



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES
TO THE UNITED NATIONS AND OTHER INTERNATIONAL
ORGANIZATIONS, GENEVA

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The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (Attn: Special Procedures Branch) and, with reference to SPMH communication AL PHL 3/2020 dated 9 June 2020 on the television and radio network ABS-CBN's franchise renewal application, has the honor to enclose the response from the Philippine Government.

In its response, the Philippine government highlights that the ABS-CBN franchise renewal is **not an issue of press freedom but a procedural issue regarding legislative franchise, the decision on which falls within the purview of the Congress and there have been no impediments to ABS-CBN's right to pursue and exhaust all legal remedies.**

The Committee on Legislative Franchises of the House of Representatives sought the position of the stakeholders, relevant government agencies and constituencies on the franchise application of ABS-CBN Corporation and conducted public hearings.

The Philippine government stresses that the House Committee on Legislative Franchises denial of the franchise application of ABS-CBN on 10 July 2020, with a vote of 70 to 11, is **"a sole prerogative of Congress" that the executive branch recognizes, noting and respecting the separation of powers between the two co-equal branches of the government.**

The Philippine government invites the concerned Special Procedures mandate holders to consult Section 5 (Media Freedom) of the Philippine Human Rights Situationer¹. This section contains information on the situation of media/ press freedom in the country as well as government efforts to further safeguard this space and uphold the welfare of media practitioners.

The Permanent Mission of the Philippines requests the assistance of the OHCHR Special Procedures Branch in publishing the Philippine Government's response on to the SPMH communications website.

The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations in Geneva avails itself of the opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (Attn: Special Procedures Branch) the assurances of its highest consideration.

Geneva, 16 November 2020

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
(Attn: Special Procedures Branch)

Palais Wilson
52 Rue de Paquis
CH-1201 Geneva, Switzerland



Enclosure: The Philippine Government's Response to AL PHL 3/2020 dated 9 June 2020

¹ <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200609-PH-Human-Rights-Situationer.pdf>

The Special Procedures' Communication AL PHL 3/2020 cites information it received on various alleged forms of pressure against ABS-CBN, the country's largest broadcast television and radio network, and concerns that the National Telecommunications Commission's (NTC) cease and desist order against the network does not seem to meet the principles of legality, necessity and proportionality for restriction to freedom of expression and may be related to ABS-CBN's coverage on the "war on drugs."

The Philippine government highlights that the ABS-CBN franchise renewal is **not an issue of press freedom but a procedural issue regarding legislative franchise**. The decision regarding this matter falls within the purview of Congress and there have been no impediments to ABS-CBN's right to pursue and exhaust all legal remedies.

The Philippines provides the following facts as well as updates concerning ABS-CBN's franchise renewal:

The Constitution and the NTC's legal mandate

The grant of a franchise is an exercise of sovereign power vested in Congress under the 1987 Constitution of the Republic of the Philippines.

Section 1 of Act No. 3846 provides that "No person, firm, company, association or corporation shall construct, install, establish, or operate a radio transmitting station, or a radio receiving station used for commercial purposes, or a radio broadcasting station, without having first obtained a franchise therefor from the Congress of the Philippines".

Furthermore, Section 16 of Republic Act No. 7925 provides that "no person shall commence or conduct the business of being a public telecommunications entity without first obtaining a franchise" and thereafter a license to operate from the National Telecommunications Commission (NTC).

As said by the Supreme Court in *Radio Communications Philippines Inc. v. National Telecommunications Commission*, the grant of a franchise is "merely a privilege emanating from the sovereign power of the state and owing its existence to a grant, is subject to regulation by the state itself by virtue of its police power through its administrative agencies."

Background on ABS-CBN's franchise renewal application

ABS-CBN Broadcasting Corporation (ABS-CBN) was last granted a 25-year franchise under Republic Act No. 7966. The franchise expired on 4 May 2020.¹

A bill for the renewal of ABS-CBN's franchise was first filed under the 16th Congress on 11 September 2014 as House Bill 4997. Several such bills were thereafter filed with the House of Representatives but none progressed beyond the House Committee on Legislative Franchises.

¹ Sec 15 of RA 7966 provides that it becomes effective 15 days from date of publication in at least 2 newspapers of general circulation. As franchise was published on April 19, 1995, the expiration of the franchise was 4 May 2020.

The OSG's quo warranto petition and NTC's cease and desist order

On 10 February 2020 a *quo warranto* petition was filed by the Office of the Solicitor General (OSG) before the Supreme Court against ABS-CBN Corp. and its subsidiary, ABS-CBN Convergence Inc. This represents a regular exercise of the OSG's mandate and authority, in relation to the operation of media corporations in the Philippines under the 1987 Constitution and various regulatory issuances. The purely legal issues raised in the *quo warranto* petition on ABS-CBN's alleged violations of pertinent laws and regulations on the constitutional restrictions on foreign ownership, the operation of services and transfer of franchise without necessary authority – are all valid questions that the Supreme Court can deliberate and decide upon, for or against the OSG.

On 26 February 2020 the Speaker of the House of Representatives and the Chair of the House Committee on Legislative Franchises informed NTC that deliberations on ABS-CBN's application for franchise renewal had been initiated.

On 5 May 2020, the National Telecommunications Commission (NTC), in the exercise of its regulatory authority and **absent a valid franchise from the legislative body as required by law**, disallowed the continued operation of ABS-CBN. NTC's order covers only platforms using government-issued frequencies such as TV and radio.

The National Telecommunications Commission is bound by law to decide on and execute policies and programs that are in accordance with the Philippine Constitution.

Action by the House of Representatives

The Committee on Legislative Franchises sought the position of the stakeholders, relevant government agencies and constituencies on the franchise application of ABS-CBN Corporation. It conducted its initial hearing on March 10, 2020 and the Joint Committees on Legislative Franchises and Good Government and Public Accountability conducted extensive hearings from May 26 to July 9, 2020 to discuss the various issues raised against ABS-CBN Corporation.

The Committee on Legislative Franchises created a Technical Working Group (TWG) to discuss the findings and recommend a decision of the Committee on Legislative Franchises on the franchise application of ABS-CBN Corporation. After due consideration of the testimonies, documents, submissions and arguments, the TWG has come up with its findings and recommendations contained in the TWG Report. The TWG recommended to deny the franchise application of ABS-CBN Corporation and the Committee on Legislative Franchises to adopt its recommendation.

On 10 July 2020, the Committee on Legislative Franchises rejected ABS-CBN's bid for a fresh 25-year legislative franchise. A total of 70 lawmakers approved in favor of a resolution denying ABS-CBN's franchise application. Only 11 lawmakers voted against the resolution, two inhibited from the vote while only one abstained.

The Philippine government stresses that the House Committee on Legislative Franchises denial of the franchise application of ABS-CBN is “a sole prerogative of Congress” that the executive branch recognizes, noting and respecting the separation of powers between the two co-equal branches of the government.