

Committee on the Application of Standards

Date: 22 May 2023

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 22 May 2023.

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

Philippines (ratification: 1953)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information as well as copies of Executive Order No. 23; the organizational structure and tentative identification of focal persons and offices from each of the concerned agencies; and the framework for the evolving draft of the road map.

This report, submitted by the Department of Labor and Employment (DOLE) on behalf of the Government, pertains to the report of the high-level tripartite mission (HLTM) which visited the Philippines from 23 to 26 January 2023 to inquire into allegations and reports arising from the implementation of the Convention.

The HLTM report substantially reiterates the findings and recommendations in previous reports of the ILO's supervisory mechanisms, particularly of the Conference Committee, the Committee on Freedom of Association, and the Committee of Experts, as well as the premises on which the ILO Governing Body and the International Labour Conference (ILC) created the HLTM. The issues raised date back from those inquired into during the first high-level ILO mission to the Philippines in 2009, the direct contacts mission in 2017, and the tripartite high-level virtual meeting in 2021.

The HLTM report expresses concerns on the Government's perceived slow action in carrying out previous ILO recommendations. It appears to put much reliance on the views expressed in a report submitted to the HLTM by a group of unions.

Even prior to the HLTM, the Government has taken several actions in response to the outstanding issues, in some cases acting jointly with the social partners. These actions are anchored on past ILO reports and missions and have been previously reported to the ILO and its supervisory bodies.

For the record, the Government reiterates some of these major actions: (i) creation of national and regional mechanisms to monitor compliance with Conventions Nos. 87 and 98; (ii) issuance of operational guidelines of tripartite monitoring bodies; (iii) designation of focal persons to facilitate reporting and immediate intervention in cases of violations; (iv) adoption of two guidelines governing the conduct of stakeholders in relation to the exercise of workers' rights and concerted activities; (v) legislation of laws strengthening alternative dispute resolution and further institutionalizing tripartism; (vi) inclusion of DOLE as observer in the Inter-Agency Committee created under Administrative Order No. 135 [2012]; and (vii) dialogue with the Supreme Court resulting in the issuance of Administrative Matter No. 21-06-08-SC which stopped the alleged "wholesale" issuance of cross-border search and arrest warrants that led to most of the reported incidents of arrest of trade unionists. After the tripartite high-level virtual exchange in September 2021 and before the HLTM in January 2023, the Government has also: (i) initiated consultations with labour and employer representatives on developing a tripartite time-bound road map and plan of action; (ii) initiated review of the two guidelines governing the conduct of stakeholders relative to the exercise of workers' rights and concerted activities; and (iii) conducted capacity-building activities for Regional Tripartite Monitoring Bodies (RTMBs) and partner agencies.

The Government believes that the HLTM report should have given due attention to these actions for a fuller and more objective context in appreciating the efforts toward implementing the recommendations. This would have allowed the HLTM to appreciate more fully the significance of the views expressed by the Government during the debriefing session on 26 January 2023 that resolving and bringing closure to the issues raised requires commitments not only from the Government but from the social partners as well. Be that as it may, the Government nevertheless welcomes the report. Within the framework of the Philippine Constitution and the laws, and as a sovereign and equal member in the community of nations, it has seriously considered all the recommendations with an eye of using these as constructive guidance in ensuring the country's continuing progress to promote freedom of association and the right to collective bargaining as instruments of social justice.

Actions taken on the HLTM recommendations

The HLTM report has six recommendations:

- (i) greater coordination and consistency across varying arms of government to better guard against serious threats to freedom of association;
- (ii) engagement with the social partners to make genuine progress on the concerns raised by the CEACR and the CAS to prevent future violations of freedom of association, including through the finalization before the June 2023 ILC of a road map on the way forward to address the identified concerns, with agreed timelines;
- (iii) establishment of a single presidentially mandated body to comprehensively identify and address all outstanding cases of alleged labour-related extrajudicial killings and abductions with priority emphasis on criminal investigation and prompt prosecution and accountability;
- (iv) establishment of a specialized, eminent, independent non-judicial body to review cases referred by the presidential commission with a view to receiving and documenting testimony and making proposals for compensation;
- (v) strengthening of the role of NTIPC-MB and incorporation of improvements recommended by the presidential body to identify and ensure rapid and effective protection measures

with regard to imminent and/or emerging threats to the life, security or safety of trade unionists;

- (vi) full implementation of all previous recommendations.

On strengthening coordination and consistency across various arms of the Government and establishment of a presidentially mandated body

The administration and enforcement of laws and investigation and prosecution of cases in the Philippines, as in every modern government structure, is allocated to various executive agencies with specific legal mandates. Efficient and effective inter-agency coordination among these agencies is indispensable for the structure to function. To ensure such coordination in the country's presidential system of government, the executive agencies all fall under the control and supervision of the President of the Republic.

Recognizing the mandates of the relevant agencies involved, the Government has acted swiftly and decisively on the recommendation to strengthen inter-agency coordination and to set up a presidentially driven body that will monitor the status of cases arising from the exercise of freedom of association. On 30 April 2023, the President signed Executive Order No. 23 constituting an Inter-Agency Committee (EO 23-IAC), copy of which is Annex A, to strengthen coordination, develop a road map, monitor actions taken, and expedite the investigation, prosecution and resolution of cases involving violations of freedom of association and the right to organize. Its salient features are:

- EO 23-IAC is chaired by the Executive Secretary with DOLE as Vice-Chairperson, and the following members: Departments of Justice (DOJ), Interior and Local Government (DILG), National Defense (DND), Trade and Industry (DTI), National Security Council (NSC) and the Philippine National Police (PNP). The Civil Service Commission (CSC) and the Commission on Human Rights (CHR) may be invited whenever necessary.
- EO 23-IAC is tasked to: (i) consolidate and evaluate reports of concerned agencies and submit to the President a comprehensive report on its findings and recommendations; (ii) develop a road map consistent with the HLTM recommendations; and (iii) monitor the progress of implementation of action plans and the close coordination among concerned agencies.
- Member agencies are required to submit to EO 23-IAC: (i) an inventory of cases and incidents within their jurisdiction involving trade unionists whose rights to freedom of association, to organize, and to collectively bargain have been allegedly violated; (ii) inventory of community-based programmes affecting trade unions, employers and workers; (iii) inventory of cases related to freedom of association involving agency personnel and state agents arising from the exercise of their official functions; (iv) measures being undertaken or proposals to strengthen agency programmes toward addressing outstanding issues and promoting and protecting freedom of association; and (v) a comprehensive education and capacity-building programme and a communication plan to promote common understanding within and among agencies of the principles, policies, laws, and regulations on freedom of association.

Directly under the Office of the President, all the substantive functions of EO 23- IAC relate to the performance of governmental powers lodged with specific agencies that cannot be shared with or delegated to non-government organizations. Utilizing existing structures, expertise and resources, EO 23-IAC is immediately functional. It convened its first organizational meeting on 22 May 2023 where it was agreed that priority will be given to the

inventory and facilitated action on pending cases, and to the adoption of a road map consistent with the recommendations in the HLTM report. It also agreed on its working structure and arrangements, including the setting up of a secretariat and adoption of reporting forms.

With the establishment of EO 23-IAC, the Government now has a functional mechanism to address all the issues raised and carry out the relevant recommendations in the HLTM report.

On development of the tripartite road map

The main aim of the road map is to create or provide an enabling environment for the free and responsible exercise of freedom of association and right to organize. As presently being drafted, the road map is structured along the four areas of action identified at the 2019 Conference, namely:

- prevention of violence in relation to legitimate activities of workers' and employers' organizations;
- immediate and effective investigation into allegations of violence against members of workers' organizations;
- operationalization of monitoring bodies, including the provision of adequate resources;
- ensuring that all workers are able to form and join unions of their own choosing.

Prior to the HLTM, DOLE has called three tripartite and two bilateral meetings with the labour and employer sectors at the national level. In February 2023, post-HLTM, DOLE primarily engaged the Leaders' Forum toward developing the road map. With support from ILO Manila, DOLE also conducted three area-wide consultations in Luzon, Visayas and Mindanao involving the Regional Tripartite Industrial Peace Councils (RTIPCs) and the RTMBs. On 20 April 2023, the Leaders' Forum agreed to create a technical working group (TWG) that will seek to incorporate further specific inputs from the social partners to the evolving road map.

In the meantime, within the framework of Executive Order No. 23, the Government is proceeding to implement activities that will eventually form part of the road map, particularly the following:

- completion of inventory of cases and agency programmes relating to freedom of association;
- institutionalization of information-sharing arrangements;
- operationalization of the Memorandum of Agreement (MOA) between DOLE, the DTI, and the Philippine Economic Zone Authority (PEZA), signed on 30 April 2023, to pave the way for the establishment of tripartite committees in special economic zones;
- completion of the review of the Joint Guidelines between DOLE, DILG, DND, DOJ, and PNP, and the Joint Guidelines between DOLE, PEZA and PNP on terms of engagement between uniformed personnel and workers engaged in trade union activities, such as strikes;
- adoption of implementing mechanics on the requirement of DOLE clearance before DOJ prosecutors can file cases for acts arising from the exercise of trade union rights;
- setting up of regional counterparts of EO 23-IAC;
- conduct of paralegal and related training and other assistance for trade unionists and workers, especially on the legal remedies, case build-up, and evidence gathering;

- conduct of sharing sessions among civilian and uniformed personnel, at national and regional levels, to promote common understanding on freedom of association;
- incorporation of the road map with the Labor and Employment Plan 2023–2028 which DOLE aims to launch by July 2023.

On other matters arising from the recommendations

On the establishment of a specialized, eminent, independent non-judicial body to review cases, the Government has seriously considered this recommendation. But with the issuance of Executive Order No. 23 and the existence of agencies already mandated to perform the same functions, such a body may simply be a superfluity.

On the establishment of a compensation fund for victims, there is already a board of claims under the DOJ for victims of unjust imprisonment or detention. This was established by Republic Act No. 7309, enacted in 1992. Further, remedies and claims for compensation based on proven human rights violations are already within the purview of the Commission on Human Rights.