

# Summary report of the virtual exchange on the Philippines

(6-7 and 16 September 2021)

## I. Background, purpose and terms of reference

1. At the 108th International Labour Conference (June 2019), the Committee on the Application of Standards (CAS) adopted conclusions regarding the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) by the Philippines. The CAS noted with concern the numerous allegations of murders of trade unionists and anti-union violence, as well as the allegations regarding the lack of investigation in relation to these allegations. The CAS also noted that the Government had introduced legislative reforms to address some of the issues but regretted that those reforms were not adopted and urged the Government to bring the law into compliance with the Convention. Taking into account the discussion of the case, the CAS requested the Government to:

- take effective measures to prevent violence in relation to the exercise of workers' and employers' organizations' legitimate activities;
- immediately and effectively undertake investigations into the allegations of violence in relation to members of workers' organizations with a view to establishing the facts, determining culpability and punishing the perpetrators;
- operationalize the monitoring bodies, including by providing adequate resources, and provide regular information on these mechanisms and on progress on the cases assigned to them; and
- ensure that all workers without distinction are able to form and join organizations of their choosing in accordance with Article 2 of the Convention.

The CAS also called on the Government to accept a high-level tripartite mission (HLTM) before the 2020 International Labour Conference and to elaborate, in consultation with the most representative workers' and employers' organizations, a report on progress made for the transmission to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) by 1 September 2019.

2. Due to the Covid-19 pandemic, the HLTM has not yet taken place. The Government submitted its reports to the 2019 and 2020 CEACR, which published comments concerning the application of Convention No. 87 in 2020 and 2021. It noted in particular the Government's request for guidance in respect of the application of the CAS conclusions and called upon the Government to take a number of specific steps in relation to the application of the Convention, including the elaboration of a plan of action.
3. In these circumstances, the International Labour Office set up a virtual exchange between the Government of the Philippines and designated representatives from the workers' group (Mr Luc Cortebeeck) and the employers' group (Mr Scott Barklamb), in order to clarify any outstanding confusion in respect of the 2019 CAS conclusions and to assist the Government and the social partners to take effective action for their implementation. The virtual exchange also aimed at gaining greater understanding of the situation on the ground and the developments since the 2019 CAS conclusions, including challenges faced and steps taken in relation thereto.
4. The virtual exchange was not intended to be a substitute for the HLTM. The conclusions and recommendations in this report emphasize that it would be critical for the HLTM to take place before the 2022 International Labour Conference, taking into account the sanitary conditions prevailing in the country.

## **II. Meetings**

5. Virtual exchanges were convened on 6, 7 and 16 September 2021 with high-level representatives from different government departments and agencies, the Commission on Human Rights (CHR), numerous trade unions and the Employers' Confederation of the Philippines (ECOP) and several of its member affiliates.

### **A. Government**

#### Courtesy briefing with the Honourable Secretary of Labour and Employment

6. **The Honourable Secretary of Labour and Employment Silvestre Bello III** welcomed the participants to the virtual exchange and thanked the ILO for the opportunity to discuss the application of Convention No. 87 by the Philippines. The Honourable Secretary emphasized the country's commitment to recognizing and protecting the right of workers and employers to form and join organizations of their own choosing to be able to

effectively negotiate labour relations, as confirmed by the ratification of Conventions Nos 87 and 98. He indicated that the Department of Labour and Employment (DOLE) acknowledged the opportunity to improve its framework and systems in providing justice to victims of anti-union violence, harassment and other forms of infringement of trade union rights.

7. Reiterating the 2019 CAS conclusions, the Honourable Secretary expressed hope that the virtual exchange would facilitate the application of Convention No. 87 and its principles and that impediments to the total recognition of the rights of workers to organize, associate and collectively bargain would be eliminated so as to contribute to improving the working conditions. He also expressed trust that the activity would yield fruitful results in addressing the gaps so that the Government could improve and strengthen its ties and partnerships towards the effective application of ratified ILO conventions.

#### Meeting with Government representatives

8. A number of government agencies and offices participated in the virtual exchange, including the DOLE, the DOLE Bureau of Labour Relations (DOLE BLR), the DOLE International Labour Affairs Bureau (DOLE ILAB), the Department of Justice (DOJ), the Department of the Interior and Local Government, the Department of Trade and Industry, the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the Administrative Order No. 35 (AO35) Secretariat, the Board of Investments, the Civil Service Commission, the National Conciliation and Mediation Board (NCMB), the National Labour Relations Committee (NLRC), the Philippine Economic Zones Authority (PEZA), the Philippine Overseas Labour Office and the Secretariat of the Presidential Human Rights Committee (PHRC).
9. **The Undersecretary of Labour and Employment** (Mr Claro Arellano) welcomed the participants, expressed gratitude to the ILO for providing a venue to discuss the application of Convention No. 87 by the Philippines and expressed confidence that through the virtual exchange, which aimed at developing a better and common understanding with regard to the 2019 CAS conclusions, the joint efforts to refine, clarify and make the instrument more coherent and meaningful to the workers would be achieved. The Undersecretary welcomed the suggestions of the delegation for a better application of Convention No. 87 and emphasized the numerous measures undertaken by the Government with the social partners, demonstrating its sincere effort to promote

workers' fundamental rights. He informed that necessary efforts were being made at all levels to strengthen compliance with ILO ratified Conventions in law and in practice. Finally, the Undersecretary expected the mutually beneficial relationship between the Government and the ILO to be further enhanced and thanked for the support of the ILO and the partners.

**10. The Undersecretary of Labour and Employment** (Mr Benjo Santos Benavidez) indicated that the aim of the virtual exchange, which was not a substitute for a face-to-face meeting, was to provide updates on the actions taken by the Government following the 2019 CAS conclusions. He then elaborated on the investigations into the allegations of extra-judicial killings, the functioning of the national monitoring mechanisms, pending legislative bills and other measures undertaken by the Government.

**11.** Of the 43 cases of killings presented to the 2019 CAS by the workers' group, 23 cases were currently being investigated and the remaining 20 cases had various statuses (10 cases were under preliminary investigation, 4 cases were pending in court with suspects on bail, 3 cases were before the courts with arrest warrants issued, 2 cases were dismissed due to insufficiency of evidence and 1 case was before the court with the suspect arrested). The 43 cases had been presented to the Tripartite Executive Committee (TEC) within the National Tripartite Industrial Peace Council (NTIPC) in 2019 but not yet elevated to the NTIPC itself due to the need for more information. While many cases were not linked to trade union rights they were nevertheless investigated and monitored. The aim of the investigations was to establish the facts, determine culpability and bring the perpetrators to the courts for punishment but the lack of evidence was a recurrent challenge, hampering expeditious investigation and successful prosecution. Although not presented during the virtual exchange, further information was also available and could be provided on additional allegations of violence against trade unionists after 2019.

**12.** Concerning the monitoring mechanisms, the Undersecretary recalled that the country was divided into 16 regions, each with a functional regional tripartite monitoring body (RTMB) with its own resources provided by the regional office and which could also be supplemented directly from the DOLE, if necessary. Some RTMBs were not active as there were no alleged cases of violence to be monitored in the regions and would only be mobilized upon receipt of complaints of violations. The RTMBs did not have the mandate to investigate or prosecute but rather to monitor cases reported to them and to coordinate with other government agencies in charge of investigation or prosecution.

- 13.** To ensure a more effective operationalization of the monitoring mechanisms, mediator-arbiters were designated as focal persons, all DOLE regional directors were designated as regional focal persons and the Undersecretary was designated as a national focal person. The DOLE also conducted capacity-building of RTMBs personnel to guarantee a coherent approach in the regions. Furthermore, to ensure coordination among the DOLE monitoring bodies, the RTMBs from each region reported to the DOLE BLR, which served as the secretariat of the NTIPC. It was contended that the layering in monitoring should not lead to inconsistencies and in case of lack of information, a member of the NTIPC could request a validating team to be sent on the ground, but this process had not yet been activated.
- 14.** The procedure for coordination among the tripartite monitoring bodies at various levels was based on consultations with workers' and employers' representatives. Therefore, if the sectors wanted to remove a layer, it could be done but any changes needed to come from consultations with the sectors. If certain cases were referred for monitoring or for investigation to mechanisms outside of the DOLE (the DOJ or the PNP), the DOLE BLR was in charge of requesting updates and information on progress.
- 15.** Other measures were also taken by the Government to prevent violence in relation to workers' and employers' legitimate activities:
- (i) the AO35 operational guidelines were being reviewed and the Secretary of Labour and Employment acted as an observer in the AO35 Inter-Agency Committee (IAC) meetings so as to ensure the effective investigation of labour-related cases;
  - (ii) the ILO technical assistance programme would be used in the future to incorporate a labour perspective in the work of the AO35 IAC;
  - (iii) following requests from the tripartite constituents, the 2011 and 2012 Guidelines on the conduct of the Government and other agencies in the exercise of workers' activities were being reviewed (*the 2011 Joint DOLE-PNP-PEZA Guidelines on the Conduct of PNP personnel, economic zone police and Security Guards, Company Security Guards and Similar Personnel during Labor Disputes and the 2012 Joint Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities*);

- (iv) a productive labour dialogue was initiated with the Supreme Court and with the PEZA in relation to the formation and resources of tripartite mechanisms within eco-zones, the continuation of the review of the guidelines and the creation of the Joint Industrial Peace and Concern Office (JIPCO, now referred to as the Alliance for Industrial Peace and Program (AIPP)); and
- (v) the DOLE was in close cooperation with the PNP, the AFP, the DOJ and the CHR on specific concerns raised by trade unions.

**16.** Finally, the Undersecretary indicated that a number of legislative bills to align the relevant provisions of national laws with the principles of Convention No. 87 were pending in the Congress and explained that legal changes were expeditiously enacted if the sectors agreed to them. Some bills had been filed years ago but not yet adopted as there was no support or consensus from trade unions and employers. The Undersecretary emphasized the continued cooperation with the delegation and the CAS with a view to resolving all pending matters and reiterated the Government's commitment to apply in law and in practice the principles enunciated in international instruments and standards.

**17. Chief of the AO35 Secretariat** (Attorney Gino P. S. Santiago) described the structure of the AO35, indicating that coordination revolved around the IAC, composed of different government agencies represented by the secretaries and agency heads. The IAC served as the policy making body, with the DOLE as an observer and a resource. If a case was brought before the IAC, a special investigation team was created led by the AO35 prosecutor, who was responsible for coordinating the different agencies, notifying the law enforcement – the PNP or the National Bureau of Investigation (NBI) – or requesting investigators from the CHR to participate in the investigations. All government agencies were expected to provide support and cooperation to enable the AO35 mechanism to fulfill its mandate. Once sufficient evidence was found, investigators would file a complaint before the proper prosecution office (the prosecutor supervising the investigation was different from the prosecutor presiding the preliminary investigation) and the DOJ, through the national prosecution service, would file formal charges before the courts. The ILO technical assistance currently provided aimed at improving the outcome of the investigations and allowing consultations with the DOLE.

**18.** While the AO35 Secretariat had entered into a data-sharing agreement with the CHR, there were currently no rules, regulations or agreements on the coordination between

the AO35 mechanism and the RTMBs for cases involving trade union leaders. The AO35 Secretariat did not have access to the RTMB monitoring system. This was an area that ought to be addressed through ILO technical assistance, including through a workshop between the AO35 Secretariat and the DOLE so as to identify opportunities for coordination and collaboration. Furthermore, the AO35 technical working group (TWG) had drafted revised operational guidelines to make them more responsive to the actual situation on the ground and to the needs of the investigators. The revised operational guidelines were presented to the IAC and the TWG was currently implementing its recommendations.

**19. The Philippine Economic Zone Authority Director General** (Ms Charito Plaza) indicated that the protection of the rights of workers was non-negotiable in eco-zones. Replying to the concerns raised with regard to the JIPCO, including the unions' requests to withdraw the initiative, she clarified that it was being transformed into Eco-Zone Industrial Peace Program (EIPP) (now referred to as the Alliance for Industrial Peace and Program (AIPP)) which did not have an anti-labour purpose but instead aimed at pre-empting and preventing industrial crimes, such as pilferage, hijacking, technical smuggling and illegal drugs, and focused on peacekeeping and community relations to achieve a regime of industrial harmony in the eco-zones, together with the host communities. She stressed that this strategic alliance between the PEZA and the PNP would be translated into increased PNP visibility in police stations in the proximity of the eco-zones, as well as increase in the number of fire stations and even hospitals, transforming the eco-zones into townships, with the aim of providing a safe business environment.

**20.** The PEZA Director General highlighted that several mechanisms had been established to promote labour-management relations in enterprises, including zone administrators, the industrial relations officers and the PEZA police who conducted conciliation, mediation and labour law seminars. The PEZA had also established bi-partite mechanisms through company relationship enhancement programmes and social dialogue of PEZA registered enterprises concerning a grievance machinery, family welfare committee, labour management council, conciliation-mediation techniques, diversity and inclusion group, recognition of voluntary arbitration, collective bargaining workshops, learning/coaching/counselling sessions, plant-level labour seminars and trainings and capacity building for workers. She recalled that the DOLE was a member of the PEZA Board in order to contribute to the discussion on human and labour rights issues in eco-

zones, but was not involved in the development of the JIPCO or the AIPP, since this focused strictly on peace and security.

21. The PEZA Director General considered that human and labour rights violations involving the police and the military did not occur inside the eco-zones and there were no extra-judicial killings of trade unionists. As to the killing of Leonidas Sequeña, she stated that this matter had already been addressed and the case had been closed. She added that the unions should be advised to only bring up new cases, not those already dealt with, since repeated accusations could be misused as propaganda against the Government.
22. **A representative from the AFP Center for Law of Armed Conflict** (previously the AFP Human Rights Office) (Colonel Eduardo Esquivias) indicated that upon recommendation from the RTMBs, the NTIPC could constitute an independent body to verify or validate claims of trade union rights violations or violations of the existing guidelines by AFP personnel. The RTMBs and the NTIPC could act on complaints or incidents of alleged human rights violations or extra-judicial killings even though most of them were found not to be labour-related or union-related.
23. Violations were not tolerated and aside from the criminal justice system, AFP personnel were subject to the military justice system. The AFP had signed a Memorandum of Understanding with the CHR to collaborate on education and training regarding monitoring and reporting cases, as well as conducting a top level forum on human rights. There was also a process of revising the 2011 and the 2012 Guidelines into one and improving them to achieve compliance with Conventions Nos 87 and 98.
24. **A representative from the PNP Human Rights Affairs Office (PNP HRAO)** (Colonel Joaquin Alva) described the mandate of the office as monitoring human rights violations by PNP personnel, conducting capacity building, preventing blatant violations of human rights and collaborating with civil society. The PNP had a manual on police operations procedures, including rules regarding labour, and its personnel were continuously trained, especially officers assigned to the eco-zones. When an investigation involved a trade union associated victim, the PNP HRAO would make a report, submit it to the prosecutors' office and a special investigation team would be created under the AO35 mechanism.



- 25.** On coordination with the PEZA, the representative from the PNP HRAO indicated that a strategic partnership had been developed through a Memorandum of Understanding with the aim of strengthening peace and order inside the eco-zones but that the PNP generally did not enter the eco-zones without first coordinating with the DOLE, except in an emergency when a crime had been committed. The PNP participated in the TWG reviewing the 2011 and the 2012 Guidelines.
- 26. The Undersecretary from the Presidential Human Rights Committee** (Mr Severo Catura) emphasized that mechanisms to address allegations of killings already existed. He emphasized that following investigation more than half of the 43 alleged cases presented to the CAS were not related to trade unionism. When there were alleged violations, the Government would address them through a proper process while validating the sources of allegations since various groups criticizing the Government tended to exaggerate the situation of human rights in the Philippines. Any allegations should therefore first be raised with the Government and not directly with the ILO as this created media alert; he also indicated that groups sharing false information should be held accountable. Additionally, the ILO should speak with a wide range of trade unions and other actors to obtain a real image of the situation in the Philippines.

## ***B. Commission on Human Rights***

- 27. A Commissioner** from the CHR (Ms Karen Gomez-Dumpit) stated that the CHR was a constitutional mechanism established as a watchdog of the Government in relation to its compliance with international treaty obligations. She indicated that while its powers were limited with respect to actual investigations into allegations of human and labour rights violations, the CHR did make recommendations to the relevant entities in the Government to investigate and to prosecute.
- 28.** The commissioner reported that the CHR had consistently mainstreamed protection of labour rights and promotion of freedom of association and collective bargaining and had been working closely with civil society organizations, people's organizations, international non-governmental organizations and other stakeholders in monitoring human rights abuses and violations against Filipino workers. The activities conducted by the CHR included the development of a training module on freedom of association and collective bargaining rights for CHR staff, so as to strengthen the role of the CHR within the investigative mechanisms and to capacitate CHR staff and ensure that they integrate and

develop a labour rights perspective in examining human rights violations. In the context of the ILO-EU Trade for Decent Work Project, the CHR also worked on strengthening the current monitoring and investigative mechanisms and processes that sought to handle and resolve labour-related violations and cases.

- 29.** The Commissioner further indicated that the situation in the country was characterized by a growing climate of impunity, unchecked power, weaponization of the law, militarization of the civilian Government and adoption of measures that aimed at controlling and unfairly regulating workers' rights and initiatives. In particular, she highlighted continued challenges in relation to human and labour rights, including a shrinking civic space, regulation of the freedom of movement, profiling, surveillance and red-tagging of trade unionists and other human rights activists as "communists" or "rebels" by the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC), distorting the nature of their work and making them targets of attacks and human rights violations, including house visits, harassment, arrests and killings.
- 30.** The commissioner stated that despite its members also being targeted by the anti-insurgency campaign, the CHR continued to express concern about violence against human rights defenders and trade unionists and was successful in raising concerns and pointing out gaps and cases that required Government attention and response. The CHR also called for more social dialogue and a cooperative rights-based approach to addressing the socio-economic and employment challenges. She further emphasized that since the CHR was not part of the ILO's formal tripartite bodies, it made it difficult to highlight human and labour rights violations. Finally, the Commissioner considered that it would be important for the Government to show, through indicators, that there was proper investigation into allegations of violence and that perpetrators were held to account administratively and criminally. In her view, the international community should provide more support in this regard and express more vocally its concerns about human rights violations in the country.

### ***C. Trade unions***

- 31.** Trade union representatives from the following trade unions participated in the virtual exchange: Building and Wood Workers' International (BWI)-Asia Pacific; Council of Global Unions (CGU)-Philippines; IndustriALL Global Union-Philippines; UNI Global Union-Philippine Liaison Council (UNI-PLC); Public Service International-South East Asia (PSI-

SEA); Kilusang Mayo Uno (KMU); the Association of Concerned Teachers (ACT); ACT Caraga; SAMAKA-QCU; SENTRO; the Teachers' Organization of the Philippine Public Sector (TOPPS); the Trade Union Congress of the Philippines (TUCP); the National Congress of Unions in the Sugar Industry (NACUSIP); the Philippine Federation of Labor (PFL); the New and Independent Workers Organization (NIWO); the Federation and Cooperation of Cola, Beverages and Allied Industry Unions (FCCU); the Metal Workers Alliance of the Philippines; BPO Industry Employees Network; the Confederation of Independent Unions in the Public Sector (CIU); the Public Sector Labour Management Council; the National Union of Workers in the Power Industry (POWER); Supreme Court Employees Association (SCEA); the Public Services Labour Independent Confederation (PSLINK); the PNP Non-Uniformed Personnel Inc. (PNP-NUPAI); the National Trade Union Center (NTUC); the National Alliance of Teachers and Office Workers (NATOW); the Federation of Free Workers (FFW); the National Union of Bank Employees (NUBE-IFO); UNI Apro; COURAGE; Defend Southern Tagalog; TF2 Kilos Damit; San Fernando Coca-Cola Rank and File Union (SACORU); SAMACoke; Pepsi-Cola Employees and Workers' Union (Davao) (PEWU); NMLDCC; Nexperia Philippines Inc. Workers Union (NPIWU); LIKHAFED; Bien Philippines; Partido Manggagawa; Obrero Pilipino; PLTIU; Pamantik and Piglas.

- 32.** The general context described by trade union representatives put forward a deteriorating situation in the Philippines and the intensification of trade union repression, characterized by harassment and red-tagging of trade unionists and the Government's failure to take action on the pretext that it required further clarification from the ILO on what constituted effective measures and investigations. It was also reported that the Government took initiatives which further restricted the trade union movement, such as the creation of the JIPCO (now referred to as the AIPP), the elaboration of the NTF-ELCAC and the adoption of the Anti-Terrorism Act (ATA). As a result, it was claimed that the trade union movement in the Philippines was under systematic attack, with AFP and PNP counter-insurgency exercises used to undermine and bust genuine independent unionism in all industries.
- 33.** To illustrate the general allegations of a climate of repression, trade union representatives provided concrete examples of alleged human and trade union rights violations, including the killing of trade unionists Emmanuel "Manny" Assuncion in Dasmariñas, Cavite (by the police); Dandy Miguel in Barangay Canlubang; Dennis Sequeña in Barangay Bunga in Tanza, Cavite; and Leonardo Escala in Tondo, Manila;

illegal raids and the arrest of seven unionists in December 2020; the arrest of union leaders Ramir Corcolon, Nedo Lagunias, Elizabeth "Mags" Camoral and Steve Mendoza in Laguna in March 2021; pressure, surveillance, intimidation and threats on members of the ACT in Caraga to disaffiliate from their union and pledge alliance to the Government; 36 reported cases of profiling of ACT members across 10 regions and 18 cases of harassment, threats and intimidation (death threats, tailing of vehicles, release of flyers); red-tagging and vilification of at least 19 national and regional ACT and COURAGE leaders; forced disaffiliation of more than 600 teachers from Butuan City and 7 leaders of ACT MIMAROPA; fake charges and detention of 14 teacher unionists across various regions; a campaign of union-busting and intimidation (house visits, anti-union dismissals, fake New People's Army (NPA) surrender ceremonies, the presence of PNP personnel outside factories during certification elections, workers' orientation events hosted by state security forces during which workers were encouraged to disaffiliate from their unions), as well as red-tagging at several beverage plants in Parañaque, Antipolo and Malabon in Metro-Manila, as well as in Bacolod City and Davao City, including members of NIWO and SAMACOCKE; and red-tagging of members of the PNP-NUPAI and fabricated labour cases against the union's president. Trade unions indicated that, as a result of harassment, many unionists withdrew their membership from independent unions and joined unions pledging allegiance to the Government and that the choice of trade unions was therefore not free but rather based on the likelihood of being tagged as supporters of the insurgency.

- 34.** According to trade union representatives, there was an institutional failure on the part of the Government, exacerbating the culture of impunity and facilitating the killings of unionists. They pointed to a number of institutional challenges, including a failure of government institutions to protect labour rights; lack of political will to stop the attacks on trade unionists despite full union cooperation; lack of regular reports about investigations into allegations of violence, with some incidents not even reaching the courts; inefficient functioning of the monitoring and investigative mechanisms; lack of progress in the improvement of forensics and capacity-building despite several technical cooperation projects on freedom of association and extensive resources; slow and insufficient DOLE processes, including lack of powers or funding; lack of effective means for the Public Service Labour Management Committee (PSLMC) to deal with labour issues in the public sector; ineffective implementation of the 2012 Guidelines on the conduct of the PNP and the AFP; and lack of capacities of the PNP and AFP human rights offices.

- 35.** While recognizing that some measures had been taken by the Government to address the issues raised, including training, capacity-building, discussions on cases pending before the courts and the review of the Guidelines, trade union representatives considered that they were insufficient, as they did not lead to respecting international conventions.
- 36.** Trade unions felt strongly that there was a pressing need to sensitize all agencies about labour and trade union rights to combat the culture of impunity and emphasized that any reforms should be more inclusive and accessible and that the judiciary should have a crucial role to play in addressing violations of freedom of association.
- 37.** The representatives of trade unions presented the following recommendations:
- (i) for the Government to immediately investigate all cases brought forward to the ILO, including those mentioned in the virtual exchange;
  - (ii) for the DOLE to strengthen the NTIPC-Monitoring Body and RTMBs by providing the necessary staff, resources and powers to address violations of freedom of association, as stipulated in the recommendations of the CAS;
  - (iii) to meaningfully operationalize the 2012 Guidelines on the conduct of the PNP and AFP in labour disputes and elevate the guidelines to the status of an Executive Order, in order to protect freedom of association rights;
  - (iv) for the Office of the President and the DOJ to fully operationalize the AO35 IAC, with meaningful trade union representation and a renewed mandate (a more permanent status and labour representation, chaired by a representative from the President's office to ensure better inter-agency coordination);
  - (v) for the Government to take effective measures to guarantee freedom of association rights in eco-zones, in particular by abolishing the JIPCO without replacing it with a similar process, and activating the social dialogue bodies; and
  - (vi) rescind the Executive Order No. 70 of 2018 establishing the NTF-ELCAC to avoid the practice of red-tagging of trade unionists.

The proposed measures could be implemented even before the HLTM took place.

#### ***D. Employers' representatives***

38. The delegation met with representatives from the ECOP, the Philippine Retailers Association, Cargill Philippines, the EEI Corporation, Tech, the Philippine Hotel Owners Association (the PHOA), the Philippine Association of Service Exporters, Inc. (PASEI), the Philippine Women's Economic Network and the ICCT Colleges. The employers' delegation was headed by the ECOP Vice-President Mr Ranulfo Payos.
39. **The ECOP Vice-President** (Mr Ranulfo Payos) stressed that employers had a healthy respect for the right of workers to organize and did not widely violate freedom of association, which was guaranteed by both the Convention and the country's Constitution. It was submitted that laws ensuring ample protection of freedom of association existed in the Philippines and the country also possessed dispute resolution mechanisms and other bodies to address labour complaints. While recognizing that the allegations submitted to the 2019 CAS were a matter of serious concern, in the employers' view, it was important to note that investigations did actually take place into the allegations, most of which were, upon investigation, proven not to be labour-related and that only a fraction of these cases remained pending in court while the rest had been discontinued for lack of evidence.
40. There was a growing concern among the employers about excessive ILO focus on alleged violations of trade union rights in the Philippines without sufficient attention and resources being directed to other positives and challenges for employment in the country, such as the country's and employers' efforts to generate jobs despite the pandemic and to ensure fair treatment of workers.
41. Employers urged the ILO to assist the social partners in addressing the decline in trade unionism and the consequences of that decline (only about 10 per cent of the workforce was unionized) and to help unions achieve relevance rather than focus on allegations which were often unfounded.
42. Employers also expressed concerns that complaints were being made internationally without first applying the domestic processes within the country, harming the country's reputation and providing what employers saw as a quiet erroneous impression that serious matters and alleged violations were not acted upon in the Philippines. It was argued that serious complaints should not be lodged against the country without due

investigation and that the ILO supervisory bodies should scrupulously assess the validity of all claims and verify the allegations made since some came from leftist militant trade unions and many of the extra-judicial killings were motivated by the war on drugs and had inaccurately been characterized as labour-related. In the employers' view, the NTIPC worked well, met regularly and there were also other functioning monitoring and investigative mechanisms and it was therefore strongly suggested that any complaints about violations of ratified ILO Conventions should be first addressed to the NTIPC before being elevated to the ILO.

- 43. Other representatives of employers** observed that the numerous allegations of harassment and killings were shocking but stressed the need for dialogue and enhanced coordination and cooperation among the social partners when filing a complaint before the ILO, so as not to put the employers at a disadvantage and unfairly harm the country's reputation. Employers reiterated that the claims must be properly investigated and verified as many of them were unfounded or were made on the basis of false or inappropriate sources, portraying employers in a negative light and having a negative impact on the reputation of the economy. Many of the allegations were political in nature, stemming from workers' support for certain political ideas. For instance, all extreme left labour leaders were subjected to verifications by the NTF-ELCAC but employers could not intervene as this involved questions of national security.
- 44.** Employers reported that in their view the judicial system worked well and there was no need to change the investigation process but it was rather a question of properly segregating labour-related cases from those not related to labour. Since the complaints submitted were not representative of the situation in the country, there was a pressing need for substantiation and an evidence-based approach to such allegations, combined with prudent and impartial research into the background of the persons complaining, as well as a ratio and proportion analysis.
- 45.** Where complaints are made to the ILO, it was requested that the ILO investigate in an expansive manner to assess the veracity of the allegations, while giving equal treatment to unionists and employers.
- 46.** In summary, employers' representatives:

- stressed the substantial legal protections and processes, including a constitutional guarantee of freedom of association, that exist in the Philippines;
- expressed concern that the constant raising of grave accusations before international supervisory bodies without proper vetting was having a negative impact on the country's image and economy despite the generally positive environment for freedom of association in the Philippines;
- called for enhanced dialogue, coordination and cooperation among national social partners before filing complaints at the ILO;
- stressed a pressing need for substantiation, verification and an evidence-based approach to allegations to avoid unfounded or politically motivated cases either progressing without merit or being framed as labour related that were not labour-related; and
- reported that the judicial system, monitoring and investigative mechanisms worked well but needed to focus on correctly separating labour-related cases from those not related to labour.

### **III. Conclusions and recommendations**

- 47.** The virtual exchange provided an opportunity for the delegation to obtain valuable insights into the current situation in the country, the challenges faced by the different parties and gaps in the effective protection of trade union rights, as well as developments since the 2019 CAS conclusions and the measures taken by the Government to address the issues raised therein. The participation of high-level government officials and members from several monitoring and investigative mechanisms, as well as numerous representatives from workers' and employers' associations demonstrated the importance of the discussion, the interest of the national actors to contribute to a constructive dialogue and the Government's commitment to continuous engagement with the ILO supervisory mechanisms with a view to ensuring full compliance with Convention No. 87.
- 48.** Trade union representatives from different regions, industries and professions in both the public and private sectors highlighted persistent and deep concerns of a worsening human and labour rights situation in the country, characterized by intimidation, threats, harassment, union busting, red-tagging and extra-judicial killings of labour leaders,



coupled with institutional deficiencies in investigation, exacerbating the culture of impunity and allowing widespread and systematic attacks on trade unionism throughout the country. While legislation to protect freedom of association and collective bargaining existed, there were problems with its implementation. Furthermore, while several monitoring and investigative bodies had been created, concerns were raised as to their efficiency and effectiveness, with unions pointing in particular to a lack of transparency, staff and resources to provide timely results, as well as insufficient participation and consultation with workers' representatives on matters involving the trade union movement.

- 49.** Employers' representatives stressed the substantial legal protections and processes, including a constitutional guarantee of freedom of association, that existed in the Philippines and expressed concern that the constant raising of grave accusations before international supervisory bodies without proper vetting was having a negative impact on the country's image and economy despite the generally positive environment for freedom of association in the country. They called for enhanced dialogue, coordination and cooperation among national social partners before filing complaints at the ILO and stressed a pressing need for substantiation, verification and an evidence-based approach to allegations to avoid unfounded or politically motivated cases either progressing without merit or being framed as labour related that were not labour-related. They reported that the judicial system, as well as the monitoring and investigative mechanisms worked well but needed to focus on correctly separating labour-related cases from those not related to labour.
- 50.** Government representatives broadly stressed their commitment to fulfilling the country's obligations arising from ratified ILO Conventions and to ensuring full respect for freedom of association. The Government considered that social dialogue in the country was robust and fruitful. Industrial peace was key to ensuring a prosperous and stable business environment, in particular in eco-zones. While it was acknowledged that some legislative bills had been pending for years, it was emphasized that delays in adopting the legislative amendments were due to the lack of consensus between workers' and employers' organizations. The Government further assured that all allegations of violence against trade unionists were being investigated and that the monitoring and investigative mechanisms were in place to address any complaints of human and labour rights violations.

- 51.** Having carefully listened to the different perspectives of the participants in the virtual exchange, the delegation considers that despite measures undertaken and further commitments by the Government, the existence of a number of institutions and strong support from the ILO and other partners, the exchange failed to bring forward evidence of tangible progress on the four areas of concern highlighted in the 2019 CAS conclusions.
- 52.** The delegation noted with concern reports of further incidents since 2019, including reports of assaults and extra-judicial killings of labour leaders.
- 53.** The delegation therefore considers that there continues to be a pressing need for a HLTM to travel to the Philippines to obtain first-hand information on the situation on the ground and to hear directly from social partners and different government agencies so as to be able to assist the Government in effectively implementing the 2019 CAS conclusions and recommendations and to contribute any updated guidance and recommendations. Recalling that in 2019, the CAS had requested the HLTM to take place before the 2020 International Labour Conference, it would be critical that the HLTM now be able to take place before the 2022 International Labour Conference, taking into account the sanitary conditions prevailing in the country.
- 54.** Members of the mission should be able to meet a broad range of high-level representatives from the Government, the monitoring and investigative mechanisms, workers' and employers' groups and others considered relevant so as to enable an inclusive and informed dialogue with all concerned actors to ensure as full and up to date an assessment as possible of concerns, progress and challenges on the ground. Bearing in mind relevant safety and security concerns, the HLTM should also be able to travel to regions outside the capital to canvass further views and experiences and to assess the local application of nationally agreed processes and institutions.
- 55.** In order to assist the Government in delivering in practice on its unwavering support for freedom of association at the highest levels, in implementing the 2019 CAS conclusions and in being in a position to report meaningful progress to the HLTM, the delegation considers that the Government should:
- (i) Adopt a time-bound plan of action in consultation with the social partners and with support from the ITUC and the IOE, to address each of the four areas of concern;

- (ii) Promptly and effectively investigate all allegations of extra-judicial killings of and assaults against trade unionists (those reported in 2019 and those occurring since then and presented in the virtual exchange in September 2021), to determine the circumstances of the incidents, including any links to trade union activities, and support the bringing of prosecutions;
  - (iii) Strengthen the NTIPC-Monitoring Body and the RTMBs by ensuring the necessary levels of staffing, budget and investigative powers;
  - (iv) Ensure the effective operationalization of AO35 IAC with the participation of the DOLE and the trade union movement on cases of direct concern brought forward by trade unions;
  - (v) Reiterate the Government's support for the 2011 and the 2012 Guidelines and ensure, pending any revision, their effective operationalization by the Government and its agencies;
  - (vi) Take concrete measures to bolster the role of the DOLE in ensuring effective protection of labour rights in eco-zones; and
  - (vii) Engage in discussion with the social partners and competent authorities to ensure that the NTF-ELCAC cannot be used for broad red-tagging of trade unionists and does not unfairly prejudice trade union activities.
- 56.** Given the continuing urgency of the matters raised and the Government's offer to provide more detailed information on the acts of violence against trade unionists since 2019, the delegation stresses the necessity of the Government furnishing this information for the consideration of the Committee of Experts on the Application of Conventions and Recommendations so that it may keep under review the application by the Philippines of Convention No. 87 and any further developments in the follow-up to the 2019 CAS conclusions.
- 57.** The delegation further notes that a number of allegations of extra-judicial killings, violence, harassment, arrest and detention relate to trade union activities linked to government employment, including in the education sector. The delegation urges the Government to ensure effective respect for freedom of association for its employees and

their representatives, to engage with them on concerns regarding the safety and security of government workers and effective protection against violence and harassment.

**58.** The delegation counts on the commitment of all social partners to address these grave allegations with the full seriousness which they deserve and to support investigative, prosecutorial and judicial authorities to determine those responsible, bring prosecutions and punish the perpetrators.

**59.** Finally, the delegation invites the Government to fully avail itself of the technical assistance offered by the ILO in progressing the four areas of the 2019 CAS conclusions, including support for the identification of the specific areas for priority action in order to achieve effective implementation of the 2019 CAS conclusions.

Luc Cortebeek



Scott Barklamb



## Appendix

### List of acronyms (excluding trade unions and employers' associations)

AFP	Armed Forces of the Philippines
AIPP	Alliance for Industrial Peace and Program
AO35	Administrative Order No. 35
ATA	Anti-Terrorism Act
CAS	Committee on the Application of Standards
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CHR	Republic of the Philippines Commission on Human Rights
DOJ	Department of Justice
DOLE	Department of Labour and Employment
DOLE BLR	Department of Labour and Employment Bureau of Labour Relations
DOLE ILAB	Department of Labour and Employment International Labour Affairs Bureau
EIPP	Eco-Zone Industrial Peace Program
HLTM	High-Level Tripartite Mission
IAC	Administrative Order No. 35 Inter-Agency Committee
JIPCO	Joint Industrial Peace and Concern Office
NBI	National Bureau of Investigation
NCMB	National Conciliation and Mediation Board
NLRC	National Labour Relations Committee
NPA	New People's Army
NTF-ELCAC	National Task Force to End Local Communist Armed Conflict
NTIPC	National Tripartite Industrial Peace Council
PEZA	Philippine Economic Zones Authority
PHRC	Presidential Human Rights Committee
PNP	Philippine National Police
PNP HRAO	Philippine National Police Human Rights Affairs Office
PSLMC	Public Service Labour Management Committee
RTMB	Regional Tripartite Monitoring Body
TEC	Tripartite Executive Committee at the National Tripartite Industrial Peace Council
TWG	Technical Working Group at the AO35 Secretariat