

Decent Work for Domestic Workers in the Philippines: A Look at Standards and Issues

Ryan Jeremiah D. Quan*

Cathleen Terry E. Caga-anan**

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* '15 LL.M., *summa cum laude*, University of Notre Dame Law School; '08 J.D., Ateneo de Manila University School of Law. The Author is the Coordinator of the Ateneo Graduate Legal Studies Institute. He currently teaches at the Ateneo de Manila University School of Law and is the Chair of the Legal Research and Writing Department. He also teaches at the Far Eastern University Institute of Law and at De La Salle University-Manila. The Author is formerly a Program Director of the Ateneo Human Rights Center. Among the Author's previously published works include *Towards a New Public-Private Sector Engagement in Water Security in the Philippines: A Preliminary Discussion*, 59 ATENEO L.J. 749 (2014) & *Revisiting the Element of Exploitation in the Definition of Trafficking in Persons in Republic Act No. 9208*, 57 ATENEO L.J. 401 (2012).

** '14 J.D., Ateneo de Manila University School of Law. The Author is a Program Officer of the Ateneo Human Rights Center's Urduja Women's Desk and a Research Fellow of the Ateneo Graduate Legal Studies Institute.

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I. INTRODUCTION

Domestic workers are among the most marginalized in the Philippine labor sector.¹ Stories of various forms of abuse — ranging from unsafe working conditions to sexual violence to death — are common when discussing issues of Filipino domestic workers who choose to work in a foreign land in search of the so-called “greener pastures.”² Of course, these problems are naturally linked to problems of migration, where migrant workers do not receive as much protection as when they opt to stay in their own countries.³ However, news and statistics are replete of stories of abuse, both physical and sexual, withholding of salaries, debt bondage, human trafficking, and a host of other human rights violations committed against Filipino domestic workers who work in the Philippines.⁴ This makes one wonder if domestic workers suffer the same fate whether they choose to leave or stay in the country.

Domestic workers’ need for protection, both at the international and domestic levels, is imperative. Hence, this Article will be divided into four parts. The first section will give an overview of the profile and general situation of domestic workers in the Philippines. The next section will then discuss, in broad terms, the international and domestic legal framework for the protection of domestic workers by studying relevant United Nations (U.N.) instruments, International Labour Organization (ILO) instruments, and domestic laws enacted in the Philippines. Owing to the variety of

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1. See Roland Pacis, et al., Selected Case Studies on Forced Labor: Trafficking of Domestic Workers in the Philippines 6, available at http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-manila/documents/publication/wcms_124910.pdf (last accessed Aug. 20, 2015).
 2. See AsiaNews, Saudi Arabia, 70% of Filipino domestic workers suffer physical and psychological violence, available at <http://www.asianews.it/news-en/Saudi-Arabia-70-of-Filipino-domestic-workers-suffer-physical-and-psychological-violence-24260.html> (last accessed Aug. 20, 2015).
 3. See The Center for Migrant Advocacy, Philippine Migration, available at <http://centerformigrantadvocacy.com/philippine-migration> (last accessed Aug. 20, 2015).
 4. See generally Nicole J. Sayres, An Analysis of the Situation of Filipino Domestic Workers 21-23, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_124895.pdf (last accessed Aug. 20, 2015).

challenges that domestic workers in the Philippines face, the Article will limit its discussion to four key issues, namely: (1) promotion of formalization of employment; (2) minimum wage and social security; and (3) protection from abuse; and (4) minimum age. These four issues are among the main areas of concern since the Philippines' Domestic Workers Act⁵ took effect. A comparative analysis of the international and domestic standards will also be presented, along with a description of the challenges that beset the implementation of the law.

The Article concludes that while the Philippine law is generally compliant with the standards set by the international conventions, particularly ILO Convention No. 189,⁶ which the Philippines has signed and ratified, problems as to the proper execution of the law continue. It bears stressing that compliance with international obligations, human rights obligations included, only starts with the enactment of measures, but it hardly ends there. While it is true that the principle of progressive realization would apply to these measures, it is also a fact that there are non-monetary measures that can be put in place in order to give immediate solutions to some of the challenges. At the end, the Article proposes solutions to the challenges identified in the four key areas, taking into account ILO Recommendation No. 201⁷ and the realities in the country.

A. The Story of Lilibeth Masamloc

One of the stories of child domestic workers is that of Lilibeth Masamloc.⁸ At the age of 13 years old, she moved to Davao City to be a domestic worker.⁹ She performed a diverse array of tasks for four different employers — from cleaning, cooking, washing, and doing errands.¹⁰ At one point, she had only three hours of sleep at night.¹¹ Lilibeth said in an interview — “[t]here were times that I wanted to end everything by committing suicide[;]

5. An Act Instituting Policies for the Protection and Welfare of Domestic Workers [Domestic Workers Act], Republic Act No. 10361 (2012).

6. International Labour Organization (ILO), *Convention Concerning Decent Work for Domestic Workers*, Convention No. 189 (June 16, 2011) [hereinafter ILO Convention No. 189].

7. ILO, *Recommendation Concerning Decent Work for Domestic Workers*, Recommendation No. 201 (June 16, 2011) [hereinafter ILO Recommendation No. 201].

8. See generally JO BECKER, *CAMPAIGNING FOR JUSTICE: HUMAN RIGHTS ADVOCACY IN PRACTICE* 36 (2013).

9. *Id.*

10. *Id.*

11. *Id.*

when my employers [do not] respect me as a human and degrade my dignity.”¹²

Lilibeth, despite her hours as a domestic worker, attended school on Sundays, and paid for her tuition fee with her own salary.¹³ Lilibeth eventually conquered the psychological and verbal abuse, finished school, and is now an advocate for the rights of domestic workers.¹⁴ She became involved with *Samahan at Uganayan ng mga Manggagawang Pantahanan sa Pilipinas*, an association of domestic workers, and the Visayan Forum Foundation, Inc.¹⁵ In 2011, she attended the final negotiations of the ILO Domestic Workers Convention in Geneva and addressed the delegates with regard to the plight of domestic workers.¹⁶

In her own words, she shared her story and conveyed this powerful message — “[w]e have been ignored and lived in the margins of society for so long. Now is the time to protect us.”¹⁷

B. The Story of Bonita Baran

Bonita Baran became famous in newspapers in the Philippines in 2012.¹⁸ She worked as a domestic worker, more commonly known as *kasambahay*,¹⁹ in the household of the Marzans.²⁰ Baran, who hails from the province of Catanduanes, was only 17 years old when she went to the nation’s capital

12. *Id.*

13. *Id.*

14. BECKER, *supra* note 8, at 36-37.

15. *Id.* at 37.

16. *Id.*

17. *Id.*

18. See Jeannette I. Andrade, *Maltreated maid claims being locked up for 3 years*, PHIL. DAILY INQ., Oct. 16, 2012, available at <http://newsinfo.inquirer.net/289660/maltreated-maid-claims-being-locked-up-for-3-years#ixzz3FDgxcZ30> (last accessed Aug. 20, 2015).

19. *Kasambahay* is the politically-correct term used in the Philippines to refer to domestic workers or house helpers. It comes from the Filipino phrase “*kasama sa bahay*,” which, when translated, would mean “companion in the house.” DOLE promotes *Kasambahay* Law, publishes career guide for HSWs, available at <http://www.dole.gov.ph/news/view/2078> (last accessed Aug. 20, 2015). See also Randy David, *The ‘kasambahay,’* available at <http://opinion.inquirer.net/51823/the-kasambahay> (last accessed Aug. 20, 2015).

20. Andrade, *supra* note 18.

and started working for the Marzans.²¹ She maintained that Anna Liza Marzan pressed hot iron onto her face several times between 2007 and 2012.²² This maltreatment resulted in one of her eyes going blind.²³ Baran was also locked up for three years.²⁴ In her testimony in the Regional Trial Court, where charges were pressed against the Marzans, Baran related that Anna Liza locked her up inside the house whenever they left.²⁵ Reynold Marzan, Anna Liza's husband, while not directly abusing Baran, remained indifferent to her plight.²⁶ Prior to being rescued, Baran received a measly ₱700.00 (approximately \$15.00)²⁷ salary per month.

Baran's plight is not unique, nor is it the first time that a similar incident happened. But physical abuse is just one of the many forms of abuse that domestic workers face — countless other undocumented cases of abuse exist. These go unreported primarily due to the very private sphere where the *kasambahays* work, i.e., inside the household, very distant from the eyes of the general public. This then results in a lack of access to justice for domestic workers.

C. Profile and General Situation of Domestic Workers in the Philippines

The 2010 Labor Force survey indicates that there are approximately 1.9 million local domestic workers in the Philippines, the youngest ones aged 15.²⁸ This number does not reflect a significant part of the population of domestic workers, such as those who do domestic work as a secondary occupation or those who work for wealthier relatives in the cities in exchange for shelter or education.²⁹ More recent estimates peg the number

21. Fredrick P. Cruz & Frances P. Sayson, *The kasambahay law: Its precedents and its promises*, available at <http://www.theguardian.com/1112/main/2013/10/the-kasambahay-law-its-precedents-and-its-promises> (last accessed Aug. 20, 2015).

22. *Id.* See Andrade, *supra* note 18.

23. Andrade, *supra* note 18.

24. *Id.*

25. *Id.*

26. *Id.* See Cruz & Sayson, *supra* note 21.

27. Using a \$1 = ₱44.00 conversion rate. Cruz & Sayson, *supra* note 21.

28. See ILO, *Domestic Workers in the Philippines: Profile and Working Conditions* (An Unpublished Document of the International Labour Organization Conditions of Work and Employment Branch), available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_167021.pdf (last accessed Aug. 20, 2015) [hereinafter ILO, *Domestic Workers*].

29. *Id.*

of domestic workers in the country at 2.5 million.³⁰ Women comprise roughly 84% of the domestic workers in the Philippines.³¹ It should be noted that women in the country account for only 38% of the national total work force.³² The Philippine Child Labor Survey shows that around 373,000 children aged five to 14 years old work in private households.³³

A 2009 survey shows that only 5.8% of Philippine households employ domestic helpers.³⁴ As expected, the lower the household income, the less likely that the household will employ a domestic helper.³⁵ The survey highlights that four percent of the households having house helpers have an annual income of at least \$2,350.00.³⁶ The same survey shows that the lower the household income, the lower the salaries that they provide their domestic helpers.³⁷ These numbers show that although the majority of Philippine households do not employ domestic workers, the plight of the large population of domestic workers in the country needs to be examined. Protection is an important issue, given the fact that domestic workers usually come from poor and rural areas,³⁸ and are prone to exploitation in the cities where employment awaits them.

Apart from the abuse that was depicted by the story of Bonita Baran, *kasambahays* all over the country have other issues to deal with. A study in 2010 shows that, on the average, domestic workers work nine hours a day.³⁹ However, in the case of stay-in domestic workers, the working hours would usually be longer given their constant availability in the house.⁴⁰ It is worth

30. See Rappler, Fast facts on Filipino domestic workers, *available at* <http://www.rappler.com/nation/6378-fast-facts-on-filipino-domestic-workers> (last accessed Aug. 20, 2015).

31. ILO, Domestic Workers, *supra* note 28.

32. *Id.*

33. See Rappler, *supra* note 30.

34. See ILO, Domestic Workers, *supra* note 28.

35. *Id.*

36. *Id.*

37. *Id.*

38. See Jane Hodges, *Preface* to ASHA D'SOUZA, MOVING TOWARDS DECENT WORK FOR DOMESTIC WORKERS: AN OVERVIEW OF THE ILO'S WORK v-vi (2010).

39. ILO, Domestic Workers, *supra* note 28.

40. *Id.*

noting that the Labor Code of the Philippines⁴¹ provides that the normal hours of work for employees covered by the said law is eight hours a day.⁴² When the Domestic Workers Act or the *Kasambahay* Law was enacted, Senator Loren B. Legarda cited an ILO Report that stated that domestic helpers in the country worked 59 hours weekly — the seventh longest work hours recorded in the data that covered 39 countries.⁴³

Domestic workers also get very low salaries. For example, the studies show that in 2010, the salary of a domestic helper in the National Capital Region (NCR), where there is a concentration of domestic helpers,⁴⁴ is ₱176.20 per day (approximately \$4.00).⁴⁵ This should be contrasted to the minimum wage of employees in the same region for that year, which is ₱367.00 per day (approximately \$8.35).⁴⁶ The usual reasons given to justify the low pay are the low levels of education and skills compared to other wage-earning employees.⁴⁷ Another reason is that the tasks done by domestic workers are usually done by family members, generally women, for no pay, and are not considered as “skilled work.”⁴⁸

Apart from low wages and long hours of work, the other common problems faced by domestic workers include: (1) non-payment of wages; (2) verbal, physical, and sexual abuse; (3) lack of adequate accommodation; (4) lack of access to education; and (4) vulnerability to illegal recruitment, forced labor, debt bondage, and human trafficking.⁴⁹ While domestic workers in the Philippines deal with many of these problems, this Article will only tackle four key issues, namely: (1) the promotion of formalization of employment; (2) the minimum wage and social security; (3) the protection

41. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442 as amended (1974).

42. Note that domestic workers are not covered by this provision. *Id.* art. 83.

43. *Legarda asks employers to respect new 'Kasambahay Law,'* PHIL. DAILY INQ., Feb. 7, 2013, available at <http://newsinfo.inquirer.net/354321/legarda-asks-employers-to-respect-new-kasambahay-law> (last accessed Aug. 20, 2015).

44. It is estimated that about 35% of domestic helpers are in the National Capital Region. See Rappler, *supra* note 30.

45. ILO, Domestic Workers, *supra* note 28.

46. Regional Tripartite Wages and Productivity Board, Providing an Increase in the Minimum Wage in the National Capital Region, Wage Order No. NCR-15 [RTWPB Wage Order No. NCR-15] (June 7, 2010).

47. ILO, Domestic Workers, *supra* note 28.

48. *Id.*

49. Rappler, *supra* note 30.

against abuse; and (4) minimum age. These four issues are among the most discussed after the Domestic Workers Act was enacted.

In response to the growing need to protect domestic workers, a number of legal instruments have been put in place both at the international and domestic levels. The next section will discuss the legal framework for the protection of domestic workers.

II. INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK

A. *United Nations Instruments*

The foremost international instruments applicable to domestic workers are the Universal Declaration of Human Rights (UDHR)⁵⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵¹ The right to work is enshrined in Article 23 of the UDHR.⁵² Articles 6, 7, and 8 of the ICESCR further specifies what is included in the right to work, such as the right to just and favorable treatment,⁵³ fair wages,⁵⁴ right to form and join trade unions,⁵⁵ and safe and healthy working conditions,⁵⁶ among other rights. It must be noted that the said provisions in the UDHR and the ICESCR apply to workers in general, including domestic workers. There is no core international human rights instrument that is specifically applicable to domestic workers apart from the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families,⁵⁷ which covers migrant domestic workers.

50. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948) [hereinafter UDHR].

51. International Covenant on Economic, Social and Cultural Rights, *entered into force* Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR].

52. UDHR, *supra* note 50, art. 23.

53. ICESCR, *supra* note 51, art. 7.

54. *Id.* art. 7 (a) (i).

55. *Id.* art. 8 (1) (a).

56. *Id.* art. 7 (b).

57. See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *entered into force* July 1, 2003, 2220 U.N.T.S. 3.

Apart from the UDHR and the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women⁵⁸ (CEDAW) also contains provisions on the right to work of women⁵⁹ and protection from violence and abuse.⁶⁰ This becomes particularly important given that the domestic worker sector is largely feminized. The Convention on the Rights of the Child⁶¹ (CRC) likewise contains provisions on employment of children.⁶²

In 2006, the U.N. Committee on Economic, Social and Cultural Rights issued General Comment No. 18 on the right to work.⁶³ It took note of the fact that high rates of unemployment force people to seek work in the informal economy, which lessens the degree of protection of workers relative to those who work in the formal sector.⁶⁴ General Comment No. 18 thus recommends that domestic and agricultural work be regulated by national legislation in order for workers in this sector to be protected in the same way as other workers.⁶⁵ This is the farthest that the U.N. core human rights instruments have been used to tackle rights and protection specific to domestic workers.

B. International Labour Organization Instruments

In 2011, the ILO adopted Convention No. 189 or the Domestic Workers Convention.⁶⁶ The adoption came with a vote of 396–16, with 63 abstentions.⁶⁷ Recommendation No. 201⁶⁸ was also approved with a vote

58. Convention on the Elimination of All Forms of Discrimination against Women, *entered into force* Sep. 3, 1981, 1249 U.N.T.S. 13.

59. *Id.* arts. 11 & 14.

60. See generally U.N. Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation No. 19: Violence Against Women*, U.N. Doc. A/47/38 at 1 (Feb. 19, 1993).

61. Convention on the Rights of the Child, *entered into force* Sep. 2, 1990, 1577 U.N.T.S. 3.

62. *Id.* art. 32.

63. U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work*, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

64. *Id.* ¶ 10.

65. *Id.*

66. See ILO Convention No. 189, *supra* note 6.

67. ILO, 100th ILO annual Conference decides to bring an estimate 53 to 100 million domestic workers worldwide under the realm of labour standards, *available at* http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm (last accessed Aug. 20, 2015) [hereinafter ILO, 100th Annual Conference].

434–8, with 42 abstentions,⁶⁹ to accompany Convention No. 189. It needed two ratifications for it to come into force, and the Philippines and Uruguay committed to ratify the same.⁷⁰ On 5 September 2012, the Philippines ratified Convention No. 189.⁷¹ One year after, it went into force.⁷² Prior to 2011, there were a number of ILO Conventions that included protection for domestic workers on various issues, yet a comprehensive convention was necessary in order to highlight the special plight of domestic workers worldwide.⁷³ While different countries started to enact legislation protecting domestic workers, there remained a gap at the international level. Thus, the adoption of the two ILO instruments became a welcome development in setting minimum standards that would complement applicable ILO and U.N. instruments.⁷⁴

C. Philippine Laws

In the Philippines, the general framework for labor rights is contained in the 1987 Philippine Constitution. The Constitution “affirms labor as a primary social economic force.”⁷⁵ It guarantees seven basic rights afforded to all workers, namely, the rights to organize, to conduct collective bargaining or negotiation, to engage in peaceful concerted activities (including the right to strike, in accordance with law), to enjoy security of tenure, to receive a

68. See ILO Recommendation No. 201, *supra* note 7.

69. ILO, 100th Annual Conference, *supra* note 67.

70. See Joseph Holandes Ubalde, ILO adopts ‘historic’ convention for maids: PH urged to pass Kasambahay bill, *available at* http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1434:ilo-adopts-historic-convention-for-maids-ph-urged-to-pass-kasambahay-bill-joseph-holandes-ubalde&catid=109:overseas-filipino-new&Itemid=840 (last accessed Aug. 20, 2015).

71. See ILO, Ratifications for the Philippines, *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970 (last accessed Aug. 20, 2015).

72. Human Rights Watch, Domestic Workers Treaty Goes Into Force, *available at* <http://www.hrw.org/news/2013/09/03/domestic-workers-treaty-goes-force> (last accessed Aug. 20, 2015). Uruguay ratified Convention No. 189 on 14 June 2012. ILO, Ratifications for Uruguay, *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102876 (last accessed Aug. 20, 2015).

73. See Martin Oelz, *The ILO’s Domestic Workers Convention and Recommendation: A window of opportunity for social justice*, 153 INT’L LAB. REV. 143, 146–47 (2014).

74. *Id.* at 144.

75. PHIL. CONST. art. II, § 18.

living wage, to work under humane conditions, and to participate in policy and decision-making processes that affect their rights and benefits as may be provided by law.⁷⁶

The Labor Code of the Philippines further expands this protection for workers. In its Declaration of Policy, the Labor Code provides that

[t]he State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race[,] or creed[,] and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.⁷⁷

Soon after ratifying ILO Convention No. 189, the Philippine Congress enacted Republic Act (R.A.) No. 10361, otherwise known as “An Act Instituting Policies for the Protection and Welfare of Domestic Workers” or the Domestic Workers Act. President Benigno C. Aquino III approved the law on 18 January 2013.⁷⁸ Senator Legarda, the principal author of the law, sees its enactment as a “major step in giving decent working conditions, fair compensation, and sufficient benefits to domestic workers.”⁷⁹

D. ILO Convention No. 189 and the Domestic Workers Act

ILO Convention No. 189 sets the minimum standards for protection of domestic workers.⁸⁰ It contains the basic rights and principles, and requires States Parties to take measures to ensure decent work for domestic workers.⁸¹ As a party to the Convention, the Philippines is bound to comply with its obligation to “take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in [the] Convention.”⁸²

A look at the Domestic Workers Act and related statutes would show that the Philippine laws comply with the minimum standards of ILO Convention No. 189 in the following aspects — guaranteeing freedom of

76. PHIL. CONST. art. XIII, § 3, ¶ 2.

77. LABOR CODE, art. 3.

78. See TJ Burgonio, *Finally, Aquino signs ‘kasambahay’ bill into law*, PHIL. DAILY INQ., Jan. 23, 2013, available at <http://newsinfo.inquirer.net/345859/finally-aquino-signs-kasambahay-bill-into-law> (last accessed Aug. 20, 2015).

79. Philippine Daily Inquirer, *supra* note 43.

80. See generally ILO Convention No. 189, *supra* note 6.

81. *Id.* art. 6.

82. *Id.* art. 3 (1).

association and collective bargaining,⁸³ elimination of forced labor,⁸⁴ abolition of child labor and provisions on child domestic workers,⁸⁵ non-discrimination,⁸⁶ work hours and rest periods,⁸⁷ setting of minimum wage,⁸⁸ occupational safety and health,⁸⁹ social security,⁹⁰ and provision for dispute settlement, complaints, and enforcement.⁹¹

The next section will then examine the Domestic Workers Act vis-à-vis the ILO Convention No. 189 to determine its compliance with the

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83. See ILO Convention No. 189, *supra* note 6, art. 3 (2) (a) & Department of Labor and Employment, Rules and Regulations Implementing Domestic Workers Act, Republic Act No. 10361, rule I, § 1 (f) & rule IV, § 1 (j) [hereinafter Domestic Workers Act IRR].
84. See ILO Convention No. 189, *supra* note 6, art. 3 (2) (b); An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes [Anti-Trafficking in Persons Act], Republic Act No. 9208, § 4 (2003); & An Act Expanding Republic Act No. 9208, Entitled “An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes” [Expanded Anti-Trafficking in Person Act], Republic Act No. 10364 (2012).
85. See ILO Convention No. 189, *supra* note 6, art. 3 (2) (c); LABOR CODE, art. 139; An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended, Otherwise Known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” Republic Act No. 9231, § 2 (2003); & Domestic Workers Act, art. III, § 16.
86. See ILO Convention No. 189, *supra* note 6, art. 3 (2) (d) & LABOR CODE, art. 130.
87. See ILO Convention No. 189, *supra* note 6, art. 10 & Domestic Workers Act, art. IV, §§ 20, 21, & 29.
88. See ILO Convention No. 189, *supra* note 6, art. 11 & Domestic Workers Act, art. IV, § 24.
89. See ILO Convention No. 189, *supra* note 6, art. 13 & Domestic Workers Act, art. II, § 6 & art. IV, § 19.
90. See ILO Convention No. 189, *supra* note 6, art. 14 & Domestic Workers Act, art. IV, § 30.
91. See ILO Convention No. 189, *supra* note 6, art. 16 & Domestic Workers Act, art. VI, § 37.

minimum standards on four key issues mentioned above. Other applicable domestic laws will also be cited. Issues and challenges arising from the implementation of the law, particularly to the four issues, will also be presented.

III. COMPARATIVE ANALYSIS OF ILO CONVENTION NO. 189 AND THE BATAS KASAMBAHAY ON FOUR KEY ISSUES

A. Promotion of Formalization of Employment

ILO Convention No. 189 requires that States Parties “ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable[,] and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations[,] or collective agreements[.]”⁹² To comply with this obligation, the Domestic Workers Act requires that a written employment contract between the employer and the employee be executed, which shall be duly signed by both parties.⁹³ Section 11 of the said law indicates certain minimum contents⁹⁴ to be included in the contracts and even mandates the Department of Labor and Employment (DOLE) to develop a model employment contract that can be used.⁹⁵ The DOLE has, in fact, made the model contract.⁹⁶

92. ILO Convention No. 189, *supra* note 6, art. 7.

93. Domestic Workers Act, art. III, § 11.

94. *Id.* Section 11 of the Domestic Workers Act provides for the following:

- (a) Duties and responsibilities of the domestic worker;
- (b) Period of employment;
- (c) Compensation;
- (d) Authorized deductions;
- (e) Hours of work and proportionate additional payment;
- (f) Rest days and allowable leaves;
- (g) Board, lodging[,] and medical attention;
- (h) Agreements on deployment expenses, if any;
- (i) Loan agreement;
- (j) Termination of employment; and
- (k) Any other lawful condition agreed upon by both parties.

Id.

95. *Id.*

96. The DOLE provides for the model contract in the DOLE website. See *Kontrata sa Paglilingkod sa Tahanan*, available at <http://www.dole.gov.ph/files/Sample%20Contract.pdf> (last accessed Aug. 20, 2015).

Despite the mandate of the law, Filipinos are not yet used to treating their domestic helpers as full-fledged bona fide workers or employees.⁹⁷ This problem is largely cultural and may lead to a situation wherein the employers will not fully comply with the requirements provided by the law. Take for instance the employment contract requirement. Many busy employers, in practice, tend to ignore this. Another seemingly tedious procedure is applied if the domestic worker has a low level of education, as is usually the case. The law requires that the *Punong Barangay* (community chief) explain the contract to the domestic worker to be hired.⁹⁸ The employer is also required to register the domestic helper in the barangay where he or she is located.⁹⁹ It must be remembered that one of the main reasons why employers take in domestic helpers is to help them in household work, which they cannot themselves perform, usually due to their busy schedules at work. This, coupled with the tedious processes, pushes many employers to just ignore these requirements.

B. Minimum Wage and Social Security

The Convention requires State Parties “to ensure that domestic workers enjoy minimum wage coverage”¹⁰⁰ and “to ensure that domestic workers enjoy ... social security protection.”¹⁰¹ The Domestic Workers Act sets the minimum wage of domestic workers, depending on their location.¹⁰² The highest minimum wage is ₱2,500.00 (approximately, \$57.00) per month.¹⁰³ Such wage rates shall be periodically reviewed by the Regional Tripartite Wages and Productivity Boards (RTWPB) to determine and adjust the minimum wage of domestic workers accordingly.¹⁰⁴ As regards social security, the law provides that domestic workers who have “rendered at least one [] month of service shall be covered by the Social Security System (SSS)[.]”¹⁰⁵ It even goes beyond this minimum requirement by entitling those who have rendered at least one month of service to be covered by the

97. Butalidnl, On the Kasambahay Law, available at <http://butalidnl.wordpress.com/2013/02/12/on-the-kasambahay-law> (last accessed Aug. 20, 2015).

98. Domestic Workers Act IRR, rule II, § 5.

99. Domestic Workers Act, art. III, § 17.

100. ILO Convention No. 189, *supra* note 6, art. 11.

101. *Id.* art. 14 (1).

102. Domestic Workers Act, art. IV, § 24.

103. *Id.* (a).

104. *Id.*

105. *Id.* § 30, ¶ 1.

Philippine Health Insurance Corporation (PhilHealth) and the Home Development Mutual (PAG-IBIG) Fund.¹⁰⁶ The employers shall shoulder premium payments to the SSS, PhilHealth, and PAG-IBIG Fund, unless the domestic worker receives a wage of ₱5,000.00 or higher, in which case, the domestic worker shall pay the proportionate share in the premiums or contributions.¹⁰⁷

The first major criticism on the minimum wage provision is its inadequacy. While welcoming the passage of the law is a step towards protecting domestic workers and treating them with respect, the militant groups Gabriela and Kilusang Mayo Uno stressed that the minimum wage set by the law is not enough to meet the needs of the *kasambahays* and their families.¹⁰⁸ The highest rate of ₱2,500.00 per month is given to those working in NCR.¹⁰⁹ This means that the domestic worker is only receiving about ₱3.00 daily (approximately, \$1.90). This is very low compared to the daily minimum wage of workers in NCR, which is ₱466.00 in 2014.¹¹⁰ It is often argued that this is justified because the domestic workers have “in kind” benefits, such as food and shelter. However, not all domestic workers are on a “live-in” arrangement, yet the same minimum wage rate applies to all domestic workers. Even then, ₱83.00 is hardly enough to provide a decent living, especially if the domestic worker is supporting a family in the province, which is usually the case. Thus, it is doubtful whether the current minimum wage is in line with the object of the Convention. The other issue as regards wages is the possibility of employers reducing the wages of those receiving wages above the minimum set by law in order to compensate for payment of fees and contributions.¹¹¹ Senator Legarda also saw this potential problem and appealed to employers not to do this in recognition of the contribution of domestic workers to the household.¹¹²

106. *Id.*

107. *Id.* ¶ 2.

108. See Lorie Ann Cascaro, Minimum salaries in Kasambahay Law not enough, groups say, *available at* <http://www.mindanews.com/top-stories/2013/03/20/minimum-salaries-in-kasambahay-law-not-enough-groups-say> (last accessed Aug. 20, 2015).

109. Domestic Workers Act, art. VI, § 24 (a).

110. See generally RTWPB Wage Order No. NCR-15.

111. See David Dizon, Pros and cons of the Kasambahay Law, *available at* <http://www.abs-cbnnews.com/-depth/01/28/13/pros-and-cons-kasambahay-law> (last accessed Aug. 20, 2015).

112. See Philippine Daily Inquirer, *supra* note 43.

The busy schedules of employers, who are mandated to pay the SSS, PhilHealth, and PAG-IBIG Fund contributions, again pose a problem.¹¹³ What some employers do is to entrust the registration and the payment of contributions to the domestic helpers themselves.¹¹⁴ Thus, instances may arise where the domestic worker, instead of remitting the funds, keeps it for his or her own use.¹¹⁵ The Domestic Workers Act does not provide for such a contingency.

C. Protection Against Abuse

The Convention mandates States Parties to “take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment[,] and violence[,]”¹¹⁶ and “[t]o effectively protect domestic workers ... against abusive practices[.]”¹¹⁷ The Domestic Workers Act has an equivalent provision which provides that “[t]he employer or any member of the household shall not subject a domestic worker or ‘*kasambahay*’ to any kind of abuse nor inflict any form of physical violence or harassment or any act tending to degrade the dignity of a domestic worker.”¹¹⁸ It even contains a provision on the rescue and rehabilitation of abused domestic workers.¹¹⁹

These protective provisions notwithstanding, domestic workers continue to suffer from maltreatment and abuse. An ILO study in 2007 showed that physical, verbal, and sexual abuse was common among domestic workers in the Philippines, with 85% of the respondents saying that they face some form of abuse or abusive working condition.¹²⁰ In a 2008 survey of 551 domestic workers, 19% said that they do not receive their salary.¹²¹ From April 2010 to March 2011, the Visayan Forum, a national non-governmental organization working on domestic workers’ issues, helped 619 abused

113. See Dizon, *supra* note 111.

114. *Id.*

115. *Id.*

116. ILO Convention No. 189, *supra* note 6, art. 5.

117. *Id.* art. 15 (1).

118. See Domestic Workers Act, art. II, § 5.

119. *Id.* art. IV, § 31.

120. Sayres, *supra* note 4, at 22.

121. Basic Facts on Filipino Domestic Workers, available at http://sumapi.weebly.com/uploads/1/0/5/3/10536320/basic_facts_on_filipino_domestic_workers-pdf.pdf (last accessed Aug. 20, 2015).

domestic workers (98% are female)¹²² The common abuses are the following: long working hours with no rest period, non-payment of wages, verbal abuse, and physical abuse.¹²³ The data of the DOLE on labor cases do not indicate the proportion of cases that involve domestic workers, assuming that many cases are reported. It may be reasonably expected that not many cases involving abuse of domestic workers are reported. This can be attributed to the fact that domestic workers remain “hidden” as they continue to work in the private sphere of the household. Many domestic workers, due to very low levels of education, also do not know the legal remedies available to them. All these combined lead to the conclusion that access to justice of domestic workers remains very low.

D. Minimum Age

Based on the 2011 Survey on Children, out of the 29.019 million children in the Philippines, ages five to 17 years old, 18.9% or 5.49 million are working.¹²⁴ Of the 18.9%, 55.1% (3.03 million) work under the definition of child labor, while 44.9% (2.46 million) have permissible work, not considered as child labor.¹²⁵ Also, 2.99 million children are exposed to hazardous child labor.¹²⁶ In another statement, the Philippine Commission on Women reported that “child household workers are perhaps the largest group of working children.”¹²⁷

ILO Convention No. 189, in relation to ILO Convention No. 138¹²⁸ or the Minimum Age Convention, prescribes the minimum age at 15 years old.¹²⁹ However, the Minimum Age Convention provides for additional parameters for the protection of the child. According to the Convention, if the work is “likely to jeopardi[z]e the health, safety[,] or morals of young persons[,]” the minimum age of employment shall not be less than 18

122. *Id.*

123. See Sayres, *supra* note 4, at 21–22.

124. Carmelita N. Ericta, 2011 Survey on Children (Joint Project of the Philippine National Statistics Office and the International Labour Organization), available at http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-manila/documents/meetingdocument/wcms_184097.pdf (last accessed Aug. 20, 2015).

125. *Id.*

126. *Id.*

127. Lila Ramos Shahani, Kasambahay Law knocks on Filipino homes, available at http://www.dole.gov.ph/good_news/view/192 (last accessed Aug. 20, 2015).

128. ILO, *Convention Concerning Minimum Age for Admission to Employment*, Convention No. 138 (June 26, 1973) [hereinafter ILO Convention No. 138].

129. *Id.* art. 2 (3).

years.¹³⁰ Hazardous work is expounded in the supplement to the ILO Recommendation No. 190 or on the Worst Forms of Child Labour.¹³¹ It provides for what is considered as hazardous work, to wit:

- (a) work which exposes children to physical, psychological[,] or sexual abuse;
- (b) work underground, under water, at dangerous heights[,] or in confined spaces;
- (c) work with dangerous machinery, equipment[,] and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents[,] or processes, or to temperatures, noise levels, or vibrations damaging to their health; [and]
- (e) work under particularly difficult conditions such as work for long hours or during the night or work *where the child is unreasonably confined to the premises of the employer*.¹³²

Thus, it is clear that under the Convention on the Minimum Age and the Recommendation on Worst Forms of Child Labour, those above the age of 18 are the only ones who may be employed for this kind of work.

The Kasambahay Law also considers R.A. No. 7610¹³³ and its amendment R.A. No. 9231,¹³⁴ or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. According to the Kasambahay Law,

[i]t shall be unlawful to employ any person below [15] years of age as a domestic worker. Employment of working children, as defined under [the law], shall be subject to the provisions of Section 10 (A), paragraph 2 of

130. *Id.* art. 3 (1).

131. ILO, *Worst Forms of Child Labour Recommendation*, Recommendation No. 190 (June 17, 1999).

132. *Id.* ¶ 3 (emphasis supplied).

133. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992).

134. An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended, Otherwise Known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” Republic Act No. 9231 (2003).

Section 12-A, paragraph 4 of Section 12-D, and Section 13 of [R.A.] No. 7610, as amended, otherwise known as the 'Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.'¹³⁵

For the employment of a child to be permissible, it must not fall under the definition of worst forms of child labor articulated in the Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act:¹³⁶

- (4) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety[,] or morals of children, such that it:
- a) Debases, degrades[,] or demeans the intrinsic worth and dignity of a child as a human being;
 - b) Exposes the child to physical, emotional[,] or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals;
 - c) Is performed underground, underwater[,] or at dangerous heights;
 - d) Involves the use of dangerous machinery, equipment[,] and tools such as power-driven or explosive power-actuated tools;
 - e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength[,] or contortion, or which requires the manual transport of heavy loads;
 - f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents[,] or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations;
 - g) Is performed under particularly difficult conditions;
 - h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes[,] and other parasites; or
 - i) Involves the manufacture or handling of explosives and other pyrotechnic products.¹³⁷

The hours of work of a working child are also limited to not more than eight hours a day, if the child is 15 years of age but below 18 years.¹³⁸ The law also states that “[n]o child shall be deprived of formal or non-formal

135. Domestic Workers Act, art. III, § 16.

136. Special Protection of Children Against Abuse, Exploitation and Discrimination Act, as amended by R.A. 9231, § 12-D.

137. *Id.*

138. *Id.* § 12-A.

education.”¹³⁹ The working child shall be provided with access to at least primary and secondary education by the employer.¹⁴⁰ The State is also mandated to guarantee the access of the working child to education and training.¹⁴¹ The Act also imposes a penalty for the commission of any other acts of child abuse, cruelty, or exploitation.¹⁴²

Another protective measure for working minors can be found in the Labor Code, which states that “[n]o child below [15] years of age shall be employed ... [and any] person between [15] and [18] years of age may be employed for such number of hours and such of the day as determined by the Secretary of Labor and Employment in appropriate regulations.”¹⁴³ A person below 18 years of age shall also not be employed if the undertaking is hazardous or deleterious in nature.¹⁴⁴ The DOLE, in Department Advisory No. 01-08,¹⁴⁵ clarified that the “employment of children in the worst forms of child labor in any public or private establishments” falls under the prohibitions.¹⁴⁶ And while a permit is required for the employment of children below 15 years of age, “[the] law [] is silent with regard to the issuance of a permit or certificate to those who are [15] but below [18] years of age.”¹⁴⁷ The issuance of a DOLE certificate for these cases is, therefore, not required by law.¹⁴⁸ Both the international and domestic frameworks provide for the protection of working children, particularly children under 18 years of age and above 15 years of age. However, while the law provides that children may not be employed for hazardous work, it still allows their employment as domestic workers, which may be harmful or hazardous.¹⁴⁹

139. *Id.* § 13 (a).

140. *Id.*

141. *Id.* § 13 (b) & (c).

142. Special Protection of Children Against Abuse, Exploitation and Discrimination Act, as amended by R.A. 9231, § 10.

143. LABOR CODE, art. 139 (a) & (b).

144. *Id.* art. 139 (c).

145. Department of Labor and Employment, Employment of Youth Aged 15 to Less Than 18 Years, Department Advisory Opinion No. 01-08, Series of 2008 [DOLE Dept. Advisory No. 01-08] (June 10, 2008).

146. *Id.* II (3).

147. *Id.* II (2).

148. *Id.* III (3).

149. Interview with Roland Pacis, former Deputy Executive Director, Visayan Forum Foundation, Inc. (Oct. 17, 2014) (on file with Authors).

IV. CONCLUSION AND RECOMMENDATIONS

The Domestic Workers Act and other related laws are generally compliant with the standards set by the international conventions, particularly ILO Convention No. 189, which the Philippines has signed and ratified. The proper execution of the law, however, continues to be a problem. It bears stressing that compliance with international obligation, human rights obligations included, only starts with the enactment of measures, and it hardly ends there. While it is true that the principle of progressive realization would apply to these measures, it is also a fact that there are non-monetary measures that can be put in place in order to give immediate solutions to some of the challenges faced by domestic workers. The hurdles to the promotion of formalization of domestic workers' employment can be done through a more thorough information, education, and communication campaign (IEC) for the benefit of both the employers and domestic helpers. The IEC should be aimed at a paradigm shift in the way Filipinos treat the employment of domestic workers. It is true that culture cannot be changed overnight, but such IEC would surely contribute to this goal.

The issues pertaining to minimum wage and social security must also be addressed. It would be too hasty to say that the RTWPB is not performing its function mandated by the Domestic Workers Act since it has been only a year and a half since the law took effect. The National Wages and Productivity Commission (NWPC) must actively monitor the RTWPBs' review of the minimum wage. Again, this is not something that would require additional resources, as it is part of NWPC's function to supervise the RTWPBs.¹⁵⁰ The creation of the one-stop shop for registration of *kasambahays* and enrollment in the SSS, PhilHealth, and PAGIBIG Fund, as mandated by the rules,¹⁵¹ must be prioritized. DOLE and other related government agencies should also consider opening these one-stop shops or similar offices after office hours or during Saturdays to accommodate the employers who are also working. The extended hours or Saturday operations may be done at scheduled intervals, which should be made known to the public.

The status of children in domestic work should also be addressed. Since there is a risk of merging hazardous work (therefore impermissible work)

150. An Act to Rationalize Wage Policy Determination by Establishing the Mechanism and Proper Standards Therefor, Amending for this purpose Article 99 of, and Incorporating Articles 120, 121, 122, 123, 124, 126 and 127 Into, Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, Fixing New Wage Rates, Providing Wage Incentives for Industrial Dispersal to the Countryside, and for Other Purposes [Wage Rationalization Act], Republic Act No. 6727, § 3 (1989).

151. Domestic Workers Act IRR, rule IX, § 2.

with domestic work, DOLE must be vigilant in identifying situations of children working in hazardous situations as domestic workers. Awareness of the status of the child domestic worker must be advocated by DOLE, to “transform social attitudes and to address the widespread acceptance of child [labor] in domestic work and the beliefs [among] employers and parents that these situations represent a protective and healthy environment for children [—] especially girls.”¹⁵² The current legal framework presents a gray area between impermissible work and allowable domestic work for children between the ages of 15 and 18 years old; thus, it should be vigilant in identifying and prohibiting hazardous work in domestic work.

Protecting domestic helpers from abusive environments must also be given due attention. DOLE has to include in their statistics of labor-related cases disaggregated data that would show the number of cases involving domestic workers, the nature of the cases, and the resolution. The data would not only be very valuable for policy setting, but this also contributes to the aim of elevating the status of domestic work. The Domestic Workers Act should also be strictly implemented to achieve the goal of providing decent work for domestic workers. The rehabilitation program¹⁵³ for survivors of abuse must be implemented properly. The implementing agencies should ensure that those in-charge of the program should be properly trained in gender and child sensitivity. The complaints mechanism should be made very accessible to the domestic workers.¹⁵⁴ Part of the IEC campaign for domestic workers should focus on the violations and remedies included in the law. Needless to say, lack of information will most likely lead to lesser protection.

It must be borne in mind that the Philippines has the obligation to respect, protect, and fulfill the right to work of domestic workers in the country. The enactment of the Domestic Workers Act is a sure first step, but its proper implementation and monitoring is key to ensure that all these State obligations are met. The plight of the domestic workers must be made known to all, in order to improve their situation. As aptly pointed out by Senator Legarda, “[i]t is important that we treat our [*kasambahays*] as workers, not servants. This is a clear yardstick for equality in the country, and this heralds better things to come for [the] other marginalized.”¹⁵⁵

152. ILO, Child labour and domestic work, available at <http://www.ilo.org/ipec/areas/Childdomesticlabour/lang--en/index.htm> (last accessed Aug. 20, 2015).

153. Domestic Workers Act, art. IV, ¶ 31.

154. See ILO Recommendation No. 201, *supra* note 7, ¶ 7 (a).

155. Philippine Daily Inquirer, *supra* note 43.