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POLICY BRIEFS ON IDENTIFIED LEGISLATIVE PRIORITIES

By Brian Barbour
in his capacity as Researcher
SURGE Capacity Project on Statelessness

SURGE Capacity Project

This initiative aims to support the Philippine Government in improving its quantitative and qualitative data and enhancing its policy and legislative framework. The outputs from this Project—the Desk Review Report and Policy Briefs—were developed through a series of consultations with government and civil society actors and a review of relevant literature.

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Data Collection: April to December 2020

Report Layout and Final Editing: May to September 2021

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COVER PHOTOGRAPH:

A child from a bunkhouse in Kidapawan City, North Cotabato in Southern Philippines where some of the Persons of Indonesian Descent (PID) work for milling companies in the area. PID is one of the State-identified populations at risk of statelessness in the Philippines.

Acknowledgements

The outputs from this Project resulted from the collaboration with the Philippine Government and civil society organizations. Our sincerest gratitude goes to:

Philippine Government

1. Department of Justice – Refugees and Stateless Persons Protection Unit
2. Bureau of Immigration
3. Department of Foreign Affairs (especially the following Offices: United Nations and Other International Organizations, Office of Treaties and Legal Affairs, Office of the Undersecretary for Migrant Workers Affairs, Office of Asia and Pacific Affairs)
4. Department of Labor and Employment (especially the International Labor Affairs Bureau)
5. Department of Social Welfare and Development (especially the International Social Services Office)
6. Council for the Welfare of Children
7. Current and previous Social Welfare Attachés of Dubai, United Arab Emirates, Kuwait, Riyadh, Saudi Arabia, and Malaysia
8. Philippine Overseas Employment Administration
9. Overseas Workers Welfare Administration
10. City Civil Registrar's Office of Zamboanga
11. Philippine Statistics Authority (including the Offices in Bangsamoro Autonomous Region in Muslim Mindanao, Basilan, Sulu, and Tawi-Tawi)
12. Commission on Human Rights

Civil Society and Academe

1. Philippine Nikkei-jin Legal Support Center (Secretary General Norihiro Inomata, Atty. Hiroyuki Kawai, Atty. Sim Zuniega, Ms. Ines Yamanouchi-Mallari)
2. Ms. Mariquit Melgar (former staff of the-then Representative Bello)
3. Center for Migrant Advocacy (Director Ellene Sana)
4. Dr. Filemon Romero

We are also grateful to Mr. Brian Barbour for his arduous work and analysis as researcher and writer for the SURGE Capacity Project. We also appreciate the efforts of UNHCR staff members and government and non-government stakeholders who provided support and information that enhanced both outputs. Finally, these would not have been possible without the support of the International Rescue Committee whose partnership has led to successful deployments in UNHCR operations in the Philippines and other parts of the world.

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Acronyms and Abbreviations

1951 Refugee Convention	1951 Convention Relating to the Status of Refugees
1967 Protocol	1967 Protocol Relating to the Status of Refugees
1954 Statelessness Convention	1954 Convention Relating to the Status of Stateless Persons
1961 Statelessness Convention	1961 Convention on the Reduction of Statelessness
ACSG	Asylum Capacity Support Group
AEP	Alien Employment Permit
ASEAN	Association of Southeast Asian Nations
BI	Bureau of Immigration
CA	Commonwealth Act
CAMP	COVID-19 Adjustment Measures Program
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CoC	Certificate of Concurrence
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
CWC	Council for the Welfare of Children
DFA	Department of Foreign Affairs
DILG	Department of the Interior and Local Government
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DOT	Department of Tourism
DTI	Department of Trade and Industry
ExCom	Executive Committee of the High Commissioner's Programme
GCM	Global Compact for Safe, Orderly, and Regular Migration
GCR	Global Compact on Refugees
HLS	High-Level Segment on Statelessness
HB	House Bill
HRC	Human Rights Committee
IASC	Inter-Agency Steering Committee on the Protection of Refugees, Asylum Seekers, and Stateless Persons in the Philippines
ICCPR	International Covenant on Civil and Political Rights
JMC	Joint Memorandum Circular
NAP	National Action Plan to End Statelessness by 2024
NPAC	National Commission on Indigenous Peoples
OFs	Overseas Filipinos
OSG	Office of the Solicitor General
PAO	Public Attorney's Office
PCW	Philippine Commission on Women
PDP	Philippine Development Plan 2017-2022
PSA	Philippine Statistics Authority

RA	Republic Act
RSD	Refugee Status Determination
RSPPB	Refugees and Stateless Persons Protection Board
RSPPO	Refugees and Stateless Persons Protection Office
RSPPU	Refugees and Stateless Persons Protection Unit
RSSD	Refugee and Stateless Status Determination
SB	Senate Bill
SDGs	Sustainable Development Goals
TESDA	Technical Education and Skills Development Authority
UDHR	Universal Declaration of Human Rights

Introduction

These policy briefs are provided in relation to priority legislative endeavors for the 18th Congress, in support of the Government of the Philippines' pledge to "[e]nhance the policy, legal, and operational framework for stateless persons...," and its National Action Plan (NAP) to End Statelessness by 2024. These policy briefs can be read in conjunction with the Desk Review[1] prepared separately in relation to populations at risk of statelessness in the Philippines and in a migratory setting.

[1] *The Desk Review supports Action Point 7 of the National Action Plan (NAP) to End Statelessness by 2024, seeking to continue the study of statelessness, in order to improve qualitative and quantitative data on populations at risk of statelessness in the Philippines and among its nationals, and in support of the government's efforts around statelessness initiated with pledges in 2011. See: https://www.refworld.org/pdfid/6103f4174.pdf.*

Policy Brief 1

Accession to the 1961 Convention

In 2011, at the *Ministerial Intergovernmental Event on Refugees and Stateless Persons*, the Government of the Philippines pledged to "Initiate the process of accession to the 1961 Convention on the Reduction of Statelessness ["1961 Statelessness Convention"]."[2] As an initial step and a key achievement for the Philippines, the government has adopted the National Action Plan (NAP) to End Statelessness by 2024.[3] This runs parallel to the Global Action Plan to End Statelessness and the #IBelong campaign.[4] In October 2019, at the High-Level Segment on Statelessness (HLS), the Government of the Philippines made a series of pledges. In its statement, the Philippines emphasized that its pledges were made on the bases of "[a] deeply rooted culture of hospitality and compassion for others…, the fundamental Filipino value of *pakikipagkapwa* (or feeling one with others), adherence to human rights instruments, national policies and commitments to achieve the Sustainable Development Goals (SDGs), and as a priority of its National Development Plan embedded within the country's long-term vision '*Ambisyon Natin* 2040.'"[5]

At the *High-Level Segment on Statelessness*, the Government of the Philippines affirmed its pledge to, "[e]nhance the policy, legal, and operational framework for stateless persons to ensure their full access to the rights as guaranteed by the 1954 Convention Relating to the Status of Stateless Persons ["1954 Statelessness Convention"] including their facilitated naturalization and as may be provided by national laws;" and to "[c]ontinue the process of accession to the 1961 Convention on the Reduction of Statelessness."[6] These policy briefs are being developed in support of the government's pledge in this regard. The Government of the Philippines further pledged to: "improve access of vulnerable and marginalized populations to documentation through birth and civil registration;" "[c]ontinue the study of

[2] *Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011) available at: https://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf.*

[3] *Government of the Republic of the Philippines, National Action Plan to End Statelessness by 2024, available at: https://www.unhcr.org/ibelong/the-philippines-joint-strategy/ (Key components of the National Action Plan include resolving existing cases of statelessness, ensuring that no child is born stateless, and improving quantitative and qualitative data on stateless populations.)*

[4] *UNHCR, Global Campaign to End Statelessness 2014-2024, See: https://www.unhcr.org/en-au/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html.*

[5] *Statement of the Republic of the Philippines at the High Level Segment on Statelessness, 7 October 2019, available at: https://www.unhcr.org/5d9cbcb27.pdf.*

[6] *Results of the High-Level Segment on Statelessness, October 2019, available at: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/.*

statelessness, with a thrust to improve qualitative and quantitative data on populations at risk of statelessness in the Philippines and among its nationals…," continue leadership on these issues in Southeast Asia, and cooperate with UNHCR.[7]

The Philippines has shown tremendous leadership globally in the protection of refugees and stateless persons.[8] It was the first country in Southeast Asia to become a State Party to the 1954 Statelessness Convention,[9] and is implementing a State-led joint Refugee and Stateless Status Determination (RSSD) procedure, pursuant to Department of Justice (DOJ) Circular 58 series of 2012.[10] It is encouraging to see that the Philippines has further pledged to "continue leadership in Southeast Asia in the development of a human rights framework and provide technical support to other States in dealing with issues relating to stateless persons."[11] The Philippines has demonstrated a capacity to follow through on its pledges by establishing a robust operational framework to implement its commitments under the 1954 Statelessness Convention, the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and its 1967 Protocol.

The following initiatives relating to the policy, legal, and operational framework of the Philippines already undertaken or currently underway to further demonstrate the commitments made by the Government to address statelessness:

- Ratification of the 1954 Statelessness Convention and implementation of the statelessness status determination procedures under DOJ Circular 58 series of 2012;
- Adoption of the NAP;
- Establishment of seven inter-agency Technical Working Groups pursuant to the Action Points of the NAP;
- Execution of an Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines;

[7] *Results of the High-Level Segment on Statelessness, October 2019, available at: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/.*

[8] *The Philippines was one of the first in Asia to sign the 1951 Convention Relating to the Status of Refugees, UN Treaty Series, vol. 189, p. 137 (Philippines accession, 22 July 1981); and the 1967 Protocol Relating to the Status of Refugees, UN Treaty Series, vol. 606, p. 267 (Philippines accession, 22 July 1981). It was also the first in Asia to establish an Emergency Transit Mechanism, Government of the Philippines, IOM, UNHCR Memorandum of Agreement on Providing Emergency Transit Facilities, 28 Aug 2009. (See: https://reliefweb.int/report/philippines/philippines-government-iom-unhcr-sign-refugee-transit-agreement).*

[9] *Convention Relating to the Status of Stateless Persons, UN Treaty Series , vol. 360, p.117 (The Philippines acceded to the Convention on 22 Sep 2011) https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en.*

[10] *Department Circular No. 58 - Establishing the Refugee and Stateless Status Determination Procedure [Philippines], 18 October 2012, available at: https://www.refworld.org/docid/5086932e2.html.*

[11] *Results of the High-Level Segment on Statelessness, October 2019, available at: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/.*

- Creation of an Inter-Agency Steering Committee (IASC) with 16 members, four observers, and four clusters implementing an inter-agency and whole-of-government approach pursuant to the Inter-Agency Agreement on the Protection of Refugees, Asylum Seekers, and Stateless Persons in the Philippines;
- Accomplishments, including policies issued through the efforts of IASC members, are diverse. Several are listed in the Philippines' Country Report to the High-Level Segment on Statelessness,[12] including:
  - » Establishment of the Refugee and Stateless Status Determination (RSSD) procedure through the issuance of DOJ Circular 58 series of 2012;[13]
  - » Supreme Court rulings[14] recognizing a presumption of natural-born Philippine citizenship for foundlings with House Bill 7679, the Foundling Welfare Act,[15] recently passing its third and final reading in the House of Representatives;
  - » Issuance of DOJ Circular 26, series of 2018[16] and Bureau of Immigration (BI) Operations Order JHM-2019-004, which provide for Special Non-Immigrant Visas to Registered Indonesian Nationals;
  - » Issuance of Philippine Statistics Authority (PSA) Memorandum Circular (MC) 2017-12[17] for reporting births abroad of Filipino parents without any foreign documents;
  - » Exemption from securing an Alien Employment Permit (AEP) for refugees and stateless persons pursuant to Department of Labor and Employment (DOLE) Order 186-17;[18]
  - » Issuance of Technical Education and Skills Development Authority (TESDA) Circular 24 series of 2018, which aims to assist asylum seekers, refugees, and stateless persons in the identification of the needed skills training and provision of access to technical education and vocational training;

[12] *Country Report of the Philippines for the High-Level Segment on Statelessness.*

[13] *Department Circular No. 58 - Establishing the Refugee and Stateless Status Determination Procedure [Philippines], 18 October 2012, available at: https://www.refworld.org/docid/5086932e2.html.*

[14] *Another landmark case, Republic v. Karbasi (G.R. No. 210412, July 29, 2015), relaxes legal requirements to acquire Philippine citizenship through judicial naturalization. This may also be relevant within the context of statelessness. Furthermore, the Supreme Court, through Memorandum Order No. 87-2020, is pursuing the development of the Rules on Facilitated Judicial Naturalization in line with its rule-making power under the 1987 Constitution.*

[15] *House Bill 7679, Foundling Welfare Act, available at: http://www.congress.gov.ph/legisdocs/third_18/HBT7679.pdf.*

[16] *Department Circular No. 26 - Guidelines on the Issuance of Special Non-Immigrant Visas under Section 47(A)(2) of Commonwealth Act 63, as amended, to Registered Indonesian Nationals (RINs), 27 June 2018, available at: https://www.doj.gov.ph/files/2018/DC/DC026-2018JUN%20Guidelines%20on%20Special%20Non-Immigrant%20Visas%20dtd%2027%20Jun%202018.pdf.*

[17] *Memorandum Circular No. 2017 - Requirements for the Preparation of Report of Birth (ROB) of a Child Born Abroad of Filipino Parent/s without any Foreign Documents, 24 July 2017, available at: http://rsso01.psa.gov.ph/sites/default/files/MC%202017%20-%2012%20Reqmnts%20for%20the%20Preparation%20of%20Report%20of%20Birth%20of%20a%20Child%20Born%20Abroad%20of%20Filipino%20Parents%20without%20any%20Foreign%20Documents%28FILEminimizer%29.pdf.*

[18] *Department Order 186-17 - Revised Rules for the Issuance of Employment Permits to Foreign Nationals, 16 November 2017, available at: https://www.dole.gov.ph/news/department-order-186-17-revised-rules-for-the-issuance-of-employment-permits-to-foreign-nationals/.*

- Issuance of Department of Trade and Industry (DTI) Administrative Order 18-07, series of 2018[19] on the Revised Rules and Regulations Implementing Act 3883, as amended, liberalizing the Requirements for Registering Businesses;
- Issuance of Department of the Interior and Local Government (DILG) Circular No. 2020-153,[20] which aims to ensure that refugees, asylum seekers, and stateless persons have uniform access to basic services and assistance at the local level, even in times of public emergencies;
- Issuance of DTI Order 20-54 series of 2020,[21] which includes refugees and stateless persons as beneficiaries of the DTI's livelihood seeding programme as part of the agency's commitment in supporting their economic integration during and post pandemic;
- Issuance of the DOLE Order No. 218-20 series of 2020,[22] which includes refugees, asylum seekers, and stateless persons as beneficiaries of the COVID-19 Adjustment Measures Program (CAMP) under the Republic Act (RA) 11494, otherwise known as the Bayanihan to Recover as One Act for individuals employed in the formal sector;
- Issuance of the DOLE and the Department of Tourism (DOT) Joint Memorandum Circular (JMC) 2020-001,[23] which includes refugees, asylum seekers, and stateless persons as beneficiaries for financial assistance for displaced workers in the tourism sector;
- Advocacy towards the inclusion of refugees, asylum seekers, stateless applicants, stateless persons, and populations at risk of statelessness in the implementation of RA 11055,[24] otherwise known as the Philippine Identification System Act;

[19] *Department Administrative Order 18-07 - Revised Rules and Regulations Implementing Act No. 3883 as amended, otherwise known as an Act to Regulate the Use in Business Transactions of Names Other than True Names, available at: https://www.refworld.org/pdfid/5d779a774.pdf.*

[20] *Department Circular 2020-153 - Assistance to Refugees, Asylum Seekers, and Stateless Persons in the Philippines Recognized by the Department of Justice - Refugees and Stateless Persons Protection Unit, 10 November 2020, available at: https://www.dilg.gov.ph/PDF_File/issuances/memo_circulars/dilg-memocircular-20201110_359d5fa7b1.pdf.*

[21] *Department Order 20-54 - Revised Guidelines for the Implementation of Livelihood Seeding Program (LSP) - Negosyo Serbisyo sa Barangay (NSB).*

[22] *Department Order 218 - Guidelines on the Implementation of COVID-19 Adjustment Measures Program (CAMP) under the Bayanihan to Recover as One Act, 28 October 2021, available at: https://www.dole.gov.ph/php_assets/uploads/2020/10/DO-218-20-Guidelines-on-the-Implementation-of-COVID-19-Adjustment-Measures-Program-CAMP-under-the-Bayanihan-To-Recover-As-One-Act.pdf.*

[23] *Joint Memorandum Circular No. 2020-001 - Implementing Guidelines on Providing Financial Assistance and Cash-for-Work Program for Displaced Workers in Tourism Sector, 5 November 2020, available at: https://www.dole.gov.ph/news/joint-memorandum-circular-no-2020-001-implementing-guidelines-on-providing-financial-assistance-and-cash-for-work-program-for-displaced-workers-in-tourism-sector/.*

[24] *Republic Act 11055, Philippine Identification System Act, available at: https://www.officialgazette.gov.ph/downloads/2018/08aug/20180806-RA-11055-RRD.pdf.*

  - » Renewal of the Memorandum of Understanding between the Public Attorney's Office (PAO) and UNHCR which outlines a framework of cooperation between the two agencies for access to free legal assistance, counselling, and representation of refugees, stateless persons, and asylum and stateless applicants; and
  - » Development of the proposed draft Facilitated Administrative Naturalization Bill for Refugees and Stateless Persons and the Rules on Facilitated Judicial Naturalization pursuant to Supreme Court Memorandum Order No. 87-2020.
- Inclusion of Accession to the 1961 Statelessness Convention as part of the Council for the Welfare of Children's (CWC) Legislative Agenda for the 18th Congress; and
- Filing, drafting, or consultations around a number of bills such as a Facilitated Administrative Naturalization and the Comprehensive Refugees and Stateless Persons Protection Bills.

The 1961 Statelessness Convention must be interpreted and implemented "in light of additional obligations that Contracting States have under other treaties to which they are party."[25] The Philippines has a demonstrated commitment to human rights. Section 11, Article II of the 1987 Philippine Constitution, provides that "[t]he State values the dignity of every human person and guarantees full respect for human rights."[26] The Philippines is also a State Party to eight of the nine core international human rights instruments,[27] alongside the 1951 Refugee Convention and its 1967 Protocol and the 1954 Statelessness Convention. Many of these human rights treaties include provisions on the right to a nationality, beginning with the Universal Declaration of Human Rights (UDHR).[28]

[25] *UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: https://www.refworld.org/docid/5ec5640c4.html.*

[26] *Moreover, Article XIII mandates Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good." Constitution of the Republic of the Philippines [Philippines], 2 February 1987, available at: https://www.refworld.org/docid/3ae6b5470.html.*

[27] *See Annex 1: International Legal Framework. (Ratified or acceded to: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) on 18 June 1986; International Covenant on Civil and Political Rights (ICCPR) on 23 Oct 1986; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 5 Aug 1981; International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 15 Sep 1967; International Covenant on Economic, Social and Cultural Rights (ICESCR) on 7 Jun 1974; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) on 5 Jul 1995; Convention on the Rights of the Child (CRC) on 21 Aug 1990; Convention on the Rights of Persons with Disabilities (CRPD) on 15 Apr 2008.).*

[28] *Please find a detailed matrix setting out the relevant international legal framework highlighting those that are specific to statelessness in Annex 1: International Legal Framework.*

Article 15 of the UDHR declares, that "everyone has the right to a nationality,"[29] yet international law does not establish to which nationality a person is entitled. States establish criteria for the conferral or withdrawal of nationality through the promulgation of national laws. It is for this reason that persons may be excluded and fall between gaps of existing domestic nationality laws.

Nonetheless, stateless persons have minimum rights guaranteed under the 1954 Statelessness Convention, 1961 Statelessness Convention, and other international human rights instruments, with some exceptions such as the right to vote and stand for public office which are considered political rights. Human rights do not depend on citizenship, but are attached to every person, without any exception, by virtue of their humanity alone.[30] In order to preserve the concepts of sovereignty and States as the primary subjects of international law, and to ensure a person can access their rights with State protection, it is undesirable, for both States and individuals alike, to have people who are "not considered as a national by any State under operation of its law."[31]

The Benefits of Accession

States have developed a system of common rules that "elaborates clear, detailed, and concrete safeguards to ensure a fair and appropriate response to the threat of statelessness."[32] These standards are codified in the 1961 Statelessness Convention, in recognition of the need for international cooperation and harmonized practice to address gaps between national laws that would otherwise result in persons falling outside of the State system, with no nationality.

The 1961 Statelessness Convention does not react to statelessness. It prevents statelessness from occurring, at little cost and with little labor involved. Safeguards are generally applied automatically, just as provisions of nationality laws are generally applied automatically. There is no need to establish any additional, expensive procedure or institution.

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[29] *UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html.*

[30] *UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html (Preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"; Article 1: "All human beings are born free and equal in dignity and rights"; and Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").*

[31] *UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, Article 1, available at: https://www.refworld.org/docid/3ae6b3840.html.*

[32] *UNHCR, Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness, available at: https://www.unhcr.org/en-au/about-us/background/4ca5937d9/preventing-reducing-statelessness-1961-convention-reduction-statelessness.html.*

Efficient resolution of statelessness disputes and inclusion of people (who would otherwise be stateless but remain in or among society), reduces administrative and social welfare costs, and promotes self-sufficiency, enfranchisement, and the full participation of individuals in society. It prevents criminality, conflict, and insecurity among persons or communities who may be pushed into destitution and desperation, including subjecting themselves to exploitation and abuse (see consequences below).

Children and women are specifically highlighted in human rights law through the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which the Philippines is a State party.[33] This is important with regard to the laws and practices in the Philippines, and contributes to ensuring a child's right to a legal identity, but it is also a safeguard for Overseas Filipinos (OFs) and their children who may be at risk of statelessness in a migratory setting.

By utilizing the tools outlined in the 1961 Statelessness Convention, the Philippines' capacity is strengthened to achieve:

- Goal 16.9 of the Sustainable Development Goals (SDGs) to provide legal identity for all;
- The goals and objectives of the NAP which includes "preventing new cases [of statelessness] from emerging;"
- The strategies of the updated Philippine Development Plan (PDP) of 2017-2022, which include enhancing the legal framework among other strategies;
- Goal 1.5 of the National Plan of Action for Children (to ensure legal identity for all children and increase the birth registration rate) is strengthened; and
- State commitments in the Global Compact for Safe, Orderly, and Regular Migration (GCM) in Objective 4, Paragraph 20(e), to "[s]trengthen measures to reduce statelessness, including by registering migrants' births, ensuring that women and men can equally confer their nationality on their children, and providing nationality to children born in another State's territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation."

[33] *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified by the Philippines on 5 Aug 1981; Convention on the Rights of the Child (CRC) ratified by the Philippines on 21 Aug 1990. (The CRC in Article 7, provides that a child "shall be registered immediately after birth and shall have…the right to acquire a nationality… [and] States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." In CEDAW, Article 9, "States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband…[and] States Parties shall grant women equal rights with men with respect to the nationality of their children.").*

"[I]f all States actively applied the provisions of the 1961 [Statelessness] Convention, there would be a decrease in the number of cases arising in relation to the 1954 [Statelessness] Convention."[34] If the Philippines actively applies the provisions of the 1961 Statelessness Convention, it could eliminate statelessness within its jurisdiction and among all OFs and their children who may be at risk of statelessness around the world.

The Consequences of Statelessness

The impact of statelessness on stateless persons, those that care for them, the communities in which they live, and the State that hosts them should not be underestimated. Statelessness has consequences for everyone:

- Stateless persons themselves may struggle to access documents which can have ramifications on being able to marry, travel, access education, health care, or livelihood opportunities. They may have difficulty opening a bank account or securing a cell phone or may be subject to indefinite or repeated detention or homelessness and destitution.
- The family of a stateless person may struggle to get married which can affect the birth registration of their children and meet their needs. This may further lead to intergenerational statelessness.
- For the community and for the State, statelessness has costs. It can impair social and economic development, undermine social cohesion and lead to tensions that result in national security risks, violence and conflict, criminality, trafficking, or forced displacement.

In sum, statelessness prevents people, communities, and the State from fulfilling their full potential. Filipinos are affected by the laws of other countries when they migrate, travel, marry, adopt, and otherwise interact and live their lives in this increasingly globalized and interconnected world. The Philippines' act of acceding to and implementing the 1961 Statelessness Convention would strengthen the protection the State makes available to its constituents, including populations at risk of statelessness in migratory settings.

[34] *19 C Batchelor, 'Stateless Persons: Some Gaps in International Protection' (1995) 7 IJRL 232, 235.*

Initiating the process of accession to the 1961 Convention

The Philippines has pledged to accede to the 1961 Statelessness Convention.[35] In the Philippines, accession (or ratification) is a two-pronged consecutive process:

1. Ratification by the President; and,
2. Concurrence to the President's ratification by at least two-thirds of the Senate.[36]

The Philippine treaty-making process engages all relevant government agencies in a process of consensus building. In the legislative part of the process, civil society organizations (CSOs) are also consulted by Congress in fulfillment of the Government's whole-of-society approach to addressing statelessness issues.[37]

The relevant government agencies, in coordination with the Department of Foreign Affairs (DFA), review the international agreement and determine whether the same is aligned with constitutional and national laws and is consistent with established policies. Once the agencies find that the agreement conforms with domestic legislation, they submit their respective Certificate of Concurrence (CoC) and other supporting documents to the DFA. The DFA thereafter prepares the Instrument of Accession (or Ratification, as the case may be) for transmittal to the Office of the President for approval.

Once the President has signed the instrument of accession (or ratification), the documents are then forwarded to the Senate for their concurrence. The Senate conducts public hearings on the agreement. After appropriate hearings, the Senate will vote on the measure, and a two-thirds vote of the Senate is needed for concurrence. With the Senate's approval, the CoC is sent back to the DFA for the appropriate deposit, registration, or notification necessary for the entry into force of the agreement. Relevant agencies are also informed of the Senate concurrence, deposit and registration of the agreement to ensure that all arrangements are made in preparation for implementation of the agreement upon its entry into force.[38]

[35] *UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: https://www.refworld.org/docid/3ae6b39620.html.*

[36] *Section 21, Article VII of the 1987 Constitution of the Republic of the Philippines: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."*

[37] *See: Political Mapping and Analysis on the Ratification of the 1961 Convention on the Reduction of Statelessness and Other Related Draft Bills on Statelessness and Refugees.*

[38] *Executive Order No. 459, "Providing for the Guidelines in the Negotiation of International Agreements and its Ratification" (25 November 1997).*

The DOJ has submitted its favorable recommendation, together with the Certificate of Concurrence (COC) to the DFA, strongly endorsing "the Philippines' timely accession and ratification of the 1961 [Statelessness] Convention."[39]

Consistency of the National Legal Framework with the 1961 Statelessness Convention

Preventing Statelessness at Birth and Among Children

Safeguard for those who would otherwise be stateless

Article 1(1) of the 1961 Statelessness Convention requires State Parties to grant its nationality to a person born in its territory who would otherwise be stateless. Article 1(1) permits states to ensure compliance with this provision either by operation of law (*jus soli* citizenship); or upon application in a manner prescribed by national law. The 1987 Constitution, does not currently grant citizenship on the basis of *jus soli*, but the Constitution recognizes as citizens those who are naturalized in accordance with law

Under existing laws, RA 9139 provides an administrative path towards citizenship for those born in the Philippines who satisfy certain qualifications. However, there is nothing in RA 9139 that relates to the granting of citizenship to those who would otherwise be stateless. In addition, the qualifications include a requirement of residence since birth (at least 18 years old as the application cannot be made by minors), which would exceed the maximum of five years immediately preceding application that is permitted by the 1961 Statelessness Convention. Other qualifications may also need to be assessed in light of the situation, rights, and vulnerabilities of stateless persons. Another path to citizenship is provided through Judicial Naturalization under Commonwealth Act (CA) 473, but this law also does not have a safeguard for those who would otherwise be stateless, and it also has a residency requirement of 10 years, among other criteria. Neither option is in line with Article 32 of the 1954 Statelessness Convention, under which "[t]he Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to *expedite* naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings (*italics supplied*)."[40]

[39] *Letter of the Department of Justice addressed to the Department of Foreign Affairs favorably recommending the accession to the 1961 Convention, 28 July 2020.*

[40] *UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, Article 34, available at: https://www.refworld.org/docid/3ae6b3840.html.*

A draft Facilitated Administrative Naturalization Bill, if filed and passed, would fill the gap as the residence requirement is limited to three years from the date of recognition as a stateless person. While the applicant must be 18 years old to apply, there is an exception for unaccompanied minors, and minor children of an applicant could receive derivative citizenship. This is consistent with the Article 7 of the CRC, which ensures that a child has the "right to acquire a nationality" and requires State parties to ensure implementation of these rights in accordance with national law, "in particular where the child would otherwise be stateless." Parallel to this, the ongoing development of the proposed draft Rules pursuant to Supreme Court Memorandum Order No. 87-2020 (Creation of the Special Committee on Facilitated Naturalization for Refugees and Stateless Individuals) would expedite the procedural aspects of the judicial naturalization proceedings for recognized stateless persons.

The DOJ, in a letter addressed to the DFA dated 28 July 2020, recommending accession to the 1961 Statelessness Convention, proposes that "a new comprehensive law be enacted governing the application of stateless persons for Philippine citizenship including their adoption."

Foundlings

With regard to foundlings, Article 2 of the 1961 Statelessness Convention states that "[a] foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." This requirement is consistent with the current case law in the Philippines, as interpreted by the Supreme Court in the landmark decisions of *Poe-Llamanzares v. Commission on Election and David v. Senate Electoral Tribunal*.[41]

Further, Article 8 of RA 386, otherwise known as the Civil Code of the Philippines, provides that: "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[42] The DOJ, in its letter dated 28 July 2020 addressed to the DFA favorably recommending the accession to the 1961 Statelessness Convention, notes that, "[i]t is necessary, however, that an appropriate procedural mechanism in granting

[41] *Mary Grace Natividad S. Poe-Llamanzares v. COMELEC, G.R. Nos. 221697 & 221698-700, March 8, 2016. (The Court based its decision on deliberations of the framers of the 1934 Constitutional Convention that specifically discussed foundlings, and the generally accepted principle of international law 'to presume foundlings as having been born of nationals of the country in which the foundling is found'); and Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016 wherein the court found that "the Constitution sustains a presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother and are thus natural-born, unless there is substantial proof otherwise..., any such countervailing proof must show that both—not just one—of a foundling's biological parents are not Filipino citizens."*

[42] *Republic Act 386, Civil Code of the Philippines, available at: https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/.*

Philippine citizenship to such foundlings should also be in place."[43] In the 18th Congress, there are filed bills that uphold the non-discriminatory access to services towards the fulfillment of rights of foundlings. This includes the right to nationality. It operationalizes the 2016 Supreme Court rulings on the presumed natural-born citizenship of foundlings. For example, HB 7679,[44] known as the "Foundling Welfare Act," has been approved on third reading as of 5 October 2020 by the House of Representatives. Senate Bills (SBs) 56 and 2112,[45] known as the "Foundling Recognition Act" and "Foundling Recognition and Protection Act" respectively, have also been filed and are pending at the Committee level in the Senate. Passage of a foundling bill would be consistent with the 1961 Statelessness Convention.

Loss and Deprivation of Citizenship[46]

Under the national legal framework of the Philippines, CA 63 sets out the ways in which Philippine citizenship may be lost or reacquired. Section 1 provides a number of scenarios under which Filipino nationality is lost.

Loss of citizenship under Section 1(1), "naturalization in a foreign country", is conditional on the possession or acquisition of another nationality. However, grounds under Sections 1(2)-(6) do not provide adequate safeguards to prevent statelessness as generally required by the 1961 Statelessness Convention. There is a risk that the person will be rendered stateless by their loss of Philippine citizenship.

[43] *DOJ also notes that in a specific case where an adopted foundling wanted to confirm their Philippine citizenship, they were able to explore the possibility of undergoing recognition procedures before the Bureau of Immigration (BI). It may be possible to explore such possibilities in other cases as well, whether adopted foundlings or those who reach the age of majority without adoption. Although the Supreme Court precedent, and these procedures respond to those who are at risk of statelessness, until legislation passes codifying the judicial precedent the "at risk of statelessness" status cannot be entirely overcome. In addition to the law, the situation for foundlings in practice must also be considered, noting that "foundling certificates" are not the same as "birth certificates". Foundling certificates are a different color, and do not include a space for nationality, and as such, in practice, they are not always recognized or accorded the same weight and legitimacy as a birth certificate.*

[44] *The bill is available at: https://www.congress.gov.ph/legisdocs/third_18/HBT7679.pdf.*

[45] *An initial hearing on these measures was conducted last 25 March 2021. As of 25 May 2021, Senate Bill 2233 has substituted Senate Bills 56 and 2112 and is pending second reading. The bill is available at: http://legacy.senate.gov.ph/lisdata/3505731898!.pdf.*

[46] *This paper follows the terminology of the Philippines' legislation, which uses "loss" as a general term whether in reference to "loss" by operation of law, or withdrawal by State initiation. Note, however, the distinction used in other jurisdictions varies and needs to be assessed and understood as a matter of that State's law. The international distinctions in terminology are clarified as follows: UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: https://www.refworld.org/docid/5ec5640c4.html ("The 1961 Convention generally uses the expression "loss of nationality" in Articles 5-7 to describe withdrawal of nationality that occurs automatically by operation of law ("ex lege"). The term "deprivation" is used in the 1961 Convention in Articles 8 and 9 to describe situations where the withdrawal is initiated by the authorities of the State. These Guidelines will generally use the terms "loss" and "deprivation" as they are used in the 1961 Convention, and the term "withdrawal of nationality" will be used to encompass both loss and deprivation of nationality.").*

CA 63, which was enacted in 1936, has been subsequently amended by the following:

- Article IV of the 1987 Constitution;
- RA 8171, enacted in 1995, which provides for the reacquisition of citizenship among Filipino women who have lost their Philippine citizenship by marriage to aliens, and natural-born Filipinos who have lost their Philippine citizenship, including their minor children, on account of political or economic necessity;[47] and,
- RA 9225, enacted in 2003, which provides for the reacquisition or retention of Philippine citizenship among natural-born citizens who have lost their citizenship due to naturalization in another country.

There are also various court judgments that have interpreted the provisions of the above laws that must be taken into account. Consequences may be different for natural-born as opposed to naturalized citizens, among other considerations. Due to the risk of confusion or misinterpretation between these various laws, and their interpretation by the courts, care must be taken to correctly determine whether citizenship is lost, retained, or reacquired along with when the loss took place versus when the retention or reacquisition is deemed to be effective.[48] Greater clarity may be needed to avoid risks of statelessness.

Loss of citizenship due to naturalization in another country

Article 1(1) of CA 63 entails the loss of citizenship for those who are naturalized in another country. This provision has been supplemented by RA 9225, known as the "Citizenship Retention and Reacquisition Act of 2003," which declares that all natural-born citizens of the Philippines who become citizens of another country "shall be deemed not to have lost their Philippine citizenship under the conditions of this Act."[49] Under this law, citizens who have lost their Philippine citizenship through naturalization in a foreign country prior to the

[47] *As interpreted in Tabasa v. Court of Appeals (G.R. No. 125793, August 29, 2006), the legislative intent of RA 8171 is "to limit the application of the law only to political or economic migrants, aside from the Filipino women who lost their citizenship by marriage to aliens" given the emigration trends at the time the law was enacted. Consideration is being provided to these two (2) classes of persons as they left the Philippines "because of political persecution or because of pressing economic reasons". Thus, they should be accorded opportunities to reacquire Philippine citizenship due to the challenges they faced "because they are treated no different from any other class of alien". This would include "situation[s] where a former Filipino subsequently had children while he [or she] was a naturalized citizen of a foreign country. The repatriation of the former Filipino will allow him [or her] to recover his natural-born citizenship and automatically vest Philippine citizenship on his children of jus sanguinis or blood relationship." Children of these Filipinos, however, "must be of minor age at the time the petition for repatriation is filed by the parent."*

[48] *See for example, Vivenne K. Tan vs. Vincent 'Bingbong' Crisologo (GR No. 193993, 8 Nov 2017) wherein the Metropolitan Trial Court, the Regional Trial Court, and the Court of Appeals each overturned each other's interpretations due to confusion about retention, reacquisition, and retroactivity.*

[49] *Republic Act 9225, Citizenship Retention and Re-acquisition Act of 2003, available at: https://www.lawphil.net/statutes/repacts/ra2003/ra_9225_2003.html.*

effectivity of RA 9225 may reacquire it.[50] Reacquisition is valid from the date the oath is taken and is not retroactive.[51] Those who become a citizen in another country following the effectivity of the Act may nevertheless retain their Philippine citizenship and remain dual citizens (in such cases the citizen shall be considered as not to have lost their Philippine citizenship). In both cases, they reacquire and retain citizenship by taking an oath of allegiance to the Republic of the Philippines.[52]

Only natural-born citizens can retain and re-acquire citizenship and sustain dual nationality under RA 9225,[53] and therefore, those who are naturalized citizens cannot retain or reacquire nationality under this law and cannot sustain dual nationality. Naturalized citizens would lose their nationality and could only go through the naturalization process again to reacquire it.[54]

Loss of citizenship for women due to marriage

Section 1(7) of CA 63 entails the loss of citizenship for women who marry a foreigner, "if, by virtue of the law in force in her husband's country, she acquires his nationality."[55] This provision is not explicitly in conflict with the 1961 Statelessness Convention as there will be no loss unless she acquires his nationality.[56] However, the provision is gender discriminatory, which runs contrary to other violating other laws and policies of the Philippines that provide for equal rights of men and women to acquire, change, or retain their nationality.

[50] *Vivenne K. Tan v. Vincent 'Bingbong' Crisologo, GR No. 193993, November 8, 2017.*

[51] *Ibid.*

[52] *DOJ confirms that the analysis reflects the ruling in Tan v. Crisologo on the effects of naturalization of a natural-born Philippine citizen in a foreign country prior and after the effectivity of RA 9225.*

[53] *Republic Act 9225, Citizenship Retention and Re-acquisition Act of 2003, Section 3, available at: https://www.lawphil.net/statutes/repacts/ra2003/ra_9225_2003.html.*

[54] *DOJ notes that those who expressly renounce their Philippine citizenship because of naturalization in a foreign country can only re-acquire their Philippine citizenship by naturalization.*

[55] *In practice, this provision appears to have been entirely superfluous at the time because any person (male or female) already lost their nationality by acquisition of another nationality under Section 1(1), by renunciation under Section 1(2), or by taking an oath of allegiance to another country in Section 1(3).*

[56] *Pursuant to the ruling in In re Petition of Gloria Baldello for Naturalization as a Philippine Citizen (Commonwealth of the Philippines v. Baldello, G.R. No. L-45375, April 12, 1939), "a married woman follows the nationality of her husband presupposes a nationality in the husband. Where no such nationality exists, the rule does not apply." This is "to prevent such condition of statelessness in a Filipino woman married to an alien, a policy that is perfectly applicable in the present case".*

Section 1(7) of CA 63 has been amended by Section 4, Article IV of the 1987 Constitution as it provides that "citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it." Renunciation must be expressed in order for one's Philippine citizenship to be lost (see the section on renunciation). As with other laws, the provisions of the 1987 Constitution are not retroactive, thus the situation for women who had already lost their citizenship before enactment of the 1987 Constitution has not been resolved.[57]

In addition, this has been further supplemented by RA 8171 providing that Filipino women who have lost their Philippine citizenship by marriage to aliens… may reacquire Philippine citizenship through repatriation under Section 4 of CA 63, with some qualifications.[58] Repatriation and reacquisition under RA 8171 is available to natural-born and naturalized citizens of the Philippines alike. Repatriation is a matter of recovery of the original citizenship, so if what was lost was naturalized citizenship, that is what will be reacquired. There are qualifications under Section 1 of RA 8171 that may exclude some women depending on interpretation of the law, and which must be taken into account.[59]

Finally, RA 9225 may also provide the opportunity for retention or reacquisition of Philippine citizenship among natural-born citizens. Deprivation of citizenship on the basis of one's sex and marriage is in conflict with various legal obligations prohibiting gender discrimination in nationality laws, even if reacquisition of citizenship is possible under RA 8171 (see below). The overlap between various laws and judicial decisions may still result in confusion, and

[57] *DOJ confirmed that the ruling in Commonwealth of the Philippines v. Baldello provides protection to Filipino women married to a foreigner from losing their Philippine citizenship, if the national law of their foreigner husbands do not allow them to acquire their nationality. It provides a safeguard from statelessness. Thus, Filipino women who were married to foreigners during that time (effectivity of the 1935 Constitution) retains their being Filipinos, if they did not acquire their husbands' nationality or citizenship.*

[58] *Disqualifications under Section 1 of RA 8171 are as follows: (1) opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing organized government; (2) defending or teaching the necessity or propriety of violence, personal assault, or association for the predominance of their ideas; (3) convicted of crimes involving moral turpitude; (4) suffering from mental alienation or incurable contagious diseases. For more information, see also footnote #47 on the ruling and interpretation of RA 8171 in Tabasa v. Court of Appeals (G.R. No. 125793, August 29, 2006). On the final qualification, it should be further noted that contemporary laws provide for and uphold the non-discriminatory principle for persons with mental health concerns (RA 11036 or the Mental Health Act) or persons living with HIV and AIDS (RA 11166 or the Philippine HIV and AIDS Policy Act). These may also be considered in interpreting Section 1(4) of RA 8171 when a judicial controversy on this provision arises.*

[59] *Disqualifications under Section 1 of RA 8171 are as follows: (1) opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing organized government; (2) defending or teaching the necessity or propriety of violence, personal assault, or association for the predominance of their ideas; (3) convicted of crimes involving moral turpitude; (4) suffering from mental alienation or incurable contagious diseases. For more information, see also footnote #47 on the ruling and interpretation of RA 8171 in Tabasa v. Court of Appeals (G.R. No. 125793, August 29, 2006). On the final qualification, it should be further noted that contemporary laws provide for and uphold the non-discriminatory principle for persons with mental health concerns (RA 11036 or the Mental Health Act) or persons living with HIV and AIDS (RA 11166 or the Philippine HIV and AIDS Policy Act). These may also be considered in interpreting Section 1(4) of RA 8171 when a judicial controversy on this provision arises.*

those provisions that do not provide adequate safeguards in CA 63 and other related nationality laws may, therefore, still require amendment.

Removing any Potential Gender Discrimination from Nationality Laws

Action Point 3 of the National Action Plan (NAP) to End Statelessness by 2024, is to "remove gender discrimination from nationality laws."[60] Gender discrimination is contrary to the national legal framework of the Philippines. Article II, Section 14 of the 1987 Constitution, "... recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men." Section 19 of RA 9710 or the Magna Carta of Women requires that "[t]he State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure: ...(g) women shall have equal rights with men to acquire change, or retain their nationality. The State shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of the husband. Various statutes of other countries concerning dual citizenship that may be enjoyed equally by women and men shall likewise be considered." Gender discrimination is also contrary to the international framework adopted by the Philippines, such as Article 9 of CEDAW, among others, which provides the text adopted in RA 9710.

There are gaps in existing legislation in the form of antiquated provisions, provisions that discriminate on the basis of sex, and the absence of safeguards to prevent statelessness. In addition to the above discussion, under Section 15 of CA 473 which covers judicial naturalization, "[a]ny **woman** who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines." In addition, under Section 12 of RA 9139, which covers administrative naturalization, "**[i]f the applicant is a married woman**, the approval of her petition for administrative naturalization *will not benefit her alien husband* but her minor children may file a petition for cancellation of their alien certificates of registration with the BI subject to the requirements of existing laws." Each of these laws and all new draft legislation should be evaluated to ensure that men and women are treated equally and have the same rights, access to nationality, and safeguards against statelessness.

There are other practical challenges such as the qualifications for naturalization listed in Section 3(e) of RA 9139, requiring that "[t]he applicant must have a known trade, business, profession or lawful occupation, from which he/she derives income sufficient for his/her

[60] *Government of the Republic of the Philippines, National Action Plan (NAP) to End Statelessness by 2024.*

support and if he/she is married and/or has dependents, also that of his/her family." It has been suggested by the Philippine Commission on Women (PCW) during inter-agency validation meetings that this may not be met by some alien spouses who are full-time unpaid care workers or whose contribution in the household consists of devoting their efforts towards providing care for family members. In those discussions, the Office of the Solicitor General (OSG) stated that an affidavit of support would be sufficient to establish the requirement stipulated in this provision. This analysis of the application of relevant laws and the practice of the various authorities is invaluable to ensure equality before the law is achieved in practice.

Loss of citizenship by renunciation

Section 1(2) of CA 63 permits the renunciation of Filipino nationality without the prior possession or acquisition of another nationality,[61] and therefore may result in statelessness. This conflicts with Article 7 of the 1961 Statelessness Convention and requires revision to explicitly limit renunciation or loss of nationality if it would result in statelessness.[62] "It is therefore advisable that the assurance of acquisition of a second nationality referred to in Article 7(2) should consist of a written statement from the State in which nationality is being sought that acquisition of nationality is imminent. Contracting States should ensure that an individual will not be left without a nationality for a prolonged period and that nationality is automatically re-acquired, or deemed never to have been lost, in the event that the assurance proves false or where there are significant delays in the naturalization process."[63]

Loss of citizenship due to disloyalty

Sections 1(3), 1(4), and 1(6) of CA 63 describe situations in which the person loses their citizenship upon taking an oath of allegiance to support the constitution or laws of a foreign country upon reaching 21 years of age; accepting commission in the military, naval or air service of a foreign country; or by having been declared by a competent authority, a deserter of the Philippine Army, Navy or Air Force in time of war. These provisions may require revision as Article 8 of the 1961 Statelessness Convention prohibits such deprivation if it will render the person stateless. However, in accordance with Article 8(3) and 8(4), a State may declare a reservation and retain these grounds for deprivation of citizenship, but only if:

[61] *The case, Valles v. COMELEC (G.R. No. 137000, August 9, 2000), for instance, provides that citizenship may be lost through expressed renunciation of Philippine citizenship.*

[62] *This is the case unless, as provided in Article 7(1)(b), it would be inconsistent with Articles 13 and 14 of the Universal Declaration of Human Rights on the freedom of movement, to leave any country, and to return to one's own country; and to seek and enjoy asylum.*

[63] *UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: https://www.refworld.org/docid/5ec5640c4.html.*

- The grounds already exist in national law;
- The grounds relate to the violation of a duty of loyalty;[64] and
- The deprivation in such circumstances must be in accordance with law, affording the right to a fair hearing by a court or other independent body (Section 8(4) of CA 63).

Loss of citizenship due to cancellation of naturalization

Section 1(5) of CA 63 allows for loss of citizenship by cancellation of the certificate of naturalization. Detailed provisions for the cancellation of naturalization certificates are set out in both Section 18 of CA 473 on Judicial Naturalization and Section 13 of RA 9139 on Administrative Naturalization.

Cancellation of naturalization certificates issued under Section 18 of CA 473 is not automatic by operation of law, but requires a motion by the Solicitor General or his or her representative, or by the proper provincial fiscal, and the competent judge may cancel the naturalization certificate and its registration in the Civil Registry on certain grounds,[65] including the following scenarios:

1. The naturalization certificate was obtained fraudulently or illegally.
2. The naturalized person returns or travels to another country within the next five years and establishes permanent residence there (the fact of one year in the native or country of former nationality, or two years in another country is *prima facie* evidence of intent).
3. The petition was made on an invalid declaration of intention.
4. The naturalized person's minor children fail to graduate from a recognized school through the fault of their parents.
5. It is shown that the person used themselves as a dummy to exercise/use/enjoy a right franchise or privilege requiring citizenship.

Cancellation of naturalization certificates issued under Section 13 of RA 9139 may be accomplished by the Special Committee on Naturalization in cases where:

1. The naturalization certificate was obtained fraudulently or illegally;
2. The naturalized person (whether the applicant "or his wife or his minor children")

[64] *Under Article 8(3) of the 1961 Statelessness Convention, a violation of the duty of loyalty must be: "by disregard of an express prohibition rendering or continuing to render services to, or receive or continue to receive emoluments from, another State; or (ii) acting in a manner seriously prejudicial to the vital interests of the State; OR (b) the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State."*

[65] *Under UNHCR Guidelines on Statelessness No. 5, this would be referred to as "deprivation" and not "loss", but under the legislation of the Philippines, loss is used generally in all cases of withdrawal of nationality.*

returns or travels to another country within the next five years and establishes permanent residence there (the fact of one year in the native or country of former nationality, or two years in another country is prima facie evidence of intent);

3. The person allowed themselves to be used as a dummy to exercise/use/enjoy a right, franchise or privilege requiring citizenship; or
4. "The naturalized person or his wife or child with acquired citizenship commits any act inimical to national security."

Article 8 of the 1961 Statelessness Convention prohibits the deprivation of nationality if it would render the person stateless, but does allow for such deprivation in limited circumstances. The provisions in Section 18(a) and (e) of CA 473, and Section 13(a) and (c) of RA 9139 about fraud and illegality may be retained in accordance with Article 8(2) of the 1961 Statelessness Convention, and the provisions about a person allowing themselves to be used as a dummy can likely be retained if a declaration or reservation is made in accordance with Article 8(3)(a)(ii).

Cancellation of citizenship due to residence abroad

The provisions about traveling with an intent to reside permanently in another country are in conflict with Article 7 of the 1961 Statelessness Convention, which permits loss of citizenship for naturalized persons because of residence abroad only if that residence was for over seven consecutive years as specified by law, without any declaration of intent to retain nationality. Therefore, cancellation under Section 18(b) of CA 473 and Section 13(b) of RA 9139 would need to be revised. If the loss of citizenship of naturalized citizens based on residence abroad is to be retained in law, the law must explicitly specify seven years or more. It must also provide mechanisms for the declaration of intent to retain nationality for such persons in any case so that they retain their nationality as long as they declare their intention to do so.

Cancellation of citizenship due to a failure to ensure children graduate from a recognized school

The provision about failing to ensure one's children graduate from a recognized school in Section 18(d) of CA 473 would likely not justify depriving a person of nationality if it would render the person stateless. Thus, it would require revision. Under Article 8 of the 1961 Statelessness Convention, this is not among the limited grounds where deprivation of nationality is permissible.[66]

[66] *UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, Article 8, available at: https://www.refworld.org/docid/3ae6b39620.html.*

Government regulations requiring children to be enrolled in regular schools as a basis for acquisition or deprivation of nationality would run contrary to the best interest of the child under the CRC, especially if deprivation would lead to statelessness.

IDENTIFIED LEGISLATIVE PRIORITIES

Policy Brief 2

Comprehensive Refugees and Stateless Persons Protection Bill

The Department of Justice (DOJ) has adopted DOJ Circular 58 series of 2012 establishing the Refugee and Stateless Status Determination Procedure (RSSD). The objective of the circular is to establish "a fair, speedy and non-adversarial procedure to facilitate identification, treatment, and protection of refugees and stateless persons consistent with the laws, international commitments and humanitarian traditions and concerns of the Republic of the Philippines."[67]

Section 5 of the Circular establishes the Refugees and Stateless Persons Protection Unit (RSPPU) in the Legal Staff of the DOJ to facilitate identification, determination, and protection of refugees and stateless persons under the terms of the 1951 Refugee Convention and its 1967 Protocol, as well as the 1954 Statelessness Convention.

Despite the establishment of this institutional mechanism and the operationalization of this procedure, the Philippines does not have a law that institutionalizes the policies, procedures, and mechanisms for determining the status of refugees and stateless persons and providing for their protection and assistance. Senate Bill (SB) 379 and House Bill (HB) 3425, which have been filed to establish a Refugees and Stateless Person Protection Board (RSPPB) and Secretariat to carry out status determination, are still pending.[68] Another draft bill proposing the establishment of a Refugee and Stateless Persons Protection Office (RSPPO) to facilitate identification, determination, and protection of refugees and stateless persons has also been prepared, presented to the

[67] *Department Circular No. 58 - Establishing the Refugee and Stateless Status Determination Procedure [Philippines], 18 October 2012, available at: https://www.refworld.org/docid/5086932e2.html.*

[68] *Senate Bill 379, An Act Protecting the Rights of Refugees and Stateless Persons, Establishing the Refugees and Stateless Persons Protection Board, and for Other Purposes, 11 July 2019, available at: http://legacy.senate.gov.ph/lisdata/3067127525!.pdf.*

House Bill 3425, An Act Protecting the Rights of Refugees and Stateless Persons, Establishing the Refugees and Stateless Persons Protection Board, and for Other Purposes, 5 August 2019, available at: https://www.congress.gov.ph/legisdocs/basic_18/HB03425.pdf.

Inter-Agency Steering Committee (IASC), and shared with the author of HB 3425 for possible harmonization.

This policy brief reviews and compares these three legal frameworks:

- DOJ Circular 58 series of 2012: Established the RSPPU, which currently conducts RSSD;
- Filed Bills (SB 379, HB 3425): Propose the establishment of the RSPPB and Secretariat to carry out status determination; and,
- Draft Bill: "An Act Establishing the Refugees and Stateless Persons Protection Office, Providing for the Refugee and Stateless Person Status Determination, Setting Forth the Obligations, Rights and Treatment of Recognized Refugees and Stateless Persons, and for Other Purposes."

It will evaluate the institutional set-up established by the associated legal framework, the location of decision-making authority, and the availability of independent appeal, among other qualitative characteristics of a competent decision-making authority as set out in the table on the following pages.

Institutional Set-Up

The effective protection of refugees and stateless persons and the resolution of cases of displacement and statelessness efficiently and in accordance with the law is partially dependent on the integrity of the institutions conducting RSSD. The integrity of the decision-making authority requires adherence to high standards of professional and ethical conduct, adequate resourcing, and effective management. Systems that are perceived to be arbitrary, corrupt, or biased risk losing legitimacy in the eyes of applicants and the general public, while accountability to such standards raises the public's confidence in the legitimacy and capacity of such systems. The institutional set-up can establish a firm foundation for the efficient and effective conduct of RSSD for the benefit of the government and applicants alike.

Executive Committee of the Programme of the United Nations High Commissioner for Refugees (ExCom) Conclusion No. 8 in 1977 was the first document to address the determination of refugee status and recommended that refugee status determination procedures satisfy certain basic requirements.[69]

[69] *Executive Committee of the Programme of the United Nations High Commissioner for Refugees (ExCom), Determination of Refugee Status, 12 October 1977, No. 8 (XXVIII) - 1977, available at: http://www.refworld.org/docid/3ae68c6e4.html (clear instructions on non-refoulement so that border officials can recognize and refer those who might have protection needs, guidance to potential applicants on procedures, a clearly identified authority with responsibility for decision-making, interpretation, access to UNHCR, documentation, access to appeal, and permission to remain among other facilities.).*

	DOJ Circular 58	SB 379/HB 3425	Draft Bill
Institutional set-up	*Individual decision-makers*	*Eligibility Committee*	*Individual decision-makers*
	Refugees and Stateless Persons Protection Unit (RSPPU) in the Legal Staff of the DOJ *Headed by the Chief State Counsel and assisted by such number of personnel of this Department and officers of the Bureau of Immigration as may be necessary*	Refugees and Stateless Persons Protection Board (RSPPB): • Secretary of the DOJ or representative as *ex-officio* Chairperson; • Secretary of the Department of Foreign Affairs (DFA) or representative as *ex-officio* Vice Chair; • Commissioner of the Bureau of Immigration (BI) or representative; • National Security Advisor or representative; and, • Four Presidential appointments (civil society representative, and three lawyers with the qualifications of a regional trial court judge) **attached to the DOJ for coordination of policies and programs* Functions of the Secretariat: • To receive, evaluate and process applications; • To recommend approval or disapproval • To assist the RSPPB in technical functions; and, • To perform other duties that may be assigned by RSPPB.	Refugees and Stateless Persons Protection Office (RSPPO) attached to the DOJ, but independent and autonomous *Headed by an Executive Director, assisted by three Deputy Directors, five Senior Protection Officers, 10 Associate Protection Officers, and such personnel as may be necessary to effectively and efficiently execute its mandate*

	DOJ Circular 58	SB 379/HB 3425	Draft Bill
Qualifications	Nothing specified	Based on appointments of the four listed bureaucrats who may serve in the RSPPB or may delegate this authority to their respective representatives Qualifications for such delegation are not stipulated in the bill. The RSPPB will also be composed of four additional presidential appointments who should have strong advocacy and experience in refugee crisis management—three of them lawyers with the qualifications of at least a regional trial court judge and training or experience in human rights, immigration, social work, or refugee protection.	Specified in some detail for each of the above positions, but generally include: • A number of years legal practice experience • A number of years refugee/stateless practice experience
Fact-finding vs. decision-making	Fact-finding and interviewing by RSPPU staff, with recommendation to the Secretary of Justice for decisions (decision-making authority has been delegated to the Chief State Counsel)	Fact-finding and interviewing by Secretariat staff, with recommendation to the RSPPB for decisions	Decisions are made by the RSPPO. It is left to the RSPPO to delegate decision-making authority.
Appeal	Written reconsideration by the same decision-maker (the Secretary of Justice) and further appeal to the courts	Written reconsideration by the same decision-maker (RSPPB), but with the availability of judicial review	Appeal to the Office of the President and further appeals to the Court of Appeals and to the Supreme Court

Basic requirements include:

- Clear instructions on non-refoulement so that border officials can recognize and refer those who might have protection needs;
- Guidance to potential applicants on procedures;
- A clearly identified authority with responsibility for decision-making;
- Interpretation services;
- Access to UNHCR;
- Documentation;
- Access to appeal; and
- Permission to remain in the country throughout the process.

Subsequent ExCom Conclusion Nos. 11, 14, 16, 21, and 28 "reiterated the importance of the establishment of procedures for determining refugee status and urged" States to establish them.[70]

Article 10 of the UDHR recognizes that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations…,"[71] while Article 14 of the International Covenant on Civil and Political Rights (ICCPR) declares that "[i]n the determination of… his [or her] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."[72] The principles and rights to a fair hearing and effective remedy to be determined by an independent and impartial court or other competent authorities are recognized in universal and regional human rights instruments, in domestic law, and in judicial codes of practice. Among regional instruments, the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration grants to every person "the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law."[73] Judicial and administrative mechanisms to determine rights and obligations are generally required to be investigated "thoroughly and effectively through independent and impartial bodies."[74]

There is an interest in designing an institutional set-up that can better promote high-quality, ethical, efficient, sustainable, and accurate decision-making. For example, one of the new operational mechanisms adopted through the Global Compact on Refugees (GCR) is an

[70] *Also See ExCom Conclusion Nos.: 29, 30, 46, 65, 71, 74, 81, 99, and 108. ExCom Conclusion No. 100 (LV) in 2004 notes that international protection obligations are not dependent on burden-sharing arrangements first being in place, because respect for human rights and humanitarian principles is a responsibility for all members of the international community. While a number of ExCom Conclusions such as No. 85 also note that protection is "best achieved through effective cooperation between all States and UNHCR, as well as other international organizations and pertinent actors, in a spirit of international solidarity and burden-sharing."*

[71] *UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html.*

[72] *UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: https://www.refworld.org/docid/3ae6b3aa0.html.*

[73] *Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012, available at: https://www.refworld.org/docid/50c9fea82.html. (Article 7(1) of the African Charter on Human and Peoples' Rights; Article 8(1) of the American Convention on Human Rights; and Article 6(1) of the European Convention on Human Rights, contain corresponding provisions.).*

[74] *This conclusion was drawn by the Human Rights Committee in General Comment No. 31 [80] on the nature of the general legal obligation imposed on States Parties to the Covenant (UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: https://www.refworld.org/docid/478b26ae2.html).*

"Asylum Capacity Support Group" (ACSG).[75] It was established to provide support to relevant national authorities to strengthen asylum systems, "with a view to ensuring their fairness, efficiency, adaptability and integrity."[76]

Quality state asylum systems share a number of key characteristics. These may include specialization, expertise, independence and impartiality, transparency, integrity, accountability, efficiency (timeliness), and resource-efficiency. These qualitative criteria will be described in some detail below and can inform the development of the institution that is to be created through this priority piece of legislation.

In evaluating the institutional set-up of a State's asylum system, a key question is, who, ultimately, has the legal authority to determine refugee status? Who has the authority to decide in the first instance? Who has the legal authority on appeal? RSD typologies could all be placed along a spectrum from heavily centralized to progressively de-centralized decision-making. In the most heavily centralized systems, there may only be one decision-maker. That decision-maker is often some sort of "Eligibility Committee" or single "Refugee Commissioner." In the most decentralized systems, the legal authority to determine refugee status may be dispersed among a large number of individual 'eligibility officers' in an administrative institution, or even to a quasi-judicial, or judicial body. The most obvious difference between these models is efficiency. A single decision-maker will only be able to process a very small number of cases, whereas a larger number of decision-makers will have an exponentially higher case processing capacity and flexibility to handle changes in case load. Under any model, quality control, accountability mechanisms, and supervision are imposed at varying levels of micromanagement, and effectiveness can be evaluated next to certain identifiable characteristics of a competent decision-making institution.

[75] *Report of the United Nations High Commissioner for Refugees Part II Global Compact on Refugees ("GCR"), GAOR A/73/12 (Part II), Paragraph 62, available at: https://www.unhcr.org/gcr/GCR_English.pdf.*

[76] *Id. (GCR Paragraph 62). See a detailed explanation of these principles in the Asylum Capacity Support Group Mechanism: Guide to Working Modalities, available at: https://globalcompactrefugees.org/sites/default/files/2020-06/ACSG%20Guide%20to%20Working%20Modalities.pdf.*

Characteristics of a Competent Decision-Making Institution

Characteristics	Details	References
Specialization	A designated authority is specialized if it is specifically set apart for the function of protection, conducting refugee status determination with responsible staff that are dedicated to this particular functional area.[77]	"There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance."[78]
Expertise	It is an institution's staff that generally have expertise and not the institution itself, but an institution promotes and enhances the expertise of its staff by: • Intensity of training; • Expectation of, and space for, continual learning and improvement; and, • Staff recruitment and retention policies.	"Refugee status determination should be carried out by staff with specialized skills and knowledge of refugee and asylum matters. Examiners must be familiar with the use of interpreters and appropriate cross-cultural interviewing techniques. The central refugee authority should also include eligibility officials with training in the treatment of applications by women, asylum-seeking children or applicants who are survivors of sexual abuse, torture or other traumatizing events."[79]
Independence and impartiality	The RSSD Authority responsible for protection should be independent of the authority responsible for law or immigration enforcement. Conflicts of interest for the RSSD Authority itself or its staff should be minimized and mitigated, and the Authority should also not be subject to improper influence from the other government bodies, or from private or partisan interests. • Only an independent institution is able to determine refugee status impartially on the basis of a purely objective legal analysis. • All other relevant authorities, such as immigration, police, prisons, social and educational authorities, must respect and abide by the judgements of the RSSD body.	All general universal and regional human rights instruments guarantee the right to a fair hearing in judicial proceedings (criminal, civil, disciplinary and administrative matters) before an independent and impartial court or tribunal.[80]

[77] *While it is important that staff of the relevant institution are not tasked with multiple functions simultaneously (particularly when there may be a conflict of interest between these functions, as there sometimes is between, for example, immigration enforcement and protection), this does not prevent rotation of staff to give them broader cross-functional capacities. The point is that a specialized institution would assign and train staff with specialized skills and knowledge for the processing of protection claims.*

[78] *UNHCR, Executive Committee Conclusion No. 8 (XXVIII) Determination of Refugee Status, 28th Session, 1977, available at: http://www.refworld.org/docid/4b28bf1f2.html.*

[79] *UNHCR, Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee, Section 5.2.1, 1 September 2005, available at: http://www.refworld.org/docid/43141f5d4.html.*

[80] *The right is found in the International Covenant on Civil and Political Rights, Articles 13 and 14(1); Article 7(1) of the African Charter on Human and Peoples' Rights; Article 8(1) of the American Convention on Human Rights; and Article 6(1) of the European Convention on Human Rights. Administrative mechanisms dealing with human rights are generally required to be investigated "thoroughly and effectively through independent and impartial bodies." UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: http://www.refworld.org/docid/478b26ae2.html.*

Characteristics	Details	References
Transparency	"[T]ransparency is concerned with the quality of being clear, obvious and understandable without doubt or ambiguity."[81]	"[Transparency] can enable superiors to exercise control, but also contributes to a better dialogue with citizens..." and users of the system. Furthermore, the economy and efficiency of administrative decisions are better assured by transparency: "[s]implicity and comprehensibility in procedures may avoid excessive cost and improve the comprehensibility of decisions"[82] "RSD applications should be processed on a non-discriminatory basis pursuant to transparent and fair procedures."[83] "Justice must not merely be done but must also be seen to be done."[84]
Integrity	Integrity is concerned with good faith in the discharge of official responsibilities[85] in accordance with a transparent and consistent framework of principles: • Public confidence in the Refugee and Stateless Status Determination (RSSD) system and in the authority responsible for implementing it will ensure respect for, and compliance with, the law. • Integrity includes the transparency and propriety of the process, the decision, and the decision maker.[86]	Integrity is the extent to which the institution has the capacity to do the job for which it has been empowered with fairness, independence and respect for the public, and the degree to which the conduct is free of bias, prejudice or improper influence.[87]

[81] *See Opinion of AG Ruiz-Jarabo Colomer of 16 December 2004 in C-110/03 Belgium v. Commission, 2005, ECR I-2801, point 44.*

[82] *John S. Bell, Comparative Administrative Law, The Oxford Handbook of Comparative Law (1st edn), Edited by Mathias Reimann and Reinhard Zimmerman, November 2006.*

[83] *UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, 26 August 2020, available at: https://www.refworld.org/docid/5e870b254.html (Section 1-2, "Core Standards for Due Process in Mandate RSD").*

[84] *Bangalore Principles of Judicial Conduct, Value 3 "Integrity", available at: https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.*

[85] *Vienna Convention on the Law of Treaties, Article 26, U.N. Doc. A/CONF.39/27 (1969), reprinted in 63 AM. J. INT'L L. 875 (1969). (Article 26 of the Vienna Convention on the Law of Treaties, pacta sunt servanda, holds that, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").*

[86] *The International Framework for Court Excellence, 2nd Edition, March 2013 (available at: http://www.courtexcellence.com/~/media/Microsites/Files/ICCE/The%20International%20Framework%202E%202014%20V3.ashx).*

[87] *Bangalore Principles of Judicial Conduct, Value 3 "Integrity", available at: https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.*

Characteristics	Details	References
Accountability	Accountability is the obligation of the institution to be answerable for the responsibilities that have been assigned to it. • While independence is a requirement for impartial decision-making, an asylum authority should still be accountable for the discharge of its professional functions. • Accountability of decision-making authorities is primarily through independent appeal. • However, there must also be clear rules of conduct, usually covering principles such as: independence, impartiality, integrity, competence and diligence among others.[88]	The Bangalore Principles of Judicial Conduct[89] "A Code of Ethics and Conduct should be developed and adopted by each judiciary as a means of ensuring the accountability of judges"[90]
Efficiency	Staffing, infrastructure, internal organization, division of labour, and processes should be adequate to ensure that the RSSD processing capacity can meet the demand, even when applicant numbers fluctuate.	"Timeliness reflects a balance between the time required to properly obtain, present, and weigh the evidence, law and arguments, and unreasonable delay due to inefficient processes and insufficient resources."[91]
Resource-efficiency	Investment of resources, human and financial, is adequate to achieve resolution of RSSD processes in a timely manner, and efficient use of resources facilitates effective access to processes through to durable solutions.	"Where the investment is inadequate, a backlog is likely to arise, as are additional systemic issues, which may further exhaust the willingness to invest of the authority responsible for the budget allocation and compound the problem."[92]

[88] *See for example: Code of Conduct for Members of the Immigration and Refugee Board of Canada (http://www.irb-cisr.gc.ca/Eng/BoaCom/empl/Pages/MemComCode.aspx); US Citizenship and Immigration Services, Codes of Conduct for the Immigration Judges and Board Members [72 FR 35510] [FR 34-07] (USCIS Code of Conduct).*

[89] *Bangalore Principles of Judicial Conduct, available at: https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.*

[90] *International Commission of Jurists (ICJ), International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors - A Practitioners Guide, 2007, Practitioners Guide No. 1, available at: https://www.refworld.org/docid/4a7837af2.html.*

[91] *The International Framework for Court Excellence, Third Edition, May 2020, available at: http://www.courtexcellence.com/__data/assets/pdf_file/0015/53124/The-International-Framework-3E-2020-V2.pdf.*

[92] *Brian Barbour, UNHCR Refugee Status Determination Backlog Prevention and Reduction, January 2018, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html.*

Specialization and Expertise

ExCom Conclusion No. 8 (VIII)(e)(iii) states that, "[t]here should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance." This is the principle of *specialization*. "Refugee status determination should be carried out by staff with specialized skills and knowledge of refugee and asylum matters. Examiners must be familiar with the use of interpreters and appropriate cross-cultural interviewing techniques. The central refugee authority should also include eligibility officials with training in the treatment of applications by women, asylum-seeking children or applicants who are survivors of sexual abuse, torture, or other traumatizing events."[93]

An identified authority is specialized if it is specifically assigned and dedicated to the function of determining refugee and statelessness status. Such an institution will have staff dedicated to this particular field of work. Specialization is considered good practice[94] because it decreases the potential for conflicts of interest allowing staff to focus solely on the goal of protection,[95] and because it facilitates the development of expertise allowing for improved efficiency and accuracy over time.

Specialized staff eventually become experts, developing specific skills and knowledge, and gain greater depth of understanding with greater experience implementing the work. *Specialization and expertise are not the same*. A specialized institution may lack expertise if it is new and inexperienced, or newly hired staff within the institution may lack experience and expertise, but specialization provides a specific focus for decision-makers, who can then develop relevant skills, knowledge, or judgment through training, study, or practice and thereby gain expertise over time.

Expertise is strengthened by intensity of training, such as through regular and ongoing professional development and legal education, and staff retention preserving institutional knowledge and expertise so that systems benefit from improved expertise over time. Where institutions are adequately resourced and staffed by those with greater expertise, efficiency and accuracy may both be of a high-quality, and this can improve progressively with the development of expertise among veteran decision-makers and managers. At the same time,

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[93] *UN High Commissioner for Refugees (UNHCR), Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee, Section 5.2.1, 1 September 2005, available at: http://www.refworld.org/docid/43141f5d4.html.*

[94] *UN High Commissioner for Refugees (UNHCR), Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee, Section 5.2.2, 1 September 2005, available at: http://www.refworld.org/docid/43141f5d4.html ("Best State practice provides for a clearly identified authority with responsibility for...").*

[95] *For more details on conflicts of interest see the section on Independence below.*

experience does not always translate to more efficient and accurate decision-making. For example, incidents of burnout or cynicism may increase among staff due to the daily workload and pressure associated with the work.[96] These also may eventually lead to turnover. Other qualitative and quantitative criteria, therefore, must also be considered.

What about courts? In many contexts, courts of general jurisdiction serve a judicial review function and/or also hear protection claims. Such courts of general jurisdiction are not specialized in protection claims, but they are specialized in producing high-quality objective legal analysis. Courts also require ongoing professional development, and specific trainings for the judiciary or exchanges between judiciaries are important for courts to have a solid understanding of the law and international standards around protection claims, but courts can have the capacity to make accurate and effective decisions on the basis of facts and law in the particular case, and are more likely to do so, where courts strive for the same qualitative criteria set out here: expertise, independence, impartiality, transparency, accountability, timeliness, and resource efficiency. Many countries, the Philippines among them, maintain judicial academies for continuing professional development, and the provision of specialized trainings in the area of protection claims may be of tremendous benefit to the judiciary.[97]

Independence

Independence of the institution conducting RSSD decreases the potential for conflicts of interest and allows decision-makers to focus solely on the question of eligibility for protection. An 'interest' is the commitment, obligation, duty, or goal associated with a particular mandate, role, or practice. A conflict of interest exists in a situation where a decision-maker or institution is subject to conflicting obligations, opposing loyalties, or is expected to sustain two or more co-existing interests that work against each other or lead to different outcomes.[98] For example, the Supreme Court of the Philippines, in its New Code of Judicial Conduct for the

[96] *Brian Barbour, UNHCR, Refugee Status Determination (RSD) Backlog Prevention and Reduction, January 2018, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html ("Exercises evaluating the well-being of RSD personnel regularly show high levels of cynicism, as one indicator of stress among RSD personnel, and often high levels of turnover. RSD caseworkers are usually exposed to heavy workloads. In addition, they interact regularly with persons who have gone through difficult experiences some of whom may be traumatized. Caseworkers need to confront credibility or fraud issues. Applicants may display strong emotions including anger and frustration. Caseworkers may work in difficult security environments. In addition, in certain RSD systems, caseworkers may have concerns over career perspectives or over public perceptions of RSD related work. If the above factors remain unacknowledged or unaddressed, these conditions may affect the resilience of caseworkers and expose them to cumulative stress, burn-out or vicarious trauma. These conditions would likely affect the quality of RSD interviews, the fairness and accuracy of RSD decisions as well as the efficiency of the RSD process.").*

[97] *See, for example, Report of "The Asian Network for Refugees and International Protection (ANRIP) Conference hosted at the Philippines Judicial Academy Training Center in Tagaytay, Philippines, January 28-29, 2016, available at: http://cdr.c.u-tokyo.ac.jp/RCSP/en/topics/314.html.*

[98] *Organization for Economic Co-operation and Development ("OECD"), Managing Conflict of Interest in the Public Sector: A Toolkit, 2005, available at: https://www.oecd.org/gov/ethics/49107986.pdf.*

Philippine Judiciary, emphasizes in Canon I on "Independence" that: "Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason." Even Court Personnel in their Code of Conduct requires as Canon III "Conflict of Interest" that "personnel exercise diligence when the court personnel's objective ability or independence of judgment in performing official duties is impaired or may reasonably appear to be impaired…"[99]

The existence of conflicting interests can compromise the objectivity, accuracy, integrity, or reliability of the outcome, but the existence of conflicting interests is an objective fact and does not in itself indicate any lack of integrity. Conflicting interests should be recognized and a process for separating them must be rigorously established. These create a risk that a decision or professional judgment or actions may be unduly influenced or compromised by another secondary interest.

In RSSD, the primary interest is protection, and yet it is not uncommon for the authority responsible for RSSD to be delegated to immigration or law enforcement offices that are also responsible for enforcement. The potential conflict between protection and law enforcement is of particular concern in the context of refugee protection because many refugees and others in need of protection move irregularly, but their irregular movement is irrelevant to the question of protection.[100]

Article 31(1) of the 1951 Refugee Convention prohibits Contracting States from imposing penalties on account of entry or presence into a territory without authorization.[101] While this system is qualified in some ways, the system benefits from a separation between protection and enforcement

[99] *Supreme Court of the Philippines, New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01-SC, 2004, available at: https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Philippines_Code%20of%20Judicial%20Conduct_2004_en.pdf.*

[100] *UN High Commissioner for Refugees (UNHCR), Refugee Protection and Mixed Migration: The 10-Point Plan in action, February 2011, available at: https://www.refworld.org/docid/4d9430ea2.html ("More often than not… [the movement of refugees and asylum-seekers] are irregular, in the sense that they take place without the requisite documentation and frequently involve human smugglers and traffickers.").*

Guy S. Goodwin-Gill and Jane McAdam, The Refugee in International Law, Third Edition (Oxford 2007), pg. 448 ("With regard to basic human rights, the lawfulness or otherwise of presence is as irrelevant as the distinction between national and alien…").

[101] *UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3be01b964.html (Article 31(1) ("Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.").*

roles so that those determining whether someone is a refugee or stateless person, are not prejudiced against applicants due to violations of immigration law, or preoccupied by prosecuting those violations before they will consider the persons eligibility for protection.

Impartiality

The Preamble of the 1951 Refugee Convention recognizes that the nature of the refugee problem is social and humanitarian.[102] UNHCR's Statute mandates that the work of the High Commissioner shall be of an entirely non-political character.[103]

The recognition of refugee and stateless person status is considered declarative, meaning that a person does not become a refugee or stateless person because they are granted that status by an authority. They already are a refugee or stateless person, and the authority is simply recognizing and documenting this objective legal fact.[104] Yet, States still implement a process of status determination in order to identify those to whom States have an obligation to protect. The relevant Conventions establish legal definitions for refugees and stateless persons and set out rights and protections that States have an obligation to safeguard for persons who fit that definition. "Effective implementation requires at least some form of procedure whereby refugees can be identified, and some measure of protection against laws of general application governing admission, residence, and removal."[105] Moreover, an asylum seeker can make a claim for the rights owed to them and a State must necessarily make a determination as to whether or not it owes claiming them.[106] Furthermore, a solution is more likely if eligibility for protection is, "determined once and for all practical purposes by a special authority."[107]

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[102] *UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3be01b964.html (Preamble: "...all States, recognizing the social and humanitarian nature of the problem of refugees...").*

[103] *UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: http://www.refworld.org/docid/3ae6b3628.html (Chapter 1 (2). "The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.").*

[104] *UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, available at: https://www.refworld.org/docid/4f33c8d92.html ("A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee").*

[105] *Guy S. Goodwin-Gill and Jane McAdam, The Refugee in International Law, Third Edition (Oxford 2007), page 528.*

[106] *Grahl-Madsen pg. 333 ("...the question of eligibility may be determined ad hoc whenever a person claims this, that, or the other benefit for which the Convention provides.").*

[107] *Grahl-Madsen cites the German Court in Obrenowic v. Bundesrepublik Deutschland, 7 BVerwGE 333 (1958) for finding that, "[The Refugee Convention] intends to give refugees, who meet the requirements of Art. 1, relief for gainful employment, pension rights in case of need, a right to freedom of movement, the issue of ID cards and travel documents, etc. The realization of these rights presupposes that the foreign refugee is recognized as such. If he had to prove that he was a refugee every time he claimed the rights granted to him by the Convention, the provisions of the Convention would be of little use to him. With the adoption of the Convention, the Federal Republic has therefore undertaken to give appropriate recognition to the foreign refugee who is seeking it. Although this is not expressly stipulated in the Convention, it follows from the task of implementing the convention domestically."*

Status as a refugee and stateless person is, as a matter of law, determined impartially and solely on the basis of an objective legal analysis. The RSSD process is fundamentally, a peaceful, non-political and humanitarian act.

Impartiality may be considered related or distinct from independence, but refers more specifically to the performance of, "judicial duties without favor, bias or prejudice."[108] In the RSSD context, independence and impartiality should ensure that eligibility is determined by an autonomous authority, and on the basis of an objective legal analysis alone without the control, influence or interference of any political interests or agendas, with respect for the humanitarian and non-political nature of the protection of refugees and stateless persons

Transparency

"RSD applications should be processed on a non-discriminatory basis pursuant to transparent and fair procedures."[109] Transparency is often associated with accountability and the prevention of corruption, bribery, and other misconduct. It is also suggested that transparency promotes equal access to information and justice. On the other hand, some have suggested that governments cannot properly deliberate, collaborate and compromise when everything they are doing is being watched and criticized. Some contend that transparency may result in indecision, gridlock, delay, and second guessing by those who are not in a position to understand all aspects and reasons for a decision. Moreover, particularly in the refugee context there are serious issues around privacy and confidentiality that cannot be compromised. Refugees or their associates may suffer adverse consequences including retribution when their private information is publicly disclosed.

However, it is possible to develop a system that ensures confidentiality for applicants and space for private and confidential deliberation and consultation, while also ensuring clarity around expectations and procedures, and transparency with regard to the ultimate decision reached and the grounds upon which that decision is based. The Istanbul Declaration on Transparency in the Judicial Process, recognizes that, "…it is now universally accepted that the principle of transparency is a fundamental component of the judicial process in a State that upholds human rights and the rule of law."[110] In fact, transparency lends legitimacy to the process and ensures greater efficiency because applicants cannot claim ignorance of the

[108] *Bangalore Principles of Judicial Conduct, Value 2, available at: https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.*

[109] *UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, 26 August 2020, available at: https://www.refworld.org/docid/5e870b254.html (Section 1-2, "Core Standards for Due Process in Mandate RSD").*

[110] *The Istanbul Declaration on Transparency in the Judicial Process, available at: https://www.icj.org/wp-content/uploads/2015/03/I--stanbul-Declaration.pdf.*

process or expectations, and have had every opportunity to put forward their claim and have received support in doing so including a shared burden by the decision-maker.[111] Research has shown that "[i]ndividuals are more likely to accept and comply with a negative decision on their visa application, status determination or other immigration process if they believe they have been through a fair and efficient process; they have been informed and supported through that process; and they have explored all options to remain in the country legally."[112]

Transparency is generally considered desirable when it ensures both fairness and efficiency for a system. "A poor reception, registration, or first instance procedure is more likely to result in repeat interviews, overlooked vulnerabilities or protection needs, and re-processing of previously processed cases at appeal level due to procedural errors, [or failure to elicit relevant facts and evidence,] on remand from the court. It may also contribute to a higher number of multiple or repeat applications where return is not possible, and recognition becomes unlikely due to past exhaustion of a process. Failing to provide applicants with information, guidance, support, and adequate time to prepare early in the process may also result in poor quality applications, which may complicate the process later contributing to a longer process and more complex assessment."[113]

So, what is transparency? "Transparency is concerned with the quality of being clear, obvious and understandable without doubt or ambiguity."[114] A transparent system lacks any hidden agendas or policies with all information being available to those subject to that system. Transparency requires ensuring that applicants are well-informed and supported throughout the process. This includes informing applicants of their rights and obligations, making sure all procedures to be followed are clear and accessible, providing access to the file and clear reasons for decisions.[115]

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[111] *UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, available at: https://www.refworld.org/docid/4f33c8d92.html ("...while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt").*

[112] *International Detention Coalition, There are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition), 2015, Pg. 14, available at: http://www.refworld.org/docid/57d022a24.html.*

[113] *Brian Barbour, 'Refugee Status Determination Backlog Prevention and Reduction' (2018) UNHCR Legal and Protection Policy Research Series, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html.*

[114] *See Opinion of AG Ruiz-Jarabo Colomer of 16 December 2004 in C-110/03 Belgium v. Commission, 2005, ECR I-2801, point 44.*

[115] *For example, in 'A' & others v Director of Immigration (CACV No. 314 to 317 of 2007), the Hong Kong Court found that the detention of persons under Section 32 of the Immigration Ordinance would be unlawful if there were no certain and accessible grounds and procedure for the exercise of the power to detain. It was not enough that the policy be accessible to the government, it had to be accessible to the detainee subject to the policy.*

Information disclosure laws, sharing and publicizing written and redacted/anonymized decisions, and various access points and languages for information dissemination all contribute to transparency. Greater transparency generally ensures greater consistency, efficiency, and accuracy in decision-making.

In some systems, details on the regulations or standard operating procedures (SOPs) are not accessible outside of the authority implementing the law, access to the applicant's file is not always granted, and the reasons for negative decisions are either not provided or are too general for the applicant to address on appeal. Where reception, registration, and first-instance procedures fail to convey the purpose and requirements of RSSD, this may result in poor quality applications. Where the first instance fails to elicit all of the relevant information, the burden on appeal is increased and more complicated, and may result in cases being remanded back for re-processing.

> "[F]ailing to provide applicants with information, guidance, support, and adequate time to prepare early in the process may result in poor quality applications, which may increase the burden on decision-makers, make assessments more complicated and affect accuracy, and complicate the process later when attempting to review a case on appeal… For example, in Chile, the asylum authorities noted that the quality of applications affects what you have to work with and may require multiple interviews and clarifications. The eligibility process takes longer and is more difficult to organize. In Chile, the system was changed through the modification of the application form and the establishment of a registration and reception unit, which provide assistance in filling out the form, and provides information on rights and duties, and how the applicant can access assistance."[116]

Sustainability: Efficiency, Timeliness, and Resource-efficiency

Timeliness and efficiency are qualitative measures that are prized by the State and applicants alike.[117] Delay entails expense and uncertainty. No matter the Government process or decision, there are requirements for timeliness and efficiency. A number of State Constitutions or national laws, regional instruments, and international laws, contain provisions for fair trial

[116] *Brian Barbour, UNHCR Refugee Status Determination Backlog Prevention and Reduction, January 2018, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html; Citing Chile Presentation at the First Regional Round Table of the Americas Quality Assurance Initiative (QAI), Sao Paulo, Brazil, 28-29 August 2017.*

[117] *Brian Barbour, 'Refugee Status Determination Backlog Prevention and Reduction' (2018) UNHCR Legal and Protection Policy Research Series, PPLA/2018/03, https://www.refworld.org/docid/5b1a38374.html ("Where the system has little value in terms of protection or solutions, applicants instead can utilize it only for purposes of the "time" that it provides in terms of legal or tolerated stay during the asylum procedure, with consequences for both the individual and the State… In the most extreme cases, new applicants receive appointments for RSD interviews five (5) years or more away. In such circumstances, RSD may become meaningless as a protection tool.").*

that include a requirement for a speedy trial, or to be tried without undue delay. Cases that have been brought on the basis of complaints against Article 6 ("right to a fair trial") of the European Convention of Human Rights have primarily been about undue delay and findings that trials had exceeded a "reasonable time."[118] What would constitute as reasonable time? In Hong Kong, when considering the question of immigration detention, the court determined that there must be a purpose to justify detention, and that if there is a purpose, such as health and security checks, then there is a reasonable amount of time within which such health and security checks must be completed, and any amount of time in detention beyond that would be a violation of the prohibition of arbitrary detention.[119] In Barker v. Wingo (1972), the United States Supreme Court developed a four-part test to determine whether there is undue delay that violates the Constitutional requirement for a "speedy…trial" that considers the length of the delay, the reasons for the delay, the defendant's assertion of his right to a speedy trial, and the prejudice to the defendant.[120]

At the same time, quality assessment requires a certain amount of time to produce. Timeliness and efficiency can be taken to such an extreme that a quality assessment is no longer possible, because there is no sufficient time to complete the assessment.[121]

Efficiency and sustainability are primarily related to adequate case processing capacity. Case processing capacity is the sum of granted applications, rejected applications, and closed applications for a given period of time (e.g. on an annual basis).[122] RSSD requires a certain minimum amount of time, and though the amount of time it takes varies according to the complexity of the case, averages can be assessed over time through good management. These averages can serve as benchmarks that can help to determine the necessary staffing levels to ensure case processing at sustainable levels.

[118] *Guide on Article 6 of the European Convention on Human Rights, 30 April 2020, available at: https://www.echr.coe.int/documents/guide_art_6_eng.pdf.*

[119] *A v. Director of Immigration, CACV 314/2007.*

[120] *Barker v. Wingo, 407 U.S. 514 (1972).*

[121] *UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions, March 2010, http://www.refworld.org/docid/4c63e52d2.html (explaining that time limits imposed may be too short, given the procedural steps that need to be taken and the general circumstances of applicants, that these time limits may result in a failure to exercise the right to asylum or in incomplete or hastily-completed applications and appeals.). See also: Brian Barbour, UNHCR Refugee Status Determination Backlog Prevention and Reduction, January 2018, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html ("While it may seem counter-intuitive, slowing down at the very beginning of the process may make the process overall more efficient. This does not mean delaying the first instance process, but only ensuring an adequate minimum period for preparation before the main substantive interview is conducted.").*

[122] *Brian Barbour, UNHCR Refugee Status Determination Backlog Prevention and Reduction, January 2018, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html.*

> "It is critical that managers accurately assess long and short-term RSD staffing needs and make the best operational and strategic use of the regular and temporary or affiliate workforce in their operations. Staffing levels should take into account the segregation of functions and responsibilities, including the work of clerical and support staff, facilitating an accurate picture of the requirements for individual RSD case processing, such that adequate targets are set for individual examination of claims. Targets, outputs and benchmarks should be set for each stage of the process including reception, registration, and file management as well as first instance and appeal procedures that include time for preparation, interviewing, case assessment, decision drafting and decision delivery. It should take into account adequate leave time, and any additional non-RSD responsibilities of staff. Flexibility should be maintained, however, as particularly complicated cases, or vulnerable applicants such as unaccompanied children may take more time. This level of management cannot be imposed at the global level or as a matter of inflexible requirements, but depends on active oversight by locally present and accessible managers."[123]

Compulsory and regular filing, reporting, and ongoing periodic analysis of data on new applications and trends are critical on an ongoing basis, in order to:

- Alert the operation to symptoms of a developing backlogs or systemic problems;
- Review adequacy of case processing capacity and justify requests to the annual budget; and
- Inform decisions about when to begin or cease a surge, or other specific case-processing modality when a new influx occurs or patterns change.

Efficiency is also effected by infrastructure – a database that is not fit for purpose, inadequate or inaccessible interviewing facilities, inefficient filing systems, poor internet connectivity.

> "Much can be accomplished by committed and competent staff and managers, even in the most difficult of circumstances, when they take the time to analyse the situation and identify areas for improved efficiency. At the same time, the availability of fit-for-purpose data management tools and technology with adequate IT support can have a tremendous impact on efficiency. When schedules, forms, or statistics are automated, work processes can be completed much faster and more accurately. Similarly, devoting time to templates, repositories (including of up-to-date COI and other relevant information) and samples, can dramatically reduce individual processing

[123] *Brian Barbour, UNHCR Refugee Status Determination Backlog Prevention and Reduction, January 2018, PPLA/2018/03, available at: https://www.refworld.org/docid/5b1a38374.html.*

> times where staff are recreating the wheel with every case. Sometimes there is a rush to develop a tool, but it is important to know what you want. Without a fit for purpose data management tool there will be daily frustrations, work-arounds, and inadequate data collection or analysis."[124]

There is a need for an adequate level of infrastructure and staffing to process cases efficiently and sustainably. Benchmarks can be established based on an average case processing time, with targets set for each staff member per week, month, or year, keeping in mind that actual time required can vary when the case is either more straightforward or more complex. Flexibility is necessary as is regular monitoring and evaluation. These benchmarks will need to be regularly updated.

All of the work done on benchmarking has the added benefit of providing an adequate evidence base to justify the budget being requested to do the work, and it can justify the limits of what is possible within the actual budget received. On the other hand, without an understanding of the caseload, namely the demographics, vulnerabilities, the actual size and stage of the process of applicants, it would be difficult to understand how to establish adequate case processing capacity through adequate timeframes and staffing benchmarks.

Integrity

Integrity is concerned with good faith in the discharge of official responsibilities,[125] in accordance with a transparent and consistent framework of principles. Public confidence in the RSSD system and in the authority responsible for implementing it will ensure respect for, and compliance with, the law. Integrity includes the transparency and propriety of the process, the decision, and the decision maker.[126] Integrity is the extent to which the institution has the capacity to do the job for which it has been empowered with fairness, independence and respect for the public, and the degree to which the conduct is free of bias, prejudice or improper influence.[127] In other words, integrity, in this context, is the good faith execution of the States' responsibilities to protect refugees and stateless persons, measured against common standards such as other characteristics of a competent decision-making authority set out in this analysis.

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[124] *Brian Barbour, UNHCR Refugee Status Determination Backlog Prevention and Reduction, January 2018, PPLA/2018/03,Section 3.1.2, available at: https://www.refworld.org/docid/5b1a38374.html.*

[125] *Vienna Convention on the Law of Treaties, Article 26, U.N. Doc. A/CONF.39/27 (1969), reprinted in 63 AM. J. INT'L L. 875 (1969). (Article 26 of the Vienna Convention on the Law of Treaties, pacta sunt servanda, holds that, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").*

[126] *The International Framework for Court Excellence, 2nd Edition, March 2013 (available at: http://www.courtexcellence.com/~/media/Microsites/Files/ICCE/The%20International%20Framework%202E%202014%20V3.ashx).*

[127] *Bangalore Principles of Judicial Conduct, Value 3 "Integrity", available at: https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.*

Accountability

There should be mechanisms for quality control, evaluation, and accountability of institutions and decision-making that contribute to a more fair, effective, and efficient functioning of the RSD. Traditionally, appeal is the legal accountability mechanism for first-instance decision-making, and appeals through to the highest authority of the land.

> "The judicial registers, the files that record the proceedings in each case, the public nature of oral proceedings, judicial reasons for decisions and appeal courts are the mechanisms that keep track of the proceedings and allow the checks on the proper application of the law so that the legality of each case may be verified."[128]

That form of accountability is one of the reasons why independent appeal is considered important. Other forms of accountability are provided through complaints mechanisms (with complaints assessed next to Codes of Professional Conduct), ombudsman, ongoing quality assessment procedures, and managerial methods of evaluating individual judges (discipline, promotion, transfer, appointment, tenure) and decision-making bodies as a whole (statistics, consistency, timeliness, etc.).[129] Some have seen the notions of independence and accountability to be in conflict with each other,[130] but it is, and must be, possible to ensure both respect for independence and accountability.

> "…'the independence of the judiciary from the executive, far from being an end in itself, is nothing but another instrumental value [which is] intended as a means of safeguarding another value, that is, the impartiality of the judge'. In other words, just as will be seen in the case of accountability, neither the independence of the judiciary nor that of the individual judge is an end in itself. It is, rather, a necessary means to the end of the adjudication of cases by an impartial and neutral third party."[131]

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[128] *Contini, F. and Mohr, Richard: Reconciling independence and accountability in judicial systems 2007. Available at: https://ro.uow.edu.au/lawpapers/46.*

[129] *Ibid.*

[130] *Authors Contini and Mohr discuss this conflict, and propose resolution of it: Contini, F. and Mohr, Richard: Reconciling independence and accountability in judicial systems 2007. https://ro.uow.edu.au/lawpapers/46 ("The creation of conditions favourable to communication between the various institutional actors can therefore be seen to be essential to a satisfactory system of accountability. This system will be one that develops a set of accountability mechanisms that take account of and understand the full breadth of values and interests that must be emphasized and followed by judicial systems. These are the conditions necessary to overcome the stalemate between judges who think of the court as a temple to law and justice, protected by the sacred value of independence, and managers who see the court as a decision factory, to be directed and evaluated through managerial or productivist forms of accountability.").*

[131] *Contini, F. and Mohr, Richard: Reconciling independence and accountability in judicial systems 2007. https://ro.uow.edu.au/lawpapers/46, citing to: M. Cappelletti, Giudici Irresponsabili?, 1989; P. Nonet et al., Law & Society in Transition, 2001; and C. Guarnieri et al., The Power of Judges, 2002, p. 154; J.L. Waltman et al. (eds.), The Political Role of Law Courts in Modern Democracies, 1988.*

Another important point to note about accountability is that, traditionally, accountability is thought to be owed to a higher authority, to the authority that delegated the power, or to a budgetary authority (upward and hierarchical accountability). While this form of accountability is generally not contested, recently, particularly in the humanitarian sector, accountability has been understood to also be directed to those affected by a system (downward or quality accountability).[132] This form of accountability asks whether an institution's performance meets the needs and expectations of those affected by the use of its authority, and whether it respects the dignity and rights of such persons.

Accountability is the obligation of the institution to be answerable for the responsibilities that have been assigned to it. The institution is accountable when it communicates, implements, and monitors compliance with its purpose and function

Fact-finding vs. decision-making functions

The fact-finding function involves the collection of forms, evidence, legal arguments, and a number of other material necessary to determine the relevant facts of each case. Interviews are considered "essential to establish the facts of the claim" and are considered a "core standard of due process" in RSD.[133] Interviews are critical because in some cases, "the Applicant's own testimony is often the primary if not the only source of relevant information available… [and therefore], an individual RSD interview is essential to establish the facts of the claim, …[i]dentify what elements are material to the Applicant's claim; [g]ather, as far as possible, from the Applicant all the necessary information related to those material elements; and [p]robe the credibility of the Applicant's statements with regard to material elements."[134] Fact-finding is conducted so that the law can be objectively applied to those facts for purposes of making a decision on a person's protection status. An accurate decision cannot be made without all of the relevant facts, so effective and efficient decision-making is dependent upon effective and efficient fact-finding.

Despite the dependence of decision-making on fact-finding, a number of jurisdictions continue to separate the fact-finding function from the decision-making function.

[132] *See, for example, HAP, Sphere, Core Humanitarian Standard, etc. ("It is a process of taking into account the views of, and being held accountable by, different stakeholders, and primarily the people affected by authority or the exercise of power.").*

[133] *UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, 26 August 2020, available at: https://www.refworld.org/docid/5e870b254.html (See Core Principles and Standards Pg. 15, and Section 4.3.1 "The Applicant's Right to an Individual RSD Interview").*

[134] *Ibid.*

Comparing national asylum systems, there may be designated committees, sub-committees, technical secretariats, boards, research units, or other institutions who conduct interviews, investigate claims, and compile all relevant evidence, and then submit that information (sometimes with a recommendation on the grant or denial of asylum) to the Minister, Commissioner, or Eligibility Committee who maintains the legal authority to decide the case. In systems that separate the investigation from the decision-making, the individual or body that has legal authority to determine refugee status may consider the case *de novo*,[135] or they may simply endorse a decision/recommendation of the eligibility officers. In some circumstances this endorsement may become a rubber stamp. This is more likely in situations of a high caseload where an Eligibility Committee or Commissioner is presented with hundreds or even thousands of cases at a time. There are also cases where delegation of legal authority to determine refugee status is delegated to a smaller number of officials, rather than to a large number of eligibility officers.

At least one court has ruled that it is "inherently unfair" for the person or body who determines refugee status to do so without ever having met the applicant. In Hong Kong, considering the fairness of the process for the determination of non-refoulement claims under Article 3 of the Convention Against Torture, the Courts ruled that "setting in place a system where the decision on the claim is not made by the examining officer, but by some other more senior Immigration Officers, two or three steps removed from the examining officer [and who has not seen the claimant but only read answers noted on a screening form by someone else], the Respondents have established an inherently unfair system of dealing with Convention claims."[136] Transparency may also be affected among applicants who feel that they have not had the opportunity to present their case directly to the decision-maker.

Independent Appeal

An appeal against the first instance decision is considered a fundamental due process guarantee and serves as the primary form of accountability for decision-makers. There are different numbers and levels of appeal in each jurisdiction. Key question in evaluating asylum systems are: how many levels of appeal are available? Is the appeal body independent of the first-instance body? What kind of institution conducts appeal?

[135] *De novo considers all facts and law anew, including new evidence not submitted in the first instance. Garner, B. A., & Black, H. C. (1999). Black's law dictionary, available at: https://courts.mt.gov/External/SOR/definitions/2.*

[136] *FB v. Dir. of Imm., HCAL 51/2007 ("[where the first-instance decision-maker is not the person who conducts the interview] a view has to be formed of the credibility of the claimant's account by a person who has not seen the claimant but only read the answers noted on screening form by someone else... By setting in place a system where the decision on the claim is not made by the examining officer but by some other more senior Immigration Officers, two or three steps removed from the examining officer, the Respondents have established an inherently unfair system of dealing with Convention claims.").*

A final decision on appeal is made at the final instance of an administrative or judicial procedure as established by law or policy. The final instance in many countries is a decision by the highest national court. A common progression may include an administrative first-instance procedure followed by a second-instance administrative appeal procedure, and then the availability of judicial review in the national courts of general jurisdiction.[137] However, States may limit the number and levels of appeals available and may establish specialized bodies to conduct them.

In asylum cases, the relevant time in question is always now. RSD assesses whether there is a "well-founded fear of persecution." It is forward looking, and therefore, it is important that the decision-maker always considers the most up to date circumstances, rather than considering whether the applicant had a well-founded fear upon arrival in the country or at the first instance. UNHCR recognizes the right to an independent appeal and considers the claim *de novo* (considers all facts and law anew, including new evidence not submitted in the first instance), and attempts to establish detailed procedures to ensure for these procedural standards in practice.

> ""Every Applicant whose RSD decision was negative at first instance has the right to appeal that negative RSD decision. The scope of the review on appeal encompasses both findings of fact and the application of the refugee criteria under UNHCR's mandate. The review of the negative RSD decision at the appeal stage should also take into consideration any new information relevant to the claim, including information relating to a change in the Applicant's personal circumstances or a change in the situation in their country of origin… Applicants should continue to enjoy the rights and protection accorded to them… throughout the period allowed for submitting an appeal and, once the appeal application is submitted, while a final decision is pending…"[138]

De novo review[139] also ensures that at the appeal stage (which in some contexts may be years after the first instance determination), the applicant's claim is analyzed under the current situation, not the situation as it was at the time the applicant left the country, or at the time of the application or first instance assessment.[140] Because the refugee definition is forward-looking, the question is always future risk under current circumstances which may be better or worse than they were in the past.[141]

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[137] *See for example Japan, Korea, Hong Kong where apart from an administrative appeal, recourse to the courts is also available.*

[138] *UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, 26 August 2020, 7.1-7.5, available at: https://www.refworld.org/docid/5e870b254.html.*

[139] *Ibid.*

[140] *Ibid.*

[141] *Ibid.*

Assessment of Proposed and Draft Bills Against Characteristics

Current practice under DOJ Circular 58 series of 2012, and proposals under the Draft Bill both seem to show a greater potential for specialization and expertise than the filed Bills (SB 379/HB 3425), with the greatest potential being shown by the draft Bill for achieving high marks against each of the characteristics of a competent decision-maker described above. On the question of appeals, none of the models provide much detail on procedural standards or independence on appeal.

Current Practice under the RSPPU

The current system in place for RSSD under DOJ Circular 58 series of 2012, assigns responsibility for identification, determination, and protection of refugees and stateless persons to a "Refugees and Stateless Persons Protection Unit" in the Legal Staff of the DOJ. The Unit is "headed by the Chief State Counsel assisted by such number of personnel of the [DOJ] and officers of the [BI] as may be necessary."[142] Efficiency can be sustained by the number of personnel, but decision-making is remains centralized in a single decision-maker who is not directly involved in fact-finding. Under Section 11, interviewing and fact-finding are conducted by a Protection Officer,[143] but under Section 12, written decisions are rendered by the Secretary of Justice.

Filed Bills (Senate Bill 379/House Bill 3425) establishing the RSPPB

Under Section 9 of the filed Bills (SB 379/HB 3425), the RSPPB is "the central authority in matters relating to the determination of the status of refugees and stateless persons and their eligibility for protection." Under Section 13, a Secretariat is established to receive, evaluate, and process applications, and make recommendations on approval or disapproval. The recommendations, however, go to the RSPPB as the sole decision-maker. There is, therefore, a separation of the fact-finding and decision-making functions.

The RSPPB has decision-making authority as an eight-member committee with high-level appointed members who hold a number of other functions and responsibilities:

- Secretary of DOJ or a representative;
- Secretary of DFA or a representative;
- Commissioner of BI or a representative;

[142] *DOJ Circular 58 series of 2012, Section 5.*

[143] *Pursuant to DOJ Office Order No. 0366 dated 17 May 2021, the RSPPU has its internal process by which draft decisions are reviewed by Team Heads/senior Protection Officers.*

- National Security Advisor or representative; and,
- Four Presidential appointments (one civil society rep and three lawyers).

No qualifications aside from "rank," and nothing relating specifically to RSSD, are specified for the first four appointees. Among the other four Presidential appointments, the civil society representative is required to have experience in advocacy and refugee crisis management while the three lawyers should have a regional trial court judge qualification and relevant training and experience in any of the areas: human rights, immigration, social work, or refugee protection.

The identified officials (Secretary of Justice, Secretary of Foreign Affairs, Commissioner of the Bureau of Immigration, and National Security Advisor) are appointees "whose entrance and continuity in the service is based on trust and confidence."[144] Their appointment "is subject to pleasure, or co-existent with [the] tenure"[145] of the President. Further, a number of functions and responsibilities and will have substantial demands on their time in other areas. Experience with high-level eligibility committees in other jurisdictions tends to show that such high-level Ministers are unable to come together frequently, and generally do not have time for in-depth training. Thus, they will be less likely to develop expertise or will take longer to do so. When they do come together, they often have a high number of cases before them for approval and disapproval. All cases are on paper and they have never met the applicants upon whose case they will be pronouncing judgment. If the number of cases becomes even moderately large, and they meet infrequently, they are likely to become a rubber stamp. Under the filed Bills (SB 379/HB 3425), the relevant officials could delegate this role to a representative with a rank of at least an Assistant Secretary. This could, depending on how it was done, improve the situation in terms of specialization and expertise. If decision-making was delegated directly to the Secretariat, accountable to and acting under effective supervision and management, even if the RSPPB retained a policy and oversight function, the situation would be greatly improved and the institution could sustain most of the common characteristics of a quality decision-maker.

Independence and impartiality would be less likely under the inter-Ministerial model of the filed Bills (SB 379/HB 3425) due to the diversity of interests among the committee members,

[144] *Civil Service Commission Memorandum Circular No. 40, series of 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions), Section 2(d) available at: http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/855-mc-1998.html?download=3379:mc-no-40,-s-1998-revised-omnibus-rules-on-appointments-and-other-personnel-actions. For more information, see Section 14, Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, available at: https://sites.google.com/view/e-codal/political/administrative-code/book-v/omnibus-rules.*

[145] *Executive Order No. 292, Administrative Code of 1987, Book IV, Title III, Chapter 14.*

and the RSPPB members would not have the opportunity to interview and conduct fact-finding directly due to the separation of the fact-finding and decision-making functions. Overcoming those conflicting interests and ensuring an individualized assessment will, therefore, be a challenge in practice.

With regard to efficiency, the RSPPB proposed in filed bills (SB 379/HB 3425) would have a small case processing capacity. In essence there would be only one single decision-maker for every case, and that decision-maker is a body with eight members who would need to reach consensus on each case. When the number of applications exceeds a certain threshold, determination by a single person or body becomes difficult, at that point either the RSPPB becomes a rubber stamp, approving the large number of recommendations put to them by the Secretariat, or they actually try to determine the large number of cases, but at an increasingly superficial level while the backlog piles up.

This is the primary reason why many States have moved to progressively decentralized models, with a large number of individual decision-makers each empowered to determine refugee status. Such systems have a much higher case processing capacity due to the larger number of decision-makers, and they can increase the number of decision-makers according to the annual trends in applications.

Draft Bill establishing the RSPPO

The draft Bill establishes an RSPPO as an independent and autonomous institution but attached to the DOJ for purposes of policy and program coordination. It is an institution established specifically to "[f]acilitate identification, status determination and protection of refugees and stateless persons," with staff that are required to come with a specific set of skills, knowledge, and experience that are set out in the draft Bill as "Minimum Requirements for Qualification and Benefits" in Section 8. These qualifications are specified in some detail and include generally: a number of years of legal practice experience, and a number of years of refugee or statelessness-related practice experience. There is no separation of decision-making and fact-finding functions. Interviewing and collection of evidence, as well as decisions are made directly by the RSPPO without referral to a higher authority.

For the same reasons, and by design as an autonomous and independent institution, the independence of the RSPPO under the draft Bill is well established. Impartiality and transparency can be promoted under any of the three models through due process, effective management, and quality standards, but where decision-making and fact-finding are separated, applicants may feel that a system in which they have been denied the opportunity to make their case directly to the decision-maker lacks transparency and is

not impartial. With regard to efficiency, the draft Bill requires the RSPPO in Section 7, to hire "such number of personnel, as may be necessary, to enable the RSPPO to effectively and efficiently execute its mandate", and is therefore likely, given an adequate budget, to be efficient and sustainable.

Conclusion

In sum, the draft Bill ("Comprehensive Refugees and Stateless Persons Protection Act") has the greatest potential to achieve high marks against each of the common characteristics of a competent decision-making authority described above.

Assessment of Appeal under Proposed and Draft Bills

Appeals are a point by which the Government of the Philippines could consider in more depth, no matter which system is adopted. In reviewing each of the three models considered in this policy brief, none of the models establish clear procedural standards and independence at the administrative appeal level.[146] On the other hand, judicial review is ensured under all three of the models considered here, which is an excellent safeguard.

The RSPPU under DOJ Circular 58

Under current practice, in accordance with DOJ Circular 58 series of 2012, a "Request for Reconsideration" is available under Section 13, but it is to the same decision-maker that considered the case in the first instance, that is, the Secretary. No details are provided on the procedures that will be followed except that decisions shall be issued in writing within a reasonable time. It would be useful to understand how the RSPPU currently responds to "requests for reconsideration" in practice, whether such appeals involve re-assessment of the claim *de novo*,[147] and whether some form of independence from the first instance factfinder and decision-maker is ensured. Judicial review is assured under Section 20 of the DOJ Circular 58 series of 2012.

[146] *It is noted by DOJ that even where remedies are not explicitly mentioned in the relevant laws and regulations, pursuant to the structure of the government and to the Rules of Court, specific associated remedies remain available. In fact, consistent with prevailing administrative and judicial processes, while also recognizing however, that there is value in spelling out such remedies in the relevant laws, rules and regulations.*

[147] *DOJ has noted that in case of a reconsideration of the first-instance decision denying a refugee or stateless status application, the DOJ-RSPPU has limited its review to the errors indicated in the request for reconsideration, but that if the denial of the first-instance decision or the request for reconsideration is further appealed to the Office of the President or the Court of Appeals or the Supreme Court, as the case may be, a de novo or a new assessment on the appealed case may be observed, subject to existing rules and regulations prescribed for such purpose by the said Office or courts.*

Filed Bills (Senate Bill 379/House Bill 3425)

Under Section 23, a "Request for Reconsideration" is available in the case a decision is disapproved, but this request is made to the RSPPB, the same decision-maker that considered the case in the first instance. No details are provided on the procedures that will be followed except that decisions shall be issued in writing within a reasonable time. Judicial review is assured under Section 33 of the SB 379.

The Draft Bill

The draft Bill is the only one that offers an administrative appeal to a decision-maker that is different than the first instance decision-maker prior to judicial review. However, the draft Bill offers instead an appeal to the Office of the President. Nothing further is mentioned about the Office of the President in the draft Bill. It offers no details on how such applications would be made, received, assessed, or resolved, and therefore would appear to only offer an act of pure discretion by the Office of the President in both how it assesses the appeal and in the procedures it would follow. Although subsequent regulations may choose to provide such detail, it would be preferable for the law to provide clear guidance on the rights and procedural standards expected of the administrative appeal process. Judicial review is assured under Section 16. This provision is in line with Rule 43 of the Rules of Court which states that appeals from judgments by the Office of the President, as a quasi-judicial agency, "may be taken to the Court of Appeals."

Conclusion on Appeals

Administrative appeals are a point which the Government of the Philippines could consider in more depth, including the question of what institution will conduct the appeal, and its independence from the first-instance decision-maker. All of the other characteristics of a competent decision-maker will also apply equally to the appeal body and can inform its development. It is recommended that appeal be available to a different decision-maker than the one that made the first decision, and that the decision-maker on appeal consider the case *de novo*.

Under current practice, judicial review is also the only venue through which decisions are published with a view to "*stare decisis,*" to serve as precedent and provide guidance to future decisions. Many systems have established a kind of administrative refugee appeals board that publishes select decisions as a form of precedent and to provide guidance to future decisions. For example, in New Zealand, the Immigration & Protection Tribunal hears and determines appeals concerning decisions about the recognition of a person as a

refugee or protected person.[148] In Canada, the Immigration and Refugee Board of Canada (IRB) is a quasi-judicial, independent administrative tribunal.[149] In the United States, the Board of Immigration appeals ("BIA") is the highest administrative body for interpreting and applying immigration laws and its decisions are binding on all Department of Homeland Security officers and immigration judges unless modified or overruled by the Attorney General or a federal court.[150]

It is encouraging to see that judicial review is in place in every model being considered, as this will ensure high-level and high-quality review of administrative action by an independent and impartial body no matter which model is eventually adopted. There may be concern that the draft Bill sends judicial appeals straight to the Court of Appeals, as this raises the question about whether claims will ever be considered *de novo* under this model.

	DOJ Circular 58 series of 2012	Filed Bills (Senate Bill 379 & House Bill 3425)	Draft Bill
Appeal	Written reconsideration by the same decision-maker (the Secretary of Justice) and further appeal to the courts[151]	Written reconsideration by the same decision-maker (the RSPPB) and further appeal to the courts	Written reconsideration by the same decision-maker (the RSPPB) and further appeal to the courts

[148] *See: https://www.justice.govt.nz/tribunals/immigration/immigration-and-protection/.*

[149] *See: https://irb-cisr.gc.ca/en/Pages/index.aspx.*

[150] *See: https://www.justice.gov/eoir/board-of-immigration-appeals.*

[151] *It should be noted that in practice, appeal is made to the Office of the President before the courts.*

Policy Brief 3

Facilitated (Administrative) Naturalization Bill

Under Article 32 of the 1954 Convention Relating to the Status of Stateless Persons ("1954 Statelessness Convention"), "[t]he Contracting States shall as far as possible facilitate the assimilation and naturalization of **stateless persons**. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."[152] A matching and identical provision is found in Article 34 of the 1951 Convention Relating to the Status of Refugees ("1951 Refugee Convention"), stating that: "[t]he Contracting States shall as far as possible facilitate the assimilation and naturalization of **refugees**. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

Considering these obligations, alongside the vulnerable circumstances of refugees and stateless persons, a draft bill has been prepared to provide a path to citizenship through administrative naturalization for those recognized through the Refugee and Stateless Status Determination (RSSD) process.

Law	Administrative Naturalization Republic Act 9139	Facilitated Naturalization (Administraive naturalization of persons recognized through RSSD) Proposed Draft Bill
Competent Authority	*Special Committee on Naturalization* (three members): 1. Solicitor General (Chair); 2. Secretary of Foreign Affairs, or representative; and, 3. National Security Adviser	Same as Committee established under RA 9139.
Support Role	Secretariat of the Special Committee	Same as established under RA 9139
Complementary Role	Publication and Security Check by: 1. Department of Foreign Affairs 2. Bureau of Immigration (BI)* 3. Civil registrar of the petitioner's place of residence 4. National Bureau of Investigation **Notification of naturalization is also made by BI to Civil Registrar*	Same as established under RA 9139

[152] *UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, Article 32, available at: https://www.refworld.org/docid/3ae6b3840.html*

Law	Administrative Naturalization Republic Act 9139	Facilitated Naturalization (Administraive naturalization of persons recognized through RSSD) Proposed Draft Bill
Qualifications	1. A person born in the Philippines and residing in the Philippines since birth; 2. At least 18 years old at the time of filing; 3. Who has received primary and secondary education in a recognized school; 4. Who is able to read, write and speak Filipino or any of the dialects of the Filipinos 5. Who has mingled with Filipinos and evinced a sincere desire to learn and embrace the customs, traditions, and ideals; 6. Who is of good moral character; 7. With a known and lawful trade.	1. A person recognized by the DOJ as a refugee or stateless person; 2. At least 18 years old at the time of filing (unless an unaccompanied child); 3 Residing in the Philippines for at least three years from the date of recognition as a refugee or stateless person; 4. Who can communicate in Filipino or any local dialect (or sign language in the case of persons with disability);[153] 5. Who has mingled with Filipinos and evinced a sincere desire to learn and embrace the customs, traditions and ideals; 6. Who is of good moral character; and, 7. With a known and lawful trade (unless an unaccompanied child).
Disqualifications	1. Those opposed to or affiliated with groups opposed to organized government; 2. Defending or teaching violence for success of their ideas; 3 Polygamists; 4. Convicted of crimes involving moral turpitude; 5. Suffering from mental alienation or incurable contagious diseases; 6 Have not mingled socially with Filipinos, or evinced a sincere desire to learn the customs, traditions & ideals; 7. Subjects with whom the Philippines is at war, during such war; and, 8 Subjects of a country whose laws do not grant Filipinos the right to naturalize.	1. Those opposed to or affiliated with groups opposed to organized government; 2 Opposed to ideals and policies of the Philippine government; 3. Defending or teaching violence for success of their ideas; 4. Committed any act that is a threat to national security; 5. Suffering from mental illness with active symptoms resulting in temporary impairment and decision-making capacity or with a public health emergency of international concern at the time of the petition; 6 Those with pending naturalization applications in another State; 7 Those granted citizenship in another State; 8. Subjects with whom the Philippines is at war, during such war; and, 9. Convicted of crimes involving moral turpitude in the Philippines and sentenced to more than six years imprisonment, or more than once for similar crimes.

[153] *See entry in International Labour Organization Database of national labour, social security and related human rights legislation, at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107250*

Naturalization in the Philippines

Under Section 1(4), Article IV of the 1987 Constitution, "[t]hose who are naturalized in accordance with law" are citizens.[154] There are three forms of naturalization under the law of the Philippines: (1) administrative naturalization under Republic Act (RA) 9139, (2) judicial naturalization under Commonwealth Act (CA) 473, and legislative naturalization through which Congress can enact a law bestowing Philippine citizenship (See, for example: Republic Act [RA] 10148, 12 March 2011 or RA 10636, 11 June 2014 [conferring nationality on basketball players Marcus Doubhit and Andray Blatche respectively]).

	Administrative	Judicial
Law	RA 9139	CA 473
Competent Authority	*Special Committee on Naturalization* (three members): 1. Solicitor General (Chair); 2. Secretary of Foreign Affairs, or representative; and, 3. National Security Adviser	The Court of First Instance of the Province in which the petitioner has resided at least one year immediately preceding filing.
Eligibility	A person born in the Philippines and residing in the Philippines since birth; who is at least 18 years old at the time of filing; who has received primary and secondary education in a recognized school; who is able to read, write and speak Filipino or any of the dialects of the Filipinos; who has mingled with Filipinos and evinced a sincere desire to learn and embrace the customs, traditions, and ideals; and who is of good moral character; with a known and lawful trade.	Anyone 21 years old or over on the day of the hearing, who has resided in the Philippines for at least 10 years, of good moral character, with real estate or some known and lucrative trade; able to speak and write any of the principal Philippine languages; whose children are enrolled in a recognized school.

It is conceivable that a stateless person could be eligible for Administrative Naturalization already, if they satisfy the criteria found in RA 9139. Alternatively, any stateless person could be eligible for judicial naturalization if they satisfy the criteria found in CA 473. Further, if approved and issued, the proposed draft Rule on Facilitated Judicial Naturalization for Refugees and Stateless Persons, created pursuant to Supreme Court Memorandum Order No. 87-2020, could pave the way to expedite the procedural aspects of the naturalization proceedings for recognized stateless persons in line with Article 32 of the 1954 Statelessness Convention.

[154] *The Constitution of the Republic of the Philippines, 1987, available at: https://www.officialgazette.gov.ph/constitutions/1987-constitution/.*

CA 473, judicial naturalization, was passed in 1939, and was the only form of naturalization available until 1975. In 1975, President Marcos issued Letter of Instruction (LOI) No. 270, establishing an administrative naturalization procedure.[155] It is suggested that the LOI was issued at a time when the Philippine was establishing diplomatic relations with the People's Republic of China, and following long standing campaigns for inclusion among a large ethnic Chinese population living in the Philippines for generations[156] Individuals of several ethnicities were naturalized under the new administrative procedure. Presidential Decree 836 in 1975 facilitated derivative citizenship for alien women and dependent children. In the case of alien men, children could elect Philippine citizenship upon reaching the age of majority.[157]

RA 9139, the Administrative Naturalization Law, was approved in 2001, and codified the administrative procedure for naturalization that had been put in place by former President Marcos, with some amendments. The law was developed and eventually enacted with a view to encourage "brain gain" by inviting foreigners to contribute to the economy and was also seen as a way to encourage the emigration of many overseas Filipinos.

Administrative Naturalization

RA 9139 provides for administrative naturalization by application to a Special Committee on Naturalization of the Office of the Solicitor General (OSG). Administrative naturalization is currently limited under RA 9139 to persons born in the Philippines, who studied and resided in the Philippines since birth, and is at least 18 years old at the time of filing, and who satisfy certain qualifications set out in the chart above. It provides a path to citizenship through administrative naturalization to persons born and raised in the Philippines to non-Filipino parents.

This is the only form of administrative naturalization currently available. All other persons must seek naturalization through the courts under CA 473. Under very limited circumstances there are also persons granted citizenship directly by legislative action. Judicial naturalization under CA 473 is only available to persons over 21 years old on the day of the hearing, who have resided in the Philippines for at least 10 years, are of good moral character, who

[155] *Letter of Instruction No. 270, s. 1975, April 11, 1975, available at: https://www.officialgazette.gov.ph/1975/04/11/letter-of-instruction-no-270-s-1975/.*

[156] *Filomeno V. Aguilar, Report on Citizenship Law: Philippines, RSCAS/GLOBALCIT-CR 2017/1, January 2017, available at: https://cadmus.eui.eu/bitstream/handle/1814/45147/GLOBALCIT_CR_2017_01.pdf.*

[157] *Presidential Decree No. 836, s. 1975, December 3, 1975, available at: https://www.officialgazette.gov.ph/1975/12/03/presidential-decree-no-836-s-1975/.*

have real estate or some known and lucrative trade; are able to speak and write any of the principal Philippine languages; and whose children are enrolled in a recognized school.

Administrative Naturalization for Refugees and Stateless Persons

As noted in Policy Brief #1 on accession to the 1961 Convention on the Reduction of Statelessness ("1961 Statelessness Convention"), RA 9139 provides an administrative path towards citizenship for those born in the Philippines who satisfy certain qualifications, but there is no safeguard for those who would otherwise be stateless, and the qualifications include a requirement of residence since birth (at least 18 years old since the application cannot be made before the person is 18 years of age), which would exceed the maximum of five years immediately preceding application that is permitted by the 1961 Statelessness Convention. Other qualifications may also need to be assessed in light of the situation, rights, and vulnerabilities of stateless persons.

The draft Facilitated (Administrative) Naturalization Bill, if filed and passed, would reduce the residency requirement to three years following the date of recognition as a stateless person, and though the applicant must be 18 years old to apply, there is an exception for unaccompanied minors, and minor children of an applicant could receive derivative citizenship. This is consistent with Article 7 of the Convention on the Rights of the Child (CRC) which ensures that every child has the "right to acquire a nationality" and requires States Parties to ensure implementation of these rights in accordance with national law, "in particular where the child would otherwise be stateless."

Among the participants in inter-agency validation meetings, discussions have been held regarding whether or not it is obligatory to accord the child with nationality, and how to balance the obligations of Articles 7 and 8 of the CRC:

- Article 7: "The child shall be registered immediately after birth and shall have..., the right to acquire a nationality, [and] States Parties shall ensure implementation of these rights..., in particular where the child would otherwise be stateless."
- Article 8: "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

There is an immediate need to address the lack of citizenship of stateless children, but for refugee children who may still have a nationality, the case may be different.

The Council for the Welfare of Children (CWC) noted that social workers and/or parents or legal guardians will be assessing if there is an urgent need for citizenship especially for stateless children, this assessment will involve consultation of the social worker with the child, and, in all instances, the best interest of the child will be the paramount concern.

This is consistent with General Comment No. 6 of the Committee on the Rights of the Child (2005) addressing the treatment of unaccompanied and separated children outside their country of origin. In paragraphs 20 to 21, it finds that, "[a] determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs...The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques... Subsequent steps such as the appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard... [and] where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian."[158]

There were other suggestions that perhaps the considerations may be different for refugees and stateless children since the only durable solution for statelessness is a grant of citizenship. However, in both cases, the best interests of the child will be the paramount concern.

> "Several provisions of the CRC are important tools for interpreting Articles 1 to 4 of the 1961 [Statelessness] Convention. CRC Article 7 guarantees that every child has the right to acquire a nationality while CRC Article 8 ensures that every child has the right to preserve his or her identity, including nationality. CRC Article 2 is a general non-discrimination clause which applies to all substantive rights enshrined in the CRC, including Articles 7 and 8. CRC Article 3 also applies in conjunction with Articles 7 and 8 and requires that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration. It follows from CRC Articles 3 and 7 that a child may not be left stateless for an extended period of time."[159]

[158] *UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: https://www.refworld.org/docid/42dd174b4.html.*

[159] *UNHCR, Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions", September 2011, available at: https://www.refworld.org/docid/4e8423a72.html.*

The DOJ, in its letter dated 28 July 2020 addressed to the DFA favorably recommending the accession to the 1961 Statelessness Convention, proposes that “a new comprehensive law be enacted governing the application of stateless persons for Philippine citizenship including their adoption.” Further developments on the Facilitated Administrative Naturalization Bill and its sponsorship for passage in the House of Representatives and Senate are recommended.

Annexes

Annex 1. International Legal Framework

Statelessness and Refugees

The 1954 Convention Relating to the Status of Stateless Persons (1954 Statelessness Convention), and the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention) are the two primary Conventions addressing statelessness. These Conventions are complemented by a number of international human rights obligations related to nationality, identity, movement, and protection.

This Annex provides a non-exhaustive list of international legal instruments, with excerpts that are most relevant to issues of statelessness highlighted. The Philippines is State Party to these international legal instruments except the 1961 Statelessness Convention, to which the Philippines has pledged to accede.[160]

Theme	Convention Title	Year of Ratification/Accession by the Philippines
Statelessness	1954 Convention Relating to the Status of Stateless Persons	2011
	1961 Convention on the Reduction of Statelessness	*Pledged to Accede during the High-Level Segment on Statelessness*
Refugees	1951 Convention Relating to the Status of Refugees	1981
	1967 Protocol Relating to the Status of Refugees	1981

Human Rights

International Instruments	Relevant Provisions	Year of Ratification/ Accession by the Philippines
Universal Declaration of Human Rights	Article 15, (1) "Everyone has the right to a nationality"; and (2) "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."	N/A[161]

[160] *UNHCR, Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011, October 2012, available at: https://www.unhcr.org/4ff55a319.pdf.*

UNHCR, Results of the High-Level Segment on Statelessness, October 2019, available at: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/.

[161] *UN General Assembly, Declaration on Human Rights Defenders, 14 December 1950, A/RES/53/144, available at: https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx. Paragraph 1 (Legal Character).*

International Instruments	Relevant Provisions	Year of Ratification/ Accession by the Philippines
International Covenant on Civil and Political Rights (ICCPR)	Article 24, (2) "Every child shall be registered immediately after birth and shall have a name"; and (3) "Every child has the right to acquire a nationality"	1986
	Article 12, freedom of movement; free to leave any country, including his own; no arbitrary deprivation of the right to enter his own country.	
	Article 13, expulsion only in pursuance of a decision reached in accordance with law, with review by competent authority, and representation	
International Convention on the Elimination of Racial Discrimination (CERD)	Article 5, guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (i) the right to freedom of movement and residence within the border of the State; (ii) the right to leave any country, including one's own, and to return to one's country; (iii) the right to nationality.	1967
International Covenant on Economic, Social and Cultural Rights (ICESR)	Article 10, (3), "[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions..."	1974
International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Article 9, (1), "shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband...; and (2) "shall grant women equal rights with men with respect to the nationality of their children."	1981
Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment	Article 3, (1), "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."	1986
Convention on the Rights of the Child (CRC)	Article 7, (1), "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents"; and (2) "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."	1990
	Article 8, (1), "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference" and (2) "Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."	

International Instruments	Relevant Provisions	Year of Ratification/ Accession by the Philippines
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)	Article 8, (1), "Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention"; and (2) "Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin."	1995
	Article 29, "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality."	
Convention on the Rights of Persons with Disabilities (CRPD)	Article 18, (1), Right to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities: "(a) [h]ave the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability; (b) [a]re not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement; (c) [a] re free to leave any country, including their own; (d) [a]re not deprived, arbitrarily or on the basis of disability, of the right to enter their own country"; and (2) "[c]hildren with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents."	2008

Other International Frameworks

Non-binding Commitments	Relevant Provisions
The Sustainable Development Goals (SDGs) [The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015]	Many of the SDGs and related Targets are pertinent to improving the living conditions of stateless persons… [due to] the many negative consequences of not being recognised as citizens of any country. There are also specific SDGs and Targets that will help prevent and reduce statelessness itself, provided they are implemented properly. These…notably include SDG 5, Target 5.1, which relates to the elimination of gender discrimination, and SDG 16, Target 16.9":[162] SDG 16.9, "By 2030, provide legal identity for all, including birth registration"

[162] *UNHCR, The Sustainable Development Goals and Addressing Statelessness, March 2017, available at: https://www.refworld.org/docid/58b6e3364.html.*

Non-binding Commitments	Relevant Provisions
The New York Declaration (NYD) for Refugees and Migrants [adopted by the UN General Assembly in 2016]	Paragraph 72, "We recognize that statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness. We take note of the campaign of the Office of the United Nations High Commissioner for Refugees to end statelessness within a decade and we encourage States to consider actions they could take to reduce the incidence of statelessness. We encourage those States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to consider doing so."
Global Compact on Refugees (GCR) [December 2018]	Paragraph 46, "…Upon the request of concerned States, support will be provided for the inclusion of refugees and host communities, as well as returnees and stateless persons as relevant, within national data and statistical collection processes…"
	Paragraph 60, "In support of concerned countries, States and relevant stakeholders will contribute resources and expertise for the establishment of mechanisms for identification, screening and referral of those with specific needs to appropriate and accessible processes and procedures… identification and referral of stateless persons and those at risk of statelessness, including to statelessness determination procedures."
	"2.8 Civil registries", Paragraph 82, "Civil and birth registration helps States to have accurate information about the persons living on their territory, and is a major tool for protection and solutions, including for refugee women, girls and others with specific needs. While it does not necessarily lead to conferral of nationality, birth registration helps establish legal identity and prevent the risk of statelessness. In support of host countries, States and relevant stakeholders will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons, as appropriate, to civil and birth registration and documentation, including through digital technology and the provision of mobile services, subject to full respect for data protection and privacy principles."
	"2.9 Statelessness", Paragraph 83, "Recognizing that statelessness may be both a cause and consequence of refugee movements, States, UNHCR and other relevant stakeholders will contribute resources and expertise to support the sharing of good, gender-sensitive practices for the prevention and reduction of statelessness, and the development of, as appropriate, national and regional and international action plans to end statelessness, in line with relevant standards and initiatives, including UNHCR's Campaign to End Statelessness. States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are encouraged to consider doing so."

Non-binding Commitments	Relevant Provisions
Global Compact for Safe, Orderly, and Regular Migration (GCM) [adopted December 2018]	Objective 4, Paragraph 20, "Ensure that all migrants have proof of legal identity and adequate documentation… commit to fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant's legal identity upon entry, during stay, and for return, as well as to ensure effective migration procedures, efficient service provision, and improved public safety. We further commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights." "…To realize this commitment, we will draw from the following actions: a) Improve civil registry systems, with a particular focus on reaching unregistered persons and our nationals residing in other countries, including by providing relevant identity and civil registry documents, strengthening capacities, and investing in information and communication technology solutions, while upholding the right to privacy and protecting personal data; b) Harmonize travel documents in line with the specifications of the International Civil Aviation Organization to facilitate interoperable and universal recognition of travel documents, as well as to combat identity fraud and document forgery, including by investing in digitalization, and strengthening mechanisms for biometric data-sharing, while upholding the right to privacy and protecting personal data; c) Ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents, making use of information and communications technology, as well as community outreach, particularly in remote areas; d) Facilitate access to personal documentation, such as passports and visas, and ensure that relevant regulations and criteria to obtain such documentation are non-discriminatory, by undertaking a gender-responsive and age-sensitive review in order to prevent increased risk of vulnerabilities throughout the migration cycle; e) Strengthen measures to reduce statelessness, including by registering migrants' births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State's territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation; f) Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights; and, g) Build upon existing practices at the local level that facilitate participation in community life, such as interaction with authorities and access to relevant services, through the issuance of registration cards to all persons living in a municipality, including migrants, that contain basic personal information, while not constituting entitlements to citizenship or residency" (emphasis added).

Annex 2. National Legal Framework

Citizenship

Citizenship in the Philippines is based upon the principle of *jus sanguinis*, determined by descent from a parent who is a citizen or national of the Philippines. The criteria for determining citizenship has shifted over time, and the relevant law for determining one's citizenship is the law that was in place at the time of birth. The Supreme Court of the Philippines has held that, "it is a well-settled rule that statutes are to be construed as having only a prospective operation, unless the legislature intended to give them a retroactive effect.[163] ...It has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions."[164]

Before 1935	1935 Constitution	1973 Constitution	1987 Constitution
The Treaty of Paris Art. IX; and the Philippine Bill of 1902 enacted by the US Congress (The Philippine Autonomy Act (Jones Law) of 1916) Primarily through residence, birth, or declaration of allegiance	1) Those who are citizens at the time of the adoption of this Constitution. 2) Those born in the Philippines to foreign parents who had been elected to public office. 3) Those whose fathers are citizens of the Philippines. 4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship. 5) Those who are naturalized in accordance with law.	1) Those who are citizens at the time of the adoption of this Constitution. 2) Those whose fathers or mothers are citizens of the Philippines. 3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five. 4) Those who are naturalized in accordance with law.	1) Those who are citizens at the time of the adoption of this Constitution; 2) Those whose fathers or mothers are citizens of the Philippines; 3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and 4) Those who are naturalized in accordance with law.

[163] *Tan v. Crisologo, G.R. No. 193993, S. Ct., November 8, 2017 (citing to: Lepanto Consolidated Mining Co. v. WMC Resources Intl. Pty. Ltd., 537 Phil. 473, 485 [2006]).*

[164] *Tan v. Crisologo, G.R. No. 193993, S. Ct., November 8, 2017 (citing to: Balatbat v. Court of Appeals, 282 Phil. 429, 436 (1992)).*

Citizenship Acquisition, Loss, Retention and Reacquisition, or Dual Citizenship

Acquisition	
Relevant Laws	**"Natural Born Citizens"** *(1987 Constitution, Article IV, Section 2)*: citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.* Citizenship is defined in the relevant Constitutions: 1935, 1973, 1987, and the relevant law is the one in place at the time of birth. **Those who elect citizenship in accordance with the Constitution are considered "natural born citizens" - Procedures for Election of Citizenship (CA 625)* **"No election of Philippine citizenship shall be accepted for registration under CA No. 625 unless the party exercising the right of election has complied with the requirements of the Alien Registration Act of 1950. In other words, [one] should first be required to register as an alien" (Republic v. Sagun, G.R. No. 187567, February 15, 2012)* **Naturalization** • [Judicial] Revised Naturalization Law (CA 473) • [Administrative] Administrative Naturalization Law (RA 9139) • [Legislative] Naturalization by direct legislative act
Competent Authority	• **Office of the Solicitor General (OSG):**[165] Appears in all proceedings involving the acquisition or loss of Philippine citizenship • **Civil Registry**[166] **or Philippine Embassy or Consulate:**[167] Election of Citizenship, Birth Registration • **Court of First Instance of the relevant province, with appeal to the Supreme Court:**[168] Judicial Naturalization • **Special Committee on Naturalization**[169] (with the Solicitor General as chair, Secretary of Foreign Affairs or his representative, and the National Security Adviser, as members, with the power to approve, deny or reject applications for naturalization): Administrative Naturalization
Existing Rules	Jus Sanguinis, and naturalization procedures for anyone who is not a natural-born citizen

[165] *Executive Order No. 292, Administrative Code of 1987, Book IV, Title III, Chapter 12-Office of the Solicitor General, Section 35(4). ("The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers…[including] specifically the following specific… functions… [a]ppear in all proceedings involving the acquisition or loss of Philippine citizenship.").*

[166] *Act No. 3753, Law on Registry of Civil Status: "A civil register is established for recording the civil status of persons, in which shall be entered: (a) births; (b) deaths; (c) marriages; (d) annulments of marriages; (e) divorces; (f) legitimations; (g) adoptions; (h) acknowledgment of natural children; (i) naturalization; and (j) changes of name"*

[167] *Executive Order No. 292, Administrative Code of 1987, Book IV, Title I, Foreign Affairs, Chapter 1-General Provisions, Section 3(9) "Protect and assist Philippine nationals abroad"; and (10) "Carry out legal documentation functions as provided for by law and regulations;"*

[168] *Commonwealth Act 473, Section 8.*

[169] *Republic Act 9139, Section 6.*

Loss	
Relevant Laws	Loss and Re-Acquisition of Citizenship Act (CA 63)
Existing Rules	1. By naturalization in a foreign country; 2. By express renunciation of citizenship; 3. By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining 21 years of age or more; 4. By accepting commission in the military, naval or air service of a foreign country; 5. By cancellation of the certificate of naturalization; 6. By having been declared, by competent authority, a deserter of the Philippine army, navy or air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and 7. In the case of a woman, upon her marriage to a foreigner if, by virtue of the law in force in her husband's country, she acquires his nationality.[170]

Retention, Re-acquisition, and Repatriation	
Relevant Laws	Loss and Re-Acquisition of Citizenship Act (CA 63) Citizenship Retention and Re-acquisition Act of 2003 (RA 9225) Citizenship Repatriation Act (RA 8171)
Competent Authority	Office of the Solicitor General (OSG)[171] By direct act of the Congress of the Philippines[172] Commissioner of Immigration Philippine Embassy or Consulate, who shall forward the entire records to the Commissioner of Immigration
Existing Rules	Under CA 63, re-acquisition is by naturalization, repatriation or direct act of the National Assembly RA 9225 provides for the retention or reacquisition of citizenship for natural-born citizens who naturalize in a foreign country, permitting dual nationality upon taking the oath of allegiance (and for their children below the age of 18). RA 8171[173] facilitates repatriation and re-acquisition of nationality for women who have lost their nationality through marriage to a foreigner under CA 63, by taking the necessary oath of allegiance and registration in the civil registry and Bureau of Immigration

[170] *In Commonwealth of the Philippines v. Gloria Baldello (G.R. No. L-45375, April 12, 1939), the court found that where the spouse was a stateless individual, "there being no new citizenship imposed upon her by marriage, nothing could have divested her of her original citizenship, and, therefore, her Philippine citizenship remained unchanged. The general rule that a married woman follows the nationality of her husband presupposes a nationality in the husband. Where no such nationality exists, the rule does not apply."*

[171] *Executive Order No. 292, Administrative Code of 1987, Book IV, Title III, Chapter 12-Office of the Solicitor General, Section 35(4).*

[172] *Commonwealth Act 63, Section 2(3), "Citizenship may be reacquired: (3) By direct act of the National Assembly". It should be noted that the unicameral National Assembly has been replaced by the bicameral legislature (Philippine Congress).*

[173] *See also Tabasa v. Court of Appeals, G.R. No. 125793, August 29, 2006.*

Recognition	
Relevant Laws	Bureau of Immigration's Law Instruction No. RBR-99002
Competent Authority	Bureau of Immigration – Order of Recognition Department of Justice – Confirmation by Secretary of Justice
Existing Rules	Any child born of a Filipino parent may be recognized as a Filipino citizen, by submission of appropriate documentation

Naturalization in the Philippines

Under Section 1(4), Article IV of the 1987 Constitution, "[t]hose who are naturalized in accordance with law" are citizens.[174] There are three forms of naturalization under the law of the Philippines: administrative naturalization under RA 9139; judicial naturalization under CA 473; and legislative naturalization, a special act of the legislature by which distinguished foreigners who have rendered some notable service are directly conferred Philippine citizenship (See, for example: RA 10148, 12 March 2011 or RA 10636, 11 June 2014 [conferring nationality on basketball players Marcus Doubhit and Andray Blatche respectively]). It is conceivable that a stateless person could be eligible for Administrative Naturalization, if he or she satisfies the criteria found in RA 9139. Alternatively, any stateless person could be eligible for judicial naturalization if they satisfy the criteria found in CA 473.

	Administrative	Judicial
Law	Republic Act No. 9139	Commonwealth Act No. 473
Competent Authority	*Special Committee on Naturalization (three members):* (1) Solicitor General (Chair); (2) Secretary of Foreign Affairs, or representative; and (3) National Security Adviser	The Court of First Instance of the Province in which the Petitioner has resided at least 1 year immediately preceding filing (Presently known as the Regional Trial Court (RTC))
Eligibility	A person born in the Philippines and residing in the Philippines since birth; who is at least 18 at the time of filing; who has received primary and secondary education in a recognized school; who is able to read, write and speak Filipino or any of the dialects of the Filipinos; who has mingled with Filipinos and evinced a sincere desire to learn and embrace the customs, traditions, and ideals; and who is of good moral character; with a known and lawful trade.	Anyone 21 or over on the day of the hearing, who has resided in the Philippines for at least 10 years, of good moral character, with real estate or some known and lucrative trade; able to speak and write any of the principal Philippine languages; whose children are enrolled in a recognized school.

[174] *The Constitution of the Republic of the Philippines, 1987, available at: https://www.officialgazette.gov.ph/constitutions/1987-constitution/.*

Natural-Born vs. Naturalized Citizenship

Only natural-born citizens can retain and re-acquire citizenship and sustain dual citizenship under RA 9225.[175] They can run for national offices such as President, Senator, or Representative and be eligible for appointment to the Supreme Court or serve on the Civil Service Commission, among others. Lower courts and local government positions do not require natural-born citizenship. The "natural-born" distinction was only introduced for the first time in the 1935 Constitution, and then only in reference to eligibility for President or Vice-President. In the 1973 Constitution, the distinction was defined, and became a criterion for eligibility to many national offices, and this was carried over into the 1987 Constitution.

Natural-Born Citizens	Naturalized Citizens
1987 Constitution, Article IV, Section 2: "Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." (These include those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority) • A person who, at the time of his/her birth, has at least one Filipino parent • A person born to a Filipino mother before 17 January 1973 who elected Philippine citizenship upon reaching the age of majority (21 years old) and • Those who were born under the 1935 and 1973 Philippine Constitutions	1987 Constitution, Article IV, Section 1(4): "Those who are naturalized in accordance with law."

**Foundlings are also considered natural-born citizens unless there is evidence to the contrary.*[176]

Under Article 8 of the Republic Act No. 386, the Civil Code of the Philippines, "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[177]

Derivative Citizenship

The Philippines has always maintained a derivative citizenship regime through which dependents of the person who becomes a Philippine citizen also benefit from the person's acquisition of citizenship.

[175] *Republic Act No. 9225, Citizenship Retention and Re-acquisition Act of 2003, available at: https://www.lawphil.net/statutes/repacts/ra2003/ra_9225_2003.html.*

[176] *A landmark ruling in the Supreme Court found that "[a]s a matter of law, foundlings are as a class, natural-born citizens" (Mary Grace Natividad S. Poe-Llamanzares v. COMELEC, G.R. Nos. 221697 & 221698-700, March 8, 2016), and according to Article 8 of the Civil Code, judicial decisions "form part of the legal system of the Philippines." Moreover, the Government of the Philippines has pledged to adopt "legislation to implement the ruling from the Supreme Court, through which foundlings are presumed to be natural born citizens" and issue birth certificates to foundlings on an equal basis with other children as part of its strategy.*

[177] *Republic Act No. 386, Civil Code of the Philippines, June 18, 1949, available at: https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/.*

To ensure derivative citizenship, the former President Marcos issued Presidential Decree 836 on 3 December 1975 to expand the coverage of mass naturalization to include the wife and minor children of the principal petitioner, who henceforth no longer had to undergo the entire process of naturalization because they were deemed Philippine citizens by virtue of the naturalization of the husband or father. Yet, the provisions are gender-biased. If the principal petitioner was a woman, derivative citizenship did not apply to any of her minor children whose father was a non-citizen.

Persons are eligible for administrative naturalization as long as they are at least 18 years of age and they possess the specified qualifications that are essentially the same as those identified in CA 473. As an application of the principle of derivative citizenship, the female spouse and minor children acquire Philippine citizenship by virtue of the naturalization of the male spouse and father. However, if the petitioner is the female spouse, the benefit of administrative naturalization does not extend to the male spouse, but it extends to her minor children, based on Section 12 of RA 9139, which remedies the perceived gender bias in Presidential Decree 836.

RA 9225, approved on 29 August 2003, provides that natural-born citizens of the Philippines who had lost their Philippine citizenship by reason of naturalization as citizens of a foreign country will be deemed to have reacquired Philippine citizenship upon taking an oath of allegiance to the Republic. Section 4 specifies derivative citizenship for the children, regardless of whether they are legitimate, illegitimate, or adopted, as long as they are below 18 years of age and are unmarried.

Birth and Civil Registration

Birth registration is a prerequisite to establishing parentage and would be a means to acquire proof of nationality.[178] Under Article 172 of the Family Code, the filiation of legitimate children is established by any of the following: (1) The record of birth appearing in the civil register or a final judgment; or (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence of that, the legitimate filiation shall be proved by: (1) The open and continuous possession of the status of a legitimate child; or (2) Any other means allowed by the Rules of Court and special laws (265a, 266a, 267a).

[178] *Article 172, Chapter 2, Executive Order 209 [Family Code of the Philippines].*

A Regional Strategic Plan for the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific[179] was approved by the Economic and Social Commission for Asia and the Pacific (ESCAP) in Commission Resolution 69/15.[180] A Regional Action Framework was also developed setting goals and targets that would set a road map towards achievement of a shared vision that, "all people in Asia and the Pacific will benefit from universal and responsive CRVS systems that facilitate the realization of their rights and support good governance, health and development."[181] Three outputs are intended:

- Universal civil registration of births, deaths, and other vital events
- The provision to individuals and families of legal documentation as evidence of the occurrence of vital events
- The production and dissemination of vital statistics based on civil registration records.

Civil registration records should contain, for each vital event, the minimum information for judicial and administrative purposes as recommended by the United Nations.[182]

The Philippines, through Presidential Proclamation 1106 declared the years 2015-2024 as Civil Registration and Vital Statistics Decade.[183] Following up on UNESCAP Resolution 69/15 on "Implementing the Outcome of the High-level Meeting on the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific;" and the Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific where it was agreed to declare the years 2015-2024 as the "Asian and Pacific Civil Registration and Vital Statistics Decade, for 2015 to 2024." Through this Declaration, "[a]ll agencies and instrumentalities of the National Government and local government units, including government-owned or -controlled corporations, in consultation with the private sector, development partners and the citizenry, are hereby enjoined to actively support all activities and programs relevant to the 'Get everyone in the Picture' initiative."[184] Furthermore, Chapters 11 and 21 of the Philippine Development Plan (PDP) 2017-2022 indicate

[179] *Regional Strategic Plan for the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific, 3 December 2012, available at: https://www.unescap.org/sites/default/files/CRVS%20Draft%20Regional%20Strategic%20Plan%20%282012%29%20English.pdf.*

[180] *ESCAP Commission Resolution 69/15, Implementing the outcome of the High-level Meeting on the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific, E/ESCAP/69/L.5, 27 April 2013, available at: https://www.unescap.org/sites/default/files/ESCAP%20Res-69-15.pdf.*

[181] *Regional Action Framework on Civil Registration and Vital Statistics in Asia and the Pacific, 28 November 2014, available at: https://www.unescap.org/sites/default/files/Regional.Action.Framework.English.final.pdf.*

[182] *Principles and Recommendations for a Vital Statistics System: Revision 3, Department of Economic and Social Affairs, Statistics Division, Statistical Papers, Series M No. 19/Rev.3, available at: https://unstats.un.org/unsd/demographic/standmeth/principles/M19Rev3en.pdf.*

[183] *Presidential Proclamation No. 1106, Declaring the Years 2015 to 2024 as Civil Registration and Vital Statistics Decade, available at: https://www.officialgazette.gov.ph/downloads/2015/08aug/20150820-PROC-1106-BSA.pdf.*

[184] *Ibid.*

the Government's commitment to protect persons of concern,[185] focusing on ensuring access to services, establishment of a database management system, and enhancement of the policy and legislative framework.[186] As part of the efforts to address the risks of statelessness among Persons of Indonesian Descent, advocacy meetings with local civil registrars were held to facilitate the delayed birth registration of the population. Through this initiative, local government units have issued resolutions waiving fees for birth registration and administrative corrections.

UNHCR and UNICEF have developed a joint strategy for addressing childhood statelessness in the Philippines, as a part of the global strategy.[187] This strategy aims to improve birth registration and support law reform and implementation, including accession to the 1961 Convention on the Reduction of Statelessness to ensure safeguards against childhood statelessness are in place. The strategy has already supported a pilot birth registration project for the Sama Bajau, spearheaded by the Zamboanga City local government and supported by UNHCR and UNICEF.[188]

Although the national average for birth registration in the Philippines is relatively high, less developed areas and specific populations may have much lower registration. Obstacles remain for systematic implementation of birth registration that include: a lack of understanding about the value of registration and negative perceptions or misperceptions about registration; difficulties of establishing identity for persons who lack required evidence; issues with access due to the distance and isolation of remote or displaced populations; armed conflict and insecurity in the area; poverty and the costs associated with registration.

PSA Memorandum Circular 2017-12

PSA Memorandum Circular 2017-212 was issued to all concerned Consuls General on "requirements for the preparation of reports of birth (ROB) of a child born abroad of Filipino parent/s without any foreign documents."[189] It was issued due to the increase of unreported births abroad, "particularly in the Middle East." The Department of Social Welfare and Development (DSWD) conducted consultations with the Philippine Overseas Labor Office (POLO) and other stakeholders because of children who come home undocumented.

It provides that:

[185] *Persons of concern (POC) are those whose protection and needs are of concern to the State. They generally refer to refugees, asylum seekers, stateless applicants, stateless persons, and populations at risk of statelessness.*

[186] *Philippine Development Plan 2017-2022, available at: http://pdp.neda.gov.ph/wp-content/uploads/2021/02/Prepublication-Updated-PDP-2017-2022-as-of-Feb-10.pdf (updated 10 February 2021).*

[187] *See details of the Joint Strategy at: https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/.*

[188] *UNHCR and UNICEF support Zamboanga City in pilot birth registration project for Sama Bajaus, 10 December 2019, available at: https://www.unhcr.org/ph/17097-unhcr-unicef-zamboanga-birth-registration-sama-bajaus.html.*

[189] *PSA MC 2017-12.*

1. Children born to a Filipino mother without documents such as medical/hospital or local birth records, can be registered with an affidavit from the mother and two disinterested witnesses.
2. Where the mother is deceased, an affidavit of the father or person to whom the child was entrusted, plus a death certificate and two disinterested witnesses are sufficient.
3. Where the mother is missing, an affidavit of the father or person to whom the child was entrusted, and two disinterested witnesses are sufficient.
4. Where the mother is missing and unknown to the person currently entrusted with the child, the Philippine Foreign Service Post is empowered to investigate and where unsuccessful, shall assist local registration of the child in the country where the child was born.[190]

This Circular was reported by the Philippines during the High-Level Segment on Statelessness.[191] All ROBs are free (done gratis) as long as Social Welfare Attachés facilitate the requirements (affidavit of the mother, among others) for the registration of birth of the child. The following analysis regarding application of PSA MC 2017-12, is based on excerpts from the initial consultations with DSWD Social Welfare Attachés who have worked in Kuwait, the UAE, and Saudi Arabia.[192]

- For Embassies who are implementing this policy, it is reported that among mothers who give birth without documents, there are cases where the children are left behind or abandoned, and where parents are deported without their children, and this complicates the requirements of proof.
  - » Based on interviews with Social Welfare Attachés, there seems to be some inconsistency in what is required among Embassies at different locations. In practice, the Embassy in Kuwait would still require the custodian to produce proof even if affidavits have been submitted. There were currently two cases in this kind of situation. Proof can be difficult, particularly in cases under situation #4 described above.[193] The MC stipulates that the Philippine foreign post may conduct further investigation, but if they cannot confirm the circumstances, then

[190] *This is subject to the domestic laws and practices of the relevant State.*

[191] *Results of the High-Level Segment on Statelessness, October 2019, available at: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/.*

[192] *Based on initial consultations with Social Welfare Attachés and the Department of Social Welfare and Development, 17 June 2020.*

[193] *The interviewed Social Welfare Attachés faced cases wherein an abandoned child has been left to the care of an individual who claimed that they have no information on the mother's name or address. They claimed that the child was simply left in their care.*

the child can be registered in Kuwait. However, the local law in Kuwait and other countries may not confer citizenship on the children resulting in statelessness.[194]

  - » The Social Welfare Attaché of Kuwait shared that it would be more difficult to register a child now that three witnesses are needed for those born at home, whereas previously only two witnesses would be required and an affidavit from the mother.
- In Saudi Arabia, only two witnesses are required.
- Based on these findings, it is recommended that the application of PSA MC 2017-12 be further studied, in consultation with relevant Social Worker Attachés in the Gulf, particularly with regard to challenging cases falling into the scenario under situation #4 as described in the Circular.

Foundlings

With regard to foundlings, the 1961 Convention in Article 2 states that, "[a] foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." This requirement is consistent with currently existing law in the Philippines as interpreted by the Supreme Court in the cases of: *Poe-Llamanzares v. Commission on Election and David v. Senate Electoral Tribunal*.[195] Under Article 8 of the Republic Act No. 386, the Civil Code of the Philippines, "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[196] The DOJ in its letter dated 28 July 2020 addressed to the DFA favorably recommending the accession to the 1961 Statelessness Convention, notes that, "[i]t is necessary, however, that an appropriate procedural mechanism in granting Philippine citizenship to such foundlings should also be in place." There are draft bills considering specifically the rights of foundlings, and these define and provide natural-born citizenship to all such foundlings. For example, House Bill 7679, known as the "Foundling Welfare Act," has been approved on 3rd reading as of 5 October 2020 by the House of

[194] *In Kuwait, there is no law to recognize children without any information on their parents. The Social Welfare Attaché would rely on information from those who found the child, thus, neither the PSA MC, nor existing Kuwait law will resolve the situation, and the child would then be at risk of statelessness. See also the nationality laws of Middle East countries in Section 5.2.*

[195] *Mary Grace Natividad S. Poe-Llamanzares v. COMELEC, G.R. Nos. 221697 & 221698-700, March 8, 2016. (The Court based its decision on deliberations of the framers of the 1934 Constitutional Convention that specifically discussed foundlings, and the generally accepted principle of international law 'to presume foundlings as having been born of nationals of the country in which the foundling is found'); and Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016 (the court found that "the Constitution sustains a presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother and are thus natural-born, unless there is substantial proof otherwise..., any such countervailing proof must show that both—not just one—of a foundling's biological parents are not Filipino citizens."*

[196] *Republic Act No. 386, Civil Code of the Philippines, June 18, 1949, available at: https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/*

Representatives,[197] while Senate Bill 56[198] and 2112[199] are pending at the Committee level in the Senate.[200] Passage of a foundling bill would codify judicial precedent and ensure ongoing consistency with the 1961 Statelessness Convention, and aligns with the Convention on the Rights of the Child, PDP 2017-2022, National Action Plan to End Statelessness, the Philippines' High-Level Segment on Statelessness pledge, and other relevant frameworks.

National Framework on Refugees and Stateless Persons

The Philippines ratified the 1951 Refugee Convention and the 1967 Protocol in 1981 and acceded to the 1954 Statelessness Convention in 2011. There are legal provisions in the Immigration Act of 1940 as amended, that predate these ratifications and grant the President the authority to authorize admission for humanitarian reasons to "refugees," and authorize the admission of quota immigrants "without nationality." These powers were delegated to the DOJ in line with Presidential Decree 830 series of 1975, through Letter of Implementation No. 47, s. 1976 and Administrative Order No. 142 series of 1994 in line with the Administrative Code of 1987.[201] Under DOJ Circular No. 58, the Refugees and Stateless Persons Protection Unit (RSPPU) has been established and a procedure to identify and protect refugees and stateless persons is in operation. There is, however, a lack of a comprehensive law institutionalizing the Refugee and Stateless Status Determination (RSSD) Procedure and codifying the rights of persons of concern in the areas of protection, durable solutions, and access to services among others as found in relevant policies, rules, and regulations.

[197] *House Bill 7679, Foundling Welfare Act, available at: http://www.congress.gov.ph/legisdocs/third_18/HBT7679.pdf.*

[198] *Senate Bill 56, Foundling Recognition Act, available at: http://legacy.senate.gov.ph/lisdata/3028627114!.pdf.*

[199] *Senate Bill 2112, Foundling Recognition and Protection Act, available at: http://legacy.senate.gov.ph/lisdata/3476031556!.pdf*

[200] *An initial hearing on these measures was conducted last 25 March 2021. As of 25 May 2021, Senate Bill 2233 has substituted Senate Bills 56 and 2112 and is pending second reading. The bill is available at: http://legacy.senate.gov.ph/lisdata/3505731898!.pdf.*

[201] *Presidential Decree No. 830 confirms authority of the President of the Philippines to reorganize the administrative structure of the Office of the President, by transferring agencies; transferring functions; and effecting the restructure of the internal organization by issuing Letters of Implementation. Letter of Implementation No. 47, s. 1976 signed on August 18, 1976 transfers to the Secretary of Justice functions relating to "[a]ction on immigration matters including waiver of visas and admission of aliens except deportation matters". Administrative Order No. 142, s. 1994 signed on August 23, 1994 transfers the same functions to the Secretary of Justice under the authority of the Administrative Code of 1987.*

National Policy and Legal Framework for Refugees and Stateless Persons on the Admission of Refugees and the RSSD	
Commonwealth Act No. 613, as amended, "the Philippine Immigration Act of 1940"	Section 13: "...there may be admitted into the Philippines immigrants, termed "quota immigrants" not in excess of 50 of any one nationality or without nationality for any calendar year"
Note: This authority has been delegated to the Secretary of Justice pursuant to Presidential Decree No. 830 series of 1975 and Letter of Instruction No. 47 dated 18 August 1976 and Administrative Order No. 142 series of 1994	Section 47(b) the President is authorized... "for humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe."
Department Circular No. 58 Establishing the Refugee and Stateless Status Determination Procedure *(established under the authority granted to the Secretary of Justice by Title III, Section 7 of the 1987 Administrative Code)*	Section 5: Creates the Refugees and Stateless Status Persons Protection Unit ("RSPPU") in the Department of Justice responsible for the identification, determination, and protection of refugees and stateless persons under the terms of the 1951 Refugee Convention and its 1967 Protocol, and the 1954 Statelessness Convention. Section 2: "Establishes a fair, speedy and non-adversarial procedure to facilitate identification, treatment, and protection of refugees and stateless persons"

National Plans, Policies, and Institutional Mechanisms

Philippine Development Plan 2017-2022

Chapters 11 and 21 of the Philippine Development Plan, respectively entitled, "Reducing Vulnerability of Individuals and Families," and "Protecting the rights, promoting the welfare, and expanding opportunities for Overseas Filipinos," include the following:

> "Provide persons of concern (POC) with access to protective services. Engagements and partnerships of concerned agencies such as the DOJ and DSWD will continue to provide POC with access to protective services. A database management system for the POC will be developed to efficiently assess and monitor their concerns." (Chapter 11, page 198)
>
> "The legal framework for the protection of asylum seekers, refugees, and stateless persons, including children, will be developed, including institutionalization of their access to social services." (Chapter 21, page 341)

National Action Plan to End Statelessness by 2024 (NAP)

The National Action Plan to End Statelessness by 2024 (NAP) was developed in 2015 and formally launched in 2017. It is aligned with UNHCR's "IBelong Campaign to End Statelessness" and the Global Action Plan to End Statelessness. There are seven Action Points that cover the following objectives:

1. Resolve existing cases of statelessness
2. Ensure no child is born stateless
3. Remove gender discrimination from nationality laws
4. Grant protection status and facilitate the naturalization of refugees and stateless persons
5. Ensure birth registration for the prevention of statelessness
6. Accede to the UN Statelessness Conventions
7. Improve Quantitative and Qualitative Data on Stateless Populations

Inter-Agency Agreement on Refugees, Asylum Seekers, and Stateless Persons

In 2017, an Agreement was signed by representatives of various government agencies with a commitment to protection refugees and stateless persons. The Agreement establishes a whole-of-government approach, by establishing an "Inter-Agency Steering Committee" (see organizational chart) with a mandate to ensure the protection and assistance for refugees, asylum-seekers, stateless persons and stateless applicants, including by institutionalizing the policies that would improve their access to rights and services, and the mechanisms in providing appropriate assistance and services to the POC."[202]

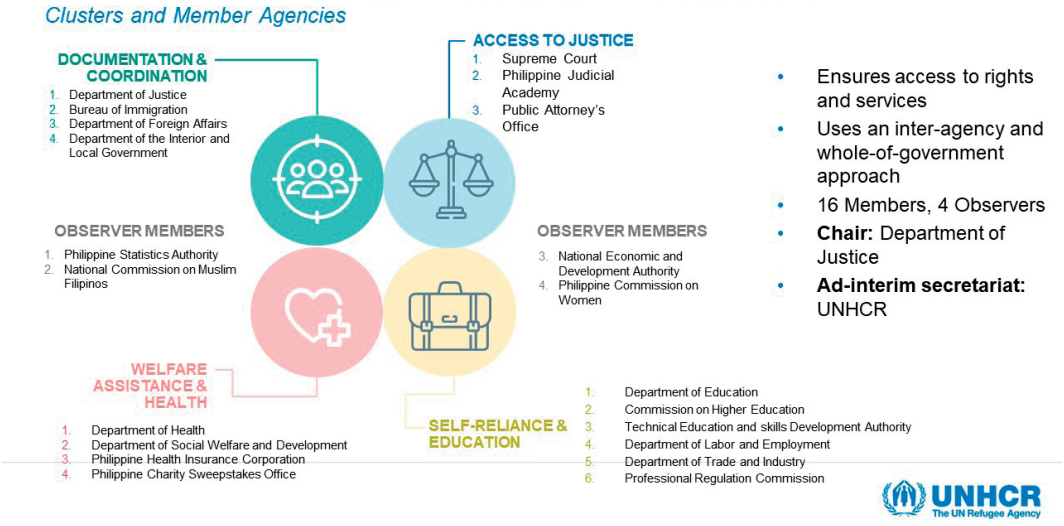
The Agreement sets out both the rights and obligations of POC in Section 6, as well as the roles and responsibilities of the agencies who are Party to the agreement, noting that:

> "While the RSPPU is primarily mandated to provide protection for refugees, asylum seekers and stateless persons, the task of ensuring their access to rights and services entails the support of various agencies. It is therefore crucial that the policies of relevant agencies be institutionalized in order to ensure that the POC are properly protected and assisted in the Philippines."

The Inter-Agency Steering Committee is a body made up of representatives of the members, "the composition of the committee shall not be exclusive and shall be open to other government agencies."

[202] *Inter-Agency Agreement on the Protection of Persons of Concern in the Philippines.*

The Inter-Agency Steering Committee



Pledges by the Philippines Government

2011 - Ministerial Intergovernmental Event on Refugees and Stateless[203]	2019 High-Level Segment on Statelessness[204]
The Government of the Republic of the Philippines pledges to:	The Government of the Philippines hereby commits to:
1. Continue to develop the policy and operational framework to address statelessness after the ratification of the 1954 Convention Relating to the Status of Stateless Persons and to strengthen implementation of the 1951 Convention Relating to the Status of Refugees, with the support of, and in cooperation with, UNHCR.	1. Enhance the policy, legal, and operational framework for stateless persons to ensure their full access to rights as guaranteed by the 1954 Convention Relating to the Status of Stateless Persons including their facilitated naturalization and as may be provided by national laws
2. Issue machine readable travel documents to refugees and stateless persons in accordance with Philippine law.	2. Improve access of vulnerable and marginalized populations to documentation through birth and civil registration
3. Continue the study of statelessness in the Philippines and among its nationals that are at risk of statelessness, in continuation of efforts initiated in 2011.	3. Continue the study of statelessness, with a thrust to improve qualitative and quantitative data on populations at risk of statelessness in the Philippines and among its nationals, in continuation of efforts initiated in 2011.
4. Initiate the process of accession to the 1961 Convention on the Reduction of Statelessness.	4. Continue the process of accession to the 1961 Convention on the Reduction of Statelessness
5. Continue leadership in ASEAN in the development of a human rights framework dealing with issues relating to migrants, trafficked persons, refugees and stateless persons; and	5. Continue leadership in Southeast Asia in the development of a human rights framework and provide technical support to other States in dealing with issues relating to stateless persons
6. Increase the Philippines' contribution for 2012 to USD 100,000, in support of UNHCR program.	6. Cooperate with UNHCR by supporting projects, continuing fund contributions, and by building or expanding partnerships

[203] *UNHCR, Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011, October 2012, available at: https://www.unhcr.org/4ff55a319.pdf.*

[204] *UNHCR, Results of the High-Level Segment on Statelessness, October 2019, available at: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/.*

POLICY BRIEFS ON IDENTIFIED LEGISLATIVE PRIORITIES

OCTOBER 2021

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