

**MANDATORY OR VOLUNTARY LABOR GOVERNANCE?  
THE DETERMINANTS OF FIRMS' COMPLIANCE WITH  
INTERNATIONAL LABOR STANDARDS IN THE  
PHILIPPINES**

By

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# Author's Declaration

I, the undersigned Miguel Luis Uson Arias, hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

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# Abstract

This thesis has investigated why firms comply (or do not comply) with international labor standards. Using a combination of descriptive, thematic, content and decent work elements and indicators analyses, the study analyzed in a comparative manner the evolution of, rationale behind, regulatory strategy used, and behavior of firms across the three labor governance regimes in the Philippines – Visitation and Enforcement Framework, Labor Standards Enforcement Framework, and Labor Laws Compliance System – from 1974 to 2017 by looking at statistical tables and key labor policies that chartered and institutionalized each regime. Notwithstanding the effect of the normative infrastructure on workers' rights and labor standards to labor laws compliance, the findings suggest that firms comply with international labor standards when the regime demands compliance through punitive and coercive measures (hard tools). Firms comply more in a regime that utilizes state regulation and mandatory mechanisms. Ultimately, the thesis contributes to a better theoretical, methodological and empirical understanding of labor laws compliance in the Philippines by looking at the perspective of the regulated party – the firm – through historical comparison.

# Acknowledgement

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# List of Abbreviations

BWC	Bureau of Working Conditions
COC	Certificate of Compliance
CSR	corporate social responsibility
DOLE	Department of Labor and Employment
GRI	Global Reporting Initiative
GVC	global value chain
HRBA	human rights-based approach
IFA	international framework agreement
ILC	International Labour Conference
ILO	International Labour Organization
ILS	international labor standards
ISO	International Organization for Standardization
LLCS	Labor Laws Compliance System
LSEF	Labor Standards Enforcement Framework
OSHS	occupational safety and health standards
OSHC	Occupational Safety and Health Center



PLC	Philippine Labor Code
PSA	Philippine Statistics Authority
SOLE	Secretary of Labor and Employment
UN	United Nations
UNGC	United Nations Global Compact
VEF	Visitorial and Enforcement Framework
WTO	World Trade Organization

# Chapter 1 – Introduction

Watching the news at home, Marie Tabano heard of the fire that engulfed the building where her husband worked as a maker of rubber slippers (The Guardian 2015). The building, Kentex factory, was unrecognizable. Marie went to the remains of the factory and heard personal accounts from survivors of how workers were trapped in the second floor of the building attempting to go through windows covered with grills, gasping for air, asking to be saved (The Guardian 2015). After going to the remains of the building herself, talking to some survivors, and hearing the statement from their city's Mayor, Marie knew that she has truly lost her spouse (The Guardian 2015). Subsequent investigations led to questions on the firm's compliance with occupational safety and health standards (OSHS). It was found that Kentex acquired a certificate of compliance on general labor standards and OSHS from the Department of Labor and Employment (DOLE) despite clear lapses on OSHS. This happened just few years after the Philippine government shifted from a mandatory to a voluntary labor governance regime.

This Master thesis looks at this problem by investigating why despite the existence of international labor standards (ILS) ratified by member states of the International Labour Organization (ILO) and even with sophistication of compliance systems geared to ensure that such standards are maintained and enforced, the horrors of the Kentex tragedy still continue to haunt workers under precarious working conditions today. There are several reasons on why compliance systems fail to protect the rights of workers; one angle looks at the behavior of firms in complying with ILS. This thesis sheds light on the topic with the following research question: Why do firms comply (and not comply) with ILS in the Philippines?

Existing research explains what makes states comply with ILS including factors that contribute to compliant behavior as well as the enforcement and compliance mechanisms that operate at the global level. Reasons and factors affecting compliance include the pressure mounting from

international organizations like the ILO (Töller 2011); poverty, underdevelopment, and a myriad of political, economic and social factors (Shah 1994); active use of protectionist strategies as specified in the World Trade Organization (WTO) rules and multilateral trade agreements (Chang 2003); inclusion of compliance with ILS to the WTO (Moran 2005, Rittich 2019); preconditions set in trade agreements (ILO 2019, Santos 2019); and integration of domestic firms to global value chains (GVCs) (Hollweg 2019). However, little is known about why firms comply with ILS. Much of the literature on regulation and compliance deals with how governance regimes are distinguished based on the dominant regulatory strategy in place – from being traditional, private or hybrid – which are further narrowed on different mechanisms at work such as those that go beyond the conventional idea of state regulation (i.e., trade agreements, codes of conduct, etc.) (Potowski and Prakash 2011, van Waarden 2011, Vrielink, Montfort and Bokhorst 2011, Töller 2011). Labor governance regime like the one in the Philippines face dissent primarily from labor unions and even the private sector despite being recommended by the ILO as a dominant and ideal regulatory system. A governance regime that does not account for the complex, diverse and dynamic characteristics of regulated parties could account as one the missing links on the problematic enforcement of labor laws compliance systems whether mandatory or voluntary.

In order to determine the reasons behind the compliance of firms with ILS, the thesis delved deeper on a set of specific research areas. First, it described the global normative framework on workers' rights and labor standards including the dynamic relationship of labor governance actors in the said framework. How do international and domestic level standards, rules and regulations affect labor governance at the level of state enforcement? Second, it investigated how labor governance regime evolved through time and probed how enforcement and compliance mechanisms on ILS operate in the Philippines. What prompted the Philippine government to transition from a mandatory to a voluntary labor governance regime and how

did the behavior of firms change in the transition to a new labor governance regime? Third, it examined what the enforcement and compliance mechanisms on ILS demand from and offer to firms. How did the mechanisms induce compliance with ILS? Lastly, it analyzed the behavior of firms vis-à-vis the demands of the government's enforcement and compliance mechanisms. Do the demands of the mechanisms correspond with the behavior of firms?

To capture shifts in governance regime, the thesis relied on the models of labor governance espoused by Hassel (2008) together with Helmerich (2016) which distinguished three different regulatory strategies, including state regulation, self-regulation and a combination of both. These were applied on three distinct compliance regimes entailing the use of historical comparison as the research method of this thesis: The Visitorial and Enforcement Framework (VEF) from the inception of the Philippine Labor Code (PLC) in 1974 up to 2003, the Labor Standards Enforcement Framework (LSEF) from 2004 to 2013 and the Labor Laws Compliance System (LLCS) from 2014 up to present. A qualitative research design, combining descriptive, thematic and content analyses with analysis of decent work elements and indicators, was used to analyze Philippine labor policies and statistical tables. The paper focused on a country that has transitioned from mandatory to a voluntary labor governance regime with a problematic enforcement of labor laws: The Philippines.

The study found that there is divergence between the behavior of firms and the demands and intended outcome of the Philippine government's enforcement and compliance mechanisms. This contributes to the problematic enforcement of labor laws in the country. Notwithstanding the effect of the normative infrastructure on workers' rights and labor standards to labor laws compliance, the thesis' findings suggests that firms comply with ILS when the regime demands compliance through punitive and coercive measures (hard tools). Firms comply more in a regime that utilizes state regulation and mandatory mechanisms.

The structure of this thesis is as follows: The literature review first details development in labor governance regime then explores approaches to the study of compliance with ILS. This is followed by a theoretical section which assesses the governance performance of labor governance regimes and enumerates the four hypotheses that corresponds with the four research objectives/areas of this study. The fourth chapter expounds on the research design specifically the methodology, data sources used, plan for data analysis, case selection, and limitations of the study. In the fifth chapter, the findings and analysis are divided into four sections as follows: (1) Normative Framework on Workers' Rights and Labor Standards; (2) The Evolution of Labor Governance and the Changing Behavior of Firms; (3) Mechanisms of Enforcement and Compliance with ILS: What Do They Demand from and Offer to Firms?; and (4) Summative Assessment of Firms' Compliance with ILS. The thesis closes with conclusions.

## Chapter 2 – Literature Review

This chapter elaborates on existing literature in the study of labor regulation, governance regimes, and regulatory enforcement and compliance. It particularly shows the gaps and less explored areas in the study of labor regulation and governance regimes particularly in the area of compliance and in the context of the Philippines. Specifically, this chapter is divided into two sections as follows: (1) Developments in Labor Governance; and (2) Approaches to the Study of Compliance with ILS.

### Developments in Labor Governance

In the last decades, labor governance across the world has seen an increasing shift to a regulatory strategy of self-regulation (Marx 2011, Levi-Faur 2005 as cited in Töller 2011, Peetz 2019). It appears that deregulation of the labor market in terms of enforcement of ILS was late in a predominantly neoliberal global political economy. In fact, the world is now seeing a return to state regulation as populist regimes continue to gain traction and support from majority of their voting populations (Streeck 2017, Rodrik 2018). Yet, the world saw a continuous rise in non-conventional ways of regulating the labor market, either through self or hybrid regulation (Levi-Faur 2011, Marx 2011, Vrielink, Montfort and Bokhorst 2011, Peetz 2019). Voluntary approaches to regulation are used based on power-centered,<sup>1</sup> better-regulation,<sup>2</sup> and institutional explanations<sup>3</sup> (Töller 2011). State regulation characterized by mandatory

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<sup>1</sup> The perception of firms' mobility has limited the influence of policy instruments used by the government in regulating behavior of firms (Peters 2005 as cited in Töller 2011). On a less antagonistic view, firms use corporate social responsibility (CSR) as a vehicle to improve their vulnerable reputation in a globalized world (Töller 2011).

<sup>2</sup> This explanation draws from the deficiencies of traditional regulatory policy instruments particularly for its inflexible and simple character (Black 2001 as cited in Töller 2011).

<sup>3</sup> The threat of boycotts (Gunningham and Rees 1997; Kirton and Trebilcock 2004 as cited in Töller 2011) and the shadow of the state (Marx 2008 as cited in Töller 2011) motivates firms to submit to voluntary regulation. If taken seriously, firms accept costs of voluntary regulation if they fear either higher cost stemming from legal regulation or loss of market share (Töller 2011). International organizations can trigger voluntary approaches to regulation if the regulation succeeds or fails (Töller 2011). However, failure of regulation at the intergovernmental level motivates governments to curb their aspiration for regulation from international institutions by considering the option of voluntary regulation as seen in the field of labor regulation where the failure of adopting a regulation

compliance with ILS and heavy use of sanctions to penalize non-compliant behavior appears to be outdated.

The rise in these self and hybrid regulatory strategies are best captured by looking at the mechanisms of regulation in the past two decades. Table 1 below enumerates these mechanisms with additional information on the date each mechanism started, the actor where it originated and where enforcement is led, and the number of firms who participated in them (Hassel 2008).

**Table 1. Mechanisms of Labor Regulation (1990s-2010s)**

Name	Date	Sponsor	Participating Firms
Caux Principles of Business	1994	Firms	No participation expected
Global Sullivan Principles	1999	Firms	No participation expected
Principles for Global Corporate Responsibility–Benchmark	Revised in 1998	Firms	No participation expected
OECD guidelines	Revised in 2000	OECD	No participation expected
Global Compact	1999	United Nations	2,900
Social Accountability 8000	1998	Civil society	1,200
Global Reporting Initiative	1999	Civil society	197
International framework agreements	Since 1996	Trade Unions	50
Trade agreements	Since 2000 <sup>4</sup>	States	-
Corporate social responsibility norm	2004	International Standard Organization	Not yet adopted

*Source: Expanded version of Hassel's (2008) table on 'Initiatives for Setting Standards of Decent Corporate Behavior'*

There is a growing discontent over the strategy of state regulation in the labor market. Firms and economists argue that an overly rigid labor market characterized by a robust and complex workers' rights and labor standards framework hamper not just economic gains of firms but of national economies (Hollweg 2019, van Waarden 2011). In response, states who participate in

in the context of the ILO in the mid-1990s prompted actors to address the issue in a voluntary context (Bartley 2003, Kirton and Trebilcock 2004 as cited in Töller 2011).

<sup>4</sup> Based on ILO's publication in 2011, *Labour provisions in trade agreements: current trends and perspectives*.

the actual production of goods and provision of services in GVCs relax their labor laws to make their markets competitive resulting to backsliding in labor standards and a race to the bottom (Marx 2011, Davies and Vadlamannati 2013 as cited in Arias, forthcoming). On the side of international standards-setting institutions, the ILO in particular have impressed its influence and relevance in the global labor standards governance regime by wielding its unique tripartite identity, with the participation of non-state actors serving as the Organization's source of vigor that brings dynamism and additional authority to the decisions they make (La Hovary 2015). Further, the top-down character and dominant use of punitive approaches to induce compliance with ILS in a state-led regulatory regime is not aligned with the conceptual framework of the United Nations (UN) known as human rights-based approach (HRBA). HRBA emphasizes greater participation of people in shaping decisions that have an impact in the realization of their human rights (Scottish Human Rights Commission, n.d. and European Network of Human Rights Institutions, n.d.). This framework – which guides the work of the UN and its specialized agencies like the ILO – together with other movements and developments in public administration saw the rise of other actors in the governance arena that used to be solely dominated by the state (Powell 1990, Crosby and Bryson 2005, Stoker 2006). These could be considered as main contributors to the shift from state regulation to non-conventional regulatory strategies of self and hybrid regulation.

Hassel (2008) together with Helmerich (2016) provided an elaborate explanation of these developments in labor governance. They accounted the transition from a traditional regime of labor regulation that is state-led, mandatory and hinged on sanctions to a regime of 'private labor governance' (which they refer as 'transnational private labor governance') that is market-driven, voluntary and incentivizes compliance, up to what is now an emerging regime known as 'transnational labor governance' (public policy framework for private standards) that is characterized by a synthesis between the traditional and private labor governance regimes and



an interaction between public and private norms and mechanisms (Hassel 2008 and Hassel and Helmerich 2016). This is discussed further in the subsequent section of this chapter.

One of the objectives of this thesis is to investigate how labor governance regime evolved in the Philippines through time and what prompted the Philippine government to transition from a mandatory to a voluntary regime. Building from this section of the Literature Review, the normative framework on workers' right and labor standards as well as the evolution of labor governance in the Philippines are discussed in the first and second sections of Chapter 5 – Findings and Analysis, respectively.

## **Approaches to the Study of Compliance with International Labor Standards**

Existing research explains what makes states comply with ILS including factors that contribute to compliant behavior as well as the enforcement and compliance mechanisms that operate at the global level. Reasons and factors affecting compliance include the pressure mounting from international organizations like the ILO (Töller 2011); poverty, underdevelopment, and a myriad of political, economic and social factors (Shah 1994); active use of protectionist strategies as specified in the WTO rules and multilateral trade agreements (Chang 2003); inclusion of compliance with ILS to the WTO (Moran 2005, Rittich 2019); preconditions set in trade agreements (ILO 2019, Santos 2019); and integration of domestic firms to GVCs (Hollweg 2019). However, little is known about why firms comply with ILS. Much of the literature on regulation and compliance deals with how governance regimes are distinguished based on the dominant regulatory strategy in place – from being traditional, private or hybrid – which are further narrowed on different mechanisms at work such as those that go beyond the conventional idea of state regulation (i.e., trade agreements, codes of conduct, etc.)

(Potowski and Prakash 2011, van Waarden 2011, Vrielink, Montfort and Bokhorst 2011, Töller 2011).

There are four interesting studies that are worth more thorough review on labor governance and regulatory compliance. As discussed in the previous section, Hassel together with Helmerich provided three dominant models of labor governance that emerged and evolved through time. Hassel (2008) in her paper on *The Evolution of a Global Labor Governance Regime* argues that patterns of local self-regulation, norm-setting, and international codes as compared to traditional regime of labor regulation lead to higher expectations on the behavior of firms operating transnationally and to an indirect pattern of regulation. She further points that the adoption of the ILO's core labor standards and the setup of the UN Global Compact (UNGC) serve as points of convergence (Hassel 2008). However, this private governance regime lacks the strength of sanction-based approaches that were dominantly present in the traditional regime of labor regulation.

In a succeeding paper that she authored with Helmerich, Hassel expanded the discussion on global labor governance regime to now include an emerging model of transnational labor governance (Hassel and Helmerich 2016). This new public-private mechanism was illustrated through the cases on the implementation of social standards in the two policy areas of social public procurement and export credit guarantees. In both cases, the implementation of labor standards followed an approach that focused on the role of the civil society (Hassel and Helmerich 2016). Civil society groups target transnational regulatory frameworks such as European Union policy frameworks and the Organization for Economic Co-operation and Development Common Approaches and lobby for the inclusion of social and labor standards in regulatory frameworks in both transnational and local levels (Hassel and Helmerich 2016). This model is assessed based on their governance performance along with the two other models in Chapter 3 – Theory and Hypotheses.

The third significant study was carried out by Weaver (2014) where he developed a framework for examining compliance of individuals and businesses with government policy and tested the framework's implications in empirical cases. The analytical arguments of the article are summarized in four broad propositions. First, multiple barriers to compliance may actually lead to low level of overall compliance given the difficulty of designing and implementing compliance and enforcement regimes that target specific barriers of individual targets (Weaver 2014). This requires a comprehensive analysis of barriers to compliance. Second, barriers to autonomy and resources are critical impediments to compliance (Weaver 2014). Much attention must be given to these barriers by researchers and policymakers. Third, heterogeneity can be a critical source of non-compliance (Weaver 2014). Differentiating among heterogeneous target populations and differentiating through increased monitoring and enforcement is intrusive and may provoke accusations of discrimination or unequal treatment. Lastly, compliance and enforcement regimes differ based on the social construction and political resources of the target population (Weaver 2014). In the end, Weaver (2014) argues that the reaction of the government to compliance failure is influenced by social construction and political power of the regulated population as tested in the case of the Swedish pension system and the United States welfare reform. This thesis aims to complement Weaver's contribution in understanding barriers to compliance specifically in the domain of labor policy and the case of the Philippines.

There is no comprehensive study conducted on regulatory compliance in the Philippines aside from the study conducted by the Institute for Labor Studies – the research arm of the DOLE in the Philippines – on the effectivity of the DOLE's LLCS. The research provided an assessment of the two components of the LLCS – policy and implementation – based on efficiency indicators such as compliance rate of firms with general labor standards and OSH as well as the number of firms targeted versus firms covered by the compliance system (Institute for

Labor Studies 2015). The study used the results of the conducted survey of labor laws compliance officers (LLCOs) and key informant interviews with DOLE Regional Directors and LLCS focal persons (Institute for Labor Studies 2015). Under the policy component of the LLCS, the Institute found that the compliance rate of firms with general labor standards and OSH under the LLCS is above 50% (Institute for Labor Studies 2015). In terms of the implementation component, they found that gaps such as those of operational nature, unclear directives from the DOLE central office, and issues on monitoring of accomplishments (Institute for Labor Studies 2015). However, the study did not analyze thoroughly the policy document that created the LLCS including the performance of the system on decent work indicators through time. Carrying out such analysis could have provided a rationale behind the transition to a voluntary regime and a deeper understanding of how firms behaved in the transition. Further, the study only assessed the LLCS single-handedly without comparing it to a similar compliance system that could have revealed salient differences potentially explaining divergence in outcomes. Comparison of compliance systems can result to sounder conclusions on the performance of governance regimes where they have operated and continue to operate. The abovementioned studies serve as foundation for researchers to further delve into the study of regulatory compliance particularly on firms' compliance with ILS. In order to confirm or refute this thesis' hypothesis on firms' compliance, more evidence is needed which particularly examines the evolution of labor governance in the Philippines and analyzes the behavior of firms vis-à-vis the demands of the enforcement and compliance mechanisms over the last decade. A more recent analysis is important given the doubts posed on voluntary regulatory strategies and labor governance in the Philippines exacerbated by the controversy that tarnished the reputation of the LLCS in 2015.

For public policy, the question on why firms comply (and do not comply) with ILS and if the ruling administration considered the behavior of firms in complying with ILS is crucial.

Regulatory policies that deal with enforcement of ILS can only be effective if it considers the complex, diverse and dynamic characteristics of regulated parties.

This thesis aims to fill this research gap and to contribute to the current debate by posing the following sub-research questions:

*What prompted the Philippine government to transition from a mandatory to a voluntary labor governance regime and how did the behavior of firms change in the transition to a new labor governance regime? What do enforcement and compliance mechanisms on ILS demand from and offer to firms? Ultimately, do the demands of the mechanisms correspond with the behavior of firms?*

The questions above are answered through the second, third and fourth sections of Chapter 5 – Findings and Analysis. The following chapter elaborates on the theory this thesis employed and specifies the hypotheses.

## Chapter 3 – Theory and Hypotheses

This chapter provides the theory that guides this thesis specifically in analyzing the case study. It primarily drew from the labor governance models espoused by Hassel (2008) and Helmerich (2016), building from the discussion in *Developments in Labor Governance* section of Chapter 2 – Literature Review, and integrating key points from other authors. It then assesses the performance of labor governance regimes based on the framework proposed by Biermann, Pattberg, van Asselt, and Zelli (2009) and proposes an appropriate model to address the challenging enforcement of ILS. In the end, it enumerates the four hypotheses that corresponds with the four research objectives of this thesis.

### **Performance Assessment of Labor Governance Regimes**

This section was based on a paper submitted for The Political Economy of Global Governance course in December 2019 at Central European University (Arias 2019). The governance performance of labor regulatory regimes is distinguished under the three different models of labor governance espoused by Hassel (2008) and Helmerich (2016) and assessed based on the aspects of speed, ambition, participation, and equity with the corresponding degree of fragmentation (Arias 2019). Biermann, Pattberg, van Asselt, and Zelli (2009) provided a framework that used the four aspects in analyzing global governance architectures. They have specifically used this framework in the environmental policy domain. Nonetheless, they argue that the framework can be utilized in the assessment of governance performance of other policy domains (Biermann, Pattberg, van Asselt, and Zelli 2009); in this case, the thesis focused on the labor policy domain. Table 2 shows a summary of this appraisal. Speed is determined in terms of relative pace (fast or slow) in coming up with the assessment<sup>5</sup> instrument or set of

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<sup>5</sup> Assessment here refers to the process of reviewing firms' compliance with ILS.

regulatory obligations. Ambition determines the level of the assessment process (broad or narrow) and output achieved. Participation is determined through the variation of actors involved in the assessment process and their corresponding level of participation (state-led, private or collaborative). Lastly, equity determines representation of the interest of the actors in the assessment process (state, market or all the actors involved).

**Table 2. Performance Assessment of Labor Governance Regimes**

4 Aspects of Governance Performance	Models of Labor Governance Regime		
	<i>Traditional (State)</i>	<i>Private (Market)</i>	<i>Transnational Hybrid (State-Market-Labor)</i>
Speed	• fast	• moderately slow	• very slow
Ambition	• broad but shallow assessment (result)	• narrow but deep assessment (result)	• middle ground
Participation	• state-led with private sector participation	• private sector voluntary initiative monitored by state	• shared responsibility among state, market, and labor union
Equity	• dominated by state interest(s)	• compromise between state and private interest	• accommodates different interests of all actors involved

*Source: Own assessment (Arias 2019) based on framework by Biermann, Pattberg, van Asselt, and, Zelli (2009)*

Based on the above evaluation of different models of regulatory regime, the transnational labor governance regime appears to be the most appropriate model to address the challenging enforcement of ILS including the effective compliance of firms to such standards (Arias 2019).

## Hypotheses

Each qualitative hypothesis below corresponds with the four research objectives/areas of this thesis detailed in Chapter 1 – Introduction. They are confirmed in the succeeding case study and linked with sub-sections of Chapter 5 – Findings and Analysis.

## Hypothesis 1

The normative framework on workers' rights and labor standards demands different levels of commitment from firms addressed at so many levels – global, national and firm – that tightens the web of rules and reduces the possibility of circumventing labor laws. However, this normative framework did not push state enforcement to a regime that goes beyond self and voluntary regulatory strategies.

## Hypothesis 2

The Philippine government transitioned to a voluntary labor governance regime because of the increasing pressure from transnational standard-setting institutions. This served as a window of opportunity for the ruling administration at the time of transition to re-establish its credibility and relevance in labor governance. Further, contrary to theory (Hurd 2003, Hassel 2008), firms comply more with the traditional regime of labor regulation than the private regime.

## Hypothesis 3

Enforcement and compliance mechanisms induce compliance with ILS through different regulatory strategies and tools appropriate and consistent with the established regime. The traditional regime heavily used hard tools and punitive measures to induce mandatory compliance with ILS. The private regime used soft tools and developmental measures to inculcate culture of voluntary compliance.

## Hypothesis 4

There is divergence between the behavior of firms and the demands of the Philippine government's enforcement and compliance mechanisms.

The following chapter expounds on the study's research design.



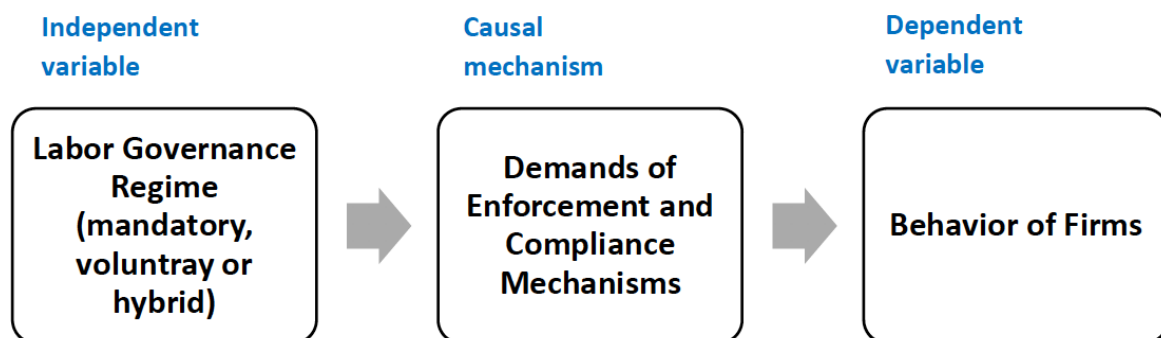
# Chapter 4 – Research Design

This chapter outlines the research design of the thesis. It first stipulates the methodology used including the direction of relationship among variables of interest. It then specifies the data sources used ranging from policy documents to statistical tables. This is followed by a discussion of the analytical tools/methods employed including the plan for analyzing the data gathered. The chapter ends with a discussion justifying the case selection and detailing the limitations of the study.

## Methodology

The goal of this thesis is twofold: On the one hand, it ultimately strives to investigate why firms comply (and not comply) with ILS in the Philippines. On the other hand, it specifically seeks to analyze the behavior of firms (*the dependent variable*) vis-à-vis the demands (*causal mechanism*) of the enforcement and compliance mechanisms to ILS (*the independent variables: mandatory, voluntary or hybrid regulatory strategies*). Figure 1 below shows the relationship among the variables of interest. The goals can be primarily achieved using qualitative method which this thesis employed through a comparative case study design. The specific analytical methods used are as follows: descriptive, thematic, decent work indicator, and content analyses.

Figure 1. The Firms' Compliance Hypothesis



Specifically, this thesis is a historical comparison of labor governance regimes in the Philippines: The VEF from the inception of the PLC in 1974 up to 2003, the LSEF from 2004 to 2013, and the LLCS from 2014 up to present. These three regimes or systems are the focal units of analysis. Systems of labor laws compliance gives a profound insight on the regulatory strategies used including the mechanisms that are present and utilized, governance performance based on decent work indicators specifically on ILS and OSHS, and policies that institutionalized them. To capture shifts in compliance systems, the thesis relied on the models of labor governance espoused by Hassel (2008) together with Helmerich (2016) which distinguishes three different regulatory strategies: state regulation, self-regulation, and a combination of both known as hybrid regulation. While Hassel and Helmerich identified three regulatory models, only two of the systems fall under their models of labor governance: traditional regime of labor regulation (VEF) and private labor governance regime (LLCS). To be discussed in the Findings and Analysis chapter, the LSEF surfaced as a transitory period towards self-regulation. In this case, compliance systems vividly show the nuances in labor governance regimes as exemplified in practice. Moreover, they are appropriate units of analysis to conduct a comparative descriptive, thematic, decent work indicator, and content analyses due to their comparability (to be discussed further in the Case Selection section). It is important to note that the thesis utilized similar analytical tools/methods and data for the units of analysis not only to ensure consistency but to warrant comparability of results.

Table 3 shows a summary of the methods used in this thesis. It details the objectives of the study broken down into topical elements that serve as main sections of Chapter 5 – Findings and Analysis. Under every identified topical element, the method employed to describe or explain the topic is indicated along with the data sources used.

First, a descriptive analysis of selected ILO documents on labor standards and decent work together with secondary data sources on enforcement and compliance mechanisms was

conducted to describe and construct the global normative framework on workers’ rights and labor standards. It depicts the dynamic relationship of relevant labor governance actors in the said framework across different levels (international, intermediary and domestic) and activities (from international standard setting, state enforcement, to private and civil society movements).

**Table 3. Summary of Methods**

Research Objectives	Topical Elements (sections of Findings and Analysis)	Analytical Tools/Methods	Data Sources
<b>Objective 1:</b> Describe the global normative framework on workers’ rights and labor standards including the dynamic relationship of labor governance actors in the said framework	Normative Framework on Workers’ Rights and Labor Standards	Descriptive analysis	ILO resources on labor standards and decent work + secondary data
<b>Objective 2:</b> Investigate how labor governance regime evolved and probe how enforcement and compliance mechanisms on ILS operate in the Philippines	The Evolution of Labor Governance and the Changing Behavior of Firms	Thematic analysis and analysis of decent work elements and indicators	Philippine labor policies + 1995-2017 Decent Work Statistics of PSA
<b>Objective 3:</b> Examine what enforcement and compliance mechanisms on ILS demand from and offer to firms	Mechanisms of Enforcement and Compliance with ILS: What Do They Demand From and Offer to Firms?	Content analysis	Philippine labor policies
<b>Objective 4:</b> Analyze the behavior of firms vis-à-vis the demands of the enforcement and compliance mechanisms	Summative Assessment of Firms’ Compliance with ILS	Summative assessment/ comparison	Results of sections 2 and 3 of Chapter 5 – Findings and Analysis

Second, a thematic analysis of Philippine labor policies<sup>6</sup> was conducted to reveal not only how labor governance evolved in the Philippines but what prompted the Philippine government to transition from a mandatory to a voluntary labor governance regime. The study specifically used the inductive and latent approaches to thematic analysis. This is done through data

<sup>6</sup> This refers to the PLC (2017 DOLE edition) and Department Orders that institutionalized the LSEF (Department Order No. 57, Series of 2004) and LLCs (Department Order No. 131, Series of 2013).

familiarization followed by coding of relevant provisions of examined labor policies to generate and subsequently define themes that surface from analyzing texts. This is followed by an analysis of decent work elements and indicators based on the 1995-2017 Decent Work Statistics (summary tables) of the PSA to probe how enforcement and compliance mechanisms on ILS operate in the Philippines and to explain how the behavior of firms changed in the transition to a new labor governance regime. 13 decent work indicators under 7 decent work elements were compared across the three governance regimes based on the time the corresponding compliance systems were in force to show which regime performed better and which performed worse.

Third, a content analysis of Philippine labor policies was conducted to examine what the enforcement and compliance mechanisms demand from and offer to firms. This content analysis relied on primary data by manually coding the relevant provisions of the policies and indicating key points that surfaced from the analysis. This exercise did not only reveal what is demanded from and offered to firms, it also revealed how the mechanisms induce compliance with ILS.

Lastly, a summative assessment comparing the two labor governance regimes was conducted to analyze the behavior of firms vis-à-vis the demands of the government's enforcement and compliance mechanisms. It matches the results of second and third sections of Chapter 5 – Findings and Analysis and demonstrates if the demands correspond with the behavior of firms.

## **Case Selection**

The paper focused on a country that has problematic labor laws enforcement: The Philippines. The said country was selected as area of research based on the following criteria: (1) the extent the country has mainstreamed ILS to the national level; (2) prevalence of work-related accidents; and (3) transition from a mandatory to a voluntary labor governance regime.

In terms of the first criterion, it is worthy to note that the Philippines has ratified 38 ILO conventions, 30 of which are in force (ILO, n.d.). These ratifications include all the eight fundamental conventions covered in the 1998 Declaration on the Fundamental Principles and Rights at Work as well as priority conventions on tripartite consultation and employment policy (ILO, n.d.). This demonstrates that the country has a comprehensive national framework on workers' rights and labor standards making it a good case to conduct a study on labor governance specifically on compliance with ILS. Based on this, the problem appears not to lie on ratification of conventions on ILS but on other factors that this thesis investigated.

In terms of second criterion, data shows that the Philippines is struggling to curb the number of work-related accidents. According to a study by the DOLE's Institute for Labor Studies (2015), 44.2% (112,982) out of 255,616 establishments inspected from 2003 to 2013 are found with violations in general labor standards. They also found that the average number of inspected firms in 10 years' time was just a meager 2.5% (23,238) of the total number of establishments (944,897) present in the entirety of the country (Institute for Labor Studies 2015). One of the critical events that shook labor governance in the Philippines is the Kentex fire incident. It put the DOLE and its LLCS in the spotlight. The often dubbed 'developmental' character of the LLCS was questioned despite a higher compliance rate achieved relative to its punitive predecessor – the LSEF. How can a firm that received a certificate of compliance on general labor standards and OSHS from the DOLE be mired with lapses in OSHS that caused the death of 74 makers of rubber slippers and flipflops (Guardian 2015)? This thesis looks at this problem by investigating why despite the existence of ILS ratified by member states of the ILO and even with the sophistication of compliance systems geared to ensure that such standards are maintained and enforced, the horrors of the Kentex tragedy still continue to haunt workers under precarious working conditions. There are several reasons on why compliance

systems fail to protect the rights of workers; one angle looks at the behavior of firms in complying with ILS which this thesis sheds light on.

In terms of third criterion, the Philippines transitioned from a mandatory to a voluntary labor governance regime. The timeframe considered the transition from the VEF to LSEF to LLCS – chartered through the PLC and the signing of Department Order No. 57, Series of 2004 and Department Order No. 131, Series of 2013 formally establishing LSEF and LLCS – as technical divisions between mandatory regime, transitory period, and voluntary regime. These systems are similar in many ways. The systems were all chartered and institutionalized through legislative products that this thesis exploits. Similarly, the systems were all monitored through inspection of firms by labor inspectors/compliance officers. Yet, there are causally salient differences in both cases that this thesis investigated explaining divergence of outcomes.

## **Limitations**

Considering the ongoing COVID-19 pandemic, the thesis relied solely on available data online such as statistical tables and policy documents. The researcher attempted to conduct key informant interviews but to no avail. It is important to consider that actors in the labor policy domain are currently focused in addressing the effects of the pandemic to the labor market. Hence, their priority is on providing safety measures for millions of workers affected by social distancing, quarantine and lockdown measures. The researcher also considered to access datasets on decent work statistics. However, using econometric tools to establish causality like difference-in-differences is not possible since the transition from VEF to LSEF to LLCS were carried out in one go nationwide. The econometric tools could have been utilized if for instance, the implementation of LLCS was piloted in selected areas, and non-selected areas could have served as control group. However, given the difficulty of accessing such data, the thesis instead used the 1995-2017 Decent Work Statistics of the PSA. It is important to note though that this

data is simply a compilation of summary tables. Certainly, there are limitations in using this data such as controlling for other factors that could have contributed on how each regime performed under the selected decent work indicators and the difficulty to pin point exactly and make conclusive statement on firms' behavior under the regimes examined. Nonetheless, the data captured the period of transition in labor governance regime this thesis covers. It instead compared key decent work elements and indicators from 2001-2003 to cover the mandatory regime, 2011-2013 to cover the transitory period, and from 2015-2017 to cover the voluntary regime. Using the data from PSA is more reliable in responding to the research objectives than simply using compliance reports from the BWC and OSHC. The reports only encompass firms that are covered by the respective systems of compliance while the statistical tables from PSA deals with household and establishment surveys that are larger in scope. Further, this thesis focused on labor governance at the national level. While labor governance operates at different levels – global, national and firm – observing them at these levels with the aim of generating generalizable conclusions require big sample of regions, countries or firms. This thesis acknowledges the importance of such nuances. However, given the nature of the research question including time and data limitations, the thesis utilized a single case study. Based on the discussion of methodology and case selection, the case study proved to be worthy of deep academic exploration. Lastly, a single case study inhibits the generalization of findings to other cases. Yet, this thesis can be replicated in other cases to test the given set of hypotheses specifically the firm's compliance hypothesis.

The next chapter presents the findings and analysis of the thesis.

## Chapter 5 – Findings and Analysis

In order to determine the reasons behind the compliance of firms with ILS, the thesis delves deeper on a set of specific research areas divided into the four sections of this chapter as follows: (1) Normative Framework on Workers' Rights and Labor Standards; (2) The Evolution of Labor Governance and the Changing Behavior of Firms; (3) Mechanisms of Enforcement and Compliance with ILS: What Do They Demand From and Offer to Firms?; and (4) Summative Assessment of Firms' Compliance with ILS.

### **Normative Framework on Workers' Rights and Labor Standards**

This section describes and depicts the normative framework on workers' rights and labor standards<sup>7</sup> under different integrated levels (international, intermediary and domestic) and activities (from international standard setting, state enforcement, to private and civil society movements) while explaining the dynamic relationship of relevant labor governance actors in the said framework. Figure 2 shows the relationship between different actors in labor governance.

The ILO, a specialized unit of the UN, was founded to establish international standards to protect and improve the conditions of workers around the world (La Hovary 2015, Berten 2019). It is different from other international organizations because of its unique tripartite structure (La Hovary 2015). Specifically, the International Labour Conference (ILC) and the ILO's Governing Body include representatives from governments of states represented in the UN, as well as non-traditional actors from the private sector and trade/labor unions (Berten

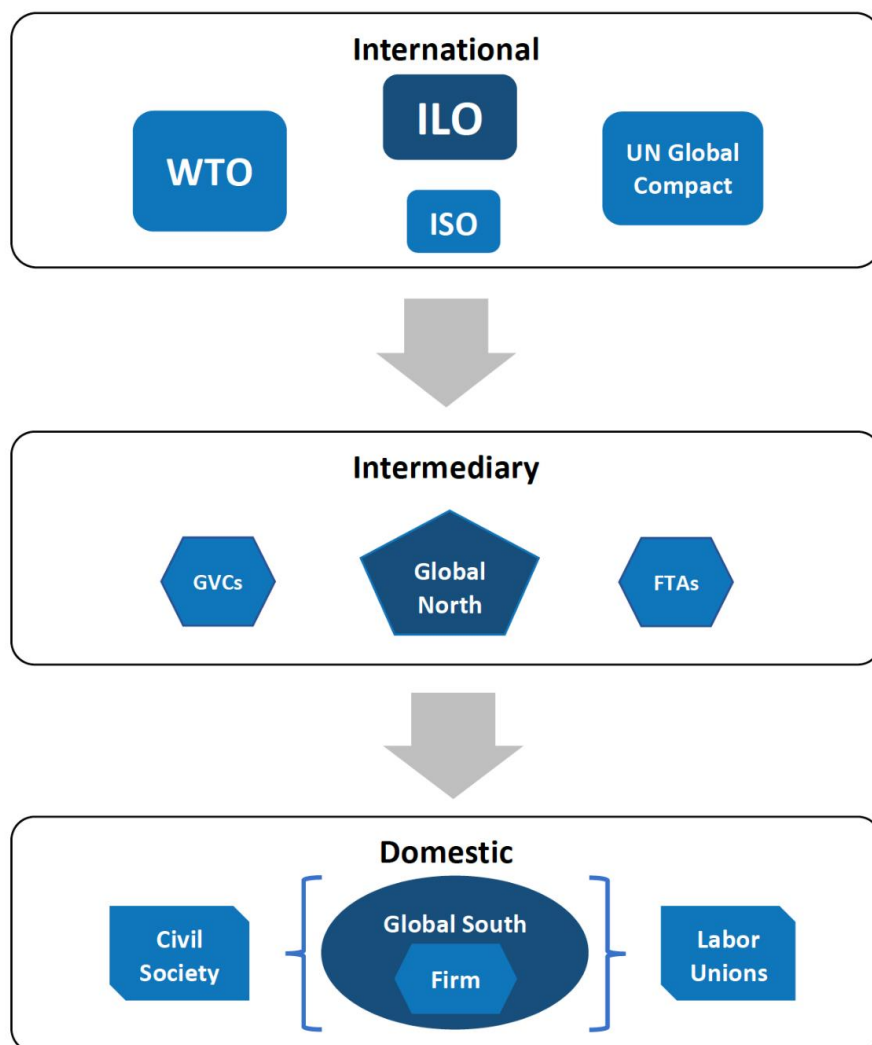
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<sup>7</sup> The normative framework on workers' rights and labor standards include ILO conventions and its Decent Work Agenda, trade agreements, codes of conduct, domestic labor laws, CSR, international framework agreements (IFAs), and Global Reporting Initiative (GRI).



2019). The ILO was a major leading force in defining the ILS agenda (Alston 2005). This is evident in the ILC’s adoption of 189 conventions and 203 recommendations since the ILO’s founding in 1919 (La Hovary 2015). The ILO has constantly maintained its relevance in global labor governance through standards setting as seen in the evolution of ILS – from the ILO Declaration on Fundamental Principles and Rights at Work in 1998, to the ILO Fundamental (also known as Core Labor Standards) and Priority Conventions, up to its current Decent Work Agenda (ILO, n.d.).

**Figure 2. The Normative Framework on Workers' Rights and Labor Standards**



Still at the international level, the WTO, the International Organization for Standardization (ISO), and the UNGC have contributed with the ILO in global labor governance. On one hand, the WTO has made huge strides in redefining itself from its liberal stance on trade given its increasing acceptance in including ILS in its rules and trade agreements (Rittich 2019). On the other hand, the ISO has affirmed the principle of voluntarism and self-governance that allows it to avoid direct reliance on governments through inter-firm standardization (Hurd 2003). While the ISO has not formally entered the territory of ILS for firms, it has broadened its scope in the areas of quality and environmental standards (Hurd 2003). Lastly, the UN has found a way to exact accountability from firms in complying with ILS through the UNGC (Hurd 2003, Rasche, Waddock and McIntosh 2012, Kell 2013, Sethi and Schepers 2013). Created in 2000, the UNGC integrated UN issues into the global corporate responsibility movement by inducing its 10,000 business and non-business participants to advance 10 universal principles that include labor rights and fair treatment of workers. (Rasche, Waddock and McIntosh 2012, Kell 2013, Sethi and Schepers 2013). The UNGC “represents the most promising avenue for institutionalizing labor standards in the global economy” borrowing aspects from the ILO, WTO and ISO (Hurd 2003 p. 99).

At the intermediary level are states in the Global North. Their influence in labor governance not only operates at the international level through representation in the ILO; it also operates through GVCs and free trade areas/unions (Hollweg 2019, Santos 2019). GVCs have offered developing countries new opportunities to integrate to the global economy and had fundamental impact on workers in the Global South (Hollweg 2019). However, as argued by Hollweg (2019), better working conditions for workers within GVCs does not necessarily follow from greater GVC participation. This can be addressed by labor regulations particularly on occupational safety, health and environment standards in GVC sites (Hollweg 2019). Still in GVCs, codes of conduct on labor practices that emerged as a response to consumer

campaigns were applied to firms regardless of where they do their business and if they directly own the operation (Hassel 2008). ILS have also found its way in trade agreements (Alston 2005, Rittich 2019, Santos 2019). While hortatory to some extent (ILO 2019), there have been instances wherein domestic labor reforms served as precondition for a trade agreement to push through such as the case of Mexico in the United States-Mexico-Canada Agreement (Santos 2019).

The most familiar and most understood level where labor governance operates is at the domestic level. This is where states use the government as a machinery to regulate the actions and behavior of its subjects (Levi-Faur 2011). In a traditional sense, it is well-known that states mainstream ILS in their labor policy domain by ratifying selected ILO conventions, legislating new laws, and making necessary changes in existing labor policies. However, the complexity of labor governance has expanded the ways by which states can enforce ILS (Hurd 2003, Hassel 2008, Hassel and Helmerich 2016). Inclusion in GVCs have pushed states to come into terms with investors to generate jobs and boost their economy (Davies and Vadlamannati 2013 as cited in Arias, forthcoming). Parent firms that have codes of conduct operating in different territories through complex GVCs can push local firms to function in a stricter manner compliant with ILS even if the workers' rights and labor standards framework at the state where they operate is below the benchmark they have set (Hollweg 2019). It is important to note though that GVCs can either push states towards a more robust workers' rights and labor standards framework or pull states back to a labor market bereft of such rights and standards (Arias, forthcoming).

Still at the domestic level, other actors have found their way to influence labor governance through hybrid regulatory strategies (Levi-Faur 2011, Marx 2011, Vrieling, Montfort and Bokhorst 2011, Peetz 2019). The civil society and trade unions utilized GRI and IFAs as mechanisms to induce firms' compliance with ILS (Hassel 2008). The GRI pioneered in global

standards for sustainability reporting through its Sustainability Reporting Standards (GRI n.d.) and published its first guidelines in 2002 with the objective of providing a framework for sustainability reporting that required organizations to provide information on the economic and social aspects of their activities (Perez 2011). To date, there are reporting standards on employment, labor/management relations, forced or compulsory labor, and child labor (GRI n.d.). On the other hand, an IFA is an instrument negotiated by global union federations with multinational firms that ensures that the firm respects the same labor standards in all countries it operates (Hassel 2008, ILO, n.d.). While these agreements vary based on the different requirements and characteristics of firms and labor unions involved, they specifically reference ILO core conventions and include all the four fundamental principles and rights at work (ILO, n.d.).

The following section narrates the evolution of labor governance and the changing behavior of firms in the Philippines.

## **The Evolution of Labor Governance and the Changing Behavior of Firms**

This section provides a brief historical account of how the Philippines transitioned from a traditional to a private labor governance regime and explains how the behavior of firms changed in lieu of the transition from one regime to another by presenting key themes that emerged from the thematic analysis, depicting the models of labor governance in the country, and showing a comparison between the three regimes across 7 and 13 decent work elements and indicators, respectively.

Table 4 shows the result of the thematic analysis of the labor policies examined in this section: Articles 128 and 129 of the PLC (2017 DOLE edition) that chartered the VEF; Department Order No. 57, Series of 2004 that institutionalized LSEF (DOLE 2004); and Department Order

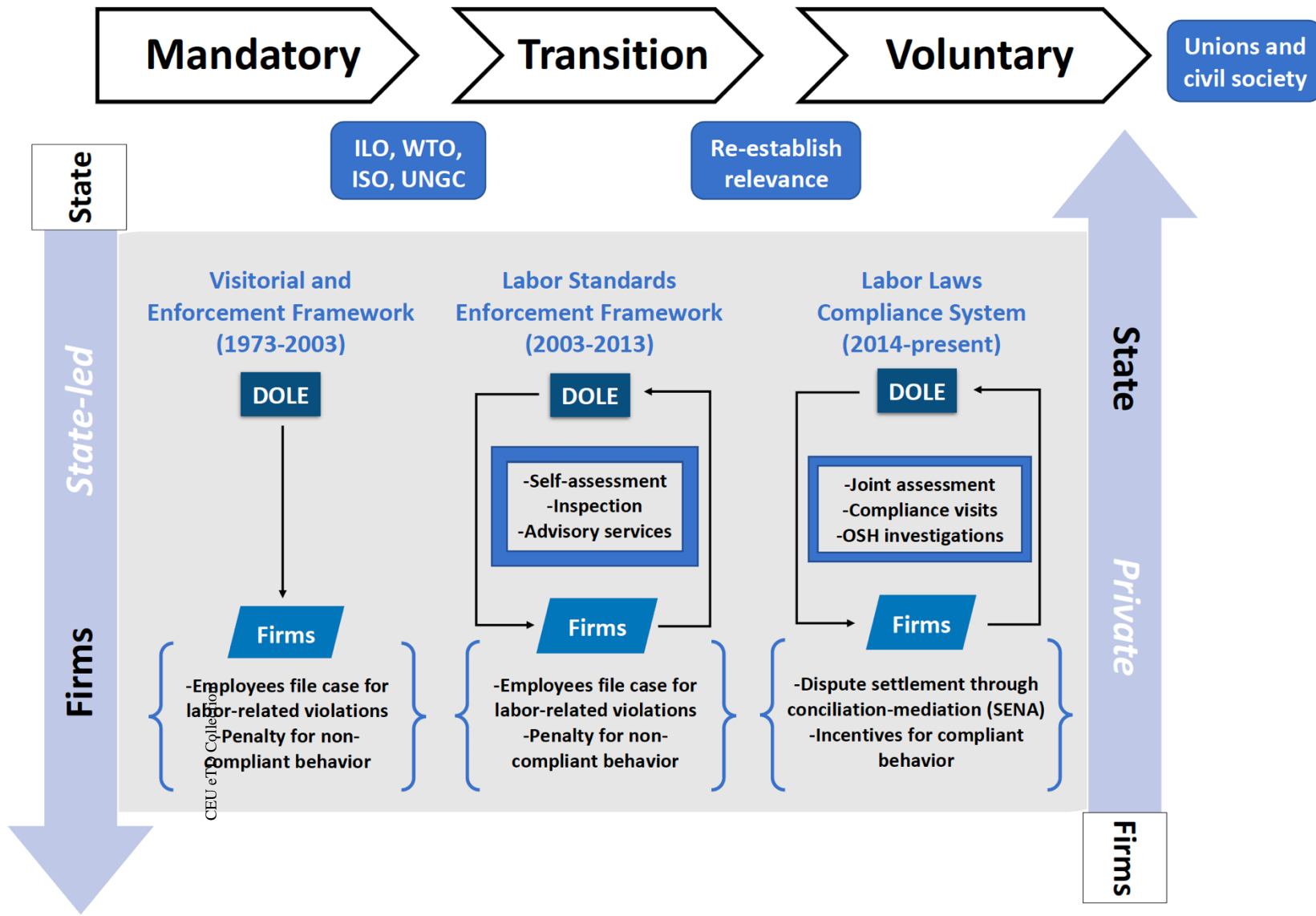
No. 131, Series of 2013 that established the LLCS (DOLE 2013). The table demonstrates the key themes that emerged from the manually coded provisions of the concerned labor policies.

**Table 4. Thematic Analysis of Philippine Labor Policies**

Key policy documents	Themes	
Articles 128 and 129 of the PLC 2017 DOLE edition (VEF)	<ul style="list-style-type: none"> <li>▪ strongly worded</li> <li>▪ state-led</li> <li>▪ mandatory</li> <li>▪ force</li> <li>▪ extensive power</li> </ul>	<ul style="list-style-type: none"> <li>▪ punitive</li> <li>▪ focused on labor</li> <li>▪ due process</li> <li>▪ fair</li> <li>▪ accountability</li> </ul>
Department Order No. 57, Series of 2004 (LSEF)	<ul style="list-style-type: none"> <li>▪ subtle language</li> <li>▪ move towards voluntary labor governance</li> <li>▪ devolved inspection to local government units</li> <li>▪ employer-focused</li> <li>▪ heterogeneity of firms considered (size and capacity)</li> <li>▪ developmental</li> <li>▪ involved non-traditional actors</li> </ul>	<ul style="list-style-type: none"> <li>▪ quality checks and validation</li> <li>▪ accountability</li> <li>▪ increased responsiveness of government implementers and firms</li> <li>▪ orderly and organized fashion</li> <li>▪ no tangible incentive for compliance</li> <li>▪ remnants of state-led regime</li> <li>▪ labor inspectors - inspection</li> </ul>
Department Order No. 131, Series of 2013 (LLCS)	<ul style="list-style-type: none"> <li>▪ subtle language</li> <li>▪ voluntary</li> <li>▪ feedback mechanism</li> <li>▪ developmental</li> <li>▪ all establishments are covered (except for those in the priority list)</li> <li>▪ hard tools (punitive) with semblance of state/mandatory regulation</li> <li>▪ specific definitions</li> <li>▪ reactive (once ready for assessment and a complaint is lodged)</li> <li>▪ remediation and correction</li> </ul>	<ul style="list-style-type: none"> <li>▪ tripartite/collaborative</li> <li>▪ proactive</li> <li>▪ quality checks and validation</li> <li>▪ expeditious</li> <li>▪ non-litigious settlement of disputes</li> <li>▪ given notice before the conduct of assessment</li> <li>▪ engaging/established communications (with employers)</li> <li>▪ incentives for compliance</li> <li>▪ labor laws compliance officers – joint assessment</li> </ul>

Based on the, above thematic analysis, a schematic diagram depicting the evolution of labor governance in the Philippines was constructed (see Figure 3). It shows how the Philippines transitioned from a mandatory to a voluntary labor governance regime. The regime that emerged after the enactment of the PLC in 1973, coined in this study as VEF, followed the state-led regulatory strategy present in traditional regime of labor regulation. This was evident with the use of strong words typical of a punitive regime. Compliance with ILS was mandatory.

Figure 3. The Evolution of Labor Governance in the Philippines



The mode of enforcement is made in a top-down fashion. The Secretary of Labor and Employment (SOLE) has extensive power allowing him to have access to employment records and inspect work premises. Non-compliance with ILS are penalized and may result to the DOLE pursuing criminal charges against the violating firm. Employees are also encouraged to file a case for labor-related violations. This was the predominant regulatory strategy in the Philippines not until the DOLE attempted to transition to a private labor governance regime. The transition was prompted by the growing pressure from international standard-setting institutions encouraging governments to expand the protections afforded to workers and firms to consider voluntary regulatory strategies that improves business operations while considering the rights of their workers.

The regime that followed the VEF embodied self-regulatory tools that aimed to build a culture of voluntary compliance with ILS. It can be noticed that the language used in the Department Order that institutionalized the LSEF was more subtle than the PLC. It considered the heterogeneity of firms. A specific enforcement strategy was designed depending on the size and capacity of firms. Further, it moved away from the top-down modality used in the VEF evident in the inclusion of non-traditional actors in the conduct of inspection. However, remnants of the state-led regime are noticeable in the continued promotion of filing a case for violations, dispute settlement through litigation, and penalizing non-compliant behavior. Also, there is no evident tangible incentive for compliance. The continued use of punitive tools and the absence of incentives could have contributed to the failed attempt of the DOLE to transition to a voluntary labor governance regime. The transition to LLCS was largely based on the window of opportunity that the ruling administration saw and exploited to re-establish their relevance and credibility in labor governance in the Philippines.

The LLCS can be considered as a private labor governance regime that corrected the deficiencies of the LSEF and geared towards transitioning to a transnational hybrid regulatory

regime. The LLCS made massive improvements in the failed attempt of the DOLE through the LSEF to utilize self-regulatory strategy. The developmental persona of the LLCS was evident not only with the introduction of remediation and corrective strategies; the DOLE even replaced the term ‘inspection’ with ‘assessment’ and renamed their labor inspectors as labor laws compliance officers. It is largely voluntary and collaborative. As compared to the LSEF, the LLCS did not make any distinction on the size and capacity of firms; all firms are covered except for those included in their ‘priority list’. Instead, the enforcement and compliance strategies were designed to capture firms that voluntarily ask for Joint Assessment, complaints against firms through Compliance Visit, and existence of imminent danger through OSHS Investigation. Firms were given advance notice prior to the conduct of assessment/visit. The LLCS also boasts expeditious and non-litigious settlement of disputes through the Single Entry Approach. The DOLE also introduced through the LLCS the grant of Certificate of Compliance (COC) to firms who proved to be compliant with general labor standards and OSHS. Incentives for compliance are clearly pronounced. There are perks accompanied with possession of COC; companies are granted access job fairs and high-performing firms are incentivized through awards (BWC, n.d.). Yet, the LLCS also utilized hard tools to induce compliance using Work Stoppage Orders and pursuing criminal action for firms that continuously refuse access to their records and premises. The LLCS was even used as a prerequisite in obtaining, upgrading or renewing licenses (POEA 2015). After the Kentex incident that questioned the credibility and effectiveness of voluntary regime of labor governance, the DOLE faced backlash from civil society and labor unions. A new regime may soon emerge that mimics what Hassel and Helmerich (2016) describe as a synthesis between the traditional and private labor governance regimes and an interaction between public and private norms and mechanisms.

Table 5 shows the results of the decent work elements and indicators analysis. It demonstrates how the regimes behaved through time specifically at the points of transition.



**Table 5. Analysis of Decent Work Elements and Indicators – Behavior of Firms at Points of Transition**

Decent Work Elements and Indicators		VEF			LSEF			LLCS		
		2001	2002	2003	2011	2012	2013	2015	2016	2017
<b>Adequate earnings and productive work</b>	low-paid employees, % of employed	14.1	14.3	14.9	14.3	14.4	14.5	11.9	13.8	13.8
<b>Decent hours</b>	underemployment rate (%)	17.2	17.0	17.0	19.3	20.0	19.3	18.5	18.3	16.1
<b>Work that should be abolished</b>	working children, not currently attending school, % of working children	-	-	-	46.4	49.9	50.0	45.4	44.9	39.1
<b>Stability and security of work</b>	employees in precarious work, % of employed – Household Survey Data	14.1	13.6	14.5	15.0	17.4	18.8	18.2	18.9	17.8
	employees in precarious work, % of employed – Establishment Survey Data	-	-	19.2	-	22.8	-	-	18.5	-
	number of casual workers in thousands	-	-	158	-	202	-	-	159	-
<b>Equal opportunity and treatment</b>	gender wage gap (%)	-3.9	-3.5	-1.7	-3.2	-4.6	-5.6	-5.4	-5.5	-5.3
<b>Safe work environment</b>	total cases of occupational injuries, fatal	-	302	170	161	-	270	156	-	-
	total cases of occupational injuries, non-fatal in thousands	-	21	23	20	-	20	18	-	-
	total cases of occupational diseases in thousands	-	-	55	85	-	172	126	-	-
<b>Social Dialogue, Workers' and Employers' Representation</b>	union density rate (%)	-	-	20.2	-	9.9	-	-	6.5	-
	Collective bargaining coverage rate (%)	-	-	19.7	-	10.3	-	-	7.2	-
	Tripartism – number of Voluntary Codes of Good Practices adopted	-	-	-	33	45	35	21	8	0

Based on the analysis of decent work elements and indicators, the regime that performed the worse are the LSEF and LLCS. The VEF on one hand performed worse in the following two elements: adequate earnings and productive work; and safe work environment. On the other hand, the LSEF performed worse in the following four elements: decent hours; work that should be abolished; stability and security of work; and safe work environment. While the LLCS performed worse in the following four elements: stability and security of work; equal opportunity and treatment; safe work environment; and social dialogue, workers' and employers' representation. Though the LLCS performed well in other elements and indicators in comparison with the other regimes, the performance remains unsatisfactory. It is notable that the LLCS performed poorly in social dialogue indicators such as union density rate (6.5%), collective bargaining coverage rate (7.2%), and tripartism (21 and 8 Voluntary Codes of Good Practices adopted). Further, employees in precarious work are at their highest in 2016. Hence, it can be deduced that the behavior of firms in the transitory period and voluntary regime appears to have worsened. This happened despite the continuous improvement of labor governance regimes and sophistication of the LLCS in attempting to utilize a combination of state and self-regulatory strategies.

This section is followed by a discussion explaining the demands and offers of the enforcement and compliance mechanisms from firms.

## **Mechanisms of Enforcement and Compliance with International Labor Standards: What Do They Demand From and Offer to Firms?**

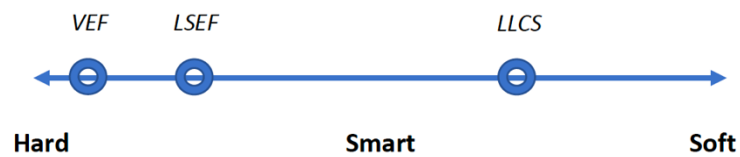
This section explains what the Philippine labor policies that chartered and institutionalized the three regulatory regimes demand from and offer to firms to comply with ILS. It further explains how the mechanisms induce compliance.

**Table 6. Content Analysis of Philippine Labor Policies – The Demands From and Offers to Firms**

Key policy documents	Demands	Offer
Articles 128 and 129 of the PLC 2017 DOLE edition (VEF)	<ul style="list-style-type: none"> <li>▪ allow access to employment records and to question employees</li> <li>▪ post bond as a precondition for an appeal</li> <li>▪ comply with law and IRR</li> <li>▪ address imminent danger</li> <li>▪ pay employees their salaries or wages</li> <li>▪ do not obstruct, impede, delay or render ineffective the orders of the SOLE</li> <li>▪ keep and maintain employment records</li> </ul>	<ul style="list-style-type: none"> <li>▪ contest findings</li> <li>▪ appeal an order</li> <li>▪ opportunity to be heard</li> <li>▪ abusive inspectors/government employees dismissed from service</li> </ul>
Department Order No. 57, Series of 2004 (LSEF)	<ul style="list-style-type: none"> <li>▪ collaborate with government</li> <li>▪ comply with labor standards</li> <li>▪ encouraged to participate in self-assessment</li> <li>▪ allow inspection and conduct of spot and authenticity checks</li> <li>▪ understand legal obligations</li> <li>▪ conduct self-assessment</li> <li>▪ allow to be monitored on commitments to comply with labor standards</li> </ul>	<ul style="list-style-type: none"> <li>▪ build culture of voluntary compliance with labor standards</li> <li>▪ advisory service</li> <li>▪ increased productivity</li> <li>▪ conduct of assessment and visit based on Manual on Labor Standards, checklist, and a Manual on the Conduct of Assistance/Advisory Services</li> <li>▪ updated Labor Inspection Manual and Manual on Technical Safety Inspection</li> </ul>
Department Order No. 131, Series of 2013 (LLCS)	<ul style="list-style-type: none"> <li>▪ collaborate with employees and government</li> <li>▪ allow conduct of Joint Assessment, Compliance Visit, OSHS Investigation with employee participation</li> <li>▪ allow review of employment records, interview of employees, and inspection of work premises</li> <li>▪ address dangerous occurrences, hazardous environment</li> <li>▪ continuous refusal to access to records and premises dealt with appropriate criminal action</li> <li>▪ Work Stoppage Order</li> <li>▪ correct OSHS deficiencies</li> <li>▪ settle monetary award or face criminal liability</li> </ul>	<ul style="list-style-type: none"> <li>▪ inculcate culture of voluntary compliance with labor laws</li> <li>▪ improved employer-employee relations</li> <li>▪ increased productivity</li> <li>▪ incentives for compliant establishments</li> <li>▪ developmental approach</li> <li>▪ fair, expeditious, and non-litigious settlement of disputes</li> <li>▪ impact of LLCS to the economy assessed</li> <li>▪ Certificate of Compliance valid for 2 years</li> <li>▪ access to results of Joint Assessment, Compliance Visit, OSHS Investigation</li> <li>▪ remediation period to correct OSHS deficiencies</li> <li>▪ Compromise Agreement</li> <li>▪ advisory service and trainings</li> </ul>

The content analysis as seen in Table 6 above reveals that the governance regimes induced compliance with ILS through different demands and offers and a combination of hard and soft tools. The regimes can be located in a spectrum of regulatory tools seen in Figure 4.

**Figure 4. Spectrum of Regulatory Tools (location of regimes)**



The VEF mostly relied on hard tools. The DOLE through the VEF demand from firms to comply with labor laws, address imminent danger, allow access and inspection of employment records, and to allow inspectors to question employees. Aside from these, a bond is posted as a precondition for an appeal. As stated in the PLC, firms are forewarned to not obstruct, impede, delay or render ineffective the orders of the SOLE. However, the VEF offers no incentive to induce compliance. What it offers instead is the opportunity for the firms to contest the findings of the inspection and to appeal an order.

The succeeding regime of LSEF shows that the DOLE started to introduce soft tools to induce compliance with ILS. Its primary aim is to build a culture of voluntary compliance with labor standards through self-assessment. The demands are less punitive. It encourages the participation of firms in self-assessment. It even has an advocacy campaign geared towards increasing firms' understanding of their legal obligations and offered advisory services designed to increase productivity of firms. Nonetheless, the LSEF still relied heavily on hard tools showing signs that it has not fully or successfully transitioned into a private labor governance regime. This is evident with the use of litigation to settle disputes and penalties to condemn non-compliant behavior.

Of the three regimes analyzed in this study, the LLCS was the most comprehensive and progressive in combining hard and soft tools as mechanisms to induce compliance of firms with ILS. Like the LSEF, the LLCS aim to inculcate a culture of voluntary compliance with labor laws using a developmental approach. They demand firms to collaborate with employees and the government. Firms are also demanded to allow conduct of Joint Assessment,

Compliance Visit, OSHA Investigation with employee participation. Yet, they also use hard tools by dealing with continuous refusal to access employment records and work premises by firms through criminal action and issue a Work Stoppage Order in the existence of imminent danger or dangerous occurrence. This is coupled with soft tools using incentives in the form of advisory service and trainings, expeditious and non-litigious settlement of disputes, and issuance of COC as the ultimate seal of compliance with ILS. These strategies, according to the DOLE, can result to increased productivity and improved employer-employee relations. The LLCS also offer remediation as an opportunity for firms to correct their deficiencies based on the assessment conducted by the assigned LLCO.

The following section demonstrates how the demands of mechanisms correspond with the behavior of firms.

## Summative Assessment of Firms' Compliance with International Labor Standards

This section summarizes the findings and analysis of this thesis as discussed in the earlier sections of this chapter (see Table 7). It primarily demonstrates if the demands of the enforcement and compliance mechanisms correspond with the behavior of firms through a summative assessment and comparison.

**Table 7. Summative Assessment of Firms' Compliance with ILS**

	<b>VEF</b>	<b>LSEF</b>	<b>LLCS</b>
Rationale behind transition	<ul style="list-style-type: none"> <li>▪ pressure from ILO, WTO, ISO, UNGC</li> </ul>	<ul style="list-style-type: none"> <li>▪ re-establish relevance and credibility</li> </ul>	<ul style="list-style-type: none"> <li>▪ pressure from civil society and unions</li> </ul>
Regulatory strategy	<ul style="list-style-type: none"> <li>▪ state regulation</li> </ul>	<ul style="list-style-type: none"> <li>▪ state regulation (prematurely private)</li> </ul>	<ul style="list-style-type: none"> <li>▪ self-regulation (prematurely hybrid)</li> </ul>
Behavior of firms	<ul style="list-style-type: none"> <li>▪ performed worse in 2 elements and 3 indicators</li> </ul>	<ul style="list-style-type: none"> <li>▪ performed worse in 4 elements and 5 indicators</li> </ul>	<ul style="list-style-type: none"> <li>▪ performed worse in 4 elements and 6 indicators</li> </ul>
Regulatory tool/mechanism (demands and offers)	<ul style="list-style-type: none"> <li>▪ hard tools</li> </ul>	<ul style="list-style-type: none"> <li>▪ mainly used hard tools (introduced soft tools)</li> </ul>	<ul style="list-style-type: none"> <li>▪ smart tools (hard and soft)</li> </ul>

Different factors induced the transition from one labor governance regime to another. In the traditional regime, the pressure to move to voluntary regime mounted from international standard-setting institutions. The transition did not materialize as planned. The LSEF failed to embody the ideal strategy of self-regulation. In an effort to re-establish its relevance and credibility in labor governance in the Philippines, the DOLE introduced the LLCS. This private labor governance regime covered what LSEF unsuccessfully endeavored to achieve. Currently, there is a mounting pressure for the DOLE to transition to transnational labor governance regime brought primarily by civil society and labor unions. Time will tell when the DOLE sees another window of opportunity and act to solidify its relevance in labor governance.

Each regime used a specific regulatory strategy to induce firms' compliance with ILS. The VEF used state regulation through mandatory enforcement of labor laws in a top-down fashion. This regulatory strategy was sustained in the LSEF given the regime's failed attempt to use self-regulation. The DOLE successfully utilized self-regulation through the LLCS. The system showed some signs of utilizing hybrid regulatory strategy with the inclusion of non-traditional actors in labor regulation specifically in the enforcement and compliance process.

The LLCS performed the worst in terms of their performance against selected decent work elements and indicators. Notably, the LLCS performed poorly in social dialogue indicators such as union density rate (6.5%), collective bargaining coverage rate (7.2%), and tripartism (21 and 8 Voluntary Codes of Good Practices adopted in 2015 and 2016, respectively). Additionally, employees in precarious work are at their highest in 2016. It appears that firms are more compliant with ILS in a mandatory than a voluntary regime. This is contrary to what was desired by the DOLE when they decided to shift from one regime to another.

The mechanisms that induced compliance with ILS in the VEF were mainly hard tools. Despite its punitive and coercive nature, the VEF stood out with a positive performance in the analysis

of decent work elements and indicators. In contrast, the LLCS utilized a combination of hard and soft tools. Yet, it performed poorly across four decent work elements and six indicators. Clearly, the behavior of firms do not correspond with the demands and intended outcome of the enforcement and compliance mechanisms.

To answer the research question on why firms comply (or do not comply) with ILS, the determinants of firms compliance based on the previous discussion of findings and analysis is specified under the labor governance models considered in this thesis. In the traditional regime, firms comply because compliance is mandatory. The penalty is huge. Compared to other regimes, the reputation of firms in the traditional regime is at a critical juncture since disputes related to labor laws violations and non-compliance with ILS are immediately settled through litigation. Further, to go through the litigation procedure is both time-consuming and sometimes financially heavy. The benefits outweigh the costs of non-compliance. Despite the lack of incentives, the mandatory and punitive character of this regime proved to be its key strength in inducing firms' compliance with ILS.

On the other hand, firms comply less in the private regime because compliance is voluntary. There are ways to evade compliance with ILS. Further, the penalty is not as huge as it was in the traditional regime. There are ways for remediation and the means to settle disputes is non-litigious. Hence, even if a violation of labor laws was committed, firms have a lot of space to commit the same violation over and over again. In the point of view of firms, they will benefit more from non-compliance. Finally, the incentives may not be significant enough to warrant compliance with ILS. Despite the developmental character of the LLCS, the DOLE will need to rethink how it employs a combination of hard and soft tools – herein referred as smart tools – to induce compliance (Arias, forthcoming). It needs to acknowledge and consider the key

strength of the mandatory regime and reconsider the current incentives used in the voluntary regime.

This does not mean though that the Philippines should revert back to a traditional regime of labor regulation. It must explore the emerging transnational regime and determine the ways it will operationalize such regime to address the problematic enforcement of ILS in the country. As provided in the discussion on *Performance Assessment of Labor Governance Regimes* in Chapter 3 – Theory and Hypotheses, the transnational regime appears to be the most appropriate governance model to address the said problem. However, to prove this, further research must be conducted on the transnational regime to expand the understanding of labor governance in the Philippines.

The last chapter closes the thesis with conclusions.



## Chapter 6 – Conclusions

This thesis has investigated why firms comply (or do not comply) with ILS. Using a combination of descriptive, thematic, content and decent work elements and indicators analyses, the study analyzed in a comparative manner the evolution of, rationale behind, regulatory strategy used, and behavior of firms across the three labor governance regimes in the Philippines – VEF, LSEF and LLCS – from 1974 to 2017 by looking at statistical tables and key labor policies that chartered and institutionalized each regime. Notwithstanding the effect of the normative infrastructure on workers' rights and labor standards to labor laws compliance, the findings suggest that firms comply with ILS when the regime demands compliance through punitive and coercive measures (hard tools). Firms comply more in a regime that utilizes state regulation and mandatory mechanisms. The paper validates and confirms the hypotheses made in the following four conclusions.

First, there is a robust set of standards, rules and regulations that safeguard and promote workers' rights and labor standards. This so-called normative framework operates at different levels among distinct actors and diverse activities in labor governance. The normative framework on workers' rights and labor standards demands different levels of commitment from firms addressed at so many levels – global, national and firm – across a myriad of activities – from international standard setting, state enforcement, to private and civil society movements – that tightens the network of rules and reduces the possibility of circumventing labor laws. However, as seen in the case of the Philippines and consistent with the first hypothesis, this normative framework has not yet fully pushed enforcement of ILS to a regime that goes beyond self and voluntary regulatory strategies.

Second, as hypothesized, the Philippine government transitioned to a voluntary labor governance regime because of the increasing pressure from transnational standard-setting

institutions. It is to note that this trigger happened in the transition from VEF to LSEF. However, the plan to move to a voluntary regime did not materialize as planned. This served as a window of opportunity for the ruling administration at the time of transition to LLCS to re-establish the DOLE's credibility and relevance in labor governance. However, other factors emerged throughout the course of the study specifically the transition from LSEF to LLCS and the impending transition from LLCS to the proposed transnational regime. Further, the findings of the study suggest that contrary to theory (Hurd 2003, Hassel 2008), firms comply more with the traditional regime of labor regulation than the private labor governance regime. This is confirmed in the analysis of decent work elements and indicators in Chapter 5.

Third, enforcement and compliance mechanisms in the traditional regime of labor regulation utilized hard and punitive tools to induce firms' compliance with ILS. The DOLE endeavored to transition to a private labor governance regime through the LSEF. However, it failed to capture what a voluntary regulatory strategy entails and demands. A strictly self-regulatory strategy in labor governance lacks the hard power of traditional regime of labor regulation while returning to a regime that dominantly uses state regulatory strategy is devoid of the flexibility offered by the private regime (Arias, forthcoming). This was corrected through the DOLE's transition to LLCS. This is the regime that is most consistent to self-regulation or private labor governance. However, it failed to capture and consider other operative mechanisms that could have strengthened enforcement of ILS. As argued by Hassel and Helmerich (2016) and based on the governance performance assessment, the transnational labor governance regime appears to be the most appropriate model to address the challenging enforcement of ILS including the effective compliance of firms to such standards. Hence, it is recommended that the Philippine government transition to a transnational regime that utilizes hybrid regulatory strategy and consider how the other enforcement and compliance

mechanisms in play such as private codes of conduct, CSR, ISO certification, trade agreements, GRI, and IFAs contribute to the enforcement of ILS.

Lastly, based on the assessment of firms' compliance with ILS, there is divergence between the behavior of firms and the demands and intended outcome of the Philippine government's enforcement and compliance mechanisms. The government did not comprehensively consider the behavior of firms in their decision to transition from one regime to another. This was evident across different sections of Chapter 5 – Findings and Analysis; most notable in the discussion of rationale and factors behind transition in labor governance regime. This contributes to the problematic enforcement of labor laws in the country.

This thesis contributes to a better conceptual, methodological, and empirical understanding of labor regulation particularly in the area of compliance. Conceptually, it utilized the framework of Biermann, Pattberg, van Asselt, and Zelli (2009) in the labor policy domain to assess the governance performance of labor governance regimes. This allows scholars of labor regulation to understand the performance of labor governance regimes across different aspects of speed, ambition, participation and equity. Each regime has its own pros and cons that can be considered by policy- and decision-makers specifically in designing regulatory strategies. In terms of compliance, answering the question on why firms comply (and do not comply) with ILS and if the ruling administration considered the behavior of firms in complying with ILS is crucial. In the best of the researcher's knowledge, the study lays the groundwork in the study of labor laws compliance in the Philippines by looking at the perspective of the regulated party – the firm.

Methodologically, the application of qualitative method and a combination of different analytical tools is ingenious. The triangulation of the results of the descriptive, thematic, content and decent work elements and indicators analyses strongly validates the findings of

this study. Further, the use of historical comparison to understand why firms comply with ILS in the Philippines is a breakthrough.

Empirically, the study is astute and unconventional because it provides a current analysis of determinants to firms' compliance with ILS. Little is known about why firms comply with ILS. Much of the literature on regulation and compliance deals with how governance regimes are distinguished based on the dominant regulatory strategy in place – from being traditional, private or hybrid – which are further narrowed on different mechanisms at work such as those that go beyond the conventional idea of state regulation (i.e., trade agreements, codes of conduct, etc.) (Potowski and Prakash 2011, van Waarden 2011, Vrielink, Montfort and Bokhorst 2011, Töller 2011). Contrary to the prevalent literature in labor governance, the study's findings suggest that firms comply more in a traditional regime of labor regulation. This brings to light why despite the sophistication and complexity of private labor governance regime, enforcement of labor laws and compliance with ILS remains to be problematic in the case of the Philippines.

Further research should look at the use of other methods. While the findings of the study suggest that firms comply more in the traditional regime of labor regulation, it is important to note that it is difficult to conclusively state that the transnational regime is the most appropriate regime to address problematic enforcement of labor standards. Observational methods can be used to establish a causal link on the effect or impact of labor governance regime (mandatory, voluntary or hybrid) to the behavior of firms. This can be conducted with the use of data on work-related accidents and labor cases, if available. Also, a transition to another regime may provide the opportunity to use econometric tools such as difference-in-differences to establish the effect of transnational regime (treatment) to the behavior of firms versus the effect of voluntary regime (control/counterfactual). Researchers can also look at the aspect of corruption in analyzing why labor laws compliance systems fail to protect the rights of workers. Lastly,

considering the rapid evolution of the labor market due to technological change and the consequent increase of non-standards forms of employment, labor laws compliance will continue to be a worthwhile field of further research in the coming years.

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