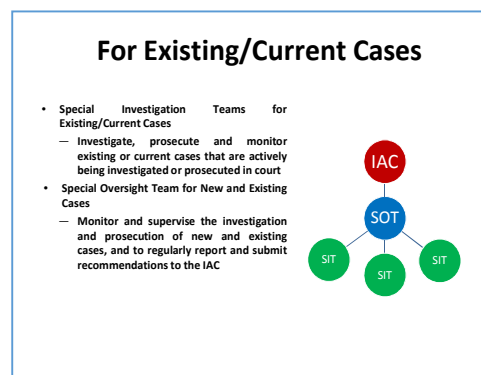
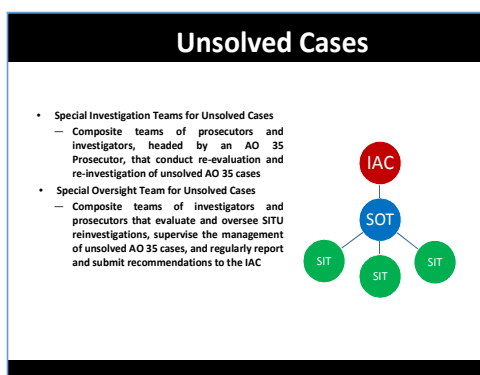
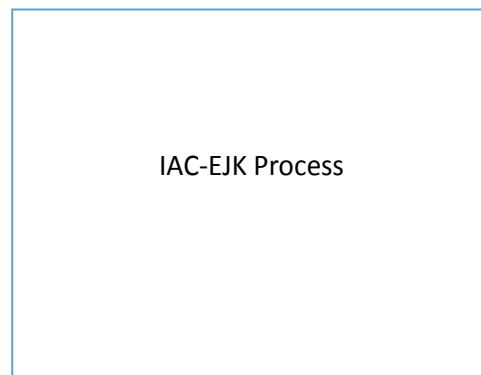
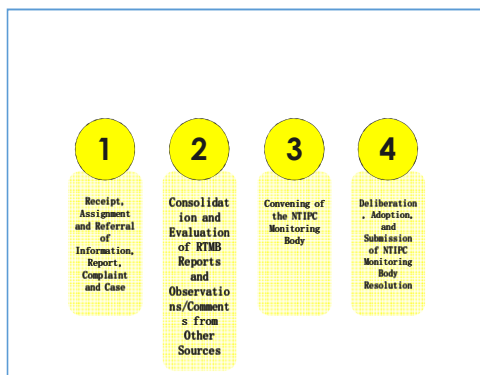
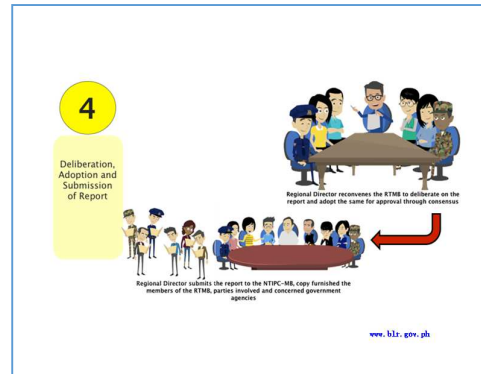
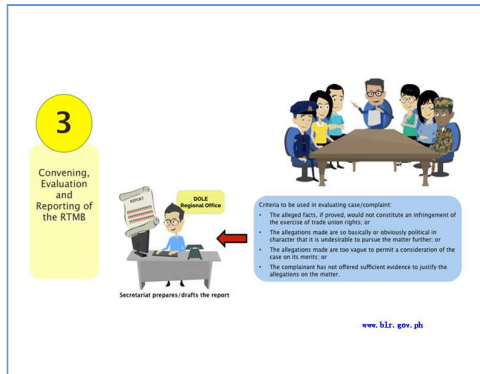
NTIPC-RTMB	IAC-EJK	NMN
NTMB -Chaired by SOLE (alternate USEC Labor Relations) -Same NTIPC Composition -Agencies that may be invited: NCMB, NLRC, AFP, PNP, CHR, DOJ, CSC, DILG RTMB -Chaired by the DOLE Regional Director -Equal number of 'workers' and employers' reps, to be determined by the RTIPC -Agencies that may be invited: NCMB, NLRC, AFP, PNP, CHR, DOJ, CSC, DILG	Chairperson: SOJ Members: -Chairperson, PHRC -SILG -SND -Presidential Adviser on the Peace Process -Presidential Adviser for Political Affairs -Chief of Staff, AFP -PAG, PNP -NH Director <i>(Bureaucracy, CHR, Ombudsman, Labor Sector Representative)</i> TWC	Convenor: CHR NGAs: PHRC, DOJ, DILG, IND, AFP, PNP, DOLE, ISWD, NCIP, OPAPP, RJMP CSOs: Asian Federation Against Involuntary Disappearances, ALG, AMRC, Balay Rehabilitation Center, Inc., Families of Victims of Involuntary Disappearances, MAG, PANRA Technical Working Group Working Committee Local Monitoring Committees

Functions

NTIPC-RTMB	IAC-EJK	NMN
• Ensure the application and implementation of ILS • Monitoring and processing of complaints • Gather relevant information and verify the same • Prepare case profiles and complaints	• Inventory of cases • Investigation of unsolved cases • Monitoring and reporting • Facilitate investigation and prosecution • Regularly report to the President	• Referral and monitoring • Case conferences • Provision of services • Information dissemination • Capacity-building

NTIPC-RTMB Process





3.2.6 References

a) Laws and jurisprudence

Administrative Order No. 32, Series of 2018: Operation Guidelines of the National and Regional Tripartite Monitoring Body on the Application of International Labour Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organise.

Administrative Order No. 35, Series of 2012: Creating the Inter-Agency Committee on Extra-Judicial Killings (EJKs), Enforced Disappearances (EDs), Torture, and Other Grave Violation of the Right to Life, Liberty, and Security of Persons.

Commission on Human Rights National Monitoring Mechanism for EJK (2015).

b) Experts' presentation, online sources and others

International Labour Organization *ILO Supervisory System Mechanism* <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang-en/index.htm> (Last Accessed: 15 June 2018 10:28).

Kumar, Arun (2018) *Presentation on ILO Supervisory Mechanism for Application of International Labour Standards*.

Respass, Diane (February 2018) *Presentation on ILO, ILS and Supervisory Mechanisms*.

4. MODULE 3: JUDICIAL REMEDIES ON FREEDOM OF ASSOCIATION (FOA) CASES

4.1 Session V: Remedies for violation of constitutional guarantees

4.1.1 Introduction

Fundamental rights such as the right to life, liberty and security are guaranteed in the Constitution. Rules have been promulgated to provide remedies or redress when such guarantees have been violated.

4.1.2 Objectives

At the end of the session, participants are expected to:

- a) Know the remedies available in cases of violation of rights enshrined in the Constitution.
- b) Understand the basic concepts and procedure of the Writs of Habeas Corpus, Amparo, and Habeas Data.

4.1.3 Key learning points

- a) The Rules provide for remedies such as the writ of habeas corpus, Writ of Amparo and Writ of Habeas Data, which may be availed of when there has been a violation on the rights to life, liberty, and security or the right to privacy in life, liberty, or security.
- b) While the writs are remedies to violations of some of the enshrined rights in the Constitution, it does not cover violations or threatened violation on the right to property or right to privacy in property.
- c) The Rules have set forth guidelines to avail of the aforementioned writs such as who shall file the petition, against whom shall the petition be filed, the acts covered by the writ, the courts having jurisdiction over the petitions and the burden of proof to be established in order for the writ to be granted.

4.1.4 Session guide

- a) Activity 1: Structured learning exercise on the remedies for violations of constitutional rights:
 - Time: 15 minutes
 - Methodology: Structured learning exercise (EK-MISMO)
 - Materials needed: laptop and projector
- b) Activity guide:
 - Various scenarios will be read or flashed onto the projector. Participants will have to determine whether the writs provided by the Rules may be availed of in each case by stating MISMO or EK if the remedies provided are inapplicable.

- Cases:
 - 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.
 - 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 taken into custody by a jail officer.
 - A security guard made threatening statements against an employee in the workplace.
 - 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.
- c) Activity 2 : Interactive lecture:
 - Time: 45 minutes
 - Methodology: Lecture discussion
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts
- d) Activity guide:
 - The facilitator will give an input guided by the attached lecture notes.
 - The facilitator will entertain questions from the participants thereafter.
- e) Lecture notes. Remedies for violation of constitutional rights to FOA
 - Notes on the case studies

Can there be recourse for the writs to be discussed in the following situations:

- 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. EK

- * It cannot be subject of petition of 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.

- 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 taken into custody by a jail officer.

Answer. EK

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

Answer. EK

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

- * 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).

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

It means to produce the body or you have the body.

It is also referred to as 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).

It is a special proceeding provided in the Rules of Court.

- Coverage
 - 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 (Section 18, Article VII, 1987 Constitution).
- Parties who can file the petition:
 - The party for whose relief it is intended.
 - Some person on behalf of the aggrieved party.
- Parties who can be named as respondents in the petition:
 - The officer or the name of the person who imprisoned or restrained the aggrieved party.
 - If unknown, description of such officer or person by assumed appellation.
- Jurisdiction, venue and enforceability
 - Regional Trial Court - Enforceable within the judicial district
 - Sandiganbayan - Enforceable anywhere in the Philippines
 - Court of Appeals - Enforceable anywhere in the Philippines
 - Supreme Court - Enforceable anywhere in the Philippines
- When writ of habeas corpus is not allowed:
 - The person is under the custody of an officer under process issued by a court or 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. (Section 4, Rule 102, Rules of Court).
 - * Burden of proof - Preponderance of evidence
 - * Docket fees - Payment required
 - * Appeal - Forty-eight hours from notice of judgment appealed from

ii. *Writ of Amparo (A.M. No. 07-9-12-SC | 25 September 2007; amended 16 October 2007)*

It is referred to as writ of protection.

The proceeding is summary in nature.

- Coverage
 - Violation or threatened violation of the right to life, liberty, and security by an unlawful act or omission of a public official or employee, or of a private individual or entity.
 - * The rights to life, liberty, and security are the rights that can be found in the Bill of Rights of the Constitution.
 - * This remedy does not cover violation or threatened violations of the right to property; however, when it is closely related to the violation or threatened violation of the right to liberty, then, the same may be included.

- 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).
- 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; and
 - * concerned institution.
- Parties who can be named as respondents in the petition:
 - Public 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.
- Burden of proof - Substantial evidence
- Docket fees - No docket fees
- Appeal - Five working days from the date of notice of adverse judgment under Rule 45, raising questions of fact or law or both.

- Interim or preliminary reliefs:
 - Petitioner
 - * Temporary protection order – order by the court, justice, or judge, upon motion or motu proprio, that the petitioner or aggrieved party and any member of the immediate family be protected by a government agency or by an accredited person or private institution capable of keeping and securing their safety. In cases of organization, association, or institution, such protection may be extended to the officers involved.
 - * Inspection order – order by the court, justice or judge, upon verified motion and hearing, to any person in possession or control of a designated land or other property to permit entry for the purpose inspecting, measuring, surveying, or photographing the property or any relevant object or operation.
 - * Production order – order by the court, justice or judge, upon verified motion and hearing, to any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, or objects in digitized or electronic form constituting or containing evidence relevant to the petition to produce and permit their inspection, copying, or photographing by or on behalf of the movant.
 - * Witness protection order – order by the court, justice or judge, upon motion or motu proprio, to refer witnesses to the DOJ for admission to the Witness Protection Programme pursuant to Republic Act 6981.
 - Respondent (upon verified motion and after due hearing):
 - * Inspection order
 - * Production order

iii. Writ of Habeas Data (A.M. No. 08-1-16-SC | 22 January 2008)

It means “you should have the information.”

The proceeding is summary in nature.

- Coverage
 - 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.
- 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).
- 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 be named as respondents in 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.
- 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 Rule 45, raising questions of fact or law or both

4.1.5 Presentation

REMEDIES FOR VIOLATIONS OF CONSTITUTIONAL GUARANTEES

- WRIT OF HABEAS CORPUS
- WRIT OF AMPARO
- WRIT OF HABEAS DATA

EK or MISMO

- 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 was taken into custody by a jail officer.

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

- During the Labor 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.

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

REMEDY	JURISDICTION AND VENUE	OTHERS
WRIT OF HABEAS CORPUS	• RTC, Sandiganbayan, CA, SC • with docket fees	• Special Proceeding • Preponderance of Evidence • Appeal
WRIT OF AMPARO	• RTC, Sandiganbayan, CA, SC • no docket fees	• Summary Proceeding • Substantial Evidence • Appeal
WRIT OF HABEAS DATA	• RTC, Sandiganbayan, CA, SC • public data files • with docket fees; indigents exempt	• Summary Proceeding • Substantial Evidence • Appeal

INTERIM RELIEFS WRIT OF AMPARO	PETITIONER	RESPONDENT
TEMPORARY PROTECTION ORDER	/	X
INSPECTION ORDER	/	/
PRODUCTION ORDER	/	/
WITNESS PROTECTION ORDER	/	X

REMEDY	NATURE
WRIT OF HABEAS CORPUS (Rule 102, Rules of Court)	• Writ of liberty • Produce the body • All cases of illegal confinement or detention • Unlawful custody
WRIT OF AMPARO (A.M. 07-9-12-SC 25 September 2007, amended 16 October 2007)	• Writ of protection • Violation or threatened violation of the right to LIFE, LIBERTY and SECURITY
WRIT OF HABEAS DATA (A.M. No.18-1-16-SC 22 January 2008)	• You have the information • Violation or threatened violation of the right to PRIVACY in LIFE, LIBERTY or SECURITY

REMEDY	PETITIONER	RESPONDENT
WRIT OF HABEAS CORPUS	• Aggrieved party • Some person on behalf of the aggrieved party.	• Officer or person who imprisoned or restrained the aggrieved party; • If unknown, assumed appellant.
WRIT OF AMPARO	• Aggrieved party or • Immediate family, distant relatives or concerned citizens	• Public official or employee • Private individual or entity
WRIT OF HABEAS DATA	• Aggrieved party • Extralegal killings/enforced disappearances: immediate family and distant relatives	• Public official or employee • Private individual or entity engaged in data gathering and storing

4.2 Session VI: Procedure for criminal cases

4.2.1 Introduction

If the employee decides to protect his/her rights in the context of and using the legal system he/she should expected to observe some rules in the process of having her complaint resolved in court. As a paralegal, knowledge on criminal procedure is important to protect the rights of every employee or union member in a workplace.

4.2.2 Objectives

At the end of the session, participants are expected to:

- Know the basic concepts of criminal procedure.
- Familiarize with the steps involved in the prosecution of a criminal case related or not to labour.

4.2.3 Key learning points

- Criminal jurisdiction is essentially the power of a State to try and punish a person for a violation of its penal laws.
- Criminal procedure is the method prescribed by law for the apprehension and prosecution of person accused of any criminal offense, and for their punishment, in case of conviction.

- c) Criminal prosecution is one of the pillars of criminal justice system of the Philippines along with law enforcement, judiciary, penology, and the community.
- d) During prosecution and trial of a case, the law secures some rights of the accused such as:
 - i. To be afforded an opportunity to be present at any hearing at which clarification of certain matters is to be made and submit questions to the investigating officer for the purpose.
 - ii. To be presumed innocent until the contrary is proved beyond reasonable doubt.
 - iii. To be informed of the nature and cause of the accusation against him.
 - iv. To be present and defend in person and by counsel at every stage of the proceedings, from the arraignment to the promulgation of judgment.

4.2.4 Session guide

- a) Activity 1: Structured learning exercise
 - Time: 30 minutes
 - Methodology: Board game (snakes and ladder)
 - Materials needed: Steps in filing criminal cases written/typed separately in a paper (1/4 size of a short bond paper), dice, slide (powerpoint) of “snakes and ladder”-like board, game piece (labour related cut-out images of) and masking tape.
- b) Activity guide:
 - Before announcing the mechanics of the game, the facilitator will post on the board in any order the 1/4 sheet of paper containing the steps in filing a criminal case.
 - Tell the participants that they will be playing a game similar to the SNAKE and LADDER only that, unlike the latter, this game will be played in groups. With this, ask the participants to divide themselves into three to four groups.
 - Ask each group to leave their seats and find a spot within the space provided by the facilitator. Each member of the group will have a turn in rolling the dice. To do so, instruct the members of each group to count 1-10 and ask to take note of their respective number because that would be the sequence they will observe in rolling the dice.
 - Invite all number 1 of every group to go in the middle. Choose a game piece and roll the dice to see who gets the highest number. Whoever rolls the highest number, his/her group gets to take the first turn.
 - Member #1 will give the game piece to member #2. Member #2 of the group who got the highest number will go in front, roll the die, move the game piece forward to that number of spaces.

- After member #2 takes a turn, member #2 of the group who got the next highest number will take a turn. After member #2 of all groups had their turn, the next player to take his/her turn will be member #3 of the group with highest number. The game will continue following this sequence.
- If the game piece land on/or pass by the blue rectangular box, the player will choose from the papers posted on the board what he/she thinks is the first step in filing a criminal case. If the answer is wrong the player will move back to the starting point. If the answer is correct, his or her group gets an extra turn. The same rule applies to the rest of the blue rectangular box.
- The facilitator will reveal the correct answer after the player has given his/her answer.
- The green rectangular box will either move the player back or forward several steps. Tell the player to follow the instruction of the particular box he/she landed on.
- If the player rolls a six, his/her group gets an extra turn. The player will first move his game piece six square forward. If the player land on any blue or green rectangular box, follow the instructions in numbers seven and eight then give the dice to the next member of their group to roll the dice. As long as the player keep on rolling six(es), the group will continue to keep moving.
- The first group to reach the last square of the board wins. But there's a twist! If you roll too high, your game piece "bounces" off the last square and moves back. You can only win by rolling the exact number needed to land on the last square.

c) Notes to facilitator:

- Remember that the aim of the game is to provide a lighthearted way of determining the level of awareness of the participants on the steps involved in filing a criminal case. It is important for the facilitator to encourage everyone to participate in the game.
- The facilitator will give a preliminary description of every stage when the participants answered correctly before moving to the next stage.
- At the end of the game, facilitator will summarize the process of criminal procedure and proceed to the discussion using the lecture guide and powerpoint presentation.

- d) Activity 2: Interactive discussion
 - Interactive lecture
 - Time: 1 hour
 - Methodology: Lecture discussion
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector
- e) Activity guide:
 - The facilitator will give an input guided by the attached lecture notes. (Annex A).
 - After the input, the facilitator will entertain questions from the participants.
- f) Lecture notes. Criminal procedure

i. Reporting the Crime

- To the police.
 - The Police may obtain information on the commission of a crime through their own observation or from a complaint by interested persons. A police investigation is then conducted upon receipt of a complaint.
 - A 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
 - A 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.
- To the prosecutor. Any interested person may file a criminal complaint with the prosecutor who shall conduct an inquest or preliminary investigation.
 - Inquest. 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.

Commencement and termination of inquest.

- * Commenced: upon receipt by the Inquest Officer from the law enforcement authorities of the complaint/referral documents which should include:
 - the affidavit of arrest;
 - the investigation reports;
 - the statement of the complainant and witnesses; and
 - other supporting evidence gathered by the police in the course of the latter's investigation of the criminal incident involving the arrested or detained person.

Note: The Inquest Officer shall, as far as practicable, cause the affidavit of arrest and statements/affidavits of the complainant and the witnesses to be subscribed and sworn to before him by the arresting officer and the affiants.

* 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

Note: The above-mentioned hours should be understood to mean working hours only and runs only during working days. If there is no filed within the above periods, the detaining officers may be held liable for the crime of arbitrary detention.

* The Inquest Officer will determine whether the person arrested or detained will be released or charged in court.

- The Inquest Officer shall first determine if the arrest of the detained person was made in accordance with paragraphs a and b of Section 5, Rule 113 of the 1985 Rules on Criminal Procedure⁶², as amended, which provide that arrests without a warrant may be effected (Go vs. Court of Appeals, 206 SCRA 138 [1992]).
- Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he or she shall:
 - recommend the release of the person arrested or detained;
 - note down the disposition on the referral document;
 - prepare a brief memorandum indicating the reasons for the action taken; and
 - forward the same, together with the record of the case, to the city or provincial prosecutor for appropriate action.
- Should the inquest Officer find that the arrest was properly effected: the detained person shall be asked if he desires to avail himself of a preliminary investigation and, if he does, he shall be made to execute a waiver of the provisions of Article 125 of the Revised Penal Code⁶³.

⁶²Sec. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

⁶³Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes, or

Note: The detained person must be with the assistance of a lawyer and, in case of non-availability of a lawyer, a responsible person of his choice (parent, elder brother or sister, spouse, the municipal mayor, the municipal judge, district school supervisor, or priest/minister of the gospel as chosen by him).

- The preliminary investigation may be conducted by the Inquest Officer himself or by any other Assistant Prosecutor to whom the case may be assigned by the city or provincial prosecutor, which investigation shall be terminated within 15 days from its inception.
- If detained person refuses to execute the required waiver, the inquest officer shall proceed with the inquest by examining the complainant and the witnesses and other supporting documents.

Note: If necessary, the Inquest Officer shall require the presence of the complaining witnesses and subject them to an informal and summary investigation or examination for purposes of determining the existence of probable cause.

- If probable cause exists, the Inquest Officer shall:
 - prepare the corresponding complaint/information with the recommendation that the same be filed in court. The complaint/information shall indicate the offense committed and the amount of bail recommended, if bailable; and
 - the record of the case, together with the prepared complaint/information, shall be forwarded to the city or provincial prosecutor for appropriate action.
- If there is absence of probable cause, the Inquest Officer shall:
 - recommend the release of the arrested or detained person;
 - note down his disposition on the referral document;
 - prepare a brief memorandum indicating the reasons for the action taken; and
 - forward the record of the case to the city or provincial prosecutor for appropriate action.

Note: If the recommendation is approved: the order of release shall be served on the officer having custody of the said detainee. If disapproved, the arrested or detained person shall remain under custody, and the corresponding complaint/information shall be filed by the city or

offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel.

provincial prosecutor or by any Assistant Prosecutor to whom the case may be assigned.

Note: Probable cause exists when the evidence submitted to the Inquest Officer engenders a well-founded belief that a crime has been committed and that the arrested or detained person is probably guilty thereof.

- 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.
- * A preliminary investigation is intended:
 - to secure the innocent against hasty, malicious, and oppressive prosecution and to protect him from an open and public accusation of a crime and from the trouble, expense, and anxiety of a public trial (People vs. Pocalan, 167 SCRA 176 [1988]); and
 - to protect the State from having to conduct useless and expensive trials (Tandoc vs. Resultan, 175 SCRA 37 [1989]).
- * The following may conduct a preliminary investigation:
 - Provincial or City Prosecutors and their assistants
 - National and Regional State Prosecutors
 - Other officers as may be authorized by law
- * The right to a preliminary investigation may be invoked only in cases cognizable by the Regional Trial Court. The right is not available in cases triable by inferior courts. Within ten days after the filing of the complaint, the Investigating Prosecutor shall:
 - dismiss the same if he finds no ground to continue with the inquiry; or
 - issue a subpoena to the respondent, attaching thereto a copy of the complaint together with the affidavits of witnesses and other supporting documents.
- * If the investigating prosecutor does not find sufficient basis for the prosecution of the respondent, he/she shall prepare the resolution recommending the dismissal of the complaint or if he/she finds that probable cause exists, he shall prepare the resolution and the corresponding information or complaint in the appropriate cases.

ii. Filing of 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. A criminal action is commenced by the filing of a complaint with the:
 - * City/Provincial Prosecution Office
 - * Municipal Trial Court or Municipal Circuit Trial Court
 - * Prosecutor's Office if the criminal action is for an offense committed within Metro Manila
 - If the officer conducting the preliminary investigation believes that probable cause exists to hold the accused for trial, an information shall be filed in the court having jurisdiction over the case. An information is the accusation in writing charging a person with an offense, subscribed by the prosecutor, and filed with the court. The information is certified under oath by the prosecutor that:
 - * he has examined the complainant and his witnesses;
 - * there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof;
 - * the accused was informed of the complaint and of the evidence submitted against him; and
 - * the accused was given an opportunity to submit controverting evidence.
 - Note:
 - * Cases falling within the jurisdiction of the Regional Trial Court:
 - Offenses punishable with imprisonment exceeding six years of imprisonment.
 - * Cases within the jurisdiction of the Municipal Trial Court:
 - Violations of city or municipal ordinances committed within their territorial jurisdiction.
 - Offenses punishable with imprisonment not exceeding six years.

Any false statement in the complaint may give rise to a finding of a *prima facie* case for perjury before the same office.

- The complaint or information should state the following:

Name of the accused	• the name and surname of the accused, if known. • any appellation or nickname by which he -has been or is known. • fictitious name, such as "John Doe" or "Jane Doe", if name of accused is not known.
Designation of the offense committed	• the designation given to the offense by the statute. • the statement of the act or omission constituting the offense committed. • if there is no such designation, reference shall be made to the section or subsection of the law punishing it.
Act or omission complained of	The act or omission shall be stated in an ordinary and concise language without repetition. The statement need not use the terms of the statute defining the offense so long as a person of common understanding is able to know what offense was intended to be charged and to enable the court to pronounce proper judgment.
Name of the offended party	Person against whom or against whose property the crime was committed.
Approximate time of the commission of the offense	• if time is a material ingredient of the crime: precise time of the commission of the offense shall be stated in the complaint or information (e.g. treason, infanticide). • otherwise, it is sufficient that it be alleged that the offense was committed at any time as near to the actual date at which the offense was committed.
Place where the offense was committed	Specify the particular place: • if the particular place in which the crime was committed is an essential element of the crime-state the particular place (e.g. violation of the provision of the Election Code which punishes the carrying of a deadly weapon in a polling place). • if the particular place is necessary to identify the offense charged (e.g. the domicile in the offense of "violation of domicile"). Complaint or information should state that the crime charged was committed or some of the ingredients thereof occurred at some place within the jurisdiction of the court.

- 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.

iii. Arrests

Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense⁶⁴. Probable cause is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.

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. The person arrested shall not be subject to a greater restraint than is necessary for his detention⁶⁵. The head of the office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within ten days from its receipt. Within ten days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of his failure to execute the warrant, he shall state the reasons therefor⁶⁶.

- Methods of arrest:
 - With 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. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrants shall be shown to him as soon as practicable.
 - 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.

A peace officer or a private person may, without a warrant, arrest a person:

- * When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.
- * When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

⁶⁴Sec. 1, Rule 113, ROC.

⁶⁵Sec. 2, Rule 113, ROC.

⁶⁶Sec. 4, Rule 113, ROC.

- * When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Note: In cases falling under asterisks 1 and 2 above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112⁶⁷.

When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees, or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest⁶⁸.

- Who may make a warrantless arrest?
 - * Peace officer
 - * Private person
- Making a warrantless arrest.
 - * An arrest may be made on any day and at any time of the day or night.
 - * If an officer effects the arrest, s/he may orally summon as many as s/he deems necessary to aid him/her in making the arrest.
 - * A person so summoned must aid him/her when s/he can render assistance without detriment to himself/herself.
 - * If an officer effects the arrest, s/he may break into any building or enclosure in which the person to be arrested is or is reasonably believed to be. But this can only be done if s/he is refused admittance after announcing his/her authority and purpose. After entering the building or enclosure s/he may break out to liberate himself/herself.
- 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.
 - * 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.

⁶⁷Sec. 5, Rule 113, ROC.

⁶⁸Sec. 8. Rule 113, ROC.

iv. Search and seizure

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

- 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.

- Requisites of a valid search warrant:
 - * Existence of probable cause in connection with one specific offense.
 - * Personal determination by the judge as to the existence of probable cause.
 - * Examination under oath and affirmation of the complainant and the witnesses that she may produce.
 - * Particular description of the place to be searched and the things to be seized.
- Personal property that may be seized
 - * Subject of the offense.
 - * Stolen or embezzled and other proceeds or fruits of the offense.
 - * Used or intended to be used as the means of committing an offense.
 - * Evidence in plain view.
- Serving search warrant. – The search warrant must be served within ten days from its date of issuance. After such period, it shall be void.
- Conducting the search and seizure:
 - * A peace officer may conduct the search and seizure by virtue of a search warrant.
 - * The warrant must direct that it be served in the day time. If there is an affidavit asserting that the property is on the person or in the place ordered to be searched, a direction may be inserted that it may be served anytime of the day or night.
 - * The search must be made in the presence of the lawful occupant or any member of his family. In their absence, it may be made in the presence of two witnesses of sufficient age and discretion residing in the same locality.

- * The peace officer has the right to break open any outer or inner door or window of a house or any part of a house to execute the warrant or liberate himself/herself when unlawfully detained therein.
- * The officer must give lawful occupant of the premises a detailed receipt of the property seized. In the latter's absence, the receipt must be left in the place where the seized property was found in the presence of at least two witnesses of sufficient age and discretion residing in the same locality.

- 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 exception to the general rule. Pursuant to this, there should be only few instances when searched and seizures may be made without a warrant.

- Valid warrantless searches and seizures
 - * Incidental to a lawful arrest.
 - * Made on motor vehicles.
 - * With the consent of the owner.
 - * Involves prohibited articles in plain view (example: shabu, unlicensed firearm), which was discovered inadvertently and the illegality is apparent.
 - * Involved smuggled articles.

Note: Although the search and seizure may be validly made without a warrant under any of these circumstances, it must still comply with the basic requisites that probable cause exists.

- 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.

v 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 recognizance⁶⁹. The right to bail is guaranteed by the Constitution. It is the duty of the prosecutor to recommend such amount of bail to the courts of justice as, in his opinion, would ensure the appearance of an accused person when so required by the court.

Bail is a matter of right to any person in custody of the law, if the same is invoked in any of the following:

- Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court.
- Before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment (4a)⁷⁰.

Admission to bail is discretionary when the same is invoked upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment. If the penalty imposed by the trial court is imprisonment exceeding six years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration.
- That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification.
- That he committed the offense while under probation, parole, or conditional pardon.
- That the circumstances of his case indicate the probability of flight if released on bail.
- That there is undue risk that he may commit another crime during the pendency of the appeal⁷¹.

Note: Bail shall not be available to persons charged with:

- capital offense, or
- offense punishable by *reclusion perpetua* or life imprisonment, when evidence of guilt is strong.

• 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.

Note: Instead of posting bail, the accused may ask the court to release him on recognizance in case the crime charged carries an impossible penalty of not more than one month and/or a fine of Php1,000. In recognizance, a

⁶⁹Sec. 1, Rule 114, Rules of Court.

⁷⁰Sec. 4, Rule 114, Rules of Court.

⁷¹Sec. 5, Rule 114, ROC.

responsible member of the community guarantees the appearance of the accused whenever required by the court.

- Bail may be filed in:
 - The court where case is ending; in absence or unavailability of judge thereof, with any judge of the Regional Trial Courts (RTC), Municipal Trial Courts (MTC) or Municipal Circuit Trial Courts (MCTC) in the province, city, or municipality of arrest.
 - If the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed in any RTC of said place. If no RTC judge is available, bail may be filed with any MTC, Metropolitan Trial Courts (METC) or MCTC judge therein.

Note: The filing of an application for bail not a bar to objections on illegal arrest, invalid arrest warrant, lack of or irregular preliminary investigation for the charge against the accused, provided that accused raises them before entering a plea. The court shall then resolve the matter as early as practicable but not later than the start of the case.

- Grounds for cancellation of the bail bond:
 - surrender of the accused
 - proof of death of the accused
 - acquittal or dismissal of the case
 - execution of judgment of conviction
 - escape
 - upon order of the court

vi. 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.

Note: After an information has been filed, the accused shall personally appear before the court for 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 prosecution may call at the trial witnesses other than those named in the complaint or information.

- The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but failure to do so shall not affect the validity of the proceedings.
- The arraignment shall be held within 30 days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period⁷².
- The following are instances when a “not guilty” pleas is entered:
 - When the accused refuses to plead.
 - Accused makes a conditional plea.
 - When the accused pleads guilty but presents exculpatory evidence.
- The private offended party shall be required to appear at the arraignment for purposes of: (a) plea bargaining; (b) determination of civil liability; and (c) other matters requiring his presence.
- The effect of the absence of the offended party. – In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is necessarily included in the offense charged with the conformity of the trial prosecutor alone.
- Duty of the court regarding accused’s right to counsel. – Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed a counsel of his choice, the court must assign a counsel *de oficio* to defend him.

Note: It is important to note that the prosecution must consent to the change of plea. The concerned government agency is also notified of the arraignment of the accused to allow the latter to intervene in plea-bargaining. This is consistent with the public interest inherent in environmental cases, thus the government agency is involved.

If the prosecution, the offended party and the concerned government agency all agree to the plea offered by the accused, the court shall:

- Issue an order which contains the plea-bargaining arrived at.
- Proceed to receive evidence on the civil aspect of the case, if any.
- Render and promulgate the judgment of conviction, including the civil liability for damages.

⁷²Sec. 1, Rule 116, ROC.

vii. 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. The prosecutor shall enter into a pre-trial only when the accused and counsel agree and upon order of the court.

The pre-trial conference shall consider the following:

- Plea bargaining. – This is a process where the defendants usually plead guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.
- Stipulation of facts. – This is the agreement of the parties on some facts admitted, some facts covered by judicial notice (Sec. 1, Rule 129), judicial admissions (Sec. 2 Rule 129), or on matters not otherwise disputed by them.
- Marking of documentary evidence in advance for identification.
- Waiver in advance of objections to admissibility of evidence.
- List of witnesses to be presented which should be qualified by the following statement: "that other witnesses may be presented in the course of the trial".
- Such other matters as will promote a fair and expeditious trial⁷³.

viii. 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.

⁷³Sec.1, Rule 118, ROC.

The object of a trial is to mete out justice, and to convict the guilty and protect the innocent. Thus, the trial should be a search for the truth and not a contest over technicalities and must be conducted under such rules as will protect the innocent.

Note: In criminal cases, the complainant is the State and the prosecutor controls the prosecution. However, the private complainant may employ the services of a private prosecutor.

- 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.
- 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. The rule of logical sequencing notwithstanding, a witness whose testimony is vital to the case and whose life is in danger or who may be sick/injured and may possibly die, should be made to testify as early as practicable.

- Steps in examining a witness:
 - direct examination
 - cross examination
 - re-direct examination
 - re-cross examination

ix. 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. It must be written in the official language, personally, and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based⁷⁴.

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 waived⁷⁵.

x. 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.

Any party to the case may appeal from a final judgment or order of the court, except when it would place the accused in double jeopardy. Double jeopardy is exposing the accused to the risk of punishment for the same offense. For example, the prosecution may not appeal a judgment of acquittal.

⁷⁴Sec. 1, Rule 120, ROC.

⁷⁵Sec. 2, Rule 120, ROC.

4.2.5 Presentation

Criminal Procedure

Criminal Procedure

- It is the method prescribed by law for the apprehension and prosecution of person accused of any criminal offense, and for their punishment, in case of conviction.

Procedure

1. Filing of Complaint
2. Police Investigation
3. Preliminary Investigation
4. Filing of Information
5. Notification through issuance of warrant of arrest
6. Arraignment
7. Pre-Trial Conference
8. Trial proper
9. Judgment
10. Appeal

Filing of complaint or information in the name of the Republic of the Philippines

- A. Complaint – sworn statement charging a person with an offense subscribed by:
- offended party
 - any peace officer
 - officer in charge of the enforcement or execution of the law violated
- B. Information – is an accusation in writing charging a person with an offense subscribed by the Prosecutor/Fiscal and filed in court

2. Police Investigation

- The Police may obtain information on the commission of a crime through their own observation or from a complaint by interested persons. A police investigation is then conducted upon receipt of a complaint.
- A 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

Inquest

- 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.

3. Preliminary Investigation

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.

4. Prosecution of Offenses

criminal action is one by which the state prosecutes a person for an act or omission punishable by law.

- A criminal action is commenced by the filing of a complaint with the:
 - City/Provincial Prosecution Office or
 - Municipal Trial Court or Municipal Circuit Trial Court.
 - Prosecutor's Office if the criminal action is for an offense committed within Metro Manila

Prosecution of Offenses

- If the officer conducting the preliminary investigation believes that probable cause exists to hold the accused for trial, an information shall be filed in the court having jurisdiction over the case.
- The information is certified under oath by the prosecutor that:
 - *he has examined the complainant and his witnesses;*
 - *there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof*
 - *the accused was informed of the complaint and of the evidence submitted against him; and*
 - *the accused was given an opportunity to submit controverting evidence.*

5. Issuance of Warrant of 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. Probable cause is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. (Sec. 1, Rule 113, ROC)

Methods of Arrest:

With warrant (issued by a Judge)

2. Without warrant

- When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

6. Arraignment

- It consists in reading the complaint or information to the accused and asking him whether he is guilty or not
- It 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.
 - Article 3 Sec 14 - In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him.

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.

Pre-Trial Conference-

Plea bargaining:

- a. Stipulation of facts
- b. Simplification of the issues
- c. Marking of exhibits
- d. Trial dates
- e. Number of witnesses

8. Trial Proper

Presentation of witnesses and evidences

A. Order of Trial

- a. The prosecution shall present evidence to prove the charge plus civil liability
- b. The accused may present evidence to prove his/her defenses
- c. The prosecution may present rebuttal
- d. The accused may present sur-rebuttal
- e. Upon admission or ruling on the evidence, the case shall be deemed submitted for decision

Trial Proper

. Presentation of Witnesses

- a. Direct Examination
- b. Cross Examination
- c. Re-direct Examination
- d. Re-Cross Examination

- Take Note: Rights of the accused- Art. 3, sec. 14

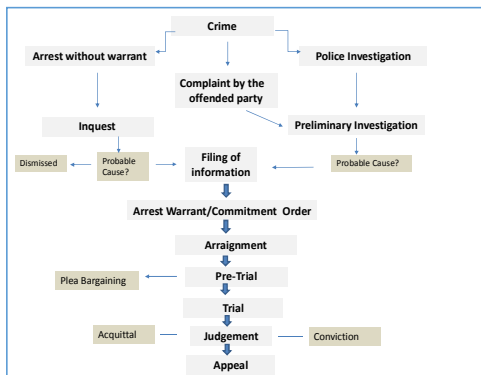
9. Judgement

- 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.
- It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based

10. Appeal

Judgment is reviewed by a higher court

- a. In a judgment of acquittal, said judgment is immediately final and executory. The prosecution cannot appeal.
- b. In a judgment of conviction, the accused has the right to appeal.



4.2.6 References

a) Laws and Jurisprudence

1987 Constitution.

The Rule on the Writ of Amparo. A.M. No. 07-9-12-SC, 25 September 2007; amended 16 October 2007.

The Rule on the Writ of Habeas Data. A.M. No. 08-1-16-SC, 22 January 2008.

Rule 110 – 122, Criminal Procedure, Rules of Court.

Mison v. Gallegos, G.R. No. 210759, 23 June 2015.

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Parulan vs. Director of Prisons, G.R. No. L-28519, 17 February 1968.

Velasco vs. CA, G.R. No. 118644, 7 July 1995.

b) Literature

RBS Editorial Staff. *Rules of Court*. Manila: Rex Book Store, Inc., 2011.

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Paralegal Manual on VAW, SALIGAN Publication, 2007.

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Remedial Compendium, Vol II, Regalado, 9th Edition.

5. MODULE 4: SKILLS

5.1 Case studies

The following are suggested cases studies for Module 4, in lieu of or in addition to those contained in each session. The choice of case studies should depend on the context of the participants.

- 5.1.1 The Thumbs-up Cola Company massively retrenched 200 employees allegedly due to installation of cost-saving devices, which reduces the need for personnel. The Union was informed that Thumbs-up entered into an agreement with Slow-down trucking company to do the delivery services the retrenched employees of the Thumbs-up Company used to do. When they examined the records of Slow-down company, the Union found out that the owners of Thumbs-up and Slow-down are the same. The employees then filed a complaint before the Labour Arbiter. Further, the Union exposed the mechanism, saying that it was the Thumbs-up's way of getting rid of its regular employees. They used the official Facebook page of the Union to discuss the matter and called on the public to boycott the products of the Thumbs-up. The Company filed a Complaint for cyberlibel before the office of the Provincial Prosecutor. The Prosecutor took cognizance of the case and asked the Union officers to file their answers.
- 5.1.2 Rey Lima is a labour union president and a member of the RTIPC. He joined the inspections conducted by DOLE in manufacturing companies in Laguna and Cavite. He noticed that most of these companies have employed contractual workers and are unorganized. Soon thereafter, he met with the employees of Tralala Company with the aim of organizing them.
- They are in the process of registering their union, when suddenly, Rey Lima was not allowed to visit the premises of Tralala. One day, while he was meeting four employees outside the company's premises, an armed man approached them and warned Rey that something bad would happen if he does not stop what he was doing. Mark Ayala, one of the employees Rey was meeting, witnessed the incident. Rey also disclosed to Mark and the other companions that he often receives threats from unknown numbers.
 - Shortly thereafter, while he was walking to the bus station after meeting with the employees, he was gunned down by a riding-in-tandem. The incident was caught on closed-circuit television (CCTV), but the men were unidentified. While the case was being investigated, the Mayor had a press conference wherein he presented a matrix of Rey's illicit relationships with women, some of them are employees of the company. In the press conference, the police investigator said that they are exclusively looking at these relationships as the motive for the killing.
- 5.1.3 On 1 May, workers across the country made history by conducting the biggest labour day rally. They are calling for, among others, the passage of security of tenure law, and the increase in minimum wage. While they were marching from Welcome Rotonda to Malacañang Palace, members of the AFP entered their ranks and "picked-up" three rallyists who were holding the megaphones and leading the chants. The three were immediately taken into a government vehicle and they drove away from the streets.

The rest of the rallyists were not able to go after them. They have been missing for four days now.

- 5.1.4 Last month, the DOJ filed with the Court a Petition to declare 600 organizations as terrorist groups. Four of those organizations are the largest labour union federations in the Philippines. The list was given to the media and the international community.
- 5.1.5 Officers of the Tsokolate Products Company Labour Union wrote the company expressing the grievances of the union and seeking a formal conference with management regarding the previous dismissal of the union's president and vice-president. At the meeting, the company's general manager, Procorpio, instead of discussing the problems affecting the labour union and management, berated the officers for writing that letter and called the letter and the person who prepared it "stupid".
- The officers told their counsel, Atty Matilda, what happened. Since she was the one who prepared the letter, she filed a case for grave slander against Procorpio. The union officers present during the meeting: Ramon; Arnold; and Edwin executed affidavits supporting Atty Matilda's case. Procorpio, in turn, filed a complaint for perjury against Ramon, Arnold and Edwin alleging that their affidavits contained false statements.
 - Furthermore, the management of Tsokolate Products Company suspended and later on dismissed Ramon, Arnold and Edwin saying that their execution of the affidavits is an act of breach of trust and confidence and inimical to the interest of the company⁷⁶.
- 5.1.6 The Mayor of Bagong Sentro went to Korea to invite investors in his city. He assured the investors that he would make sure that the workers will not engage in unionism. Samyang Company then put up its garments factory in Bagong Sentro thereby employing 700 persons from the city and neighbouring municipalities. While the workers are paid the minimum wage and the company complies with the required contributions to Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth) and Home Development Mutual Fund (HDMF), more popularly known as the Pag-IBIG Fund, they work under bad working conditions like being required to work for 12 hours with only 15-minute lunch break, being forced to work even on their supposedly work days, having to work in an area with very poor ventilation, among others. Furthermore, most workers are dismissed after three months of service and are re-hired again after one-month break.
- One day, Patricia, one of the workers, went to Manila to visit her sister, Jennifer. Jennifer is a labour organizer for workers in Manila. When Patricia told Jennifer about the situation in the factory, Jennifer said that it is not right. They should report their situation to DOLE. When Patricia got back to work, she told her co-

⁷⁶From the case of Dabuet, et. al. vs. Roche Pharmaceuticals, Inc. No. L-45402, April 30, 1987, as discussed in Azucena Labor Code with Comments and Cases 8th Edition Volume 2, Page 303.

workers about the advise of her sister. They planned on having a meeting after their work on Saturday to discuss the matters further and their actions.

- The management heard about this and called the Mayor, who then went to the factory and scolded the workers for their actions. He said that they should be thankful that Samyang Company decided to establish its business in Bagong Sentro rather than complain. Before leaving, he warned the workers that if they would continue with their plans, something bad will happen to their leaders.

5.1.7 Members of the Miniyu Company Union staged a strike based on CBA deadlock. Four days into the strike, the Company president sent letters to the striking employees urging them to abandon their strike with a promise of free coffee, movies, and paid overtime. Furthermore, the president warned that if they failed to return to work on the date stated therein, they will be replaced in their jobs. The letters were delivered to the residences of the striking employees by the messenger of the METROPESO office of the locality where the company is located⁷⁷.

5.1.8 Annie Batungbakal is employed by Bakya Supermart as a cashier in its Davao City branch. Bakya Supermart is a huge company with over 100 branches across the country. Annie is also a labour organizer. As such, she is set to organize the workers of Bakya Supermart to form a union and eventually enter into CBA with the company. Before the conduct of a Certification Election, Annie Batungbakal received a notice from the company that because of her good performance, she is being transferred to its newly-opened Naga City branch as head cashier. Annie Batungbakal did not want the transfer because she is from Davao City and her family is there. Because of her refusal to follow the order, she was dismissed.

5.1.9 Fifteen full-time instructors of the Pamantasan ng Pilipinas, a state-university, were hired under temporary contracts of employment renewable on a yearly basis. The 15 instructors, after being in service for an average of four years, with their contracts being yearly renewed due to outstanding performance, formed the Pamantasan ng Pilipinas Faculty Organization. Their contracts were not renewed at the same time the union secured its public sector union registration. The PNP management also refused to produce the results of their evaluation which, they said, was the basis for the non-renewal of their contracts⁷⁸.

5.1.10 Pearl works as a nurse at the Get Well Hospital for 15 years now. She has just been elected President of the newly-organized union. One evening, at the end of her shift, she exited the hospital going through the standard procedure of security check. In the course thereof, the guard noticed a pouch in her bag and asked her to open it. Found inside were items such as syringe, cotton balls and gloves. Pearl requested the guard that she will just return the pouch inside the treatment room but the guard refused. Instead, they went to the security office where an incident report was filed.

⁷⁷(The Insular Life Assurance Co., Ltd., Employees Association-ATU, et. al. vs. The Insular Life Assurance Co. Ltd., G.R. No. L-25991, January 30, 1971; Azucena Vol 2, pages 308-307).

⁷⁸Pamantasan ng Lungsod ng Maynila vs. Civil Service Commission, et. al., G.R. No. 107590, February 21, 1995.

- Pearl explained that the questioned items came from the medication drawers of discharged patients. These were used during immediate procedures especially when there is delay in the replenishment of stocks. This was also a practice among the staff in the hospital. Pearl was placed under preventive suspension pending investigation.

5.1.11 Ibong Adarna is a five-star hotel in Cebu City. Because business was booming, it built another hotel in Bohol. However, instead of directly hiring employees, it entered into a service agreement with Labour Lover Agency wherein the latter will provide personnel on all matters pertaining to maintaining the rooms and attending to the needs of the guests. Not long after, other personnel services were outsourced. As a result, many regular employees lost their jobs on the ground of redundancy.

5.1.12 Union Nice is a labour organization in Tag Hiras Clothing Company located inside a PEZA area. Because of CBA deadlock, members of the Union Nice staged a strike. On the second day of the strike, members of the private security unit of the Company, started breaking the strike, alleging that they are blocking the entrance gate to the company. The PEZA security personnel negotiated with the strikers, upon request of the Company.

5.2 Session VII: Legal interview

5.2.1 Introduction

This is a discussion and workshop on the basic skill of conducting a legal interview.

5.2.2 Objectives

At the end of the session, participants are expected to learn tips and hone their skills in conducting a legal interview, gathering relevant data that may be useful in a potential case or a pending issue.

5.2.3 Session guide

a) Activity 1: Interactive lecture

- Time: 30 minutes
- Methodology: Lecture
- Materials needed: laptop, projector, powerpoint presentations

b) Activity guide:

- The facilitator will discuss tips on how to conduct a legal interview.
- The facilitator will entertain questions from the participants after the discussion.

c) Activity 2: Workshop (Practice interview)

- Time: 30 minutes
- Methodology: Session on conducting interview
- Materials needed: Pens, sheets of paper

d) Activity guide:

- The participants will have to pair up where one will be the interviewer while the other will be the interviewee. The interviewer shall prepare the guide questions while the interviewee will have to listen and answer the questions accordingly. The pair shall act according to the situation they choose.
- The following are some sample situations (you may think of other situations).
- The interviewee is an employee dismissed from work.
- The interviewee is a victim of child abuse.
- The interviewee is an owner of a business employing minors.
- The interviewee is a leader of a labour union that is holding a strike.
- The interviewee is a member of an organization that helps fisher folks.

e) Lecture notes. Legal interview.

i. What is a legal interview?

It is a meeting between two or more persons for the purpose of drawing out and gathering all the relevant information that can be used in a potential or pending legal case or issue and come up with appropriate remedies.

ii. What do you need in a legal interview?

- Knowledge of the applicable laws
 - Need not be an expert.
- Knowledge as to the purpose of the interview
 - To be able to distinguish between relevant and irrelevant data.
- Adequate preparation.

iii. Tips in conducting the legal interview

- Before the interview:
 - Plan and prepare for the interview. Ask the interviewee for a brief summary to have knowledge and background of the issue.
 - Appear professional to the interviewee. Be punctual to the interview. Conduct the interview in a quiet and organized room.
- During the interview:
 - Introduce yourself to the interviewee with a smile.
 - Develop a rapport with your interviewee and motivate them to talk freely.
 - Once everyone is seated and settled, brief the interviewee on what will happen during the interview. Emphasize that everything that will be shared will remain confidential.
 - Ask the interviewee for a general description of the problem and the relief desired. Then, summarize your understanding of what was relayed.

- Get a chronological overview of the problem by asking the interviewee to give a detailed step-by-step description of what has happened. Listen carefully and allow the interviewee to tell their story. Use active listening techniques such as nodding of the head, eye contact or words of reassurance.
- Ask open-ended questions when the interviewee is given the total freedom to respond or when a topic is being selected. Narrow-ended questions are asked on certain aspects of the topic. Leading questions can only be asked to confirm information provided by the interviewee or to obtain information that the latter may be reluctant to admit.
- Based on the information obtained in the first stages of the interview, you may now consider all plausible legal claims or theories and proceed to obtain relevant information that would support or negate a claim.
- Avoid legal jargon as well as unnecessary interruptions, personal opinions and contradictions.
- Sum up the interview and outline the steps going forward. You may be able to give a preliminary view depending on your skills and experience. When in doubt, explain that the matter has to be considered carefully before forming a view. Do not give legal advice without proper consideration.
- Finally, thank the interviewee and accompany them as they leave the room.
- After the interview:
 - Make a detailed note of the interview while it is fresh in your mind.
 - Schedule any follow through and deadline.
 - Discuss any concerns with your colleagues and supervisor.
 - Once approved by your supervisor, update the interviewee by sending them your advice.

5.2.4 Presentation

LEGAL INTERVIEW

What is a Legal Interview?

- It is a meeting between two or more persons for the purpose of drawing out and gathering all the relevant information that can be used in a potential or pending legal case or issue and come up with appropriate remedies.

What do you need in a Legal Interview?

- a. Knowledge of the applicable laws
- b. Knowledge as to the purpose of the interview
- c. Adequate preparation

TIPS WHEN CONDUCTING LEGAL INTERVIEW

- BEFORE THE INTERVIEW
 - Adequate preparation.
 - Be professional and punctual.

- DURING THE INTERVIEW
 - Introduction.
 - Build rapport and allow interviewee to talk freely.
 - Confidentiality.
 - Get chronological overview of the problem.
 - Active Listening.
 - Use questioning techniques appropriate to the purpose.
 - Obtain relevant information.

- DURING THE INTERVIEW
 - Avoid legal jargon.
 - Summarize.
 - Do not give legal advice without proper consideration.
 - Thank the interviewee.

- AFTER THE INTERVIEW
 - Make a detailed note of the interview.
 - Schedule follow-up.
 - Discuss any concerns with colleagues and supervisors.
 - Once approved by supervisor, update interviewee with the advice.

5.3 Session VIII: Case analysis

5.3.1 Introduction

Case analysis is an important tool in the appreciation of a case which will aid in the threshing out of issues and case build up and strategy.

5.3.2 Objectives

At the end of the session, participants are expected to be able to know the facts of the case, determine the cause of action using the TARP method and identify the issues in a case.

5.3.3 Session guide

- a) Activity 1: Interactive lecture:
 - Time: 30 minutes
 - Methodology: Lecture
 - Materials needed: laptop, projector, powerpoint presentation
- b) Activity guide:
 - The facilitator will discuss the elements of case analysis.
 - The facilitator will entertain questions from the participants after the discussion.
- c) Activity 2: Workshop:
 - Time: 30 minutes
 - Methodology: Case analysis exercise
 - Materials needed: Pens, sheets of paper, laptop, projector
- d) Activity guide:
 - A case problem will be read or flashed onto the projector.
 - The participants will have to know the facts of the case, determine the cause of action using the TARP method and identify the issues in the presented case.
- e) Lecture notes. Case analysis
 - i. *What are the elements of case analysis?*
 - Determine if there is cause of action:
 - * T – thing (subject of the case)
 - * A – act (act that violated the right)
 - * R – right (right that is to be respected that has been violated)
 - * P – prayer (relief or redress sought)
 - Example: Non-payment of salary:
 - * T – salary
 - * A – non-payment of salary
 - * R – right to a fair day's wage for a fair day's labour
 - * P – payment of salary

- Determine the facts of the case:
 - * Material fact. – Fact that is germane to the decision to be made, the suppression of which would result in a different decision.
 - * Relevant fact. – Fact which, though not in issue, is so connected or related to a fact in issue.

Sample:

A store cashier has been dismissed from employment. She is paid below the minimum wage set by law. She has not received her salary for the past two months. The store owner contended that he is suffering business losses and would have to lay off his employees.

- When was the cashier employed? What is the status of her employment?
- How much is she receiving?
- When was she dismissed from work?
- Was there notice prior to the termination of employment?
- What was the reason for the termination of employment?
- Is the business suffering losses? When did it start suffering losses?
- Identify the issues:
 - Factual – it pertains to what happened in the case.
 - * Is the termination of the cashier's employment due to business losses or to some other facts?
 - Legal – it pertains to the interpretation of the law.
 - * Is the business losses sufficient cause for the termination of employment?
 - Mixed –
 - * Is the business establishment suffering losses?
 - * Will the decrease in profits be considered as business losses which would result to the termination of employment of the staff?
- Case analysis exercise:
 - * Pearl works as a nurse at the Get Well Hospital. One evening, at the end of her shift, she exited the hospital going through the standard procedure of security check. In the course thereof, the guard noticed a pouch in her bag and asked her to open it. Found inside were items such as syringe, cotton balls, and gloves. Pearl requested the guard that she'll just return the pouch inside the treatment room but the guard refused. Instead, they went to the Security Office where an incident report was filed.
 - * Pearl explained that the questioned items came from the medication drawers of discharged patients. These were used during immediate procedures especially when there is delay in the replenishment of stocks. This was also a practice among the staff in the hospital. Pearl was placed under preventive suspension pending investigation. After notice and hearing, Get Well Hospital decided to terminate Pearl's employment for having committed theft, in violation of the hospital's Code of Discipline.

5.3.4 Presentation

CASE ANALYSIS

1. Determine if there is Cause of Action

- T - Thing (subject of the case)
- A - Act (act that violated the right)
- R - Right (right that is to be respected but is violated)
- P - Prayer (relief or redress sought)

✕ Example: Non-payment of salary

- ✕ T - salary
- ✕ A - non-payment of salary
- ✕ R - right to be paid fair day's wage for a fair day's labor
- ✕ P - payment of salary

✕ A store cashier has been dismissed from employment. She is paid below the minimum wage set by law. She has not received her salary for the past two months. The store owner contended that he is suffering business losses and would have to lay off his employees.

• II. Determine the facts.

- Relevant
- Material

• III. Identify the issues.

- Legal
- Factual
- Mixed

Case study

✕ Pearl works as a nurse at the Get Well Hospital. One evening, at the end of her shift, she exited the hospital going through the standard procedure of security check. In the course thereof, the guard noticed a pouch in her bag and asked her to open it. Found inside were items such as syringe, cotton balls and gloves. Pearl requested the guard that she'll just return the pouch inside the treatment room but the guard refused. Instead, they went to the Security Office where an incident report was filed.

✕ Pearl explained that the questioned items came from the medication drawers of discharged patients. These were used during immediate procedures especially when there is delay in the replenishment of stocks. This was also a practice among the staff in the hospital. Pearl was placed under preventive suspension pending investigation. After notice and hearing, Get Well Hospital decided to terminate Pearl's employment for having committed theft, in violation of the hospital's Code of Discipline.

- What are the material and relevant facts?
- What is the TARP in this case?
- What is the issue in this case?

5.4 Session IX: Evidence

5.4.1 Introduction

The rules of evidence, being parts of the Rules of Court, apply only to Judicial proceedings. In fact, in one Supreme Court case, it was declared that “technical rules of evidence are not binding in labour cases. Labour officials should use every reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process”. Nevertheless, as expressly provided in the NLRC Rules of Procedure, the rules on evidence are applicable by analogy or in a suppletory character and whenever practicable and convenient.

5.4.2 Objectives

At the end of the session, the participants are expected to:

- a) Know the different classifications of evidence.
- b) Understand the evidentiary rules.

5.4.3 Session guide

- a) Activity 1: Evidence relay race
 - Time: 15 minutes
 - Methodology: Structured learning exercise
 - Materials needed: Metacards, masking tape
- b) Activity guide: (refer to case studies)
 - Prepare at least five scenarios/situations/circumstances which would require the identification and gathering of evidence as proof.
 - Group the participants with at least five members each.
 - Ask them to form a line facing the board/front.
 - Place a pool of evidence cards in front of each group.
 - After reading a situation, the person who is in front of the line shall choose one best evidence among the choices and stick it on the board.
 - The goal is to stick the correct answer on the board faster than the other groups. The fastest group with the most number of correct answers win the game.
 - After every situation, process the correct answer (See lecture notes for processing).

Sample scenarios/situations/circumstances:

- Union Nice is a labour organization in Tag Hiras Clothing Company. To bargain for better work benefits, Union Nice would like to file a petition to become the sole and exclusive bargaining agent in Tag Hiras Clothing. Which documentary evidence can Union Nice use in proving that it is a duly organized labour organization for the purpose of filing a petition for certification election. (*Certificate of Registration*).
- Kristel is a five-star hotel in Cebu City. Because business was booming, it built another Hotel in Bohol. However, instead of directly hiring employees, it entered into a service agreement with Labour Lover Agency wherein the latter will provide personnel on all matters pertaining to maintaining the rooms and attending to the

needs of the guests. Not long after, other personnel services were outsourced. As a result, many regular employees lost their job on the ground of redundancy. To prove that Labour Lover Agency is a labour only contracting, what pieces of evidence will you gather. (*Financial Statements, Articles of Incorporation, Affidavits of Employees with personal knowledge*).

- What pieces of evidence would you need to compel the employer to commence contract negotiations? (*Certificate of Majority Representation, Demand to Bargain*).
 - Employees of the Magulang Corporation allege that the latter pays its rank and file employees below the minimum wage and does not pay overtime pay and holiday pay. What pieces of evidence would you gather to help in proving the allegations of the employees? (*Payslip, affidavits of the employees, payroll records*).
- c) Activity 2: Interactive lecture
- Time: 45 minutes
 - Methodology: Lecture discussion
 - Materials needed: PowerPoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts
- d) Activity guide:
- The facilitator will discuss the rules on evidence and its admissibility guided by the attached lecture notes.
 - After the input, the facilitator will entertain questions from the participants.
- e) Lecture notes. Rules on evidence
- Purpose of evidence:
 - To ascertain the truth respecting a matter of fact in a judicial proceeding.
 - It is the means of proving a fact.
 - Evidence is required because of the presumption that the court is not aware of the accuracy of the facts involved in the case.
 - When evidence is required; when not required:
 - The need for the introduction of evidence when the court has to resolve a question of fact. Where no factual issue exists in a case, there is no need to present evidence because where the case presents a question of law, such question is resolved by the mere application of the relevant statutes or rules of this jurisdiction to which no evidence is required.
 - Evidence may be dispensed with by agreement of the parties.
 - Evidence is also not required on matters of judicial notice and on matters judicially admitted.

- Proof vs. evidence:

Proof	Evidence
Probative result or effect of evidence.	Means by which a fact is proved or disproved.

- Waiver of rules of evidence:
 - Rules of evidence may be waived. When an otherwise objectionable evidence is not objected to, the evidence becomes admissible because of waiver.
 - As long as no law or principles of morality, good customs and public policy are transgressed or no rights of third persons are violated, the rules of evidence may be waived by the parties.
- Admissibility of evidence:
 - For evidence to be admissible, two elements must concur, namely:
 - * The evidence is relevant.
 - * The evidence is not excluded by the rules (competent).
 - Relevant evidence:
 - * To be relevant, it must have such a relation to the fact in issue as to induce a belief of its existence or non-existence.
 - * It deals with the rational relationship between the evidence and the fact to be proved.
 - Competent evidence:
 - * One that is not excluded by law in a particular case.
- Admissibility vs weight of the evidence (probative value):
 - Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.
 - Admissibility of evidence depends on its relevance and competence while weight of evidence pertains to its tendency to convince and persuade.
- Classification of evidence as to form:
 - Object evidence:
 - * Are those addressed to the sense of the court.
 - * It is the real thing itself. It appeals directly to the senses of the court.
 - * Also known as real evidence, demonstrative evidence, physical evidence. It extends to the visual, auditory, tactile, gustatory, and olfactory.
 - * When physical evidence runs counter to testimonial evidence, conclusion as to physical evidence must prevail.
 - * Requisites for admissibility:
 - It must be relevant and competent; and
 - Authenticated.

- Documentary evidence:
 - * Consist of writings or any material containing letters, words, numbers, figures, symbols, or other modes of written expressions, offered as proof of their contents.
 - * Electronic document does not only refer to the information itself. It also refers to the representation of that information. Whether it be the information itself or its representation, for the document to be deemed electronic, it is important that it be received, recorded, transmitted, stored, processed, retrieved, or produced electronically.
 - * Rules for Admissibility:
 - It must be relevant.
 - It must be authenticated.
- Testimonial evidence:
 - * Evidence elicited from the mouth of a witness.
 - * Competent witness:
 - Qualified to take the stand and testify.
 - Qualifications of a witness:
 - He can perceive.
 - In perceiving, he can make known his perception to others.
 - Ability to remember and communicate it.
 - Must not possess the disqualifications imposed by the law or rules.
 - Disqualified if he cannot understand the duty to tell the truth, mental incapacity, mental immaturity.
 - Competency of a child witness
 - Every child is presumed qualified to be a witness.
 - Competency examination of a child is conducted (only) by the judge when the court finds that substantial doubt exists regarding the ability of the child to perceive, remember and communicate what was perceived, distinguish falsehood from truth or appreciate the duty to tell the truth in court.
- Best evidence:
 - * Original document rule.
 - * What should be offered is the original writing, when the subject of the inquiry is the contents of a document.
- Parol evidence:
 - * Rule: When there is an agreement in writing, look into the written agreement and not elsewhere because only the contents of the written agreement are admissible.
 - * Means offering extrinsic or extraneous evidence.
 - * Applies only to contracts which the parties have decided to set forth in writing.
 - * Not only oral but also to written evidence which are outside of the written contract.
 - * Only applies/binds the parties and their successors in interest.

- * Exceptions:
 - Intrinsic ambiguity, mistake, or imperfection of the written agreement:
 - Does not express the true intent and agreement.
 - Invalid written agreement.
 - Other terms agreed upon exist after execution.
- Quantum of evidence:
 - * Proof beyond reasonable doubt.
 - Used in criminal cases.
 - Does not mean as such degree of proof, excluding possibility of error, produces absolute certainty.
 - Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.
 - * Clear and convincing evidence:
 - If it produces in the mind of the trier of fact a firm belief or conviction as to allegations sought to be established.
 - Between preponderance and beyond reasonable doubt.
 - Used in cases where fraud is alleged.
 - Fraud is not presumed – it must be proved by clear and convincing evidence.
- Preponderance of evidence:
 - * Used in civil cases.
 - * Evidence with superior weight but not necessarily with the greater number.
 - * It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.
- Substantial evidence:
 - * Used in administrative and quasi-judicial bodies.
 - * That amount of evidence which a reasonable mind might accept as adequate to justify a conclusion.
- Hierarchy of evidentiary values:
 - Proof beyond reasonable doubt.
 - Clear and convincing.
 - Preponderance of evidence.
 - Substantial evidence.
- Application to labour disputes.
- NLRC new rules of procedure.

SECTION 2. Construction. — These Rules shall be liberally construed to carry out the objectives of the Constitution and the Labor Code of the Philippines and to assist the parties in obtaining just, expeditious, and inexpensive settlement of labour disputes.

SECTION 3. Suppletory Application of Rules of Court and Jurisprudence. — In the absence of any applicable provision in these Rules, and in order to effectuate the

objectives of the Labor Code, the pertinent provisions of the Revised Rules of Court of the Philippines and prevailing jurisprudence may, in the interest of expeditious labour justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

- Sample evidences for labour disputes:
 - Employer in relation to individual workers
 - * Employment contracts:
 - Forms: Appointments, letter notice, letters memoranda
 - Promotion notices
 - Merit increases
 - Notices of temporary designations/transfers/assignments
 - Job descriptions
 - Work assignment slips
 - * Company/employer actions regarding personnel actions:
 - Approval/grant of leave of absence, sick leave/vacation leave
 - Reminders of specific duties
 - Warning on lapses from particular standards
 - * Wage and compensation records:
 - Pay slips
 - Pay envelopes
 - Salary vouchers
 - Time records
 - Work reports submitted
 - Performance ratings of workers
 - * Employee service records:
 - Special commendations/awards/prizes
 - Past disciplinary actions taken/penalties imposed
 - * Current disciplinary proceeding material:
 - Notice of charge
 - Reports submitted
 - Employee's response/employer's reply
 - Immediate supervisor's report
 - Affidavits
 - Transcripts/note of hearing
 - Order/decision.
 - * Past rulings of company in similar disciplinary case.
 - * Rulings of public officers/agencies on matters relating to the offense for which discipline is sought to be imposed (fiscals/judges).
 - * Company announcements/memos.

- Employer in relation to union:
 - * CBA
 - * Company/employer manuals/ handbook
 - * Company/employer memos/announcements
- Nature of company:
 - * Articles of Incorporation/partnership
 - * Organizational structure and work distribution of the company
 - * Press release/news stories
 - * Souvenir programmes, anniversary brochures, newsletters, bulletins
 - * Annual financial statements
 - * Payroll list of employees (from SSS, Employees' Compensation Commission, PhilHealth/Medicare)
 - * License, application submitted to government agencies
 - * Annual stockholders report
- Union:
 - * Certificate of registration o charter certificate
 - * Minutes of organizational meeting
 - * Minutes of elections of officers
 - * Financial records (books of account, among others)

5.4.4 Presentation

EVIDENCE

Purposes of Evidence

- To ascertain the truth respecting a matter of fact
- It is the means of proving a fact.

When required; When not

- When there is a question of fact
 - Evidence may be dispensed with by agreement of the parties.
 - Evidence is also not required on matters of judicial notice and on matters judicially admitted.

In Labor Disputes

- The pertinent provisions of the Revised Rules of Court and prevailing jurisprudence may, in the interest of expeditious labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

Classification of Evidence as to Form

- Object Evidence
- Documentary Evidence
- Testimonial Evidence

Documentary Evidence

Best Evidence Rule

- When the subject of the inquiry is the contents of a document, what should be offered is the original writing.
- Exceptions
 - Original has been lost or destroyed
 - Original is in the custody of the other party
 - Original consist of voluminous documents
 - Original is a public record in the custody of public officer

Documentary Evidence

- Originals under the Rules on Electronic Evidence
 - Its printout or output readable by sight or other means, provided it is shown to reflect the data accurately

Documentary Evidence

Parol Evidence Rule

- It means offering extrinsic or extraneous evidence (oral or written)
- Rule: When there is an agreement in writing, look into the written agreement and not elsewhere because only the contents of that written agreement are admissible.
- Applies only to contracts which the parties have decided to set forth in writing

Documentary Evidence

Exceptions

- Intrinsic ambiguity, mistake, or imperfection of the written agreement
- Does not express the true intent and agreement
- Invalid written agreement
- Other terms agreed upon exist after execution

Testimonial Evidence

- Competency of a child witness
 - presumed qualified to be a witness
- Examination of Witness
 - Done in open court
 - the answer of the witness shall be given orally unless incapacitated to speak or question calls for a different mode of answer.

Testimonial Evidence

- Evidence elicited from the mouth of a witness.
- Competent witness – the witness is qualified to take the stand and testify.
- Qualifications of a Competent Witness
 - He can perceive
 - In perceiving, can make known to others
 - Must take an oath or affirmation
 - Must not possess the disqualifications imposed by the law or rules

Testimonial Evidence

- Disqualification by Reason of Privilege Communication
 - between Husband and Wife during marriage
 - between Attorney and Client
 - between Doctor and Patient (Civil cases)
 - Between Priest and Penitent
 - To public officers given in confidence (Public interest would suffer)
 - Presidential communication privilege
 - Others (Voters, Trade Secrets, Bank Deposits, etc.)

Quantum of Evidence

- **Hierarchy of Evidentiary Values**
 - 1. Proof beyond reasonable doubt
 - 2. Clear and convincing
 - 3. Preponderance of evidence
 - 4. Substantial evidence

Pointers for Paralegals

- In preparation of testimony/affidavit,
 - only state facts not opinion
 - The affiant should have personal knowledge of the facts
 - Note the name, date/time, and place of interview
- In handling evidence
 - Ask the witness to place a distinct mark on the evidence
 - Make a record of the date/time, place, and name of the person who handed the evidence to you
 - Take a picture of it and noting when it was taken and who saw it took place.

Sample Evidence in Labor Disputes

- Employer in Relation to Individual Workers

1. Employment Contracts
 - Forms: Appointments, letter notice, letters memoranda
 - promotion notices
 - merit increases
 - notices of temporary designations/transfers/ assignments
 - job descriptions
 - work assignment slips
2. Company/ employer actions regarding personnel actions
 - approval/grant of LOA's, sick leave/vacation leaves
 - reminders of specific duties
 - warning on lapses from particular standards

Sample Evidence in Labor Disputes

3. Wage and compensation records
 - pay slips
 - pay envelopes
 - salary vouchers
4. Time records
5. Work reports submitted
6. Performance ratings of workers
7. Employee service records
 - special commendations/awards/prizes
 - past disciplinary actions taken/penalties imposed

Sample Evidence in Labor Disputes

- 8. Current disciplinary proceeding material
 - notice of charge
 - reports submitted
 - employee's response/employer's reply
 - immediate supervisor's report
 - affidavits
 - transcripts/ note of hearing
 - order /decision
- 9. Past Rulings of Company in similar disciplinary case
- 10. Rulings of Public officers/agencies on matters relating to the offense for which discipline is sought to be imposed (fiscals/judges)
- 11. Company announcements/memos

Sample Evidence in Labor Disputes

- Employer in Relation to Union
 - CBA
 - Company/employer manuals/ handbook
 - Company/employer memos/announcements
- Nature of Company
 - Articles of Incorporation/partnership
 - organizational structure and work distribution ng kompanya
 - press release/news stories
 - souvenir programs, anniversary brochures, newsletters, bulletins
 - annual financial statements

Sample Evidence in Labor Disputes

- Nature of Company
 - Payroll list of employees (mula sa SSS, ECC, PhilHealth/MEDICARE)
 - License, application submitted to gov't agencies
 - Annual stockholders report
- Union
 - Certificate of registration o charter certificate
 - Minutes of organizational meeting
 - Minutes of elections of officers
 - Financial records (books of account, etc.)

5.5 Session X: Affidavit-making

5.5.1 Introduction

The session aims to guide the participants on how to prepare an affidavit and to jump-start the process drafting legal documents. An affidavit is a voluntary statement in writing sworn to before someone authorized to administer oaths.

5.5.2 Objectives

At the end of the session, the participants are expected to understand the concept, parts and importance of an affidavit; and know how to draft affidavit based on the case studies presented.

5.5.3 Key learning points:

- The affidavit is a document that states something about a certain event. It is executed by a person called the “affiant,” who, in effect, states her/his personal knowledge about this certain event.
- The statement made by the affiant is sworn to in order to verify that what is written in the document is true and correct and is based on her/his personal knowledge. And because this is a sworn statement, the document is considered a public document.

- And also, because it is a sworn statement, the affiant may be prosecuted for the crime of perjury, if she/he is found to have made an untrue statement under the affidavit.

5.5.4 Session guide

- a) Activity 1: Presentation and discussion on the concept, parts and importance of an affidavit.
 - Time: 30 minutes
 - Methodology: Interactive lecture
 - Materials needed: Powerpoint presentation with lecture guide, laptop, projector, microphone, metacards for the participants to list down questions, handouts.
- b) Activity guide:
 - As an introduction and levelling off, the facilitator will ask the participants who among them have seen or executed an affidavit. What did it look like? Why it was made or executed?
 - The facilitator will first give input on the definition, parts and importance of affidavit. He/she will discuss how to make affidavit by showing an example of an affidavit written on a manila paper/power point presentation. Please see attached lecture notes.
 - The facilitator will discuss each part of an affidavit by defining its role and significance in writing an affidavit. He/she will give emphasis on the learning points mentioned above.
 - After the presentation and discussion, he/she will show seven case studies through powerpoint presentation which will be the basis of Activity 2. The facilitator will instruct the participants to read carefully the cases to determine the ultimate facts and identify those significantly related to the legal issue. The facilitator will proceed to Activity 2.
- c) Activity 2: Affidavit-making writeshop
 - Time: 1 hour
 - Methodology: Writeshop
 - Materials needed: case studies, yellow pad paper, ball pen, manila paper, pentel pens
- d) Activity guide:
 - The facilitator will ask the participants to draft an affidavit based on the case studies presented. Participants shall choose case studies by draw lots and write its own affidavit or choose a partner depending on the number of participants. The participants will be given 45 minutes to draft their respective affidavits. The affidavit should be written on a yellow pad paper or manila paper for group work.

- The facilitator including other members of the training team will guide each participant while they are drafting their respective affidavit.
- The facilitator will ask for a volunteer for each case studies to present their output in the plenary for critiquing. Each presenter will have two to three minutes to present his/her affidavit.
- After the plenary presentation, the facilitator will summarize some tips on how to write an affidavit by discussing some of the mistakes of the participants during the writeshop.

e) Lecture notes. Affidavit-making.

i. *Introduction*

An affidavit is a document that is frequently used in cases and other legal issues. More often than not, the paralegal, employee and the union members will encounter an affidavit during the course of her work in connection with a case. The paralegal or an employee who wants to file a case against employer for violations committed against his/her labour rights would have to execute an affidavit. Thus, the affidavit is a basic document that a paralegal, employee, or union members needs to know how to make. They will find out that affidavit-making is a simple and easy task and can easily be mastered.

ii. *Definition and concept of an affidavit*

The affidavit is a document that states something about a certain event. It is executed by a person called the “affiant,” who, in effect, states her/his personal knowledge about certain event.

<i>Quick facts</i>	<i>An affidavit is a voluntary statement in writing sworn to before someone authorized to administer oaths like a notary or other officers.</i>
---------------------------	--

The statement made by the affiant is sworn to in order to verify that what is written in the document is true and correct and is based on her/his personal knowledge. And because this is a sworn statement, the document is considered a public document. This means that if and when the document is used in a particular case, it may be presented or introduced in evidence without need of proving first that it was duly executed by the affiant. And also, because it is a sworn statement, the affiant may be prosecuted for the crime of perjury, if she/he is found to have made an untrue statement under the affidavit.

The affidavit may narrate a certain event that is needed to be disclosed or told by the affiant. Because of this, the affidavit is considered to be a frequently used legal form that a paralegal or an employee or union member needs to be familiarized with. Thus, it is necessary for them to master the skill of affidavit-making.

The main character of an affidavit is called affiant. It refers to the person who signs an affidavit and swears to its truth before a notary public or a person authorized to administer oaths.

iii. The parts of an affidavit

Quick facts	Parts of an affidavit: 1. Venue 2. Title of the document 3. Personal circumstances 4. Oath of affirmation 5. Recital of facts 6. Signature of the affiant 7. The jurat
-------------	---

- Venue. This is usually the place where the affidavit was executed, or where it was sworn to. More specifically, it is to be filed where the violation of law occurred, or at the residence or office of the victims of the offender, as the case may be.
 - It is a customary to put scilicet (S.S.) after the venue. The use of a scilicet in legal documents is to particularize that which has been stated in general.
- Title of the document. This is to inform the office or officer where it was presented the nature of the document, and to make his/her job less difficult given the number of documents and papers he or she reads or goes through daily.
 - The title indicates what kind of legal form it is; it is aligned at the center of the document.
- Personal circumstances. The third step is to narrate the personal circumstances of the affiant, or the person making the affidavit. These should contain the name, nationality, and age of the affiant, to determine if he or she is capacitated to execute an affidavit.
 - For minors, a guardian or legal representative should also sign the affidavit to indicate that they assisted such minor in executing such document.
- The fourth part is an oath of affirmation, where the affiant swears upon the truth and veracity of the statements contained in the affidavit that he or she may be held liable for perjury, or the crime of lying under oath. This is to serve as a reminder to affiants to narrate or sat the truth and nothing but the truth.
 - An oath is when the affiant swears upon the veracity of his/her statements and that he/she may otherwise be held liable for perjury. For an affiant whose religion prohibits swearing under oath, an affirmation is used instead.

- The next part forms the meat of the affidavit, which is the recital of facts. It is an enumeration of the Who, What, Where, When, Why, and How a particular event happened or the act complained of. It narrates the personal information known to the affiant in relation to the violation of law complained of.

Quick facts:	
Who?	Who are involved?
What?	What happened?
Where?	Where did it happened?
When?	When did it happened?
Why?	Why it happened?
How?	How did it happen?

- Take note that only things of your personal knowledge should be in the affidavit. The affiant cannot testify regarding things he/she just heard (hearsay statements) and has no first-hand knowledge of, save for some exceptions under the Revised Rules of Evidence in the Rules of Court.
- The sixth part is the signature, which can be any actual signature or symbol commonly used by the affiant, or a thumb mark if he or she is illiterate or cannot write.
- Lastly, jurat, or the certification of an officer (one who administers oaths such as a notary public) that the instrument was subscribed and sworn to before him or her. Competent evidence of identity, such as government issued ID, must be presented by the affiant before the officer.
 - Competent evidence of identity must be exhibited to the notary, if not personally known. The 2004 Rules on Notarial Practice list down the following as competent evidence of identity or the identification of an individual based on at least one current identification document issued by an official agency bearing the photograph and signature of the individual. Cedula or community tax certificate is no longer acceptable as proof of identity based on the New Rules on Notarial Practice⁷⁹.

⁷⁹Law on Notarial Practice.

iv. Points/tips to remember in drafting affidavit

- The venue is found in the uppermost left corner of the document. From reading the place of execution, the reader will be able to check if the notary public was within her jurisdiction when she administered the oath-taking of the affiant.
- The scilicet is written on the space beside the place of execution. Scilicet is taken from the Latin terms “scire licet”, which means “namely,” “to wit” or “in particular”. This is written on the affidavit to show the particular place where the document was executed.
- The title is written on the center after the space where the place of execution is written. It is important to place the title so that at first glance, the reader will be advised that the document she is holding is an affidavit.
- The personal circumstances of the affiant are written on the first part of the affidavit. The name of the affiant, her/his age (or the fact that she/he is or is not of legal age), her/his civil status, and her/his residence are all written on this part of the affidavit. The second part of the paragraph states that the affiant voluntarily and freely executed the affidavit.
- After writing the personal circumstances of the affiant, the affiant then states the allegations that are related to the particular event which is being related. These allegations must be of the affiant’s personal knowledge. It is better if the body is written in such a way that there are numbers to the paragraphs and the events are chronologically arranged. In order to have a clearer statement of facts, it is suggested that each paragraph should only contain one idea or point.
- In the last paragraph of the statement, the affiant must state the reason(s) why she/he is executing the affidavit.
- The part after the affidavit in which a notary public or officer authorized to administer oaths certifies that the instrument was sworn to before him. Jurat is used in documents that is declaratory in nature like affidavits, shows when, where, and before whom the actual oath was sworn. It gives the document a legal character.

5.5.5 Presentation

Affidavit - Making

Outline:

- Definition and concept of an affidavit
- Parts of an affidavit
- Tips in drafting an affidavit
- Case Studies

Affidavit

affidavit is a voluntary statement in writing sworn to before someone authorized to administer oaths like a notary or other officers.

- *An affidavit is a document that states something about a certain event. It is executed by a person called the "affiant," who, in effect, states her/his personal knowledge about a certain event.*

The parts of an affidavit

1. *Venue*
2. *Title of the Document*
3. *Personal Circumstances*
4. *Oath of Affirmation*
5. *Recital of Facts*
6. *Signature of the Affiant*
7. *The Jurat*

Venue

The place of execution

Republic of the Philippines)
Legazpi City }"

- This is found in the uppermost left corner of the document. From reading the place of execution, the reader will be able to check if the notary public was within her jurisdiction when she administered the oath-taking

The scilicet

"SS"

- The scilicet is written on the space beside the place of execution. Scilicet is taken from the Latin terms "scire licet", which means "namely," "to wit" or "in particular." This is written on the affidavit to show the particular place where the document was executed.

The title of the document

Affidavit"

- The title is written on the center after the space where the place of execution is written. It is important to place the title so that at first glance, the reader will be advised that the document he/she is holding is an affidavit.

Personal circumstances of the affiant

Ricardo Dalisay , of legal age, Filipino, and a resident of Bgy. Sto Nino, Sansinukod, Quezon City,

- The personal circumstances of the affiant are written on the first part of the affidavit. The name of the affiant, her/his age (or the fact that she/he is or is not of legal age), her/his civil status, and her/his residence are all written on this part of the affidavit. The second part of the paragraph states that the affiant voluntarily and freely executed the affidavit.

Oath of affirmation

- The affiant swears upon the truth and veracity of the statements contained in the affidavit that he or she may be held liable for perjury, or the crime of lying under oath.
- (Personal circumstances).....**after having been duly sworn in accordance with law, hereby depose and state under oath that:**

The body of the affidavit (recital of facts)

1. "I am an employee ABCDE Corporation since June 10, 2017;
2. I started as a technician and eventually promoted as machine operator on February 10, 2018;
3. When I was promoted, my salary did not increase but my task and position different from my previous position;
4. Etc."

The last paragraph in the body of the affidavit

paragraph of the statement, the affiant must state the reason(s) why she/he is executing the affidavit

"This statement is executed in order to attest to the truth of the foregoing and for the purpose of filing a case against my employer....."

The signature of the affiant

"IN WITNESS WHEREOF, I have hereunto affixed my signature this ___ day of _____, 2018, in _____."

(signature)
"Juan de la Cruz Affiant"

The signature of the affiant should be affixed after the last paragraph of the body of the affidavit. The signature affirms the fact that the affidavit was executed by the affiant. It is also necessary that the affiant state the date and place when he/she affixed his signature to the affidavit.

Jurat

The jurat is the certification of an official who is authorized to administer oaths that the statement was signed and subscribed before him/her.

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 2018, affiant exhibiting to me her/his government issued ID with picture and signature _____ issued on _____ in _____.

(signature)
Notary Public
Until 31st of December 2018
PTR No. _____

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2018.

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ANNEX A
Sample pre- and post-test questions

Name: _____

Score: _____

Part 1: TRUE or FALSE. Write TRUE if the statement is correct and write FALSE if the statement is wrong.

- _____ 1. Freedom of association is not only a fundamental right but a development policy.
- _____ 2. Government employees' organizations have the right to peaceful and concerted activities, but do not have the right to strike.
- _____ 3. The International Labour Organization is the only tripartite organization in the United Nations.
- _____ 4. Under the regular system of supervision in the ILO, governments are required to submit copies of their report to employers' organizations but they are not required to submit the report to workers' organizations.
- _____ 5. The service of a lawful Order/Writ issued by the DOLE is the primary concern of the PNP.
- _____ 6. The RTMB can prosecute cases.
- _____ 7. The primary duty of the IAC on EJK, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons is the investigation and prosecution of covered cases.
- _____ 8. The definition of Extra-Judicial Killings in the Operational Guidelines on National Monitoring Mechanisms on Human Rights covers suspected drug pushers.
- _____ 9. Dispersal of striking employees inside the factory by police officers through the use of tear gas and by whipping the employees with police sticks is a form of torture.
- _____ 10. The inquest proceedings for grave offenses must be terminated within the period of eight hours.

Part 2: MULTIPLE CHOICE. Encircle the letter corresponding to the correct answer.

1. Which of the following is an ILO core labour standard?
 - a. Freedom of association and the effective recognition of the right to collective bargaining.
 - b. Elimination of all forms of forced and compulsory labour.
 - c. Abolition of child labour.
 - d. Elimination of discrimination in respect to employment.
 - e. All of the above.
2. Which of the following statement is not correct?
 - a. The right to assemble is not subject to prior restraint.
 - b. The right to assemble is conditioned upon the prior issuance of a permit by the government.
 - c. A permit is necessary only for the use of a public place relevant to the assembly, and not a permit to assemble itself.
 - d. The right to free assembly and petition prevails over economic rights.
3. Which of the following is not an International Labour Standards Instrument:
 - a. Protocol
 - b. Guidelines
 - c. Ordinance
 - d. Resolution
 - e. Memorandum
4. Labour disputes are under the primary and sole jurisdiction of:
 - a. Department of Justice
 - b. Local Government Unit
 - c. Department of Labor and Employment
 - d. Office of the President
5. The Regional Tripartite and Monitoring Body covers which of the following cases:
 - a. Intra-union disputes.
 - b. Illegal dismissal cases.
 - c. Labour-related extra-judicial cases.
 - d. Non-payment of minimum wages.
6. Which of the following is not an element of an extra-legal or extra-judicial killing:
 - a. The victim is a member of a labour organization.
 - b. The victim was killed because he was involved in a heated traffic altercation.
 - c. The perpetrator is a police officer.
 - d. The method and circumstance of the attack reveal a deliberate intent to kill.

7. Which of the following is not the objective of the NMM:
 - a. Effectively monitor human rights violations.
 - b. Raise public awareness and understanding of cases involving EJKs, EDs and torture to deter, minimize and prevent future incidents.
 - c. Address human rights violations by the immediate provision of legal and non-legal services to human rights victims and/or their families.
 - d. Directly handle cases of human rights violations.
8. Which of the following remedies literally means "protection"?
 - a. Writ of Habeas Corpus
 - b. Writ of Amparo
 - c. Writ of Habeas Data
9. A criminal action is commenced by filing of a complaint with the:
 - a. City/Provincial Prosecution Office
 - b. Public Attorney's Office
 - c. Integrated Bar of the Philippines
 - d. Commission on Human Rights
10. It is a proceeding to determine whether there is a sufficient ground to engender a well-founded that a crime has been committed and that the respondent is probably guilty thereof.
 - a. Police booking
 - b. Preliminary investigation
 - c. Inquest
 - d. Police blotter

Workers' training manual on freedom of association

The Philippines adopted a number of mechanisms that seek to address the issues of workers' freedom of association (FOA). These mechanisms opened an opportunity for the workers to participate in the investigation and monitoring of FOA cases. This Manual aims to empower the workers to constructively engage with stakeholders, and meaningfully participate in the investigation and monitoring of FOA cases.

The Manual contains four inter-related modules: (a) basic principles and Philippine policies on FOA and collective bargaining; (b) mechanisms on FOA cases; (c) judicial remedies on FOA cases; and (d) skills. There are ten sessions. While each module or session may be facilitated on its own depending on the need of the participants, it is advised that the entire Manual be given to have better results. A pre- and post-test is also suggested with Modules 1, 2 and 3 while Module 4 is measured by the final output of drafting a sworn statement.

Lastly, this Manual was prepared for workers. While the topics are relevant to other stakeholders, such as the duty-bearers or government agencies, other methodology may be more apt for them.

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