

**INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN PHILIPPINES**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE  
TRADE POLICIES OF PHILIPPINES  
(Geneva, 20 and 22 March 2012)**

### **EXECUTIVE SUMMARY**

**Philippines has ratified all eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments Philippines accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.**

**Trade union rights are recognised in the Philippines but with many restrictions. In practice, there is an environment of violence and intimidation against trade unions. Employers and state authorities make use of anti-union practices in order to curb unions' rights. Killings of trade unionists have declined since 2009 but continue to take place with impunity. Furthermore, the increasing replacement of long-term employment contracts with subcontracted or contractual labour curtails union membership.**

**Discrimination on various grounds is prohibited but it is a problem. Women are concentrated in low skilled, low paid occupations and face a sizeable pay gap. The laws on indigenous peoples' rights are not effectively enforced and many indigenous persons have lost the means to exercise their traditional occupations.**

**The legislation on child labour is not in conformity with ILO Conventions 138 and 182. In practice, child labour is prevalent and many children are exploited in the worst forms of child labour. The government is endeavouring to address the situation and has made some progress to this end.**

**Forced labour and human trafficking are problems. Many women and girls are forced into domestic servitude and prostitution and men are coerced into debt peonage in agriculture and fisheries. The government is making some efforts to eliminate trafficking and forced labour but prosecutions are rare and some police agents are complicit.**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN PHILIPPINES**

### **Introduction**

This report on the respect of internationally recognised core labour standards in Philippines is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The ITUC affiliates in Philippines are the Trade Union Congress of the Philippines (TUCP) and the Federation of Free Workers (FFW) which have a membership of 500,000 persons covering various areas of employment in Philippines.

### **I. Freedom of Association and the Right to Collective Bargaining**

The Philippines ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining in 1953.

All workers have the right to form and join trade unions, including public sector employees, except for the police and military. Restrictions on organising exist. Foreign nationals may not form or join a union unless there is a reciprocal agreement between the countries. A high membership quota of at least 10 trade unions is required for the establishment of a national centre or trade union federation. Furthermore, the freedom of workers to elect their own representatives is restricted by the requirement that trade union leaders must be employed in the same enterprise as the workers they represent. The Labour Code prescribes that legitimate trade unions are required to submit their lists of members at least once a year or whenever required by the Ministry. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) considered that *"such a requirement, if used beyond a simple formality for determining representativeness, constitutes interference in trade union internal affairs."*

While the right to collective bargaining is stipulated by law a number of categories of workers are not allowed to exercise this right, including prison guards, fire-fighters and managerial employees. Public sector employees are not permitted to bargain over matters relating, inter alia, to wages and all other forms of remuneration, retirement benefits, appointments, promotions and disciplinary action. Employees of the public

sector may file complaints with the Civil Service Commission, a special body which arbitrates disputes between public workers and the authority. Due to law restrictions and violation in practice, which often include the use of violence, there are only 212,054 private- and public-sector workers covered by collective bargaining agreements, or approximately 12 per cent of union members and less than 1 per cent of the total workforce.

Despite clear provisions for certification of elections, in practice the employer has the power to intervene in the procedure from the stage of submitting a petition for certification elections (PCE) to the reference of the issue to the Supreme Court.

Public employees have no right to strike. Other workers have the right to strike, however excessive requirements to calling a strike exist. For a strike to be lawful, all conciliation procedures must be exhausted, mandatory cooling-off periods must be respected and notice must be given 30 days in advance. A union may not call a strike for issues other than a bargaining deadlock involving economic issues and grave acts of Unfair Labour Practice (ULP) as defined by law.

The Secretary of Labour and Employment can intervene through compulsory arbitration in a strike if the industry in which the strike takes place is “indispensable to the national interest”. In practice, the assumption of jurisdiction can be exercised over disputes that could hardly be considered to affect the national interest, including in specific hotels and other companies. In 2010, the Department of Labour and Employment (DOLE) assumed jurisdiction in seven disputes. Severe penalties are applied for participation in illegal strikes and trade union leaders risk up to three years of imprisonment.

It is easy to have a strike declared illegal resulting in dismissal of union officers and members. A strike can be declared illegal on grounds of not meeting the cumbersome procedural requirements, blocking entrance or exit in premises and using violence. Employers commonly allege that unions make use of such practices. Moreover, the Supreme Court’s decisions on the definition of strike and on replacement labour - contrary to provisions of the Labour Code and rulings – further limit the right to strike.

The National Labour Relations Commission (NLRC) handles complaints of anti-union discrimination and practices. The DOLE also examines such cases when they concern disputes over strikes and collective bargaining, in a mediation board.

In practice, flagrant anti-union practices are used and trade union members and leaders are often victims of intimidation, harassment, dismissals, false criminal charges, arrests, threats and violence which sometimes result in loss of life. In 2009, the ILO Conference Committee on the Application of Conventions and Recommendations (ILCCR) examined the Philippines’ violations of Convention No. 87 and *“remained concerned at the allegations of a continuing situation of violence against trade unionists and urged the Government once again to ensure that all the necessary measures were taken to restore a climate of complete freedom and security from violence and threats*

*and bring an end to impunity so that workers and employers could fully exercise their freedom of association rights.”* In September 2009, the ILO conducted a high-level mission, the results of which imply that the government was complicit in violations. The mission’s outcome asked the highest level of the government to make a statement *“instructing all government actors to make special efforts to ensure that their actions do not infringe upon the basic civil liberties of trade unionists”*.

Reacting to the ILO missions’ findings, the government established the National Tripartite Industrial Peace Council (NTIPC) on 20 January 2010 as a high-level monitoring body on the application of international labour standards. However, the NTIPC has been criticised as inadequate because it lacks adequate funding and a dedicated secretariat that is staffed by qualified persons. For instance, the Council only recently started looking into cases of trade union killings, harassments, intimidation, torture and enforced disappearances that took place in 2010.

Union leaders and members are frequently threatened with dismissal and sometimes dismissed for holding industrial action or just for trying to benefit from their legal rights as union members. For example, 17 bus driver-union members were dismissed for seeking certification as bargaining agent for their union, in February 2010.

Employers sometimes react violently against industrial action. Such was the case of picketing workers at the Goldilocks Company in March 2009 when members of the company’s management drove two vans filled with strike-breakers to try to ram through the picket line. The vans could not cross the picket line and so the strike-breakers pelted the strikers with stones; Goldilocks security guards followed and attacked the picketers with truncheons. Eight union members suffered leg and arm injuries as a result of the attack. The strike was called in response to the illegal dismissal of 127 workers. In early 2011, the dismissed workers were forced to settle the case “amicably” and were given severance pay.

Protesting workers were assaulted on various occasions in 2010. In May, members of a vigilante group attacked the picket line of 4D Employees Union (4DEU) in Pasig City; also in May, factory security guards of Phil Bless Inc. fired two gunshots at a picket line; workers in Triumph International (Philippines) Inc. were violently evicted from their picket line on May 4 when more than 200 security force members invaded the former factory grounds; in October, 50 officials from the Metro Manila Development Authority rammed a picket line and destroyed the strikers’ encampments.

In some cases, attacks on unionists have been assigned to and carried out by professional murderers. In June 2010 in Santa Rosa City, two unknown assailants shot and killed Eduard Panganiban on his way to work. Panganiban served as the elected Secretary of a union that represents workers of the Japanese company Takata. Co-workers reported that Panganiban had been receiving threats before the incident. Takata workers had been picketing the company since March in support of their demand to recognise the union and negotiate a collective agreement. Takata unionists reported that

agents of the Intelligence Services of the Armed Forces of the Philippines had visited some union officers to dissuade them from pursuing their union activities.

Also in June 2010, Benjamin Bayles of the National Federation of Sugar Workers (NFSW) was shot and killed in Barangay Buenavista Himamaylan City. Two suspects, members of the Philippines Armed Forces, were detained. On 12 November 2010 in Calamba, the President of the Water District Union, Carlo Rodriguez, was shot and killed on his way home from work.

Employers have set up yellow unions intending to prevent the formation of trade unions or to weaken collective bargaining power. In March 2010, an audit conducted by Société Générale de Surveillance (SGS) in the Dole Food Company (Dolefil) in Polomolok found 'non-conformity' with its standardised requirements on freedom of association and collective bargaining. The audit cited Dolefil's management for violating workers' freedom of association by discriminating against the certified union members, while favouring an employer-controlled union, UR-Dole. In February, UR-Dole had held a company-sponsored assembly in an attempt to oust all 31 officers of the independent trade union. As a result of this meeting, Dolefil recognised UR-Dole as the workers' representative on 18 February. In July, the Department of Labour and Employment rejected Dolefil's decision to recognise the UR-Dole, rebuked the UR-Dole for conducting an unconstitutional change of leadership and found the February assembly to have been illegally summoned.

Employers often contest proceedings for elections in court in order to postpone collective bargaining. In Pasay City, after years of litigation the workers of Heritage Hotel obtained a ruling to hold a certification election but in order to prevent this, the management refused to participate in the PCE proceedings and did not allow the election to be conducted inside its premises. When the workers held it outside in July 2011 the management actively engaged in barring workers from voting by deploying their security personnel. The police sent in forces that intimidated the workers around the polling area. A failure of election was declared when in the face of such intimidation the union could not get a majority of the workers to cast their votes.

Even if after the long and tedious process a union manages to be granted the status of sole and exclusive bargaining agent in an enterprise, this does not necessarily lead to collective bargaining. Unscrupulous employers prefer to shut down their company and reopen them hiring only non-unionised workers, as in the case of Gosford Hotel Balibago in Pampanga. And even if a union finally succeeds in negotiating a collective agreement, implementation may take long time. Such is the situation in Masbate Electric Cooperative where the union and the management had signed an agreement in January 2011, but the management has yet to implement it.

Labour's bargaining power is also undermined by employers' preference to use short-term contractual workers, who are not permitted to organise even though Article 280 of the Labour Code of the Philippines states that employment is deemed regular "where the employee has been engaged to perform activities which are usually necessary

or desirable in the usual business or trade of the employer”. A 2011 ITGLWF report showed that *“the percentage of the workforce employed on a contract basis has been increasing steadily year on year, in line with DOLE figures<sup>1</sup> which show the use of contract labour increasing by 20% in recent years. All the casual and short term contract workers surveyed were found to be carrying out core business activities yet were being denied regular employee status”*. Employers systematically circumvent the law in order to avoid regularising their workforce by firing workers before the 6 months’ probationary period is over. Then employers re-hire these employees or hire new ones in their place. The ITGLWF report also found that this practice makes workers’ dismissals easier, provides them with fewer benefits and discourages them from complaining about poor working conditions. Another report shows that contractual workers in the fish canning industry are re-hired only if they use a bogus name.

Of the 21,000 workers employed by Hanjin Heavy Industry and Construction – Philippines Inc., one the largest foreign direct investments in the Philippines, only two dozen Korean managers and trainers are categorised as regular employees. The rest are contractual employees hired by 16 subcontractors, many of which have directorates employing some of the Hanjin-Philippines managers. Many of those contractual employees have suffered mistreatment including occupational injuries and some 35 workers died from occupational accidents.

The ABS-CBN television network has been denying regularisation to workers carrying out core business activities after they completed 6 months in employment, which is the required duration of employment for an employee to enjoy the rights of regular workers. In essence, ABS-CBN was disguising employee-employer relationships by categorising workers in the internal job market. The ABS-CBN Internal Job Market Workers’ Union (IJMWU) has been demanding the regularisation of hundreds of contractual employees and its recognition as a bargaining agent. In 2010, the management offered the status of regular worker selectively and under the condition of acceptance of a ‘waiver of all complaints against the company’ and a promise not to seek back-pay or recognition of delayed regular status. The company’s offer was designed to validate its argument that employees were individual contractors. When the union members did not accept the proposal, management issued an ultimatum to accept the company proposal on changing their status to regular employees or face dismissal. On 16 June 2010, ABS-CBN terminated, delayed, or rearranged the work schedules of dozens of IMJWU workers who refused to accept the company’s proposal on regularisation. In August, the DOLE ruled that the IJMWU members are regular employees; as a result of the decision, the union sought a certification election and the reinstatement of 114 members who were terminated by the company.

Another example of the increasing contractualisation of employment is Philippine Airlines (PAL). In April 2010, Philippine Airlines (PAL) announced plans to outsource its non-core operations to third-party service providers. The plan would affect nearly 3,000 employees represented by the PAL Employees Association (PALEA). In response to the PAL announcement, PALEA filed a strike notice after a vote in which over 86 per

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<sup>1</sup> [http://www.bles.dole.gov.ph/LABSTAT/Vol14\\_6.pdf](http://www.bles.dole.gov.ph/LABSTAT/Vol14_6.pdf)

cent of its membership authorised the union to strike. PAL management threatened to fire all ground employees who would strike. On 15 December, President Aquino assumed jurisdiction over the matter, staying earlier decisions of the Secretary of Labour that would allow PAL management to outsource PALEA workers. The staying of the orders also meant that PALEA could not strike. PAL's financial statement for the fiscal year ending in March 2011 showed a comprehensive income of US\$ 72.5 million or more than 3 billion pesos. Yet the government gave the company permission to continue with its outsourcing plan to "prevent continued heavy and substantial losses" for the company. On September 27, 2011 PALEA launched a sit-down strike and picket lines outside the international airports of Manila and Cebu. The government forcibly evicted the striking workers in an operation which combined the use of violence by police and by security guards. The workers have been locked out since then and their contracts were terminated from October 1.

Several workers who had been jailed under false charges were released in 2010. Such was the case of Vincent Borja, a KMU unionist who was released on October 13, 2010, after the government's lone witness admitted he did not recognise Borja as the offender in the crime the witness had supposedly seen. Joseph Atienza, Pulido Baguno and Claro Claridad, who were facing charges under the Serious Illegal Detention provisions of the Revised Penal Code following a strike in May 2007, were also released in March 2010.

The Human Security Act classifies a wide range of crimes as terrorist acts if they are committed to "*create a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand*". Due to the broad definition of 'terrorist acts', unionists have been accused of being 'factory terrorists'. Moreover, the law's provisions have been used to arrest labour activists and human rights defenders.

The government's counter-insurgency programme continues to contribute to the undermining of trade union rights in the country. Frequently, unions are described as "communist fronts" and remain targets of military action and intimidation, as in the case of the Alliance of Progressive Labour (APL). In the electricity company National Grid Corporation of the Philippines (NGCP), the management hired ex-military personnel to conduct a campaign against unionisation. In DOLE Philippines Inc, a subsidiary of US multinational Dole Food Company, the military together with a right-wing group directly campaigned to ensure the defeat of an incumbent union, AMADO-KADENA-NAFLU-KMU. The certification election was held in a "peaceful manner", but the results were heavily influenced by the actions of the military.

Labour inspection is weak and many abuses of labour rights remain unpunished. However, instead of taking measures to strengthen inspections the government has abandoned labour inspection in factories with more than 200 workers in favour of voluntary compliance. Essentially, this is the principle of the Labour Standards Enforcement Framework which, instead of a formal inspection, requires self-regulation of

labour standards in large companies and in companies where there is a union that has registered a collective agreement.

Labour legislation does apply in Special Economic Zones (SEZs), where production for exports takes place. However, union organising in these zones is difficult. Reports show that government security forces are stationed close to SEZs to discourage organising by intimidating workers and barring union representatives from entering. There are reports of several forms of anti-union discrimination and employer interference, including replacement of trade unions by non-independent company unions, dismissals and blacklisting of activists. Moreover, the DOLE has not enforced labour legislation in SEZs effectively, partly as the SEZs authorities claim that labour inspection comes under their competences. Hiring employees for the zones takes place through a specialised office of the SEZ or private employment agencies which reportedly prefer casual, temporary or contractual employment. When a union is organised the management of the SEZs or individual companies file lawsuits to frighten union leaders or threaten that they will file for bankruptcy. This was the case of the garment producer, Alta Mode Inc, in the Mactan EPZ II, Lapu-Lapu City. On 12 February, 2010, the Alta Mode Workers Union (AMWU) filed a strike notice against Alta Mode after the company announced it would shut down its activity on March 15 for financial reasons. However, Alta Mode's financial statements did not support its position that it was in financial distress. On 16 February, AMWU began picketing Alta Mode to protest the company's decision. After maintaining its picket camp for three months, AMWU settled with Alta Mode when faced with legal harassment and an adverse arbitration decision concerning an AMWU sit-in at the factory the year before. As a result of the settlement, Alta Mode workers will receive a severance package and Alta Mode will move its factory to Vietnam.

### *Summary*

*Trade union rights are recognised in the Philippines to some extent and with many restrictions. In practice, there is an environment of violence and intimidation against trade unions. Employers and state authorities make use of anti-union practices in order to curb unions' rights. Furthermore, the increasing replacement of long-term employment contracts with subcontracted or contractual labour curtails union membership.*

## **II. Discrimination and Equal Remuneration**

The Philippines ratified Convention No. 100 on Equal Remuneration in 1953, and Convention No. 111 on Discrimination (Employment and Occupation) in 1960.

Section 5(a) of the 1990 Rules implementing Republic Act No. 6725 defines work of equal value to be “activities, jobs, tasks, duties or services which are identical or substantially identical”. This provision is not in line with the Convention on Equal Remuneration, as it does not require equal remuneration for men and women for work of



equal value. In 2009, the government enacted the Magna Carta of Women which provides, inter alia, that the state shall “protect women against discrimination and from violations of their rights by private corporations, entities, and individuals”.

Several reports show that the Philippines labour market is occupationally segregated, with women being concentrated in low-skill and low-income jobs. The gender pay gap is 24 per cent; however in terms of earned income, women face a gap of 42 per cent. Moreover, only 51 per cent of women participate in the labour force. According to the Public Services Labour Independent Confederation (PSLINK), in the public sector the gap stems from discriminatory factors in the wage-setting process, occupational segregation and inequalities in the Salary Standardisation Law. In the private sector, the Kilusang Mayo Uno Labour Center points to companies “violating the minimum wage law, particularly in industries where women predominate, such as garments, electronics and food manufacturing.” In these sectors, “mandatory wage orders are not being implemented and that the overtime rate actually paid is not based on the mandatory minimum wage.” Similar concerns are raised by the United Nations Committee on Economic, Social and Cultural Rights (CESCR). Furthermore, there are several reports of discrimination against women who become pregnant.

The Anti- Sexual Harassment Act of 1995 prohibits sexual harassment at the workplace and prescribes penalties. It also provides for a complaints procedure. However, sexual harassment at the workplace is reported to be a problem. Although there have been no complaints, the CEACR notes that the absence of complaints of sexual harassment at the workplace could indicate a lack of awareness of the legal provisions, lack of confidence in, or absence of, practical access to procedures, or fear of reprisals. Reports show that the prevalence of contractual labour in certain female dominated sectors of the economy has been an impediment to raising complaints or filing reports of sexual harassment at the workplace.

The 1987 Indigenous People's Rights Act (IPRA) grants indigenous people “the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society.” The law recognises the free prior and informed consent of Indigenous Peoples for implementing projects on their lands and asserts that in the absence of such consent, a project cannot proceed. However, only 21 out of 1,700 local government divisions complied with the IPRA's requirement for the mandatory representation of indigenous persons in local legislative councils. Moreover, the 1995 Mining Code gives mining companies the right to raise claims on the same indigenous land provided by the IPRA, and allowed a subsequent expansion of mining activity without regard to the land and resources upon which indigenous people rely to exercise traditional occupations.

The law prohibits discrimination against persons with disabilities in employment and social services, and mandates access to buildings. However, disabled persons face difficulties in finding employment and receive minimal to no assistance from state authorities.

There is no law prohibiting discrimination against or recognising equal rights to lesbian, gay, bisexual and transgendered persons. Homosexual persons are reported to face discrimination in employment.

The law prohibits discrimination against persons with HIV/AIDS. The Philippine Business for Social Progress (PBSP) promotes HIV/AIDS workplace programmes. The Trade Union Congress of Philippines (TUCP) has adopted a policy for HIV/AIDS under which it undertakes to promote workplace programmes through collective bargaining.

### *Summary*

*Discrimination on various grounds is prohibited but it is a problem. Women are concentrated in low skilled, low paid occupations and face a sizeable pay gap. The laws on indigenous peoples' rights are not effectively enforced and many indigenous persons have lost the means to exercise their traditional occupations.*

### **III. Child Labour**

The Philippines ratified Convention No. 138, the Minimum Age Convention in 1998 and Convention No. 182, the Worst Forms of Child Labour Convention in 2000.

Education for children is compulsory from 6 to 12 years of age. However, the minimum age for employment is 15 years, indicating a discontinuity between compulsory education and legal and formal employment. Children are not allowed to be employed in dangerous or hazardous work. Children under 15 may work under the responsibility of their parents and children below 16 may be employed in light work for not more than 4 hours a day or not more than 20 hours a week. Persons aged 15-18 years are allowed to engage in domestic or household service. This legislative framework is complicated by several ordinances at the local level which regulate the employment of children in particular sectors, such as services offered in the streets, entertainment and manufacturing of pyrotechnics and fire-cracking.

The agricultural sector lacks a minimum age provision even though in 2009 agriculture, hunting and forestry employed more than half of the country's child workforce. The vast majority of children in these activities work with their parents in family businesses.

While child labour has been decreasing over the years it remains a problem. According to some reports, in 2009 there were 2.2 million working children. However in March 2009, the government of Philippines submitted a report to the Committee on the Rights of the Child in which it estimated that 4.2 million children do not attend school. The 2010 Labour Force Survey found 1,285,000 workers between 5 and 17 years old, of which 841,000 were boys and 444,000 girls. A great proportion of boys work in farms (74.3 per cent) while girls are concentrated in domestic servitude (88.2 per cent) as well

as wholesale and retail trade (54.5 per cent). Most child labour occurred in informal economic activity, often in family settings.

Many children are exploited in the worst forms of child labour. In farms and plantations, children make use of pesticides and carry heavy loads. In mines, use of heavy machinery by children has been reported. Girls are usually victims of involuntary domestic servitude, in which case they are often barred from going to school and vulnerable to sexual exploitation. Reports show that the use of children in drugs trafficking is widespread.

The government is implementing the Philippine National Strategic Framework for Plan Development for Children, 2000-25 and the National Programme of Action Against Child Labour (NPACL). It is engaged in second phase of the ILO-Philippine Time Bound Programme for the years 2009-2013, which aims to reduce 75 per cent of child labour, focusing on agriculture, mining, fishing and domestic servitude. The National Child Labor Committee (NCLC) coordinates national efforts to combat child labour.

The Sagip Batang Manggagawa (SBM) is the agency which monitors child labour and rescues children from its worst forms. It has been operational in 16 regions around the country. From 1998 to 2008, in 806 operations the SBM rescued 2,711 children.

The Labour Inspectorate employs 219 labour inspectors in the whole country and lacks the necessary financial and human resources to effectively enforce the labour laws. Nonetheless, in July 2010, DOLE launched the Labour Enforcement and Action Program (LEAP) which increased the number of inspections. In 2010, 27,764 establishments were inspected.

#### *Summary*

*The legislation on child labour is not in conformity with ILO Conventions 138 and 182. In practice, child labour is prevalent and many children are exploited in the worst forms of child labour. The government is endeavouring to address the problem and has made some progress to this end.*

#### **IV. Forced Labour**

The Philippines ratified Convention No. 29, the Forced Labour Convention, on 17 May 2005. It ratified Convention No. 105, the Abolition of Forced Labour Convention, in 1960.

Forced labour is prohibited in the Philippines, including forced labour by children. The 2003 Anti-Trafficking in Persons Act prohibits trafficking and prescribes penalties that are sufficiently stringent. The Inter-Agency Council Against Trafficking (IACAT) is charged with implementing the Anti-Trafficking Act.

The Revised Penal Code prescribes penalties of imprisonment involving compulsory labour for inciting to sedition by means of speeches, proclamations, writings or emblems; uttering seditious words or speeches; writing, publishing or circulating scurrilous libels against the government and for publishing any false news which may endanger the public order or cause damage to the interest or credit of the State, by means of printing or any other means of publication. Moreover, the Labour Code prescribes imprisonment which involves an obligation to perform labour for declaring or taking part in a strike after “assumption of jurisdiction” by the Secretary of Labour or submission to compulsory arbitration.

There are many reports of forced labour. Many children are recruited as domestic workers in exchange for loans to their families or for repaying old debt through domestic work. Furthermore, men, women and children are trafficked inside and outside the country for the purpose of prostitution, involuntary domestic service and forced labour in industries, manufacturing, fisheries, agriculture and construction. Many women and girls working as domestic servants become victims of physical and sexual abuse and many men are coerced into becoming debt peons in agriculture and fisheries. Traffickers usually present themselves as recruiters and with fraudulent recruitment practices, hiring fees, use of violence, withholding of travel documents and salaries, psychological intimidation and other practices, force their victims into work.

A great proportion of the two million Filipinos working abroad are female domestic workers in Asia and the Middle East who frequently experience abuses including unpaid wages, food deprivation, forced confinement in the workplace, and physical and sexual abuse.

The government has dedicated funds for the establishment of special anti-trafficking agents in airports, seaports and other key-places and provided training for judicial officials and law enforcers. Nevertheless, NGOs continue to report a lack of understanding of trafficking and the anti-trafficking law among many judges, prosecutors, social service workers, and law enforcement officials, which remains an impediment to successful prosecutions. For instance, some judges erroneously claim that the use of force is a necessary element in processing a case as a trafficking case when in reality the abuse of victims’ vulnerability is a more common problem. Prosecutors have difficulty distinguishing labour trafficking crimes from labour contract violations. Moreover, it is reported that police are often complicit with traffickers and organised crime. Allegedly, some well-known establishments where trafficking activities are taking place are not targeted by police for controls and investigations. Some police officers receive bribes to allow traffickers to escape during raids or to warn traffickers before a raid. Although some officers have been suspended, there has been no conviction of officers for complicity in trafficking activities.

Fighting human trafficking has been named as one of the new government’s priorities and the Philippine Department of Justice and Supreme Court has issued directives to hasten court decisions in backlogged trafficking cases. In the last two years the government has convicted 26 traffickers compared with a previous total of 21

convictions in the six years since the Anti-Trafficking law was enacted in 2003. Out of all these convictions, only two involved forced labour. Moreover, ten of these convictions were achieved by private attorneys who prosecuted cases under the authority of a public prosecutor. All ten cases were initiated by an anti-trafficking NGO. However, in April 2011, there were still more than 380 pending or ongoing trafficking cases. In general it would appear that the authorities do not yet make sufficient efforts to identify and protect victims of trafficking and forced labour.

*Summary*

*Forced labour and human trafficking are problems. Many women and girls are forced into domestic servitude and prostitution and men are coerced into debt peons in agriculture and fisheries. The government is making some efforts to eliminate trafficking and forced labour but some police agents are complicit in trafficking.*

## Recommendations

1. The government should commence urgent investigations and ensure that all cases of trade union killings are resolved at the soonest possible moment. The murderers and those who ordered murders should be prosecuted and subject to the full penalty of the law.
2. Public sector employees should be permitted to bargain over wages and all other forms of remuneration, retirement benefits, appointment, promotion and disciplinary action. Their right to strike should be recognised.
3. Collective bargaining rights should be granted to prison guards, fire-fighters and managerial employees.
4. Foreign nationals should be allowed to form or join a union.
5. Workers should be free to elect their own representatives without illegitimate requirements.
6. The high membership quota of at least 10 trade unions required for the establishment of a national centre or trade union federation should be repealed.
7. The Labour Code prescription for trade unions to submit their lists of members at least once a year or whenever required by the Ministry should be abolished.
8. Unions should be allowed to call a strike for issues other than a bargaining deadlock and grave acts of “Unfair Labour Practice (ULP)”.
9. The excessive requirements to calling a strike in the private sector should be eliminated. The Secretary of Labour and Employment should not intervene through compulsory arbitration in strikes in industries which are “indispensable to the national interest”.
10. The government should strengthen the National Tripartite Industrial Peace Council (NTIPC) by providing more funding and a dedicated secretariat.
11. The authorities should take measures to enforce proceedings for certification elections in compliance with the law. Employers should not be allowed to contest the proceedings.
12. The authorities should immediately investigate and prosecute employers making death threats and using violence or threatening to do so. The authorities should also investigate and prosecute employers making threats to dismiss, or dismiss, blacklist, intimidate, or take any other offensive measures against their employees for participating in unions.
13. The law should be amended to prohibit discrimination at the workplace and give full legal expression to “work of equal value”.
14. The government should take urgent measures to improve women’s participation in the workforce and their access to better skilled and paid jobs and close the gender wage gap.

15. The government needs to take measures to inform workers of their rights in cases of sexual harassment at the workplace and establish a credible procedure for complaints.
16. The government needs to enforce minimum salaries and other legal provisions in all industries, including with a view to combating discrimination in sectors where women predominate such as garments, electronics and food manufacturing.
17. Measures including training and other human resources development, employment preferences and sensitisation should be taken to provide improved access for ethnic groups, disabled persons and other groups which face discrimination in employment.
18. The 1995 Mining Code and other laws overlapping with the 1987 Indigenous People's Rights Act (IPRA) should be revised and measures should be taken to enforce the IPRA.
19. The authorities should actively encourage and facilitate companies and unions to adopt workplace HIV/AIDS programmes.
20. Education for children should be compulsory up to 15 years of age in order to align schooling with the minimum age for admission to work.
21. Children under 15 should not be allowed to work under the responsibility of their parents without any conditions and prerequisites.
22. The authorities should establish a minimum age provision in the agricultural sector and take measures to enforce it.
23. The provisions of the Revised Penal Code that prescribe penalties of imprisonment involving compulsory labour for inciting to 'sedition' by means of speeches, uttering 'seditious words' or speeches, writing, publishing or circulating 'scurrilous libels against the government' and other cases should be removed. Moreover, the Labour Code's prescription of imprisonment involving compulsory labour for declaring or taking part in a strike after "assumption of jurisdiction" by the Secretary of Labour or submission to compulsory arbitration should be revoked.
24. The government should start investigations and prosecutions against law enforcers and state officials who are allegedly complicit in trafficking and forced labour.
25. The government should upgrade its efforts to create understanding of trafficking and to build the capacity of judges, prosecutors, social service workers, and law enforcement officials in recognising trafficking victims and enforcing the anti-trafficking law.
26. The Ministry of Labour and the Labour Inspectorate should monitor the law's application in informal and unregistered economic activity.
27. The authorities should actively investigate, prosecute and achieve convictions of offenders of labour laws, especially for cases of anti-union discrimination, forced labour, trafficking and child labour.

28. In general, the government should build its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of trade union rights, discrimination, child labour and forced labour and trafficking, and start punishing those who commit such crimes.
29. The Labour Inspectorate need to be adequately funded and inspectors should be properly trained.
30. The WTO should draw the attention of the Philippines' authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the government of Philippines in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.



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