



International
Labour
Organization



Addressing impunity: A review of the three monitoring mechanisms

DISCLAIMER

*The views expressed in this study are not necessarily the views of
the European Union but the experts or authors of this study*

Addressing impunity: A review of the three monitoring mechanisms

International Labour Organization
Country Office for the Philippines
April 2019

Copyright © International Labour Organization 2019.
First published (2019)

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

978-92-2-133199-5 (print)
978-92-2-133200-8 (web pdf)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Printed in the Philippines

Foreword

The Review entitled “*Addressing impunity: A review of the three monitoring mechanisms*” came at an opportune moment, during the ILO Centenary to recall the recommendations of the ILO supervisory bodies particularly the 2009 High Level Mission (HLM) on areas of action for the better application of ILO Convention No. 87 (Freedom of Association and Collective Bargaining) in the Philippines. Ten years hence, this Review seeks to address some of the recommendations of the 2017 Direct Contacts Mission (DCM) on continuing concern on violations of workers’ civil liberties and trade union rights.

The Review examined the structures, processes and operational guidelines of the National Tripartite Industrial Peace Council-Monitoring Body (NTIPC-MB) and its regional expression, the Regional Tripartite Monitoring Body (RTMB) of the Department of Labor and Employment (DOLE); the Department of Justice’s (DOJs) Inter-Agency Committee of Administrative Order 35 (AO 35-IAC) and the National Monitoring Mechanism (NMM) of the Commission on Human Rights (CHR) to determine gaps and issues in the slow investigation and resolution of cases. The Review further recommended ways and next steps to address the remaining gaps and issues in terms of policy and practice. A concrete way forward which this Review can facilitate would be a broad dialogue among the tripartite and multisectoral partners tackling the recommendations on how to improve the effectiveness of the monitoring and investigative mechanisms in addressing impunity in the country.



Khalid Hassan
Director
International Labour Organization (ILO)
Country Office for the Philippines

Acknowledgements

This Review entitled “*Addressing impunity: A review of the three monitoring mechanisms*” has been produced with the support and assistance of the European Union Generalized Scheme of Preferences Plus (EU GSP+) through the International Labour Organization (ILO) Project on “Support GSP+ Beneficiary Countries to Effectively Implement International Labour Standards (ILS) and Comply with Reporting Obligations”.

The ILO Country Office for the Philippines (ILO CO-Manila) wishes to thank Atty Rebecca Chato, former DOLE Undersecretary, for being the lead author of this Review, and her research collaborator, Atty Romeo Montefalco, Jr, both previously head the Tripartite Executive Committee and Secretariat of the DOLE monitoring body, at different periods, in their capacity as Director of the Bureau of Labor Relations (BLR).

The ILO CO-Manila also acknowledges the technical inputs of Mr Jajoon Coue, ILO Specialist on Labour Standards and Labour Law from the ILO Regional Office for Asia and the Pacific (ROAP), Ms Diane Respall, Programme Officer of the ILO CO-Manila, and respondents of this research including government officials, law enforcement officials and representations of trade unions and employers’ groups.

Finally, the ILO CO-Manila extends its gratitude to partners from the government, particularly the Department of Labor and Employment (DOLE)-BLR, Department of Justice (DOJ), Commission on Human Rights (CHR), the labour sector and the trade unions; the employers and other relevant stakeholders who provided inputs. Their contributions have highlighted the principle of social dialogue in advancing better application of ILS, particularly freedom of association (FOA) and collective bargaining (CB) principles, and in addressing the issue of impunity.

Table of contents

Foreword.....	iii
Acknowledgements.....	iv
List of tables.....	vii
List of figures.....	vii
Abbreviations.....	viii
Executive summary.....	1
1. Introduction.....	3
1.1 Background and context.....	3
1.1.1 Deep concern on the Philippine application of ILO Convention No. 87 and the “areas for future action” of the ILO 2009 High Level Mission (HLM).....	3
1.1.2 The Philippines “four areas of commitment” on ILO Convention No. 87 (Freedom of Association and Protection of the Rights to Organise).....	5
1.1.3 Labour clause in preferential market access: The Philippine commitment under the EU-GSP+	8
1.1.4 The 2017 ILO Direct Contact Mission report on the Philippines...	9
1.2 Overview of the review: Purpose, coverage, objectives and limitations....	11
2. Review: The three monitoring mechanisms – NTIPC-MB and RTMB, AO 35-IAC and NMM.....	12
2.1 Department of Labor and Employment-led National Tripartite Industrial Peace Council Monitoring Board (NTIPC-MB), its regional structure, the Regional Tripartite Monitoring Body (RTMB) and the Tripartite Validating Team (TVT).....	14
2.1.1 NTIPC Resolution No. 1, Series of 2010: Creation of NTIPC-MB and mandate as the high level monitoring body.....	14
2.1.2 Structure and operational guidelines of NTIPC-MB: Data gathering, case profiling process and progress report.....	15
2.1.3 Inventoried cases and progress: 2001 to 2016.....	17
2.1.4 NTIPC-MB Resolution No. 1, Series of 2010: Classification of cases into possibly labour-related or possibly not; the ILO observation.....	18
2.1.5 DOLE Administrative Order No. 32, Series of 2018.....	19
2.2 Department of Justice-led Administrative Order 35 Inter-Agency Committee (IAC).....	20
2.2.1 Labour cases with allegations of violations of freedom of association (FOA).....	20
2.2.2 Administrative Order 35-IAC mandate.....	21
2.2.3 Administrative Order 35-IAC structures.....	21
2.2.4 Administrative Order 35-IAC special investigation teams.....	22
2.2.5 Suppletory application of joint Department Order No. 003-2012.....	24

2.2.6 Supreme Court Administrative Order No. 25-2007.....	25
2.2.7 ILO observation on the exclusion of cases.....	26
2.3 Commission on Human Rights-led National Monitoring Mechanism (CHR-NMM).....	26
3. Stakeholders' view	26
3.1 NTIPC-MB and RTMB members.....	27
3.2 Capacity-building for national labour organizations, federations and/or unions on FOA: Problem of recall, too many topics to digest in training and multiple-tasking, modules.....	28
3.3 Public sector workers: Unaware of the three monitoring mechanisms.....	30
3.4 ECOP insights on the three mechanisms and the ILO DCM report on FOA.....	31
3.5 Insights, views on improving the monitoring work.....	31
4. Gaps and issues	33
4.1 NTIPC-MB and RTMB.....	35
4.1.1 DOLE Administrative Order No. 32, Series of 2018: Process changed, regionalizing the monitoring of FOA cases.....	35
4.1.2 The RTMB: Composition, staff, turnovers and coordination concerns.....	36
4.2 Philippine National Police reports.....	37
4.3 Administrative Order 35-IAC.....	38
4.4 Armed Forces of the Philippines-Human Rights Office (AFP-HRO).....	38
4.5 Commission on Human Rights (CHR).....	39
5. Conclusion and recommendation	40
Bibliography	48

List of tables

Table 1. EJK/ELK cases filed in courts, resolved and nature of decision (2001-2016).....	18
Table 2. Total alleged EJK/ELK cases processed by NTIPC-MB (2001-2016).....	19
Table 3. Comparative matrix of the monitoring mechanisms.....	34

List of figures

Figure 1. Three monitoring mechanisms process flow and practice.....	13
Figure 2. DOLE flow chart in data gathering, case profiling and reporting of ILO cases (Pre AO 35-IAC).....	16
Figure 3. Details on the process flow (Pre AO 35-IAC).....	17
Figure 4. Current BHRAC complaint processing system.....	45

Abbreviations

AFP	Armed Forces of the Philippines
AGLO	Associated Genuine Labor Organizations
AO	Administrative Order
BHRAC	Barangay Human Rights Action Center
BLR	Bureau of Labor Relations
BMP	Bukluran ng Manggagawang Pilipino
CAFGU	Civilian Armed Forces Geographical Unit
CAS	Committee on the Application of Standards
CB	Collective Bargaining
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CFW	Confederation of Filipino Workers
CHR	Commission on Human Rights
CLC	Church Labour Conference
COURAGE	Confederation for Unity, Recognition and Advancement of Government Employees
CSR	Corporate Social Responsibility
CTUHR	Center for Trade Union and Human Rights
DCM	Direct Contacts Mission
DFA	Department of Foreign Affairs
DIDM	Directorate for Investigation and Detective Management
DILG	Department of Interior and Local Government
DND	Department of National Defense
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DTI	Department of Trade and Industry
ECC	Employers Compensation Commission
ECOP	Employers' Confederation of the Philippines
EDs	Enforced Disappearances
EFTA-PH FTA	European Free Trade Association-Philippines Free Trade Agreement
EJK/ELK	Extra-Judicial/Extra-Legal Killing
EPJUST	European Union-Philippines Justice Support Programme
EU	European Union
EU-GSP+	European Union-Generalized Scheme of Preferences Plus
FFW	Federation of Free Workers
FGDs	Focused-Group Discussions
FOA	Freedom of Association
GSP	Generalized System of Preferences
HDMF	Home Development and Mutual Fund
HLM	High Level Mission
HRAO	Human Rights Affairs Office
IAC	Inter-Agency Committee
IBP	Integrated Bar of the Philippines
ILAB	International Labor Affairs Bureau
ILC	International Labour Conference
ILO	International Labour Organization
ILRF	International Labour Rights Forum
ILS	International Labour Standards

KMU	Kilusang Mayo Uno
LEES	Labor and Employment Education Services
LLCS	Labour Laws Compliance System
LMLC	Lakas Manggagawa Labor Center
MAKABAYAN	Manggagawa para sa Bayan
NBI	National Bureau of Investigation
NCL	National Confederation of Labor
NCMB	National Conciliation and Mediation Board
NICA	National Intelligence Coordinating Agency
NGOs	Non-Government Organizations
NLRC	National Labor Relations Commission
NMM	National Monitoring Mechanism
NTIPC	National Tripartite Industrial Peace Council
NTIPC-MB	National Tripartite Industrial Peace Council-Monitoring Body
NUWHRAIN	National Union of Workers in Hotel Restaurant and Allied Industries
OMB	Office of the Ombudsman
ONSA	Office of the National Security Adviser
OPPA	Office of the President on Political Affairs
OPAPPHRC	Office of the Presidential Adviser on Peace Process, Presidential Human Rights Committee
OSH	Occupational Safety and Health
OWWA	Overseas Workers Welfare Administration
PAHRA	Philippine Alliance of Human Rights Advocates
PALSCON	Philippine Association of Local Service Contractors
PAPA	Presidential Adviser on Political Affairs
PAO	Public Assistance Office
PCVF	Presidential Commission on Values Formation
PDMP	Pambansang Diwa ng Manggagawang Pilipino
PEZA	Philippine Economic Zone Authority
PHRC	Philippine Human Rights Committee
PIA	Philippine Information Agency
PIPSEA	Philippine Independent Public Sector Employees Association
PGEA	Philippine Government Employees Association
PMA	Philippine Metalworkers Alliance
PNP	Philippine National Police
POEA	Philippine Overseas Employment Administration
PRC	Professional Regulation Commission
PSLINK	Public Service Labor Independent Confederation
RTIPC	Regional Tripartite Industrial Peace Council
RTMB	Regional Tripartite Monitoring Body
SEnA	Single Entry Approach
SENTRO	Sentro ng Nagkakaisa at Progresibong Manggagawa (Center of United and Progressive Workers)
SIT	Special Investigation Team
SITEC	Special Investigation Team for Existing or Current Cases
SITG	Special Investigation Task Group
SITN	Special Investigation Team for New Cases
SITU	Special Investigation Team for Unsolved Cases
SOT	Special Oversight Team
SSC	Social Security Commission

STF	Special Task Force
STT	Special Tracker Team
TCP	Technical Cooperation Programme
TEC-MB	Tripartite Executive Committee-Monitoring Body
TESDA	Technical Education and Skills Development Authority
TUCP	Trade Union Congress of the Philippines
TUPAS	Trade Union of the Philippines and Allied Services
TVT	Tripartite Validating Team
ULAP	Union of Local Authorities of the Philippines
US-GSP	US Generalized System of Preferences
USTR	United States Trade Representatives
WPP	Witness Protection Programme
WRW	Workers' Rights Watch

Addressing impunity: A review of the three monitoring mechanisms

Executive Summary

The Review of the three existing investigative and monitoring mechanisms examines the mandates, composition and processes of these mechanisms in addressing cases of violations on workers' civil liberties and trade union rights. The three mechanisms are the National Tripartite Industrial Peace Council-Monitoring Body (NTIPC-MB) and its regional expression, the Regional Tripartite Monitoring Bodies (RTMB) coordinated by the Department of Labor and Employment (DOLE); Administrative Order 35–Inter-Agency Committee (AO 35-IAC) on Extra-Legal Killings (ELKs), Enforced Disappearances (EDs), Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons convened by the Department of Justice (DOJ); and the National Monitoring Mechanism (NMM) led by the Commission on Human Rights (CHR) of the Philippines.

Triggered by the 2017 ILO Direct Contacts Mission Report (DCM) expressing genuine concern on the limited tangible impact in the resolution of cases on labour-related extra-judicial killings (EJKs), the Review not only examined the Operational Guidelines of the mechanisms but also determined the causes of the slow resolution of cases, and provided recommendations to address the gaps and issues in terms of policy, practice and ways forward.

The Review is straightforward in providing the background and context of the establishment of the three mechanisms as part of the Philippine Government response to the ILO supervisory bodies' observations on the effective application of Conventions Nos. 87 (Freedom of Association [FOA]) and 98 (Right to Collective Bargaining [CB]), and the linkage of compliance with International Labour Standards (ILS) to trade matters.

Stakeholders were engaged in the conduct of the Review through interviews, purposive surveys and focused group discussions (FGDs). Stakeholders' views were presented in the Review from key-informant interviews and FGDs comprised of involved government agencies, public and private sector unions, employers groups, and from the security forces.

The Review identified the weaknesses in the whole framework. Among the shortcomings of the mechanisms include lack of institutional and fund support for the NTIPC-MB/RTMB representatives; lack of adequate screening procedures for identifying FOA cases for AO 35-IAC; and non-operationalization of the NMM until the present. Lack of coordination among the government agencies coordinating the mechanisms; low awareness from stakeholders particularly the absence of workers' participation in the investigative processes contribute in the overall weakness of the mechanisms. In sum, the Review recommends the suitability of crafting of a national policy combatting impunity comprising the guarantee to exercise FOA; capacity-building for stakeholders to effectively participate in the investigative/monitoring bodies; and development of training modules to promote awareness on the mechanisms. The Review further recommended to strengthen the NTIPC/RTMB, consider abolishing AO 35 and NMM, and explore other mechanisms such as the Barangay-level Human Rights Dialogue coordinated by the CHR.

The Review can guide future actions through better understanding of the Philippine Government's commitment to implement its ratified core ILO Conventions and commitments in trade agreements, on how to improve the existing mechanisms with accountability and transparency, as well as in engaging stakeholders on better application of ILS particularly FOA and CB principles throughout the country.

1. INTRODUCTION

1.1 Background and context

1.1.1 Deep concern on the Philippine application of ILO Convention No. 87 and the “areas for future action” of the ILO 2009 High Level Mission (HLM)

Violations of trade union rights had been raised against the Philippine Government before the supervisory mechanisms of the International Labour Organization (ILO) with serious allegations of military interventions in workplaces and anti-union violence, harassments and intimidation of workers.

The ILO Committee on the Application of Standards (CAS) in their examination of the Philippine Government application of ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise) during the 96th Session of the International Labour Conference (ILC) in 2007, noted the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on serious allegations of the murder of trade unionists, anti-union violence in the sugar sector, death threats to discourage union formation in an economic zone, impunity relating to the killings of workers and the need to amend the current Labor Code to bring it into conformity with the Convention. The CAS expressed deep concern and requested the Philippine Government to accept an ILO HLM to obtain greater understanding of all aspects of the case and to enable it to note tangible progress in the country's application of Convention No. 87, in law and in practice¹.

The FOA cases under examination were the 31 October 2006 complaint by the Kilusang Mayo Uno (KMU), docketed as ILO Case No. 2528, and four other cases of violations docketed as ILO Case Nos. 1914, 2488, 2252 (subsequently superseded by ILO Case Nos. 2652) and 2546². ILO Case No. 2669 and the 30 September 2009 compilation of cases of the same nature, which was docketed as ILO Case No. 2745, were subsequently added³. ILO Case Nos. 2716, 2815, 3037, 3119, 3159, 3185 and 3236 were cases filed after the 2007 examination of Philippine application of Convention No. 87⁴.

¹Provisional records of the 2007 CAS discussions: <https://www.ilo.org/public/english/standards/realm/ilc/ilc96/pdf/pr-22-part2.pdf>

²ILO Case No. 1914 on Telefunken and ILO Case No. 2488 on University of San Agustin were cases of dismissal of trade unionists arising from strike action and the exercise of the assumption of jurisdiction power of the Secretary of Labor and Employment under Article 263(g) of the Philippine Labor Code. ILO Case No. 2252, which subsequently became ILO Case No. 2652, on Toyota Motor Philippines Corporation was on allegations of union busting, assumption of jurisdiction power of the Secretary of Labor and Employment and military intervention in the workplace. ILO Case No. 2546 on Technical Education and Skills Development Authority (TESDA) alleged acts of discrimination against trade union members in retaliation to anti-corruption proceedings against the head of office, curtailment of freedom of expression, suspension without pay, work transfers and termination of employment and filing of libel lawsuit against a trade union leader.

³ILO Case No. 2669 on International Wiring System involved allegation of military harassments and vilification while ILO Case No. 2745 were the 2009 submission of the KMU detailing additional cases of trade union rights violation.

⁴ILO Case No. 2716 on Dusit Hotel involved a decision of the Philippine Supreme Court that upheld the dismissal of workers who shaved or cropped their hair as unprotected illegal strike action. ILO Case No. 2815 on Cirtek Electronics Corporation alleged anti-union dismissals and discrimination while ILO Case No. 3037 is the intra-organization dispute in the Trade Union Congress of the Philippines (TUCP), which alleged government interference in the right of the members to elect freely their representatives by reversing the results of the elections of its officers. ILO Case No. 3119 is on Southern Mindanao (Davao region) labour rights violations where the KMU alleged failure of the government to address the culture of impunity and continuing violations

The KMU labour rights cases were also filed before the United States Trade Representatives (USTR) in 2006 by the International Labour Rights Forum (ILRF), a US non-government organization (NGO), to determine whether or not the Philippines “has taken or is taking steps to afford its workers internationally recognized rights”⁵, which is an eligibility requirement for preferential access to US markets under the US Generalized System of Preferences (US-GSP). The Philippines’ US-GSP privileges, with a trade value of about US\$ 1 billion a year, was placed under a continuing country practice review until 2014 when it was reauthorized by the President of the United States.

The issue on compliance with the US-GSP labour rights clause and the numerous human rights issues compelled the Philippine Government to accept the ILO HLM through the Philippine DOLE in 2009. The acceptance was conveyed to the ILO CAS during the 98th Session of the ILC in 2009. The HLM took place in September 2009 with the following objectives: (a) to obtain a greater understanding of the application of ILO Convention No. 87, in law and practice, by the Philippines and to provide detailed information on the trade union situation on the ground to the ILO supervisory bodies; (b) to clarify issues and gaps in the application of ILO Convention No. 87 as well as identify areas in which the ILO Office could provide support and technical assistance, with the objective of proposing solutions in line with comments made by the ILO supervisory bodies; and (c) to identify further areas for training and capacity-building to improve the application of ILO Convention No. 87 and the principles of FOA.

At the conclusion of the Mission, the HLM has recommended “areas for future action on ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise)”. Two main categories of issues were identified, these are: (a) those relating to violence, intimidation, threat and harassment of trade unionists and an absence of convictions in relation to those crimes; and (b) obstacles to the effective exercise in practice of trade union rights.

On the first category, the recommended measures included the following:

- Establish a tripartite structure to review pending allegations and permit a joint determination as to the linkages with trade unionism and to expedite and monitor the follow-up action taken;
- Combined human rights, trade union rights and civil liberties programme for the forces;
- Review of the Guidelines for the conduct of security forces; and
- Adopt the proposed charter for the CHR.

of FOA. ILO Case No. 3159 on Japanese pharmaceutical Boie Takeda, the Federation of Free Workers (FFW) alleged anti-union practices, and ILO Case No. 3185 on Southern Mindanao (Davao region) labour rights violations where Sentro ng Nagkakaisa at Progresibong Manggagawa (SENTRO) alleged murders, threats and failure of the government to guarantee a climate conducive to the effective exercise of FOA. ILO Case No. 3236 on Citra Mina Group of Companies, SENTRO alleged anti-union practices, including union busting, mass termination of contracts and violations of the existing collective agreement, carried out by the company and allowed by the authorities.

⁵US-GSP Guidebook, July 2013, requires countries to “x x x have taken or is taking steps to afford internationally recognized worker rights, including: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labour; (d) a minimum age for the employment of children, and a prohibition on the worst forms of child labour; and (e) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health; and to “x x x implement any commitments it makes to eliminate the worst forms of child labour”.

On the second category of issues, the HLM report included the following recommendations:

- Awareness-raising and capacity-building of social partners;
- Training for Philippine Economic Zone Authority (PEZA) and ecozones training in the area of FOA so as to best ensure full respect for the Labor Code and the relevant international principles;
- Strengthening of voluntary conciliation, mediation and arbitration mechanisms;
- Limitations on the use of assumption of jurisdiction powers (263[g]); and
- Training programme to improve use of international labour standards (ILS) for judiciary.

The HLM also inquired on legislative proposal that could have addressed many of the outstanding issues.

On the pending allegations, “HLM urged the Government to review these cases in the light of the Committee on Freedom of Association’s (CFAs) recommendations and to think outside of the box in finding ways to resolve these long-standing cases in a satisfactory manner”.

1.1.2 The Philippines “four areas of commitment” on ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise)

The Philippine Government responded to the HLM with “four areas of commitment” as the framework for policy, action and programme reforms to be pursued to close the gaps in the country’s observance of ILO Convention No. 87, in law and practice. The framework four areas are: (a) to ensure the expeditious investigation, prosecution and resolution of pending cases concerning alleged harassment and assassination of labour leaders and trade union activists; (b) to create a high-level tripartite monitoring committee within the ambit of the National Tripartite Industrial Peace Council (NTIPC), chaired by the Secretary of Labor and Employment, with clear terms of reference as to its mandate and whose membership shall come from federations and national unions regardless of affiliations; (c) to work closely with the ILO, social partners from labour and employers sectors, and other stakeholders, to establish a Technical Cooperation Programme (TCP) that will raise the awareness and strengthen the capacity of all relevant government institutions including the social partners in the promotion and protection of labour rights; and (d) to work on the proposed legislative reforms to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights.

In respect to the commitment to set-up a high-level tripartite inter-agency monitoring body for complaints on violations of trade union rights, NTIPC was constituted as the High Level Tripartite Monitoring Body on the application of ILS, in particular ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise on 20 January 2010 through NTIPC Resolution No. 1, Series of 2010. The creation of NTIPC-Monitoring Body respond to the HLM recommendation for a high-level monitoring body with “...*a tripartite structure to review each of the pending allegations and permit a joint determination as to the linkages with trade unionism and to expedite and monitor the follow-up action taken*”.

The NTIPC, functioning either as a policy advisory and consultative body or as a monitoring body, is composed of 20 representatives each from the employers, workers and government⁶. It

⁶At its constitution as the monitoring body in 2010, the employers are represented by the Employers’ Confederation of the Philippines (ECOP) along with the People Management Association of the Philippines and the Philippine Association of Local Service Contractors (PALSCON). The labour sector representatives are from a mix of registered and most representative labour organizations. Eight are federation-affiliates of the Trade Union Congress of the Philippines (TUCP); one from the National Union of Bank Employees; one from the Alliance of

has a Tripartite Executive Committee (TEC) where all existing labour organizations in the Philippines, except the KMU, are represented⁷ while employers are represented by the Employers' Confederation of the Philippines (ECOP). The NTIPC and its TEC meet every quarter of the year, or as often as necessary.

A regional monitoring structure for the NTIPC-Monitoring Body was subsequently created at the regional TIPC. DOLE issued AO No. 263, Series of 2011, mandating the creation of a sub-committee for monitoring of observance with ILS, which is the Regional Tripartite Monitoring Body (RTMB), to ensure that complaints or reports of possible labour rights violation are immediately acted upon.

Subsequently, on 14 March 2013, Republic Act No. 10395 institutionalized the DOLE-led tripartite monitoring body on compliance with the ILS.

The DOLE-led monitoring body is specific to labour rights and related cases. There were other existing investigative or monitoring bodies. The Executive Branch of the Philippine Government, especially since early 2000, has created task forces, human rights offices and the Melo Commission⁸ to look into the rising number of ELKs and EDs that prompted the United Nations to send Special Rapporteur Philip Alston to the country in 2007. Under the Office of the President, the Presidential Human Rights Committee (PHRC)⁹ was reconstituted and strengthened. The Task Force Against Political Violence, also known as Task Force 211¹⁰, was

Independent Hotel and Restaurant Workers' Union; two from the National Union of Workers in Hotel Restaurant and Allied Industries of the Alliance of Progressive Labor (NUWRAIN); one from the Alliance of Free Workers; two from the Federation of Free Workers (FFW); one from the National Confederation of Labor (NCL); one from the Pambansang Diwa ng Manggagawang Pilipino (PDMP); one from Trade Unions of the Philippines and Allied Services (TUPAS); one from the National Federation of Labor Unions (NLFU); and one from the Lakas Manggagawa Labor Center (LMLC).

⁷Members of the TEC-MB included representatives from the TIPC organizations and the Bukluran ng Manggagawang Pilipino (BMP), Manggagawa para sa Bayan (MAKABAYAN), Philippine Metalworkers Alliance (PMA), Associated Genuine Labor Organizations (AGLO), Pambansang Diwa ng Manggagawang Pilipino (PDMP), Public Sector Link (PSLINK), IndustriAll and the Church Labour Conference (CLC).

⁸Created pursuant to Administrative Order No. 157, issued on 24 August 2006, the independent commission to probe the killings of media workers and activists was led by former Supreme Court Associate Justice Jose Melo. The Melo Commission, as the Commission was known, rendered a report which concluded that most of the killings were instigated by the Armed Forces of the Philippines, but found no proof linking the murder of activists to a "national policy" as claimed by the left-wing groups. On the other hand, the report "linked state security forces to the murder of militants and recommended that military officials, notably retired Major General Jovito Palparan, be held liable under the principle of command responsibility for the killings in their areas of assignment. *Political killings in the Philippines (2001-10) (section Melo Commission)*. Retrieved June 25, 2018, from <https://en.m.wikipedia.org/wiki/>.

⁹The Presidential Human Rights Committee (PHRC), formerly "Human Rights Committee" was created by virtue of Administrative Order No. 101 on 13 December 1988. On 14 October 1992, through Administrative Order No. 15, its membership was expanded, and on 27 January 2002, it was renamed as PHRC by virtue of Administrative Order No. 29. On 08 December 2006, through Administrative Order No. 163, the PHRC's chairmanship was elevated to Executive Secretary level and its Secretariat was directly attached to the Office of the President headed by an Executive Director.

¹⁰Task Force 211 is composed of the DOJ, Department of National Defense (DND), Department of Interior and Local Government (DILG), Office of the National Security Adviser (ONSA), Office of the Political Adviser, Office of the Presidential Adviser on Peace Process (OPAPP), Presidential Human Rights Committee (PHRC) and the Philippine Information Agency (PIA). The AFP, PNP, National Intelligence Coordinating Agency (NICA) and the National Bureau of Investigation (NBI) were directed to actively support and participate. TF 211 coordinates and works with the Judiciary, Presidential Commission on Values Formation (PCVF), the Commission on Human Rights (CHR), the Union of Local Authorities of the Philippines (ULAP) and non-government organizations (NGOs).

created under the DOJ. Task Force 211, pursuant to AO 211, Series of 2007, is an inter-agency coalition mandated to harness and mobilize government agencies, political groups, the religious, the civil society and sectoral organization, and the public for the prevention, investigation, prosecution and punishment of *political violence*. The Philippine National Police (PNP), on the other hand, created the Task Force Usig in 2006¹¹ and on 29 June 2007, it activated the PNP Human Rights Affairs Office (PNP-HRAO) by virtue of General Order No. DPL-07-04. The PNP-HRAO was to serve as a management facility that will oversee the implementation of the PNP guidelines and policies on human rights laws. The Armed Forces of the Philippines (AFP) followed suit with its own Human Rights Office or the AFP-HRO in 2010.

The DOLE, with the newly constituted NTIPC-MB, worked from 2010 to 2012, along with the DOJ's Task Force 211 and Special Task Force (STF)¹², PNP's Task Force Usig, AFP-HRO, the Office of the Court Administrator of the Supreme Court and CHR under the PHRC as the coordinating and convening office in ensuring the commitment of the Philippine Government. The evaluation and inventory of cases with identified future actions to expedite the investigation, prosecution and conviction of the perpetrators was accomplished.

Task Force 211 was eventually replaced. During the public hearing on the continuing review of the country's status as beneficiary of the GSP in Washington D.C. on 24 January 2012, the Philippine DOJ offered to the USTR the creation of a "superbody" in the light of apparent lack of substantial progress in the prosecution of EL/EJJs.

Administrative Order 35, creating the Inter-Agency Committee on ELKs, EDs, Torture and other Grave Violations of the Right to Life, Liberty and Security of Persons was issued on 22 November 2012 and its Operational Guidelines entered into force in April 2013. The DOJ-initiated AO 35-IAC was envisaged as the Executive Department's main response to the clamour to undertake a holistic approach in addressing human rights violations. It is tasked to investigate old and new cases of EJJs, EDs, torture and other grave human rights violations.

Parallel to the initiatives at the DOJ, the PHRC has formed the NMM for EJK/ELK, ED and torture cases as a component of the European Union-Philippines Justice Support Programme (EPJUST). Under the EPJUST Financing Agreement, "the NMM shall bring together state agencies and civil society organizations in a credible and inclusive forum for monitoring the nation's progress in resolving ELK and ED". The CHR, DOJ (particularly the Special Task Force on ELK and ED), PNP (Directorate for Investigation and Detective Management [DIDM] and HRAO) and AFP-HRO, are part of the NMM, together with the PNP-Task Force Usig,

The Task Forces mandate was to harness and mobilize government agencies, political groups, the religious, civil society and sectoral organizations and the public for the prevention, investigation, prosecution and punishment of political violence, the care and protection of people and communities victimized and threatened with violence, and the promotion of a culture opposed to violence and for the advancement of reconciliation and peace.

¹¹Based on PNP Letter of Instruction, Task Force Usig, the Task Force is designed to strengthen the coordination of concerned PNP offices/units in the investigation, prosecution and monitoring of cases relating to the series of *killings against militant party list members/leftist activists and media practitioners*. The Task Force spearheads the investigative and prosecutorial efforts of the PNP to facilitate the early resolution, successful prosecution and eventual conviction of the perpetrator/s.

¹²Pursuant to the directive of the President during the State of the Nation Address in July 2010 to prioritize or expedite the prosecution of cases of alleged extra-judicial killings (EJJs) in the country, the Department of Justice, through Department Order No. 848 issued on 10 December 2010, formed a Special Task Force to address Extra-Legal Killings (ELKs) and Enforced Disappearances (EDs) tasked, among others, to review all reported and unresolved cases. The STF complemented Task Force 211.

Department of National Defense (DND), Department of Interior and Local Government (DILG), National Bureau of Investigation (NBI), Office of the President on Political Affairs (OPPA), DOLE and the Professional Regulation Commission (PRC).

1.1.3 Labour clause in preferential market access: The Philippine commitment under the EU-GSP+

Preferential access of Philippine products to the US markets under the US-GSP is affected by compliance with the labour rights clause, which is whether the country “has taken or is taking steps to afford its workers internationally recognized rights”¹³. Similarly, preferential access to the European Union (EU) markets under the EU Generalized Scheme of Preferences Plus (EU-GSP+),¹⁴ which provides duty-free entry for 6,274 products from the Philippines, requires the effective implementation of 27 ratified international Conventions in the fields of core human and labour rights, the environment and good governance. Also, even the free trade agreement between the European Free Trade Association¹⁵ and the Philippines (EFTA-PH FTA) referred to observance of the obligations from membership in the ILO and ILO Declaration on Fundamental Principles and Rights at Work¹⁶.

¹³Ibid, 4.

¹⁴The Philippines has been a beneficiary of the regular EU-GSP for a long time and became a beneficiary of the GSP+ on 25 December 2014, where there is special incentive arrangement in the form of zero duties for 6,274 products but with required observance of the following criteria:

- (a) Must have ratified and effectively implemented 27 specified international Conventions in the fields of core human and labour rights, the environment and good governance;
- (b) Must give an undertaking to maintain the ratification of the Conventions and their implementing legislation and measures, and accept regular monitoring and review of the implementation record in accordance with the implementation provisions of the relevant Conventions; and
- (c) Must be considered 'vulnerable'. A vulnerable country means a country:
 - not classified by the World Bank as a high income country during three consecutive years;
 - exports to the EU are heavily concentrated in a few products (the five largest sections of GSP-covered imports into the EU represent more than 75 per cent in value of their total GSP covered exports); and
 - with a low level of exports to the EU (it represents less than 1 per cent in value of total GSP covered imports).

¹⁵The European Free Trade Association member States are: Iceland, Liechtenstein, Norway and Switzerland.

¹⁶Chapter 11, Article 11.5 on international labour standards and Agreements of EFTA-PH FTA provides:

- “1. The Parties recall the obligations deriving from membership of the ILO and the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* adopted by the ILC at its 86th Session in 1998, to respect, promote and realize the principles concerning the fundamental rights, namely:
 - (a) FOA and the effective recognition of the right to collective bargaining;
 - (b) elimination of all forms of forced and compulsory labour;
 - (c) effective abolition of child labour; and
 - (d) elimination of discrimination in respect of employment and occupation.
- “2. The Parties reaffirm their commitment, under the *Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006*, to recognize full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation and to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all.
- “3. The Parties recall the obligations deriving from membership of the ILO to effectively implement the ILO Conventions which they have ratified and to make continued and sustained efforts towards ratifying the core ILO Conventions and other Conventions classified as “up-to-date” by ILO.
- “4. The Parties reaffirm that, as set out in the *ILO Declaration on Social Justice for a Fair Globalization* adopted by the ILC at its 97th Session in 2008, the violation of fundamental principles and rights at work shall not be invoked or otherwise used as a legitimate comparative advantage”.

Core labour rights are ILO core conventions, namely: Convention No. 87 on Freedom of Association and Protection of the Right to Organise; Convention No. 98 on the Right to Organise and Collective Bargaining; Convention No. 29 on Forced Labour; Convention No. 100 on Equal Remuneration; Convention No. 105 on Abolition of Forced Labour; Convention No. 111 on Discrimination in Respect of Employment and Occupation; Convention No. 138 on Minimum Age; and Convention No. 182 on Worst Forms of Child Labour. All of the eight core ILO Conventions were ratified by the Philippine Government.

For the 2016 to 2017 reporting period, the EU-GSP monitoring and review conclusion¹⁷ has noted the following in respect to the Philippines observance of the ILO core Conventions:

- a) Further efforts are needed regarding the enforcement and implementation capacities to strengthen enforcement.
- b) Various laws have been initiated and prioritized in Congress which aim to strengthen the implementation of the labour conventions and to address the ILO recommendations but their adoption is still pending.
- c) One of the key issues to be addressed as a priority is continued and dedicated engagement in the functioning of social dialogue in the country, in particular by ensuring investigation and prevention of violence against trade unions.
- d) Further efforts should target enforcement capacities, by strengthening the labour inspection and ensuring thorough investigations and prosecutions of human trafficking cases, including child labour.
- e) Labour legislation should be aligned with ILO Convention No. 87 on FOA and be adopted.

1.1.4 The 2017 ILO Direct Contact Mission report on the Philippines

The ILO DCM took place from 6 to 10 February 2017. The acceptance by the Philippine Government of the ILO DCM was one of the conclusions¹⁸ of the CAS during the 105th Session of the ILC in 2016. The 2016 CAS examination on progress was the first since the 2009 ILO HLM, or six years of constructive engagement between the ILO and the Philippine Government on the “four areas of commitment” to close the gaps on its application of ILO Convention No. 87, in law and in practice.

¹⁷EU-GSP+ monitoring mission to the Philippines took place from 26 January to 2 February 2017.

¹⁸The Committee on the Application of Standards (CAS), concerned with the numerous allegations of anti-union violence and the lack of progress in the investigation of many cases, requested the Philippine Government in June 2016 to: (i) undertake appropriate investigations on the alleged cases of violation of trade union rights in the near future with a view to establishing the facts, determining responsibilities and punishing the perpetrators; (ii) ensure that sufficient funds and staff are available to effectively carry out this work expeditiously so as to avoid a situation of impunity; (iii) establish monitoring bodies and provide regular information on these mechanisms and progress on the cases assigned to them; (iv) institute adequate measures to prevent the repetition of crimes against trade unionists, including the institution of protection schemes for trade unionists that are determined to be at risk by an impartial body; (v) bring national legislation into conformity with the Convention with regards to the requirement of government permission for foreign assistance to trade unions and to reduce the registration requirement and lower requirements to form a federation from ten to five duly recognized bargaining agents or local chapters; (vi) amend the legislation to allow currently excluded classes of public servants to associate freely; and (vii) take effective measures to prohibit the intentional misclassification of employees so as to deprive them of the right to FOA under the Convention.

The 2017 ILO DCM report categorized the issues on the area of freedom of association into three groups: (a) those relating to civil liberties and trade union rights; (b) legislative issues; and (c) promotion of a climate conducive to FOA.

On civil liberties and trade union rights, the DCM proposed further steps for effectively combatting impunity and prevent violence against trade unionists.

Specific to combating impunity, the DCM outlined seven steps, which are:

- a) Vitalizing existing monitoring and investigative framework;
- b) Support sustained activities of AO 35;
- c) Lower standard of proof for screening of FOA cases by the IAC or the RTMBs to “initial/fair grounds to believe” so as to not unduly exclude possible FOA cases and to ensure that labour activity or trade union function albeit hybrid constitute *prima facie* evidence;
- d) Fast-track procedures for FOA violations committed by non-state actors;
- e) Increase involvement of complainant trade unions and of other independent bodies (such as the CHR and the Office of the Ombudsman [OMB]) in the working of the monitoring bodies;
- f) Monitoring bodies to give due consideration to ILO supervisory body comments; and
- g) Strengthen investigative and judiciary proceedings by:
 - i. *Motu proprio* investigations where evidence exists regardless of the desistance or disinterest of the family or other parties to pursue the case and even in the absence of a formal criminal complaint being lodged by the injured party;
 - ii. Increase forensic evidence capacity and lower reliance on eye witnesses or testimonial evidence so that the lack or retraction of witnesses no longer impedes progress in the investigation and prosecution of cases;
 - iii. Effectively protect witnesses, whether through *Amparo* proceedings, the DOJ Witness Protection Programme (WPP), the less formal programme of the CHR or informal provisional measures via the community or the church;
 - iv. Enable CHR to take cases directly to court and recommendations made by the CHR be given serious consideration; and
 - v. Create specialized labour courts or special chambers of the judiciary in regions where a concentration of cases has been identified to accelerate the proceeding.

On prevention of violence against trade unionists, the DCM proposed the following three further steps:

- a) Training and capacity-building for:
 - PNP, AFP and monitoring bodies, especially at regional and local levels.
 - Inclusion of trade union rights modules in recruitment and in the curriculum of the PNP and AFP as well as in the judicial academy.
- b) Effectively protect potential victims whether through formal or less formal avenues; and
- c) Enforced implementation at national, regional and local levels through:
 - Improved effectiveness of law enforcement (selection process, capacity development, remuneration, performance assessment).
 - Broader public participation in monitoring compliance.
 - Effective access to justice through awareness-raising activities for the local population, the judiciary being both a protective and preventive mechanism.

On the absence of progress on legislative issues, the DCM urged the Philippine Government to include as priority measures bills intended to align Philippine labour laws with ILS and to avail of ILO technical assistance and awareness-raising for key stakeholders. Regular consultation with employers' and workers' organizations and the ratification of ILO Convention No. 151 on Labour Relations in the Public Service are being encouraged.

Relative to the need to promote a climate conducive to FOA, the DCM outlined activities in two key areas, which are:

- a) On labour enforcement, effective labour inspection in line with ILS including FOA matters (random visits, right of access to all sites without notice);
- b) Incentivization of compliance through tax incentives and investment promotion by DOLE, PEZA and other stakeholders; and
- c) On compliance advocacy, ECOP is urged to go beyond Corporate Social Responsibility (CSR) and initiate self-assessment and peer-assessment, reporting and transparency.

1.2 Overview of the review: Purpose, coverage, objectives and limitations

The review of the three monitoring mechanisms – the NTIPC-MB and its regional expression, the RTMB of the DOLE, DOJ's AO 35-IAC and NMM of the CHR – was triggered by the observations and recommendations of the DCM, as a technical assistance to the tripartite partners in respect to addressing the lingering concern on violations of trade union rights and impunity.

The objectives of the study are:

- a) To review the Operational Guidelines of the NTIPC-MB and RTMB, AO 35-IAC and NMM and illustrate the monitoring and investigative processes, the roles and functions and structures of the three mechanisms;
- b) To determine the gaps and issues in the Operational Guidelines of the three mechanisms particularly in which areas blockage occur contributing to the slow investigation and resolution of cases; and
- c) Recommend ways to address the issues in terms of policy, practice and ways forward.

The review took seven months to complete from March 2018 to August 2018. To determine the gaps and way forward to implement the DCM observations and recommendations, the workings of these three monitoring mechanisms were examined through: (a) its mandates, structures, operational guidelines, inter-monitoring mechanism coordination, actual progress of the monitored cases and changes, if there is any, with a view to refine the monitoring of cases and for ease of implementation of the DCM observations and recommendations; and (b) engagements, views and insights on its workings by the stakeholders from trade union organizations in private and public sectors, which include: Federation of Free Workers (FFW); Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO), local affiliates of the KMU, local affiliates of the federations of Trade Union Congress of the Philippines (TUCP), Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), Public Services Labor Independent Confederation (PSLINK), Philippine Independent Public Sector Employees Association (PIPSEA), Center on Trade Union and Human Rights (CTUHR), NGO on trade union and human rights, focal personnel of the DOLE NTIPC-MB and RTMB; AFP-HRO; and CHR. ECOP submitted its insights.

The methodology of the review combines table review of relevant issuances, awareness and recommendations survey questionnaires, informal FGDs and interviews. Accordingly, three awareness and recommendation surveys and one informal FGD on the three mechanisms were undertaken. Informal interviews with key partners in the monitoring work were also conducted to elicit new perspective or way forward. Some insights were also gathered and validated during the area-wide (Luzon, Visayas and Mindanao) workers training on case documentation and legal remedies on violation of FOA and formation of Workers' Rights Watch (WRW). The feedback from the small group validation of the review results were also reflected¹⁹.

The review however, especially in capturing broader insights on the operations of the three monitoring mechanisms from the perspective of the concerned government agencies, has been hampered by practical limitations and constraints posed by leadership changes in various government agencies and frequent turnover of focal persons and members of the different agency-based monitoring bodies²⁰.

The review went through a small group validation process, which captured inputs from the DOJ AO 35-IAC and that of other stakeholders from the labour sector, but it lacked insights from the PNP-HRAO²¹.

On a positive note, the review has benefitted from first-hand account, information and perspective on the monitoring mechanisms beginning from the 2007 Philippine country practice review by the USTR to acceptance of the 2009 ILO HLM and the implementation of the Philippine Government “four areas of commitment”, including the development and operation of the DOLE-based monitoring mechanism, public hearings at the USTR, negotiations and content formulation for observance of ILS in the free trade agreement between the EU Free Trade Association the Philippines (EFTA-PH FTA), and the lobby on the Philippine inclusion in the EU-GSP+.

This review is deliberately made comprehensive to serve as resource material in the absence of institutional memory within the concerned government agencies. More importantly, it intends to put a context on the gaps in the mechanisms as guide in the development of future actions to obtain substantial progress in addressing impunity.

2. REVIEW: THE THREE MONITORING MECHANISMS – NTIPC-MB AND RTMB, AO 35-IAC AND NMM

Specific to violations of trade union rights, monitoring starts with DOLE through the NTIPC-MB or with its regional structure, the RTMB, see the process flow as practiced in Figure 1.

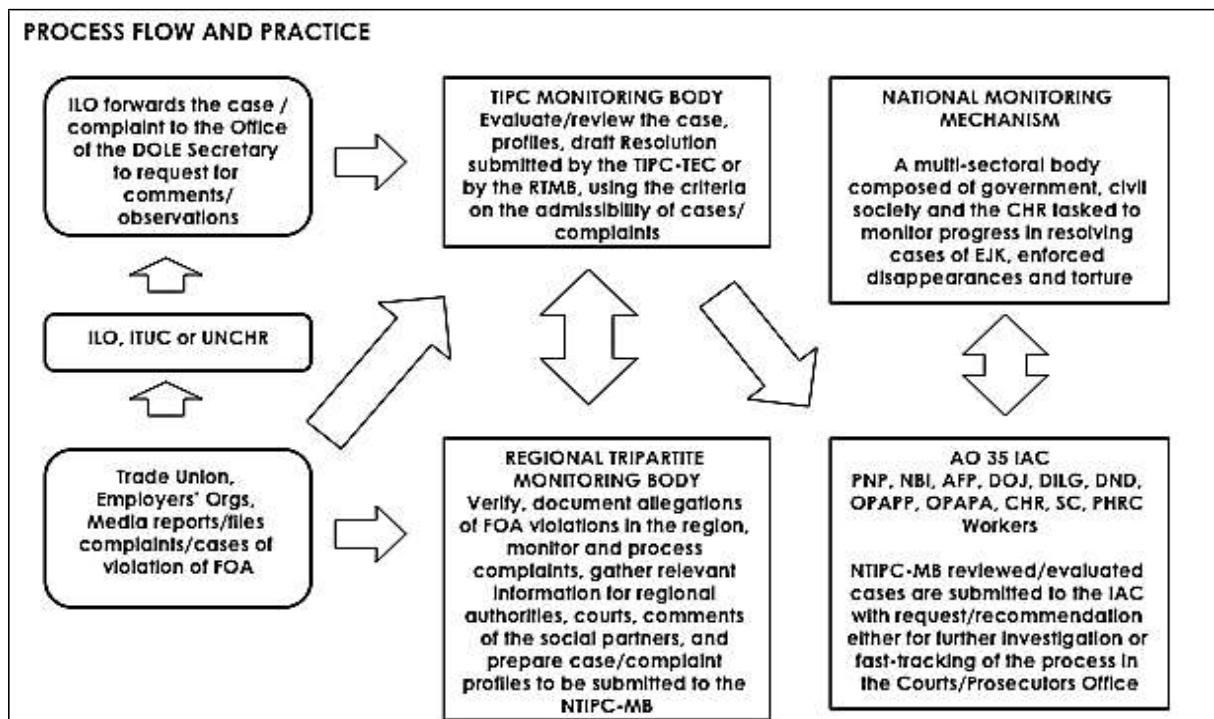
¹⁹Small group Presentation and Validation of the Review on the Monitoring Mechanisms (NTIPC-MB/RTMB, Administrative Order 35 and NMM) on 25 September 2018 before the ILO and stakeholders' representatives from the CHR, DOJ, DOLE, SENTRO, FFW, PM, CFW, PSLINK, PIPSEA, PGEA and CTUHR.

²⁰The current Secretary of Justice, Secretary Menardo Guevarra, has accepted the resignations of the undersecretaries and assistant secretaries of his predecessor, Secretary Vitaliano Aguirre and replaced them with newly officials in mid-July of 2018. The appointments have triggered internal organizational re-clustering of offices and functions including that of the undersecretary in-charge of Administrative Order 35-IAC.

²¹PNP-HRAO did not respond to requests for meeting or interview on the monitoring mechanisms.

The entry point for monitoring is either the ILO supervisory bodies or the DOLE monitoring body. Reports, complaints or cases of trade union rights violation raised by affiliates or by international trade union organizations are raised before the ILO supervisory bodies²². DOLE monitoring body may investigate reports, complaints or cases of trade union rights violations *motu proprio* or upon a complaint by trade union organizations.

Figure 1. Three monitoring mechanisms process flow and practice



On ILO supervisory bodies as entry point, once a report, case or complaint is submitted, it would solicit the Philippine Government's comment, observation or acceptance of recommendation, through DOLE as the representative to the ILO. Observation, direct request or recommendation will be published and followed-up until progress is noted and the supervisory body is satisfied with the action of the Philippine Government.

²²The ILO has two kinds of supervisory mechanism: (a) regular system of supervision; and (b) special procedures. The regular system of supervision is the examination by two ILO bodies (i.e., the Committee of Experts on the Application of Conventions and Recommendations or CEACR and the ILC Tripartite Committee on the Application of Standards or CAS) of periodic reports on the application in law and practice submitted by member States on ratified Conventions and on observations in this regard sent by workers' organizations and employers' organizations. Special procedures are the three separate procedures, these are: procedure for representations on the application of ratified Conventions; procedure for complaints over the application of ratified Conventions; and special procedure for FOA complaints through the Committee on Freedom of Association or CFA. The ILO CEACR makes two kinds of comments: observations and direct requests when examining the application of international labour standards. Observations contain comments on fundamental questions raised on the application of a particular Convention by a State and are published in the Committee's annual report. Direct requests relate to technical questions or requests for further information and are not published in the report but are communicated directly to the governments concerned. The CAS and CFA generally issue recommendations and observations (Source: www.ilo.org).

If the entry point is the RTMB or the NTIPC-MB investigation on reports or complaints of trade union right violation, the ILO supervisory bodies will issue observation, direct request or recommendation once the case or complaint is reported to it. The conduct of investigation or validation process by the RTMB or NTIPC-MB will not preclude the ILO supervisory bodies from issuing observation, direct request or recommendation.

Trade union rights violations requiring criminal prosecution as reviewed or evaluated by the DOLE monitoring body are endorsed to the DOJ, which beginning in 2013 is with AO 35-IAC for investigation or prosecution. The CHR-led NMM, being a multi-sectoral monitoring body, was intended to take cognizance of the cases monitored by DOLE NTIPC-MB.

The review looks into the mandates, structures, operational guidelines, inter-monitoring mechanism coordination, actual progress of the monitored cases and changes in the three monitoring bodies, if there is any, with a view to refine the monitoring of cases and for ease of implementation of the DCM observations and recommendations.

2.1 Department of Labor and Employment-led National Tripartite Industrial Peace Council Monitoring Body (NTIPC-MB), its regional structure, the Regional Tripartite Monitoring Body (RTMB) and the Tripartite Validating Team (TVT)

2.1.1 NTIPC Resolution No. 1, Series of 2010: Creation of NTIPC-MB and mandate as the high-level monitoring body

The DOLE-based high level monitoring body, or the NTIPC-MB was constituted from the NTIPC chaired by the Secretary of DOLE. As the high-level monitoring body on the application of ILS, in particular ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, all complaints, information or cases of trade union rights violation filed either before the ILO or taken cognizance of by the DOLE monitoring body, whether *motu proprio* or not, are handled by the monitoring body observing NTIPC Resolution No. 1, Series of 2010, dated 20 January 2010.

The NTIPC-MB was constituted in implementation of the “four areas of commitment” of the Philippine Government to the 2009 ILO HLM. It has mandate to: (a) facilitate “out of the box solution” to long-standing CFA cases; (b) monitor and report progress on active CFA cases; and (c) facilitate gathering of relevant information on complaints submitted to the ILO and evaluate and recommend appropriate action/s. In 2011, a regional structure for the NTIPC-MB was created from the RTIPC, a forum on tripartite advisement and consultation at the local level and which assists the NTIPC in the performance of its functions²³. A sub-committee of the RTIPC, which is known as the RTMB, was created through DOLE AO 263, Series of 2011.

The mandate of the TIPC as the high level monitoring body was eventually institutionalized, after three years since its establishment, through Republic Act No. 10395²⁴ or the amendments to Article 275 of the Labor Code, which provides that the TIPC shall “*xxxx monitor the full implementation and compliance of concerned sectors with the provisions of all tripartite instruments, including international Conventions and declarations, codes of conduct and social accords xxxx*”.

²³Section 1, Rule V of DOLE Department Order No.140-14, Series of 2014, or the Implementing Rules and Regulations of Republic Act No. 10395, strengthening tripartism.

²⁴Passed into law on 14 March 2013 as a component of the DOLE pursued priority legislative reforms.

2.1.2 Structure and operational guidelines of NTIPC-MB²⁵ Data gathering, case profiling process and progress report

The NTIPC-MB conducted an inventory to have a clear listing of cases and to consolidate similar cases or incidents. The 2010 inventory of cases was pursuant to the Operational Guidelines under NTIPC Resolution No. 1, Series of 2010, and was with inputs from the inter-agency small group convened by the Bureau of Labor Relations (BLR). The inter-agency small group was composed of: (a) DOLE offices and agencies i.e., Legal Service, BLR, International Labor Affairs Bureau (ILAB), National Conciliation and Mediation Board (NCMB) and the National Labor Relations Commission (NLRC); (b) DOJ's Task Force 211; (c) PNP Task Force Usig; and (d) the Regional CHR. All of the members of the inter-agency small group report to the PHRC, which coordinated and followed-through commitments, progress and documentations of the different agencies.

The output of the inter-agency small group undergoes evaluation and review by the Tripartite Executive Committee-Monitoring Body (TEC-MB) for approval and formulation of recommendations, as provided in the Operational Guidelines. The TEC-MB report and recommendation on each case or complaint shall be presented for deliberation by the NTIPC-MB, which regularly meet every quarter. Approval or adoption of the report and recommendation on each case is through NTIPC-MB Resolution, which the Secretary of Labor and Employment reports to the ILO. Figures 2 and 3 illustrate the data gathering and profiling process within the DOLE-led NTIPC-MB.

The Secretary of Labor and Employment report is the Philippine Government progress report to the ILO. The report covers not only specific profiled FOA case/s but also progress in the “four areas of commitment”, which is the framework to address the issue of impunity, violence against trade unionists and the committed legislative reforms to strengthen trade unionism and remove obstacles to the effective exercise of labour rights.

The progress report on the “four areas of commitment” covers the following key points: (a) addressing impunity through substantial progress on the NTIPC-MB monitored cases; (b) implementation of the tripartite supported preventive measures such as the Joint DOLE-PNP-PEZA Guidelines and the AFP Guidelines²⁶ and capacity-building for all stakeholders including the reforms pursued by the PNP and the AFP; (c) foundational reforms in addressing the root causes of labour disputes and create a conducive climate for free exercise of the FOA;²⁷ and

²⁵NTIPC Resolution No. 1, Series of 2010, constituting the NTIPC-MB also provided an Operational Guidelines on: (i) docketing of ILO cases/complaints; (ii) Case/Complaint profiling; (iii) Case evaluation/recommendation and convening of the body; and (iv) Deliberation, adoption and submission of tripartite observation.

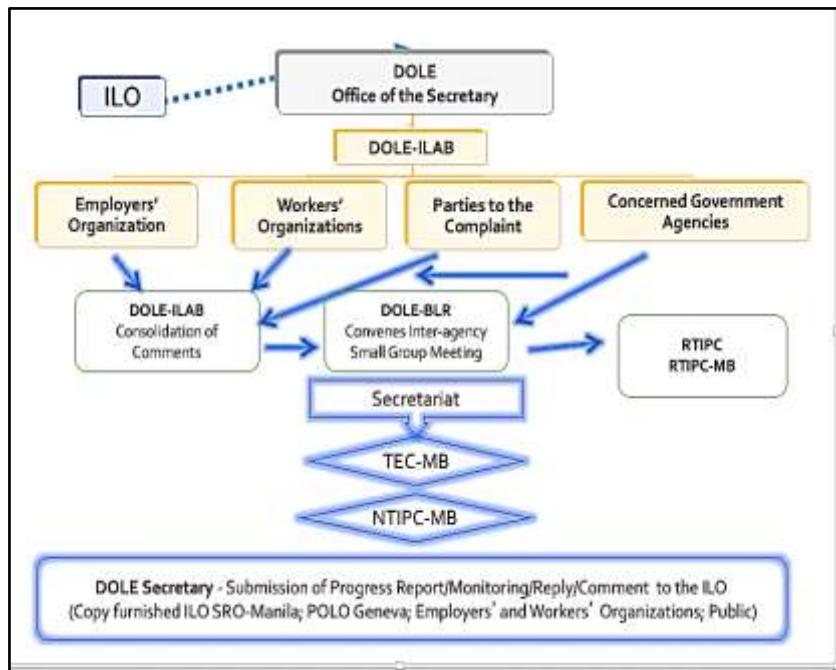
²⁶The Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel during Labour Disputes took effect on 29 May 2011 and the AFP Guidelines, or the Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers’ Rights and Activities was issued in May 2012.

²⁷Labour rights violation and labour-related incidence of violence were addressed through the root causes of labour disputes. The DOLE pursued wide-ranging reforms in the mechanisms for labour laws compliance, dispute prevention, settlement and case disposition, and expanded and robust tripartite participation, which are as follows:

(1) After an ILO audit of the inspectorate system, the Labour Laws Compliance System (LLCS), with Management Information System (an online, web-based application system that utilizes electronic checklist for real-time transmission and processing of data collected from the field), was developed. It combines regulatory and developmental enforcement approach with projected company visitations of once every two years from the previous once every 16 years, more establishments covered, enforces a total of 94 labour laws including FOA, regulation on contracting or ambiguous or disguised employment, as compared to only 23 under the old

(d) the committed legislative reforms to align the Labor Code with ILO Convention Nos. 87 and 98 (Collective Bargaining).

Figure 2. DOLE flow chart in data gathering, case profiling process and reporting of ILO cases (Pre AO 35-IAC)

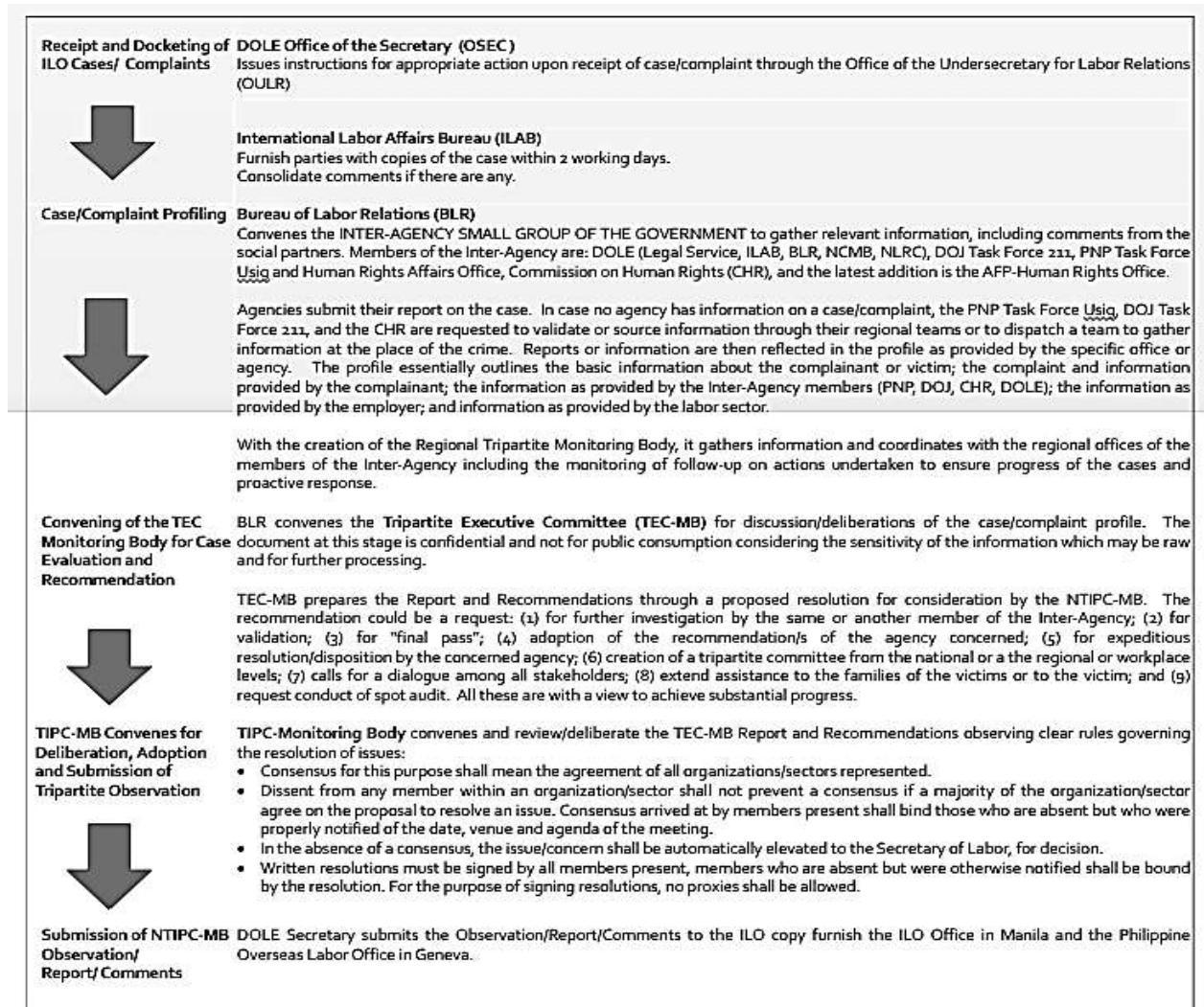


Source: Bureau of Labor Relations TIPC documents.

enforcement system, and increased to 574 the plantilla for compliance officers as compared to the previous 202.

- (2) Case management system relies on intensive and exhaustive conciliation-mediation services than arbitration for both individual and collective disputes. For individual and collective disputes not arising from collective bargaining agreement, the 30-day mandatory conciliation-mediation services, or the Single Entry Approach (SEnA) was institutionalized through Republic Act No. 10396. SEnA as a prior-resort mechanism afforded workers and employers fair, prompt, accessible and inexpensive settlement at a shortened processing at an average of 15 days as compared to the duration of one year to ten years under compulsory arbitration. Collective bargaining disputes likewise go through exhaustive conciliation-mediation with a track of allowing the parties to process and resolve issues at the plant-level by themselves before third party intervention will be effected. The Assumption of Jurisdiction power of the Secretary of Labor and Employment, pending amendment, is restrained and resolution of assumed cases is through a conciliated order.
- (3) Tripartism and social dialogue was institutionalized through Republic Act No. 10395 as the primary instrument in promoting transparency, participative governance and sectoral accountability, compliance with international labour standards and addressing social disparity while improving social cohesion among all stakeholders. Through social dialogue, the labour sector in the NTIPC was able to get commitment from the Department of Trade and Industry (DTI) in linking investment incentives with compliance with international labour standards. The creation of workers' rights board for specific industries or tariff lines that will be accessed under the GSP or FTA was pursued.
- (4) With respect to the amendments to align the Philippine Labor Code, as amended, with the principles on FOA and CB, an NTIPC endorsed DOLE Legislative Agenda was pursued under the Decent Work Agenda commitments.

Figure 3. Details on the process flow (Pre AO 35-IAC)



Source: Bureau of Labor Relations TIPC documents.

2.1.3 Inventoried cases and progress: 2001 to 2016

Accordingly, based on its Operational Guidelines, the NTIPC-MB has completed the comprehensive inventory of cases. As of 2016, the NTIPC-MB has monitored 65 cases of EJK, 11 cases of abduction and 12 cases of harassments. Of the 65 cases, 50 occurred from 2001 to June 2010 while 15 – the case of Rodel Estrellado, Kenneth Reyes, Rudy and Roderick Dejos, Bonifacio Labasan, Santos Manrique, Josephine Estacio, Carlo Rodriguez, Celito Bacay, Poncing Infante, Emilio Rivera, Romy Almacin, Antonio Petalcorin, Kagi Alimudin Lucman, Rolando Pango and Florencio Romano – were from 2010 up to the 2016 reporting period.

Of these number, Table 1 shows that out of the 65 EJK cases, 12 were filed in court and of this number nine were resolved. Of the nine resolved, only four were resolved by the trial courts. These were the case of: (a) Teotimo Dante which resulted to the conviction of all four accused on 28 May 2012; (b) Ricardo Ramos which resulted to the acquittal of the accused for failure to prove his guilt beyond reasonable doubt on 7 February 2012; (c) Antonio Pantomial which resulted to the conviction of the accused for murder qualified by treachery; and (d) Fr William Tadena which resulted to the acquittal of one accused on reasonable doubt while the other accused is at-large.

All the four were pre-AO 35-IAC resolutions and was under the old system of coordination which was through the PHRC and engagement of the Office of the Court Administrator of the Supreme Court. The AO 35-IAC was formed in November 2012 and became operational only on 18 April 2013 with the issuance of its Operational Guidelines.

Table 1. EJK/ELK cases filed in courts, resolved and nature of decision (2001-2016)

Sources	Number of EJK cases	Filed in court	Resolved	Remarks
ILO case 2528	39	8	8	Two cases permanently dismissed. Two cases resulted to acquittal. One case archived pending service of warrant. One case where one of the suspects was acquitted while the other remains at-large. One case where one of the suspects was convicted and detained while the other remains at-large. One case where all four accused were convicted.
ILO case 2528 additional	9	0	-	-
ITUC and Paul reports*	9	2	1	One case resulted to the issuance of warrant of arrest against suspects (Rudy and Roderick Dejos). One case ongoing trial (Benjamin Bayles).
Press statements	8	2	0	One case ordered archived while respondent/s is/are at-large (Emilio Rivera). One ongoing trial (Romy Almacin).
Total	65	12	9	

*Seven of the nine cases i.e., Rodel Estrellado, Kenneth Reyes, Rudy and Roderick Dejos, Bonifacio Labasan, Santos Manrique, Carlo Rodriguez and Celito Baccay were cases under the Aquino Administration.

Source: Bureau of Labor Relations.

2.1.4 NTIPC-MB Resolution No. 1, Series of 2010: Classification of cases into possibly labour-related or possibly not; the ILO observation

The NTIPC-MB Resolution No. 1, Series of 2010 issued on 25 June 2010, provides for the classification of cases or complaint into: (a) possibly labour-related under ILO Convention No. 87; and (b) possibly not labour-related under ILO Convention No. 87. It is deemed “possibly labour-related” if the circumstances of the case would constitute an infringement on the exercise of the FOA and the right to organize. This is determined through the existence of any of the following: prior or existing labour dispute or issue; the victim is previously or currently a union activist, organizer, union member or a worker; and the case arise from the exercise of the right to

strike or organize a union, or CB. It is classified as “possibly not labour-related” if none of the enumerated elements is present (Table 2).

Table 2. Total alleged EJK/ELK cases processed by NTIPC-MB (2001-2016)

Sources	Number of EJK cases	NTIPC-MB evaluation		AO 35-IAC evaluation		Possibly LR and EJK
		Possibly LR*	Possibly not LR**	EJK	Not EJK***	
ILO case 2528	39	13	26	7	32	2
ILO case 2528 additional	9	8	1	1	8	1
ITUC and Paul reports	9	7	2	2	7	1
Press statements	8	—	—	1	7	—
Total	65	28	29	11	54	4

*Possibly labour-related.

**Possibly not labour-related.

***Considered as regular criminal case.

Source: Bureau of Labor Relations.

On this, the ILO has observed that the classification has the possibility of excluding cases of labour rights violations.

The classification at the NTIPC-MB level was originally intended to put order in the prioritization of labour rights violation cases for expeditious resolution due to the volume of cases. Cases with all the elements of ordinary crimes however, were not dismissed from the NTIPC-MB list but go through expedited ordinary criminal prosecution process and excluded from the specialized process for labour rights violation cases, which was then handled by DOJ's Task Force 211 or the Task Force Against Political Violence.

In 2012, Task Force 211 was replaced by AO 35-IAC. The NTIPC-MB has brought all of the inventoried 65 cases of EJK/ELK, 11 cases of abduction and 12 cases of harassments from 2001 to 2016, including those covered by ILO Case No. 2528 to the AO 35-IAC.

2.1.5 DOLE Administrative Order No. 32, Series of 2018²⁸

DOLE Administrative Order No. 32, Series of 2018 was issued on 25 January 2018. AO 32 put together in one document the Operational Guidelines for the conduct and operationalization of the NTIPC-MB, RTMB and the committed TTV²⁹. It expressly covered the public sector and

²⁸DOLE Administrative Order No.32, Series of 2018, or the “Operational Guidelines of the National and Regional Tripartite Monitoring Body on the Application of international labour standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organise (No. 87)”.

²⁹During the 105th Session of the ILC in June 2016, the Philippine Government, through the Department of Labor and Employment, has committed, among others, to strengthen the NTIPC-MB and to fully realize its potential in

incorporated verification or documentation of violations of the following key instruments, which were among the major outputs of the three to four years ILO TCP:

- a) The Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards and Similar Personnel During Labour Disputes or the PNP Guidelines, which was signed on 23 May 2011;
- b) The Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities or AFP guidelines, which was signed on 7 May 2012; and
- c) Observance of DOJ Memorandum Circular No. 16, Series of 2014, requiring prosecutors to get clearance from the DOLE prior to taking cognizance of complaints for preliminary investigations to prevent the criminalization of labour disputes, which was issued on 22 April 2014.

On TTVT, AO 32 provides the requirements for its creation by the Secretary of Labor and Employment which is when there is a need for further validation and/or review of RTMB profiled cases or complaints. The TTVT is a special sub-unit of the NTIPC-MB and to be composed of one representative from DOLE and equal number of representatives from the workers' and employers' sectors. The TTVT once constituted shall:

- a) Review reports submitted by the RTMB and evaluate the sufficiency of information provided therein, and identify what further information is needed to substantiate the case or complaint.
- b) Gather and/or verify information with the following: (i) union or organization to which the alleged victim is affiliated; (ii) victim's family and/or relatives; (iii) company/management involved in the case or complaint; (iv) investigative and prosecutorial arms of the government; (v) local government units; and (vi) other concerned agencies such as the Supreme Court, Court of Appeals, DOJ, NBI, PNP, CHR, DILG, including the military when needed.
- c) Submit a comprehensive report and recommendations to the TEC-MB and NTIPC-MB relative to the results of their case validation.

2.2 Department of Justice-led Administrative Order 35 Inter-Agency Committee (AO 35-IAC)

2.2.1 Labour cases with allegations of violation of FOA

Only 11 of the 65 cases endorsed by the NTIPC-MB have been identified by AO 35-IAC as EJK/ELK based on their Operational Guidelines.

AO 35 Operational Guidelines³⁰ defined ELKs or EJKs to refer to killings wherein: (a) the victim was a member of, or affiliated with an organization, to include political, environmental, agrarian, labour or similar causes; or an advocate of above-named causes; or a media practitioner or person(s) apparently mistaken or identified to be so; (b) the victim was targeted and killed because of the actual or perceived membership, advocacy or profession; (c) the person/s responsible for the killing is a state agent or non-state agent; and (d) the method and circumstances of attack reveal a deliberate intent to kill. Killings related to common criminals and/or the

case build-up, by operationalizing the recently approved fully funded, independent and capacitated case-based Tripartite Validating Team (TTVT) for cases needing independent review, such as Case Nos. 3119, 3159 and 3185.

³⁰Issued on 18 April 2013.

perpetration of crimes are excluded from the mandate of AO 35 and shall be addressed by other appropriate mechanisms within the justice system.

The 54 cases not covered by AO 35-IAC were classified as common crimes and to be investigated as regular criminal cases. According to the DOJ, the reasons for the exclusion from AO 35-IAC include: (a) insufficiency of evidence which triggers referral of the case to agencies like the police, NBI and CHR for further investigation subject to a second review by the technical working group (TWG); and (b) absence of all the elements of EJK/ELK as provided in the AO 35-IAC Operational Guidelines.

The exclusion of the 54 cases was further clarified³¹ to be due to lack of clear links with labour issues and the motives were mostly associated with personal or non-labour issues. The IAC-TWG placed more emphasis on the motives of the killings rather than the profiles of the victims as union members.

2.2.2 Administrative Order 35-IAC mandate

Administrative Order 35-IAC declares as matter of paramount policy that there is no room for all forms of political violence and abuses of power by agents or elements of the State or non-State forces, and commits to establish an institutional legacy of an efficient, coherent and comprehensive government machinery dedicated to the resolution of unsolved cases of political violence in the form of ELKs, EDs, torture and other grave violations of the right to life, liberty and security of persons³².

The operations of the AO 35-IAC had an initial funding of Php10 million from the President's Intelligence Fund. It was directed to come up with an inventory of all cases of ELKs, EDs, torture and other grave violations of the right to life, liberty and security of persons, perpetrated by State and non-state forces alike, from all sources (government and non-government) for purposes of categorizing them into: (a) unsolved cases; (b) cases under investigation; (c) cases under preliminary investigation; and (d) cases under trial. The IAC is required to submit regular report to the President detailing the inventory of cases according to category, and describing the accomplishments and progress made for each case, or the problems and obstacles encountered.

2.2.3 Administrative Order 35-IAC structures

The AO 35-IAC, headed by the Secretary of DOJ as the Chairperson, is the highest policy-making and oversight body tasked to monitor and ensure the speedy resolution of AO 35 cases. The members of the IAC are Secretaries or heads of the following offices: (a) Presidential Adviser on the Peace Process (PAPP); (b) DND; (c) DILG; (d) PHRC; (e) Presidential Adviser on Political Affairs (PAPA); (f) AFP; (g) PNP; and (h) NBI. The CHR and OMB are mere observers and resource persons. The Department of Foreign Affairs (DFA) was included in 2017 as observer pursuant to IAC Resolution No. 3, dated 25 October 2017.

³¹The clarification was shared by the DOJ Administrative Order 35 Secretariat member during the small group Presentation and Validation of the Review on the Monitoring Mechanisms (NTIPC-MB/RTMB, Administrative Order 35 and NMM) on 25 September 2018 before the ILO and stakeholders' representatives from the CHR, DOJ, DOLE, SENTRO, FFW, PM, CFW, PSLINK, PIPSEA, PGEA and CTUHR.

³²Paragraph 11, Administrative Order 35, 22 November 2012.

DOLE is not a member nor an observer in the AO 35-IAC. There is no clear or formal coordinative mechanism or process between the NTIPC-MB and AO 35-IAC. Coordination with AO 35-IAC was initiated by the DOLE in recognition of the limitations on jurisdiction, investigation and prosecution of ELK/EJK cases. In a series of meetings with the DOJ as head of AO 35 and Secretariat in 2015 to 2016, the labour groups were invited to send a representative to sit as observer to the IAC recognizing their first-hand knowledge of the case and confidence of the family of the victims on friends and acquaintance. The invitation for labour groups' observer status however, has not been reflected in an issuance and was overtaken by change in administration and agency heads.

The AO 35-IAC has a TWG composed of representatives from the IAC member-agencies and a Secretariat composed of representatives from the same member-agencies, which exclude the DOLE.

Assisting the IAC are two Special Oversight Teams (SOTs), one for unsolved cases and another for new or existing cases. The SOTs supervise the Special Investigation Teams (SITs) in the handling and management of all AO 35 cases including those on trial whether new or existing cases. Each SOT has five members with a prosecutor and one investigator each from the PNP and the NBI, all must have at least ten years of experience. The two remaining members are prosecutor and PNP investigator, respectively, both of whom must have at least five years of experience. The SOT approves requests by SITs for extension of reinvestigation and case build-up and recommends to the IAC the filing of a case before the appropriate prosecution office, a reinvestigation or closure of a case.

The SITs are IAC created special teams that supervise, monitor and/or coordinate actual investigations of AO 35 cases until its final resolutions.

The IAC may also create Special Tracker Teams (STTs), upon recommendation by any AO 35 structures. It may also direct existing tracker teams from law enforcement agencies, or a combination, to operate under the ambit of AO 35 to locate and effect the arrest of an accused in AO 35 cases for trial. The STT shall be composed of personnel from or a combination of PNP, NBI, PNP Special Investigation Task Group (SITG)/task force/task group, or from other law enforcement agencies of the government. Personnel from the AFP or other security forces of the government may be directed to complement the STTs especially if the accused to be arrested is from its ranks.

The STT shall submit an Operational Plan to the TWG and progress report to the SOT; conduct manhunt operations to locate the accused in AO 35 cases; effect the arrest of the accused; immediately return the Warrant of Arrest to the issuing court; and deliver the arrested person/s to a lawful detention facility in accordance with the order of the court. The Tracker Team shall ensure that the arrested person is afforded their constitutional and statutory rights during their arrest and detention and in the conduct of physical or psychological examinations.

2.2.4 Administrative Order 35-IAC special investigation teams

AO 35-IAC forms a composite team where prosecutor and investigators collaborate, cooperate and coordinate in the investigation and build-up of AO 35 cases. The teams handle the inventoried cases of ELKs, EDs, torture and other grave violations of the right to life, liberty and security of persons, perpetrated by State and non-state forces. There are separate special teams for each of the four category of AO 35 cases.

For unsolved cases, there is a Special Investigation Team for Unsolved Cases (SITU). A composite team for unsolved cases is headed by an AO 35 prosecutor. Unsolved cases are those identified by the IAC that transpired from 2001 up to 22 November 2012. The SITU is tasked to re-evaluate and reinvestigate the unsolved cases within 30 days, unless extended for another 30 days, and submit the Final Investigation Report to the AO 35-IAC Secretariat.

The Secretariat shall calendar the Final Investigation Report for deliberation and recommendation of the SOT for unsolved cases. The SOT for unsolved cases recommends to the IAC any of the following actions on the case: (a) filing of the case with the appropriate prosecution office against the respondent; (b) further reinvestigation on the basis of some other leads; (c) closure, if vital witnesses to the incident can no longer testify, have died or can no longer be located, or for total lack of evidence, or where the suspect have died; or (d) delisting on the ground that the same is not an AO 35 case.

The IAC may adopt, modify or overturn the recommendation, or create another team to reinvestigate the case anew. But once the IAC adopts the recommendation to file the complaint, the SITU files the complaint before the appropriate prosecution office. The complaint shall be endorsed by the AO 35 Investigator who is a member of the SITU, indicating that the investigation was conducted pursuant to AO 35 and its Operational Guidelines.

If an unsolved case is recommended for closure, it shall not be delisted from the inventory of alleged AO 35 cases. However, the name/s of the person/s implicated therein, after evaluation by the SOT and approval by the IAC, shall be deleted. The deletion of the person/s implicated therein is without prejudice to their re-inclusion if the case is revived due to newly-obtained evidence sufficiently showing the person/s participation as perpetrator. Also, in case it appears during investigation and case build-up that an AO 35 agency may be somehow involved in the incident subject of the investigation, the IAC Chairperson, upon recommendation by the AO 35 prosecutor or the TWG, may reorganize the SITU.

Whenever a killing, whether attempted or frustrated, a deprivation of liberty or a suspected case of torture or other suspected AO 35 violations occurs or are reported, and assessed by the local law enforcement agency, office or unit as a possible AO 35 case,³³ the Special Investigation Team for New Cases (SITN) is immediately convened. The designated AO 35 prosecutor in the city, province or region shall convene the SITN within 24 hours from receipt of the information and names of investigators on the team for the case build-up. But in case investigation has already been started by a local team of investigators, or a SITG or task forces of law enforcement agencies, the SITN shall oversee, supervise and monitor the investigation to ensure that the case is supported by sufficient and strong evidence. The Chairperson of AO 35-IAC however may direct the SITN

³³Whether or not the incident may be treated as a possible AO 35 case is guided by the following: (i) for an EJK case, the presence of any two of the elements enumerated in Article I (1) of the Guidelines – the victim was a member of, or affiliated with an organization, to include political, environmental, agrarian, labour, or similar causes; or an advocate of abovenamed causes; or a media practitioner or apparently mistaken or identified to be so; was targeted and killed because of actual or perceived membership, advocacy or profession; person/s responsible for the killing is a state agent or non-state agent; and the method and circumstances of attack reveal a deliberate intent to kill; (ii) for an Enforced or Involuntary Disappearance, when the deprivation of liberty is suspected to have been committed by agents of the State or by persons or groups of persons suspected to have acted with the authorization, support or acquiescence of agents of the State; and (iii) For a torture case, when there are signs, reports or allegations of severe pain or suffering suspected to have been inflicted by persons in authority or their agents.

to take over the investigation and case build-up, or to absorb the task force or investigators as AO 35 investigators.

Upon its convening, the SITN shall: (a) immediately investigate the possible AO 35 case for purposes of filing the appropriate charges with the prosecution office; (b) identify the witnesses and assist in the preparation of their sworn statements; (c) recommend the immediate or provisional coverage of witnesses and/or their immediate families under the WPP of the DOJ; (d) evaluate the scene of the crime report and other physical or object evidence necessary in the filing of the case with the prosecution office; (e) invite the participation of other government agencies as may be deemed necessary or beneficial to the investigation; (f) periodically submit progress reports on the investigation to the Secretariat of the IAC; (g) ensure proper preservation and custody of all the evidence collected; and (h) perform such other tasks as the IAC, SOT or the TWG may direct them to perform.

AO 35 cases that are being investigated or reinvestigated by law enforcement officers per order of the Court, or undergoing preliminary investigation, or is already pending in Court whether there be an active trial or has been archived by the Court, as of November 2012, a Special Investigation Team for Existing or Current Cases (SITEC) shall be convened. The SITEC shall be convened to: (a) investigate or prosecute certain cases; (b) oversee, supervise or monitor the investigation or prosecution by other investigative or prosecutorial bodies or office; (c) monitor the handling and management of such cases including the submission of regular reports to the SOT and IAC; or (d) solicit the assistance of other agencies which may not be a member of the IAC; or (e) to undertake any appropriate actions pertaining to such AO 35 case.

Accordingly, the SITEC shall: (a) immediately investigate a possible AO 35 case for purposes of filing the appropriate charges with the prosecution office; (b) identify witnesses and assist in the preparation of their sworn statements; (c) recommend the immediate or provisional coverage of witnesses and/or their immediate families under the WPP of the DOJ; (d) evaluate the scene of the crime report and other physical or object evidence necessary in the filing of the case with the prosecution office; (e) invite the participation of other government agencies as may be deemed necessary or beneficial to the investigation; (f) periodically submit reports about the progress of the investigation to the Secretariat of the IAC; (g) ensure the proper preservation and custody of all the evidence collected; (h) assess if the case being investigated constitutes an AO 35 case; and (i) perform such other tasks as the IAC, SOT or the TWG may direct them to perform.

The SITN and SITEC are supervised by the SOT for new and existing cases. After deliberation and thorough review of the submissions, the SOT for New and Existing Cases may direct the SITN or SITEC to: (a) immediately file the case with the appropriate prosecution office; (b) conduct further reinvestigation; or (c) delist the case if the same is not an AO 35 case.

2.2.5 Suppletory application of joint Department Order No. 003-2012

Pursuant to AO No. 181,³⁴ joint Department Order No. 003-2012³⁵ signed by the DOJ and the DILG to ensure cooperation of prosecutors and law enforcement investigators in the

³⁴Administrative Order No. 181, a presidential issuance in 2007, directed the cooperation and coordination between the National Prosecution Service and other concerned agencies of government for the successful investigation and prosecution of political and media killings.

³⁵Operational guidelines for Prosecutors and Law Enforcement Investigators in Evidence-Gathering Investigation and Case Build-Up; Inquest and Preliminary Investigation; and Trial of Cases of Political-Activist and Media Killings.

investigation, case build-up, inquest and preliminary investigation and trial of cases pertaining to political activist and media killings, remains in effect and has suppletory application.

Under the Operational Guidelines, prosecutors and law enforcement investigators shall work together as early as case build-up and evidence-gathering after an incident has been assessed as a possible political activist or media killing. A group of prosecutors and law enforcement investigators shall then be convened to identify the witnesses, assist in the preparation of their affidavits and evaluate the Scene of the Crime Report and the other physical or object evidence necessary in the filing of the case with the prosecution office concerned. The group shall submit periodic written reports on the progress of their investigation.

The group shall file the proper complaint before the City/Provincial Prosecutors Office after the termination of the investigation. Even after referral of the complaint to the proper Prosecutors Office, the group will continue to convene for the purpose of evaluating and gathering additional evidence necessary to further strengthen the case.

After inquest or preliminary investigation, where there is a finding of probable cause, a resolution is prepared to be approved by the Prosecutor General or City/Provincial Prosecutor. Upon approval, the transmittal to the appropriate Office of the Clerk of Court is undertaken stating therein that the case is either a political-activist or media killing, as provided under Supreme Court AO 25-2007 and, therefore, should be raffled to any of the designated special courts.

The Prosecutor General or the City/Provincial Prosecutor shall then create a panel composed of prosecutors who handled the investigation, inquest/preliminary investigation and trial for the purpose of conducting the actual prosecution of the political-activist/media killing case.

2.2.6 Supreme Court Administrative Order No. 25-2007

Issued on 1 March 2007, Supreme Court AO 25-2007 designated special courts to hear, try and decide cases involving killings of political activists and members of the media. In determining whether the crime is a “political killing,” the following factors, among others, shall be considered: (a) political affiliation of the victim; (b) method of attack; and (c) reports that state agents are involved in the commission of the crime or have acquiesced in them.

About a hundred Regional Trial Courts nationwide were designated as special courts. The designated special courts shall give priority to cases involving killings of political-activists and members of the media in their trial calendars and shall subject such cases to mandatory continuous trial, which shall be terminated within 60 days from commencement of trial. Judgment shall be rendered within 30 days from submission for decision unless a shorter period is provided by law or directed. No postponement or continuance shall be allowed except for clearly meritorious reasons. Pleadings or motions found to have been filed for dilatory purposes shall constitute direct contempt.

The special courts are required to submit a report on the status of these cases to be attached to the Monthly Report of Cases submitted every 10th day of the succeeding month to the Statistical Reports Division, Court Management Office, Office of the Court Administrator. Non-submission shall be a ground for withholding of salaries and allowances of the judge and clerk of court or

branch clerk of court without prejudice to whatever administrative sanction the Supreme Court may impose on them.

2.2.7 ILO observation on the exclusion of cases

The DCM noted that one of the EJK criteria of “targeted due to trade union activity” would appear to already call for a legal judgment and determination of motive. The DCM calls for the lowering of the screening standard of proof to “initial/fair grounds to believe” so as to not unduly exclude possible FOA cases and to ensure that labour activity or trade union function albeit hybrid, constitute *prima facie* evidence.

2.3 Commission on Human Rights-led National Monitoring Mechanism (CHR-NMM)

The NMM’s objectives are two-pronged: (a) to develop an effective monitoring mechanism that involves a strong government- non-government organization (GO-NGO) partnership that will ensure that justice is served to the victims of ELKs, EDs and torture; and (b) to strengthen institutional mandates, capabilities and engagements in effectively resolving cases of ELKs, EDs and torture. Specifically, the NMM shall have the following functions:

- a) To gather/receive/record cases or report of incidents of ELK and ED and cause appropriate measures;
- b) To collate/record/review cases or report of incidents of ELK and ED in the past in order to determine the respective status of said incidents and/or cause appropriate measures;
- c) To share and pool information, with the exception of classified information, regarding cases, researches, studies and best practices in addressing ELKs, EDs and torture;
- d) To propose policies for prevention and resolution of ELKs, EDs and torture cases;
- e) To come up with common case records, common reports and common nomenclature; and
- f) To monitor and ensure the appropriate interlinking and fulfillment of institutional mandates in effectively addressing cases of ELKs, EDs and torture.

With a view to link with the broader civil liberties and human rights issues under the PHRC and NMM, trade union rights related cases before NTIPC-MB (including those with allegations of militarization in the workplaces and PNP involvement in strike dispersals) have been shared to ensure its progress under direct monitoring by the PHRC as the advisory body to the President prior to the creation of AO 35-IAC. The PHRC has convened the NMM and had meetings in 2011.

But regrettably, after the initial meetings, the NMM failed to take-off and the multi-party monitoring mechanism has not been heard of. The CHR monitoring of EJK/ELK cases with element of state actor involvement has continued to be through task forces and special crisis units.

3. STAKEHOLDERS’ VIEW

Awareness surveys and discussions were conducted on the existence, operations, coordination and effectiveness of the three monitoring mechanisms.

The first awareness survey involved the tripartite members (i.e., labour and employers’ representatives and regional CHR) of the NTIPC-MB and RTMBs along with the DOLE regional focal persons of RTMBs during the “Capacity-Building Seminar for Select NTIPC-MB and RTMB

and CHR Representatives” in Davao City on 8-9 March 2018. The second awareness survey was with the workers’ representatives during the “Workers’ Training on Social Dialogue, Case Documentation and Monitoring on Compliance with FOA and CB” on 13-14 April 2018 in Batangas City. The third, was a quick survey with the public-sector workers in Quezon City. The fourth, was a face-to-face interaction during the “Seminar on Labour Inspection and Role of Workers in Promotion of Workplace Compliance in Labour Laws and Standards” on 21-23 May 2018 in Tagaytay City through an informal FGD with key organizers of local federations affiliated to the IndustriALL Global Union and some union officials on the monitoring mechanisms and ILO Convention No. 87. The last, was the small group presentation and validation of the initial results of the review on 25 September 2018 with the ILO and stakeholders’ representatives from DOJ, CHR, DOLE, SENTRO, FFW, PM, Confederation of Filipino Workers (CFW), PSLINK, PIPSEA, Philippine Government Employees Association (PGEA) and CTUHR.

Informal interviews were conducted with key NTIPC-MB members³⁶, BLR³⁷ and quick updating was undertaken with focal persons on RTMB work in DOLE National Capital Region, Regions 4-A, 6 and 7. Discussions were also conducted with the AFP-HRO³⁸, DOLE Regional Director³⁹, CHR⁴⁰, COURAGE⁴¹ and the CTUHR⁴².

3.1 NTIPC-MB and RTMB members

Of the 50 questionnaires distributed to the participants to the training⁴³, only 29 were retrieved or returned. Answers ticked by ten or more respondents are considered indicative of a pattern, while less than ten is not indicative and not to be considered.

³⁶Key NTIPC-MB members interviewed for this review were: Atty Alan S. Montano, President Emeritus of the Federation of Free Workers (FFW) national federation and Mr Josua T. Mata, Secretary General of SENTRO, a national labour center. Key NTIPC-MB member refers to a labour organization representative to the NTIPC-MB who was part of its constitution, actively engaged in the profiling and monitoring of FOA cases in the different local and international venue, and in coordination meetings with the DOJ and other concerned government agencies.

³⁷Ms Glorializa delos Santos, Senior Labor and Employment Officer of the BLR was interviewed for the review. She has been the technical staff for the NTIPC-MB profiling and monitoring and in DOLE work on the USTR and the ILO cases since she started at the BLR.

³⁸The discussion with AFP-HRO was with Colonel Gerry Pulohanan, the new head of Office and Major Edgardo Esquivias, from the same Office. Major Esquivias is one of the pioneers in the monitoring work under Colonel Domingo Tutaan as head, which in the labour area helped produced the “Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers’ Rights and Activities” and in human rights, the formation of the National Monitoring Mechanism (NMM). Major Esquivias is a reliable partner of the BLR in the conduct of capacity-building seminar and data gathering.

³⁹Interviewed DOLE Regional Director Joffrey M. Suyao. Currently, with DOLE Regional Office No. X, but the longest serving head of DOLE Davao Region (from 2012 to 2016), which has the most number of labour rights cases.

⁴⁰Interviewed the Commissioner Gwen Gana, the acting chairperson of the Commission on Human Rights (CHR) during the conduct of the interview, for her thoughts on the monitoring body, capacity-building needed for the CHR and the proposal of labour groups to provide the Commission with prosecutorial functions.

⁴¹Interviewed Mr Ferdie Gaite, the National President of the Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), on his view on the three monitoring mechanisms and proposal to make it effective.

⁴²Interviewed Ms Daisy S. Arago, the Executive Director of the Center on Trade Union and Human Rights (CTUHR), on her view of the monitoring mechanisms, what are the gaps and her thoughts to make the monitoring mechanisms effective.

⁴³First awareness survey involving the tripartite members (i.e., labour and employers’ representatives and regional CHR) of the NTIPC-MB and RTMBs along with the DOLE regional focal persons of RTMBs during the

On awareness of FOA and CB, all of the respondents answered in the affirmative although only half knew most of it, while the rest knew a few. A majority of the respondents believed violations like union busting, harassment, dispersal of picketline, intimidation and violence, were occurring and committed by companies, private individuals or the government.

Respondents believed that investigations on violations were mostly conducted by the DOLE, CHR and PNP through their respective regional offices. However, the investigations have no conclusion, or were dismissed for lack of evidence.

Ratings on the efficiency of the three monitoring bodies and acceptability of their findings generated less than ten points. But in terms of effectiveness of the investigation, RTMB and CHR region generated ten or more points.

Lack of training and capacity-building generated the most response as hindering factor for the effectiveness of the three monitoring mechanisms. Followed by lack of budget or resources for materials, office, travel, devoted staff and documentation along with difficulty in data gathering of alleged violations. Political bias was also noted.

On possible option to authorize the NTIPC-MB and RTMB to go beyond monitoring and prosecute trade union rights before the regular courts or to exclusively hear and decide trade union rights violation cases, the same did not merit significant points from the respondents. But they agree to have a unit of first instance at the NLRC to hear and decide cases of trade union rights violations and/or determination of labour-relatedness of EJK/ELK cases prior to the filing of the case with the appropriate regular courts for determination of guilt.

Respondents also endorsed the option to replace or improve AO 35 and consolidation of all the monitoring mechanisms under the NMM.

The endorsement to replace or improve AO 35 find support in the fact that respondents who are members of the NTIPC-MB and RTMBs are not aware of its existence. NTIPC-MB and RTMBs work with or has to deal with AO 35-IAC. But most of the current NTIPC-MB and RTMB members were newly appointed or the RTMB was newly reconstituted.

3.2 Capacity-building for national labour organizations, federations and/or unions on FOA: Problem of recall, too many topics to digest in training and multiple-tasking, modules

The three monitoring bodies has been in existence for several years prior to the conduct of the survey early this year⁴⁴. The NTIPC-MB was constituted in 2010 and the RTMB in 2011, while AO 35-IAC was in 2012 and become operational with the issuance of its guidelines in 2013. The PHRC status was upgraded in 2006 and followed by the creation of human rights offices in PNP and AFP, while the initiative to put up the NMM was in 2011.

"Capacity-Building Seminar for Select NTIPC-MB and RTMB and CHR Representatives" in Davao City on 8-9 March 2018.

⁴⁴The second awareness survey was with 38 workers' representatives from IndustriALL Global Union, two labour centers (SENTRO and TUCP), about ten federations, SALIGAN and ALLWIES for informal sector workers attending the "Workers' Training on Social Dialogue, Case Documentation and Monitoring on Compliance with FOA and CB" on 13-14 April 2018 in Batangas City.

Majority of the responses, 14 out of the 19 returned survey questionnaires, indicated lack of awareness of or have not heard of the three monitoring mechanisms. Of the five who affirmed to have heard about the monitoring mechanisms, four have indicated to have: (a) no idea of its functions; (b) no updated information; (c) relied on the federation leaders; and (d) noted no outcome from it.

The lack of awareness on the three mechanisms or of its monitoring functions could be partly attributed to the fact that capacity-building carried out under the ILO TCP primarily focused on: (a) capacity-building and advocacy for ILS, FOA and CB; and (b) observance of prescribed conduct by the police and military. As of June 2016, over 70 capacity-building activities on labour rights have been carried out and around 4,384 stakeholders have been oriented and capacitated on ILS and on observance of tripartite instruments governing the engagement of the social partners, including the police, military and key government agencies during labour disputes⁴⁵.

The modules developed on FOA did not include the role or significance of the monitoring mechanisms in ensuring compliance or in providing redress in case of violations. The DOLE has digitalized its Labor and Employment Education Services (LEES) modules in 2014 into info-videos including labour rights and AFP-PNP guidelines during labour disputes⁴⁶ but has also not shown or include the monitoring mechanisms and its functions.

On awareness on programmes promoting respect for human and trade union rights or on human and trade union rights literacy, 13 affirmed awareness while six of the participants heard of trade unions rights and ILO Conventions only for the first time during the recent trainings.

The informal FGD, revealed two things. First, awareness or knowledge of ILO Conventions do not necessarily translate to day-to-day union organizing operation or in the ground level exercise of the right to self-organization and CB. Hence, acts of union-busting are not necessarily viewed in the context of violation of ILO Convention No. 87, but for the federation lawyers to decide whether to continue with the conciliation-mediation at the NCMB or file the same before the NLRC as an unfair labour practice case. Second, even key union officers or organizers of “very engaged”⁴⁷ federations or national labour organizations have heard of FOA and CB agreement Conventions for the first time during the recent training.

⁴⁵Report of the Philippine Government to the Committee on the Application of Standards during the 105th International Labour Conference in June 2016 in Geneva, Switzerland.

⁴⁶DOLE Labor and Employment Education Services (LEES) programme manage by the Bureau of Labor Relations and with LEES youtube channel launched in 2014. The DOLE LEES has info-video on Violence Against Women, Service Quality, Productivity, ISTIV, Kasambahay, Anti-Child Labour, Maritime Compliance, Welfare of Overseas Workers, Labour Laws Compliance, TESDA Skills Training, Employment Guide, Labour Standards, Occupational Safety and Health (OSH), AFP and PNP Guidelines, among others.

⁴⁷Active engagement in tripartite dialogues, campaigns and programmes is one of the criteria used for determining the “most representative organization” status of an organization, whether employers or labour sector, to represent their sector in various tripartite boards or bodies in the government -- consultative, policy-making, quasi-judicial and quasi-legislative bodies. TIPC, ITCs and NTIPC-MB are consultative bodies while the National Labor Relations Commission (NLRC) is quasi-judicial body. The National Wages and Productivity Commission (NWPC) is policy-making and the Regional Tripartite Wages and Productivity Boards are quasi-legislative bodies. Overseas Workers Welfare Administration (OWWA), TESDA, Philippine Overseas Employment Administration (POEA), Employers Compensation Commission (ECC), Social Security Commission (SSC), Home Development and Mutual Fund (HDMF or Pag-Ibig), PEZA and Philhealth are policy-making bodies.

Respondents to the survey questionnaires and to the informal FGD are from federations or national labour organizations who have been engaged for a long time in several FOA trainings, active at the NTIPC-MB, or has sent key people to trainors' training on fundamental principles and rights at work or on FOA and CB at various places including in the International Training Centre of the ILO in Turin, Italy.

This brings us to examine the areas for improvement on the content and conduct of capacity-building and labour-education seminars whether DOLE or ILO funded or internally carried out by federations or national unions. Capacity-building and labour-education seminars in general, including on workers' rights and FOA, have to be redesigned. Ease in understanding and retention given the age bracket of participants must be in mind. For consideration too is the fact that trade unionists have multiple tasks and responsibilities. Not to mention that they regularly hopped from one meeting to another, or in the case of training, from one training to a meeting. Additionally, in certain situation, the least occupied person or staff is sent to represent the union or federation to meetings or trainings, with no re-echo or re-entry training requirement.

3.3 Public sector workers: Unaware of the three monitoring mechanisms

Public sector unions have not utilized or are mostly unaware of any of the monitoring mechanisms or of its functioning. Respondents to the awareness survey questionnaire skipped or did not give any assessments on whether the monitoring bodies are capable of delivering the expected results.

Public sector unions under COURAGE with 22 cases of casing or surveillance, two cases of abductions and six unresolved EJK/ELK cases, went to the regular courts, CHR or DOJ on court procedures or request to expedite, but allegedly ineffective. COURAGE claimed it never was acted upon and there is no honest to goodness process to investigate the complaint or to resolve as the mindset is selective justice. It maintained that just like in the drugs campaign, if the victim is an activist his/her death is not a cause for alarm or uproar, and the investigation would almost always hit a dead-end – no identified culprits or suspect. According to COURAGE getting the investigation going is already a problem as the suspects are often the PNP or AFP elements. If ever it gets filed in the Court, the justice system is a problem due to reliance on testimony of witnesses, and not to mention the case backlog in courts nationwide. COURAGE shared an experience in one case where it took them four years of hearings just for the grant of bail alone⁴⁸.

With respect to PSLINK, the Technical Education and Skills Development Authority (TESDA) case was processed at the NTIPC-MB but has not resulted to its full resolution.

The other public sector unions and organizations have not known the three monitoring mechanisms or the PHRC. ILO Convention Nos. 87 and 98, until the recent ratification of ILO Convention No. 151 on Public Sector Labour Relations, have not mainstreamed to the consciousness of public sector unions and members, who are largely unaware of programmes that promote awareness and respect of the exercise of trade union rights other than Executive Order No. 180, Series of 1987, or the "Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labour-Management Council and for Other Purposes"⁴⁹.

⁴⁸Interview with Mr Ferdinand Gaite, head of COURAGE.

⁴⁹Executive Order No. 180 outlines the State policy on public sector unionism.

3.4 ECOP insights on the three mechanisms and the ILO DCM report on FOA

Philippine employers' insights on the three mechanisms was solicited through ECOP, the national organization of employers. ECOP, in response, expressed in a statement its condemnation of "EJKs and violence, more especially when it is done by reason of FOA or labour-related".

On the monitoring bodies, ECOP believes that their purpose will only be effective when cases are finally determined to be directly labour-related and since none of the 65 cases have been proven to be labour-related, it does not see any reason to monitor the said cases. It cited the evaluation by the NTIPC-MB of the 65 cases of EJKs, EDs, torture and other grave violations, where only 28 cases are indicatively classified as "possibly labour-related" and 29 cases "possibly not labour-related".

Specific to the ILO DCM report, ECOP submits that civil liberties and trade union rights is a non-issue until it is proven that the reported cases are labour-related and pointed out that there are already ample and sufficient laws in place in response to CEACR long-standing proposed legislative reforms.

As to the promotion of a climate conducive to FOA, ECOP agrees with the recommendation of the ILO DCM that there should be effective labour inspection but qualified that it should not be in line with international standards. It also agrees with incentivization of compliance through tax incentives, and compliance advocacy, as it has reportedly been promoting activities beyond CSR including self-assessment, peer-assessment, reporting and transparency.

3.5 Insights, views on improving the monitoring work

Critical insights and views on improving the monitoring work were gathered from key people. DOLE was deliberately not included in this section as it recently issued a policy instrument on the NTIPC-MB that will be discussed separately. There may be five diverse insights and views but there is a common thread that binds them all into a way forward for the mechanisms.

The first view, the three monitoring mechanisms are fine. But labour sector participation at the AO 35-IAC or its TWG should be pursued⁵⁰. The labour sector should not only be consulted but must be involved with clear support in terms of capacity-building. Moreover, reforms on the use of forensics and non-eye witness evidences by the DOJ has to be supported in order to obtain progress in the prosecution of EJK/ELK and murders. There should also be support to the family of the victims as they do not have the resources to pursue the case and the WPP should be strengthened. But there is simply too many monitoring mechanisms and they do not coordinate or is working with one another. It appears that the monitoring mechanisms are knee-jerk reaction to pressures to address impunity⁵¹.

The second view⁵², the AO 35-IAC should continue along with the advocacy for compliance with the "Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative

⁵⁰Interview with Atty Alan S. Montano, President Emeritus of FFW.

⁵¹Sharing by Mr Antonio Asper of the FFW during the small group Presentation and Validation of the Review on the Monitoring Mechanisms (NTIPC-MB/RTMB, AO 35 and NMM) on 25 September 2018 before the ILO and stakeholders' representatives from the CHR, DOJ, DOLE, SENTRO, FFW, PM, CFW, PSLINK, PIPSEA, PGEA and CTUHR.

⁵²Interview with Air Force Colonel Gerry Pulohanan, the new chief of the AFP-Human Rights Office and Major Eduardo Esquivias from the same office.

to the Exercise of Workers' Rights and Activities”⁵³, which has a provision on remedies for the victims in case of violations by the AFP, PNP or the security guards.

The third view⁵⁴, abolish AO 35-IAC and the NMM as both are not functional. An investigative body or unit on human and trade union rights violations, with forensic capacity that work with NBI, PNP and AFP, should instead be created at the CHR. The NTIPC-MB should be strengthened. It should have full-time staff, budget, a policy instrument that it can invoke to intervene or stop things from happening and has the power to deputize a DOLE regional office to carry out specific task or activity for the NTIPC-MB. Remove the regional structure of the NTIPC-MB but retain the TVT.

The fourth view⁵⁵, special courts for trade union and human rights cases should be created to help in expediting case movement. The Integrated Bar of the Philippines (IBP) can be tapped to expedite the prosecution as the organization has an existing structure up to the city level, and free legal service can be funded by the Courts or Supreme Court. The Public Assistance Office (PAO) cannot be effective for trade union and human rights cases as it has restrictions for indigent only and government employees are not considered indigent.

The fifth view⁵⁶, no one knows what AO 35-IAC and NMM are doing, both are not functional. It would be most logical to instead strengthen the CHR as the monitoring body with investigative and prosecution powers for human and trade unions rights violation. The NTIPC-MB is currently not effective as its tripartite character is an inherent flaw. Employers' representatives would not allow an investigation into his/her sector and would just temper and tamper the case profile and the recommendations, while the labour sector would push for investigation and prosecution not just of state actors involved but also of the company. Class contradictions is unavoidable at the NTIPC-MB and the DOLE, who should be an impartial mediator, swing to either side dictated only by national policy on human and trade union rights and political inclination or ambition.

The function of the NTPC-MB as the high-level monitoring body should be reviewed including identification of its accountability, and how it relates to the CHR as the constitutionally mandated body on human rights, to the OMB, DOJ and the courts. The selection process and guidelines for the composition of the TVT should be clearly provided for objectivity and trust building, and also how it relates to the CHR at the regional level.

For effective, efficient and reliable monitoring, the critical component is actually the workers' participation through their unions at the grass root level, or the people at the scene of the crime, so to speak. The experience is best captured and articulated by the victims, next of kin, or their local organization, then through their federation or national organization's spokespersons. At the outset, counseling and documentation assistance should immediately be available at the local level. Training and capacity-building should also be done at the grassroot level to address the problem of “information hoarding” or “capacity monopoly” by central office or federation people or leaders. Concretely, there should be a WRW team based at the community, enclaves, plantations, mine sites and other places where there are workers are formed after a capacity-building on labour

⁵³The Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities, which is an output of the ILO TCP was issued on 7 May 2012 and was formulated with the NTIPC.

⁵⁴Proposal of Mr Josua T. Mata, Secretary-General of SENTRO.

⁵⁵Ibid, 43.

⁵⁶Interview with Ms Daisy S. Arago, Executive Director of the CTUHR.

and documentation. WRW is envisioned to do continuing monitoring, documentation and reporting on trade unions situation at their respective areas of operation.

Additionally, respondents⁵⁷ to the awareness survey questionnaire recommended to have an awareness or education programme for respect of the exercise of trade union rights taught in educational institutions as part of school or course curricula. A majority would want the Filipinos to be “human and trade union rights literate” as lack of knowledge or understanding of it is abetting the continuing pattern of violations and impunity in the country.

On trade union rights watchdog, respondents in private and public sector, envisioned an independent body that would focus on data gathering, profiling and monitoring of violations of trade union rights and linked to the NTIPC-MB. They likewise want a simple and easy to follow monitoring process, and fast court proceedings.

4. GAPS AND ISSUES

At the outset, it must be emphasized that the high-level monitoring body at the DOLE was an intended “bypass” to the slow grind of the wheels of justice due to clogged dockets and a host of issues plaguing the Philippine criminal justice system and to have an inventory of cases with allegations of violation of FOA, CB and political and civil rights involving workers and/or trade unions. The NTIPC-MB and RTMB along with AO 35 and the NMM mechanisms are supposed to provide rapid response and expedited action in securing justice and progress with respect to these cases.

In strict sense and in the context of labour EJK/ELK, the monitoring bodies are the DOLE NTIPC-MB and its regional structure, the RTMB and CHR’s NMM as indicated in their respective mandates. The DOJ’s AO 35 can properly be designated as investigation and prosecution arm for all forms of political violence and abuses of power by agents or elements of the State or non-state forces consistent with its mandate (Table 3).

Logically, the determination of whether a case is labour-related or not, is within the competence of the DOLE monitoring body given its tripartite composition and expertise on the subject. AO 35 however, subjects such endorsed or referred cases to further review under its own standards to qualify as AO 35 cases. Similarly, CHR’s endorsed human rights cases have to undergo review or re-investigation by the DOJ. This processing rendered the monitoring endeavor by the tripartite partners at the DOLE monitoring body appears like an added layer instead of the intended expedited processing of human and labour rights cases.

⁵⁷Both the public and private sector unions and members involved in the second and third surveys.

Table 3. Comparative matrix of the monitoring mechanisms

	Monitoring mechanisms		
	NTIPC-MB and RTMB	AO 35-IAC	NMM
Lead	Secretary, Department of Labor and Employment	Secretary, Department of Justice	Chairperson, Commission on Human Rights
Mandate/ Objectives	High-level monitoring body on the application of ILS, in particular ILO Convention No. 87, all complaints, information or cases of trade union rights violation filed either before the ILO or taken cognizance of by the DOLE monitoring body.	<ul style="list-style-type: none"> • Government machinery dedicated to the <u>resolution of unsolved cases of political violence</u> in the form of ELKs, EDs, torture and other grave violations of right to life, liberty and security of persons. • Highest policy-making and oversight body tasked to monitor and ensure the speedy resolution of the AO 35 cases. 	An effective monitoring mechanism that involves a strong GO-NGO partnership that will ensure that justice is served to the victims of ELKs, EDs and torture; and to strengthen institutional mandates, capabilities and engagements in effectively resolving cases of ELKs, EDs and torture.
Composition	Tripartite, with representatives from government agencies, 20 employers through ECOP and 20 labour organizations.	Members are Secretaries or heads of the following offices: OPAPP, DND, DILG, PHRC, PAPA, AFP, PNP and NBI. CHR and OMB are mere observers and resource persons. DFA was included in 2017 as observer pursuant to IAC Resolution No. 3, dated 25 October 2017.	Multi-sectoral with the following government offices: OPAPP, DND, DILG, PHRC, PAPA, AFP, PNP, NBI, OMB, DFA, DOLE, DOJ and NGOs such as Philippine Alliance of Human Rights Advocates (PAHRA).
Structure	NTIPC-MB, TEC-MB, RTMB and TVT	AO 35-IAC, Special Oversight Teams, Special Investigation Teams for: Unsolved or New Cases or Existing or Current Cases, Special Tracker Teams.	None
Main output	<ul style="list-style-type: none"> • Profiled and classified cases whether for the specialized or ordinary expedited criminal process or for further investigation or for filing of complaint or 	<ul style="list-style-type: none"> • Investigation report. • Filing of case before the appropriate prosecution office, or • Filing of Complaint or Information before the proper court . 	Common case records, report and nomenclature, monitor and ensure interlinking and fulfillment of institutional mandate on cases of EJK/ELK.

	<p>information or for prosecution to AO 35.</p> <ul style="list-style-type: none"> • Immediate resolution/ action on cases within the DOLE or its attached agencies, and the AFP or PNP where appropriate. 	<ul style="list-style-type: none"> • Prosecution and resolution of AO 35 cases. 	
--	---	--	--

Tighter cooperation and coordination protocols within and among the monitoring bodies, with clear timelines, transparency and accountability should be looked into. The evaluation processes must be seamless and uniform, regardless of which mechanism the monitoring work is first brought or taken cognizance of in the concept of co-equal or shared jurisdiction. To be useful in combatting impunity, as urged by the ILO supervisory body, interlinking of the reviewed monitoring bodies should be pursued. To maintain the current independent and separate functioning of the mechanisms, would negate the purpose of having them despite the several inward alignments or improvements of their respective processes.

4.1 NTIPC-MB and RTMB

4.1.1 DOLE Administrative Order No. 32, Series of 2018:⁵⁸ Process changed, regionalizing the monitoring of FOA cases

DOLE AO 32 has significantly changed the monitoring and processing of the FOA or trade union rights violation cases or complaint.

Early on, the NTIPC-MB through the BLR worked with the inter-agency committee under the PHRC in processing, profiling and progress of cases and programmes on trade union and human rights. Monitoring is done under the umbrella of the PHRC. With AO 35 and migration of the inter-agency members to the IAC, the NTIPC-MB has to do processing and profiling by directly collating or gathering information or data from different sources such as the PNP, CHR, AFP, regions, concerned organization, DOJ and the courts. NTIPC-MB approved profiles and recommendation are submitted to AO 35-IAC for evaluation and inclusion as AO 35 cases. However, all the 11 cases endorsed and classified by AO 35-IAC as labour-related ELK/EJK are still pending up to this review.

Under AO 32, the high-level monitoring body has been regionalized. The RTMB is the monitoring body at the regional level and reporting to the NTIPC-MB with the BLR performing coordination and secretariat work. Docketing, profiling, evaluation and reporting of the cases or complaints will be done by the RTMB. The BLR performs the receiving, endorsement, referral or distribution functions previously lodged with the ILAB of the DOLE. Received information, report, complaint or cases are referred to the RTMB for profiling and monitoring. RTMB functions are the same, which are: (a) to ensure the application and implementation of ILS in the region; (b) to verify and/or document allegations of threats, intimidation and harassments of trade

⁵⁸DOLE Administrative Order No.32, Series of 2018, or the “Operational Guidelines of the National and Regional Tripartite Monitoring Body on the Application of International Labour Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organise (No. 87)”.

unionists in the region; (c) to conduct monitoring and processing of complaints; (d) to gather relevant information from the regional authorities and/or courts, including comments from the social partners; and (e) to prepare case/complaint profiles to be submitted to the National TIPC-MB, as may be necessary.

In AO 263, Series of 2011, the RTMB, as the regional structure of the high-level monitoring body, is convened when tapped by the BLR to assist on specific FOA case/s in their area of jurisdiction or as directed by the NTIPC-MB, through a Resolution, to perform certain acts on specific case or to conduct an investigation. The high-level monitoring is done by the NTIPC-MB with the BLR as the primary responsible office on DOLE implementation of ILO Convention Nos. 87 and 98 and in the monitoring of FOA cases or complaints whether filed through the ILO or *motu proprio* taken cognizance of by the DOLE or NTIPC-MB.

The change introduced by AO 32, has the effect of lowering the FOA cases or complaint to a typical case resolution route for non-FOA labour cases, which is from the regional office albeit as RTMB. Direct or operational monitoring of FOA cases now has to be done by the RTMBs of the different regional offices of the DOLE. The NTIPC-MB, on the other hand, will be doing oversight or supervisory function on RTMB's profiling and monitoring work.

On the whole, the BLR work on monitoring of FOA or trade union rights violation cases under AO 32 becomes programme management function typical to DOLE bureaus.

4.1.2 The RTMB: Composition, staff, turnovers and coordination concerns

The regionalization of trade union rights violation or FOA case monitoring has its positive and negative points. On a positive note, it is ideal to give regional visibility to the monitoring work and it affords easy access to complainants or victims of threats, intimidation and harassments of trade unionists in the region.

The drawbacks that hampered RTMB monitoring work under the previous set-up with NTIPC Resolution No. 1, Series of 2010, are not addressed and remained the same.

Foremost, is the nature of engagement of the private sector representatives in the Regional Tripartite Industrial Peace Council (RTIPC) itself and consequently, in the RTMB as a sub-committee. The RTIPC, just like the NTIPC, is a consultative body for policy formulation on labour and employment. The participation or engagement of the private sector is purely voluntary and *ad hoc* basis. AO 32 scope of work requires more than consultative functions from private sector representatives in the RTMB. The work load and responsibilities, depending on the region, would require more time, if not full-time work, from the workers and employers' representatives. Regional sectoral representatives however are not full-time. Workers are employed officers of local unions or area labour organizations while employers' representatives are mostly human resource personnel or manager, or industrial relations officers of the participating company.

Second is the lack of plantilla positions or items devoted for FOA advocacy and monitoring, both in the region and at the national level at the BLR. FOA promotion and monitoring, not being integrated as a regular programme of the DOLE, is *ad hoc* work for BLR and Regional Office personnel, who simultaneously are focal persons for several other programmes of the DOLE and multi-tasking.

The same is true with the other identified member-government agencies tapped for the NTIPC-MB or RTMB profiling and monitoring work. Based on the experience of the Davao Region, with the most number of FOA cases in Mindanao island, coordination with member-agencies is a challenge. Each agency has programmes and priorities of their own and cannot devote time and budget for DOLE or RTMB initiated investigation or labour-related EJK/ELK cases⁵⁹. Labour-related cases are just among the numerous pending cross-sectoral EJK/ELK cases in various stages of investigation and prosecution before the PNP, DOJ and the CHR.

The fast turnover of DOLE focal personnel handling RTMB, being at the core, is a major drawback in FOA promotion and monitoring work. But turnovers are understandably an inherent consequence of *ad hoc* handle of the FOA promotion and monitoring work.

The sectoral representatives, labour and employers in the RTMB also regularly changed. The average term of office of sectoral representatives in the RTIPC-RTMB, in practice, is three years although DOLE Department Order No. 140, Series of 2014⁶⁰, did not put a term. The absence of a term limit was intended to allow continuity in representation as long as he/she remains the representative of his/her sector, or until his/her resignation, recall or replacement and need not be tied up to the term limit, if there is any, for the regular RTIPC sectoral representatives.

Unlike the RTMB, the NTIPC and NTIPC-MB has permanency. This, despite the three years term for sectoral representatives, unless earlier recalled or replaced by the nominating organization⁶¹. Permanency is lent by Republic Act No. 10395 amendments to Article 275 of the Labor Code of the Philippines, which strengthened the NTIPC and its function of monitoring of full implementation and compliance with international Conventions and declarations. A unit in the BLR is devoted to tripartism and necessarily the NTIPC-MB monitoring work along with a unit in the ILAB that monitors the country's observance and implementation of obligations or commitments on international Conventions. Moreover, sectoral representations of employers' and labour in decision and policy-making on labour and employment, among others, are from national organizations, institutionalized and vested, and can be invoked.

With AO 32, absent full-time regional technical staff and sectoral representatives devoted to RTMB FOA promotion and monitoring work, substantial progress will be a hurdle. Along with the issue of lack of capacity and never-ending capacity-building work at the regional level.

It should be noted that tripartite approach under the RTMB, despite the challenges, has been proven effective in FOA cases that are within the DOLE jurisdiction. At the DOLE National Capital Region, several cases were resolved at first instance through the tripartite approach. It is a different story altogether when the cases are EJK/ELK, which is under the jurisdiction and mandate of other government agencies. Data gathering is difficult as the RTMB is dependent on the PNP information gathering and investigation⁶².

4.2 Philippine National Police (PNP) reports

Based on experience in profiling of possible labour EJK/ELK, the PNP investigation reports are very challenging to say the least. Generally, for cases that occurred from 2001 to 2010,

⁵⁹Interview with Regional Director Joffrey M. Suyao, who previously heads the Davao Region.

⁶⁰Section 1(b), Rule V of DOLE Department Order 140, series of 2014, or the Implementing Rules and Regulations of Republic Act No. 10395 on Strengthening Tripartism, which was issued on 7 October 2014.

⁶¹Section 1(b), Rule III of DOLE Department Order 140, Series of 2014.

⁶²Interview with Ms Jackie Borja, DOLE NCR RTMB focal person.

it is wanting in details, if ever it gets recorded in police blotter in the precincts, and with perceptible pre-conceived pattern of either being caused by personal grudges or perpetrated by riding-in-tandem John Does. The status does not say much other than the case is still “under investigation”. The then members of Task Force 211 or PNP’s Task Force Usig went back or conduct re-investigation after several years from occurrence of the incident hence, the difficulty in filing cases or prosecution and the disinterest of the families of the victim to pursue the case.

The EPJUST technical assistance programme triggered improvements in crime scene investigation which starts with securing and processing of the place of occurrence of the PNP First Responders and arrival of the Duty Investigator/Investigator-on-Case and the Scene of the Crime Operatives team for collection of physical and vital forensic evidence⁶³.

However, despite the improvements in police crime scene investigation, the seven cases (i.e., Rodel Estrellado, Kenneth Reyes, Rudy and Roderick Dejos, Bonifacio Labasan, Santos Manrique, Carlo Rodriguez and Celito Baccay) that occurred within this period, has not been resolved.

4.3 Administrative Order 35-IAC

Not much is known to the public or to the DOLE and the labour sector about the actual workings of the AO 35-IAC structures or the Tracker Teams. Only the AO 35-IAC TWG knows how in reality the AO 35 structures work. The DOLE, along with the OMB and CHR, is not part of the AO 35-IAC TWG or in any of its investigation structures. The OMB and the CHR have observer status at the IAC, and recently, the DFA, but not the DOLE.

AO 35-IAC has too many investigation and oversight teams but not many cases have substantial progress especially those that involved allegations of trade union rights violation. The nine resolved cases out of the 65 EJK cases, which include the four resolved by the trial courts, were all prior to AO 35-IAC.

Considering the absence of coordination or cooperation protocol between AO 35-IAC and the DOLE-led NTIPC-MB at the national or the RTMB at the local levels, the monitoring bodies operate separately and independently from each other. Contacts between the two monitoring bodies are usually initiated by the DOLE NTIPC-MB largely for sharing of FOA cases/information or request on update for cases endorsed to AO 35-IAC. Recorded recent engagement between the NTIPC-MB and the AO 35-IAC Secretariat on the cases was during the DCM.

The offer in 2016 from AO 35-IAC Secretariat to the labour groups for an observer status in the AO 35-IAC or in the TWG did not materialize. The offer came about following a series of meetings where the labour groups involvement is recognized to be facilitative of the investigation and would give assurance to the witness, victim or victims’ next-of-kin to testify and identify the perpetrator/s whether state actor or non-state actor. The offer did not take off absent an issuance integrating the labour groups even on an observer status in the AO 35 TWG or any structures.

4.4 Armed Forces of the Philippines-Human Rights Office (AFP-HRO)

It took the AFP-HRO⁶⁴ to point out the difficulties in the prosecution of EJK/ELK or human and trade union rights cases. It is not so much on the quality and efficiency of the CHR

⁶³PNP Standard Operating Procedure Number DIDM-2011-008 dated 7 April 2011 on the Conduct of Crime Scene Investigation.

⁶⁴Ibid, 46.

findings or field investigators and the NTIPC-MB or RTMB profiling of cases of human and trade union rights violations, but it is more on the characterization of the cases which should be based on the elements of the crime penalized under the Philippine Revised Penal Code to establish probable cause. The CHR and NTIPC-MB or RTMB characterized the cases as human or trade union rights violations, and not on the elements constituting the crime of murder or homicide or other crimes. It could be established as a human or trade union rights violation, but it should be an act punishable by Philippine criminal laws for prosecution and conviction to prosper. There is a big difference between the CHR probable cause and the DOJ probable cause. With this, the prosecutors, whether part of AO 35 or not, has to again conduct an investigation to determine whether there is probable cause or reasonable belief that the act/s complained of constitute/s an offense necessitating a court trial of the accused. The investigation or re-investigation takes time aside from the fact that getting a conviction would be a different story owing to prolong gap from the time of the incident, to profiling, then investigation and prosecution. So many things can happen in between including a change of heart of the victim's relatives or fogged up memory of eye witnesses.

The “Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers’ Rights and Activities”⁶⁵, has accordingly clarified the role of the AFP in labour disputes. They recognized that the AFP mainly support to the PNP when required. The Guidelines has been the main advocacy document for FOA observance within the ranks of the AFP. The advocacy however, has been hampered by budgetary constraints and thus, the reach is very limited.

The criticality of having a wider advocacy reach is highlighted by the fact that each AFP unit – air force, navy, marines and army – has its own human rights unit and all camps have Provost Marshal. The CHR, according to the AFP-HRO, would usually forward allegations of military involvement direct to the concerned unit. In turn, the unit will conduct an internal investigation, which would result to either dismissal or pre-trial on probable cause, or if service-related may result to court martial. The appreciation of each AFP unit, which is independent, may not be the same. The AFP-HRO functions similar to an internal monitoring unit on human rights concerns within the AFP. It is not appellate and do not have supervisory authority to oversee the different human right units in all camps.

4.5 Commission on Human Rights (CHR)

Responding to proposals to strengthen the CHR and provide it with prosecutorial power on human rights violation, the Commission emphasized that it is not actively seeking it. Prosecutorial power for the CHR would be a duplication of the functions of the DOJ and OMB, who have the mandate and the competency for prosecution. The CHR favours the creation of Specialized Regional Units for Labour Rights in its regional office that has more cases on labour rights violations as well as the creation of a DOJ special prosecution teams for labour rights violations⁶⁶.

A harmonized indicator for CHR, DOJ and OMB for probable cause determination on human rights violation cases as opposed to common crimes is one of the immediately doable and practical options. Harmonized or uniform indicators will address AFP-HRO’s stated concern. It will also address the issue on CHR findings not being given weight by the DOJ, OMB, PNP or AFP, and the consequent conduct of new investigation or re-investigation, which would add to

⁶⁵Ibid, 47.

⁶⁶Commissioner Gwen Gana, acting CHR chairperson, explained during the interview.

the delay in prosecution, exposed witnesses to harassment or intimidation and to a certain extent, impunity.

Strengthening CHR forensic based profiling capacity, alongside the PNP and DOJ, is a parallel requirement to maximize fully the CHR in ensuring observance of human and trade union rights. Having one CHR forensic expert each in Luzon, Visayas and Mindanao is a good start.

5. CONCLUSION AND RECOMMENDATIONS

The Philippine Government has not wavered in its commitment to uphold respect for human rights and trade union rights, as can be seen in its responses to calls and pressures on mounting human rights violations, which occurred in various stages since the early 80s up to the present. The responses can be seen in the various intricate systems to committees, task forces and special super bodies, presidential or otherwise.

The number of cases of violations however, continue to pile up and the issue of impunity has not been addressed. A number of factors have been shown to have contributed to the problem, but particular to trade union rights violation or FOA cases, the most significant factor is the cause, which is the ongoing insurgency in the countryside due to lingering poverty. An indication is a majority of the NTIPC-MB profiled cases were from Davao Region particularly in Compostela Valley and in Regions 3, 4-A, 5, 6 and 7, which notably are known insurgency areas.

Some groups have blamed the continuing violations to the counter-insurgency measures being implemented by the AFP and the PNP under the different dispensations from “total war policy” or “Oplan Bantay Laya” with Major General Jovito Palparan⁶⁷ as the alleged prime mover to “Oplan Bayanihan” and now, “Oplan Kapayapaan”.

The narrative of worker-participants to the case documentation and legal remedies training⁶⁸ validated the link between violations of the right to FOA or other trade union rights with the counter-insurgency campaign of the government. Worker-participants speak of being subjected to various forms of harassments from members of the AFP and PNP the moment they start to organize a union. Workers in the Visayas and Mindanao areas reported to have experienced harassments from being surveilled, accosted, warned to refrain from forming or joining a union, being visited at home, to being made to participate in a military initiated dialogue and film showing on the evils of unionism and its link to the different fronts of the Communist Party of the Philippines. Workers in Luzon shared of different forms of harassment from union busting to violent dispersals of picketlines, arrests and detentions. All of the participants are not aware of any of the three monitoring mechanisms and generally, skeptical of DOLE as it is seen to have turned a blind eye and at times, abetting the attacks on their right to self-organization.

⁶⁷Philippine Government’ Progress Report on its implementation of ILO Convention Nos. 87 and 98 in 2015 reported on the arrest and detention of Major General Jovito Palparan. The report states that “x x x From September 2005 until his retirement in September 2006, Major General Palparan was the Commanding General or Brigade Commander of the 7th Infantry (Kaughnay) Division in Central Luzon. The regional breakdown of the 39 cases of EJK and 11 cases of abduction reported in the KMU Complaint (ILO Case No. 2528) showed that the same increased or proliferated considerably during Gen. Palparan’s tour of duty in the area”.

⁶⁸A CTUHR in partnership with ILO and National Anti-Poverty Commission area-wide three-day para-legal training workshop on labour rights and labour laws, case build-up, documentation and monitoring entitled “Empowering Workers for Labour Rights Compliance by All, held in Davao City for Mindanao unions and in Quezon City for Luzon unions in July 2018 and in Cebu City in September 2018 for Visayas unions.

Given the cause, the government response of intricate systems, committees, task forces and special super bodies, require more to address impunity and to have substantial progress in various EJK/ELK cases.

Foremost, is a deliberate and fully integrated national policy on respect for human and trade union rights, with review, accountability and effective remedies for redress in case of failure of those responsible in respecting, protecting and fulfilling its obligations as duty-bearers, would do the country good regardless of the adopted counter-insurgency measure. The 1987 Philippine Constitution already provided for a national policy and Section 17 of Article XIII thereof, constituted CHR with clear powers and functions. The policy need to be strengthened, implemented and mainstreamed in all government offices nationwide.

Absent such a deliberate and fully integrated national policy, impunity and cases on violation of human and trade union rights will continue and catered through palliative interventions, lip service and *ad hoc* initiatives. There will be no let-up and the list will keep getting longer regardless of the systems, committees, task forces and super bodies, where a succession of administration have resorted to since 2006.

This is mirrored in the monitoring mechanisms under review. The monitoring mechanisms failed as the intended “bypass” to the slow grind of the wheels of justice due to clogged dockets and a host of issues plaguing the Philippine criminal justice system. The mechanisms are supposed to provide rapid response and expedited action to combat impunity, as urged by the ILO supervisory bodies. But it failed. The lack of cooperation or coordination protocol among the three mechanisms, or least among DOLE and DOJ, whether deliberate or not, caused the labour-related ELK/EJK cases to not move at all.

The DOLE monitoring body, being tripartite and having expertise on FOA and CB, and on matters concerning unions and union actions, should have precedence in its evaluation of labour-relatedness of the EJK/ELK and trade union rights violations cases. In the same way that CHR determination of human rights violations should be given due regard. Such determination by the DOLE or the CHR should already set in motion an AO 35 prosecution before the Special Courts designated under the Supreme Court AO 25-2007. There is no interlinking of the mechanisms for a seamless and uniform processes for expedited action on prosecution and in securing justice.

The mechanisms have no embedded review process, accountability to show and explain why it failed to curb impunity to the rights holders, and there are no available effective remedies to redress the failure of those responsible heads of the mechanisms in respecting, protecting and fulfilling its obligations or mandates.

Taking note of the DCM recommended actions on the free exercise of FOA, the identified gaps or blockades in obtaining substantial progress can be addressed as follows:

- a) In terms of national policy, institutionalization or embedding of observance and promotion of the eight core Conventions of the ILO at the DOLE and with the stakeholders through the Decent Work Agenda Programme. The DOLE may opt to actualize and mainstream the decent work commitments with clear deliverables into the following programmes, activities and projects:
 - Module development and implementation of advocacy on FOA observance through the DOLE Labor and Employment Education Services of the BLR.

- Prescribe FOA modules in grants under Workers' Organization Development Programme (WODP) with re-entry programmes.
 - Develop incentivization of compliance advocacy; pursue the campaign with the DTI and PEZA to link trade incentives with compliance with ILS through the NTIPC or the Industry Tripartite Council with the implementation of the Clothing and Textile Industry Tripartite Council Workers' Rights Board as a pattern.
 - On labour enforcement, strengthen the inspection system on compliance with ILS including FOA, and develop a compliance advocacy campaign with ECOP on peer-assessment, reporting and transparency.
 - Develop a national consciousness of zealous adherence for respect for human rights through a legislation incorporating the study of trade union rights and civil liberties and human rights as part of the primary, secondary and tertiary education curricula which the NTIPC can pursue as part of its priority legislative agenda. Alongside, the longstanding commitment to effect legislative reforms to align Philippine labour laws with the principles of FOA and CB.
- b) On addressing impunity, the mandates, structures and internal rules of the three mechanisms can be strengthened or modified as follows:

- AO 35 can be strengthened or abolished. The option to strengthen the AO 35 mechanism, would require an improvement in four areas.

Topmost, is the need to ensure openness and transparency on the prosecution and movement of the EJK/ELK cases. This require amendments in AO 35 that should also include participation of the labour sector and complainant organization in the IAC-TWG even on an observer status.

Second, the AO 35 criteria in screening of EJK/ELK cases relatedness to the exercise of FOA should be made inclusive rather than exclusive. Amendments in AO 35 criteria should accommodate “initial/fair grounds to believe” and “labour activity or trade union function albeit hybrid” so as not to unduly exclude possible FOA cases and the same principle should apply with the other political cases. The reason for inclusiveness is to address the issue of impunity and State action to ensure rule of law. It is not the high or low figures of officially recognized as EJK/ELK or ED cases that matters.

AO 35-IAC evaluation of the 65 cases endorsed by the NTIPC-MB, excluded 54 cases from its coverage. However, there is no endorsement for the 54 cases, which it deemed to be common crimes, to the usual investigation or prosecution procedure. It should be noted that prosecution or resolution of cases, whether it is common crime or a political case, is a mandate of the DOJ.

The use of “lack of clear links with labour issues” and the “emphasis on the motives of the killings” already calls for a determination, which require evaluation of evidentiary matters beyond the profiles. If the same criteria will be continued, a number of EJK/ELK cases will eventually be excluded under the AO 35 system. It will not be helpful in addressing the impunity issue. More so as the profiles would

not give us a clear picture given that the PNP crime scene investigation capacity is still at its infancy stage.

Third, capacity-building on collection of physical and vital forensic evidence for the PNP, CHR and DOJ should be carried out to reduce reliance on eye witnesses or testimonial evidence so that the lack or retraction of witnesses no longer impedes progress in the investigation and prosecution of cases.

Moreover, AO 35 should be made comprehensive by providing an effective and reliable witness protection programme whether under the DOJ WPP, or in the less formal structure such as in the CHR or the church.

Fourth, capacity-building on labour and ILO Conventions would need to be pursued regularly involving all the member-agencies of the IAC and the members of the various special teams. Capacity-building should have modules harmonizing understanding of the special laws penalizing human rights violations and the Revised Penal Code to address the concern pointed out by the AFP-HRO. The special laws are: Republic Act No. 9745 or the “Anti-Torture Act of 2009” which penalizes any acts of torture, physical, emotional or psychological, and other cruel, inhuman and degrading treatment or punishment, as a criminal act separate and independent whose penalties shall be imposable without prejudice to any other criminal liability, regardless of the consequent felony committed as a result thereof, or whether it is used as a means in the commission or conduct thereof; Republic Act No. 9851, or the “Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity”; and Republic Act No. 10353, or the “Anti-Enforced or Involuntary Disappearance Act of 2012” which also penalized other forms of human rights violation.

Specific to violation of the right to self-organization of workers, the same could be pursued according to the Labor Code of the Philippines as unfair labour practice. However, unfair labour practice cannot be criminally prosecuted without first securing a final judgment finding that an unfair labour practice was committed⁶⁹. The module should capture the nuance of unfair labour practice and the protected exercise of civil liberties and political rights of trade unionists, workers and union activists.

The option to abolish the AO 35 carries with it a proposal to convert the Special Teams into Special Prosecutors for human rights and trade union rights violation cases.

The argument to abolish AO 35 is, it failed to be a “superbody” and most vulnerable to changes in administration and policy bias being a creation of an executive issuance. Change in administration and a revolving door policy on key officials or personnel is critical stumbling block in obtaining substantial progress. It caused, as shown at present, repeated initiation of the IAC, the TWG and the teams involved and is affecting institutional memory.

⁶⁹Articles 258 and 259 of the Philippine Labor Code, as amended.

In the old set-up, the NTIPC-MB worked and followed-up directly with AFP-HRO, PNP-HRAO, Regular Courts, DOJ Task Force 211, CHR as well as with the Office of the Court Administrator in the profiling and monitoring of progress of the FOA cases in the prosecution and in court decision under PHRC coordination. It has produced results (the case of Teotimo Dante, Ricardo Ramos, Antonio Pantonial and Fr William Tadena) and delivered on committed reforms in the AFP, PNP, Supreme Court and the DOLE which resulted to the lifting of USTR country status review of the Philippines in 2014. Under AO 35, DOLE NTIPC-MB interaction on monitoring of labour EJK/ELK has been very limited or intermittent during reporting periods only.

The DOJ however, has shared during the presentation and validation of this review, that the IAC has already initiated regional training for investigators and prosecutors and for 2018, six training were already conducted in six regions (Regions 1, 2, 6, 11, 5 and 8). Moreover, the new focal official on AO 35, Undersecretary Mark Perete, is reportedly planning to conduct an evaluation on the effectiveness of the training and with the stakeholders in 2018. As to when will the AO 35 be ready for its task, the same is not yet known.

- The NMM of the CHR can be abandoned. It has failed to take-off and the multi-party monitoring mechanism has not been heard of. The CHR monitoring of EJK/ELK cases with element of state actor involvement has continued through its task forces and special crisis units.

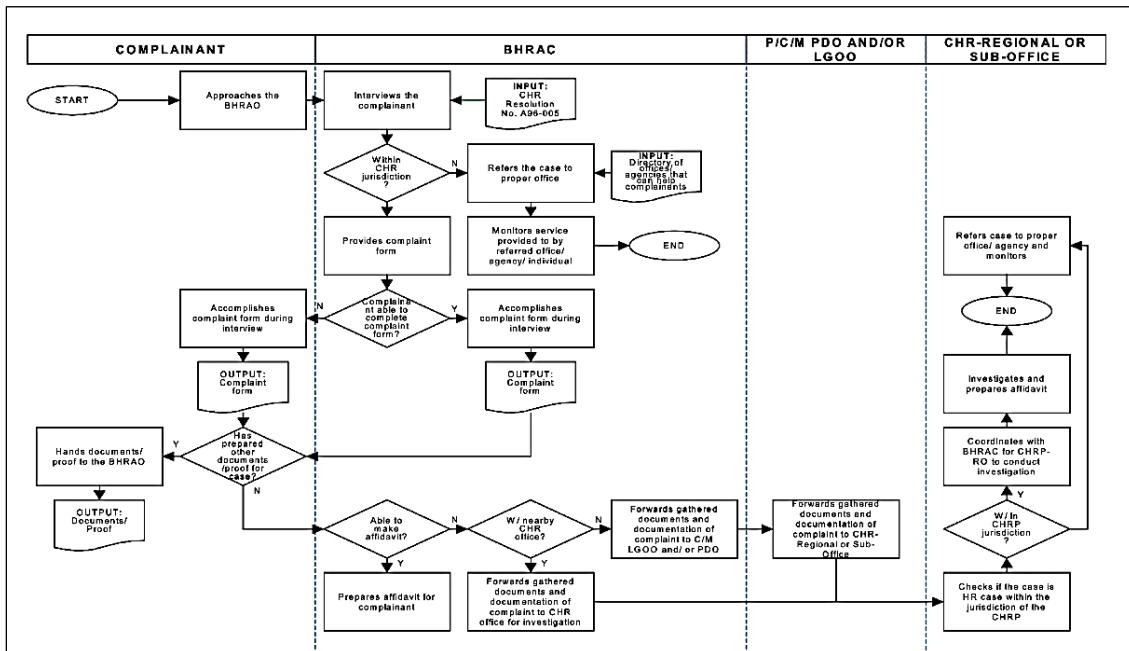
As stated earlier, the CHR favours the creation of a Specialized Regional Units for Labour Rights in areas where there is high rate of labour or trade union rights violation cases and to engage the proposed DOJ special prosecution team, AFP-HRO, PNP-HRAO, NBI, DOJ and the Courts. It is not actively seeking prosecutorial power on human rights violation. Indeed, prosecutorial power for the CHR would be a duplication of the functions of the DOJ and of the OMB, who have the mandate and the competency for prosecution.

A harmonized indicator for CHR, DOJ and OMB for probable cause determination on human rights violation cases as opposed to common crimes is one of the immediately doable and practical options. Harmonized or uniform indicators will address AFP-HROs stated concern. It will also address the issue on CHR findings not being given weight by the DOJ, OMB, PNP or AFP, and the consequent conduct of new investigation or re-investigation, which would add to the delay in prosecution, exposed witnesses to harassment or intimidation, and to a certain extent, impunity.

Strengthening CHR forensic based profiling capacity, alongside the PNP and DOJ, is a parallel requirement to maximize fully the CHR in ensuring observance of human and trade union rights. Having one CHR forensic expert each in Luzon, Visayas and Mindanao is a good start.

It would be worthwhile to revisit the Barangay Human Rights Action Center (BHRAC) Programme of the CHR with the DILG for revitalization and institutionalization or upgrading (formed through DILG Memorandum Circular Nos. 94-194 and 2006-045 and CHR trained Barangay Human Rights Action Officers). The process flow for purposes of the possibility of integrating to the monitoring mechanism or at the grassroot level monitoring is worth examining (Figure 4).

Figure 4. Current BHRAC complaint processing system



- Strengthen the NTIPC-MB as the high-level monitoring body. Its mandate and functions should be reviewed to ensure that it is independent in performing the profiling and monitoring work. Policy-making functions should be left to the NTIPC. There should be clear accountabilities, procedures and coordination protocols with its TTV and CHR, PHRC, DOJ, Courts, PNP-HRAO and AFP-HRO. NTIPC-MB representation should provide a seat for representatives from public sector and its coverage should clearly include cases involving workers in the public sector⁷⁰.

A major decision however has to be made on the RTMB. If the option is to strengthen the regional structure, the basic requirement would be to provide or devote plantilla positions for permanent regional secretariat and technical staff, budget and resources, including a provision for tenured and paid for full-time sectoral representatives to address the problem of fast turnover and obtain substantial progress even in the area of prevention and promotion of observance to FOA and CB principles. RTMB work should not be limited to case profiling and

⁷⁰During the presentation and validation of the Review, PSLINK representative pointed out that although it is stated in AO 32 that public sector is expressly covered, in actual practice, it does not show. Public sector unions should be represented not just at the NTIPC, NTIPC-MB but more so at the regional structures. It should also be ensured that the representation and participation of the government workers is on official time.

monitoring but should include promotion of compliance as provided in its mandate. If BHRAC is existing in the area, the RTMB should be able to coordinate with it being the first responder in place not just with the AFP and PNP or DOJ and CHR.

If the option is to abolish the RTMB, the TVT should be strengthened and budgeted. The TVT is case based profiling dispatch and should consist of national and regional representatives with clear guidelines and clear selection process of members of the team, independence and commitment should be a consideration. Monitoring on the progress of the case and coordination stays with the NTIPC-MB as the high-level monitoring body. Visibility and regional access can be had with the BLR developing a new App or enhancing the App called “Worker’s Eye” developed by an attendee of the 21st World Congress on Safety and Health at Work held in Singapore in 2018. The App, developed by Beatriz Brondial, would enable workers to report Occupational Safety and Health (OSH) related issues in their work environment and directly linked to the local labour inspectorate. It can also be included in the Philjobnet kiosks that are dispersed in public places and in the regional offices to address concern on easy access on reporting of violations to the NTIPC-MB.

- On DCM recommendations to strengthen the investigative and judiciary proceedings through the creation of specialized labour courts or special chambers of the judiciary in regions where a concentration of cases has been identified to accelerate the proceeding, perhaps it would be worthy to pursue the enhancement of existing Special Courts for EJK/ELK system under Supreme Court AO 25-2007.

Additionally, as proposed by the public sector workers organization, tapping and engaging the IBP to expedite the prosecution of human and trade union rights violation cases (IBP structure is up to city level) would be most useful. A Memorandum of Understanding can perhaps be developed between the NTIPC and the IBP on this concern.

- c) On the involvement of workers in ensuring compliance and monitoring of FOA violations, the BLR with the various trade union organizations may explore the formation of a trade union rights watch dog or WRW or equivalent team based at the community, enclaves, plantations, mine sites and other places where there are workers. The team should be capacitated to do advocacy, profiling and documentation of FOA cases in coordination with the NTIPC-MB and the BLR, or the TVT. Funding can be sourced from the WODP of the BLR.

At the national organization or federation level, BLR WODP grants should prioritize the conduct of trainor's training for union officers with re-entry plan on trade union rights and civil liberties, ILO Conventions and the supervisory mechanisms, labour laws; legal procedures; understanding the functioning of the monitoring mechanism/s; case documentation and profiling; case monitoring; and in-house trainor's training.

- d) On capacity-building, in addition to the ongoing capacity-building and advocacy for ILS, FOA and CB; and observance of prescribed conduct by the police and military, the following can be pursued:

- Develop modules for knowledge component for tripartite participants, AFP and PNP, and for workers on the ground, and conduct single topic seminar series on: (i) trade union rights and civil liberties; (ii) ILO Conventions and supervisory mechanisms as it relates to ground issues and concerns; (iii) labour laws; (iv) legal procedures; and (v) understanding the functioning of the monitoring mechanism/s.
 - Develop modules for skills training including for short skills training and conduct training on: (i) case documentation and profiling; (ii) paralegal training; (iii) case monitoring; and (iv) trainor's training.
 - Develop modules on understanding the AFP/PNP Guidelines and remedies in case of violations. It should be noted that the Guidelines⁷¹ provides that acts or omission of AFP personnel arising out or in connection with their participation in the implementation of the Guidelines shall be processed and resolved in accordance with the provisions of Republic Act No. 7055, or an "Act Strengthening Civilian Supremacy Over the Military by Returning to the Civil Courts the Jurisdiction Over Certain Offenses Involving Members of the AFP, Other Persons Subject to Military Law and the Members of the PNP". Further, members of the AFP and other persons subject to military law, including members of the Civilian Armed Forces Geographical Units (CAFGUs), who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless, of whether or not civilians are co-accused, victims or offended parties which may be natural or juridical persons, shall be tried by the proper civil court, if service connected, in which case the offense shall be tried by court-martial: Provided, that the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.
 - Develop INFOSTORIES similar to the ILO INFOSTORIES, that can be posted on the social media such as Facebook, on trade union rights and civil liberties, AFP-PNP Guidelines, basic rights and the monitoring mechanisms.
 - Conduct capacity-building for trade union rights watch dog or WRW team or equivalent teams.
 - A critical component of capacity-building is the forensic capacity of the CHR, NBI, PNP and AFP, while awareness of the basics on forensic evidence should be taught to the workers and at the barangay level or for the BRACs.
- e) For efficient, effective and speedy prosecution of human and trade union rights violation, there is a need for the CHR, DOJ, Courts, PNP, AFP and labour groups to build the elements constituting human and trade union rights violations as differentiated from ordinary crimes under the Revised Penal Code.

⁷¹Part IX (b) on remedy in case of violation of the Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities.

Bibliography

1. Issuances from 2006 to June 2016 Relevant to the Work of the Monitoring Bodies

July 2010 to June 2018

Office of the President:

Administrative Order No. 35, Series of 2012, “*Creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons.*” 22 November 2012. PDF retrieved from <http://www.officialgazette.gov.ph>

Department of Justice:

“*Operational Guidelines of Administrative Order No. 35.*” 18 April 2013.

Joint Department Order No. 0003-2012 “*Operational Guidelines for Prosecutors and Law Enforcement Investigators in Evidence-Gathering Investigation and Case Build-Up; Inquest and Preliminary Investigation; and Trial of Cases of Political-Activist and Media Killings.*” 05 November 2012. Available at <https://didm.pnp.gov.ph/Others/Joint%20Dept%20Order%20No%200003-2012.pdf>.

Department Order No. 848 - *Creating Special Task Force (STF) on Extrajudicial Killings (EJKs) and Enforced Disappearances (EDs)* tasked, among others, to review all reported and unresolved cases. 10 December 2010.

Department of Labor and Employment:

Administrative Order No. 263, Series of 2011 - *Mandating the Creation of Regional Tripartite Monitoring Body in the RTIPC pursuant to TIPC Resolution No. 3, Series of 2011.* 06 July 2011.

Administrative Order No. 104, Series of 2012, “*Operational Guidelines on Inter-Agency Coordination and Monitoring of Labor Disputes (DOLE Implementors’ Dos & DON’Ts).*” 27 February 2012.

Department Order No. 140, Series of 2014, “*Implementing Rules and Regulations of Republic Act No. 10395, An Act Strengthening Tripartism Amending for the Purpose Article 275 of the Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, As Amended.*” 07 October 2014.

Administrative Order No. 32, Series of 2018, “*Operational Guidelines of the National and Regional Tripartite Monitoring Body on the Application of International Labor Standards, In Particular ILO Convention on Freedom of Association and Protection of the Right to Organize (No.87).*” 25 January 2018.

Commission on Human Rights:

“*National Monitoring Mechanism (NMM) Operational Guidelines.*” Undated/Unissued.

2006 to June 2010

Office of the President:

Administrative Order No. 211, Series of 2007, “*Creating A Task Force Against Political Violence*”, 26 November 2007. PDF retrieved from <http://www.officialgazette.gov.ph/downloads/2007/11nov/20071126-AO-0211-GMA.pdf>

Administrative Order No. 181, Series of 2007, “*Directing the Cooperation and Coordination between the National Prosecution Service and Other Concerned Agencies of Government for the Successful Investigation and Prosecution of Political and Media Killings.*” 03 July 2007. PDF retrieved from <http://www.officialgazette.gov.ph>

Administrative Order No. 163, Series of 2006, “*Strengthening and Increasing the Membership of the Presidential Human Rights Committee and Expanding Further the Functions of Said Committee.*” 08 December 2006. PDF retrieved from <http://www.officialgazette.gov.ph>

Administrative Order No. 157, Series of 2006, “*Creating an Independent Commission to Address Media and Activist Killings.*” 21 August 2006. PDF retrieved from <http://www.officialgazette.gov.ph>

Philippine National Police (PNP):

Letter of Instructions Task Force Usig, as amended by Letter of Instruction Task Force Usig *Labor Related Killings and Enforced Disappearances: Inclusion as TF Usig Special Concerns*. 14 July 2008. Available at <https://didm.pnp.gov.ph/Letters%20of%20Instructions/LOI%20TASK%20FORCE%20USIG.pdf>

PNP Standard Operating Procedure Number ODIDM-2011-008 on the Conduct of Crime Scene Investigation. 07 April 2011. Available at <https://didm.pnp.gov.ph/Standard%20Operating%20Procedures/SOP%20ON%20CONDUCT%20OF%20CRIME%20SCENE%20INVESTIGATION.pdf>.

Supreme Court:

Administrative Order No. 25-2007. Available at www.oca.judiciary.gov.ph

II. National Tripartite Industrial Peace Council and Stakeholders’ Issuance

National Tripartite Industrial Peace Council Resolution No. 1, Series of 2016, “*Calling the Strengthening of the NTIPC Monitoring Body through the Creation of Fully-funded, Independent and Capacitated Case-Based Tripartite Validating Teams for Cases of Extrajudicial Killings, Enforcer Disappearances, Torture, Harassment and Other Gave Violation Committed Against Trade Unions Needing Independent Validation or Review.*” 25 May 2016, Manila, Philippines.

National Tripartite Industrial Peace Council-Monitoring Body Resolution No. 1, Series of 2010, “*Classifying ILO Convention No.87 Cases with Allegation of Extrajudicial Killings, Harassments and*

Abduction into Possibly Labor-Related and Possibly Not Labor-Related Cases Providing a Criteria for Classification of Cases into Possibly Labor-Related or Possibly Not Labor- Related.” 25 June 2010. Manila, Philippines.

National Tripartite Industrial Peace Council Resolution No. 1, Series of 2010, “*Constituting the National Tripartite Industrial Peace Council as the High-Level Tripartite Monitoring Body on the Application of International Labor Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organize (No.87) with Operational Guidelines.*” 20 June 2010, Manila, Philippines

“*Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers’ Rights and Activities.*” 07 May 2012, Manila, Philippines.

“*Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel during Labor Disputes.*” 29 May 2011, Manila, Philippines.

III. Reports

International Labour Organisation:

“*Report on the ILO Direct Contacts Mission to the Philippines.*” 6-10 February 2017.

105th Session of the International Labour Conference, May – June 2016, Report of the Committee on the Application of Standards: Part II/ 68-78. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489124.pdf

“*High Level ILO Mission to the Philippines on the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) Report.*” 22 September – 1 October 2009.

96th Session of the International Labour Conference, 30 May – 15 June 2007, Report of the Committee on the Application of Standards: Part II/ 34-39. Available at <https://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/pr-22-part2..pdf>

International Labour Standards Country Profile: Philippines. Available at www.ilo.org

Department of Labor and Employment:

“*Report of the Philippine Government to the Committee on the Application of Standards.*” 105th International Labour Conference, June 2016, Geneva, Switzerland.

“*Philippine Government’ Progress Report on its implementation of ILO Convention Nos. 87 and 98*”, 2015.

“*Public Version of the Pre-Hearing Brief of the Government of the Republic of the Philippines.*” 2011 GSP Annual Review of Case Docket No. USTR-2011-0015, 10 January 2012.

IV. Trade Agreement with Labour Rights Clause

EU-GSP+ Conditions. Available at <http://www.trade.ec.europa.eu>

EFTA-Philippines Free Trade Agreement. Available at <http://www.efta.int>

United States General System of Preference (US-GSP) Mandatory Criteria for Country Eligibility. Available at <http://www.usrt.gov/sites/default/files/GSP-Guidebook-September-16-2016.pdf>

Laws

Republic Act No. 10395, “*An Act Strengthening Tripartism Amending for the Purpose Article 275 of the Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, As Amended.*” 14 March 2013. PDF Retrieved from <http://www.officialgazette.gov.ph>

Republic Act No. 10353, “*An Act Defining and Penalizing Enforced or Involuntary Disappearance or the Anti-Enforced or Involuntary Disappearance Act of 2012.*” 21 December 2012. PDF retrieved from <http://www.officialgazette.gov.ph>

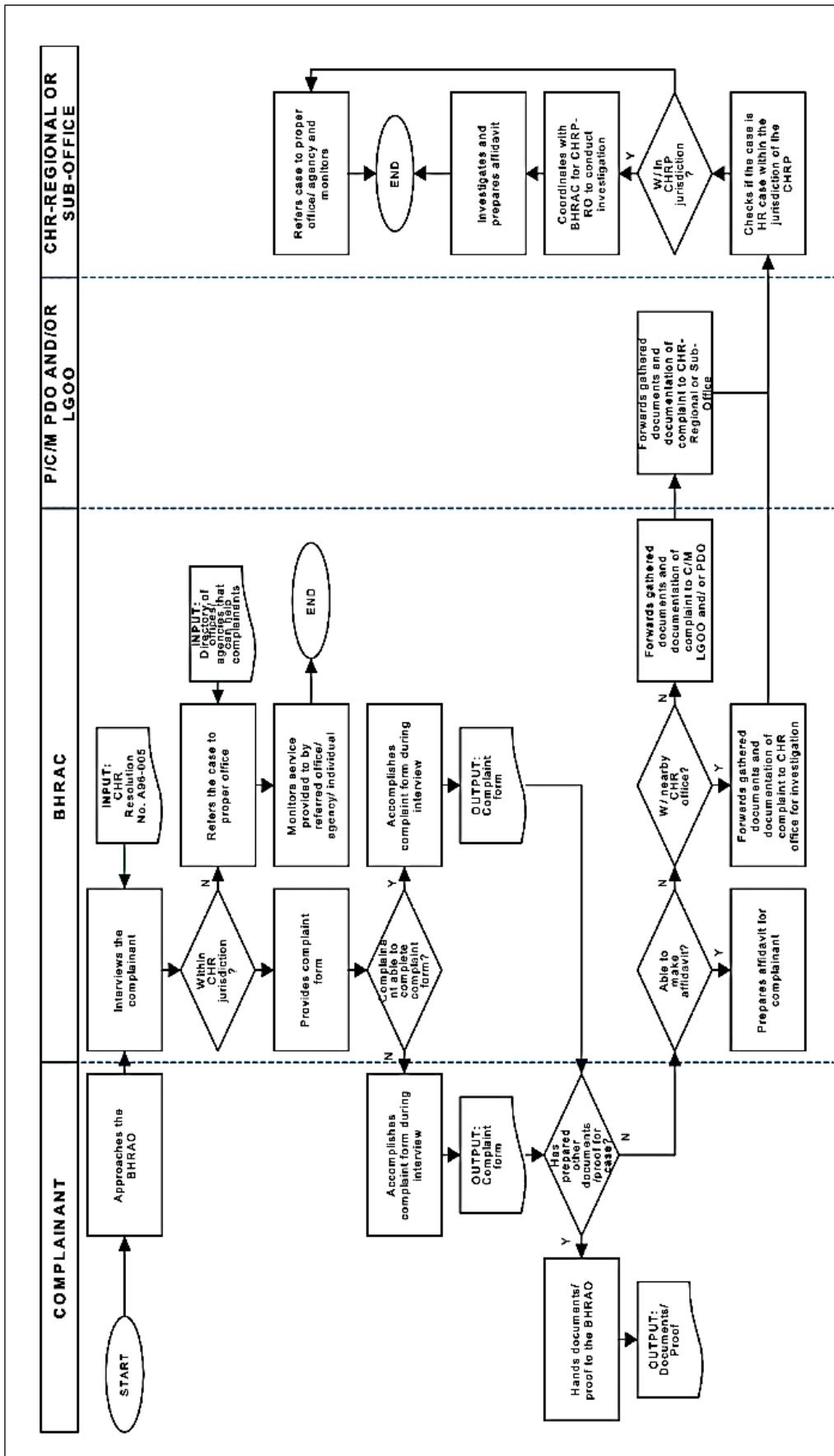
Republic Act No. 9851, “*An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and For Other Related Purposes or Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity.*” 11 December 2009. PDF retrieved from <http://www.officialgazette.gov.ph>

Republic Act No. 9745, “*An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor or Anti-Torture Act of 2009.*” 10 November 2009. PDF retrieved from <http://www.officialgazette.gov.ph>

Labor Code of the Philippines, As Amended, Articles 258 and 259. Available at <http://www.officialgazette.gov.ph>

Executive Order No. 180, Series of 1987, “*Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and For Other Purposes*”. 01 June 1987. Available at <http://www.officialgazette.gov.ph>

(Clearer copy of Figure 4. Current BHAC complaint processing system)



Addressing impunity: A review of the three monitoring mechanisms

The Review Report on the three (3) monitoring mechanisms at the three different government offices – Department of Labor and Employment (DOLE), Department of Justice (DOJ) and Commission on Human Rights (CHR) – goes beyond examination of the mandates, functioning, and composition. The Review puts into one document an institutional memory not only on the “how” of the mechanisms but “why” and “when” it came about including the International Labour Organization supervisory bodies longstanding recommendations that has not been progressively responded to by the Philippine Government.

In the crafting of future actions the Review will be useful to:

- Better understand the link between Philippine Government’s observance with core ILO Conventions in its labour practices and enjoyment of incentives from free trade agreements such as the EU-GSP+, US-GSP and PH-EFTA FTA.
- Improve the existing mechanisms to obtain rapid response and expedited action in securing justice and progress on labour-related cases of extra-judicial killings and violation of civil and political rights.
- Ensure that there is accountability, transparency and remedies in case of absence of substantial progress in addressing impunity by the monitoring bodies.
- The Recommendations from the Report encourage dialogue among the stakeholders towards the better application of international labour standards, particularly freedom of association and collective bargaining principles throughout the country.

ILO Country Office for the Philippines
19th Floor, Yuchengco Tower, RCBC Plaza
6819 Ayala Avenue 1200 Makati City, Philippines
Tel: + 63 2 580 9900, Fax: +63 2 586 7597
Email: manila@ilo.org
www.ilo.org/manila

978-92-2-133199-5 (print)
978-92-2-133200-8 (web pdf)