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Industrial relations and collective bargaining in the Philippines

Benedicto E.R. Bitonio, Jr.

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Industrial
and Employment
Relations
Department
(DIALOGUE)

ILO Regional
Office for Asia
and the Pacific

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Foreword

This paper is part of a series of national studies on collective bargaining and effective responses to the crisis conducted under the ILO Global Product on *Supporting collective bargaining and sound industrial and employment relations*, in close collaboration between the Industrial and Employment Relations Department (DIALOGUE) at ILO headquarters, the ILO Regional Office for Asia and the Pacific, and the ILO Decent Work Team for South Asia. The national studies seek to examine the impact of the crisis on industrial relations and collective bargaining institutions; and identify the ways in which collective bargaining was used to mitigate the effects of the crisis and the outcomes as they relate to employment, wages, working time and employment relations. They identify good practices in this regard and consider the implications for balanced and effective recovery.

The paper provides a comprehensive analysis of the industrial relations trends and developments in the Philippines. It highlights the limited roles that industrial relations played in dealing with the global crisis. Both trade union density and collective bargaining coverage are low. The effects of collective bargaining are confined to the enterprise level where negotiations actually take place. Given its long history, the country's industrial relations system itself is mature and stable, supported by the Labour Code and a comprehensive set of social legislation, but this also limits the scope of adaptation for change.

The paper concludes that the industrial relations system requires renewal and reforms to make it more effective and sustainable, identifying specific areas that can be the target of reforms, including labour market governance, labour standards, wages and productivity, collective bargaining and dispute settlement. Such reforms should be through tripartism and social dialogue.

DIALOGUE working papers are intended to encourage an exchange of ideas and are not final documents. The views expressed are the responsibility of the author and do not necessarily represent those of the ILO. We are grateful to Benedicto E.R. Bitonio, Jr. for undertaking the study, and commend it to all interested readers.

Yoshiteru Uramoto
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Introduction

Problems and assumptions

The 2008 global financial and economic crisis had adverse effects on advanced as well as emerging and developing economies. This slowed economic growth, reduced employment growth, levels and quality, and threatened social protection systems. Questions have been raised over the role of industrial relations, especially of collective bargaining and social dialogue, in promoting equitable and inclusive growth in the post-crisis world. Of particular concern are emerging and developing economies which, before the crisis, relied heavily on exports to advanced economies to fuel domestic growth. With a global crisis that pulled down demand in advanced economies, emerging and developing economies now need to strengthen domestic consumption to drive growth. However, for domestic consumption to increase, workers' incomes must rise. The point of inquiry is whether the Philippine industrial relations system and institutions, particularly collective bargaining, can play a role in boosting workers' incomes, reducing income gaps, and promoting equitable and inclusive growth in the post-crisis world.

In responding to this question, several important factors must be considered. First, the national development goal is to attract more investments and strengthen the country's productivity and export competitiveness as key pillars toward poverty alleviation, increasing incomes and promoting equitable and inclusive growth. Thus, even as the Philippines strives to shore up domestic consumption, exports will remain a key driver of economic growth. Second, Philippine industrial relations policy wields little influence on economic policy and decision-making. On the contrary, it is economic policy that determines the industrial relations policy, with the latter mostly playing a passive or reactive and at best supportive role. Third, the Philippine industrial relations developed earlier than in other Asian countries. Its mature system, implemented by a Labor Code and a comprehensive web of social legislation, can provide stability but it restricts adaptation within and outside the system. Third, in terms of union density and collective bargaining coverage, the Philippines has always been a "low coverage" country.¹ This necessarily limits the role collective bargaining can play in promoting more equitable and inclusive growth.

Given these factors, it is unrealistic to expect Philippine industrial relations institutions to play a major role in dealing with the global crisis, or in driving changes in economic policies for equitable and inclusive growth. If the industrial relations institutions, specifically the social partners, have any role to play in this context, it will be through tripartism and social dialogue rather than collective bargaining. They must also focus on addressing the issues and reforms needed within the industrial relations system in order to make their role effective and sustainable.

Organization and methodology

Part 1 of this paper describes the economic and social situation before and after the crisis, as well as the economic and social policy challenges that the Philippines continues to face after the crisis. Part 2 presents industrial relations and collective bargaining institutions in a national context, describing the history and institutionalization of industrial relations and changes over the years. Part 3 describes industrial relations after the crisis and identifies policy impacts and innovations. Part 4 deals with industrial relations and collective bargaining trends at the company level. Part 5 describes the role of the social partners in

¹ In the ILO's *Global Wage Report 2008/2009: Minimum Wages and Collective Bargaining: Towards Policy Coherence*, a low-coverage country is one where union density does not exceed 40 per cent of the organizable labour force.

promoting equitable and inclusive growth and the challenges they are faced with. Part 6 presents findings, conclusions and recommendations. Other specific issues at both the national and enterprise levels are integrated in the analysis throughout the paper.

There is virtually no literature in the Philippines that simultaneously addresses the issues of over-reliance on the export-led growth model, industrial relations and inclusive growth, or industrial relations, collective bargaining and productivity – whether before or after the crisis. That said, the analysis in this paper is guided by three major policy documents, particularly the *22-Point Labor Agenda* issued by President Benigno Aquino III in June 2010, the *Philippine Development Plan 2011–2016* (PDP), and the *Philippine Labor and Employment Plan 2011–2016: Inclusive Growth Through Decent and Productive Work* (LEP). The LEP was prepared by the Philippine Department of Labor and Employment (DOLE) as one of the sectoral components of the PDP. A product of extensive social dialogue and tripartite and multi-sectoral consultations, the LEP includes chapters on employment, workers' rights and social dialogue.

All three documents were formulated after the global crisis and are assumed to embody the political administration's response to the crisis. A supplemental analytical tool is the *Philippine Labor Index* (PLI), developed by DOLE as one of the outputs of the Philippine Decent Work Country Programme. The PLI identifies 11 decent work indicators, including the economic and social context for decent work, as well as social dialogue and workers' and employers' representation, all of which are relevant to industrial relations, collective bargaining, tripartism and social dialogue.² The ILO's Global Wage Reports are also important resource documents in providing insights from an international perspective.³

The paper benefited from robust primary sources consisting of statistical data on labour market and industrial relations indicators from the National Statistical Coordination Board (NSCB), DOLE's Bureau of Labor and Employment Statistics (BLES) and other data-generating agencies. Unless otherwise indicated, all the statistics cited in this paper are taken from the statistics released by the NSCB and BLES in various years. The paper also refers to the regular labour statistics updates of BLES (LABSTAT Updates), which include collective bargaining profiles, the survey of collective bargaining agreements by the Employers' Confederation of the Philippines (ECOP), and data generated by the National Wage and Productivity Commission (NWPC), an agency attached to the DOLE, on the country's levels of wages and labour productivity. Interviews of select industrial relations practitioners and key informants were also conducted.

² The PLI identifies 11 decent work indicators, including the economic and social context for decent work as well as social dialogue and workers and employers representation, all of which are relevant to industrial relations, collective bargaining, tripartism and social dialogue. The 11 PLI indicators are: Economic and social context of decent work (including GDP, labour productivity and poverty); employment opportunities; adequate earnings and productive work; decent hours; combining work, family and personal life; work to be abolished (i.e. child labour); stability and security at work; equal opportunity and treatment in employment; safe work environment; social security; and social dialogue and workers and employers representation. DOLE's Bureau of Labor and Employment Statistics is currently preparing an updated PLI report.

³ In particular, Part II of *Global Wage Report 2008/2009* identifies trends and draws conclusions and prescriptions on the interplay of minimum wage fixing and collective bargaining, the elasticity between wage increases and productivity growth, and the effects of minimum wage fixing and collective bargaining on wage inequality. In part, this paper will seek to determine the manifestations of the trends in the Philippines, and the extent of applicability or relevance of the conclusions and prescriptions drawn by the report.

1. Economic situation and challenges before and after the crisis

1.1 GDP growth and the effects of the global crisis

Although exports typically account for only about one-third of Philippine GDP annually, this did not insulate the country from the adverse effects of the crisis. A historically anaemic growth pattern added to its vulnerability.

As recognized in both the PDP and LEP, the country's economic and social progress in the last 30 years has been slow and erratic, with growth averaging about 3 per cent per year. Noticeable is a boom–bust growth pattern, characterized by brief economic upswings alternating with long and deep downturns. Over this period, growth has not been inclusive, with approximately 30 per cent of the population living below the poverty line. In 2006, about 26.4 per cent of the population and 21.1 per cent of households were poor. By 2009, there had been no progress as 26.5 per cent of the population and 20.9 per cent of households remained poor. The same pattern has been exhibited over the last ten years. The country's gross domestic product (GDP) grew at an average rate of 4.7 per cent from 2001 to 2010. Annual growth rates have been unpredictable, swinging from lows of 1.8 per cent in 2001 and 1.1 per cent in 2009, to a high of 7.3 per cent in 2010. The boom–bust cycle was recently seen between 2010 and 2011. In the first and second quarters of 2010, the economy rebounded with a GDP growth of 7.3 per cent and 7.9 per cent. Respectable growth rates of 6.5 per cent and 7.1 per cent were also registered in the third and fourth quarters.⁴ However, by the second quarter of 2011, growth had again dropped to 3.4 per cent.

The impact of the global crisis on the GDP was hardest in 2009 (Table 1). Before the crisis, GDP growth was 6.7 per cent in 2004, 4.7 per cent in 2005, 5.3 per cent in 2006 and 6.7 per cent in 2007. Growth declined sharply to 4.2 per cent in 2008. The impact was worst in 2009 when the economy registered its lowest performance of the decade: GDP growth was almost stagnant at 0.4 per cent in the first quarter, 1.5 per cent in the second quarter, 0.8 per cent in the third and 1.8 per cent in the last quarter, or an overall 2009 growth of 1.1 per cent. This poor performance, though, was not due to the crisis alone. Two devastating typhoons hit the Philippines in 2009, causing massive damage to infrastructure and agriculture. According to some economists, these natural disasters may have lowered the GDP by at least one percentage point.

Table 1.
Percentage change in GDP, Philippines, 2000–10

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
4.411	2.894	3.646	4.97	6.698	4.778	5.243	6.617	4.153	1.148	7.632

Source: International Monetary Fund, *World Economic Outlook Database*, Sep. 2011.

The aftermath of the global crisis coincided with a downturn in exports. Data from the economic accounts of the NSCB show that in the first three quarters of 2008, exports of goods accounted for 31 per cent of the GDP. With demand in product markets contracting in the last quarter of the year, GDP growth was a moderate 4.7 per cent, while the share of

⁴ According to the LEP, recovery in 2010 was boosted by the strong performances of manufacturing, merchandise exports and services, bolstered by strong consumption and sustained inflow of remittances.

manufacturing exports to GDP went down significantly to 23 per cent. The trend continued in the first and second quarters of 2009, with the share of manufacturing exports to GDP going down further to 20 per cent and 21 per cent, respectively. Modest recovery began to be felt in the third quarter of 2009 when the share of manufacturing exports ranged from 22 per cent to 25 per cent, peaking at 30 per cent in the third quarter of 2010. This went down again to about 25 per cent in succeeding quarters as jitters of an economic recession and slowdown persisted in the US and in Europe.

Personal consumption expenditure (PCE) also appears to have been affected by the crisis. As a percentage of the GDP, the PCE ranged from 7.96 per cent in 2002 to a high of 14.51 per cent in 2008. In 2009, however, the PCE share to GDP dropped drastically to 7.46 per cent, the lowest in the decade.

The ebbs and troughs in the country's GDP coincided with the global trends for 2009, which saw the GDP in advanced economies dip to less than -2 per cent from less than one per cent in 2008. The GDP in emerging and developing economies also dipped to less than 2.5 per cent from 6 per cent in 2008. That downtrends in exports mirrored in the downtrends in the GDP confirm a direct correlation between an export-oriented strategy and GDP growth.

1.2 Employment and effects of the global crisis

If the effect of the global crisis on the GDP is apparent from the aggregate numbers, the same cannot be said of employment. Although the labour force participation rate has remained at around 64 per cent from 2000 to 2009, the Philippine labour force expanded rapidly at about 3 per cent annually from 30.9 million to 37.89 million over the same period. The number of employed persons rose from 27.45 million in 2000 to 35 million in 2009, with the employment rate ranging from 88.8 per cent to 92.6 per cent over the same period.⁵ The number of employed persons actually rose by 2.85 per cent in 2009, the highest growth since 2005. Unlike the GDP, the employment data show that there were no significant differences between aggregate pre-crisis and post-crisis employment and unemployment levels. Indeed, there was no dramatic change in the unemployment rate, which stood at 7.3 per cent in 2007, 7.4 per cent in 2008, 7.5 per cent in 2009 and 7.4 per cent in 2010.

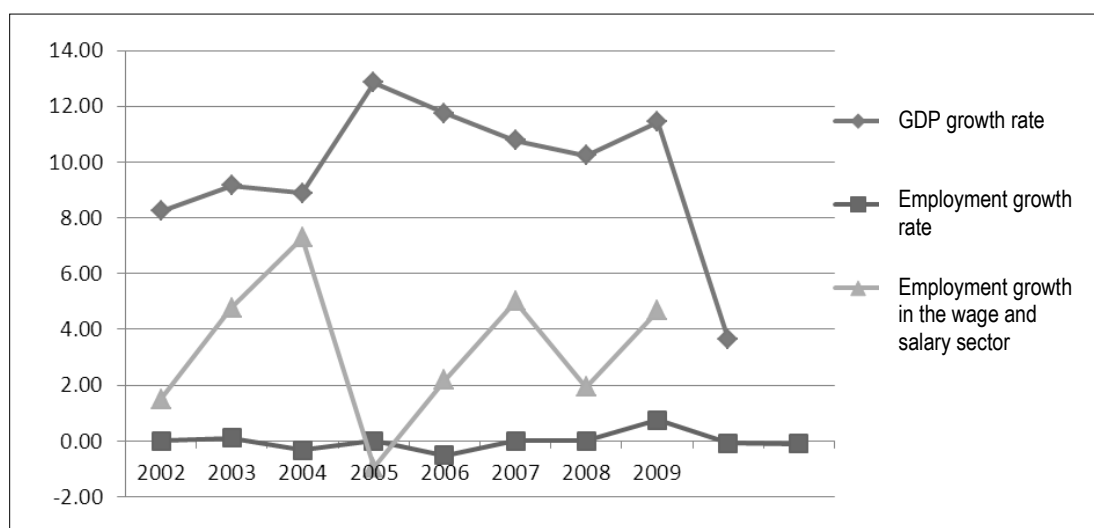
If the global crisis shrank the demand for exports and thereby decreasing the demand for labour in export manufacturing, one would expect a downward effect on wage and salary employment. However, employment in this sector actually expanded from 14.43 million in 2001 to 17.84 million in 2008 and 18.681 million in 2009. This sector actually grew by 4.68 per cent in 2009, higher than the 1.93 per cent in 2008.

Neither was the wage share to GDP adversely affected by the crisis (Figure 1). It actually increased slightly to 53.7 per cent in 2009 from 53 per cent in 2008. A similar increase was noted after the 1997 Asian financial crisis when the wage share to GDP increased to 56.6 per cent in 1998 from 55 per cent the previous year.

The global crisis may have moderated growth in average basic pay for wage and salary workers. In 2009, average daily basic wage grew by 4.23 per cent across all industries. Though this is lower than the 4.6 per cent growth in 2008 and the growth rates of 4.82 per cent and 6.73 per cent in 2005 and 2006 when the economy also posted solid GDP growth, it is actually more than double the 1.82 per cent growth rate in 2007.

⁵ The higher employment rate was brought about by a change in definition of the unemployed in 2005. It was not due to any substantive gain in actual employment levels.

Figure 1.
GDP, employment and employment growth in the wage and salary sector,
Philippines, 2002–09



Source: National Statistical Coordination Board, National Accounts of the Philippines, Bureau of Labor and Employment Statistics.

The LEP notes:

... the absence of a noticeable movement in unemployment rates in comparison with the observed trend in GDP and employment suggests that unemployment as an indicator is less sensitive to the developments in the economy and labor market. This validates the observation that while unemployment is a vital social concern, its measurement is less relevant to a developing country like the Philippines where the self-employed and unpaid family workers (vulnerable employed) account for a considerable proportion of the employed.

...

The relationship and behavior of aggregate output and employment over time can be better viewed when employment is distinguished between full-time and part-time workers. A closer look at the data series revealed that full-time employment with few exceptions tended to rise and fall with the growth and decline in domestic output. In contrast, part-time employment generally increases in times of economic slowdown and contracts in times of economic recovery.

In 2009 for instance, employment grew by 2.9% despite the slowdown in GDP to 1.1%. But the growth in employment occurred almost entirely among part-time workers (8.4%) while full-time employment actually fell (-0.5%). Another case in point is when the economy rebounded to a 7.3% growth in 2010. Full-time employment growth markedly improved to 6.3% compared with the 2.3% decline in part-time employment. This suggests that while the quantity of employment may expand in times of economic downturn, the quality of employment actually suffers because people will continue to work and accept part-time jobs most likely with lower pay to cope with the difficult situation.⁶

2009 was not a dynamic year for employment generators and investments. Data show very minimal growth in the number of employers, a trend that actually started in 2005. In the last decade, the number of employers was the highest in 2002 at 1.66 million. The number dropped to 1.425 million in 2006, 1.430 million in 2007, 1.426 million in 2008 and 1.436 in 2009. Further, the inflow of foreign direct investment (FDI), always considered a primary growth driver and key employment generator since the 1970s, was moderate if unsteady. It accounted only for US\$ 1.544 billion in 2008, \$1.948 billion in 2009 and \$1.713 billion in 2010.

⁶ DOLE, *Philippine Labor and Employment Plan*, p. 5.

With employment levels apparently rising in spite of marginal growth among employment generators and lower FDI inflows, the effects of the global crisis on employment can be better appreciated through a sectoral decomposition of the aggregate statistics.

Administrative data generated from reports⁷ on permanent displacements and closures submitted to DOLE show that in 2009, 2,522 establishments reported total permanent displacements of 61,360. This is higher than the 2,436 establishments reporting total displacements of 52,863 in 2008, and 2,314 establishments reporting total displacements of 36,583 in 2010. The spike in displacements in 2009 came largely from the manufacturing sector, which registered 39,130 displacements.

Export-oriented industries appear to be the hardest hit with more than one-third (14,372) of displacements in the electronics industry (radio, television and communication equipment and apparatus) and 5,593 in the wearing apparel, leather products, handbags and footwear industry. With the drop in personal consumption expenditure, the demand for consumer goods and durables also went down. In turn, lower personal spending has noticeable dis-employment effects on the manufacture of food products and beverages, textiles and furniture. It also affected the services sector, where displacements totalled 8,244 in real estate, renting and business activities, 5,026 in wholesale and retail, and 3,339 in transport, storage and communications.

Most of the displacements in the manufacturing sector occurred in highly urbanized areas, especially in the National Capital Region, Central Luzon, Southern Tagalog (Region IV) and Central Visayas. Notably, it is in the manufacturing sector where unionism and collective bargaining are practised the most. Therefore, volatility or weakening of this sector, more than any decline or improvement in aggregate employment levels, will tend to reduce the influence or efficacy of collective bargaining as an instrument for inclusive growth.

1.3 Labour productivity, employment and wages

Labour productivity, or output per employed person, reflects growth in output and productive employment, improvements in investments, technological progress and innovation. Increase in productivity positively influences the economic and social environments which in the long run lead to increased incomes, poverty reduction and expanded social protection. The LEP notes that over the period 2001–10, there was an uptrend in growth in labour productivity except during the crisis years 2008–09. Nevertheless, labour productivity grew annually by only 1.6 per cent on average, with the highest growth rates posted in 2007 (4.1 per cent) and 2010 (4.4 per cent).⁸ Note that it was in these years that the economy recorded the highest GDP growth rates during the decade, at 7.1 per cent and 7.3 per cent. It was also during these years that growth in full-time employment peaked at 4.7 per cent (2007) and 6.3 per cent (2010). Employment growth during the decade averaged 2.9 per cent, higher than the average growth in labour productivity.

⁷ BLES, Current Labor and Employment Statistics, various years.

⁸ LEP, p. 10.

Table 2.
Labour productivity in all industries, Philippines, 2000–09

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
At current prices (pesos)	122,203	124,553	131,857	140,898	154,100	168,478	184,801	198,111	217,354	219,016
Growth rate (%)	13.88	1.92	5.86	6.86	9.37	9.33	8.60	7.20	9.71	0.76
At constant 1985 prices (pesos)	35,442	33,957	34,399	35,419	36,513	37,491	39,103	40,722	41,570	40,846
Growth rate (%)	7.09	(4.19)	1.30	2.97	3.09	2.68	3.27	4.14	2.08	(1.74)

Sources: National Statistical Coordination Board, The National Accounts of the Philippines, National Statistics Office, Labor Force Survey.

The ILO's *Global Wage Report 2010/2011* observed that after the crisis, Asia's weighted average growth in real wages from 2006 to 2009 exceeded 7 per cent, mainly because of the rapid expansion of China's wage sector.⁹ The report includes the Philippines as among the countries where real wages fell during the crisis. Average real daily basic pay calculated at constant 2000 prices did drop from 188.05 Philippine pesos (PHP) in 2007 to PHP179.95 in 2008, but actually improved slightly after the onset of the crisis to PHP181.71 and PHP184.55 in 2009 and 2010, respectively. It was real GDP per capita, which was 4.5 per cent in 2007 and 2.1 per cent in 2008, that went down to –0.8 per cent in 2009, although it bounced right back to 5.6 per cent in 2010. By contrast, the proportion of low-paid employees¹⁰ increased slightly from 14.6 per cent in 2008 to 14.9 per cent in 2009, although it was again lower in 2010 at 14.5 per cent.

While mirroring the patterns in overall GDP, growth in labour productivity has always been lower than overall GDP growth. However, the relationship between labour productivity and employment appears inverse (Figure 3). In the years where labour productivity growth is higher, employment growth is lower. This may be explained by the fact that a large proportion of the employed is made up of the self-employed and unpaid family workers who are in low-productivity employment and thereby contribute relatively less to total output.

⁹ *Global Wage Report 2010/2011*, p. 12.

¹⁰ As defined in the Philippine Labor Index, low-paid employee refers to a person paid less than two-thirds of the median hourly basic pay.

Figure 2.
Growth in labour productivity and wages in major industry groups, Philippines, 2001–09

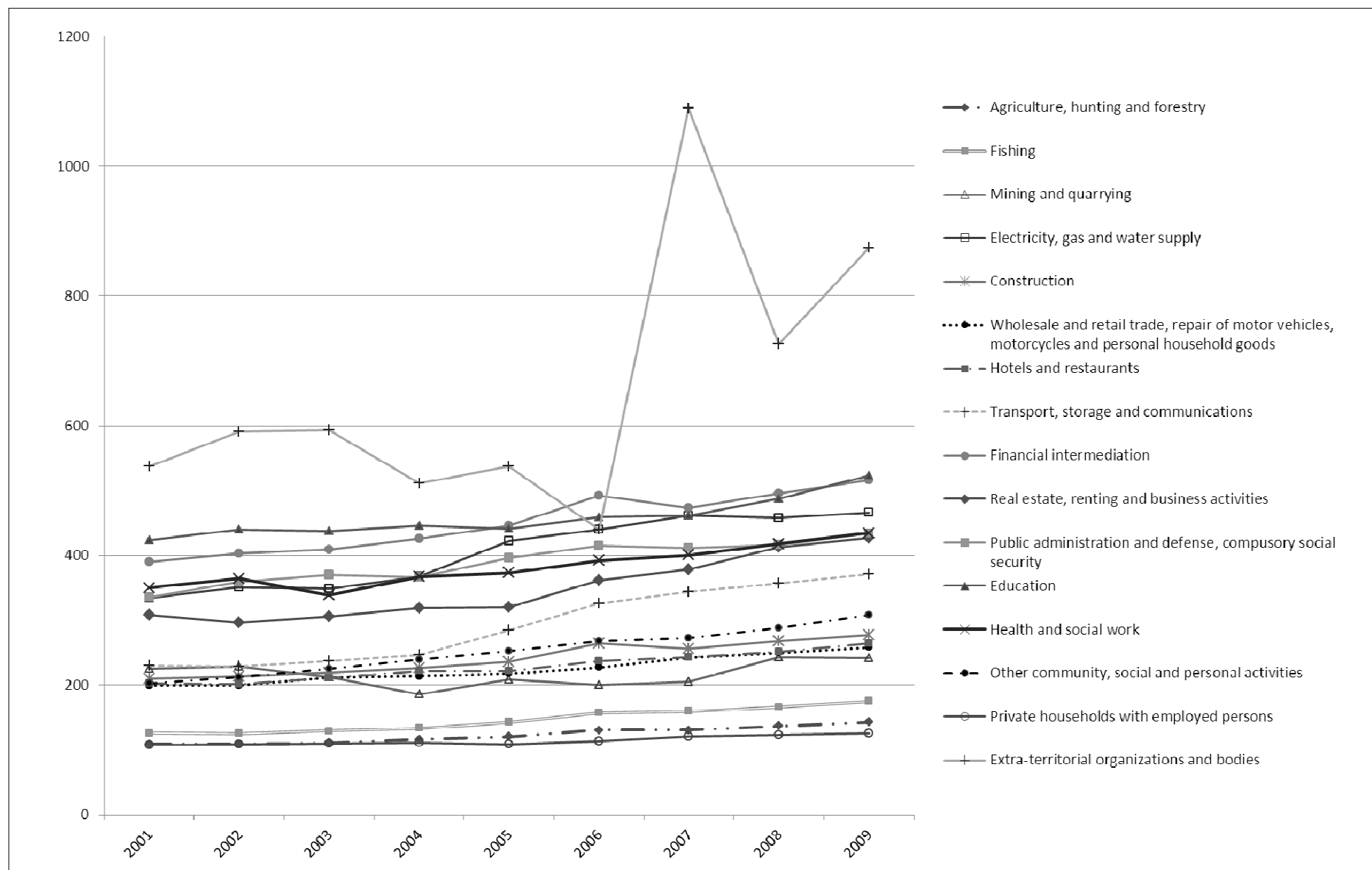
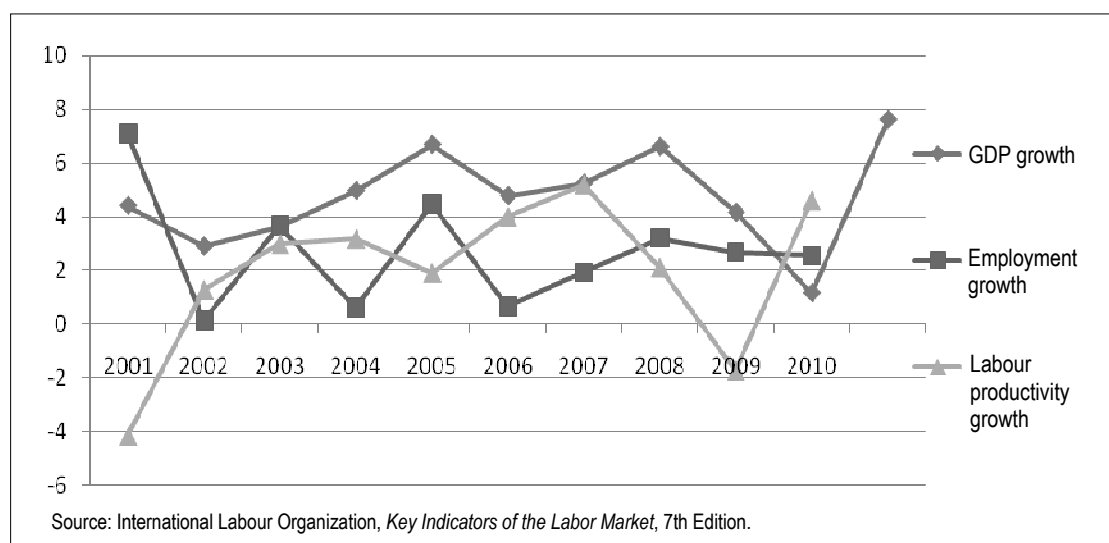
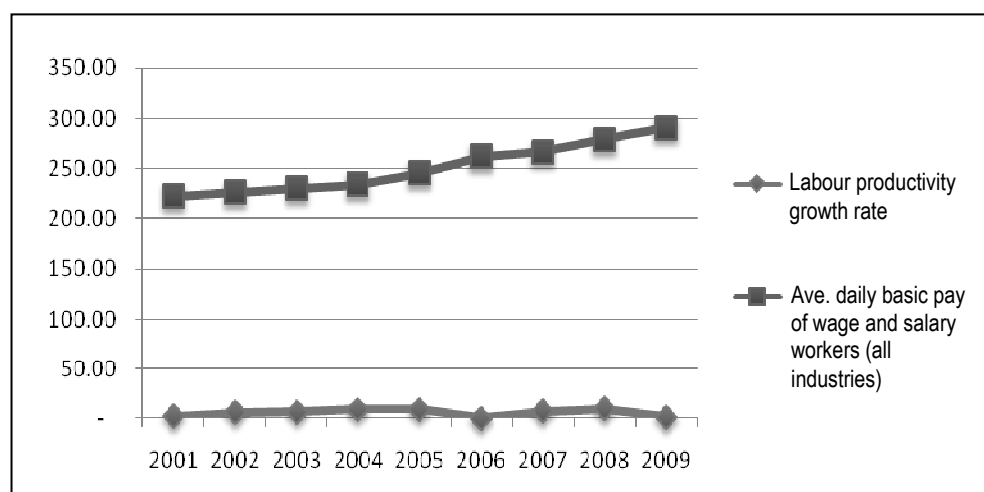


Figure 3.
Growth in GDP, employment and labour productivity, Philippines, 2001–10



A worrisome trend is that the average daily basic pay of wage and salary workers is growing faster than labour productivity. The gap has been widening since 2005.

Figure 4.
Growth in labour productivity and wages (average daily basic pay of wage and salary workers), all industries, Philippines, 2001–09



The widening gap may be due to two factors. One, minimum wage interventions are artificially driving up average wages. Two, the productive capacity of the economy has reached full potential. On the second point, capital and technology investments are necessary to push the production possibility frontier outward and make real economic expansion possible. Without this, increased average wages, whether through minimum wage interventions or through collective bargaining, will not have any positive impact on wage-earners' real incomes and purchasing power. In this regard, it is noted that investments in capital formation is quite erratic. In 2009, capital formation was only 17 per cent of the GDP. This represents a growth rate of -8.7 per cent over the previous year's

share of 18 per cent. While in 2010 capital formation increased to 20.8 per cent of GDP, a 31.8 per cent growth, this may have simply been buoyed by increased infrastructure spending ahead of the 2010 elections.

1.4 Overseas employment

The Philippines has long been known for its overseas employment programme, a key interconnection to the global economy, along with manufacturing exports and FDIs. The number of Filipinos overseas is estimated by the Commission on Filipinos Overseas at 8.579 million in 2009. This total stock is divided almost evenly into permanent migrants and circular or contract migrants or overseas Filipino workers (OFWs). As indicated in the LEP, apart from helping ease the pressure of unemployment locally, overseas employment generates foreign exchange remittances that serve as a growth driver in the domestic economy, boosting consumption and spurring economic growth. Over the past ten years, the annual share of remittances to the gross national product (GNP) was substantial, from 7.9 per cent to 10 per cent. As in similar situations in the past, remittances helped keep the Philippine economy afloat in the aftermath of the global crisis.

The effect of the global crisis on overseas employment and foreign exchange remittance inflows is not readily apparent. In fact the number of OFW deployment increased from 1.078 million in 2007 to 1.236 million in 2008 (14.7 per cent), and to 1.429 in 2009 (15.1 per cent) – record highs in terms of actual numbers and percentages. Remittance inflows remained strong, increasing from \$14.450 billion in 2007 to \$16.426 billion in 2008, \$17.348 billion in 2009 and \$18.762 billion in 2010. However, the annual growth rates slowed down, from a high of 19.4 per cent in 2006 to 13.2 per cent in 2007, 13.7 per cent in 2008, 5.6 per cent in 2009 and 8.2 per cent in 2010. Similarly, the share of remittances to GNP also went down from 10 per cent in 2006 to 9.2 per cent in 2007, 8.8 per cent in 2008, 9.4 per cent in 2009 and 8.7 per cent in 2010. The continued increase in remittances, though at a slower rate, largely came from permanent migrants, especially from North America. The higher share of remittances to GNP in 2009 may have been a major factor in the positive but minimal GDP growth of 1.1 per cent that year, enabling the economy to escape the recession while most neighbouring economies contracted.

Relating the domestic employment levels with overseas employment, the counter-intuition is that the increase in overseas deployment in 2008, 2009 and 2010 may have been due to the tightening of the formal local labour market as a result of the global crisis. After the crisis, the additional deployments could have partly absorbed local labour surpluses arising from crisis-related displacements. This, plus the elasticity afforded by a very large informal sector, tends to mask the effects of the global crisis on aggregate employment levels.

1.5 The crisis and its effects: Policy challenges

The Philippine economic downturn that started in 2008 and worsened in 2009 cannot be attributed to the global crisis alone. Unrealized production targets in agriculture resulting from two devastating typhoons, combined with an increase in oil prices and the high costs of power also constrained growth.

The relatively limited exposure of the Philippine economy to global financial markets made it less vulnerable to financial shocks, softening the impact of the crisis. As in the 1997 Asian financial crisis, policy-makers had previously introduced stabilization measures which softened the impact of the 2008 crisis. Conversely, the domestic economy's recovery in 2010 was not due solely to global economic recovery but also to growth in industry and services driven by both internal and external demand. Internal demand was boosted by election spending, higher government spending particularly in infrastructure, and also higher private sector spending in construction and durables.

Remittances from overseas workers also remained high in spite of concerns that contract migrants, especially in the Middle East, as well as permanent migrants in the United States might have been displaced from employment due to the crisis. More favourable climatic conditions also led to growth in the agriculture sector.

The Philippines will continue to rely on exports in sustaining economic growth. However, given the other sources of growth, it may not be appropriate to describe the country as over-reliant on exports. While promoting broad-based and inclusive growth, the country needs to continuously improve its export competitiveness, at the same time ensuring that strategic investments are made to improve productivity in the undeveloped and underdeveloped sectors. Specifically, strategic investments must be made on the supply side, particularly infrastructure (including power, transport and water) and social services, as well as environmental protection and climate change mitigation in order to improve the productive capacity of the economy and subsequently increase levels of income. The broad policy challenge is to get the country out of the boom–bust cycle of brief economic upswings alternating with deep downtrends that has characterized its economic path over the last four decades. On the industrial relations front, the challenges are presented in the succeeding discussions.

2. National-level institutions in industrial relations, collective bargaining, tripartism and social dialogue

2.1 Evolution and institutionalization of the industrial relations system: Policy periods

The industrial relations system in the Philippines is deeply institutionalized. The evolution of labour policy and the industrial relations system has generally followed that of economic and social policy. It may be divided into at least five policy periods: 1900–1935, 1935–1972, 1972–1974, 1974–1986, and 1986 to the present.

From 1900 to 1935, the economic philosophy was *laissez faire*, or free enterprise. Freedom of contract was supreme and there was virtually no labour law. Relations between employers and workers were purely through individual contracts in which the State may not intervene. There was no collective bargaining framework. Disputes arising from employee–employer relations were resolved by the State through compulsory arbitration. A Court of Industrial Relations handled these disputes.

The second period from 1935 to 1972 was ushered in by the 1935 Constitution, historically referred to as the social justice constitution because it included a provision on social justice and, in a complete turnaround from the previous period, adopted labour protection as State policy. After the Second World War (1941–45), economic development spurred by post-war reconstruction saw the country starting to transition to the early phases of industrialization. Accordingly, economic policy shifted to import substitution with the State adopting protectionist policies in favour of selected industries to encourage their growth.

Several milestones were reached during this period. In 1948, the Philippines became a member of the ILO. In 1950, a new Civil Code was enacted which included provisions on labour contracts, including a policy statement that labour contracts were not ordinary contracts but imbued with public interest and should, therefore, be regulated by the State through special laws. In the same year, Congress passed a minimum wage law. In 1953, the Philippines ratified ILO Convention Nos. 87 and 98. Immediately thereafter, Congress enacted the Industrial Peace Act (IPA) as the enabling legislation to implement the Conventions. Under the IPA, the policy of the State in regulating industrial relations and employment relations shifted from compulsory arbitration to collective bargaining. The

IPA was patterned after the American system of labour relations and envisioned a decentralized union and collective bargaining structure, with union organizing and collective bargaining carried out at the enterprise or plant level. Unions were also free to federate.

From this point on, trade unionism and collective bargaining as democratic institutions established a foothold. Many of the organizing and bargaining activities were carried out in urban centres and in the enterprises that benefited from protectionist policies. Unions were active in the manufacturing and services sector, with strong inroads in *arrastre* (cargo handling) and stevedoring services, transport, banking, education and health services.

Consistent with the policy of social justice and labour protection, State institutions on industrial relations expanded. The Department of Labor became the recognized national authority in charge of labour, with powers to regulate, administer and enforce labour laws. Representation from the Government, labour and employer organizations in ILO conferences also raised the level of knowledge and sophistication of Philippine industrial relations institutions on international labour standards and practices. The industrial relations design that evolved was a combination of minimum standards, collective bargaining and compulsory arbitration through the Court of Industrial Relations as the mechanism for resolving disputes.

The third period began in 1972, when then President Ferdinand Marcos declared martial law in the country and installed an authoritarian regime. He curtailed or severely restricted the democratic provisions in the IPA, including the right to organize, to engage in collective bargaining and to go on strike. While the industrial relations system overtly remained voluntarist and decentralized in orientation, restrictions on basic political freedoms and civil liberties effectively shifted the policy focus from collective bargaining as the primary mode of regulating employment relations to State control, repression and, at times, State violence.

The period of overt repression lasted till 1974, when the martial law government shifted the economic policy from import substitution to a foreign investment-led strategy which was oriented toward expansion of manufacturing exports. During this period, the first export processing zones in the Philippines were established. To attract foreign investors and assure them of a stable industrial relations environment, the government promulgated Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines.

Thus began the fourth period of industrial relations development. The Code was the first of its kind among South-East Asian countries, consolidating the major Philippine labour laws existing at that time. Its structure and coverage was patterned on international standards and incorporated the philosophies, relations, work organizations, processes and technologies associated with industrialism. It included provisions to regulate recruitment and placement activities for both local and overseas employment, set up a national programme on human resource development and training, prescribed minimum labour standards for working hours, wages, occupational safety and health and security of tenure, provided for employee compensation and social security protection, and regulated labour relations.

The Code included provisions on trade unionism and collective bargaining. It superseded the IPA but maintained the decentralized system institutionalized by the earlier law. Federations and national unions were allowed to resume their activities. However, restrictions on freedom of association and the right to organize and to bargain collectively were embedded in the Code. Among these were (1) a registration system that subjected unions trying to acquire or maintain legitimacy to the discretion of public authorities; (2) stringent preconditions on the exercise of union and collective bargaining rights, such as a minimum number of employees to form a union, to support a petition for certification election or union recognition and to support a strike or lockout; and (3) certification by a

State authority of collective bargaining agreements (CBAs) before they can be considered effective. The State, through the Secretary of Labor and the Philippine President, also reserved broad discretionary powers – grounded in the police power of the State – to intervene in labour disputes in industries that were deemed “indispensable to national interest”, and to resolve these disputes through compulsory arbitration.¹¹ Such intervention consisted of the suspension of the right to strike or lockout. Through the Code, the authoritarian regime tried to present a benign face to workers with a document assuring them their basic rights. In practice, the Code served as an instrument of State guidance, coordination, containment and social control.

A notable development during this period was the polarization of unions along ideological lines. “Moderate” unions focused on economic gains through the collective bargaining process (“rice and fish” unionism) and peaceful social transformation, most of the time aligning themselves with government goals. “Radical” unions were rooted in Marxist and socialist ideologies and called for revolutionary social and political change. They advanced a working class consciousness that included opposition to, if not eventual overthrow of existing government structures. On the other side, the State actively supported the formation of the national Employers’ Confederation of the Philippines (ECOP), thereby setting the stage for tripartite collaboration at least in its procedural sense. For purposes of representation in tripartite conferences and other tripartite bodies, the ECOP was recognized as the dominant employers’ organization, while the Trade Union Congress of the Philippines (TUCP) and the Federation of Free Workers (FFW), both aligned with moderate unionism, were recognized as the dominant workers’ organizations. This arrangement lasted till 1986.

The Code expanded the scope of authority of DOLE, attaching several specialized agencies to it. Among these were the National Labor Relations Commission (NLRC) which replaced the Court of Industrial Relations and which had exclusive jurisdiction to resolve labour disputes, and the Bureau of Labor Relations which administered trade union laws and provided conciliation and mediation services. The expansion of DOLE’s authority and the creation of these specialized agencies made the State the dominant actor in Philippine industrial relations.

The fifth and present period, which can be referred to as the post-authoritarian or modern period, started in 1986. It was ushered in by the People Power revolution which forced the collapse of the authoritarian regime and restored democracy. At the heart of this period were the 1986 Freedom Constitution and thereafter the 1987 Constitution. Both renewed and expanded the “protection to labour” clause and the social justice orientation of industrial relations. The Constitution provides that labour is a social and economic force; the State shall afford full protection to labour and promote its rights and welfare. In the context of labour protection and social justice, the Constitution speaks of social partnership and workers’ participation in policy and decision-making on matters directly affecting them, of promoting freedom of association, trade unionism and collective bargaining, of trying to promote just and equitable sharing of the fruits of production, and of encouraging shared responsibility in the management or resolution of labour disputes.¹²

The initial phase of the fifth period lasted from 1986 to 1989. The newly established democratic government of President Corazon Aquino exercised both executive and legislative powers and moved swiftly to restore union rights. Through executive issuances, Aquino liberalized or lifted the restrictive provisions of the Labor Code on the rights to organize, to bargain and to strike.¹³ She also restored the right of workers in the public sector to organize.¹⁴ This process of liberalization was also marked by a convergence, though only briefly, of the various federations and trade union centres, with ideological

¹¹ This power is still recognized under article 263(g) of the present Labor Code.

¹² Article II, section 18; article XIII, section 2, 1987 Philippine Constitution.

¹³ Executive Order No. 111 (1986).

¹⁴ Executive Order No. 180 (1986).

lines giving way to broader coalitions for industrial peace and workers' solidarity. Among employers, representation continued to be through the ECOP. On matters pertaining to economic and business policies, the Philippine Chamber of Commerce and Industry (PCCI) and foreign chambers began to participate more actively in tripartite forums. On matters pertaining to human resources management, the Personnel Managers Association of the Philippines (now People Managers Association of the Philippines) also became more active at the national, regional and industry levels.

In 1989, with a re-established and fully functioning Congress, the reforms initiated during the initial phase of the liberalization process were legislated into the Labor Code and became known as the new labour relations law.¹⁵ Complementary to this law was a wage rationalization law which set up regional tripartite wage and productivity boards empowered to determine and fix minimum wages and promote productivity at the regional level.¹⁶ The objective was to have an efficient floor or standard for minimum wages which could then serve as the foundation for more effective wage bargaining. The combined reforms were expected to improve both minimum wage-fixing and collective bargaining outcomes, thereby reinvigorating both trade unionism and collective bargaining. Congress also passed a productivity incentives law to foster gain-sharing within enterprises.¹⁷ This law, at least theoretically, offered an expanded arena of engagement for workers and employers as it covers even enterprises without unions or collective bargaining agreements.

The industrial relations system that has thus emerged is an enhanced version of the 1953-72 model, with more overt statements on the policy of minimum State intervention in the determination of terms and conditions of employment. Under the overarching framework of social justice and labour protection, State intervention consists of setting of minimum standards, organization of the collective bargaining process, prescriptions on acceptable bargaining behaviour, and provision of an administrative machinery to settle labour disputes. The preferred labour relations policy was bipartism through collective bargaining, workers' participation and shared responsibility at the enterprise level, tripartism at the national level, and emphasis on conciliation, mediation, voluntary arbitration and other consensual modes of dispute settlement if the parties failed to resolve their differences by themselves. Tripartism was also formally re-established in 1990 in the constitution of the Tripartite Industrial Peace Council (TIPC),¹⁸ which would later serve as a ready consultative mechanism for discussing labour, social and economic issues.

To be sure, the Philippine Constitution envisions a more participatory and accountable role for the social partners. In theory, the industrial relations system it shaped assigned a non-interventionist role for the State. However, under the rubric of social justice and labour protection, the system in fact further enlarges the role of the State and embodies a typical expectation among workers: that of the State as the dominant player in industrial relations and the ultimate arbiter, intermediary or provider of solutions to industrial relations problems. This is why, in spite of its deep institutionalization and overtly voluntarist and decentralized characteristics, the Philippine industrial relations system remains very much a State-centric system, with the State playing a variety of policy roles ranging from outright regulation to promotion and coordination.¹⁹

¹⁵ Republic Act No. 6715 (1989).

¹⁶ Republic Act No. 6727 (1989).

¹⁷ Republic Act No. 6971 (1990).

¹⁸ Executive Order No. 40 (1990).

¹⁹ Bitonio, *Labor market governance in the Philippines: Issues and institutions* contains a more detailed description of the mix of policy instruments used by the State.

2.2 Trade union and collective bargaining structure and coverage

2.2.1 General characteristics

Drawing on the evolution of the industrial relations system, the main characteristics of trade unionism and collective bargaining in the Philippines are the following:

- 1) By constitutional and statutory mandate, collective bargaining is the preferred institution for regulating employment relations. The State adopts a policy of minimum intervention on trade union and collective bargaining matters. A complex set of laws and rules exist to protect organizational rights, facilitate union formation, registration and recognition, prescribe norms or standards of bargaining behaviour, organize the process of collective bargaining, and provide appropriate mechanisms for dispute settlement.²⁰
- 2) Union membership and collective bargaining is premised on the existence of an employment relationship.
- 3) Every employee, except managerial or confidential employees, is eligible to join a union or be covered by a collective bargaining agreement on the first day of his employment.
- 4) The union structure is pluralist in nature. There is no single or central union which union members are required to support.
- 5) Union and collective bargaining structure is decentralized. Unions are first formed at the enterprise level among employees of the enterprise. Collective bargaining is also at the enterprise level. However, enterprise unions are free to join federations and other larger organizations.
- 6) Membership and participation in trade unions and collective bargaining is voluntary, democratic and autonomous. Workers are free to choose whether to join or not to join an organization; Unions are free to draw up the rules of their organizations; and unions and employers make their own independent decisions with a view of eventually reaching agreement on the terms and conditions of employment;
- 7) Legal status is a precondition to the exercise of trade union and collective bargaining rights. Unions acquire legal personality after registration with DOLE or issuance of a charter certificate by a federation. They acquire the right to bargain once they are certified by DOLE or recognized by the employer as the sole and exclusive bargaining agent of the employees in the enterprise.
- 8) The rights of workers to strike and other concerted actions and the right of employers to lockout are regulated. Conciliation and mediation and, if unavailing, arbitration including compulsory arbitration are the mechanisms to settle disputes.
- 9) Outside of collective bargaining, the Constitution and the Labor Code encourage other forms of workers' participation in policy and decision-making processes directly affecting workers' rights and welfare. Within the enterprise, these include labour-management cooperation (LMC), open communication schemes and variations thereof.

2.2.2 Union and collective bargaining structure

A labour organization is defined as a union or association of employees which exists in whole or in part for the purpose of collective bargaining or for dealing with employers

²⁰ The specific rules on trade unionism and collective bargaining can be found in Labor Code of the Philippines, Book V.

concerning terms and conditions of employment. It becomes a legitimate labour organization when it is registered with DOLE.²¹ A union may also engage in other legitimate activities for the benefit of its members.

Under the Labor Code, unions may be classified into two kinds based on the level or tier in which they operate. *The first is the enterprise or plant-level union* made up of employees of the enterprise. Such a union can have its own certificate of registration issued by DOLE, in which case it is called an *independent union*; or it can be created directly by a federation, in which case it is called a *charter or local*. This type of union operates exclusively within the enterprise.

The *second kind of union* is made up of several enterprise or plant-level unions. In law, this could either be a *federation* (also referred to as a national union), or a *trade union centre*. A federation is a union with at least ten independent unions or locals as members. The members must have collective bargaining agreements or must at least be certified or recognized collective bargaining agents in the enterprises in which they operate. A trade union centre is a combination of two or more federations.

The collective bargaining structure mirrors the trade union structure. The locus of collective bargaining is the enterprise level. This has been the bargaining structure since 1953. Although the present implementing rules of the Labor Code have opened avenues for multi-employer bargaining, this type of bargaining, or for that matter, industry-level bargaining or national bargaining, is not practised in the Philippines.²²

2.2.3 Labor Code and policy changes, 1986–90: Long-term significance

As discussed, substantive industrial relations policy changes affecting industrial relations institutions, including unionism and collective bargaining, took place particularly between 1986 and 1990. Most of the industrial relations reforms introduced during this period were aimed at affirming the rights to trade unionism and collective bargaining as democratic rights. It may be noted, however, that the changes were made (1) within the overall framework of labour protection; (2) using the same policy design in the Labor Code of 1974; and (3) in many ways reverting to the older design under the IPA. In this respect, the strength of the system lies in the affirmation of the traditional values and mechanisms rooted in industrialism and in the accumulation of past experiences. On the other hand, it has little by way of modernizing and looking forward, particularly in terms of responding to a more globalized, liberalized, technology-driven and market-oriented economic system.

In 1992, then President Fidel Ramos instituted policies leading to globalization and economic liberalization. The economic policy was directed at structural adjustments, dismantling of protectionist barriers and adoption of measures to make the economy more open and competitive. Erstwhile protected or subsidized industries were subjected to the discipline of the market. Other industries, such as the garment and apparel sector, matured to relocate to other countries with better infrastructure and lower labour costs. In 1995, the Philippines acceded to the World Trade Organization. While changes in economic policies unfolded, the State and the social partners continued to use the same industrial relations system. DOLE led initiatives to introduce reforms on administrative rule-making that conformed to existing industrial relations policies rather than on substantive policy reforms.

²¹ Article 212, sections [g] and [h], Labor Code of the Philippines, as amended.

²² The closest approximation of an industry-level collective bargaining agreement is the standard employment contract for seafarers. This contract binds all manning agencies and ocean-going ship owners employing Filipino seafarers. The contract was a product of negotiations among seafarers' unions, manning agencies and ship owners, and was approved by the Philippine Overseas Employment Administration whose board of directors consists of, among others, representatives from seafarers' unions, manning agencies and employers. It may be noted also that there are some rules issued by DOLE which are applicable to specific industries which were promulgated through a tripartite consultative process that approximates collective negotiations at the industry level. Rules in the construction and security services industries are examples.

Economic liberalization and restructuring displaced significant segments of the economy, particularly those in the manufacturing sector. Many of the industries affected were strongholds of union organizing and collective bargaining. As a result of company closures, many unions ceased to exist. Unions in enterprises that managed to survive and whose leverage within the enterprise had been weakened looked to the wage boards or to Congress to improve wages and other minimum labour standards, as well as collective bargaining outcomes. The economic restructuring thus moderated, if not neutralized, the intended effects of the new labour relations law and the wage rationalization law.

A profound but largely ignored significance of the developments during this period was that the pattern of industrial relations evolution was broken. In previous periods, industrial relations policy and institutions always adapted to the substance of economic policy – rightly or wrongly. Not so during this period, in spite of the fact that the philosophy of industrialism upon which the industrial relations system was founded had collapsed. This inability to adapt widened the disconnect between industrial relations institutions and actual employment relations practices in the workplace.

2.2.4 Trade union and collective bargaining performance

Notwithstanding the Philippines' long industrial relations history and mature legal institutions, the overall climate for organizing and collective bargaining, especially after economic liberalization and structural adjustments, has not fostered union growth. In the *Global Wage Report 2008/2009* a distinction in terms of union density was drawn between high-coverage (unionization rates of more than 40 per cent) and low-coverage countries (unionization rates below 40 per cent). Historically, the Philippines has always been a low-coverage country. In particular, in the 1990s the number of unions, collective bargaining agreements (CBAs) and workers covered by CBAs started falling, coinciding with the implementation of structural adjustment measures. In 2006, amendments to the labour relations law strengthening the right to self-organization were introduced. These amendments formalized into law some of the rules introduced in the 1997 amendments to the implementing rules, but introduced no substantive changes to the industrial relations system and labour law framework that had been in place since 1989. Nonetheless, evidence showed a continuing decline in union membership and collective bargaining coverage.

Union membership and collective bargaining coverage

As of end of 2010, there were a total of 17,973 registered unions – of which 135 were federations, 16,132 were private sector unions, and 1,706 were public sector unions. Total union membership was 1.714 million or about 8.7 per cent of the 19.62 million wage and salary workers in both the private and public sectors. Breaking down the numbers further, wage and salary workers in the private sector in 2010 totalled 16.6 million and union membership was 1.353 million or 8.1 per cent.

Collective bargaining coverage has also been declining. Of the existing number of private sector unions, 1,415 or 8.7 per cent have collective bargaining agreements (CBAs). These CBAs cover 213,000 workers, which means that only about 1.3 per cent of the total number of union members in the private sector are covered by CBAs. Interestingly, the figures show that in 2010, 540 new CBAs (38 per cent of the total) were registered, covering 87,445 workers (41 per cent of the total). Preliminary figures as of March 2011 indicate an improvement in the total number of registered CBAs at 1,447 and CBA coverage at 225,000. The weakening of private sector unionism and collective bargaining is readily apparent if a base year is used, for instance 2005, when 11.7 per cent of wage and salary workers who were members of unions were covered by CBAs. In the same year, there were 2,793 registered CBAs covering 556,000 workers. Only half these numbers remained in 2010.

Data on actions preparatory to collective bargaining suggest that the overall decline will likely continue. Petitions for certification election filed with the Med-Arbitrator decreased from 517 cases in 2005 to 489 in 2006, and to 312 in 2010. The one bright spot

in unionism is the public sector. From 51 collective negotiation agreements (CNAs) and 15,176 workers covered in 2005, the numbers have gone up to 139 CNAs and 33,457 workers covered as of end of 2010. However, public sector unions are prohibited by statute, regulations and jurisprudence from bargaining on wages and salaries. Thus, collective bargaining as a means to improve their salaries and incomes is not available to them.

In sum, with nominal coverage, the capacity of private sector unions to influence change – be it social, economic or political – is severely restricted. Thus, a direct role for unionism and collective bargaining in promoting inclusive growth would be difficult to establish.

Reasons for decline of unionism and collective bargaining

Apart from the inability of the industrial relations system to adapt to current economic realities, a variety of reasons can be cited for union decline. Unions typically blame strong employer resistance to union organizing, legalistic and cumbersome procedures in union registration and acquisition of certified bargaining status, and collusion between employers and administrative authorities to frustrate union-organizing efforts. A veteran labour leader²³ pointed out that many of his trade union centre's affiliates have been affected by company closures some of which were illegal or involved unfair labour practices. While there is legal protection against closures, slow quasi-judicial processes make legal recourse ineffective. Most of the time, workers end up holding an empty bag, unable to collect even the separation benefits due to them.

In addition, the structural adjustments and dismantling of protectionist barriers in the 1990s forced enterprises to adopt more efficient work processes and to compete in the open market. Many unionized enterprises were affected by sharp reductions in workforce, if not by company closures, a situation from which unions never recovered. Also, higher cross-border mobility of capital driven by economic liberalization and information technology has made labour markets more globalized and elastic. This has stripped unions of the monopoly power they once possessed, diminishing their influence in economic and political decision-making. Further, the class consciousness that fuelled the rise of the union movement at the start of the twentieth century has been replaced by more individualistic impulses of workers.

Another factor in the decline is the necessity for employers to adopt more flexible employment arrangements such as subcontracting and outsourcing. With the increase in short-term employment contracts and the consequent reduction of the ratio of regular employees in particular enterprises, the base of organizing has been considerably narrowed.

Likewise, more cooperative and motivational human resource management approaches used by employers – through labour-management cooperation schemes, employer-employee dialogues and more efficient rewards systems – also tend to make the traditional role of unions redundant.

Alternative forms of organization

One area for further inquiry is the alternative organizing form referred to as “workers’ association,” described by a DOLE official as a promising growth area.²⁴ As of end-2010, there were already 22,303 workers’ associations with total membership of 842,000. These numbers are more than double those of 2005, when there were 10,161 workers associations with 361,000 members.

The concept of workers’ association was first introduced in 1997 through the implementing rules of the Labor Code. The idea was to expand the options for organizing

²³ Interview with Democrito Mendoza, President of the Trade Union Congress of the Philippines (TUCP).

²⁴ Telephone interview with Rebecca Chato, former Director (now Undersecretary) of the Bureau of Labor Relations.

both formal and informal workers. The purpose of a workers' association is to assimilate and give legitimacy to alternative organizations, i.e. those that do not formally satisfy the requirements for obtaining legal status as a union (such as minimum membership requirements or existence of an employee–employer relationship) but which are nevertheless operating as mutual aid associations. It was partly also a response to the emergence of “social movementism”²⁵ that was advocated by some federations as a means to expand the scope and relevance of traditional unionism. By recognizing these associations as legal entities, they could then graduate beyond mutual aid and start asserting organizational rights.

The concept of workers' association has given unions an instrument for organizing workers who are traditionally unorganized or unorganizable, such as those under formal employee–employer relationships but nonetheless in precarious situations (i.e. low-paid workers under short-term employment contracts), or those under the personal employ of another (household workers or family drivers), or those who are self-employed (such as market vendors and ambulant workers). This alternative form of organizing also allows unions to help their members to augment their income not by wage concessions from the employer through collective bargaining, but by livelihood assistance programmes for workers and their family members.²⁶ In this context, a workers' association is a hybrid organizing form combining elements of conventional unionism (as defined in industrial relations terms), rural workers' organizations and the cooperative movement.

The question would be how workers' associations have used their legal status not only in putting in place self-help measures but also in exercising bargaining or negotiating rights that help them gain concessions from employers outside the scope of conventional CBAs, or access to government services. Are they able to negotiate and bargain, and with whom? To be sure, the areas for negotiation would be different from those in conventional CBAs. Associations of vendors, for instance, fall under the concept. One area for negotiation with local government authorities could be security of tenure in the place or routes where they peddle their wares. Still, what will be the long-term effects of these organizations on unions as understood from a pure industrial relations standpoint? Will these complement unions, or is the concern of union substitution legitimate?

3. Philippine industrial relations after the crisis: Impact and policy innovations

3.1 General impact of the crisis

At the macro level, there are similarities in the effects of the 1997 Asian financial crisis and the global economic crisis from 2008 on the Philippines. In both instances, there was a decline in the GDP growth and in manufacturing exports with accompanying job losses. Nevertheless, the Philippines did not suffer as much from the two crises as some of its Asian neighbours because its economy was neither as interconnected with nor as dependent on global financial markets. While the effect of the crisis on the GDP is easy to correlate, there may not be a straightforward cause and effect correlation between the crisis from 2008 on and any actual changes in the industrial relations system after the crisis. As has been mentioned, the basic design of the industrial relations system was established with the democratization of trade union rights and the institutionalization of labour relations and wage reforms between 1986 and 1990. The reduction in the GDP in 2009 did not alter the design or substance of the system. Whether the global crisis will have long-

²⁵ Interview with Antonio Asper, Vice President, Federation of Free Workers. The idea of social movementism envisions workers' solidarity for social change moving on two pillars, one made up of workers under formal employee–employer relationships organized into unions, and the other made up of workers employed under less formal conditions, rural workers and the self-employed.

²⁶ Interview with Cedric Bagtas, Assistant Secretary General, Trade Union Congress of the Philippines.

lasting effects on industrial relations and collective bargaining practices is still an open question. If the 1997 Asian financial crisis had little effect on the workings of industrial relations institutions and practices, the same can be expected of the 2008 crisis. One cannot overemphasize that calls for reforms in the industrial relations system were being made even before the crises, and trends of declining union membership and collective bargaining coverage were already manifest. What can be said is that both crises may have reinforced pre-existing trends, although the extent is difficult to measure in quantitative terms.

The global crisis has affected both product markets (thus threatening enterprises) and labour markets (a threat for workers). These effects have implications for the collective bargaining process, at least in tactical and strategic terms. Employers' collective bargaining platforms will be more focused on survival, performance and the ability of the business to compete and be more flexible and efficient. During collective bargaining, it should not come as a surprise if employers play the "shape up or ship out" or "job or no job" card on workers in order to force concessions. Unions, by contrast, will be increasingly on the defensive. Likely collective bargaining outcomes will include performance-based pay or one-time payments rather than guaranteed pay or salary increases, relaxation of union security provisions, expansion of management prerogatives, and relaxation of union participation in hiring as well as job evaluation and performance appraisal. Unions are expected to take hard-line positions, at least initially, on these issues because any relaxation will strike at core union values such as pay and job security guarantees. A fallback position for unions will be buy-out clauses, which in turn can increase the short-term costs of negotiations and enterprise-level adjustments.

3.2 Policy initiatives and innovations in recent years

The 2011–16 PDP, the 2011 LEP and President Aquino's 22-Point Labor Agenda embody the policy directions, plans and proposed initiatives of the current political leadership. However, no definite timelines for implementation have been set. Further, these documents are more of a consolidation or re-statement of plans and proposals in past documents, rather than innovations or new ideas. They may be ambitious and wide-ranging, but two interrelated concerns should be pointed out. First, the industrial relations institutions have not achieved the goals contained in the plans and proposals under past political administrations, which is why the list has grown longer under the current LEP. Second, such a long list tends to dilute focus and policy coherence, bringing up the question of whether these can be realistically and effectively delivered. The more concrete initiatives are taken at the administrative level. For example, the initiatives of DOLE with the social partners tend to be pursued through executive action rather than legislative action. These policy initiatives are implemented within the existing policies, often embodied in new, renamed or enhanced programmes.

3.2.1 Strengthening tripartism and social dialogue

The Tripartite Industrial Peace Council

Set up in 1990, the Tripartite Industrial Peace Council (TIPC) is national in scope; the most representative workers' and employers' organizations participate in it at the highest levels. It was intended to be a recommendatory mechanism that provides policy advice to the DOLE Secretary and to the President of the Philippines on industrial relations matters and also on social and economic policies. This mechanism also conforms to ILO Convention No. 144 on tripartite consultation. Industry tripartite councils and regional TIPCs were also set up subsequently by the DOLE Secretary under the umbrella of the national TIPC.

From the mid-1990s to date, the TIPC has been a very active mechanism, providing advice and support to initiatives and innovations in policy implementation. It is involved in four types of processes and outputs: (1) review and formulation of administrative rules

implementing the Labor Code; (2) formulation of plans and programmes for the social partners; (3) formulation of recommendations for legislation and ratification of ILO Conventions and Recommendations; and (4) forging of social accords.

The first type of output, the review and eventual amendment of existing rules by the DOLE Secretary through the TIPC, has been useful especially in cases where more substantive policy and legal reforms through legislation fail. For instance, in 1997, at a time when matters of flexibility and perceived restrictions on the right to organize were most contentious, new sets of rules implementing the Labor Code provisions on subcontracting and on labour relations were issued. The process was repeated in 2002. In 2006, the provisions on union organizing, affiliation and recognition embodied in the rules were subsequently formalized into legislation. Various other rules continue to be issued using the same process, including occupational safety and health rules and, more recently, rules on the single-entry approach to dispute settlement (see discussion below). Rules concerning specific industries with peculiar work conditions, such as construction and security services, have also been issued. While administrative rule-making power is constrained by the law being implemented, in some instances the TIPC has actually supported the DOLE Secretary in pushing existing policies and laws to their limits, even filling in on matters not expressly provided for by legislation. For example, new options in union organizing (such as legal recognition of workers' associations as discussed above) and collective bargaining (legal recognition of the possibility of multi-employer bargaining), as well as new rules authorizing the adoption of compressed workweek arrangements and liberalization of night work prohibition, were innovations processed through the TIPC. In all, the TIPC's involvement in administrative rule-making has helped deliver outputs that can be considered proxy to legislation.

The second type of output framework programmes affecting the implementation not only of labour but also social and economic policy, have been coursed through the TIPC. The structural adjustment measures in 1994 went through the TIPC process, as did the adoption of the Philippines' Decent Work Country Program in 2001. Lately, the TIPC was part of a broad multi-sectoral coalition that helped to formulate the LEP.

On the third type of output, consistent with ILO Convention No. 144, all ILO Conventions ratified by the Philippines after 1990 were discussed and endorsed by the TIPC. In the process of reviewing administrative rules, the TIPC has also identified key areas for legislation, all of which have been incorporated in the LEP. However, the TIPC has yet to agree on a set of legislative priorities and proposals common to the social partners.

The fourth type of output is social accords, documents signed by the social partners at the national, regional or industry levels. These embody best-effort commitments on how they will support each other and jointly promote industrial peace, voluntary compliance with labour laws, productivity improvement and productivity gain-sharing, performance-based incentives for workers, bipartite and alternative modes of dispute resolution, and maximum restraint in the use of strikes and lockouts. However, the value or effectiveness of social accords is difficult to assess. Even the social partners themselves are concerned that commitments are mere motherhood statements with no enforcement mechanism. Social accords are branded as proactive measures in that if the commitments are followed, there will be more harmonious labour-management relations and disputes will be minimized. But to the extent that they simply advocate voluntary compliance with labour laws, contractual obligations and good practices, they do not offer innovative measures, because these are already incorporated in existing laws and mechanisms.

Building on experience: Industry councils and codes of conduct

Tripartite consultation and social dialogue among the social partners at levels above the enterprise has through the years become the norm in the Philippines. In policy and practice, the DOLE does not introduce new rules, guidelines or programmes without TIPC consultation or endorsement. With respect to programmes such as the country's Decent

Work Country Programme, the social partners were not only direct participants in its formulation but are also implementing parties of specific projects under the Programme.

President Aquino's administration appears to be building on prior experiences on tripartism and social dialogue. The 22-Point Labor Agenda includes five items of relevance, i.e. for the Government (1) to promote not only the constitutionally protected rights of workers but also their right to participate in the policy-making process; (2) to review and evaluate the DOLE ruling allowing the Philippine Airlines management to outsource its critical operations, resulting in the possible mass lay-off of some 3,000 employees; (3) to work with the private and labour sector to strengthen tripartite cooperation and promote industrial peace; (4) to reform labour arbitration and adjudication systems by streamlining procedures, removing red tape and, at the same time, restoring integrity and fairness in the system, including ensuring that 98 per cent of all pending labour cases are disposed with quality decisions by April 2011; and (5) to align the country's labour policies with international treaties and ILO Conventions.²⁷

To foster tripartite participation in the policy-making process as well as to strengthen tripartite cooperation and promote industrial peace through working more closely with the private sector, DOLE is aggressively promoting industry and area-based tripartite councils. The existing industry councils are the Automotive Assembly Industry Tripartite Council (AAITC); Banking Industry Tripartite Council (BITC); Construction Industry Tripartite Council (CITC); Clothing and Textile Industry Tripartite Council (CTITC); Hotel and Restaurant Tripartite Consultative Body (HRTCB); Sugar Tripartite Council (STC) and; the Maritime Industry Tripartite Council (MITC).

DOLE has been spearheading the adoption of voluntary codes of conduct, much like past social accords, in key industries and areas. Since November 2010, as many as 12 voluntary codes have been adopted.²⁸ These codes prescribe norms of behaviour, including voluntary compliance with existing laws, standards, rules and regulations, and the use of alternative measures to resolve disputes particularly at the plant level. There are also provisions on productivity, mostly couched in general terms, although at least one code equates productivity to a low level of absenteeism.

The codes' original signatories are typically representatives of government organizations, industry and trade unions. However, one code had no union signatories (the code for the BPO industry in Region XI), as no union has been organized in the industry in that area. But consistent with the voluntary nature of the codes, any interested party from among the social partners is free to subsequently accede to the appropriate code.

Since the codes were only recently adopted, there is not enough basis for assessing their effectiveness. It can be recalled that the benefits derived from previous social accords were sketchy at best. It is important for the DOLE and the social partners to consider putting in place a system for monitoring and measuring the impact and effectiveness of the codes.

3.2.2 Dispute settlement

The dispute settlement system: Design and key issues

Both the Constitution²⁹ and the Labor Code³⁰ express a policy preference for shared responsibility, negotiation and other voluntary modes of resolving disputes. This policy is

²⁷ 22-Point Labor Agenda of President Benigno Aquino III.

²⁸ These include voluntary codes in schools and educational institutions, the hotel, restaurant and tourism industry, and the business process outsourcing and information and communications technology (BPO/ICT) industry, all in Region VII; the BPO/ICT industry and banana industry in Region XI; the wood-based industry and mining industry in CARAGA Region; the hotel and restaurant industry in Dagupan City, Region I and; the hospital industry, hotel and restaurant industry, broadcast industry, bus and transport industry, cargo handling industry, and the education sector for academic as well as for non-academic personnel, all in the National Capital Region.

²⁹ Article XIII, section 3, 1987 Constitution of the Philippines.

incorporated in the current labour dispute settlement system which covers both rights and interest disputes. At the heart of the system is a comprehensive set of codified labour laws defining substantive rights and a large State administrative bureaucracy made up of several agencies that are distinct from the courts but whose decisions may be subject to judicial review. These agencies include the National Labor Relations Commission (NLRC) which is the primary compulsory arbitration agency, the National Conciliation and Mediation Board (NCMB), the Office of the DOLE Secretary, the DOLE regional offices, and the Bureau of Labor Relations. A pool of accredited voluntary arbitrators, who are private citizens, is also maintained by the NCMB. These agencies operate through their regional or provincial offices. No fee is required in the filing of labour cases. Access to a dispute settlement agency is determined by the subject matter of the dispute (i.e. whether it involves illegal termination, violation of labour standards or collective bargaining agreements, among others). Probably as a result of codification of labour laws and the country's civil law tradition, most disputes are in the nature of rights rather than interest disputes. Strictly speaking, the only disputes that can be classified as interest disputes in the Philippines are bargaining deadlocks, wage distortion and distribution of productivity incentives under the Productivity Incentives Act.

The biggest dispute settlement agency is the NLRC, a compulsory arbitration mechanism for cases involving employment termination, damages and other claims arising from employee–employer relations, whether these involve individual or collective rights.³¹ It is often described as a quasi-judicial body and hews very closely to judicial procedures. With respect to other rights disputes, the settlement may be through voluntary arbitration and med-arbitration for collective rights, or through the inspectorate system at the DOLE Regional Offices for labour standards cases³² and small money claims.³³ Both the NLRC and DOLE can attempt to settle rights disputes by compromise agreement through conciliation or mediation in lieu of a decision. The NCMB conciliates and mediates collective rights disputes but has no decision-making authority.

The NCMB has authority to conciliate or mediate in interest disputes involving workers covered by collective negotiation agreements (CNAs). Where conciliation or mediation is not successful, the dispute will be resolved through voluntary arbitration. Wage distortion issues for workers not covered by CNAs are resolved through compulsory arbitration at the NLRC. When the NCMB is unsuccessful in settling a bargaining deadlock involving an employer who, as determined by the Secretary of Labor, is engaged in an industry “indispensable to the national interest”, the Secretary may assume jurisdiction over the dispute or turn it over to the NLRC for compulsory arbitration.³⁴

The clear-cut trends in dispute resolution are: one, there are far more individual than collective disputes and; two, in relation to the total number of cases processed through the labour dispute settlement system, most are rights disputes. Individual rights disputes filed with the NLRC continue to be high and the agency is perennially burdened by case backlogs. In any given year, illegal termination cases constitute more than 80 per cent of all individual disputes filed with the NLRC. Labour arbiters handled a total of 50,971 cases in 2004 and 47,519 cases in 2005. Appeals to the NLRC reached historic highs in 2004 at 17,156 cases and in 2005 at 17,984 cases. Labour arbiters handled 44,460 cases in 2009 and 44,693 cases in 2010, with disposal rates at 73.8 per cent and 72.5 per cent, respectively. The total number appeals was 17,363 in 2009 and 15,443 in 2010, with disposal rates of 77 per cent and 81.2 per cent, respectively.

³⁰ Article 211, Labor Code of the Philippines, as amended.

³¹ The jurisdiction of the NLRC is defined in Article 217, Labor Code of the Philippines, as amended.

³² Article 128(b), Labor Code of the Philippines, as amended.

³³ Article 129, Labor Code of the Philippines, as amended; small money claims are those arising from employee–employer relations not exceeding PHP5,000 and not accompanied by a claim for reinstatement.

³⁴ Article 263(g), Labor Code of the Philippines, as amended.

In the other dispute settlement mechanisms dealing individual cases such as labour standards enforcement cases and small money claims, the volume is less but they too have a backlog problem. In collective disputes, the number of med-arbitration cases, notices of strike, requests for preventive mediation and voluntary arbitration cases is shrinking, but delays have also been reported.

The entire labour dispute settlement system has been variously described as adversarial, legalistic and complex, with multiple entry points and multiple layers of appeal. The problem of multiple entry points arises because many agencies are involved in resolving specific types of disputes. This has often resulted in splitting causes of action, delays and inconsistent decisions. The LEP notes that perceived labour governance issues, including concerns on the disposition of labour cases, the NLRC structure, multiple layers in labour adjudication, accessibility to agencies which have possible jurisdiction over labour cases involving workers in unorganized establishments, as well as workers' lack of access to legal assistance are impediments to effective social dialogue and industrial peace. The LEP further notes that the system is criticized for its litigious and adversarial process despite tripartite involvement, giving rise to complaints that the constitutional mandate of speedy disposition of cases is not being realized. In turn, delays in the delivery of labour justice have adverse effects on the free exercise of collective rights among workers, with many denied labour justice because of alleged corruption and inefficiency in labour justice administration. In an earlier working paper,³⁵ it was observed that:

There are two common problems in labor dispute settlement agencies. The first relates to performance. Delayed disposition of cases resulting in backlogs, uneven quality and unpredictability of decisions, and ineffective execution or enforcement of decisions are nagging problems. With respect to execution or enforcement, labor leaders consider as especially problematic the enforcement of decisions and workers' liens against companies that have ceased operations or are under receivership or bankruptcy proceedings.³⁶ They call for the clarification of the rules on workers' liens as it relates to bankruptcy or liquidation proceedings and, if necessary, the amendment of the pertinent provision of the Labor Code (Article 110).

Poor performance begets the second problem, that is, the perception of corruption. This is particularly serious in enforcement (i.e., labor inspections) and arbitration (i.e., NLRC cases). Enforcement and arbitration procedures tend to mimic court procedures. This makes labor proceedings unduly technical and legalistic while giving dispute settlement functionaries wide discretion in the management and resolution of disputes.

The idea of reforming the entire dispute settlement system has been in the tripartite agenda for years. Recent DOLE initiatives are focused on administrative intervention for dispute prevention and avoidance at the firm level³⁷ and on strengthening voluntary arbitration. Toward this end, DOLE Regional Directors may now act as arbitrators who can directly compete with private arbitrators. These initiatives seem to point to a more active role of government in labour-management relations at the workplace.

Other administrative measures that can be explored is how to internalize the principles of modern alternative dispute resolution (ADR) into the existing system. Grievance procedures, conciliation and mediation, and voluntary arbitration are already well-developed when it comes to collective or union-related disputes. But there are untapped areas with respect to cases involving individual and collective claims falling under the jurisdiction of compulsory arbitration at the NLRC.

It was in the context of the above issues that the 22-Point Labor Agenda included the directive to reform labour arbitration and adjudication systems by streamlining procedures and removing red tape, by restoring integrity and fairness in the system, and by ensuring that 98 per cent of all pending labour cases are disposed of with quality decisions by April 2011. Based on latest performance statistics of the various labour dispute settlement agencies, it appears that the 98 per cent target disposal rate has not been met.

³⁵ Bitonio, *Labor Market Governance in the Philippines: Issues and Institutions* (2008).

³⁶ Victoriano Balais, President of the Philippine Transport and General Workers Organization (PTGWO), Zoilo Dela Cruz, President of NACUSIP, Democrito Mendoza, President of TUCP, and Allan Montano, former president of the Federation of Free Workers (FFW), shared this concern in separate interviews.

³⁷ DOLE calls this Administrative Intervention for Dispute Avoidance (AIDA).

Initiatives to simplify the dispute settlement system

DOLE and the social partners have been calling for the simplification of the labour dispute settlement system since the mid-1990s. Amendments to the Labor Code in 2006, however, were focused on increasing the number of divisions in the NLRC to handle appeal cases, and enhancing the security of tenure and pay of labour arbiters. These amendments serve important purposes but they do not address the objective of simplifying the system. However, initiatives have not been wanting, at least at the executive level. In 2006, DOLE initiated a team approach to dispute resolution called Administrative Intervention for Dispute Avoidance (AIDA). Although AIDA attempted to promote preventive measures and partly address the problem of multiple entry points to the dispute settlement system, no real follow through activities were undertaken and AIDA's results were not systematically documented. In 2010, DOLE revived the concept with a new name – the Single Entry Approach (SEnA)³⁸ – which mandates the provision of mandatory 30-day conciliation or mediation services for all labour and employment cases. Under SEnA, an action desk was set up at DOLE regional offices, with support from all the specialized dispute settlement agencies. Instead of going directly to the specialized agency having jurisdiction over the subject matter of the dispute, a complainant is directed first to this action desk. The desk will then evaluate the complaint and, where appropriate, initiate efforts to resolve the case through conciliation and mediation. If the case is resolved through an agreement of the parties, such agreement will then preclude the filing of a subsequent case based on the same cause. If the case is not resolved after the mandatory period, it will be referred to the appropriate dispute settlement agency that has the competence or jurisdiction to decide on it. Procedurally, though not substantively, SEnA seeks to mitigate delays and address the problem of multiple entry points in the dispute settlement system. It is an experiment endorsed by the social partners that includes a monitoring mechanism. After more than one year of implementation, a tripartite review of what SEnA has accomplished may be timely.

Philippine Airlines and Dusit Hotel cases: Policy signals?

The ramifications of two recent labour cases that reached the labour dispute settlement agencies deserve attention. The first case concerns the country's flag carrier, the Philippine Air Lines (PAL)³⁹ and the other a major hotel, Dusit Hotel Nikko Philippines. Although these cases did not result in explicit policy pronouncements, they may be used as precedents in resolving future cases relating to collective bargaining and freedom of association.

The PAL case concerns a bargaining deadlock and unfair labour practices. The main issue was the outsourcing of services normally performed by union members who were regular employees, a long-standing hot-button issue in Philippine industrial relations. At the onset, the case was processed under well-established procedures, first in the NCMB for conciliation and mediation. No settlement was reached, and since PAL operated in an industry indispensable to the national interest, the DOLE Secretary assumed jurisdiction over it for compulsory arbitration.⁴⁰ He then issued a decision recognizing the prerogative of PAL to outsource the services in question. The appropriate legal recourse of the PAL union in questioning the DOLE Secretary's decision should have been the Court of Appeals; however, the PAL union questioned the DOLE Secretary's decision and brought it to the Office of the President of the Philippines. After review, the latter eventually issued a decision affirming the DOLE Secretary's decision that the outsourcing was valid and legitimate.

The intervention of the President in the PAL case has two wide-ranging policy implications. First, it is a clear signal from the Chief Executive that outsourcing or

³⁸ Department Order No. 107-10, Guidelines on the Single Entry Approach Prescribing a Thirty-Day Mandatory Conciliation-Mediation Services for all Labor and Employment Cases (5 October 2010).

³⁹ Resolution of the PAL case is included in the President's 22-Point Labor Agenda.

⁴⁰ The basis for assumption of jurisdiction is article 263 (g), Labor Code of the Philippines, as amended.

subcontracting is not outside the realm of management prerogatives, even if it affects union members and job security. Second, the PAL case is a national interest case. Under current labour law, compulsory arbitration powers over such disputes can be exercised by the DOLE Secretary or the NLRC, and residually by the President. Where the DOLE Secretary has intervened and issued a decision on the case, the President does not have to review the decision. That the decision of the DOLE Secretary was appealed to the President, and that the President decided the case is unprecedented in labour relations procedure. Did the action of the President signal a new policy, such that the decisions of the DOLE Secretary on compulsory arbitration cases involving the national interest could now be appealed to the Office of the President? If the President's action on the PAL case was exceptional and not to be taken as a precedent, in what cases may such an exception be invoked? Does the President's action mean a more active – if not more interventionist role – for the Office of the President on labour disputes involving the national interest? If so, the intervention of the President can be interpreted as an expansion of the role of the Chief Executive in labour dispute resolution, which can have a dampening effect on efforts made by the parties or duly constituted specialized agencies to resolve disputes of a similar nature.

The second case is the labour dispute between Dusit Hotel and its union.⁴¹ Because it concerned freedom of association and the right to strike, the case was also the basis of a complaint filed with the ILO's Committee on Freedom of Association. The main issue in the case was the interpretation of the right to strike, defined as "any temporary stoppage of work by the concerted action of employees as a result of an industrial or labour dispute."⁴² After the hotel and the union reached a deadlock in the negotiations, the male union members continued reporting to work, but did so with their heads shaved. It was argued that not only did the union members violate the hotel's grooming standards, their concerted action of reporting to work with shaved heads was in effect a strike. Since the union did not comply with all the requirements for a legal strike, their act was therefore deemed an illegal strike.

In ruling that the union was liable for holding an illegal strike, the Supreme Court reasoned, among others:

... [T]he Union's violation of the Hotel's Grooming Standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the Hotel and was, therefore, not a protected action. It can be gleaned from the records before us that the Union officers and members deliberately and in apparent concert shaved their heads or cropped their hair.... Clearly, the decision to violate the company rule on grooming was designed and calculated to place the Hotel management on its heels and to force it to agree to the Union's proposals.

In view of the Union's collaborative effort to violate the Hotel's Grooming Standards, it succeeded in forcing the Hotel to choose between allowing its inappropriately hair styled employees to continue working, to the detriment of its reputation, or to refuse them work, even if it had to cease operations in affected departments or service units, which in either way would disrupt the operations of the Hotel. This Court is of the opinion, therefore, that the act of the Union was not merely an expression of their grievance or displeasure but, indeed, a calibrated and calculated act designed to inflict serious damage to the Hotel's finances or its reputation. Thus, we hold that the Union's concerted violation of the Hotel's Grooming Standards which resulted in the temporary cessation and disruption of the Hotel's operations is an unprotected act and should be considered as an illegal strike.

The Supreme Court also added that the union's concerted action, since it amounted to a strike on the ground of a bargaining deadlock, also violated the CBA's "no strike, no lockout provision." Further, to the extent that it tended to embarrass the hotel in relation to its clients and to the public, it violated the union's duty to bargain collectively in good faith.

⁴¹ National Union of Workers in the Hotel and Restaurant and Allied Industries (NUWHRAIN–APL–IUF) *Dusit Hotel Nikko Chapter v. Court of Appeals*, G.R. No. 163942, 11 November 2008; *NUWHRAIN-DUSIT Hotel Nikko Chapter v. Secretary of Labor*, G.R. No. 166295, 11 November 2008.

⁴² Article 212 [o], Labor Code of the Philippines, as amended.

The Supreme Court's decision is now part of law. The Dusit Hotel decision is likely to be cited in future cases involving the application of strike laws. Among the potential implications are: first, it can redefine the concept of a strike to include not only actual withholding of work but also constructive withholding of work; it can reset the boundaries between the right to strike, on the one side, and the right to peaceful concerted activities and freedom of expression, on the other, and; it can restrict the scope of protected concerted action. Second, the strike took place during the period of negotiations, as in fact there was already a collective bargaining deadlock. A "no strike, no lockout" provision is ordinarily interpreted as a restriction on the right of the parties to strike or lockout while a CBA is in force. The restriction does not operate during the period of negotiations (referred to as the freedom period) when the parties may exercise all their rights under the law, including the right to strike or lockout. The Dusit Hotel decision extended the restriction even during negotiations. Third, the violation of reasonable company rules, such as grooming standards, when done in concert, can now be seen as a violation of the duty to bargain in good faith. All these obviously touch on fundamental and substantive policy and legal issues, and may have profound and major implications in shaping industrial relations policy, particularly in the re-allocation and re-balancing of bargaining power between the parties.

3.3 Labour productivity and wages

The 22-point Labour Agenda does not refer to productivity or collective bargaining. At best, the concern on productivity can be deduced from the concern to speed up the resolution of labour disputes, on the premise that a dispute-free workplace is more productive. However, the LEP devotes substantial analysis to issues of productivity and wages. The Philippine Labor Index, though, considers growth in both wages and productivity as integral elements of decent work.

Both enterprise and labour productivity must grow at a reasonably rapid pace for the Philippines to realize the aspiration of decent work and inclusive growth. Among the countries in the Asia-Pacific Economic Cooperation (APEC), the Philippines is at the lower end of the labour productivity scale. Other Asian countries whose industrial relations systems evolved at about the same time as the Philippines (for instance, Japan, the Republic of Korea, Malaysia and Singapore) have high labour productivity, while others whose systems evolved later (such as the People's Republic of China, Indonesia and Thailand) also have higher labour productivity than the Philippines.⁴³ This suggests that a particular industrial relations system per se is value-neutral when it comes to labour productivity.

Productivity-based collective bargaining is more the exception than the rule in the Philippines. Unions generally look at productivity improvement measures as threats to jobs and to a standardized sharing of profits, and normally shun them in their bargaining proposals. By contrast, enterprises are always seeking to maximize efficiency, output and profits. They also normally shun discussions on productivity during collective bargaining but for a different reason – they want to control the decision-making power rather than co-share it with the union.

There are, however, initiatives emanating from the NWPC and DOLE to reform the country's wage system. As discussed earlier, minimum wage-fixing in the Philippines is decentralized and regionalized through the regional tripartite wage and productivity boards which are supervised by the NWPC. It is reported that the various regional boards have issued 245 wage orders nationwide since they were set up in 1989. Wage actions by the regional boards have benefited an estimated 2.9 million minimum wage earners and about 3.7 million more workers paid above the minimum wage. However, it has also been

⁴³ Comparison of Gross Domestic Product, Employment and Labor Productivity among APEC Economies (2006), at http://www.nwpc.dole.gov.ph/pages/statistics/stat_APEC.html.

observed that minimum wage is being set too high⁴⁴ and is moving closer to the average wage. It does not adequately cover the low-paid workers which it intends to protect because of exemptions, exclusions and non-compliance; tends to crowd out or occupy the space for collective bargaining, and; does not encourage productivity-based schemes. Moreover, it has been observed that the minimum daily and monthly wages in the Philippines are higher than in comparable Asian countries such as Thailand, Indonesia and China, and are almost equal to those in Malaysia.⁴⁵

The NWPC is advocating the adoption of a two-tier wage system. It proposes that the decentralized and regionalized policy of wage-fixing as well as the criteria for fixing wages under the Wage Rationalization Act be maintained, but that a formula be devised to incorporate quantitative factors, including poverty threshold, average wages and region-specific adjustments. The first tier of wage-fixing would be to set regional minimum wages targeting vulnerable or low-paid workers. This will be higher than the poverty threshold but lower than average wages (the NWPC estimates that the minimum should be about 70 per cent of average wages). The minimum wages would be mandatory and will not have any exemptions or exclusions. The second tier would be a productivity-based wage system, meant to adjust wages above the minimum wage level by setting guidelines or reference ranges on reasonable percentages of wage increases by industry. The second tier is also intended to encourage productivity and gain-sharing schemes. It is not yet clear how this tier will address the issue under the current system, where minimum wage-fixing appears to be crowding out collective bargaining. In any event, the NWPC is working out the details of the proposal with the tripartite partners, with technical support from the ILO.

3.4 Labor Code amendments

Amendment of the Labor Code as priority had been agreed upon by the social partners as early as 1994 when DOLE initiated a project for the omnibus amendment of the Labor Code. A Joint Congressional Commission on Labor was set up in 1998 to formulate omnibus amendments. However, not much was accomplished except for some amendments to the labour relations provisions on union formation and recognition in 2006. The fact is that the Labor Code has not undergone substantive amendment since the two major amendments in 1989. Thus under the LEP, Labor Code revision still ranks high among the priority areas for action. The basic question is, which sections need to be reformed?

The social partners have taken diametrically opposed positions on specific areas of reforms. Employers perceive some of the provisions of the Labor Code to be rigid, particularly the rules governing regular employment, labour flexibility (contracting and subcontracting) and employment termination. On their part, workers and unions call for the strengthening of regular employment and the right to security of tenure, including tightening or restricting the rules governing subcontracting. They also continue to call for the liberalization of procedures on union formation and recognition, and more protection on the right to organize, collective bargaining and strike.

These contentious areas aside, there is a pending bill seeking to institutionalize and mandate profit-sharing. This is aimed at supplementing the Productivity Incentives Act which, as will be discussed later, has not attained broad acceptance and use. Interestingly, there are no pending bills in key areas which could matter in promoting trade unionism and collective bargaining, such as expanding collective bargaining options or simplifying the collective bargaining process. Likewise, no bill has been filed on simplifying the design and substance of the dispute settlement system. While DOLE is pushing for new approaches to dispute resolution primarily through SEnA, there is no bill emanating from

⁴⁴ This is the general observation from various position papers and public statements of the Employers Confederation of the Philippines (ECOP), the Philippine Chamber of Commerce and Industry (PCCI) and foreign chambers of commerce.

⁴⁵ Comparative Wages in Selected Countries (2012), at http://www.nwpc.dole.gov.ph/pages/statistics/stat_comparative.html.

DOLE on the policy changes needed to bring about substantive and not merely procedural simplification of the system.

While public statements of the social partners point to a general consensus on Labor Code amendments, there appears to be no real push to move specific amendments forward. Employers are generally for the maintenance of the *status quo* when they perceive a proposed amendment as unfavorable to them. Unions, on the other hand, are wary about omnibus amendments because the result could be less legal protection than is provided under the current Code.

Inaction on the part of the tripartite partners translates into no real gain for any party. With the outdated philosophical foundations of the Code and substantive reforms in other fields of social and economic policy, keeping the current industrial relations system as it is would actually set it back in relation to other policy areas. In order to play an active and meaningful role in reforms in terms of more inclusive and equitable growth it is important for the social partners have a definite and common policy agenda on industrial relations reforms, including Labor Code amendments, which they can advance through the political levels of decision-making.

4. Collective bargaining trends at the enterprise level

With union and collective bargaining coverage in decline, it is difficult to claim that collective bargaining will remain influential at the firm level, particularly on the relationship between wages and other working conditions and productivity, or on introduction of new technology and work organizations. Nevertheless, among and within enterprises where collective bargaining is present, what are the trends?

4.1 Trends from the BLES profiles

The Bureau of Labor and Employment Statistics, or BLES, conducts a yearly profile on all CBAs registered during a particular year. The latest is the 2011 BLES profile, a three-part series published in June 2011 (Profile of Collective Bargaining Agreements in 2009), July 2011 (Economic Provisions of Collective Bargaining Agreements in 2009), and August 2011 (Non-Economic Provisions of Collective Bargaining Agreements in 2009).⁴⁶ For the 2011 series, the profile covers all the 274 CBAs registered in 2009. About 80 per cent of these are old or renewed CBAs and the rest are new.

4.1.1 Recurrence of general historical patterns

The 2011 BLES profile confirms general historical patterns. First, rank and file employees have the largest number of workers covered. More than 94 per cent of CBAs cover the rank and file, and the rest cover supervisory employees. Second, the industry sector has the highest number of CBAs, accounting for 59.5 per cent of the sample. The services sector accounted for 33.9 per cent and the agriculture sector 6.5 per cent. Third, within industry, the manufacturing sector remains the focus of collective bargaining, accounting for 52.2 per cent. This is a drop, however, from the manufacturing share of 60 per cent in 2005.⁴⁷ Fourth, federations or second-tier unions still play a significant role in enterprise-level negotiations. About 60 per cent of the CBAs involved unions affiliated with federations or trade union centres; the rest involved unions that are independently

⁴⁶ LABSTAT 15/10, June 2011; 15/13, July 2011; 15/16, August 2011.

⁴⁷ On this, it is possible to pursue or verify a causal link of the drop with respect to enterprises engaged in export manufacturing. This can then shed more light on how the global crisis affected specific subsectors although it did not have significant effects on aggregate numbers.

registered and are not affiliated with any second-tier union. The BLES noted that average number of workers covered by CBAs negotiated by independent unions (194 workers per CBA) is higher than the average number of workers covered in affiliated unions (178). This suggests that smaller unions are more likely to seek the assistance of federations than bigger unions which have the capacity to remain independent even during bargaining negotiations. Fifth, CBA negotiations are patterned after substantive law and labour standards. Most CBA provisions are improvements of statutory benefits.⁴⁸ In exceptional cases, some CBAs also include items not covered by minimum labour standards.

4.1.2 Trends in economic benefits

More specific observations can also be drawn on economic benefits of CBAs⁴⁹ as follows:

- 1) Wage increases are expressed either as a specific amount or as a percentage of the basic pay, and in daily or monthly rate. These are the same arrangements as five years ago.
- 2) Wage remains a core bargaining issue. The preferred approach to wage increases is for fixed amounts. For those paid daily, the minimum amount of increases in daily rates was between PHP3.00 (manufacturing) to PHP37 (electricity, gas and water) while maximum daily rates ranged from PHP35 (real estate, renting and business activities) to PHP461.54 (manufacturing).
- 3) The industry and sectoral mix in the minimum and maximum range of increases in daily rates changed from five years ago. In 2005, the minimum amount of increases in daily rates was between PHP0.50 (manufacturing) and PHP45 (mining and quarrying) per day. The maximum amount ranged from PHP1 (fishing) to PHP70 (transport, storage and communications, and manufacturing) per day. Apparently, the band in the minimum range contracted while the band in the maximum range expanded considerably. More significantly, the lower end of both the minimum and maximum range of increases is much lower than the minimum wage increases set by the regional wage boards.
- 4) Less than 10 per cent of CBAs granted wage increases as a percentage of basic pay. Of those giving percentage increases, the range of increase was from 4 per cent to 100 per cent.
- 5) For those paid monthly, the amount granted varied across industries, with the lowest minimum monthly wage increase at PHP30 (transport, storage and communications) and the highest PHP3,600 (real estate, renting and business activities). In contrast, the lowest maximum monthly wage increase granted was PHP1,000 (hotels and restaurants) and the highest PHP10,000. In 2005, the minimum amount of increase ranged from PHP16 (manufacturing) to PHP1,300 (mining and quarrying; wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods). The maximum amount was between PHP70 (community and personal and social services) and PHP4,200 (transport, storage and communications). Like CBAs granting increases in daily rates, the industry and sectoral mix in the range of minimum and maximum increases also appears to be changing.
- 6) The minimum range of wage concessions unions get in many CBAs are sometimes lower or are not significantly higher than increases in minimum wage rates granted by the regional wage boards.
- 7) Almost 22 per cent of all CBAs registered in 2009 either did not grant a wage increase or include a specific provision on wage increase. More than 53 per cent of the CBAs without a wage increase are in the education sector.

⁴⁸ Non-statutory supplementary benefits include signing bonus, longevity pay, merit increase, perfect attendance bonus, incentive pay and performance bonus.

⁴⁹ LABSTAT 11/18, July 2007; LABSTAT 15/13, July 2011.

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- 8) The absence of a wage increase in the agreement does not necessarily mean that the take-home pay did not improve. In some companies, employers and unions may have arrived at an agreement on a lump sum payment in lieu of a wage increase. The lump sum payment may be a part of the CBA, or it may be embodied in a side agreement outside the CBA. A one-time lump sum payment was provided in 10 CBAs in the 2011 BLES profile, with amounts ranging from PHP 2,500 to PHP83,000. All were recorded from agreements in the manufacturing sector. This approach allows the company some flexibility in containing costs, i.e. since the lump sum payment is not tacked into the basic salary, it avoids the incremental and legacy costs associated with a basic salary increase.
 - 9) In the education sector, the absence of a wage increase provision in a CBA reflects the unique condition of private educational institutions where all wage increases must be taken from tuition fee increases. In turn, tuition fee increases are subject to regulatory approval. Once approved, there is a law mandating the proportion of the increase that will go to wage increases. If the tuition fee increase is not approved, there will be no basis for a CBA wage increase.
 - 10) For welfare benefits, the most common is the grant of monetary benefits in the form of assistance, allowance, reimbursement or reserve fund for medical services. About 76 per cent of the sample CBAs provides this benefit. On the other hand, more than 50 per cent of CBAs provide hospitalization allowance in amounts ranging from PHP400 to PHP400,000. It can be noted that in 2005 also, a similar survey conducted by the BLES showed that the most common welfare benefits were medical services and hospitalization assistance or medical reimbursement. One explanation for the continuing preference is that these benefits are contingent and are given only to an employee when the contingency occurs. This helps contain costs.

A key concern emerging from these trends is the impact of fixing minimum wages on collective bargaining. It is evident that in many cases, the minimum ranges of CBA wage increases are lower than increases in minimum wages. In addition, wage orders typically include a provision of creditability, meaning that any CBA increase given within a six-month period prior to a wage order will be deemed as compliance with the wage order, provided the CBA increase will not result in a wage lower than the new minimum wage prescribed under the wage order. In such situations, minimum wage-fixing tends to have a substitution effect on collective bargaining. This limits positive collective bargaining outcomes. The initiatives on wage reforms discussed earlier have recognized this problem. It will be interesting to see how the proposed shift to a two-tier wage system can address it.

4.1.3 Trends in non-economic benefits

In terms of non-economic provisions, the 2011 BLES profile shows several trends. First, the most common non-economic provisions are leaves (usually improvements of what is provided for by law). Working hours are usually reiterations or slight improvements of those provided by existing laws. Second, more than 94 per cent of 2009-registered CBAs had union security clauses. More than 64 per cent of union security provisions have maintenance of membership as the union security clause. Third, many CBAs include job security clauses of various kinds. The most common is a reiteration of the legal provisions on employment termination, which is included in more than half the CBAs. About 40 per cent included provisions on dismissal or lay-off of workers as a result of sale, consolidation, mergers, dissolution, technological changes, business decline, recession, poor market or cessation of business operations beyond the control of the employer. Fourth, CBA provisions limiting the contracting out of jobs occupied by union members are not uncommon. Such provisions, however, do not impose an absolute prohibition on subcontracting. Jurisprudence has also recognized that subcontracting of functions is allowed by law, provided it is justified by business or economic reasons and is not done in bad faith. And fifth, some CBAs also include non-discriminatory and related clauses in the filling up of vacancies. More than half of the CBAs specified the filling up of vacancies

through promotion of existing employees. About one fourth provided that immediate relatives of retired employees will be given priority in hiring, provided they are qualified for the position. There was an arrangement for the rehire/recall of previously dismissed employees to fill up vacancies that may arise in 14 per cent of CBAs, while about 13.5 per cent included provisions on the assignment or transfer of employees within the establishment.

4.1.4 Trends in working hours

The BLES Collective Bargaining Profiles do not cover the extent to which collective bargaining is used to regulate working hours. A typical CBA would include provisions on working hours through a combination of approaches based on the assumption that the regular working hours and working days as provided by law is eight hours a day and six days a week. Among these approaches are fixing overtime premium pay higher than the 25 per cent premium fixed by the Labor Code; adoption of working time flexibility, including sliding schedules and compressed workweek schemes wherein, with the consent of the union (or of the employees in non-unionized establishments), workers may agree to work longer than eight hours a day without overtime pay, provided their regular work is reduced to less than six days a week, and; scheduling of work hours, including compensatory time-off.

Based on the statutory provision of 48 hours as the total number of regular working hours per week of a full-time employee, it appears that 20.5 per cent of full-time employees in the wage and salary sector worked more than 48 hours a week in 2010. This is lower than the 22.9 per cent registered in 2005. The incidence of full-time employees in the wage and salary sector working more than 48 hours a week was actually lower after the crisis, with the 21.5 per cent in 2007 and 2008, and marginally down to 21.3 per cent in 2009.

4.2 Productivity-based bargaining

4.2.1 A missing piece in Philippine industrial relations

Productivity is generally a missing piece in CBA negotiations. There is no history of productivity-based collective bargaining in the Philippines. Anecdotal evidence suggests that productivity may be discussed as a collateral issue during CBA negotiations, and in fact some CBAs do incorporate general provisions on promoting productivity within the employment relationship. These provisions, however, are mostly hortatory statements of principles or intentions, and would need some other venue of negotiations before these can be implemented. Employers generally prefer to address productivity outside the CBA process and treat it as a purely management concern which they can fully control. The unions, though, are wary about including specific productivity provisions in CBAs because this might result in differentiated levels of actual pay among employees performing the same functions (which is opposed to the core union value of standardized pay for members performing the same functions), pay equity and pay administration problems, and job or workforce reduction. Notably, another BLES survey showed that unionized establishments are less likely than non-unionized establishments to agree to productivity- or performance-based benefits.

That there is little experience in productivity-based bargaining in the Philippines is somewhat ironic, given that the policy framework for productivity gain-sharing is well articulated. As part of the social justice and labour protection provision in the Constitution, it is State policy to promote the principle of shared responsibility by recognizing, among others, the right of labour to its just share in the fruits of production and the right of business enterprises to reasonable returns of investments and to expansion and growth. The

enabling legislation to implement this policy is the Productivity Incentives Act of 1990.⁵⁰ Under the Act, productivity incentive programmes and gain-sharing arrangements are to be encouraged on a voluntary basis. The mechanism through which a productivity incentives programme shall be processed is the labour–management committee, defined as a negotiating body in an enterprise composed of representatives of labour and management, created to establish such a programme and to settle productivity-related disputes. A productivity incentives programme refers to a formal agreement established by the labour–management committee (LMC). It includes a process to promote gainful employment, improve working conditions and increase productivity, including cost savings. Employees are granted salary bonuses proportionate to increases in current productivity over the average for the preceding three years. The agreement is subject to ratification by at least a majority of the employees who have rendered a minimum six months of continuous service.⁵¹

More than 20 years after its passage, the Productivity Incentives Act has gained very little acceptance and has not become a significant tool in industrial relations. As things now stand, productivity is neither an obligatory nor a customary subject of collective bargaining. Most CBAs do not have provisions on productivity. In instances where such provisions are present, these are usually embodied in general perambulatory clauses expressing the common desire of the bargaining parties to promote harmonious labour relations and productivity in the workplace. The survey of CBAs periodically undertaken by the ECOP indicates that productivity programmes are not integrated in CBAs as these are generally initiated by the management. What is found in CBAs are intentions related to the establishment of LMCs.⁵² Examples are:

- 1) The LMC shall agree on a scheme for the improvement of [management–union] relationship for increasing productivity, appropriate sharing of benefits resulting from it, workers' education, reduction of monotony of work, recreational activities and job enrichment.
- 2) The LMC shall meet once a month to assist and encourage all employees to actively participate in the productivity and quality management programmes of the company.
- 3) Both parties agree to cooperate in the establishment of schemes or plans for increasing productivity of the workers, including further human resource and other joint undertakings mutually beneficial to the parties.
- 4) The LMC agrees to meet at least once a month to discuss matters of mutual concern, explore ways and means of increasing productivity and other matters for the purpose of promoting harmonious relations.
- 5) The parties shall create an LMC with union and company representatives for discussing problems regarding terms and conditions of employment and considering improvement of productivity and cordial relations for industrial peace and harmony.

There are, however, exceptions to the rule where the CBA itself includes more specific productivity gain-sharing arrangements that can be readily implemented without referring these to an LMC. For example:

- 1) Incentive bonus of PHP1000 if the electric cooperative meets its targets. The performance standards are based on the formulas prescribed by the National Electrification Administration (NEA), specifically: system loss = (energy input – energy output/energy input) x 100 per cent and collection efficiency = (collection/A/R beginning + revenue for the period – current month sales) x 100.

⁵⁰ Republic Act No. 6971, 1990.

⁵¹ Section 4, R.A., No. 6971.

⁵² Employers Confederation of the Philippines (ECOP). Collective Bargaining Agreements Survey Report 2005, p. 193.

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- 2) Grocery bonus of PHP5,500 for all regular employees if the employer achieves its generation forecast for five months or more from March to December and PHP700 multiplied by the number of months the generation forecast was achieved.
 - 3) Performance bonus of PHP2.50 per day for those with average collection of at least PHP340,000 a month, PHP4.50/day for those with at least PHP375,000, PHP6.50 for those with PHP410,000, PHP8.50 for those with at least PHP480,000 (credit collection company).
 - 4) Production bonus of PHP1 per shipped box for class A and equivalent class B boxes after conversion to class A f.o.b. prevailing price; length of service bonus of PHP25 per year as length of service bonus to each covered employee (agri-based firm in Davao).
 - 5) Production bonus of PHP500 for monthly factory output of cut and bend in excess of 1,500 tonnes; PHP750 for monthly output of cut and bend in excess of 2,000 tonnes.

There are several reasons why productivity does not appear to be a core bargaining issue. First, employers tend to reserve the determination of productivity gain-sharing schemes as an exclusive management prerogative. Agreeing to place it in the CBA will allow the union to participate in the decision-making process, thereby diluting the prerogative. Second, productivity gain-sharing arrangements require transparency and openness vis-à-vis significant amounts of information which employers are unwilling to share with workers. Third, productivity gain-sharing arrangements are essentially cooperative and integrative arrangements. In the Philippines, the attitude of the parties is to focus collective bargaining on conflictual and distributive issues. Once a productivity arrangement is incorporated as an economic provision in a CBA, it assumes a conflictual character. It can then also be invoked as a valid ground for a strike or lockout. The fourth and arguably the most significant reason is the design of the legal framework. The Productivity Incentives Act itself, while not precluding the inclusion of productivity gain-sharing arrangements in CBAs, may have actually discouraged it by specifying an LMC as the proper mechanism through which a productivity incentive programme may be formulated. Conceptually, the formulation of such a programme is a process separate and distinct from collective bargaining. The intended output – the programme itself – is also distinct, as this is to be embodied in a formal, separate agreement, not through a CBA.

The basic intention for the separate treatment is to give non-unionized enterprises an opportunity to evolve their own productivity incentives programmes. However, the unintended effect on unionized enterprises has been to take away a potentially bargainable item from the negotiating table, thereby limiting the scope of collective bargaining. In this regard, it should be noted that in the Philippines unions do not have a sympathetic attitude toward LMCs as they see these as among the schemes management employ to supplant collective bargaining. This may also partly explain why not all CBAs have LMC provisions. Indeed, only 45 per cent of CBAs covered by the ECOP survey have these. Of the 214 CBAs covered by the survey, only 15 (7 per cent) have LMCs that actually discuss productivity and efficiency in their meetings.⁵³ Neither does it help that the law, by setting a baseline on productivity increases based on productivity through time, i.e. the average productivity levels over the last three years, may have unintentionally excluded start-up enterprises from its coverage.

4.2.2 Exceptional cases: Convergence of collective bargaining and productivity

There are two approaches to productivity arrangements in exceptional cases where these are embodied in CBAs. One is a “separate treatment” approach and the other is an “embedded” approach. Under a separate treatment approach, a CBA may be altogether silent on a productivity incentive programme, thus the Productivity Incentives Act will

⁵³ ECOP. Collective Bargaining Agreements Survey Report, 2005, p. 197.

apply should the parties decide to eventually adopt one. A variation of the separate treatment approach is to include in the CBA a general provision embodying the commitment of the parties to work together to improve productivity and agree on gain-sharing arrangements when productivity goals are met. This general provision does not contain the specific conditions under which productivity gains should be shared or how much the sharing would be. Rather, it will typically include a provision that recognizes another venue outside of the collective bargaining process to thresh out the details of the productivity gain-sharing arrangement. In all likelihood, this venue will be the LMC as defined under the Productivity Incentives Act. Thus, with both variations of the separate treatment approach, the collective bargaining process simply affirms the concept, procedure and mechanism provided under the Act.

In the embedded approach, a specific productivity gain-sharing provision is an integral part of the CBA. This provision will also include conditions for eligibility and a specific formula to determine how much a worker shall be entitled to. No other mechanism outside the CBA is needed to implement a productivity gain-sharing arrangement of this nature. There will be no need to set up a separate LMC as the grievance mechanism of the CBA will also serve as the implementing mechanism for the provision. This approach assimilates productivity goals and rewards into the collective bargaining process and obviously strengthens collective bargaining outcomes. How are these approaches embodied in current CBAs? Three CBAs registered by the DOLE Bureau of Labor Relations in 2010 are illustrative.

The first example is that of a sugar milling company which follows the embedded approach, thus:

Production bonus. The company agrees to grant a production bonus to all employees covered by this agreement, equivalent to his/her latest monthly pay, payable after reaching the production as stated below:

- a. 900,000 lkg – half (1/2) month
- b. 1,000,000 lkg – additional one half (1/2) month.⁵⁴

As shown, no separate mechanism is required to implement the provision. Also, the only information needed to implement it would be production records which are easy to obtain. The productivity provision is on top of a guaranteed basic salary increase, which is covered by a different CBA provision. Also part of the CBA is another provision embodying an agreement to use other venues in promoting productivity whereby the “Company and the Union agree to create a Productivity Committee composed of representatives from the Company and the Union to look into ways and means to increase production and improve the efficiency of the employees and workers.”⁵⁵ Also notable is a provision that seeks to encourage the union to undertake, on its own but with subsidy from the employer, programmes on family planning, workers’ education, industrial peace and productivity, and ecological and environmental protection. For this purpose, “the Company agrees to donate a sum of Twenty Thousand Pesos (PHP20,000) every year, payable to the local union, as its counterpart contribution for these programs, conditioned that the Union show proofs of formulating and implementing the programs aforesaid.”⁵⁶

The second example, a card company in the banking industry, has a productivity provision that follows the embedded approach:

Productivity Bonus – BANKARD agrees to grant a Productivity Bonus based on the following three (3) productivity indicators: (a) revenue per head count; (b) operating expense per head count; (c) credit losses per head count. BANKARD will set at its sole discretion the level of each of these indicators on a yearly basis. If one indicator is achieved, 1/3 equivalent of one month’s salary shall be granted as bonus.

⁵⁴ Art. X, Sec 2.Hideco Sugar Milling, Inc. and HISUMCO Union of Supervisory Personnel (2009–14 CBA).

⁵⁵ Art. XVIII, Sec. 1.

⁵⁶ Art. XVI, Sec. 1.

If two indicators are achieved, 2/3 equivalent of one month's salary shall be granted as bonus. If all three indicators are achieved, the equivalent of a full one month bonus shall be granted. The bonus shall be given within the month of February of the following year.⁵⁷

The productivity bonus is on top of a basic salary increase. It is noteworthy that the salary increase provision combines a guaranteed basic salary increase and a merit or performance-based increase, as follows:

BANKARD hereby grants to covered employees salary increases to be distributed as follows:

4th year (2010) – PHP700.00 salary increase effective 1 April 2010 composed of 60% guaranteed (PHP420.00) and 40% merit (PHP280.00)

5th year (2011) – PHP800.00 salary increase effective 1 April 2011 composed of 50% guaranteed (PHP400.00) and 50% merit (PHP400.00).

For the fourth year merit increase, the amount ranges from a high of PHP460 for the top 5 per cent performers to a low of PHP130 for the bottom 10 per cent performers. For the fifth year, the amount ranges from a high of PHP580 for the top 5 per cent performers to a low of PHP250 for the bottom 10 per cent. In sum, the total salary increase (guaranteed plus merit-based) ranges from PHP550 to PHP880 for the fourth year, and PHP650 to PHP980 for the fifth year.⁵⁸

In medical facilities, the productivity provision uses a different approach, thus:

Productivity Schemes – The Hospital and the Union shall ask the Labor-Management Relations Committee to make a study on cooperative schemes to increase productivity, sharing of the benefits resulting therefrom, reduction of monotony at work and job enrichment.⁵⁹

Apart from this productivity provision, the CBA has a provision for a salary increase which combines a guaranteed increase and a performance-based component, thus:

Effective 1 March 2011, all employees ... who are covered by the current CBA shall be granted an increase of 8% in basic pay plus graduated performance-based bonus of 1% from the basic salaries of the employees within the bargaining unit, in accordance with guidelines jointly approved by herein parties. The said guidelines shall form an integral part ... of this Agreement.⁶⁰

5. The role of industrial relations institutions in promoting inclusive growth

5.1 Does industrial relations still matter?

The question is posed whether there are problems in the current labour relations setting that can prevent industrial relations institutions from playing more active roles in promoting more equitable and inclusive growth. Before this can be answered, the more fundamental question is whether in the Philippines they still have any role left to play in promoting this objective.

The Philippines promoted industrial relations institutions and labour relations earlier than most other Asian nations. It now has a mature industrial relations system. If this remains unchanged, as it has been since 1989, there will be very little room for development. Union membership appears to have peaked two decades ago and is now

⁵⁷ Article VII, section 3, BANKARD, Inc. and BANKARD Employees' Union (2010–12 CBA).

⁵⁸ Article V.

⁵⁹ Article XIV, section 4, Medical Doctors, Inc. (Makati Medical Center) and Makati Medical Center Employees Association (2010–12 CBA).

⁶⁰ Article VII, section 1.ii.

steadily declining; the same is true for collective bargaining coverage. Underscoring the situation is the fact that the yield ratio of union membership to CBA coverage (meaning the number of unions which successfully conclude CBAs and whose members eventually get CBA coverage) is very low. On political advocacies of unions, it can be noted that labour laws and social legislations in the Philippines now cover just about every dimension of the employment relationship.

5.2 Challenges faced by the social partners

The LEP advocates a two-fold path for decent work – growth-led and employment-led. The objective of the growth-led path is essentially to increase the capacity of the economy to produce, that is, optimizing the mix and deployment of capital, financial, technological and human resources so that a greater number of people can share the economic benefits. The employment-led path assumes that will generate better quality jobs and higher incomes for more people. This is a daunting policy challenge for employers and workers.

5.2.1 Challenges faced by employers

The first challenge for employers is how to survive and grow amid stiff competition. The Philippines needs to improve on almost every competitiveness dimension identified in internationally used competitiveness indicators, foremost in providing strategic infrastructure and addressing the twin issues of ease and cost of doing business. Employers must continuously advocate concrete, realistic and meaningful reforms in order to reduce power and transport costs, as well as eliminate red tape and rent-seeking behaviour in starting and operating a business. Specific to the industrial relations side would be for employers to take a clear position in addressing the perceived rigidities in the labour market, including labour laws and regulations. If employers are serious in their support to labour law revisions as expressed in the LEP, they should be prepared to negotiate mutually acceptable bargains with workers and with the government. Instead of merely opposing the proposals of workers to enhance protection, employers should forward counter proposals and alternatives on issues which affect them in common.

Second, employers must continuously find ways to maximize enterprise productivity. They have a leading role to play in fostering a culture of continuous improvement in the workplace, focusing on upgrading human resource competencies and more efficient ways of organizing work, managing the work process and using new technology. In order to gain the support of workers for productivity enhancement measures, employers must create a fair system of incentives and rewards for performance, productivity and continuous improvement.

Third, employers must continuously invest in raising the levels of knowledge, competency and skills of workers as key to increased enterprise competitiveness and productivity. An ill-equipped workforce results in low labour productivity and drags down per capita productivity and thus enterprise productivity. On the other side of the coin, higher labour productivity pushes up both the GDP and GDP per capita growth. Training for both labour and enterprise productivity helps promote a cycle of labour productivity and enterprise productivity leading to growth and more jobs, thereby expanding the economic pie and helping speed up poverty reduction.

Two institutionalized training modes critical in improving productivity – which employers have not fully maximized – are dual-tech and enterprise-based training. These modes can smooth the school-to-work transition, customize skills acquisition with enterprise needs, and reduce or prevent job mismatches. These approaches also support a demand-driven human resource development strategy, especially for “hard skills”.⁶¹ However, dual-tech training has very few takers among employers. Enterprise-based

⁶¹ Hard skills are those which require training of six months or more. Soft skills are those which can be acquired within a shorter training period.

training is used less to develop specific skills and more to reduce labour costs in a way that sometimes circumvents or undermines minimum standards. Employers will benefit most from these training modes if these are used in accordance with the purposes for which they were set up.

Employers and training institutions should also work together and be more accountable in ensuring that training results in improving labour and enterprise productivity, rather than simply assuming that training will automatically deliver better productivity outcomes. They should deliberately integrate productivity-enhancing indicators in all aspects of the entire training cycle, from the content of modules, setting assessment and certification standards, monitoring the performance of training providers and of the quality and performance of graduates.

As early as the 2006 National Manpower Summit, leaders and representatives of certain industries cited skills supply constraints, particularly those seen as key employment generators. The summit noted that educational institutions were slow to adjust their curriculum to meet the skills demand. According to industry leaders in the BPO sector, two years after the influx of back-office processing in the country they still lacked workers with bookkeeping and automated systems (ERP, HRIS) skills, noting that schools were instead emphasizing auditing subjects in their curriculum. In the area of software development, labour supply problems were attributed to the fact that instructors were not updated on new theories or technologies and to the lack of school facilities for development of student projects.

Fourth, employers have to efficiently manage human resources deployment levels, i.e. how much and who to employ in particular functions at any given time in the fickle labour and product market conditions. They have to resort to various flexibility measures (including numerical and functional flexibility, as well as pay and working hours flexibility). Search and recruitment costs must be minimized. They also need to ensure that the use of outsourcing, where necessary and efficient, is in conformity to labour laws and regulations.

Despite the general problem of unemployment and underemployment, employers actually have difficulty in filling their human resource needs. This situation has to do with both the quality and availability of supply. According to the latest BLES Integrated Survey (BITS),⁶² employers have reservations concerning the job-readiness of applicants, as seen in the ratings given by employers with respect to hard skills (verbal, writing, analytical, etc.) and soft skills (including confidence, motivation and personal appearance) possessed by many of the job applicants. Only a small portion, or 16.6 – 26.1 per cent of respondent firms rated applicants “very good”; 64.9 – 79.7 per cent rated them “good”. In terms of supply availability, enterprises reported difficulties recruiting for call centre agents, cashiers and ticket agents, accounting and bookkeeping clerks, accountants and auditors, mechanical engineering technicians, systems analysts and designers, electrical engineers, computer programmers, computer engineers and, mechanical engineers. They also encountered difficulties in recruiting and filling professional positions.

This phenomenon can be a manifestation of certain policy gaps. One, the skills produced by the educational and training system do not meet or match demand. Two, skills levels may actually match demand, but the labour market information system is not efficient in matching the vacancies with suitable candidates. Three, the hard-to-fill occupations and professions require skills and competencies that are readily marketable in the global labour market – suggesting that local enterprises may be losing out to foreign competition which offer higher wages.

In view of the apparent failure of the Productivity Incentives Act to realize its stated objectives, employers should face the challenge of introducing customized productivity-

⁶² The latest BITS containing this information surveyed the period from January 2007 to June 2008 and covered 24,457 establishments, with 10,103 of the respondent enterprises reporting job openings.

enhancement and productivity gain-sharing arrangements within their enterprises. There is much anecdotal evidence to suggest that many large enterprises have built a store of experience and good practices in formulating and administering programmes that link productivity and performance with pay. Vital to successfully implementing such programmes are transparency and openness with information, and a participatory labour-management dialogue mechanism that ensures equitable implementation of gain-sharing formulas. Employers may create a network where they can share good practices to promote wider acceptance of productivity gain-sharing arrangements.

5.2.2 Challenges faced by unions

Given the maturity of the industrial relations system, there is little left for unions to advocate at the enterprise level and on the political front. Legislation on specific labour standards and benefits now encompasses all dimensions of the employment relationship. Even strikes based on bargaining deadlocks and unfair labour practices have gone down, with the country almost strike-free in the last three years. It can thus be said that unions have run out of products to sell. The question is: do unions have new products that will make joining a union and being covered by a CBA attractive? Can they re-invent themselves? To what extent should they innovate to revive unionism and make collective bargaining a relevant device for promoting the welfare of members?

Unions must focus their efforts on areas where they are perceived to have suffered major setbacks, mainly declining union membership and CBA coverage, and the concomitant decrease in influence over policy decision-making and economic growth. Unions must find ways to highlight their importance and effectively communicate this to other workers.

Another area is in relation to the remaining unions with CBAs. Many CBAs have terms and conditions of employment that are not much different from those granted to workers in enterprises without CBAs. Unions in general should address the issue of legislation and minimum wage-fixing crowding out traditional items of bargaining.

Still another area relates to legislated or mandated benefits of workers. The incidences of violation of basic labour standards remains significant. Unions should play a major role in promoting compliance.

Further, unions must review their bargaining preferences and the strategic areas in which bargaining can make a difference. In particular, they should develop the capacity to address and make decisions on pay-for-performance and pay-for-productivity issues at the bargaining table, whether at the enterprise level or at the tripartite level (regional, industry or national).

Unions should also develop a new bargaining approach to flexibilization issues. Union and job security clauses may be part of CBAs (in exchange for which unions usually expend much of their political capital) but the effect of these clauses in attaining their purported objectives is minimal. Thus in spite of restrictive CBA clauses, practices such as subcontracting and outsourcing have flourished.

Finally, unions should review their position on Labor Code amendments. Labour laws should always be underpinned by social justice and labour protection. Attention should be paid to how amendments can strengthen the transformational role of industrial relations and its institutions in the context of larger developmental objectives, including creating a policy climate for employment generation and promoting inclusive growth and decent work.

Having hit a low water mark in terms of union membership, CBA coverage and political strength and influence, unions must now confront these issues. Visionary leadership in pushing industrial relations institutions to participate more actively in the transformation toward more inclusive growth is the biggest challenge facing unions today.

6. Findings, conclusions and recommendations

6.1 Findings and conclusions

In the last 40 years, export orientation has been one of the key pillars in the Philippine strategy for economic development and growth. But the matter of being “over-reliant” on an export-led growth model does not appear to be a major concern for economic policy-makers in the country. It is projected that the economy’s export orientation will remain. Under the PDP and the LEP, the policy goal is for the economy to continuously improve its export competitiveness simultaneously with measures to raise the productive capacity of the domestic economy.

Overall productivity growth has been erratic over the last 30 years. While there has been GDP growth, its pace and depth has not been sufficient to promote inclusive and equitable growth. The share of wage and salary employment to total employment has grown only modestly. Workers’ real incomes have only minimally improved relative to purchasing power and wage share to GDP. For there to be real and sustainable growth in workers’ incomes, the economy must make strategic investments in raising the productive capacity of the economy. These investments are outside the direct realm of industrial relations institutions or of collective bargaining. Nevertheless, the IR institutions and social partners should agree on common advocacies and strategies in order to effectively influence economic decisions, including investment priorities and resource allocation choices.

The role of the industrial relations system and its institutions in promoting inclusive and equitable growth is minimal and at best indirect. Even as an early industrial relations developer in Asia, the Philippines has always been a low-coverage country in terms of unionization rates and CBA coverage. There is no strong correlation between the industrial relations system, the role of IR institutions and economic outcomes. The evolution of industrial relations in the Philippines shows that when it comes to economic policy and decision-making, the industrial relations system is rather passive and reactive, aligning itself to political and predetermined economic directions rather than being an initiator of change processes.

There have been instances, particularly when structural adjustments were introduced in the country, when industrial relations institutions were called upon to participate in shaping social and economic policies. Apart from being consulted, the extent to which they influenced economic decisions is difficult to measure. The role of the social partners has been as fiscalizers, moderating the impact of change and influencing allocation decisions to make sure that resources are channelled to sectors which need to be supported, rather than influencing the substance of economic decisions.

Given the present framework of collective bargaining in the Philippines and the very thin collective bargaining coverage, it is unrealistic to rely on this institution as a major instrument in responding to the effects of the recent global crisis, nor in helping to move the economy toward more equitable and inclusive growth. The usefulness of collective bargaining is still at the enterprise level where actual negotiations take place, and not at the macro level. As presently conceptualized, and especially given the limitations and unintended constraints created by other laws, collective bargaining is not a natural venue for negotiating productivity. Thus, it cannot be used effectively as a ready mechanism to promote productivity gain-sharing within enterprises.

6.2 Policy issues, options and recommendations

The findings in this study indicate the weaknesses, limitations and constraints of the current industrial relations system and its institutions. It is obvious that the present industrial relations and collective bargaining framework has reached maturation point, indeed a point of diminishing returns. But instead of dismissing the social partners and industrial relations institutions as a spent force, the current situation provides the social partners an opportunity for renewal and innovation. Some policy and strategic options and recommendations may be considered.

First, the most useful industrial relations mechanism to effect renewal and innovation is not collective bargaining per se, but tripartism and social dialogue. Given the experience in the last 20 years, these mechanisms have the potential to become drivers of change by facilitating robust exchange of ideas, translating these into concrete proposals for reforms, and generating political support for such reforms.

Second, to make room for innovation, the social partners need a change in mindset. The LEP embodies a long list of issues and strategic directions, but is not clear as to specific courses of action. In this sense, it continues the conventional approach typical of the social partners in the last 20 years, i.e. wanting to do too much with too few resources and with too many factors outside their control. The social partners should aim for less in order to have a realistic chance of achieving some. They should identify their priorities and focus on issues specific to industrial relations over which they have control. With respect to macro-level issues, the social partners' role should be more of advocacy. They cannot be expected to wield influence over macro-level decisions if they cannot influence changes within the industrial relations system where they operate.

The social partners should get out of the mindset of preserving the system as it is. The space for procedural changes or rearrangements within the current system is close to being exhausted, if not already exhausted. What is needed is a new design incorporating substantive policy and institutional changes.

Third, in the context of substantively redesigning the current system, the following areas can be the focus of reforms:

- 1) **Labour market governance.** The respective roles of the State and the social partners in industrial relations should be thoroughly re-examined. A less state-centric industrial relations system would be more attuned to market-driven economic realities. The range and mix of policy instruments and institutions being administered by various specialized agencies can be re-allocated to enable employers, workers and their organizations to exercise more control, responsibility and accountability in bringing about industrial relations outcomes.
- 2) **Labour standards and flexibilization.** Minimum labour standards are vital to ensuring labour protection and should therefore be strictly enforced. However, enabling legislation is needed to encourage the development and recognition of industry-specific standards. For this purpose, the function of legislation which is currently focused on regulation (which also requires State enforcement) can be supplemented by standards to promote and facilitate agreement among social partners on alternative work arrangements based on industry-specific conditions without risking citations for violations of labour standards.
- 3) **Wage and productivity.** The wage reform initiatives of the NWPC, particularly the shift from a single-tier to a two-tier wage system, should be pursued first through a pilot or experimental phase before being institutionalized. Care must be taken that the establishment of a second tier does not crowd out enterprise-level collective bargaining, which is already a problem under the current system. A careful re-examination of the design for

productivity-based incentives at the enterprise level is also necessary, but this should not be a process distinct from collective bargaining.

- 4) **Collective bargaining.** New policies and institutions should be put in place to extend organizational and collective bargaining rights to a greater number of workers, including those in the informal sector. In this regard, the scope of negotiations should be expanded and the process of determining representation in the light of the pluralist nature of unionism and other worker organizations should be simplified.
- 5) **Dispute settlement.** The system should be simplified. Procedural reforms that have been introduced at the administrative level over the years are definitely well intentioned, but more procedures can have an opposite effect and can actually make the system even more complicated. The binding nature of arbitration needs to be given primacy, the layers of administrative and judicial appeals and review need to be reduced, and the number of agencies in the system needs integration and streamlining. It is time to consider greater involvement and responsibility of the social partners and other stakeholders in resolving labour disputes. For this purpose, the principles and various approaches of alternative dispute resolution need to be expressly assimilated into the Labor Code. In particular, given the chronically limited resources and reach of DOLE, particularly its inspectorate, it can shift its role in labour administration from direct provision of services to setting standards, accreditation and supervision of a more decentralized dispute settlement system that expands the role of private arbitration, third-party neutrals and even community-based mediation in resolving all types of disputes, but especially small money claims and basic labour standards. Such a decentralized system can be patterned after the “barangay”⁶³ justice system and the small claims court under the judiciary, in which the Philippines has substantial historical experience.
- 6) Certain provisions of the Labor Code which incentivize the filing of cases, thereby perpetuating a highly adversarial and legalistic system, should be reviewed. Among these are: the rules on full back-wages without limitations and deductions and payroll reinstatement pending appeal; the situation where failure of the employer to extend separation pay in the event of closure of the business due to economic reasons is made the subject of litigation – which could be protracted – rather than a simple administrative claim.

6.3 Concluding note

Within the industrial relations system, the social partners and other actors must contend with mature – if not outdated – industrial relations institutions, a Labor Code and a comprehensive web of labour and social legislation geared to support a manufacturing-driven industrial sector, a historically low and now declining trade union density and collective bargaining coverage, and the State as the dominant industrial relations institution. Outside the system, they must also contend with broader development issues, starting with an economy chronically beset with boom–bust cycles characterized by a relatively low level of competitiveness, slow productivity growth, and a large informal sector. While industrial relations institutions can contribute to promoting equitable and inclusive growth, this goal will not be achieved using only the institutions and instruments available within the industrial relations system. Larger reforms across the economy are needed, for which industrial relations actors must continuously devise their advocacy platforms. The first and most pressing challenge is building a consensus for reforms within

⁶³ “Barangay” means village. Under Philippine law, certain civil and criminal claims involving residents of the same village must be resolved first through conciliation and mediation under the barangay justice system. Resort to this system is a pre-condition to access to the courts.

the industrial relations system itself; their long experience in tripartism and social dialogue will serve them well in this regard. But it cannot be business as usual. Rearranging the furniture, so to speak, with procedural and administrative enhancements are helpful but will not be enough. The social partners – along with other actors – need to be more focused, strategic and purposeful in positioning for systemic, substantive and market-compatible reforms that are responsive to current and emerging realities, opportunities and constraints, even if some of them mean trading off features of the industrial relations system that have been traditionally considered as strengths or virtues. Visionary leadership and commitment to reforms from the social partners is needed in order for the industrial relations system to contribute meaningfully to achieving sustainable, equitable and inclusive growth for all.

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