PAYING THE TOLL OF THE TOIL: EMPLOYER LIABILITY FOR NON-COMPLIANCE WITH PHILIPPINE LABOR STANDARDS ON OCCUPATIONAL SAFETY RESULTING IN INDUSTRIAL ACCIDENTS*

Christine Joy F. Angat **

ABSTRACT

The issue of health and safety in the workplace is a topic that is often overlooked, if not underappreciated, in the Philippine legal landscape. Even as the right to a safe and healthy working environment is considered as one of the fundamental rights of a laborer, limited policy discussions on the matter and lack of enforcement mechanisms have hindered employees from the full realization of this right. The article focuses on the issue of enforcement, particularly employer liability in cases of noncompliance with Philippine Labor Law standards on occupational safety. It explores the possibility of imposing civil and criminal liabilities for the violation of these standards by analyzing the duties of an employer under Philippine Labor Law and the consequences of employer liability for noncompliance, both in the Philippine lens and the experience of other jurisdictions. It is suggested that recognizing the role that an employer plays in workplace accidents and regulating compliance with occupational safety standards, even to the point of penalizing neglect or noncompliance, will help strengthen the occupational safety regime and elevate the discourse of right to occupational health and safety in Philippine labor law.

* *Cite as* Christine Joy F. Angat, *Paying the Toll for Toil: Employer Liability for Non–Compliance with Philippine Labor Standards on Occupational Safety Resulting in Industrial Accidents,* 92 PHIL. L. J. 115 (2018). An earlier version of this paper was awarded the Roberto Sabido Memorial Prize for Best Supervised Legal Research (2018) and Perfecto V. Fernandez Award for Best Paper in Labor Law (2018) in the University of the Philippines College of Law.

"Where, after all, do universal human rights begin? In small places, close to home [...] the factory, farm or office where he works [...] unless these rights have meaning there, they have little meaning anywhere."

—Eleanor Roosevelt[1]

I. INTRODUCTION

On May 13, 2015, a welder was repairing the roll-up metal gate of a footwear factory in Valenzuela City when the welding sparks landed on and ignited the unlabeled flammable chemicals covered by canvas and stored near the building's entrance.[2] Fire immediately spread and trapped majority of the employees, resulting in the death of 74 workers.[3] In the investigations that ensued on what will be known as the Kentex tragedy, the employer was found to have violated several occupational safety standards on handling combustible chemicals and in providing safety drills and fire alarms.[4]

Almost two years later, on the first day of February 2017, another industrial fire broke out. This time it was in a factory located inside the Cavite

---

** J.D., University of the Philippines College of Law (2018). B.A. Political Science, *magna cum laude,* University of the Philippines Manila (2014). The author expresses her deepest gratitude to Professor Edgardo Carlo L. Vistan II, whose supervision and valuable input helped in the completion of this paper.

[1] Eleanor Roosevelt, Speech delivered at the presentation of "In Your Hands: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights." United Nations, New York (Mar. 27, 1958).

[2] According to the welder who was repairing the metal gate in the entrance of Kentex Manufacturing Corp., the welder was allegedly earlier assured that repairs can be made in that area because the combustible chemicals were already covered by canvas. Rex Remitio, *Welder tells police how Kentex factory fire started,* CNN Phil. (2015), *at* http://cnnphilippines.com/metro 2015/05/18/Welder-tells-police-how-Kentex-factory-fire-started.html.

[3] The Kentex fire was considered as the third most demoralizing fire incident in the Philippines after the Ozone Disco fire in 1996 and the Manor Hotel fire in 2001. Bibi van der Zee, *The inside story of the Kentex disaster: '74 workers died but no one is in prison',* THE GUARDIAN WEBSITE (2015), *available at* https://www.theguardian.com/global-development-professionals- network/2015/jul/20/the-inside-story-of-the-kentex-disaster-74-workers-died but-no-one-is-in-prison; Ivy Saunar, *Kentex blaze 3rd worst fire incident in the Philippines – BFP* (May 15, 2015), CNN PHIL. (2015), *at* http://cnnphilippines.com/metro/2015/05/15/Kentex-blaze-3rd-worst-fire-incident-in-Philippines---BFP.html.

[4] *See infra* notes 99–105 and accompanying text 19–20.

Economic Zone. The fire, which allegedly started when the centralized vacuums exploded due to burning sawdusts, claimed the lives of several employees of the House Technology Industries ("HTI") Factory, with about 1,328 workers unaccounted for months after the incident.[5] Subsequent investigations revealed that the factory lacked fire and safety exits, and it had fenced windows and narrow passageways.[6]

In the same year, the Philippines, for the first time, was cited as one of the Top 10 Worst Countries in the World for Workers.[7] This classification, made in a report by the International Trade Union Confederation ("ITUC"), stated that the Philippines does not guarantee workers' rights—"while legislations spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labor

---

[5] According to the accounts of witnesses and survivors, the fire started "when a panel saw scraped a metal object attached to the wood being cut. The saw dusts caught the spark and the fire ignited." The burning sawdust were sucked by the centralized vacuum located nearby, causing loud explosions and quickly spreading fire. Trade Union and Human Rights, *On the House Technology Industries (HTI) Factory Fire: Report of the National Fact-Finding Mission* (February 2017), CTR. FOR TRADE UNION & HUM. RTS., *available at* http://ctuhr.org/hti-nffm-finalreport/;

The local government of Cavite and Philippine Export Processing Zone Authority (PEZA) claimed that the incident only resulted in 126 injured and 3 dead. However, the National Fact-Finding Mission by IOHSAD, CTUHR, EILER, KMU, and Cavite-based labor organizations reported that employees were changing shifts when fire broke out. Around 746 to 3,189 employees were in the factory when the fire occurred and about 1,328 workers remain unaccounted for three weeks after it happened. The HTI management allegedly downplayed the incident by claiming that the same happened on a later time than the change of shift and by listing down only its directly-hired regular workers; it did not account for employees who were hired through HTI's six manpower agencies. Institute for Occupational Health and Safety Development, *1,328 HTI workers still unaccounted for* (2017), INST. FOR OCCUPATIONAL HEALTH & SAFETY DEV. *at* http://iohsad.org/2/17/workplace-fire/1328-hti-workers-still-unaccounted; Marya Salamat, *HTI Fire: Cover up of the worst workplace tragedy in history?*, BULATLAT, February 23, 2017, *at* http://bulatlat.com/main/2017/02/23/hti-fire-cover-worst-workplace-tragedy-history/; Center for Trade Union and Human Rights, *supra* note 5.

[6] The fact-finding investigation revealed that the company had several occupational safety standards violations, such as lacking sufficient fire exits, some of which were locked, narrow passageways, and no exits and stairways that redirect to streets or open courts for safer egress. DOLE likewise reported that the number of HTI's safety officers is significantly lower than the number required by law. Center for Trade Union and Human Rights, *supra* note 5; Department of Labor and Employment, *Cavite fire: HTI violated safety standards* (2017), ASSOCIATED LABOR UNION – TRADE UNION CONGRESS OF THE PHILIPPINES WEBSITE, *available at* http://www.alu.org.ph/events/1625/Cavite-fire--HTI-violated-safety-standards.

[7] Sharan Burrow, *Top 10 Worst Countries for Workers' Rights* (2017), ETHICAL TRADING INITIATIVE, June 5, 2017, *available at* https://ethicaltrade.org/blog/top-10-worst-countries-workers-rights; International Trade Union Confederation, The 2017 GLOBAL RIGHTS INDEX: THE WORLD'S WORST COUNTRIES FOR WORKERS 22 (2017), *available at* https://www.ituc-csi.org/IMG/pdf/survey_ra_2017_eng-1.pdf.

practices."[8] Putting this remark in the context of the Kentex and HTI tragedies, the Filipino worker is increasingly placed at risk in his workplace, his right to safe and healthy working conditions effectively discounted.

One author put it succinctly: the subject of occupational safety is a topic that continues to be in the periphery.[9] While there has been increased awareness on working conditions and safety standards in the workplace primarily attributable to industrial accidents that made its way to the headlines, the issue of occupational safety is overshadowed by more pressing demands. Concerns regarding higher wages, increased employment, ending contractualization, and stronger protection for overseas workers, have mostly been the focus of labor policy discussions, not only in the national but in the union level as well. Perhaps the lack of interest in the subject of occupational safety, not to mention the absence of urgency, has contributed to the slow development of legislation regarding the issue of liability. Congressional initiatives, notwithstanding non-compliance with labor safety standards, remains outside the purview of the penal provisions of our labor laws. Article 303 of the Labor Code prescribes penalties only to violations which were declared unlawful and penal in nature; it does not include infractions of labor safety standards.

The above-mentioned concerns and the strong emphasis on voluntary compliance have resulted in the treatment of violations of occupational safety standards as mere issues of compensation; obedience and deterrence as secondary considerations, if they are even considered at all. At the time of this writing, there has been no Philippine court ruling which penalizes an employer for violating labor safety standards.

In this paper, the author explores the possibility of imposing criminal liability for the employer's failure to comply with Philippine labor standards on occupational safety. This paper is founded on two premises: first, the lack of employer liability for non-compliance with occupational safety standards undermines the workers' right to humane conditions of work as enshrined in the 1987 Constitution; and second, the imposition of criminal liability for non-compliance with occupational safety standards may serve as a deterrence for further violations. Ultimately, the goal of this Article is to analyze how the provision of employer liability can lead to a stronger occupational safety regime and a more protected and empowered labor force.

---

[8] International Trade Union Confederation, *supra* note 7, at 15, 22.

[9] Michael Quinlan, *The Toll From Toil Does Matter: Occupational Health and Labour History,* 73 LAB. HIST. 1 (1997).

The first part of this Article will cover the concepts of right to safe and healthy working conditions and occupational health and safety standards. Part II will delve into occupational safety in the Philippines, focusing both on the evolution of legislation regarding the subject and the current state of occupational safety in the country, including recent industrial accidents and pending legislative proposals. In Part III, the author will discuss the rationale and analyze the possibility of imposing liability on the employer for non-compliance with labor safety standards and the challenges that may arise from this imposition. Finally, the last section will be dedicated to a summary of the arguments and possible resolutions.

A. The Right to Safe and Healthy Working Conditions

Like a thread running through fabric, the story of laborers is a story infinitely linked with, if not reflected in, the history of human civilization. The laboring masses led the creation of "cities, farms, industries, armies and infrastructure which have marked our time on the planet."[10] Consequently, included in the narrative of the laborers are the accounts of their struggles for fair treatment, better pay, and safe workplaces, among others.

The subject of safe and healthy working conditions developed as a response to the poor working environment prevalent during the Industrial Revolution. Even though as early as the 1700s, references were made to work-related illnesses and occupational hazards, it was the Industrial Revolution that provided the impetus for extensive research, literature, and eventually, legislation, regarding the matter.[11]

During the Industrial Revolution, industries such as mining and railroad construction exposed the laborers to dangerous environments,[12] while the factories subjected their employees to poor facilities and machineries without any safety precautions.[13] Glasser wrote:

---

[10] Simons Hardy, *The Importance of Work,* THE OCCUPIED TIMES, May 24, 2013, *available at* https://theoccupiedtimes.org/?p=11498.

[11] Quinlan, *supra* note 9, at 1, 4–5.

[12] SafetyLine, *History of Workplace Safety: A Look at Over 200 Years of Safety Development in the Workplace* (2018), SAFETY LINE WEBSITE, *available at* https://safetylineloneworker.com/blog/history-workplace-safety/.

[13] Ankur Poddar, *The Industrial Revolution: Working and Living Condition* (2018), *available at* https://firstindustrialrevolution.weebly.com/working-and-living-conditions.html.

> The earlier methods of total handcrafting had given way to a new and more profitable system of production. Unfortunately, the new system often resulted in unsafe or unhealthful working conditions. Machine guarding for power driven machinery was relatively unknown. Virtually no attention was given to the need for ventilation, adequate sanitation, or lighting. The number of amputations or cases of permanent maiming due to industrial accidents can only be guessed at; deaths and injury were generally accepted as part of the price of progress.[14]

The unhealthy working conditions and workplace accidents recurrent during this period, coupled with essays made by philosophers such as Charles Turner Thackrah, Edwin Chadwick, Friedrich Engels, and Karl Marx, ultimately revealing the dire conditions of the working class,[15] stirred public awareness and intensified the discourse on labor rights. The mid-19th century witnessed the shift of legislative interests from issues such as child labor and slavery to concerns regarding working conditions and the plight of the workforce.[16] Occupational health and safety became part of legislative policy, paving the way for annual State reports on disease and mortality in the workplace, laws on health and safety, and agencies focused on investigation of job hazards.[17]

---

[14] Melvin Glasser, Commentary, *Occupational Safety and Health – A Labor View,* 20 WAYNE L. REV. 987 (1974).

[15] In 1831, Charles Turner Thackrah published his seminal work *The Effects of the Principal Arts, Trades and Professions, and of Civic States and Habits of Living, on Health and Longevity, with Suggestions for the Removal of Many of the Agents Which Produce Disease and Threaten the Duration of Life*. Shortly after, in 1842, Chadwick published *The Sanitary Condition of the Labouring Population of Great Britain*. Against the backdrop of the Industrial Revolution in Western Europe and England and the German Social Revolution, Engels published *The Condition of the English Laboring Class* in 1845 and *The Community Manifesto* with Karl Marx in 1847, *see* Herbert K. Abrams, *A Short History of Occupational Health,* 22 J. PUB. HEALTH POL'Y 34, 35-36 (2001).

[16] *Id.*

[17] In Great Britain, Chadwick's publication of his Report on the Sanitary Condition of the Laboring Population of Great Britain, at the height of unemployment, destitution, and social protest, stimulated the passage of the Public Health Act of 1848. Under the said law, the British Government, for the first time, charged itself with a measure of responsibility for safeguarding the health of the population. In 1883, the first social insurance legislation was inaugurated in Germany, followed by the law on workman's compensation to answer for injuries and illnesses that laborers suffer from as an incident of their work. Thereafter, the United States, reeling from a series of tragedies in steel mills and coal mines, resulted to the organization of the United States Public Health Service in 1902, which initiated the institution of occupational health. In 1911, Wisconsin became the first state to enact an industrial safety law. Abrams, *supra* note 15; Glasser, *supra* note 14.

Subsequently, the growing recognition of labor as a dynamic player in economic development made occupational health and safety as a significant facet of labor rights. Indeed, in 1948, the "right to safe and healthy working conditions" was impliedly recognized in the United Nations (UN) Declaration of Human Rights: "the right to work, to free choice of employment, to *just and favorable conditions of work*, and to protection against unemployment."[18]

In 1976, the right "to just and favorable conditions of work" was made to explicitly include the "right to safe and healthy working conditions." Article 7 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") provides:

> The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
>
> *(a)* Remuneration which provides all workers, as a minimum, with:
>
> i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
>
> ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
>
> *(b)* *Safe and healthy working conditions;*
>
> *(c)* Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

---

[18] Universal Declaration of Human Rights, art. 23, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), *available at* http://www.un.org/en/universal-declaration-human-rights/ (Emphasis supplied); Prior to this, the ILO had already set forth in its Constitution: "And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by…the protection of the worker against sickness, disease and injury arising out of his employment…" ILO Constitution Preamble, June 28, 1919, *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:N.

> *(d)* Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[19]

Admittedly, the right to safe and healthy working conditions encompasses several aspects of labor standards, and even overlaps with other rights provided by the ICESCR. In fact, this right has been recognized as closely related to other rights in the ICESCR,[20] such as the right to the enjoyment of the highest attainable standard of physical and mental health through the improvement of industrial hygiene and prevention of occupational diseases.[21] Subsequently, many of the Conventions and Recommendations made by the International Labour Organization (ILO) concerning safety, health, and conditions of work actually deal with other rights such as working hours, rest periods, and safety and welfare facilities.[22] In 1976, ILO launched the International Programme for the Improvement of Safety, Health and Working Conditions (PIACT), that sparked the improvement of conditions of work and occupational safety and health.[23]

In the Philippines, the recognition accorded to labor as "a primary social economic force" [24] has impelled the State to provide labor with fundamental rights.[25] Enshrined in the highest law of the land, these are the

---

[19] International Covenant on Economic, Social and Cultural Rights, Art. 7(b) (1966), *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx. (Emphasis supplied.)

[20] Committee on Social, Economic and Cultural Rights, *"General Comment No. 23 on the Right to just and favorable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)"*, ¶ 25 (2016) *available at* https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work#_ftn21.

[21] International Covenant on Economic, Social and Cultural Rights, art. 12, (1966), *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

[22] Consistent with its duty of providing international standards for workers protection, ILO has issued several conventions and recommendations on safety and working conditions. Convention No. 1 (1919) provided that working hours should not exceed 8 hours a day and 48 hours a week. Recommendation No. 5 (1919) advocated the establishment of government services to safeguard the health of workers. Convention No. 14 (1921) provided for the weekly rest in industry, while Recommendation No. 102 (1956) laid down guidelines on welfare facilities, *see* Joint Industrial Safety Council, *Safety-Health and Working Conditions Training Manual* (1987), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/instructionalmaterial/wcms_175900.pdf.

[23] *Id.*

[24] CONST. art. II, § 18.

[25] "The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance

rights which the labor force should enjoy and the State should affirm and protect.[26] These rights include the "right to humane conditions of work" which is closely related, if not the equivalent, to the "right to safe and healthy working conditions" as elaborated in the ICESCR.

Several studies[27] have been dedicated to resolve the query of whether labor rights—and by necessary implication, the right to safe and healthy

---

with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth." CONST. art. XIII, § 3.

[26] CONST. art. II, § 18.

[27] Kevin Kolben, in his article *Labor Rights as Human Rights?*, maintains that there are conceptual and practical differences between labor rights and human rights, rendering it difficult, if not impossible, to characterize the former as forming part of the latter. Kolben points out three conceptual and four movement differences between human rights and labor rights. Conceptually, labor rights issues affect individuals, while issues of human rights affects states. Labor rights are more often associated with collective movement, while human rights take the individual as its primary subject. There is likewise a dichotomy as to how these two view the right itself, with labor rights as a process of organizing and negotiating work conditions while human rights focusing on the outcomes themselves. Movements-wise, first, the two rights movements approach law in different manners, the labor movement approaching law with skepticism with preference to extra-legal means, while the latter embroiling in a highly legalistic exercise, creating and utilizing legal interest to check state power and hold states accountable. Second, labor rights gain ground from grassroots mobilization, while human rights employ the top-down process. Third, human rights often frame labor issues as matters of philanthropy, in direct contrast to labor rights' view of workplace emancipation through individual or collective action. Lastly, the two rights movements actually cater to different social classes and culture, with human rights more often advocated by the elites and professionals while labor rights more often organized coming from the ranks, *see* Kelvin Kolben, *Labor Rights as Human Rights?*, 50 VA. J. INT'L L. 450, 468–84 (2010);

Meanwhile, Virginia Mantouvalou in *Are Labour Rights Human Rights?* avers that there are actually three perspectives in addressing the question of whether labor rights can be considered as human rights: the positivistic approach, the instrumental approach, and the normative approach. Mantouvalou believes that using the normative standard, certain labor rights, as compelling, universal, and timeless as they are, can be considered as human rights. However, "the recognition that certain labour rights are human rights…does not imply that human rights exhaust labor law as a field of study. What it implies is that some labour rights are stringent normative entitlements [which] should be reflected in law," *see* Virginia Mantouvalou, *Are Labour Rights Human Rights?,* 3 EUROPEAN LAB. L. J. 151, 172 (2012). *See further* Mathias Risse, *A Right to Work? A Right to Leisure? Labor Rights as Human Rights,* 3 J.L. & ETHICS HUM. RTS. 1 (2009).

working conditions—can be considered as human rights or are mere forms of social protection. While some labor rights are codified in international treaties protecting civil and political rights, the right to safe and healthy working conditions, alongside most of the workers' rights, is mentioned only in treaties dealing with economic and social rights, thereby implying that it is a mere aspiration rather than a real human right.[28]

However, there have been declarations which acknowledge labor rights, specifically, the right to safe and healthy working conditions, as an inherent right. In 2008, during the XVIII World Congress Summit on Safety and Health at Work at Seoul, South Korea, the right to safe and healthy working conditions was declared as a fundamental human right.[29] This declaration was further affirmed in the succeeding World Congress held in 2011 at Istanbul, Turkey.[30]

These two declarations accord a higher recognition to the right to occupational health and safety and at some point depart from certain ILO pronouncements. While the *Declaration on Fundamental Principles and Rights at Work*[31] adopted in 1998 and the *ILO Declaration on Social Justice for a Fair Globalization*[32] adopted in 2008 exclude safety and health from the list of "core labor rights" and treat it not as a fundamental principle but as a "social

---

[28] In 1998, the International Labor Organization (ILO) generated the Fundamental Declaration on Principles and Rights at Work, which designated four categories of labor rights as constituting the universally recognized labor rights: freedom of association and collective bargaining, abolition of forced labor, elimination of child labor, and freedom from discrimination. However, some scholars believe that all labor rights as embodied in the essential human rights conventions and the ILO conventions and jurisprudence ought to be treated as fundamental and co-equal labor right, *see* Kolben, *supra* note 27, at 450, 455. *See also* Virginia Mantouvalou, *Workers' rights really are human rights*, OPEN GLOBAL RIGHTS, October 21, 2014, *available at* https://www.openglobalrights.org/workers-rights-really-are-human-rights/.

[29] Seoul Declaration on Safety and Health at Work (2008), *available at* http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/statement/wcms_095910.pdf.

[30] Istanbul Declaration on Safety and Health at Work (2011), *available at* http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/meetingdocument/wcms_163671.pdf.

[31] Declaration on Fundamental Principles and Rights at Work (1998), *available at* http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.

[32] ILO Declaration on Social Justice for a Fair Globalization, (2008), *available at* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf.

protection" objective, the Seoul Declaration and Istanbul Declaration raise the right's status to a universally recognized and protected right. Hilgert writes:

> The Istanbul and Seoul statements recognizing worker safety and health as a fundamental human right are thus extraordinary for at least two reasons. First, their words counter the current idea that health and safety at work is something other than a fundamental right as has been so clearly noted within two major declarations at the ILO. Second, although they are consistent with the international human rights principles under the International Covenant on Economic, Social and Cultural Rights, both moral declarations are clearly being ignored at the workplace level and thus in national labor policies set to regulate these workplaces where the proverbial rubber hits the road. The global statistics alone evidence this point—there is failure to effectuate human rights.[33]

The recognition of the entire corpus of labor rights as forming part of fundamental human rights seems important in light of the principles of universality and inalienability; they are now regarded as an aspect of human dignity which should be enjoyed at all costs, regardless of race, class or belief. They are entitled to the highest degree of constitutional protection against any form of government encroachment.[34] However this characterization poses a question, if not altogether a difficulty, in relation to the right to a safe and healthy working environment, which is an entirely different species from the other labor rights. While other rights deal with the abolition of a particular employment practice, as in the freedom from forced labor or from workplace discrimination, or with the negotiation of issues and basic power relations, as in the right to strike or collective bargaining, the right to occupational health and safety "requires specific changes in the production process and, in turn, the functioning of management at the operational level."[35] A closer look into the role of the employer is therefore warranted to shed some light on how the right to occupational health and safety, as a fundamental right, may be further strengthened and operationalized.

---

[33] Jeffery Hilgert, *The Future of Workplace Health and Safety as a Fundamental Human Right*, 34 COMP. LAB. L. & POL'Y J. 717 (2013).

[34] *Fundamental Right*, WEBSTER'S NEW WORLD LAW DICTIONARY (2010).

[35] Hilgert, *supra* note 33, at 719.

B. Occupational Safety and Health Standards

Occupational health and safety standard has been defined as a standard "reasonably necessary or appropriate to provide safe or healthful employment and places of employment."[36] It is a standard "which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such an employee has regular exposure to the hazard [...] for the period of his working life."[37]

Occupational health and safety standards are, therefore, parameters set to ensure a safe workplace environment and the prevention of occupational accidents and diseases. These include guidelines for handling hazardous materials, prevention of exposure of employees to harmful environment, dimension requirements for walkways, stairs and windows, and provision for personal protective equipment and safety trainings. The essence of these standards has been laid down by the ILO and the World Health Organization (WHO) as follows:

> The main focus in the occupational health is on three different objectives: (i) the maintenance and promotion of workers' health and working capacity; (ii) the improvement of working environment and work to become conducive to safety and health and (iii) development of work organizations and working cultures in a direction which support health and safety at work and in doing so also promotes a positive social climate and smooth operation and may enhance productivity of the undertakings.[38]

Notably, a distinction should be made between occupational safety and occupational health. While often lumped together, they are affected by a variety of factors that differentiate one from the other. Graham Wilson, in his book *The Politics of Safety and Health*, made a simple distinction by viewing it

---

[36] 29 U.S.C. § 652(8).

[37] 29 U.S.C. § 655(b)(5).

[38] ILO-WHO JOINT COMMITTEE ON OCCUPATIONAL HEALTH, JOINT ILO/WHO COMMITTEE ON OCCUPATIONAL HEALTH – REPORT (1995); To achieve this, the ILO has formulated fundamental principles which should be observed for the promotion of occupational health and safety. These core guidelines include the institution of a national system on OSH, the adoption of a legislative framework, and the establishment of OSH as a joint tripartite responsibility, among other, *see* International Labor Organization, *Health and Life at Work: A Basic Human Right* (2009), *available at* http://www.ilo.org/public/portugue/region/eurpro/126isbon/pdf/28abril_09_en.pdf.

through their adverse effects: "occupationally-caused injuries are the result of the physical impact of objects such as machinery on the human body [while] occupationally-caused illness result from the chemical or biological interaction of substances on humans."[39]

As restrictive as this distinction might be, Wilson's premise of defining them through their effects deserves some merit. Indeed, occupational safety standards may be viewed as those dealing with potential hazards to prevent occupational accidents,[40] while occupational health standards are those formulated with a view of eliminating occupational diseases.[41] This basic division is significant in recognizing that government action and compliance thereon can only go so far; unlike in occupational illness, accidents in the workplace are not always attributable to the unsafe environment or the negligence of the employer.

As previously stated, occupational safety standards traces its roots in the industrial revolution of the 1800s, when reports on the plight of the workforce inspired legislation such as the Factory Act of 1833[42] in the United

---

[39] GRAHAM K. WILSON, THE POLITICS OF SAFETY AND HEALTH 2 (1985).

[40] The 2002 Protocol to the Occupational Safety and Health Convention defines occupational accidents as "an occurrence arising out of, or in the course of, work which results in fatal or non-fatal injury." Protocol of 2002 to the Occupational Safety and Health Convention 1981, art. 1, par. 1(a), (2002), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P155.

In the Philippines, occupational accident is defined as "an unexpected and unexplained occurrence related to work that results to injury, disease, or death whether outside the usual workplace (e.g., in another establishment, during travel, transport or in road traffic.) This includes all accidents occurring out of or in the course of work, including accidents 'going to and fro' the place of employment." Occupational injury is defined as "any injury (e.g., cuts, fractures, sprains, ad amputations) that results from a work accident or from exposure involving a single incident in the work environment." JINKY LEILANIE LU, ANALYSIS OF TRENDS OF OCCUPATIONAL INJURY IN THE PHILIPPINES: IMPLICATIONS FOR POLICY, 45 ACTA MEDICA PHILIPPINA 44 (2011), *cited in* Philippine Statistics Authority, *Safety and Health in the Workplace: Cases of Occupational Injuries,* 19 LABSTAT UPDATES 1, 3 (2015).

[41] The 2002 Protocol has defined occupational disease as "any disease contracted as a result of an exposure to risk factors arising from work activities." Protocol of 2002 to the Occupational Safety and Health Convention, art. 1 (b) (2002) *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P155.

[42] The Factory Act of 1833 regulated the conditions of industrial employment in United Kingdom in the 1800s. It was enacted following a series of labor legislation which proved inadequate in addressing the rising concerns in factories. The Factory Act prohibited child labor, regulated work hours, and established a system to ensure that regulations were enforced. The 1833 Factory Act, *available at* https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/factoryact/ (May 20, 2018).

Kingdom and the Safety Appliance Act[43] in the United States. It was not until 1911, when the tragic Triangle Shirtwaist Factory Fire[44] occurred, that the world's eyes were opened to the realities of occupational safety. The incident killed around 146 workers, mostly young immigrant women. The tragedy's aftermath involved widespread revulsion over a clearly preventable tragedy and inspired a sense of urgency in the labor movement.[45] However, public outrage was also met by exoneration: many defended the shop owners' rights to resist government safety regulation and the government even insisted that they were powerless to impose the same.[46]

Perhaps the most notable legislation promoting occupational safety came in the form of the Occupational Health and Safety Act (OSHA) of the United States enacted in 1970. Aiming to fill the gap in workmen's compensation laws—providing out-of-pocket compensation for losses but failing to meet the workers' needs for affirmative, safety programs in the workplace—OSHA provided for mandatory health and safety regulations and placed interstate commercial establishments within the jurisdictional reach of the federal government.[47] Cohen wrote:

---

[43] Railroad Safety Appliance Act of 1983, 49 U.S.C. § 20302.

[44] On March 25, 1911, a ferocious fire broke out and spread through the cramped Triangle Shirtwaist Factory, which housed around 500 workers and was located in the 8th, 9th, and 10th floor of the Asch Building in Manhattan, New York. The building's lone fire escape had collapsed during the fire, and escape was impossible due to the factories' long tables and bulky machineries and the padlocked exits and stairwells, having been earlier secured by the managers to prevent theft and unwarranted work breaks. As an eyewitness recounts, "The fire began shortly after 4:30 p.m. in the cutting room on the eighth floor, and fed by thousands of pounds of fabric, it spread rapidly. Panicked workers rushed to the stairs, the freight elevator, and the fire escape in an effort to evacuate. Most on the eighth and tenth floors escaped, however, dozens trapped on the ninth floor died, unable to force open the locked door that would have led to their escape. The rear fire escape had collapsed killing many and eliminating an escape route for others still trapped. Some tried to slide down elevator cables but lost their grip while others jumped to their death from open windows. X x x x." United States Department of Labor, *The Triangle Shirtwaist Factory Fire,* U.S. DEP'T OF LAB. WEBSITE, *available at* https://www.osha.gov/oas/trianglefactoryfire-account.html (last visited May 9, 2018); Keith Mestrich, *Why the Triangle Shirtwaist Factory Fire is Important Today,* HUFFINGTON POST, *at* https://www.huffingtonpost.com/keith-mestrich/why-the-triangle-shirtwai_b_5029158.html (last visited May 9, 2018); Triangle Shirtwaist Factory Fire Memorial, Inc., *Triangle History,* TRIANGLE SHIRTWAIST FACTORY FIRE MEMORIAL, INC., *available at* http://trianglememorial.org/triangle-history/ (last visited May 9, 2018).

[45] Mestrich, *supra* note 44.

[46] Triangle Shirtwaist Factory Fire Memorial, Inc., *supra* note 44.

[47] George H. Cohen, *The Occupational Safety and Health Act: A Labor Lawyer's Overview,* 33 OHIO ST. L. J. 788 (1972).

> The Act confers broad authority upon the Secretary to promulgate and enforce occupational safety and health standards applicable to all such establishments and, further, to require employers to furnish places of employment free from 'recognized hazard that are causing or likely to cause death or serious physical harm to his employees.' [. . .] It goes beyond the bounds of pure industrial relations, entering into the arena of progressive social reform. [. . .][48]

The purpose of OSHA is "to assure [as] far as possible every working man and woman in [the United States] safe and healthful working conditions and to preserve our human resources…by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity or life expectancy as a result of his work experience."[49] The Act places "the responsibility of improving working conditions on the employer," without using "economic efficiency as a criterion" on how occupational health and safety standards should be complied with.[50]

In the Philippines, the occupational safety standards are enshrined in the Occupational Safety and Health Standards (OSHS), as amended, which is a compilation of the department orders regulations issued by the Secretary of Labor and Employment ("SOLE") by virtue of his authority under the Labor

---

[48] *Id.*

[49] John Howard, *OSHA Standards-Setting: Past Glory, Present Reality and Future Hope,* 14 EMP. RTS. & EMP. POL'Y J. 237, 238 (2010); Lee Hornberger, *Occupational Safety and Health Act of 1970,* 21 CLEV. ST. L. REV. 1, 3 (1972) *available at* htpp://engagedscholarship.csuohio.edu/clevstlrev/vol21/iss1/3; Cohen, *supra* note 47.

[50] Nicholas A. Ashford, *Regulating Occupational Health and Safety: The Real Issues,* in 19 CHALLENGE 39, 42 (1976); In some studies, the standards under the United States OSHA have been classified as horizontal or vertical, as interim, permanent, and temporary, or as national consensus or federal. Horizontal safety standards pertain to those with general industrial application while vertical safety standards are those applicable only for specific industries. Interim standards are those promulgated as soon as practicable and based on already existing federal and "consensus standards that were developed after obtaining the views of interested parties"; permanent standards are those that would "replace or supplement the interim standards and would themselves be subject to replacement should the industry require"; and, temporary emergency standards are those that "could be issued quickly when a finding suggested that employees were exposed to a serious hazard." National consensus standards are standards developed earlier by nationally recognized standards producing organizations, while federal standards are those established by promulgation under earlier federal statutes. Robert C. Jr. Lemert & John D. Sours, *What the Employer's Counsel Should Know about the Occupational Health and Safety Act of 1970,* 10 LAW NOTES GEN. PRAC. 23, 24–25 (1974); Stephen Richard Kirklin, *OSHA: Employer Beware,* 10 HOUS. L. REV. 426, 430 (1973).

Code.[51] Similar to the OSHA of the United States, the OSHS was issued with the objective of "protecting every workingman against the dangers of injury, sickness or death through safe and healthful conditions."[52] It acts as the repository of all the standards for occupational safety and health and serves as a guide for their administration and enforcement.

Between the OSHA of the United States and the OSHS of the Philippines, of notable difference is the treatment of these standards and the manner by which they are administered and enforced. For instance, in the United States, occupational safety and health standards have the force of law and their violation gives rise to civil and criminal penalties.[53] The same could be said in other jurisdictions such as the United Kingdom and Singapore. Meanwhile, in the Philippines, enforcement of occupational safety standards is centered on selective inspections and reliance on the companies' ability to voluntarily comply with the standards, with no corresponding penalties in case of non-compliance.

II. OCCUPATIONAL HEALTH AND SAFETY IN THE PHILIPPINES

A. History of Occupational Safety Legislation

The development of occupational health and safety in the Philippines began in 1903, when establishments started rendering medical services to workers suffering from illnesses and injuries.[54] The 1900s marked the beginnings of American occupation, which, moving away from the Spanish narratives of slavery, approached the Filipino workforce with a market whose sole motive is gain.[55] Then American administration heavily relied on Filipino labor for infrastructures, transportation, armed forces, and government work.[56]

---

[51] LAB. CODE, art. 168.

[52] Dep't of Lab. & Emp't (DOLE) Occupational Health and Safety Standards, as amended (1989), Rule 1001.

[53] 29 U.S.C. § 666.

[54] Elma B. Torres, Ian A. Greave, Joselito L. Gapas & Teresita T. Ong, *Occupational Health in the Philippines,* 17 OCCUP. MED. 455 (2002).

[55] F. Wells Williams, *The Problem of Labor in the Philippines,* 10 PROCEEDINGS OF THE AM. POL. SCI. ASS'N 125, 139–142 (1913).

[56] *Id.*

Following the rise in the number of industrial accidents, in 1908, the legislature enacted Act No. 1874, also known as the Employer's Liability Act, which required employers to compensate workers who were injured while performing their job.[57]

In 1927, Act No. 3428 repealed Act No. 1874.[58] Also known as the Workmen's Compensation Act, Act No. 3428 provided for payment of damages by employers for illnesses, in addition to injury or death due to employment. The statute likewise provided that availing of the right under the said law shall exclude all other claims or demands that an employee may have against his or her employer.[59] Later on, Act No. 3428 was amended by Republic Act No. 772, which included additional grounds for compensation, expanded coverage, and the creation of the Office of Workmen's Compensation Commissioner in the Department of Labor.[60]

Perhaps the first law that expressly enjoined the management to promote occupational safety and health in the workplace is Commonwealth Act No. 104 or the First Industrial Safety Law which was enacted in 1945.[61] The law authorized the Secretary of Labor to "promulgate and enforce rules, regulations and orders for the safety of persons employed in mines, quarries, metallurgical operations and other enterprises."[62] It likewise provided for the penalty of either fine or imprisonment, based on the discretion of the court, in case of violations of any orders or rules issued pursuant to the provisions of Com. Act No. 104.[63]

B. The Labor Code and the Occupational Health and Safety Standards of 1989 (OSHS)

On May 1, 1974, Presidential Decree No. 442, which instituted the Labor Code of the Philippines, was issued . Pursuant to Article 168 of the said

---

[57] Act No. 1874 (1908). An Act to Extend and Regulate the Responsibility of Employers for Personal Injuries and Deaths Suffered by their Employees while at Work.

[58] *Id.*

[59] Act No. 3428 (1927), § 1. An Act Prescribing the Compensation to be Received by Employees for Personal Injuries, Death or Illness Contracted in the Performance of their Duties.

[60] Rep. Act. No. 772 (1952).

[61] Torres et al, *supra* note 54.

[62] Com. Act No. 104 (1936), § 1.

[63] Com. Act No. 104 (1936), § 6.

law mandating the Labor Secretary "to set and enforce mandatory occupational safety and health standards,"[64] a tripartite body composed of representatives from labor, management, and government was created to study and formulate these standards.

On December 9, 1978, the Occupational Health and Safety Standards (OSHS) was approved.[65] The OSHS codified all the safety orders that were being enforced prior to its promulgation. It contained administrative requirements, general safety and health rules, technical safety regulations, and other measures to eliminate or reduce OSH hazards in the workplace.[66]

Given the ever-evolving nature of industries and the advent of technological innovation, the National Tripartite Committee was created to continue the study on the improvement of the OSHS.[67] In August 1989, through the joint efforts of the Department of Labor and Employment – Bureau of Working Conditions (DOLE–BWC), ILO, and the tripartite sectors, major amendments on safety rules, registration, and standards for specific industries were introduced to the OSHS.[68] The mining industry, which was governed by a different order, was then excluded from the coverage of the OSHS. [69]

As to its implementation, administration and enforcement was the sole responsibility of the SOLE, save for instances when the local government, having adequate facilities and personnel, may be authorized by DOLE.[70] To ensure compliance with labor laws and standards, including OSHS, the SOLE was given visitorial and enforcement power[71] which

---

[64] LAB. CODE, art. 168.

[65] Torres, *supra* note 54; Bureau of Working Conditions, *Occupational Health and Safety in the Philippines, available at* https://www.jniosh.johas.go.jp/icpro/jicosh-old//japanese/news/050608/Philippines/presentation.ppt

[66] *Id.*

[67] *Id.*

[68] DOLE Dep't Order No. 20 (2012).

[69] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1003.4, amended by DOLE Dep't Circ. No. 2 (2008). Amending Certain Provisions of the Occupational Safety and Health Standards.

[70] LAB. CODE, art. 171; Dep't of Lab. & Emp't (DOLE) Occupational Health and Safety Standards, as amended (1989), Rule 1981.

[71] LAB. CODE, art. 128.

included the power to access employer's records and to issue compliance orders, as provided for in Article 128 of the Labor Code.[72]

Rule 1012.02 of the OSHS likewise provides:

> Rule 1012.02. Abatement of Imminent Danger.
> (1) An imminent danger is a condition or practice that could reasonably be expected to cause death or serious physical harm before abatement under the enforcement procedures can be accomplished.
> (2) When an enforcement officer finds that an imminent danger exists in a workplace, he shall inform the affected employer and workers of the danger and shall recommend to the Regional Director the issuance of an Order for stoppage of operation or other appropriate action for the abatement of the danger. Pending the issuance of the Order the employer shall take appropriate measures to protect the workers.
> (3) Upon receipt of such recommendation, the Regional Director shall immediately determine whether the danger exists and is of such a nature as to warrant the issuance of a Stoppage Order or other appropriate action to minimize the danger.
> (4) The Order shall require specific measures that are necessary to avoid, correct or remove such imminent danger and to prohibit

---

[72] Art. 128. Visitorial and enforcement power. The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the *power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation* based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

The Secretary of Labor and Employment *may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.* Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

> the presence of any worker in such location where such danger exists, except those whose presence are necessary to avoid, correct or remove such danger or to maintain a continuous process or operation. Where stoppage of operation is ordered, the Order shall allow such correction, removal or avoidance of danger only where the same can be accomplished in a safe and orderly manner.[73]

Moreover, to effectively implement the standards, DOLE issued in 2004, Department Order No. 57-04, entitled "Guidelines on the Effective Implementation of Labor Standards Enforcement,"[74] which aims to promote a culture of voluntary compliance with labor standards through the Labor Standards Enforcement Framework (LSEF).

Under the LSEF, evaluation of OSHS compliance will be done through advisory services, inspection or self-assessment.[75] For workplaces with less than 10 workers, the method will be advisory services; for workplaces with 10 to 199 workers, inspection will be undertaken.[76] Meanwhile, in establishments with at least 200 workers, the evaluation will be done through self-assessment by the employers. Management will only be subject to inspection by labor inspectors upon finding of possible violations in the checklist submitted by the employers or the existence of complaints.[77] In all cases, violations of labor standards, including OSHS, will be disposed of in accordance with Articles 128, 129, 162, and 165 of the Labor Code.[78]

D.O. No. 57-04 was heavily criticized for facilitating DOLE's abscondment from, rather than the promotion of, its duty to ensure compliance with the OSH standards. The relaxation of labor inspection under the regime of self-assessment rendered toothless the OSH standards,[79] enabling management to "freely do what they wish…and report [the self-assessment] to DOLE without worrying about government interference."[80]

---

[73] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1012.02.

[74] DOLE Dep't Order No. 57-04 (2004).

[75] DOLE Dep't Order No. 57-04 (2004), § 1.

[76] *Id.*

[77] DOLE Dep't Order No. 57-04 (2004), § 2.b.

[78] DOLE Dep't Order No. 57-04 (2004), § 4.

[79] Sentro ng mga Nagkakaisa at Progresibong Manggagawa. *Nagkaisa seeks justice for Kentex workers, blames partial privatization of labor inspection* (May 15, 2015), SENTRO WEBSITE, *at* http://www.sentro.org/?p=605.

[80] Center for Trade Union and Human Rights. *Hunger, Repression, and Resistance: Workers' Condition Under the Nine Years of Gloria Macapagal-Arroyo* (Jan. 2010), CENTER FOR

As a result, in 2013, D.O. No. 57-04 was superseded by D.O. No. 131-13,[81] replacing LSEF with Labor Laws Compliance System (LLCS). The LLCS was characterized as "voluntary compliance with a developmental"[82] rather than a regulatory approach, aiming to "inculcate a culture of compliance with labor laws and strengthen tripartism among the employees, employers and the government," among others.[83]

Under the LLCS, compliance is ensured through the methods of joint assessment, compliance visit, and occupational safety and health standards investigation.[84] As opposed to self-assessment, joint assessment mandates that evaluation of compliance with OSHS and other labor standards should be jointly undertaken by the Labor Laws Compliance Officer (LLCO) and the representatives of the employer or the employees.[85] The LLCOs likewise ensure compliance through validations made in compliance visits[86] and determination of reported imminent danger and accidents through occupational safety and health standards investigation.[87]

To further strengthen the LLCS, DOLE issued in 2016 a supplemental order in the form of D.O. No. 131-B-16,[88] which provided for developmental tracks in the LLCS in the form of awareness-raising/capacity-building measures, technical assistance, and incentives program, among others.[89] The Revised Rules likewise introduced the system of Special Assessment or Visit of Establishments (SAVE), which refers to "the process of evaluating compliance with labor laws and social legislation for policy formulation."[90]

TRADE UNION AND HUMAN RIGHTS WEBSITE, *at* https://www.bulatlat.com/wp-content/uploads/2010/03/Hunger-Repression-and-Resistance.pdf.

[81] DOLE Dep't Order No. 131-13 (2013). Rules on Labor Laws Compliance System.

[82] DEP'T OF LAB. & EMP'T, *Road to Reform: The birth of LLCS and how it propagates the culture of voluntary compliance with labor laws* (April 27, 2015), DEP'T OF LAB. & EMP'T WEBSITE, *at* https://www.dole.gov.ph/news/view/2780.

[83] DOLE Dep't Order No. 131-13 (2013), Rule I, § 2.

[84] DOLE Dep't Order No. 131-13 (2013), Rule III, § 1.

[85] DOLE Dep't Order No. 131-13 (2013), Rule II, § 1(n).

[86] DOLE Dep't Order No. 131-13 (2013), Rule II, § 1(e).

[87] DOLE Dep't Order No. 131-13 (2013), Rule II, § 1(s).

[88] DOLE Dep't Order No. 131-B-16 (2016).

[89] DOLE Dep't Order No. 131-B-16 (2016), Rule I, § 2.

[90] DOLE Dep't Order No. 131-B-16 (2016), Rule II, § 1(aa).

D.O. No. 131-B-16 was followed in 2017 by D.O. No. 183[91] which provides that the visitorial power of the SOLE under Article 128 shall be implemented through (a) routine inspection; (b) complaint inspection, or (c) occupational safety and health standards investigation.[92] Of particular note is Section 1 of Rule IV of the said department order, which states that compliance with prescribed labor standards, including OSHS, is required among all establishments, unless expressly exempted.[93] This is a development from all the previous department orders which put heavy emphasis on the role of voluntary compliance.

D.O. No. 183 likewise laid down the procedure in case of non-compliance with occupational health and safety standards. When the non-compliance was discovered through routine inspection or complaint inspection, the Labor Inspector shall issue a Notice of Results to the representative of the employer and the employees.[94] If the violation poses imminent danger to the life and limb of the employees, the employer will be given one day from receipt of Notice of Results to correct said violation. On the other hand, if the violation pertains to Personal Protective Equipment, remediation shall be effected within three days. In all other instances, the employer is allowed a longer period to remedy the situation, but such period shall in no case exceed 90 days from the issuance of the Notice of Results.[95] In complaint inspection, the Labor Inspector will also conduct a verification inspection to check whether correction on OSHS were instituted.[96]

Meanwhile, in cases of OSHS investigation, upon a finding of violation after the conduct of the investigation, the Labor Inspector shall recommend to the establishment the abatement of the imminent danger or occurrence. If not abated, the Labor Inspector shall Issue a Notice of Result and recommend to the Regional Director the issuance of a Work Stoppage Order (WSO) within 24 hours from the employer's failure to abate the violation. If upon validation by the Regional Director, he is satisfied that there exists an imminent danger, he shall issue a WSO which shall subsist until the imminent danger no longer exists.[97]

---

[91] DOLE Dep't Order No. 183 (2017). This is the Revised Rules on the Administration and Enforcement of Labor Laws Pursuant to Article 128 of the Labor Code.

[92] DOLE Dep't Order No. 183 (2017). Rule III, § 1.

[93] DOLE Dep't Order No. 183 (2017). Rule IV, § 1.

[94] DOLE Dep't Order No. 183 (2017). Rule V, § 3; Rule VI, § 2.

[95] DOLE Dep't Order No. 183 (2017). Rule V, § 3; Rule VI, § 2.

[96] DOLE Dep't Order No. 183 (2017). Rule VI, § 2(g).

[97] DOLE Dep't Order No. 183 (2017). Rule VII, § 2.

C. Current State of Occupational Safety

In the Philippines, occupational safety is a topic often overlooked, with national labor policy focusing on other issues such as wages, migration, contractualization, or workers' self-organization. This second-rate importance given to occupational safety may be attributed to two main reasons. First, issues such as compensation and regularization are perpetual matters which have wider scope, crossing industry borders and affecting workers regardless of employment status. Second, with a developing economy like the Philippines, Filipino laborers are more concerned with securing an employment which "puts food on the table"; a better pay is always preferred than a nicer work environment, and this is a fact acknowledged and repeatedly used by the management to their advantage. Thus, the matter of occupational safety is too much individualized, such that it only becomes a concern after the occurrence of an industrial accident. Even then, occupational safety is rarely significant unless it tragically results to death or affects a huge group of people. Such is the paradoxical reality, as industrial accidents are part of the occupational hazards that an employee accepts upon employment.

However, the data provided by the DOLE on industrial accidents occurring from 2010 to 2017 would show that while the number of industrial accidents fluctuate every year, the disparity between the numbers of dead and injured is in fact trivial. Except for the year 2017 where the number of mortality as opposed to the number of injured is higher by 55 people, and the years 2013 and 2017 where the difference were at least 20, the usual gap is less than 10 people. From this, an inference can be made that occupational accidents actually have a higher chance of resulting to deaths. Incidentally, the data from DOLE only covers reported and documented industrial accidents; there are incidents which never reach the light of the day.

Reported Accidents by Industry, 2010-2017											
Year	Construction	Manufacturing	Services	Mining and Quarrying	Wholesale and Retail	Electricity, Gas, Steam	Agriculture, Forestry, Fishing	Transport	Total	Fatal	Non-fatal
2010	8	3	-	-	-	-	-	-	**11**	**35**	**32**
2011	10	17	2	-	1	-	-	-	**30**	**36**	**42**
2012	25	7	6	3	2	-	1	-	**44**	**68**	**76**
2013	31	11	5	9	1	2	4	2	**65**	**85**	**105**
2014	23	11	9	2	1	3	-	3	**52**	**52**	**54**
2015	22	5	3	10	3	1	-	2	**46**	**125**	**70**
2016	14	3	6	2	2	2	1	1	**31**	**27**	**20**
2017	36	19	5	-	3	6	1	2	**72**	**95**	**117**

Table 1. Reported Accidents by Industry from year 2010 to 2017. Source: Department of Labor and Employment.

The notable death toll in the year 2015 may be attributed to the well-known Kentex Factory Fire which resulted to the death of 74 workers.[98] In a fact-finding investigation[99] made by non-governmental organizations like the Institute for Occupational Health and Safety Development ("IOHSAD"), Center for Trade Union and Human Rights ("CTUHR"), Ecumenical Institute for Labor Education and Research ("EILER"), and Kilusang Mayo Uno ("KMU"), it was found that the said tragedy was attributable to several

[98] *See supra* notes 2–3 and accompanying text.

[99] Institute for Occupational Health and Safety Development, Center for Trade Union and Human Rights, Ecumenical Institute for Labor Education and Research, Kilusang Mayo Uno, *On the Kentex Factory Fire: Statement of the Fact-finding Team* (May 16, 2015), CTR. FOR TRADE UNION & HUM. RTS. WEBSITE, *at* http://ctuhr.org/on-the-kentex-factory-fire/; The Manila Times, *Kentex's many violations caused biggest factory fire casualty – NGOs* (May 16, 2015), THE MANILA TIMES WEBSITE, *at* http://www.manilatimes.net/kentexs-many-violations-caused-biggest-factory-fire-casualty-ngos/184119/.

glaring violations of standards pertaining to labor conditions and occupational health and safety.[100]

Among these violations were:

(1) mishandling of the chemicals which were unsafely placed on the factory's floor instead of storage in a separate and safe stockroom, in violation of Rule 1943.07 of the 1989 OSHS, which provides that "Significant quantities of commodities with fire hazards greater than ordinary combustible commodities shall be separated from the main bulk by fire walls";[101]
(2) absence of proper labeling and awareness of the nature of the chemicals, in violation of Rule 1093.04, which states that "All containers with hazardous substances shall be properly labelled. No employer within the scope of this Rule shall accept any container of hazardous substances for use, handling or storage unless such container are labelled";[102]
(3) absence of proper smoke and fire alarm and apparent absence of fire and safety drill among the workers, in violation of Rule 1948.01 which requires buildings to have a "fire alarm system and signals of distinctive quality and pitch clearly audible to all persons inside the building" and which are "conspicuous, readily accessible, and in the natural path of escape from fire,"[103] and 1948.03 which requires the conduct of fire-exit drills at least twice a year;[104] and,
(4) absence of fire exits, in violation of Rule 1943.03 which requires the provision of "at least two exits in every floor and basement…, additional exits in a high hazard occupancy,…and safe, continuous and unobstructed passageways…".[105]

---

[100] Institute for Occupational Health and Safety Development et al., *supra* note 99; The Manila Times, *supra* note 99.

[101] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1943.07.

[102] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1093.04.

[103] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1948.01.

[104] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1948.03.

[105] DOLE Occupational Health and Safety Standards, as amended (1989), Rule 1948.03.

Moreover, Kentex Manufacturing Corp. likewise violated several labor standards on contracting, regularization, wage rates, and working hours. Majority of the workers were actually contractual employees hired by a labor contracting agency. Only workers who have served for 20–25 years were considered regular while those who have been working for an average of 10 years were classified as casual. In addition, the company hired workers on "*pakyawan*" or piece-rate basis and required them to work for 12 hours a day without any formal contract. Wages were below minimum, with a daily rate of PHP 202 and an allowance ranging from PHP 187 to PHP 220. There were also wage deductions despite the absence of social welfare benefits.[106] These discovered violations put the DOLE compliance certificates issued in favor of the company into inquiry and intensified doubts as to the value and credibility of voluntary compliance as the framework of labor laws' administration and enforcement.

Consequently, the Kentex tragedy is just an installment in the series of industrial accidents that occurred during the past decade: Eton accident (2011),[107] Subic Keppel Shipyard accident (2011),[108] Bulacan fireworks factory

---

[106] Institute for Occupational Health and Safety Development et al., *supra* note 99.

[107] In 2011, 10 workers installing glass panels on the 34th floor of Eton Residences Greenbelt fell to their death after the gondola or service elevator carrying them collapsed. The stability of the service elevator was allegedly not inspected, and the workers were not issued protective gears, in violation of Rule 1080 of the OSHS. Amita Legaspi, *10 killed in Makati construction accident,* GMA NEWS ONLINE, January 27, 2011, *available at* http://www.gmanetwork.com/news/news/nation/211611/ 10-killed-in-makati-constructio n-accident/story/; Maureen Hermitanio, *Deadly Eton Accident Opens Cans of Worms About Abuse of Construction Workers*, BULATLAT, January 28, 2011 *at* http://bulatlat.com/main/2011/01/28/d eadly-eton-accident-highlights-neglect-of-labor-standards-and-workers-rights-in-philippines/.

[108] During the latter part of 2011, six workers were crushed to death while around seven were injured at the Keppel Subic Shipyard after a 42-ton elevated ramp fell on them. According to the fact-finding investigation by the Metal Workers Alliance of the Philippines (MWAP), Keppel's practice of using the ramp without the required ton support and using only one instead of four booms lead to the incident. IndustriALL Global Union, *Six workers crushed in shipyard in the Philippines* (October 11, 2011), INDUSTRIALL GLOBAL UNION, *at* http://www.industriall-union.org/archive/imf/six-workers-crushed-in-shipyard-in-the-phili ppines; Joseph Santolan, *Six workers die in Subic shipyard in the Philippines* (October 10, 2011), WORLD SOCIALIST, *at* https://www.wsws.org/en/articles/2011/10/phil-o10.html.

blast (2016),[109] HTI Factory fire (2017),[110] and the almost yearly mortalities in the Hanjin Shipyard,[111] to name a few. Notably, none of these accidents resulted in the punishment of the employer, with some cases resulting in a blame game: the labor department condemning the employers, the employers absolving themselves of liability either by pointing to their compliance certificates or faulting their subcontractors, and the national government blaming the local government. [112]

---

[109] Three people died while five were injured during a fireworks factory blast in Sta. Maria, Bulacan in 2016. According to the police, the explosion was due to mishandling in the making of fireworks and the violation of the safety standard which calls for a certain distance in each section where fireworks were manufactured. The owners allegedly "added four assemblies that were closely located inside the factory nearest the mixing section where explosives or black powder were restored." GMA News, *Sta. Maria, Bulacan fireworks blast traced to violation of safety standards*, GMA NEWS ONLINE, November 24, 2016, available *at* http://www.gmanetwork.com/news/news/regions/590018/sta-maria-bulacan-fireworks-blast-traced-to-violation-of-safety-standards/story/.

[110] *See supra* notes 5–6 and accompanying text.

[111] Tagged as a "Graveyard Shipyard", Hanjin Heavy Industries Corp. – Philippines, a shipyard in Subic Bay Freeport in Zambales, has a death toll of more than 50 workers ever since it began its operation in 2006. The shipyard was issued a stoppage order by the Subic Bay Metropolitan Authority (SBMA) on all of its construction activities in 2008. Then, in 2009, it became the subject of a Senate probe following a series of fatal accidents. In 2018, DOLE issued a work stoppage order to one of the subcontractors of Hanjin following another accident which resulted to one dead and three injured. Randy Datu, *Another Hanjin worker killed at Subic shipyard accident*, RAPPLER, September 12, 2014, *at* https://www.rappler.com/nation/68918-hanjin-worker-killed-subic; GMA News, *SBMA finally suspends Hanjin after another tragic accident at shipyard*, GMA NEWS ONLINE, June 20, 2008, *available at* http://www.gmanetwork.com/news/news/regions/102402/sbma-finally-suspends-hanjin-after-another-tragic-accident-at-shipyard/story/; Tonette Orejas, *Worker dies, 3 others hurt in Subic Shipyard accident* , PHIL. DAILY INQUIRER, May 17, 2018, *available at* http://newsinfo.inquirer.net/991535/worker-dies-3-others-hurt-in-subic-shipyard-accident;

These accidents, ranging from collapse of a formwork, falling off a scaffolding, or equipment pinning an employee, were attributed to old machineries, non-inspection of equipment before operation, lack of protective gears, and the overall disposition of "getting a quick return of investment…[by] ignoring requirements on safety procedures…and requests to implement safety compliance procedures." Daniel Rudin, *Workers find ways: The ship builder* (September 15, 2013), RAPPLER, *at* https://www.rappler.com/business/26562-workers-find-ways-graveyard-shipyard.

[112] In the case of Kentex factory fire, criminal charges for reckless imprudence resulting in multiple homicides and multiple physical injuries were filed against the city mayor of Valenzuela, city officials in charge of issuing licenses and business permits, officials of the Bureau of Fire Protection , and the general manager and owner of the company. Graft and corruption charges were likewise filed against the city officials and the company owner for the anomalous permit and safety certificates issued in favor of Kentex despite its delinquent status. RAPPLER, *Valenzuele exces, BFP officials, charged over Kentex fire*, RAPPLER WEBSITE, October 19, 2016, *at* https://www.rappler.com/nation/149686-valenzuela-bfp-officials-charged-kentex-fire.

The state of occupational safety in the Philippines has likewise been criticized as lax and deficient, with a need for additional labor compliance officers, mandatory safety inspections, and more compelling compliance orders. Based on the data by DOLE, for the year 2016, the inspector-establishment ratio is at 1:117, rendering it difficult to actually inspect and monitor all of the establishments covered by OSHS. In 2017, DOLE remarked that it would need at least 2,000 additional inspectors to effectively monitor the labor conditions in business establishments.[113]

The cases against the city officials were later dismissed by the Sandiganbayan for lack of probable cause. Marc Jayson Cayabyab, *Court dismisses Kentex fire raps vs Mayor Gatchalian*, PHILIPPINE DAILY INQUIRER, December 15, 2016, *available at* http://newsinfo.inquirer.net/854010/court-dismisses-kentex-fire-raps-vs-mayor-gatchalian. Meanwhile, the company owner has moved for the dismissal of his graft case following the DOJ's dismissal of the complaints for reckless imprudence resulting to multiple homicides and multiple physical injuries for lack of evidence. Joseph Tristan Roxas, *Kentex owner moves for dismissal of graft, homicide raps* (January 25, 2018), GMA NEWS ONLINE, available *at* http://www.gmanetwork.com/news/news/nation/641024/kentex-owner-moves-for-dismissal-of-graft-homicide-raps/story/.

In the case of the Eton tragedy, the families of the victims charged the company and all its subcontractors before the National Labor Relations Commission (NLRC) "for unfair labor practice specifically the non-payment of minimum wages, unsafe working conditions, non-compliance to occupational health and safety regulations resulting to death, non-registration of social security, non-payment of social security benefits, employment of minor, and violation of labor standards." The NLRC denied the action and just ordered the payment of "monetary double indemnity awards" for the death and injuries resulting from the accident. Marya Salamat, *More Labor Violations Discovered at Eton*, BULATLAT, April 15, 2011, *at* http://bulatlat.com/main/2011/04/15/more-labor-violations-discovered-at-eton/. Ina Alice Silverio, *Neglect of occupational health and safety results in death, injuries of workers*, BULATLAT, April 29, 2011, *at* http://bulatlat.com/main/2011/04/29/neglect-of-occupational-health-and-safety-results-in-death-injuries-of-workers/.

[113] Regine Cabato, *Labor Department short of 2,000 officers to inspect contractualization* (August 3, 2017), CNN PHIL. WEBSITE, *at* http://cnnphilippines.com/news/2017/08/03/DOLE- short-2000-officers-contractualization-inspection.html.

Data on Labor Law Enforcement and Compliance (2011-2016)							
Indicators		2011	2012	2013	2014	2015	2016
Total Inspectors/ LLCOs Deployed		*(no data)*	271	228	539	564	553
Actual Establishments Covered		*(no data)*	*(no data)*	*(no data)*	67,906	44,524	62,649
Target		**24,419**	**24,753**	**26,748**	**76,766**	**44,590**	**52,074**
Total Establishments Inspected		30,727	27,264	29,248	76,880	50,161	60,376
Establishments Found with Violations/ Deficiencies		*(no data)*	**12,215**	**13,804**	**23,865**	**26,484**	**37,697**
	OSHS	*(no data)*	3,568	4,954	12,728	19,119	24,504
Compliance Rate Upon Inspection		**20,678**	**55.20%**	**52.80%**	**64.86%**	**40.52%**	**39.83%**
	OSHS	*(no data)*	86.91%	83.06%	81.26%	57.06%	0.89%
Establishments Corrected at Plant Level		**1,616**	**2,674**	**1,914**	**7,528**	**12,828**	**17,385**
	OSHS (fully Implem-ented Action Plan)		580	622	4,855	4,399	6,188
Correction Rate		**26.64%**	**21.89%**	**13.87%**	**31.54%**	**48.44%**	**46.12%**
	OSHS		16.26%	12.56%	38.14%	23.01%	25.25%
Overall Compliance Rate (at Plant Level)			**65.01%**	**59.35%**	**75.94%**	**69.33%**	**67.58%**
	OSHS		89.04%	85.19%	88.41%	66.94%	70.76%

Table 2. Labor Law Enforcement and Compliance for the years 2011–2016. Source: Department of Labor and Employment.

The table further reveals that for the same year, about 38% of establishments inspected are guilty of non-compliance with occupational safety and health standards. These establishments comprise 72% of the total establishments found guilty of violating labor laws. Lastly, overall correction and compliance rate among the establishments is only at 70%, while the remaining 30% is unaccounted for.

True, government efforts have been made to address the mounting concerns on safety in the workplace. The aftermath of the Kentex tragedy prompted several inspections in the surrounding factories[114] while department orders in the form of D.O. 131-B-16 and D.O. 183 were issued as a seeming response to the clamor to strengthen Philippine occupational safety legislation. These measures, however, brought to fore more resonant issues. The inspections revealed widespread labor standards violations which should have precluded the issuance of compliance certificates in the first place. Workplace inspections remain selective, and after almost 40 years since the first department order on OSHS, the government seems uncertain on how to effectively address the plights of workers on occupational safety.

In 2017, a few weeks after the HTI fire, a senate bill was filed seeking to strengthen laws on occupational safety by banning employer discretion-based compliance as a form of labor standard inspection while also imposing stiffer penalties on violators. Senate Bill No. 1317 was signed into law on August 17, 2018. Republic Act No. 11058, also known as the *Occupational Safety and Health Standards Act*, declares unlawful the failure of employers "to implement OSH standards, including the failure to report accidents in the workplace."[115]

---

[114] Rosabell C. Toledo, *2 years after Kentex tragedy, Valenzuela factory workers still risking life and limb for below-minimum wages*, BUSINESS MIRROR, August 17, 2017, *available at* https://businessmirror.com.ph/2-years-after-kentex-tragedy-valenzuela-factory-workers-still-risking-life-and-limb-for-below-minimum-wages/.

[115] Rep. Act. No. 11058 (2018), § 28. "An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof."

III. BROADENING EMPLOYER LIABILITY

Employer liability has been defined as "accountability held against an employer;"[116] "the employer's legal responsibility to pay damages to an employee who has been injured or who has contracted an illness because of the work he or she does."[117] However, according to Munkman, an employer may be held liable in several ways: he may incur personal liability for an accident due to his own act or default, but he may also be held liable for acts of his servants in the course of their employment under the doctrine of vicarious liability. [118]

There is also the concept of liability for breach of duty, arising from failure to comply with the statutes or regulations concerning employees' rights.[119] As opposed to the previous two where proof of negligence is required to establish liability, liability for breach of statutory duty is absolute, without necessity of proving negligence; the only question to be decided by the court is whether the statutory duty has been performed or not.[120]

Proceeding from these various modes of incurring liability, it is evident that the aforementioned definitions are narrow, if not misleading, constructions of the concept of employer liability. While it is recognized that employers may be liable to employees, it is a mistake to limit the former's liability solely to its employees, disregarding possible liability to third persons or even to the State for certain violations.

It is an established principle in Philippine law that the liability of a person may be threefold: (1) civil liability, or the responsibility for private wrongs; (2) criminal liability, or the responsibility for acts that are seen as a threat to society in general; and (3) administrative liability, or the responsibility of a public officer in relation to the discharge of his duties and functions.[121] In all cases, before a person could be held liable, there should first be a law which punishes the act or enjoins the fulfillment of a particular duty, depending on the type of liability.

---

[116] *Employer's liability*, BLACK'S LAW ONLINE DICTIONARY (2nd ed.) *at* https://thelawdictionary.org/employers-liability/.

[117] "Employer's liability." Collins English Dictionary. https://www.collinsdictionary.com/dictionary/english/employers-liability. (last visited April 20, 2018).

[118] JOHN MUNKMAN, EMPLOYER'S LIABILITY AT COMMON LAW 1 (1955).

[119] *Id.* at 2.

[120] *Id.*

[121] Regidor v. People, G.R. No. 166086-92, 578 SCRA 244 (2009).

In labor cases, liability is usually civil or criminal, the former in money judgments and damages and the latter penalized by the labor law as enshrined in Article 303 of the Labor Code. The said article provides:

> ART. 303 [288]. Penalties. Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, *any violation of the provisions of this Code declared to be unlawful or penal in nature* shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.
>
> In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.
>
> Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Courts and the Courts of First Instance.[122]

The phrase "declared to be unlawful or penal in nature" limits the application of Article 303 to acts which are specified by the Labor Code as prohibited or criminal. Thus, the said provision finds no application in cases of non-compliance with OSHS, which were neither considered as unlawful nor declared penal in character. In cases of non-compliance, Article 128 of the Code provides that the Labor Secretary can only issue compliance orders, and when the non-compliance poses grave or imminent danger to the health and safety of the workers, an order of stoppage of work or suspension of operations in the establishment may be issued.

The lack of criminal liability under the Labor Code does not, however, preclude a finding of liability under other laws. A finding of negligence by the employer in the compliance with occupational safety standards may lead to a prosecution for criminal negligence under Article 365 of the Revised Penal

---

[122] LAB. CODE, art. 303. (Emphasis supplied.)

Code,[123] or for civil liability under the Civil Code, specifically under Article 2176[124] or Article 2191.[125] In most cases, victims and their families forego

---

[123] Art. 365. *Imprudence and negligence.* - Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to prision correccional in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.

When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.

A fine not exceeding two hundred pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.

In the imposition of these penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in Article sixty-four.

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the court shall impose the penalty next lower in degree than that which should be imposed in the period which they may deem proper to apply.

2. When, by imprudence or negligence and with violation of the Automobile Law, to death of a person shall be caused, in which case the defendant shall be punished by prision correccional in its medium and maximum periods.

Reckless imprudence consists in voluntary, but without malice, doing or falling to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing of failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in this hand to give.

[124] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[125] Art. 2191. Proprietors shall also be responsible for damages caused:

(1) By the explosion of machinery which has not been taken care of with due diligence, and the inflammation of explosive substances which have not been kept in a safe and adequate place;

(2) By excessive smoke, which may be harmful to persons or property;

liability claims and accept cash settlements as reparation for the damages suffered.[126]

Further, injuries suffered by workers on account of industrial accidents can be recompensed by the Employees' Compensation Program (ECP), a government program designed to help employees or their dependents in the event of work-related sickness, injury, or death.[127] The compensation is regarded not as a result of fault or negligence, but as products of industry which the employee can claim as a right rather than an act of charity.[128]

Seemingly, the employer, as the payor of the EC contributions of his employees, is indirectly held liable, with no regard to whether occupational standards had been complied with and whether industrial accidents will occur. However, compensation schemes are really a no-fault insurance policy. The origin and fundamental value of redress for employment injury "rests on the principle of mutual protection arising from the historic compromise in which workers relinquished their right to sue their employer and employers agreed to fund a no-fault insurance system."[129] It is the oldest and most widely adopted form of social protection, representing the 80-year struggle by the labor force to provide some form of relief to injured workers and their families, and the increased interest of employers in occupational health and safety.[130]

---

(3) By the falling of trees situated at or near highways or lanes, if not caused by force majeure;

(4) By emanations from tubes, canals, sewers or deposits of infectious matter, constructed without precautions suitable to the place.

[126] In the case of Triangle Shirtwaist Factory Tragedy, the company owners were acquitted of the charges and only paid damages to 23 families who actually sued. Mestrich, *supra* note 44; In the case of Kentex workers, families of the 57 casualties dropped their case against Kentex Manufacturing Corp. in exchange for a P151,200 settlement. Agence France-Presse, *Families of 57 Kentex fire casualties settle for P151,200*, RAPPLER, June 23, 2015, *at* https://www.rappler.com/nation/97227-kentex-fire-victims-settle.

[127] Employee's Compensation Commission, *An Employer's Guide on the Employee's Compensation Program*, *available at* http://ecc.gov.ph/wp-cotent/uploads/2016/11/Employers_Guide_on_ECP.pdf (last visited May 20, 2018).

[128] U-Bix Corporation v. Bandiola, G.R No. 157168, 525 SCRA 566, 578 n.22 (2007).

[129] INTERNATIONAL LABOR ORGANIZATION, *Strengthening the Role of Employment Injury Schemes to Help Prevent Occupational Accidents and Diseases* 1 (2013), available at http://www.social-protection.org/gimi/RessourcePDF.action?ressourrce.ressourceID=48157, n.2.

[130] Quinlan, *supra* note 9, at 18.

While this principle of mutual protection and benefit is what made it revolutionary decades ago, it presents drawbacks as of today. Because employers are put in a no-fault position, claim for compensation is an "exclusive remedy," limiting the ability of the employee to bring a suit against the employer.[131] The amount to be recovered is likewise set in a predetermined schedule, precluding additional claims and discounting other factors such as lifespan or loss of potential earnings.[132] As Cohen puts it:

> State workmen's compensation laws at best provide woefully inadequate benefit schedules out of touch with present day realities. More important, those laws are predicated on the concept of providing *after the fact*, out-of-pocket compensation for losses to employees injured in industrial accidents. As such, they fail to come to grips with the worker's acute needs—affirmative, effective safety programs designed to *prevent* accidents and exposure to health hazards.[133]

Perhaps, in appraising additional liability for noncompliance with occupational safety standards, a change in perspective is warranted. Discussions on occupational injuries often concentrate on the employee—the damage he suffered, the consequences of his injury, and the compensation needed to address his situation. However, it is of equal significance to likewise view the topic from the employer's lens, emphasizing on his duty of care and the possible consequences of liability.

"Duty of care" is defined as "a requirement that a person act toward others and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use."[134] It originated from the landmark decision of *Donoghue v. Stevenson*, where the United Kingdom House of Lords, speaking through Lord Atkin, used the phrase "duty of care" to "describe the obligations he saw arising from a number of previous cases to 'take reasonable care to avoid acts or omissions which you can reasonably foresee would likely to injure your neighbor.'"[135] In an employer-employee

---

[131] Carlo Emami, Enforcing Workplace Safety Regulations with Criminal Penalties, at 6 (May 9, 2013) (unpublished thesis for M.A. Political Science, San Diego State University, available at http://sdsu-dspace.calstate.edu/bitstream/handle/10211.10/4774/Emami_Carlo.pdf;sequence=1).

[132] *Id.*

[133] Cohen, *supra* note 47, at 789.

[134] *Duty of care*, COLLINS DICTIONARY OF LAW. https://legal-dictionary.thefreedictionary.com/duty+of+care. (last visited May 20, 2018).

[135] Neil Foster, Barry Sherriff, Eric Windholz, Richard Johnstone, and Leo Ruschena, *Principles of Work Health and Safety Law,* in OHS BODY OF KNOWLEDGE 10 (October

relationship, because the employer, in hiring the employee, invites the latter to enter his premises, use his machinery, and follow his methods of work, the employer owes a duty of care and is liable for negligence.[136] Munkman wrote:

> It is the duty of the employer, acting personally or through his servants or agents, to take reasonable care for the safety of his [workers] and other employees in the course of their employment. This duty extends in particular to the safety of the place of work, the plant and machinery, and the method and conduct of work: but it is not restricted to these matters…This duty exists whether the employment is inherently dangerous or not.[137]

While the concept of "duty of care" has its origins in common law, it found its way to our legal system through the concept of "standard of care" in the law on quasi-delicts. In labor law, the employer's duty of care is enshrined in Book IV on Health, Safety and Benefits, as found in the Labor Code. These duties may be summarized as follows:

(1) The duty to provide immediate first aid treatment;
(2) The duty to provide emergency medical and dental services;
(3) The duty to adopt and implement a comprehensive occupational health program for the benefit of the employees; and
(4) The duty to abide with the occupational health and safety standards set by the Secretary of Labor and Employment through appropriate rules and regulations.[138]

The employer owes the duty, not only to the employee, but to the State, to ensure compliance with OHS standards. Non-observance of this duty of care can therefore be characterized as a breach of statutory duty, which, according to Munkman, may give rise to an action "in the criminal courts for the breach of the Act and […] an action for damages [by a private individual] if he has been injured."[139] In fact, following the basic distinctions between

---

2014), *available at* http://www.ohsbok.org.au/wp-content/uploads/2013/12/8.2-Principles-of-OHS-Law-final.pdf?x19450.

[136] Munkman, *supra* note 118, at 60.

[137] Munkman, *supra* note 118, at 58.

[138] International SOS Foundation, *Philippine Employer's Duty of Care, available at* https://www.internationalsosfoundation.org/-/media/international-sos-foundation/files/resources/asia-pacific/philippines/philippine_employers_duty_of_care.pdf?la=en, *citing* LAB. CODE, art. 162, 163, 165, 168.

[139] Munkman, *supra* note 118, at 138.

civil and criminal liability, it can be argued that criminal liability should be imposed upon the employer for failure to comply with standards for workplace health and safety, it being a derogation of his legally-mandated duty to uphold the rules and regulations enacted by the State.

In other countries, violations of occupational safety standards is treated as a crime and is penalized by fine, imprisonment or both. For instance, in the United States, federal law permits criminal prosecution of employers for willful violations of the OSHA which result in the death of an employee. Sec. 17 of the OSHA provides:

> SEC. 17. Penalties
> (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than $70,000 for each violation, but not less than $5,000 for each willful violation.
> (b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to $7,000 for each such violation.
> (c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to $7,000 for each violation.
> (d) Any employer who fails to correct a violation for which a citation has been issued under section 9 (a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues.
> (e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after

> a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.[140]

Similarly, in the United Kingdom, the Health and Safety at Work Act of 1974 declared as unlawful the failure of the employer to discharge his general duty under the Act, such as to ensure as far as reasonably practicable, the health, safety and welfare at work of all employees[141] and to ensure the safety and health even of non-employees who are accessing the employer's premises.[142] Any contravention of health and safety regulations was likewise declared illegal[143] and punished by penalties ranging from imprisonment for a term not exceeding two years or a term not exceeding 12 months, depending on whether the conviction was on indictment or summary conviction, and a fine not exceeding £20,000.[144] The same could be said of Singapore and Australia, whose respective laws, Workplace Safety and Health Act of 2006[145]

---

[140] 29 U.S.C. § 666. In 2018, the penalty amounts have been adjusted for purposes of inflation. As of January 2, 2018, the penalty amounts are: $129,336 per violation, if willful or repeated; $12,934 per violation, whether serious or non-serious; and, $12,934 per day beyond the abatement date, for failure to abate a violation. United States Department of Labor, *OSHA Penalties,* UNITED STATES DEPARTMENT OF LABOR WEBSITE, *at* https://www.osha.gov/penalties/ (last visited May 20, 2018).

[141] Health and Safety at Work Act 1974 (UK), § 2.

[142] Health and Safety at Work Act 1974 (UK), § 3.

[143] *See* Health and Safety at Work Act 1974 (UK), § 33 for the other offenses.

[144] Health and Safety at Work Act 1974 (UK), Schedule 3A, Offences: Mode of Trial and Maximum Penalty. *See* United Kingdom National Archives, *Health and Safety at Work etc. Act 1974, available at* https://www.legislation.gov.uk/ukpga/1974/37 for a summarized table of the offenses, the mode of trial, and their corresponding penalty.

[145] § 50. General Penalties. Any person guilty of an offence under this Act (but not including the regulations) for which no penalty is expressly provided by this Act shall be liable on conviction —

> (a) in the case of a natural person, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 2 years or to both; and
> (b) in the case of a body corporate, to a fine not exceeding $500,000, and, if the contravention in respect of which he was so convicted continues after the conviction, he shall (subject to section 52) be guilty of a further offence and shall be liable to a fine —
> (i) in the case of a natural person, not exceeding $2,000 for every day or part thereof during which the offence continues after conviction; or
> (ii) in the case of a body corporate, not exceeding $5,000 for every day or part thereof during which the offence continues after conviction.

Sec. 51. Penalty for repeat offenders. Where a person—

and Work Health and Safety Act of 2011,[146] impose fine and imprisonment for failure to comply with OHS standards. On the other hand, while violations

---

(a) has on at least one previous occasion been convicted of an offence under this Act (but not including the regulations) that causes the death of any person; and

(b) is subsequently convicted of the same offence that causes the death of another person,

the court may, in addition to any imprisonment if prescribed, punish the person with —

(i) in the case of a natural person, a fine not exceeding $400,000 and, in the case of a continuing offence, with a further fine not exceeding $2,000 for every day or part thereof during which the offence continues after conviction; and

(ii) in the case of a body corporate, a fine not exceeding $1 million and, in the case of a continuing offence, with a further fine not exceeding $5,000 for every day or part thereof during which the offence continues after conviction.

[146] Sec. 31. Reckless conduct—Category 1

(1) A person commits a Category 1 offence if:

(a) the person has a health and safety duty; and

(b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and

(c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

(a) In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$300 000 or 5 years imprisonment or both.

(b) In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$600 000 or 5 years imprisonment or both.

(c) In the case of an offence committed by a body corporate—$3 000 000.

(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

Sec. 32 Failure to comply with health and safety duty—Category 2

A person commits a Category 2 offence if:

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty; and

(c) the failure exposes an individual to a risk of death or serious injury or illness.

Penalty:

(a) In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an

of occupational safety standards are not punished in their labor law, the Criminal Law of the People's Republic of China expressly criminalize such behavior under the chapter "Crimes Endangering Public Security," imposing the penalty of imprisonment ranging from three years to ten years.[147]

---

officer of a person conducting a business or undertaking)—$150 000.

(b) In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$300 000.

(c) In the case of an offence committed by a body corporate—$1 500 000.

Sec. 33. Failure to comply with health and safety duty—Category 3

A person commits a Category 3 offence if:

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty.

Penalty:

(a) In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$50 000.

(b) In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$100 000.

(c) In the case of an offence committed by a body corporate—$500 000.

[147] John Balzano, *Criminal Liability for Labor Safety Violations in the People's Republic of China,* 3, WASH. U. GLOBAL STUD. L. REV. 503, 512 (2004); PRC Criminal Law, art. 134. If any employee of a factory, mine, tree farm, construction enterprise or any other enterprise or institution disobeys management or violates rules and regulations or, if anyone forces employees to work under hazardous conditions in violation of rules, thereby causing an accident involving heavy casualties or causing other serious consequences, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Criminal Law, art. 135 (China). Where the facilities for operational safety of a factory, mine, three farm, construction enterprise or any other enterprise or institution do not meet State requirements and no measures are taken to remove the hidden danger of accident after the warning given by the departments concerned or employees of the unit, so that an accident involving heavy casualties occurs or other serious consequences ensue, the person who is directly responsible for the accident shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Criminal Law, art. 136 (China). Whoever violates the regulations on the control of explosive, inflammable, radioactive, poisonous or corrosive materials and thereby causes a serious accident during the production, storage, transportation or use of those materials, if there are serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be

Accordingly, although civil liability is normally the chief concern in OSH violations, criminal liability is likewise a possible consequence. Violations of occupational safety standards may now lead to two separate actions: an injury in the workplace may lead to a civil action for compensation for harm, and in a completely separate court proceeding, to a criminal prosecution and a penalty imposed on the responsible party. As to how these affects safety in the workplace, Foster et al stated:

> Civil Law plays an indirect role in improving safety in the workplace through the obligations it imposes on employers and others to take reasonable care for the safety of workers, and through the impact of damages awards that may result when these obligations are breached. Criminal law addresses the issue more directly by seeking to prevent accidents happening through penalizing the creation of risks to safety.[148]

In a study made by Purse et al., surveying various literature from the United States, Australia and the United Kingdom, it was found that enforcement and the imposition of liability have a deterrent effect, which in turn, may factor in the reduction of occupational safety violations.[149] Since the deterrence theory is largely premised on the view that "the availability of sanctions and their application serve as an integral component of crime prevention and increased compliance with the law,"[150] increased enforcement activity coupled with sanctions are most likely to deter employers from violating OHS violations.[151]

Deterrence, however, can be classified as general or specific: general, when it pertains to "the effect of punishment meted out to others on potential

---

sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Criminal Law, art. 137 (China). Where any building, designing, construction or engineering supervision unit, in violation of State regulations, lowers the quality standard of a project and thereby causes a serious accident, the person who is directly responsible for the accident shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

[148] Foster et al, *supra* note 135, at 6.

[149] Kevin Purse, Drew Dawson, and Jill Dorrian, THE DETERRENT EFFECTS OF OHS ENFORCEMENT – A REVIEW OF THE LITERATURE (Mar. 2010), *available at* http://apo.org.au/system/files/69967/apo-nid69967-96481.pdf.

[150] *Id.* at 23.

[151] *Id.* at 41.

offenders as a means of promoting compliance with legal requirements,"[152] and specific, when it refers "to the effects of detection and punishment on an individual offender in curbing criminal behavior."[153] The deterrence brought about by the possibility of inspection and liability is mainly specific—largely influenced by previous experiences of having one's establishment detected and sanctioned, the possibility of loss of reputation, and fear of public shaming. This is likewise true even if the violation is punished by criminal penalties: the fear of prosecution or adverse publicity is more real to certain employers than to all the establishments in general.[154]

Purse et al.'s finding was affirmed by Emami in his study of administrative and criminal liability in OHS violations. He concluded, "there was not a statistically significant relationship between criminal prosecution and workplace fatalities."[155]

However, it should be noted that Purse et al. and Emami's findings were limited due to lack of criminal prosecution and literature to effectively gauge the deterrent effect of criminal liability on employer behavior. In fact, both authors believe criminal penalties remain to be meaningful and effective enforcement mechanisms for OSHA to utilize.[156] Emami, comparing the deterrent impact of imprisonment and fines, noted companies tend to accept fines as cost of doing business, while criminal prosecution and imprisonment "present[] a promising strategy for deterring willful safety violations."[157] Emami further averred:

> One might expect that, as with the range of…fines, it's the likelihood of penalty, not severity that motivates people, and that the significantly higher costs an agency must bear for prosecuting criminal charges aren't worthwhile. However, it's not unreasonable to think that the type of penalty might make a difference. In other words, the difference between a $300 penalty and a $3,000 dollar penalty, or even a $30,000 dollar penalty might not make a difference, particularly with the likelihood of detection as low as it is. However, the difference between any of those amounts and a prison sentence might be a meaningful factor. Criminal prosecution should not be used to compensate for a lack of civic education; government's role is in part to assist employers in understanding

---

[152] *Id.* at 24.

[153] *Id.* at 24.

[154] *Id.* at 54.

[155] Emami, *supra* note 131, at 52.

[156] Purse, *supra* note 149, at 54; Emami, *supra* note 131.

[157] Emami, *supra* note 131, at 35.

> how to comply with occupational safety and health obligations. However, for severe violations, criminal law is unique in its ability to condemn and shame, and also give force and representation to the norms and values society wishes to promote.[158]

In addition, it can be argued that the failure of criminal prosecution for OSH violations, to become a general deterrent for further violations, lie not within its nature but in its implementation. Both Purse et al. and Emami's studies have recognized the certainty of inspection, detection, prosecution, and punishment may contribute materially to increased compliance and reduced injury rates.[159] The threat of imprisonment, and the certainty that it will be meted out to offenders, can influence employer behavior and deter them from committing further violations.

In a U.S. study cited by Brown using data from 1979 to 1985, roughly ten years since OSHA's implementation, it was found that an "employer's injury rate was inversely related to both the probability of that employer being penalized and the mean penalty for the employer's industry."[160] The greater the likelihood that the employer will be punished for not complying with the occupational safety standards, the lower the accidents in the workplace. Brown stated:

> The researchers conducting this study estimated that a 10 per cent increase in the number of penalties would reduce the number of injuries by 1.61 per cent and that a similar increase in the average size of penalties would reduce injuries by 0.93 per cent. In other words, both the severity and certainty of punishment strongly influence injury rates, although certainty has a substantially stringer effect than severity. The researchers also found that penalties prevent more injuries by altering the conduct of employers who have not themselves been penalized than by influencing the performance of penalized employers. In other words, general deterrence is a more potent force than specific deterrence in preventing injuries.[161]

Brown asserted that while criminal penalties have specific deterrent effect, their influence on compliance over time and the example set in the community may result to general deterrence. The reputation and shaming

---

[158] Emami, *supra* note 131, at 42.

[159] Purse et al, *supra* note 149, at 56; Emami, *supra* note 131, at 42.

[160] R.M. Brown, *Administrative and Criminal Penalties in the Enforcement of Occupational Health and Safety Legislation,* 30 OSGOODE HALL L. J. 691, 705 (1992).

[161] *Id.*

which deterred a specific employer from committing any violations may influence several other employers to likewise refrain from committing any OSH violations. This is primarily true when the penalties imposed carries with it a perceived connotation, such as imprisonment. According to Brown:

> There is good reason to believe that penalties enhance compliance in the short-term by threatening would-be offenders with punishment, and in the long-term by changing attitudes about what is morally acceptable behavior.. Over the long term, stigmatizing health and safety offenders by subjecting them to legal punishment may generate a stronger moral commitment to protecting the well-being of employees. The relative ability of administrative and criminal sanctions to promote compliance in this way depends entirely upon which produces the greater stigma. Where conscience fails to induce obedience to law, the threat of punishment may suffice.[162]

Criminal liability and the penalty of imprisonment for violation of OSH standards may be justified due to the gravity and moral disapproval which surround these violations. As shown by the numerous accounts of industrial accidents, failure to comply with occupational safety standards can actually be fatal, often resulting in serious injuries and death. The risks that noncompliance create and their demoralizing outcomes are well within the purview of criminal law—these are actions that actually threaten the general welfare of the society, particularly the labor force.

In criminalizing OSH violations, certain lessons can be drawn from the Philippines' regulation of informational breach under the Data Privacy Act.[163] Aiming to uphold the individual's right to privacy while also recognizing other people's rights to information, the Data Privacy Act regulates the collection, storage, consolidation, and use, among others, of personal data by outlawing certain actions.[164] Violations such as unauthorized processing of personal information, unauthorized access or malicious disclosure are penalized by fine ranging PHP 500,000 to PHP 2,000,000 and imprisonment ranging from one year to three years, depending on the breach committed.[165]

---

[162] *Id.* at 703.

[163] Rep. Act No. 10173 (2012), Data Privacy Act of 2012.

[164] Rep. Act No. 10173 (2012), § 2. National Privacy Commission, A Brief Primer on Republic Act 10173, NATIONAL PRIVACY COMMISSION WEBSITE, *at* https://privacy.gov.ph/data-privacy-act-primer/ (last visited May 27, 2018).

[165] *See* Rep. Act. No. 10173 (2012), §§ 25–36 for the violations and their corresponding penalties.

If the State can impose penalties for informational breach because it violates the right to privacy, then it can most certainly punish violations of occupational safety standards which derogates the workers' right to humane conditions of work, sometimes at the cost of the workers' lives. Indeed, if we are to analyze this view in light of one of the fundamental doctrines in criminalization—the Harm Principle[166]—imposing criminal liability is the expression of the State's condemnation of OSH violations as harmful conducts toward the labor force; it is a means "to allow the state to secure its own and [the people's] welfare interests."[167]

Further parallels can be drawn from the treatment of unfair labor practices in our labor laws. Article 247 of our Labor Code expressly provides "unfair labor practices are not only violations of the civil rights of [...] labor [...] but are also criminal offenses against the State which shall be subject to prosecution and punishment."[168] The rationale behind this provision is because unfair labor practices violate the constitutional right to self-organization; their commission is against public right or interest and should therefore be prosecuted in the same manner as a public offense.[169] Following this premise, violation of occupational safety standards can likewise be regarded as offenses against public interest and should therefore be prosecuted as a public offense.

In making the employer criminally liable, a distinction should be made between OSH violations and criminal negligence. According to Dwiggins, the distinction is material in reinforcing the purpose behind the imposition of the liability: liability for criminal negligence merely seeks to impose a sanction for an employer's conduct, but liability for OSH violation also seeks to set standards for workplace safety by regulation through deterrence.[170] OSH

---

[166] The Harm Principle was first introduced by John Stuart Mill on his essay *On Liberty*, wherein he wrote that: "The only harm principle for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others." Harm principle provides that the State can only coerce and punish in order to prevent harm to other people. William Wilson, *Decisions to Criminalise, in* CRIMINAL LAW 32-48, 34, (6th ed., 2017), *available at* http://catalogue.pearsoned.co.uk/assets/hip/gb/uploads/M02_WILS2642_04_SE_C02.pdf.

[167] *Id.* at 37.

[168] LAB. CODE, art. 258.

[169] Pan American World Airways, Inc. v. Court of Industrial Relations, G.R. No. 20434, 17 SCRA 813, n.3 (1966).

[170] George A. Dwiggins, *Can I Go to Jail? A review of Criminal Liability for Workplace Injury or Death,* 17 APPLIED OCCUPATIONAL & ENVTL. HYGIENE 237, 239 (2002), *available at* https://www.tandfonline.com/doi/pdf/10.1080/10473220252826510.

violations are considered breach of statutory duty, which is punishable by mere failure to undertake the same; no proof of negligence required.[171]

Johnstone[172] further elaborated the distinction as follows:

> First, the OHS statutes impose general duties upon a range of duty holders…to provide and maintain safe work systems, and these duties are underpinned by process and performance standards in regulations and codes of practice…For a contravention of a duty in an OHS statute to be prosecuted, criminal law requires only the proof of failure to provide a safe system of work, to conduct adequate hazard identification, risk assessment and control, or to guard a machine…Hence, such offenses are not defined in terms of result, and the occurrence of injury or death is irrelevant to establishing criminal liability.
>
> Second, contraventions of the duties in the OHS are strict liability offenses, and require no evidence of criminal fault…on behalf of the personality prosecuted. In essence, strict liability requires only criminal conduct: in this context the breach of duty by an employer through acts or omissions, although it should be noted that offenses resulting from breach of strict liability duties under OHS statutes are qualified by the 'reasonable predictability' of measures which might be taken to minimize OHS risks and prevent any breach of OHS standard…In contrast to OHS offences, [criminal negligence] is concerned with outcome or result…and also requires proof of specific criminal fault…[173]

Consequently, certain challenges may be encountered in criminalizing violations of occupational safety standards: the difficulty of corporate criminal prosecution, the problem of establishing intent, the high evidentiary burden, and the determination of the real employer in contractual arrangements, among others.[174] However, these challenges are not really novel and can readily be addressed by the law and existing legal principles.

For instance, the problem of having no corporate "body" to imprison in cases of corporate criminal liability, can easily be resolved by making the officers and directors liable on behalf of the corporation. This is consistent

---

[171] Munkman, *supra* note 118.

[172] Richard Johnstone, *Are occupational health and safety crimes hostage to history? An Australian perspective, in* GOVERNANCE AND REGULATION IN SOCIAL LIFE: ESSAYS IN HONOR OF W.G. CARSON 33–54 (Augustine Brannigan, George Pavlich ed., 2007).

[173] *Id.* at 47–48.

[174] Emami, *supra* note 131, at 16, 28–29, 30, 32.

with our Corporation Code, which provides "personal liability of a corporate director, trustee, or officer, along with the corporation may so validly attach, as a rule, when he assents to a patently unlawful act of the corporation or for bad faith or gross negligence in directing its affairs."[175] As stated by Emami in his discussion of the ruling of the US Supreme Court in the case of *State v. Morris & Essex*,[176] "if a corporation could be civilly liable for deliberate actions…of its agents, it could also be responsible for criminal offenses. [There will be a] startling incongruity in that corporation could be liable for neglecting to perform an act, but not for committing an act in violation of law."[177]

These challenges can likewise be addressed by determining the extent of liability that may be imposed upon the employer. For instance, while in the United States, Australia, and China, the penalty of imprisonment is meted out only in cases where noncompliance with occupational safety standards results in death, in Singapore, anyone can be imprisoned by the mere failure to comply with occupational safety standards. In the United Kingdom, the enforcement of occupational safety standards is not purely founded on an employer-employee relationship; an employer may still be held liable for OSH violations if it results to injury to non-employees who were within his premises. The determination of the scope and limitation of employer liability lies within the competence of the legislature and the implementing agencies, taking into account the needs of the market and the best interest of the employees.

DOLE recognized that the failure to slap criminal liability against the violators of OSH standards is a fundamental defect in the Philippine labor law.[178] The issue of poor working conditions is not an isolated narrative, but is closely linked to other labor concerns such as minimum wage and contractualization. More than neglecting the plight of the workers, lack of criminal liability allows owners, who willfully violate occupational standards and place the workers' lives in peril, to escape prosecution. This does not bar them from opening shop again or from starting business elsewhere, effectively trapping the Filipino workers in a vicious cycle where their rights are repeatedly threatened.

---

[175] CORP. CODE, § 31; Tramat Mercantile, Inc. v. Ct. of Appeals, G.R. No. 111008, 238 SCRA 14 (1994).

[176] State v. Morris & Essex R. Co.,135 F.2d 711 (1943).

[177] Emami, *supra* note 131, at 26–27.

[178] *Kentex owners may escape prosecution*, THE MANILA TIMES, May 17, 2015, *at* http://www.manilatimes.net/kentex-owners-may-escape-prosecution/184355/.

This paper is not unmindful of the fact that while the law gives preference to labor, the 1987 Constitution likewise recognizes the indispensable role of the private sector[179] and affords them the right to reasonable return on investments and to expansion and growth.[180] It would be illogical, however, to suggest that these rights of the employers are in direct contravention with the employees' right to humane conditions of work. Rather than treating the occupational safety standards as restraints of trade, employers should see them as investments which would further their human capital—the labor force—and secure better gains.

Perhaps, in addressing the concept of liability for OSH violations, we need to stop looking at a worker as an individual, but as a member of a constitutionally protected class. The focus on tort liability and workmen's compensation obscures the view that violation of occupational safety standards is not an individual damage, but a damage to the whole working class. It creates a reactive, rather than a proactive, approach in labor law. As Johnstone writes, to impose criminal liability for OSH violation is "to enhance their capacity to focus attention on proactive as opposed to reactive measures, punishing risk whether or not it has occurred. Harm that has not occurred but could occur is surely as culpable as harm that has to occur."[181]

IV. CONCLUSION: TOWARDS A STRONGER OCCUPATIONAL SAFETY REGIME

Langille,[182] in exploring the identity of labor law, posits that the answer to the two sets of questions that labor law faces—"(1) What is labor law's domain/scope?; and, (2) Within that domain, what is labor law to do? What is it for? Why does it exist?"—is this: "Labour law's jurisdiction is defined, as is its content, by labour law's morality. Labour needs, does have, and will have a theory of justice."[183] Labor law exists to promote what is just and equitable for the workers given the circumstances.

The predecessors of the OSHS in other countries had this objective—"to legitimize employer-employee relationships by ensuring that the duration and conditions of employment were governed by a legal relationship,

---

[179] CONST. art. II, § 20.

[180] CONST. art. XIII, § 3.

[181] Johnstone, *supra* note 172, at 51.

[182] Brian Langille, *Labour Law's Theory of Justice, in* THE IDEA OF LABOUR LAW 101–119 (2011), *available at* https://www.iea-nantes.fr/rtefiles/File/brian-langille.pdf.

[183] *Id.* at 103.

enforceable—if not always enforced—at the hands of government agents."[184] Thus, compliance "must not be a product of a personal whim, of an arbitrary relationship between employer and employee (benign or otherwise), or of the economic attitude (exploitative or otherwise) of one class towards another. Instead, the responsibility, the fault or the praise, for this aspect of workaday experience was increasingly laid at the feet of the state and its functionaries."[185] It is incumbent upon the State to regulate compliance with occupational standards, taking into account not only the duty of the employer toward the employee, but his duty toward the State to comply with the provisions of the law on occupational safety.

Efforts have been made to strengthen the discourse on occupational safety. From being recognized as part of the rights of the labor, to becoming a fundamental human right, and to becoming a legally enforced duty in labor laws. Notwithstanding these developments, workers in the workplace die or get injured every day, their stories unheard and never see the light of day. While the topic of occupational safety is not a novel one, it is a topic often overlooked, if not taken for granted. Like background noise, industrial injuries and deaths seem to be a fixed condition, an accepted consequence of the risks that come with the workplace. However, when these injuries and deaths are caused, not by unforeseeable perils but by the employer's failure to comply with reasonably set standards, then the question of accountability arises.

Indeed, the imposition of criminal liability upon the employer would not magically eliminate OSH violations, more so OSH injuries. Imposing criminal liability does not guarantee increased compliance, and increased compliance does not guarantee corresponding reductions in injury rates.[186] But the recognition of the criminal nature of these violations and their detrimental effects to society is a step in the right direction. It is an assurance that measures are being taken to prevent tragedies that kills our workers and breaks apart families. It is the giving of flesh and blood and the breathing of life to the constitutionally-mandated right of workers to humane conditions of work.

Wilson once said: "The only true safe factory is an empty factory."[187] Indeed, risks are everywhere. They are inherent in any human activity, even in the workplace. But when the risks in the workplace puts the Philippines in the map as one of the worst countries in the world to work in, the risks turns to

---

[184] Johnstone, *supra* note 172, at 35.

[185] Johnstone, *supra* note 172, at 35.

[186] Purse, *supra* note 149, at 27.

[187] Wilson, *supra* note 39.

warnings, and attention must be given before they turn into full-blown tragedies.

- o0o -