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Clarifying the **Batas Kasambahay:** Q&A on the Bill for Domestic Workers in the Philippines

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Introduction

Domestic worker abuse remains rampant and hidden today despite strong public outcry. After ten years of lobbying, domestic workers and exemplary employers alike still wait in vain for the passage of *Batas Kasambahay*.

Batas Kasambahay is a pending bill in the Senate and the House of Representatives which aims to protect and uplift the working conditions of house helpers working locally in the Philippines. By institutionalizing minimum working parameters and standards, the domestic sector, a traditionally neglected informal labor sector, will come closer toward decent working conditions.

Many employers treat their domestic workers as part of their extended family, not as mere indentured servants. Hence, the bill aims to ensure that the rights of employers are also protected at all times.

There are many versions of this bill which legislators and future implementers are currently scrutinizing. In essence, these different proposals cover some basic elements which directly update Articles 141 to 152 stipulated under Chapter III of the Labor Code of the Philippines. These core elements, in effect:

- Revise the misleading definition of household work
- Increase the minimum wage of the sector
- Accord new social protection benefits such as PhilHealth
- Propose the use of a formal contract to govern employer-employee relationship
- Set mandatory registration of domestic workers
- Prevent bonded labor situation
- Increase the penalties set in the Labor Code

By arriving at an agreement on these elements, proponents and critics alike have already established a strong common ground. However, policy-makers can take a step further by considering the other proposals gathered during the ten-year advocacy of this law. For example, stakeholders propose to:

- Recognize the specific rights of domestic workers thereby clearly enshrining the sector's significant contribution to national development
- Emphasize hours of continuous daily rest instead of hours of work, which is difficult to monitor
- Support educational opportunities beyond the present stipulation of elementary education
- Clarify provisions to protect children from hazardous and exploitative conditions in domestic work
- Institutionalize the national implementation mechanisms at the local government level, after all many local government units (LGUs) have already passed related ordinances and programs
- Institutionalize *Araw ng Kasambahay* (National Domestic Workers' Day) to honor and make this sector visible

For centuries, our laws, customs and conventions have relegated the domestic work sector as among the lowest paid and least dignified profession. We have hidden this workforce to a point that domestic workers have become passive and timid as well as unaware of any of their basic rights at all. Without any coherent set of laws to offer in our country, we will continue to fail in setting a moral high ground for the protection of our domestic workers overseas.

How much longer can we put this bill on hold? It is high time for the Senate and the House of Representatives to capture the various evolutions of this bill. Policy-makers should no longer wait because even local governments have started to implement pioneering steps reflective of the principles of *Batas Kasambahay*.

Everyday, the national clamor for the immediate passage of the bill grows more urgent and more thunderous. Surely, there are salient questions

that need answers but our policy-makers cannot be forever silent. They have to make a choice.

Will they continue to neglect the injustice done to and exploitation of domestic workers? Or will they amend the outdated laws reflective of a larger societal imbalance?

The Visayan Forum Foundation, one of the key proponents of this bill, offers this simple Q&A to clear the cloud of confusion and doubt that might still be hovering over this bill.

Together, let us give *Batas Kasambahay* a chance that it rightfully deserves.

Visayan Forum Foundation, Inc.
November 14, 2006





PART ONE GETTING TO KNOW *BATAS KASAMBAHAY*

What is *Batas Kasambahay*?

It is a proposed legislation that aims to protect domestic workers in the Philippines. It seeks to update scattered laws in line with the country's international commitments such as, but not limited to, the Decent Work Agenda, elimination of child labor, elimination of forced labor and trafficking as well as the elimination of the discrimination against women.

Batas Kasambahay thus seeks to increase the minimum wage of domestic workers and to accord them new social protection benefits such as membership to PhilHealth. It also sets the mandatory registration of domestic workers in all *barangays* nationwide. It also prescribes the use of a formal contract stipulating minimum working conditions to govern employer-employee relationship.

In a broader context, the approval of this bill is a strong recognition of the dignity of every domestic worker without sacrificing the equal protection of the rights of their employers.

Why do we use the term *kasambahay*?

The term '*kasambahay*' comes from the phrase '*kasama sa bahay*' or companion at home. This term has evolved as a better description of the mutually beneficial relationship that exists between the employer and domestic worker. This term connotes partnership based on respect and dignity, rather than subservience and subordination. *Kasambahays* are partners, not just slaves at home.

Who are covered under this proposed law?

If passed, this law concerns all domestic workers and employers. A domestic worker refers to "any person who renders domestic or household services, under a full-time basis for compensation, to a homeowner/employer undertaking tasks ascribed as normal household chores within a specific household." The term includes maids, cooks houseboys and "yayas" (babysitters) who provide daily services to a specific household, either on a live-in or live-out basis.

What are the rights of a *Kasambahay*?

This proposed bill enshrines and reaffirms the universal rights of *kasambahays* such as:

- Right to just and humane treatment
- Right to just and humane conditions of work
- Rights against involuntary servitude, debt bondage and trafficking
- Right to social protection, including SSS and PhilHealth
- Right to privacy
- Right to decent and just wage
- Right to access educational opportunities
- Right to self organization
- Right to redress grievance

But without updating the law, these rights will remain as mere expressions. This is why we need to pass *Batas Kasambahay*.

Is it a one-sided law that respects the rights of *kasambahays* alone? How about protecting the rights of employers?

This bill is not anti-employer. It does not seek to demonize employers. It does not also seek to eradicate the domestic worker sector, but to regulate it instead. A part of this regulation is setting up of formal contracts to govern agreements between employers and domestic workers. Clear contracts set up clear expectations in the employer-employee relationship. The cornerstone of this relationship rests on ensuring decent working conditions and the respect of rights. This is a way of protecting employers' interests because domestic workers will also have to abide to the terms of the agreement.

"Give us respect, and we will give you loyalty," domestic workers would say. This maxim will always be true. In return, employers deserve quality work from their domestic workers.

What is the history of the bill?

***Batas Kasambahay* is the core legislative reform agenda of the Visayan Forum Foundation (VF).** Founded in 1991, VF is an NGO which provides shelter to abused domestic workers, trains leaders and various partners, and sustains policy advocacy here and abroad. VF has also organized in 1995 the first association and linkage of domestic workers in the Philippines, the Samahan at Ugnayan ng mga Manggagawang Pantahanan sa Pilipinas (SUMAPI), a genuine and strong voice in support of this law.

Today, there are different versions of the bill, reflecting its dynamic evolution within a decade. Despite delays in its approval, continuous consultations on the ground have already generated commitments and revitalized actions across many sectors. For example, some cities have passed ordinances to register domestic workers at the barangay level. (*see inset on the Evolution of Batas Kasambahay*)



- Local and overseas domestic workers jointly call for the swift passage of *Batas Kasambahay* as the first priority in the Ten-Point Agenda during the first National Domestic Workers Summit held in 2005
- Over one million signatures in favor of the swift passage of the *Batas Kasambahay* bill were gathered and presented to the Senate in 2005
- According to a 2005 survey conducted by the Social Weather Station, 87% of Filipinos strongly agree that there should be a law addressing the domestic work sector
- The Philippines finally ratifies ILO Convention 29 or the Forced Labour Convention
- On April 24, 2006, President Arroyo issued Presidential Proclamation 1051, which set aside April 30th as "a special day to honor and give recognition to the hidden, yet massive army of everyday workers, to generate greater awareness of the importance and contribution of domestic workers." On April 30th, 2006, the nation celebrated its first official National Domestic Workers' Day or *Pambansang Araw ng Kasambahay*.

The Civil Code 1689-1699:

The section of the Civil Code that touches upon household helpers describes minimum hours of work, terms of payment, payment to the house helper in case of death in the family, and termination of the house helper's employment.

Republic Act 7655:

This Act provides for the mandatory inclusion of domestic workers earning a minimum of P1,000.00 a month into the Social Security System.

Republic Act 7610:

This Act for the Special Protection of Children against Abuse, Exploitation, and Discrimination can also be invoked for the protection of domestic workers.

However, there is a generally lack of clarity in implementation mechanisms, especially the involvement of local government units and non-government organizations. Few people are also aware of these laws when it comes to working on the domestic worker's sector.

What current laws govern the working conditions of household helpers?

The main provisions governing the working conditions of domestic workers are contained in the following:

The Labor Code of the Philippines or Presidential Decree No. 442:

Enacted in 1974, it sets the minimum employment standard for domestic workers or household helpers in general. Subsequent amendments to the Labor Code pegged the minimum wage for domestic workers at P800 (about US\$16) a month. The Labor Code contains general provisions on occupational safety and health, opportunity for education and training, board, lodging, medical attendance, terms of contract, and employment certification and records, and also prescribes remedial measures for violations of standards enshrined in the law.



PART TWO

SITUATION OF KASAMBAHAYS

How large is the domestic worker sector in the Philippines?

Too big to ignore. According to a 2004 ILO country study on domestic workers in the Philippines, estimates range from 600,000 to 2.5 million. The Labor Force Survey suggests that there are about 1.5 million household helpers working in private households in the country, contributing 13.73% of total wage employment in the private sector. Visayan Forum estimates that there are at least 2.5 million persons employed as domestic workers, 1 million of which are children. The majority of domestic workers are female, with figures ranging from a high of 92% from the 2002 NSO Labor Force Survey to a low of 86% from the 1995 survey.

What are some of the abuses that domestic workers face?

The abuses of domestic workers remain rampant and hidden today despite strong public outcry. These abuses happen because domestic work is a lowly regarded work. Despite their vital contribution to the economy and society, they are considered as one of the most vulnerable sectors because they are hidden. Most of them are women and children whose work remains shrouded in the secrecy of their employers homes. The most common types of abuses include the following, namely:

- Exposure to physical, psychological and sexual abuse
- Exposure to harmful and hazardous working conditions

- Low, unpaid or delayed wages
- Vulnerability to trafficking and debt bondage
- Long working hours with no day off
- Performing multiple and all-around work
- Working in isolation and without support networks
- Lack of social security or health benefits
- Lack of opportunities for education and self improvement

Hidden from view, *kasambahays* exist without government oversight and protection. The *Batas Kasambahay* aims to urgently address these problems. With more effective monitoring mechanism, it seeks to uphold the rights and dignity of *kasambahays* and to protect them from abuse and exploitation.

How Valuable is the *Kasambahay* Sector?

Frankly speaking, every politician recognizes the voting power of at least a million *kasambahays*. But how can this sector exercise its right to vote if it remains largely unregistered?

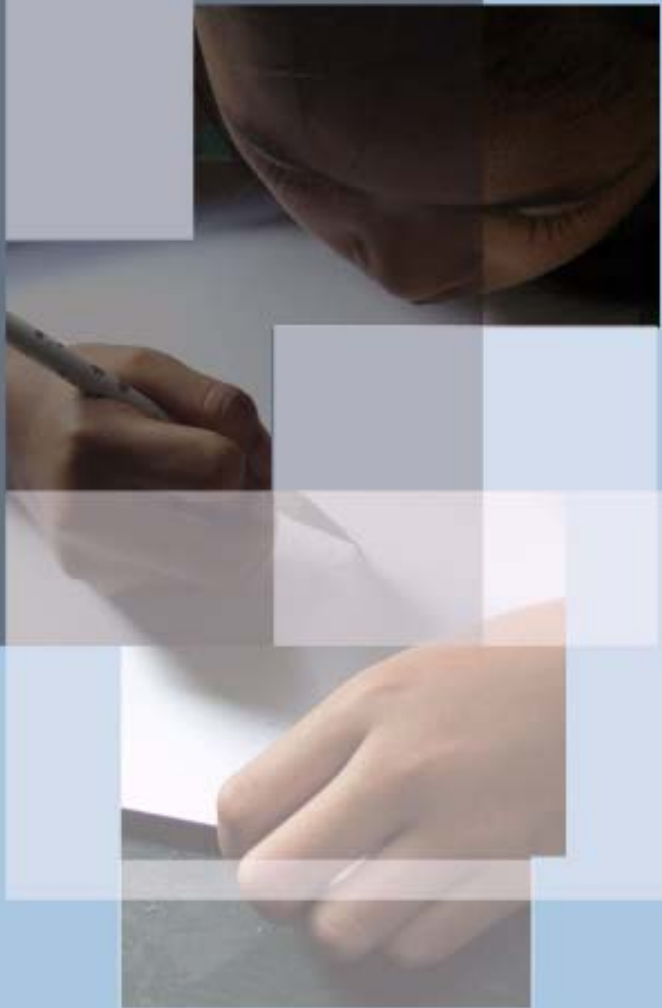
More important than this 'political power' argument, of course, is the need to recognize the economic contribution of this sector. Behind the success of every woman entering the formal workforce, is a domestic worker. Left at home to care for the children of their employers, they also wield a strong influence in the development of our nation's next generation of leaders. These migrant workers also support the families they left behind in the province. They remit much needed cash, expanding the purchasing power in the economies of poor provinces.

Are there children working as domestic workers?

Child domestic workers are perhaps the second largest group of working children, next to agriculture. With estimates ranging from 230,000 to 631,000 to 1 million, no one is sure about the exact size of the sector, but there is no doubt that the sector is too large to ignore or neglect. Domestic workers also tend to be very young, usually aged 15-17 years old. They are amongst the most vulnerable because they are young and mostly girls.

There are many reasons for this prevalence. Many people believe that domestic work is safe and is accepted as necessary and desirable. Many parents also remain supportive of their children's desire to work as domestics in other households. While poverty still remains the biggest push, the lack of educational opportunities is also a huge driving force.

Children themselves often silently endure slave-like treatment and conditions in the name of a chance to continue schooling. Many traffickers take advantage of such vulnerabilities in order to generate a quick profit by recruiting countless young girls to work in urban households. They promise work in a household in order to lure girls away from their parents, and once they are away from home, they are often funneled into jobs in bars and brothels.



PART THREE UNDERSTANDING THE BASIS OF PROPOSED REVISIONS

When we say that existing laws are not sufficient and outdated, is this enough basis to legislate a *Batas Kasambahay*?

Many positions have been made to support as well as to critique *Batas Kasambahay*. Yet one thing is very clear: no institution has issued any position that totally rejects whatever version of this bill.

All sectors agree that the existing Labor Code is already outdated and out of touch with the problems of the sector. The debate centers on how to start updating it and how far we should go in introducing new provisions to protect domestic workers. Understandably, concerns revolve on affordability and enforceability.

How far the debates will reach will be reflective of our political will as a nation to use legislation as a powerful tool for change and reform.

The following discussions hope to shed light on some of these debates.

Why change the definition of “household helper?”

Often, people believe that trying to redefine anything just adds to confusion. But in this case, the definition of “household helper” set by the Labor Code is the main root of endless confusions.

Article 141 defines domestic or household service as “services usually necessary or desirable for the maintenance and enjoyment of employers and includes ministering to the personal comfort and convenience of the member’s of the employer’s household.”

Does “enjoyment” include sexual services? Does “personal comfort and enjoyment” include massage services?

This definition is always prone to abuse and various misinterpretations. This very broad and vague definition also allows employers to treat domestic workers as personal servants to whom they can dictate unlimited tasks justified only by the comfort and convenience such tasks given to them.

Hence, there is a need to change this definition by using the phrase “normal household chores.” There is also a need to include both live-in and live-out workers. The only issue that hangs in doubt regarding this aspect is whether this also covers young domestic workers who are employed by relatives, usually in exchange for schooling support or simply in the guise of informal adoption.

Drivers can be excluded because the nature of their jobs and salary scale differ from normal household chores.

Why is it necessary to increase the minimum wage of domestic workers?

According to the current Labor Code, house helpers must be paid the following minimum wage rates: Eight hundred pesos (P800.00) a month for urban centers; six hundred fifty pesos (P650.00) a month for chartered cities and other first class municipalities; and five hundred pesos (P500.00) a month for those in other municipalities.

Many employers do not have a realistic benchmark to compare wage demands because an unregulated market of domestics relies on an uneven salary scale.

Obviously, these rates set more than 15 years ago are already unrealistic. Many employers are already paying way above this benchmark. In fact, it is difficult nowadays to hire skilled domestic workers using this offer. Domestics are also becoming choosy against low-paying employers.

With these outdated rates that are still in effect, adult and more skilled domestic workers tend to seek work overseas. This contributes to the trend of the recruitment of younger domestic workers for local employers. Many employers suffer the long-term disadvantages of employing young domestic workers, often as young as 14 years old, who are relatively inexperienced. With such measly income, many domestic workers are trapped in the vicious cycle of incurring debts and salary advances from their employers.

How do we then decide on setting an affordable and decent wage level?

This is the most difficult question. Fortunately, no institution including the employers’ sector is against such an increase. Everyone recognizes that the existing rates are artificially low and unreflective of the dignity that the sector deserves. The existing legislated proposals are as follows:

Bill version	Metro Manila	Other chartered cities / 1 st class municipalities	Other municipalities
Labor Code (existing)	P800	P650	P500
HB 3118 (Carmen Cari)	P3,000	P1,000	P800
HB 1606 (J. Ponce Enrile)	P2,500	P1,700	P1,500
SB 1772 (J.E. Estrada) – first reading	P2,500	P1,700	P1,500
SB 1772 (J.E. Estrada) – new version	P2,000	P1,500	P1,000

A random survey of domestic workers in Manila reveals that the average monthly salary these days range around P2,000.00 to P2,500.00. Still, there are cases when employers, especially in the provinces, give P10/day for young domestic workers just for schooling. On the other hand, some richer households in *Barangay* Forbes Park, Makati City offer at least P5,000.00. However, this is not even comparable to the average pay in Hong Kong and the Middle East which could range around P10,000.00 a month.

- According DOLE, a study of the National Wage and Productivity Council (NWPC) pegs the acceptable rate at a similar range, between P2,000.00 to P2,500.00.
- Since 1993, inflation has already overtaken the value of the P800 minimum wage. Given the inflation rate, the average wage of domestic workers should range from P2,100.00 (mean inflation for 12 years of 6% = P1,900.00 rounded from actual figures) to P2,800.00 (inflation rate at 9% rounded from actual figures).

What amount of correction is then affordable and sustainable? The rhetorical answer is that anything that accords this sector's decent work that merits appropriate pay. Proposing a salary increase does not aim to eradicate domestic work. It is a way to improve the conditions of work and imbue a newfound sense of dignity to the sector.

No matter what amount our lawmakers will agree on, one must learn that based on experience, inflation has always overtaken any wage increase. Thus, it is wise to argue that any *Batas Kasambahay* should mandate the Regional Tripartite Wages and Productivity Boards (RTWPBs) to determine and adjust, from time to time, appropriate minimum wages rates for kasambahays. Have you always wondered why when these bodies announce wage increases every year, they always exempt maids and drivers? Shouldn't we end this discriminatory practice once and for all?

Since inflation overcame the Labor Code rates many years ago, free market forces affected the demand for domestic workers. Employers offered higher wages to attract more dependable domestic workers. The demand for domestics is relatively inelastic, meaning that the quantity demanded will not vacillate dramatically because of price increases.

On the other hand, the supply of domestic workers became distorted by the phenomenon of trafficking. Unscrupulous recruiters victimize young girls and their families by offering high salaries and opportunities to attend schooling. In reality, these promises are not met because no employer, after all, can be violating the Labor Code for offering lower wages. Disgruntled by this reality, many domestics leave their work, and with few contacts in the city, they slowly slide into prostitution.

Is it too much to ask for a 13th month pay?

There is a common belief that only rank and file employees should receive 13th month pay. Of course, we should not compare our private households to the profit-sharing concept of companies. Domestic workers are not contributing to the profits or earnings of their employers.

True. Domestics are not creators of profit. They are more than just that. They create the freedom and opportunity for employers to work somewhere else. They are making it possible for their employers to *earn money* through office work instead of being trapped by the demands of household work. They are taking care of their employer's children. They are reducing the cost and the need to eat in restaurants. They are saving us the trip to the sprouting laundry shops.

To value and in return for these contributions, isn't it fair for every employer give a 13th month pay? This act of generosity should indeed become a standard practice, not just left to the sound discretion of any employer.

Why should *Kasambahays* be covered by PhilHealth?

Currently the employer is the sole provider of health insurance and pension for the domestic worker. With the advent of the *Batas Kasambahay*, this responsibility will also be solidly borne by the state, the domestic worker, and the employer through compulsory membership. In practice, *kasambahays* tend to ask for advance salaries or loans from the employers, often worth half a year's work. The requirement to make a minimum contribution of at least P90.00 a month, which is equivalent to a short taxi ride, partially reduces the employer's obligation to lend money to workers to cover expenses related to sickness or death in the family.

Should *kasambahays* be covered by SSS?

Once the minimum wage increases to at least P1,000.00, all employers will be mandated to register their kasambahays, pursuant to RA 8282 as amended.

How useful would it be to require the use of a written contract?

The Labor Code stipulates the use of contract but fails to enumerate its basic elements. **The proposed use of a contract clarifies the terms and conditions of work such as job description, remuneration, social security benefits, schedules of days off and the like.** It aims to minimize vague expectations and misinterpretations of mutual agreements during hiring. Finally, having a notarized contract is the only concrete safeguard that *kasambahays* have against arbitrary changes that can lead to protracted abuse.

While it is true that employing *kasambahays* is a private matter, it is also true that each employer has a social obligation to respect the rights of this sector. In one opinion, having a contract will not really destroy the practice of employers treating their *kasambahays* as part of the extended family. Interestingly, treating them as such and at the same time respecting the value of their labor are mutually reinforcing practices. *Kasambahays* will appreciate and reciprocate whatever we sow in their hearts.



For any contract to become effective, it should stipulate just causes and conditions of terminating the agreement. In the real world, employers usually notify their *kasambahays* at least 15 days before termination. In the same spirit, there should also be disincentive for *kasambahays* to abruptly leave the homes of their employers without seeking permission or without due cause.

Such justifiable causes, in the eyes of *kasambahays*, may include insults, abuses or even crime. Employers are also protected because they have the right to fire their *kasambahays*, even without serving any notice, if the *kasambahay* is misbehaving, willfully disobeying, neglecting her duties or stealing money.

Contracts, which are newly proposed to be effective for a year, can be certified and entrusted to the *Punong Barangay* for safekeeping, whose office has jurisdiction over the residences in his or her area. Hence, the next question on the registration of *kasambahays* is important.

Is there any value in registering *kasambahays*?

Some local governments have pioneered ordinances to register *kasambahays* in their *barangays*. For example, the Quezon City Public Employment Service Office-Industrial Relations Office (PESO-IRO) registers and provides identity cards to domestic workers.

Makati, Iloilo, and Bacolod already passed similar ordinances. Other cities continue to follow suit. These include Baguio, Batangas, Davao, Bulacan, Daet and lately, Mandaluyong, Marikina and Taguig.

There are many convincing reasons for exploring this monitoring mechanism. First, it keeps a natural record of employment history of each *kasambahay*, thereby making it easier for employers to do background checks. Second, it helps policy-makers to fine-tune legislations because of improved statistical information on this sector. Third, it helps the *barangay* system in effectively mediating on disputes because in the first place they are already assigned as depository of contracts. Finally, it helps government and private agencies such as the Social Security System (SSS) and training institutions to deliver better services through immediately available documentation.

So why not legislate on a national scale these existing local ordinances? Local officials are the eyes and ears that monitor conditions in every household. The next logical step would be to create *barangay* desks and train desk officers to implement such measures.



Now, we go to the finer details of the contract. Why propose minimum hours of rest instead of maximum hours of work?

The Labor Code does not stipulate any minimum hours of work. Thus, it has become the usual practice to expect domestic workers to be available full-time. After all, they live under the same roof with their employers.

The issue of setting minimum hours of work came about with the advent of child labor laws and the ratification of ILO Convention 29 on Forced Labor. RA 9231 or Child Labor Law distinguishes the special needs of children 15 to 17 years old by setting a limit to hours of work to 8 hours a day, 5 days a week or not more than 40 hours a week. Subsequent proposals under Senate Bill Nos. 860 and 202 provided for 10-work hours for adult domestics.

There have been many objections to setting work hours for adult domestics. If strictly observed, it might mean that employers are already violating the law when they ask their domestics to open the gate in the wee hours of the morning. The question also arises, how can employers count the hours served when they practically leave their domestics at home?

One possible way of resolving this dilemma is to require minimum hours of rest instead. For example, employers may be encouraged to provide *kasambahays* a daily rest period of 8 hours. This can be at least a sporadic concession granted by employers.

How can you justify vacation leave if you already grant weekly days off?

Kasambahays work away from home, disconnected from their families in the provinces. They pay a heavy price for this sacrifice. The phenomenon of “Inang Yaya,” where domestics take care of their wards while they neglect their own biological children, is becoming more relevant than ever before. Unlike regular office employees, domestics have only one day off a week. *Kasambahays* also work six days a week and ten hours a day unlike private employees wherein the regular workday is five days a week and eight hours a day. Thus, it is appropriate to give the household helper additional days for their vacation leave.

Is it wise to ask prerequisites for the employment of *kasambahays*?

Existing proposals require *kasambahays* to submit medical certificates, NBI clearance, *barangay* clearance and authenticated birth certificates. The intention here is to protect the employers from unduly hiring *kasambahays* who are either disease-carriers, or with connections to illegal activities, or simply under-aged (below 15 years old).

However, these requirements may be very stringent. They may force *kasambahays* to agree to substandard wages and conditions of work if they are allowed not to submit these requirements. These can also force them to work underground and be invisible.

Should employers insist on these provisions, they may need to shoulder the costs of acquiring these documents.



Isn't the contract too cumbersome? How will the contract be enforced?

The Department of Labour and Employment (DOLE) has already prepared for this by preparing a standard contract. In practice, the contract can be analogous to those required by DOLE for local recruitment. The DOLE and the *barangays* can have copies of the standard contract so that these can be executed in areas convenient and accessible to employers and *kasambahays*. These can even be executed along with the recruitment contract.

The contract will be registered with the *barangay* that has jurisdiction over the households. The *barangay*, as already practiced, shall be the first line of conciliation and mediation in case of disagreements; unlike the current practice where disputes can only be formally resolved through the DOLE.

The contract will also stipulate just causes for termination of contract such as willful and habitual neglect of duties, etc. This can still be settled through *barangays*.

How will the enforcement of the contract be monitored?

This will be monitored largely through the *barangays* where the contracts will be registered. Similarly, the *barangay* will be empowered and trained to settle disputes. This is already practiced in large cities such as Quezon City, Makati, Bacolod, Iloilo, and Baguio where there are complementary ordinances on the registration of *kasambahays*.

According to the Makati City Government, registration is very feasible because if local governments can register and keep track of stray dogs, why can't we do this for humans? Employers are also observing some of the provisions.

In these cities, NGOs and government agencies like the DOLE are conducting trainings for *barangay* officials on how to reach out to domestic workers and employers. Registrations in these cities are often tied-in with outreach and service-oriented programs of the LGUs such as medical missions, SSS Registration, and training for household helpers.

The home is not a workplace. Isn't it an invasion of privacy to legislate what goes on within a private home?

The rights to privacy and freedom from unreasonable searches and seizures will be considered in the enforcement and the implementation of the *Batas Kasambahay* legislation. However, the right to privacy is not absolute. The closed doors of a private household do not give license for employers to break the law with complete impunity. Likewise, employing a domestic worker in a private home does not shield the employer from complying with basic standards of decency and fair treatment.

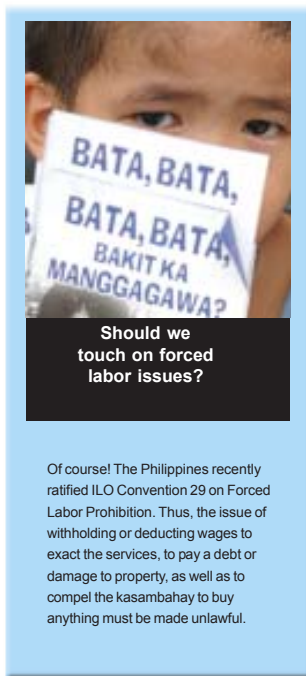
Various sectors and agencies will be involved in the drafting of the implementing rules and regulations. This is to make sure that these agencies are already on-board and that all agencies will contribute to the implementation.

Does this bill legalize child domestic labor?

No. Any version of *Batas Kasambahay* should not repeal the provisions of RA 9231 (Child Labor Law) on the prohibition of employing minors, ages 15 to 17, into hazardous work. One thing should just be made clear: we should totally ban the employment of children below 15 years in domestic work.

Do we need to legislate any special day for domestic workers?

Why not? After all, the Philippines is the first country in the world to observe this special day. On April 24, 2006, President Arroyo issued Presidential Proclamation 1051, which set aside April 30th as "a special day to honor and give recognition to the hidden, yet massive army of everyday workers, to generate greater awareness of the importance and contribution of domestic workers."



Do we need to specify the special rights of *Kasambahays*?

Why not? We can add this as a special section. Or we can also enumerate such rights under the declaration of policies and principles. Whichever way, this will enshrine the sector's significant contribution to national development.

One such right is to self-organize because they must be consulted and involved in matters affecting them. How can government truly hold genuine wage-fixing consultations at the Regional Tripartite Wages and Productivity Boards (RTWPB) when there is no voice representing the sector?

Kasambahays should also be granted the right to access educational and training opportunities to upgrade their skills and improve the services they provide to their employers. This is a step ahead of what the Labor Code stipulates, which only allows for elementary education for children.

Finally, every *kasambahay* must have the right to redress grievance and to the expeditious settlement of disputes. Without explicit mention of this principle, *kasambahays* usually do not report abuses. Many of them are not aware of their rights at all.



PART FOUR

QUESTIONS OF IMPLEMENTATION

What specific agencies will be tasked to implement this law?

Barangays will be the first line of defense and implementation. Hence, the Department of Interior and Local Government (DILG) should be tasked in mobilizing efforts in the ground. The DOLE can also play a vital role in resolving violations of labor standards. Both DILG and DOLE should collaborate with other government agencies to promulgate implementing rules and regulations. Local government units and all attached agencies should be involved in the long run to provide relevant services. These include the Department of Social Welfare and Development (DSWD), Department of Education (DepEd), Technical Education and Skills Development Authority (TESDA), Philippine National Police (PNP), Department of Justice (DOJ) and local NGO groups.

Government agencies are already overextended and under-resourced.
Can *Batas Kasambahay* be implemented?

Yes. It can be implemented. It is already being implemented even if it is not yet a law. Local governments are setting up registration schemes. NGOs are helping to train government agencies and other civil society groups down to the *barangay* level to provide services to *kasambahays*.

The principles of *Batas Kasambahay* are already being practiced by many employers who find it surprising that the law remains pending in the legislature.

No single institution will be able to solve the problem of implementation overnight. The limited number and capacity of the labor inspectorate should not provide an excuse to derail or postpone the passage of much needed legal reforms. The *Batas Kasambahay* is a bold piece of legislation that requires bold action to be fully implemented, but we should not shy away from this challenge but instead rise above it.

Why not just wait for the whole Labor Code revision?

Domestic workers have waited for the past ten years. They cannot wait any longer. They will lobby for a law to call their own just the same. It is high time to recognize their sector as a special vulnerable group, rather than just be a part of the informal sector.

Will this bill have any effect on the problem of human trafficking and illegal recruitment of children?

Yes. By clarifying relevant provisions that can be covered by a pro-forma contract, employment of domestic workers will be better regulated and applicants or recruits will have a firm basis for their decision other than the empty promises of traffickers.

How does this bill complement existing international commitments?

This bill is in accordance with a variety of international instruments and agreements, not least of which is the International Labor Organization's Decent Work Agenda. The Philippines has also ratified or acceded to the following international human rights instruments relevant to the protection of the domestic worker, namely: 1) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; 2) Convention on the Elimination of All Forms of Discrimination Against Women; 3) Convention on the Rights of the Child; 4) International Convention on the Elimination of All Forms of Discrimination; 5) Convention for the Suppression of the Traffic in Persons; and 7) Slavery Convention. In addition, the Philippines has ratified seven ILO fundamental conventions, namely: Freedom of Association and Protection of the Right to Organize Convention (No. 87); Right to

Organize and Collective Bargaining Convention (No. 98); Equal Remuneration Convention (No. 100); Abolition of Forced Labor Convention (No. 105); Discrimination (Employment and Occupation) Convention (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labor Convention, 1999 (No. 182).

Can *kasambahays* take the employer to court?

Yes. But this law tries to avoid clogging the courts with lawsuits. Regular courts can take cognizance only after prior recourse in the *barangay* level has been exhausted.

Can aggrieved employers also complain?

Certainly! Any employer can complain to the *barangay* if one believes that the *kasambahay* has violated any responsibility in the contract.

How is the employer protected from frivolous lawsuits?

The law heavily favors local dispute resolution at the *barangay* level to prevent frivolous lawsuits from clogging the courts. The employer is protected from frivolous claims by the employment contract which delineates the terms and conditions of employment.

Why is this law significant in the international arena?

Without any coherent set of laws that we offer to domestic workers in the local front, our government shall continue to fail to set a moral high ground to protect our domestic workers overseas. There is a need for a new and robust legal mechanism to protect the rights of domestic workers at the global level. The *Batas Kasambahay* coupled with an international convention will be a precedent in negotiating for better protection of our Filipino domestic workers deployed abroad.

In order for a law to be an effective tool for reform, there must be real penalties for failure to comply with conditions and for gross violations of the law. A “slap on the wrist” is not sufficient disincentive for employers to take their responsibility seriously to honor the law and to comply with the new employment requirements.

How heavy should penalties then be provided?

There are many approaches to this. One is to prescribe a general punishment with a fine of not less than P40,000.00, and/or imprisonment of not less than six months but not more than 6 years, or both.

Violation of Contract Provisions	Fine from P10,000 to P40,000 and/or 6 months to 6 years imprisonment
Exploitation of Kasambahays into forced labor	Set maximum penalty of P40,000 and/or 6 months to 6 years imprisonment
Abuse of Batang Kasambahay (15-17 years old)	Maximum penalties set by RA 7610; Rape Act; RA 9231 or Anti-Child Labor law
If offender is related to Kasambahay (up to fifth degree of consanguinity)	Should be a degree higher than prescribed penalties
Trafficking of Kasambahays	Maximum penalties set by RA 9208



has to change and evolve for the sake of equality. The Philippine Constitution stipulates that “Congress shall give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and power for the common good.” In effect, by changing the cultural paradigm that domestic workers are slaves in the household, we pave the way for the realization of a more just and humane society

Domestic work is part of the Filipino culture. Can you really expect to change culture with a piece of legislation?

In the Philippines, there is a long history of domestic work and migration to urban centers from the provinces in search for better opportunities. Although domestic work is part of the Filipino culture, the abuse and unfair treatment of workers cannot be justified. The Filipino people are a fair and justice-minded people and every culture

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