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## EDITOR'S NOTE

Welcome to this 2024 Online Issue of *The UST Law Journal*, where we continue our commitment to providing thoughtful and rigorous analysis of the most pressing legal questions of our time. In this edition, we explore a diverse range of topics that reflect the ever-evolving landscape of law, from emerging constitutional debates to the latest developments in judicial reform governance and international human rights.

As we publish this issue, our field is at a critical juncture. Legal practitioners, policymakers, and scholars are grappling with complex challenges—from the intersection of law and critical legal philosophies to the shifting dynamics of ethics, judicial reform, and economic implications in an increasingly globalized world. This journal aims to serve as a forum for cutting-edge research, fostering dialogue among those who seek to understand, shape, and respond to these challenges.

We are particularly excited to feature a series of articles that delve into topics of great contemporary relevance, such as strengthening Filipino's cultural heritage, the governance structure of the criminal justice system and judicial reforms, the evolving narrative on constitutional change, legal-philosophical norms of public morality, and the notion of justice. These contributions advance academic discourse and provide valuable insights for legal practitioners, academe, and jurists navigating the practical realities of law in today's fast-paced, interconnected society.

As always, we are grateful to our contributors for their expertise and dedication and to our Editorial Board for their tireless efforts in bringing this issue to fruition. Through their hard work and commitment, we can continue to produce a journal that meets the highest standards of scholarship and impact.

With its foundational commitment to encouraging broader discussions through diverse legal perspectives, this issue aims to foster deeper insights for the Philippine legal community. We hope this issue sparks thoughtful reflection and inspires new avenues for inquiry in the legal profession. Thank you for your continued readership and support.

Sincerely,

IRENE D. VALONES, DCL, DPA  
Editor-in-Chief  
December 5, 2024

# INCLUSIVITY IN DIVERSITY: ENHANCING THE PROTECTIVE MECHANISMS FOR REFUGEES AND STATELESS PERSONS IN THE PHILIPPINES

By:

ATTY. ALDEN REUBEN B. LUNA<sup>1</sup>

## I. INTRODUCTION

The idea that human beings have inherent dignity, which requires respect, has been generally recognized as a truism. The task of protecting basic human rights borne out of this inherent dignity has been equally recognized as one that needs to be undertaken collectively and collaboratively by the international community. This is reflected by the different international conventions relating to the protection of human rights adopted and acceded to by different States, such as the United Declaration of Human Rights (UDHR)<sup>2</sup> and the International Convention on Civil and Political Rights<sup>3</sup>. However, despite the existence of international mechanisms towards ensuring that human rights are properly protected, without distinction as to any socio-cultural nuances, accounts of human rights violations throughout history and across different niches have remained prevalent. Across different epochs, stories of horrifying violations of human rights have reverberated throughout the world. One of the more prominent reasons for the occurrence of different human rights violations is deleterious and uncalloused discrimination – the arrogant sense of superiority that some assert over others, the conceited belief of being entitled to a guaranteed place atop the zenith of societal hierarchies at the detriment of those who do not share the same shade, nook, or status.

In particular, the plight of two social (2) groups, known as refugees and stateless persons, who are suffering or are vulnerable to suffering from significant discrimination as regards their capacity to properly enjoy and exercise basic human rights, has garnered international attention throughout the years and has been regarded as an international humanitarian crisis that requires a swift and comprehensive response. Specifically, a refugee is defined under the 1951 Convention Relating to the Status of Refugees (*1951 Convention*) as one who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group

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<sup>2</sup> Adopted by the United Nations on 10 December 1948.

<sup>3</sup> Adopted by United Nations General Assembly on 16 December 1966.

or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”<sup>4</sup>.

For refugees, the fundamental basis for granting them international protection is because their countries of nationality are no longer able to afford them with such protection, having been the niche of their actual or inevitable persecution, which forces them to leave the same.

“It is, first and foremost, the responsibility of States to protect their citizens. When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their personal rights that they are willing to leave their homes, their friends, maybe even some of their family, to seek safety in another country. Since, by definition, the basic rights of refugees are no longer protected by the governments of their home countries, the international community then assumes the responsibility of ensuring that those basic rights are respected. The phrase “international protection” covers the gamut of activities through which refugees’ rights are secured.”<sup>5</sup>

On the other hand, a stateless person is a “person who is not considered as a national by any State under the operation of its law,” as defined under the 1954 Convention Relating to the Status of Stateless Persons (*1954 Convention*).<sup>6</sup> For stateless persons, the foundation for granting international protection lies in their susceptibility to discrimination in their countries of residence in terms of exercising basic human rights, as they are not legally regarded as nationals or citizens of such country. Considering that most rights in any given State are generally reserved to citizens, or at the very least regulated based on nationality, stateless persons are usually unable to properly access basic government services in their countries of residence.

The Philippines acceded to the 1951 Convention and its 1967 Protocol in 1981 and to the 1954 Convention in 2011. In 2022, the Philippines also acceded to the 1961 Convention on the Reduction of Statelessness (*1961 Convention*) – an international instrument that seeks to totally eradicate statelessness in the world. Throughout the years, the country has been a host to hundreds of thousands of refugees and stateless persons (*collectively referred to as Persons Of Concern or POCs*). At present, the country is a host to an estimated 264,000 POCs, of which around 129,000 are stateless persons or

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<sup>4</sup> Article 1, *1951 Convention relating to the Status of Refugees*, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>, accessed on 15 November 2022.

<sup>5</sup> UNHCR, *Protecting Refugees*, <https://www.refworld.org/pdfid/3c03682d4.pdf>, May 1999, accessed on 30 September 2023.

<sup>6</sup> Article 1, *1954 Convention Relating to Status of Stateless Persons*, [https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf), accessed on 15 November 2022.

persons at risk of statelessness, and around 1,800 are refugees and asylum seekers<sup>78</sup>. The number of individuals applying for status recognition as refugees in the country has drastically increased in the past few years<sup>9</sup>, and are coming from different parts of the world, most of whom are from Cameroon, Yemen, Sudan, Syria, Congo, and Ivory.

In compliance with its obligations under the international conventions, consistent with the principle of transformation, coupled with the growing number of POCs in the country, the Philippines has adopted several domestic measures and policies for the purpose of providing protection to POCs. However, while the Philippines has adopted certain domestic measures to provide protection to POCs, the current state of the protective mechanisms afforded to them has negatively magnified institutional gaps in the implementation and fulfillment of the country's obligations under the relevant international conventions. In addition, the absence of a specialized law particularly intended for POC protection underlines a lack of cohesion and even the possibility of conflict between the said endeavor and relevant existing laws.

Specifically, the lack of proper and formal domestic legislation leaves some of the POCs in the country to fend for themselves in terms of basic needs, such as food, shelter, and health care. Furthermore, given the lack of an institutional mechanism to officially and properly govern their ability to engage in productive livelihood or jobs, they are oftentimes at the mercy of private corporations and companies, or the intermittent assistance being extended by the national government and non-governmental organizations. As such, they only become more susceptible to discrimination<sup>10</sup>.

This article proposes the enhancement of the protective mechanisms being provided to POCs in the Philippines, such as through the enactment of a comprehensive law for such purpose, in compliance with the country's obligations under the relevant international conventions. The proposed enhanced mechanism for POC protection will not only properly provide the over-arching legal basis and national framework for the protection of POCs in the country but will also amply capacitate and empower the different

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<sup>7</sup> Asylum seekers are those who are outside of their countries of nationality and are seeking international protection elsewhere. For purposes of this study, they will be referred to as those applying to be recognized as refugees in the Philippines, but whose applications have not yet been resolved.

<sup>8</sup> UNHCR, <https://www.unhcr.org/countries/philippines> (as adjusted by the recent 2023 data from UNHCR and Department of Justice).

<sup>9</sup> For instance, in 2018 the number of refugees in the Philippines is 631, and only 238 asylum seekers or applicants. This year, the Philippines is host to 911 refugees and 914 asylum seekers. On the other hand, in 2018, there are only 68 persons who are considered at risk of statelessness. This year, this number has ballooned to 128,207. (Numerical data is derived from UNHCR database, <https://www.unhcr.org/refugee-statistics/download/?url=jKU78H>)

<sup>10</sup> Where refugees (and stateless persons) are not allowed to work or face practical barriers such as costly work permits, language requirements or failure to recognize their qualifications, they often have no choice but to work in the informal sector. In that context they risk exploitation, discrimination and abuse, often being paid less than nationals or expected to work longer hours, or in more dangerous conditions. - Frances Nicholson and Judith Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, (Switzerland: UNHCR and Inter-Parliamentary Union, 2017), 82 and 208.

agencies of the government to undertake the relevant measures for such endeavor in a consistent, coherent, and sustainable manner.

Given the legal issues relating to the comprehensive protection of POCs in the Philippines, in consonance with the country's obligations under relevant international conventions, it is necessary that there are enhanced protective measures for POCs in the Philippines, such as through the enactment of a law for this purpose. This article seeks to analyze the 1951 Convention, its 1967 Protocol, and the 1954 Convention to define and establish the rights of POCs; other international instruments that established the obligations of State parties to protect and promote the rights of POCs; Philippines' compliance with its international obligations under international conventions; and, proposals in developing enhanced protective mechanisms for POCs in the Philippines that will aid in furthering the country's compliance to its international obligations under the international conventions?

The plight of refugees and stateless persons is part of a bigger international humanitarian crisis – *i.e.*, forced displacement. It is a global crisis that has plagued the international community for decades, long before the COVID-19 pandemic disrupted our social and economic existence. Displacement is caused by a variety of reasons, ranging from war to persecution to natural disasters. In 2018, the world witnessed an unprecedented 70.8 million people who have been forced from their homes by conflict and persecution, averaging 37,000 people driven out of their communities every day. Among them are nearly 30 million refugees, over half of whom are under the age of 18.<sup>11</sup> By 2019, the number of forcibly displaced people worldwide has increased to 79.5 million.<sup>12</sup> Since then, this number has only soared higher, as more and more people are being displaced from their communities for fear that their lives are in danger. At the end of 2021, 89.3 million people were forced to flee their homelands. As of June 2023, this number has already ballooned to more than 110 million<sup>13</sup>, especially due to the recent armed conflict between Russia and Ukraine.

As of June 2023, the global refugee population reached 36.4 million in mid-2023, an increase of 3 percent (+1.1 million) from the end of 2022. This figure includes 5.9 million refugees under UNRWA's mandate and 30.5 million refugees and people in refugee-like situations under UNHCR's mandate.<sup>14</sup> On the other hand, UNHCR has accounted for 4.3 million stateless persons<sup>15</sup> around the world. However, due to underreporting,

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<sup>11</sup> Source of 2018 figure: United Nations (<https://www.un.org/en/sections/issues-depth/refugees/>), accessed on 20 November 2022.

<sup>12</sup> Source of 2019 figure: UNHCR (<https://www.unhcr.org/ph/figures-at-a-glance>) accessed on 20 November 2022.

<sup>13</sup> Source of 2023 figure: UNHCR (<https://www.unrefugees.org/refugee-facts/statistics/>) accessed on 15 March 2023.

<sup>14</sup> Source of 2023 figure: UNHCR (<https://www.unhcr.org/mid-year-trends#:~:text=UNHCR%2FColin%20Delfosse,Refugees,like%20situations%20under%20UNHCR%27s%20mandate.>) accessed on 15 March 2023.

<sup>15</sup> Source of 2023 figure: UNHCR (<https://world101.cfr.org/understanding-international-system/building-blocks/statelessness-around-world>) accessed on 15 March 2023.



UNHCR noted that the actual number of stateless persons is significantly higher than those registered in the system.

## II. THE 1951 AND 1954 CONVENTIONS: A BRIEF HISTORY

Prior to the adoption of the 1951 Convention, there was no generally recognized definition of who a refugee is. In its most generic sense, the term refugee often refers to “any uprooted, homeless, involuntary migrant who has crossed a frontier and no longer possesses the protection of his or her former government,”<sup>16</sup> an individual “who has fled war, violence, conflict or persecution and have crossed an international border to find safety in another country,”<sup>17</sup> or a person “who has fled his or her own country because he or she is at risk of serious human rights violations and persecution there.”<sup>18</sup> In a nutshell, they are individuals who are forcibly displaced or are compelled to leave their countries and take the unfortunate plight of crossing international borders to seek refuge and protection from another country. This refugee problem was first formally recognized as an international crisis after the 2<sup>nd</sup> World War. With the adoption of the 1951 Convention, displaced individuals who are compelled to leave their countries by reason of a well-founded fear of persecution have been generally categorized as a refugee.

However, the international conundrum concerning refugee protection has been an issue even prior to the immediately preceding events leading to the adoption of the 1951 Convention. The world wars and domestic armed conflicts of the 20<sup>th</sup> century have resulted in waves of refugees leaving their countries and seeking protection elsewhere. Specifically, the First World War resulted in the drastic and radical uprooting of millions of European civilians. To address the unfortunate aftermath of the First World War and promote international peace, the predecessor of the United Nations, the League of Nations, was created under the Peace Treaty of Versailles. The Covenant of the League of Nations (hereinafter referred to as the Covenant) obliged the Member States not to resort to war and mandated that “any dispute likely to lead to a rupture will be submitted either to arbitration or judicial settlement or to an inquiry by the Council.”<sup>19</sup> To this end, the Covenant also stated that “any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.”<sup>20</sup>

It must be noted that the *Covenant* did not directly address the refugee problem. After its inception, different international instruments were

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<sup>16</sup> Britannica, <https://www.britannica.com/topic/refugee>, accessed on 31 March 2023.

<sup>17</sup> UNHCR, *What is a refugee?*, <https://www.unhcr.org/what-is-a-refugee.html>, accessed on 31 March 2023.

<sup>18</sup> Amnesty International, *Refugees, Asylum Seekers, and Migrants*, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>, accessed on 31 March 2023.

<sup>19</sup> Article 12, *The Covenant of the League of Nations*, <https://www.ungeneva.org/en/about/league-of-nations/covenant>, accessed on 02 April 2023.

<sup>20</sup> *Ibid.*, Article 11.

adopted to address the global refugee movement. However, these instruments were more pragmatic in approach and limited in scope, as they merely focused on specific groups of refugees and migrants and did not provide a uniform definition of who a refugee is. Some of these instruments are the *Arrangement with respect to the Issue of Certificates of Identity to Russian Refugees*<sup>21</sup>, the *Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees*<sup>22</sup> of 1926, the *Arrangement Relating to the Legal Status of Russian and Armenian Refugees* of 1928, the *Convention Relating to the International Status of Refugees* of 1933, the *Provisional Arrangement concerning the Status of Refugees Coming from Germany*<sup>23</sup> and its *Additional Protocol*<sup>24</sup>, and the *Convention concerning the Status of Refugees Coming From Germany*<sup>25</sup>.

To reiterate, no concrete definition of a refugee was provided in any of the pre-second World War international instruments. As such, if a non-Russian person was forcibly removed from his home country for the same reason as a Russian refugee, he or she will not be entitled to the same benefits that the latter may be granted under relevant international instruments. Furthermore, because the international instruments prior to the 1951 Convention are regional in scope, refugees who end up running towards countries that are not signatories thereto might not receive the necessary assistance that their unfortunate situations may require. These individuals might end up being in a similar dystopic niche to that from which they have been forcibly displaced. It is in this context that the international community endeavored to develop a new international instrument that will address the refugee problem in a more comprehensive and encompassing manner. The prevalent recognition that the refugee problem is of international character, rather than regional or domestic, happened after the Second World War. With millions more forcibly displaced in the aftermath of the Second World War, it became apparent that there is a need to approach the issue in a more collaborative manner and on an international scale rather than treat the situation of each refugee piecemeal. It also became evident that the refugee situation is no longer sporadic in nature and, as such, requires a long-term solution.

“Soon after the Second World War, as the refugee problem had not been solved, the need was felt for a new international instrument to define the legal status of refugees. Instead of ad hoc agreements adopted in relation to specific refugee situations, there was a call for an

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<sup>21</sup> League of Nations, Treaty Series Vol. XIII No. 355, <https://www.refworld.org/docid/3dd8b4864.html>, accessed on 02 April 2023.

<sup>22</sup> League of Nations, Treaty Series Vol. LXXXIX, No. 2004, <https://www.refworld.org/pdfid/3dd8b5802.pdf>, accessed on 02 April 2023.

<sup>23</sup> League of Nations Treaty Series, Vol. CLXXI, No. 3952, <https://www.refworld.org/docid/3dd8d0ae4.html>, accessed on 02 April 2023.

<sup>24</sup> League of Nations Treaty Series Vol. CXCVIII No. 4634, p. 141, <https://www.refworld.org/docid/3dd8d1fb4.html>, accessed on 02 April 2023.

<sup>25</sup> League of Nations Treaty Series, Vol. CXCII, No. 4461, page 59, <https://www.refworld.org/docid/3dd8d12a4.html>, accessed on 02 April 2023.

instrument containing a general definition of who was to be considered a refugee.”<sup>26</sup>

With the establishment of the United Nations, the successor to the League of Nations, the drafting and development of the 1951 Convention was initiated. The United Nations High Commissioner for Refugees (UNHCR) was established on December 14, 1950, by the UN General Assembly to principally address the problems brought forth by the unfortunate plight that refugees are forced to undertake. On July 28, 1951, grounded upon Article 14 of the Universal Declaration of Human Rights of 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the 1951 Convention was adopted. The 1951 Convention defined who a refugee is, established internationally accepted standards for the treatment of refugees and became the centerpiece of international refugee protection today. The same entered into force on 22 April 1954.<sup>27</sup>

With the goal of developing an international instrument that is more inclusive than its predecessors, the 1951 Convention veered away from the definition by categories provided therein and merely referred to such instruments as a matter of establishing who will fall within its ambit, to wit:

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.”<sup>28</sup>

“The 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level.”<sup>29</sup> However, it must be noted that while the general objective of the 1951 Convention is the universalization of the definition and legal status of refugees and the institutionalization of the necessary protective mechanisms, its initial coverage was still limited to those affected by the events occurring before 1 January 1951. As such, in addition to those already recognized as refugees under the earlier international instruments, the term refugees under the 1951 Convention also applied to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social

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<sup>26</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, 2011, 5, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>, accessed on 15 February 2023.

<sup>27</sup> Introductory Note to the 1951 Convention.

<sup>28</sup> Article 1, *1951 Convention*.

<sup>29</sup> UNHCR, *Convention and Protocol Relating to the Status of Refugees with an Introductory Note by the Office of the UNHCR*, <https://www.unhcr.org/3b66c2aa10>, 3.

group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>30</sup>

“The 1951 dateline originated in the wish of Governments, at the time the Convention was adopted, to limit their obligations to refugee situations that were known to exist at that time, or to those which might subsequently arise from events that had already occurred.”<sup>31</sup> At this juncture, it was still difficult to account for other circumstances or specific events that may cause forced displacement or the propagation of the number of refugees other than those that occurred during the world wars. As such, the 1951 Convention was initially limited to those events that were already widely known and recognized<sup>32</sup>. Despite the temporal and geographic limitations provided under the 1951 Convention, it has significantly provided a clearer and more general definition of who may be recognized as a refugee. After the 1951 Convention entered into force, the number of refugees throughout the world increased drastically, resulting from circumstances not related to the Second World War or other pre-1951 events. As such, the clamor and need to amend the 1951 Convention to make the same applicable to other individuals equally suffering from international persecution but are not covered by the same. This resulted in the adoption of the 1967 Protocol, which significantly removed the temporal and geographic limitations of the 1951 Convention, aiding in the universalization of protective mechanisms for refugees all over the world.

As regards the 1954 Convention, the UN saw statelessness as an enigma of great proportion. A person with no nationality finds himself or herself with no State or government to seek protection from. Because of the vulnerabilities that stateless persons are subject to, the UN Commission on Human Rights adopted a Resolution in 1947 for the purpose of undertaking a study on the legal status of individuals who are not receiving nor are enjoying protection from any State or government, which included stateless persons. Based on this Resolution, the study entitled “A Study of Statelessness”<sup>33</sup> was published by the Department of Social Affairs. According to this study, the phenomenon of statelessness is a global issue,

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<sup>30</sup> Article 1, 1951 Convention.

<sup>31</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, 5.

<sup>32</sup> Article 1, (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either (a) “events occurring in Europe before 1 January 1951”; or (b) “events occurring in Europe or elsewhere before 1 January 1951”; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. (*emphasis supplied*)

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations

<sup>33</sup> E/1112 Add. 1, UN Series no. 1949.XIV.2, (New York: Lake Success, 1949), <https://www.refworld.org/pdfid/3ae68c2d0.pdf>, accessed on 10 April 2023.

which was further worsened by the First and Second World Wars. Being of global concern, the UN deemed it necessary to adopt an international convention that will assist and aid stateless persons in their plight, especially regarding their capacity to enjoy and exercise basic human rights. Some of the circumstances that cause statelessness are lack of birth registrations, or proper access thereto, conflict of nationality laws between States, birth to stateless parents, discrimination in nationality laws, change in political landscape leading to transfer of territory, and targeted discrimination against cultural minorities. At present, one of the biggest stateless populations around the world is the Rohingyas of Myanmar<sup>34</sup>.

The 1954 Convention was adopted to aid in institutionalizing domestic State mechanisms that are geared towards upholding the rights of stateless persons. It is intended to establish “a framework for the international protection of stateless persons and is the most comprehensive codification of the rights of stateless persons yet attempted at the international level.”<sup>35</sup> Aside from establishing the international protective mechanisms for stateless persons, and in line with Article 15 of the UDHR that “everyone has the right to a nationality”, it was also important for the international community to work towards the total eradication of statelessness. As such, the *1961 Convention on the Reduction of Statelessness* was also adopted.

### III. ESTABLISHMENT OF THE RIGHTS OF PERSONS OF CONCERNS (POCs)

Before delving into a detailed discussion of the rights of POCs as established and enshrined under the relevant international conventions, it is important to first understand the conventions themselves and the underlying fundamental principles that govern their adoption and implementation.

#### A. REFUGEE PROTECTION

To reiterate, a refugee is a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”<sup>36</sup>.

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<sup>34</sup> “The Rohingya from Myanmar are still the largest stateless population for whom data is provided. This year, the methodology for reporting on displaced Rohingya has been amended further, with available data on Rohingya refugees also provided for India, Indonesia, Malaysia and Thailand – alongside Rohingya refugees in Bangladesh and Rohingya in Myanmar. The total number reported across these six countries is 1.57 million, yet this data is still not comprehensive and does not provide a full picture the global Rohingya population. New data is also reported for Côte d’Ivoire, which has moved to the ‘top’ of the list of countries with the largest (non-displaced) stateless populations: 955,399 people - Institute on Statelessness and Inclusion, *Stateless in Numbers: 2020*,

[https://files.institutesi.org/ISI\\_statistics\\_analysis\\_2020.pdf](https://files.institutesi.org/ISI_statistics_analysis_2020.pdf), accessed on 15 April 2023.

<sup>35</sup> *Ibid.*

<sup>36</sup> Section 1, *1951 Convention relating to the Status of Refugees*.

Leaving or being outside one's country of nationality is an important feature of classifying one as a refugee. This is because a person cannot generally be granted international protection if such person is still within the territorial jurisdiction of his or her country, as it works towards the presumption that he or she is receiving protection from the country's duly instituted government and established legal system or that he or she is still able to access such protection. In relation to this, the 1951 Convention states that it "shall cease to apply to any person who voluntarily re-availed himself or herself of the protection of the country of his or her nationality"<sup>37</sup> or "has acquired a new nationality and enjoys the protection of the country of his new nationality."<sup>38</sup> This characteristic also differentiates a refugee from individuals who, while similarly suffering from serious human rights violations and other causes of forced displacement, have not fled from their own countries, *i.e.*, internally displaced people (IDPs)<sup>39</sup>. In the Philippines, millions have been internally displaced, primarily due to natural calamities and armed conflicts<sup>40</sup>. Unlike refugees, IDPs still theoretically enjoy State protection, albeit with greater difficulty than other nationals or residents due to their circumstances. However, IDPs should be granted the same rights and freedoms as those enjoyed by others within the same country and should not be discriminated against by reason of their internal displacement. On the contrary, the State must intensify its efforts to provide IDPs with the needed assistance because of their heightened vulnerabilities.

Refugees must also be distinguished from asylum-seekers. Technically speaking, an asylum seeker is any person who has requested sanctuary or protection in another State but whose request has not yet been approved or processed, at the very least. "An asylum seeker is a person who has left their country and is seeking protection from persecution and serious human

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<sup>37</sup> *Ibid.*, Article 1C (1).

<sup>38</sup> *Ibid.*, Article 1C (3).

<sup>39</sup> IDPs are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border." - UN Economic and Social Council, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, p.5, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>, accessed on 31 March 2023.

<sup>40</sup> Disasters triggered 5.7 million internal displacements in 2021, of which storms accounted for 91%. Typhoon Rai, known locally as Odette, led to the largest number of disaster displacements of the year worldwide. Around 3.9 million were recorded, particularly the regions of Western Visayas, Eastern Visayas and Caraga. Rai also destroyed around 415,000 homes across the archipelago and damaged around 1.7 million. IDPs' livelihoods were disrupted and food prices increased, heightening the risk of food insecurity. More than 590,000 people were still displaced as of the end of December. Conflict displacement also took place in 2021, particularly in the south, where the Moro Islamic Liberation Front (MILF) waged an armed rebellion for more than 40 years in pursuit of an autonomous Islamic state for the indigenous Moro people. Despite a peace agreement signed in 2014 between the MILF and the government and the establishment of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) in 2019, violence has continued as other smaller groups continue to fight. The situation in Mindanao accounted for 136,000 of the 140,000 conflict displacements recorded for the country as a whole, the overall figure being an increase of 27 per cent compared with 2020. - Internal Displacement Monitoring Centre, *Country Profile: Philippines*, <https://www.internal-displacement.org/countries/philippines, 2021>, accessed on 15 March 2023.

rights violations in another country, but who hasn't yet been legally recognized as a refugee and is waiting to receive a decision on their asylum claim."<sup>41</sup>

Given the fragility of the situation of refugees and the innate mobility of their plight, it was important to establish, in an international scale, a common definition and clear understanding of what constitutes refugee status that is sufficient to enable different States to properly adopt and pragmatically establish domestic mechanisms that will be in consonance with internationally accepted principles on refugee protection. This, together with the surging number of divergent and polarizing socio-political circumstances around the world that compel individuals to leave their home countries, highlighted the need and urgency for the establishment of an international convention or treaty to institutionalize international refugee protection, which found its fruition in the adoption of the 1951 Convention.

"The 1951 Convention, complemented by its 1967 Protocol, has served as the foundation of the refugee protection regime. It provides a universal code for the treatment of refugees uprooted from their countries as a result of persecution, including serious human rights violations or other forms of serious harm, as well as in the context of violence or armed conflict. Its key elements include:

- a definition of the term refugee (with provisions for inclusion, exclusion and cessation);
- a guarantee of protection against *refoulement*; and
- a set of minimum civil, political, economic, social and cultural rights."<sup>42</sup>

#### **i. REFUGEE DEFINITION AND ITS ELEMENTS**

One of the most important contributions of the 1951 Convention, as amended by the 1967 Protocol, in addressing the global refugee problem is providing a basic definition of who a refugee is. As discussed earlier in this article, it veered away from the regional approach and spatial restrictions in the identification and protection of refugees that earlier international instruments on the matter have adopted. The basic definition provided under the 1951 Convention has given the international community a mutual and collective approach towards the institutionalization of protective mechanisms for refugees across the world.

Based on the definition provided under the 1951 Convention, there are five (5) recognized elements that constitute who a refugee is:

1. The person must be outside his country of nationality;

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<sup>41</sup> Amnesty International, *Refugees, Asylum Seekers, and Migrants*, accessed on 20 March 2023.

<sup>42</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, Foreword.

2. There must be fear of persecution;
3. The person's fear of persecution must be well-founded;
4. The persecution is for reason of race, religion, nationality, membership of a particular social group or political opinion, and
5. The person is unable or unwilling to avail of the protection of or to return to, her country of origin due to such fear.

The **first element** is that the person must be outside of his or her country of nationality. As explained earlier, one of the main reasons for the grant of international protection to refugees is because they are not able to receive protection from their own countries or cannot fully and properly exercise basic human rights because of domestic persecution. A person who experiences or is bound to experience persecution in his or her own country is compelled to leave and undertake the journey of seeking protection elsewhere, which is equally enveloped in uncertainty and risk. As such, a person who, while susceptible to experiencing persecution, still opts to remain in his or her home country cannot be regarded as a refugee.

It is also important to note that the fear of persecution must be in relation to a person's country of nationality. If he or she does not fear persecution from his or her country of nationality, it is expected that he or she can avail of its protection and is not entitled to international protection as a refugee.

However, it is not required that the primordial reason why the person left his or her country of nationality is for fear of persecution. It can happen that the persecution arose while he or she is outside his or her country of nationality and, as such, can no longer return therein. As such, he or she was not a refugee when he left his country but became one at a later time. A person falling within this category is called a refugee *sur place*.

The **second element** is that the person must fear persecution. The Convention does not provide a precise definition of the term "persecution". However, it may be inferred from Article 1 A(2), in relation with Article 33<sup>43</sup> of the 1951 Convention, that any threat, discrimination or oppression to one's life or freedom, and the proper and unhampered exercise of these rights, by reason of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Serious violations to human rights, in consonance with other relevant international conventions, may also be considered as persecution for purposes of the 1951 Convention.

However, persecution must be distinguished from mere prosecution. Persons who leave their countries to simply evade punishment under the laws of or their country of origin, when such a law is not prosecutorial or discriminatory, are not considered refugees. The protective mechanisms of the 1951 Convention are reserved only for those who are suffering from or are likely to suffer from persecution and should not be exploited by

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<sup>43</sup> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.



individuals who are fugitives from justice or are the perpetrators of injustice themselves. It may happen, though, that the measure or law being used to prosecute a person is in itself the source of persecution.

“A person guilty of a common law offense may be liable for excessive punishment, which may amount to persecution within the meaning of the definition. Moreover, penal prosecution for a reason mentioned in the definition (for example, in respect of ‘illegal’ religious instruction given to a child) may in itself amount to persecution. In order to determine whether prosecution amounts to persecution, it will also be necessary to refer to the laws of the country concerned, for it is possible for a law not to be in conformity with accepted human rights standards.”<sup>44</sup>

The **third element** is that the fear of persecution must be well-founded. A fear is well-founded where there is a real chance or a serious possibility for the same to happen or that the same has already taken place. It cannot be one that is purely based on mere speculation or conjecture.

“The phrase ‘well-founded fear of being persecuted’ reflects the views of its authors as to the main elements of refugee character. It replaces the earlier method of defining refugees by categories (*i.e.* persons of a certain origin not enjoying the protection of their country) by the general concept of “fear” for a relevant motive. Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his country of origin.”

“To the element of fear – a state of mind and a subjective condition – is added the qualification ‘well-founded’. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term “well-founded fear” therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.”<sup>45</sup>

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<sup>44</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 57 and 59.

<sup>45</sup> *Ibid.*, para. 37-38.

In determining whether one's fear of persecution is well-founded, the same is assessed and evaluated both in its objective and subjective elements. It cannot be one purely based upon the feelings of the person claiming refugee status recognition, nor is entirely bereft of such consideration. In the same vein, such determination cannot be wholly anchored upon objective circumstances and events happening in the country of such person, as the experience of persecution, or susceptibility thereto, may vary for each person, depending on his or her own personal situation and condition. As such, it may be possible that there is a State-initiated persecution and discrimination against religious minorities, but not everyone will be persecuted by reason of such State edict as not everyone belongs to the maltreated minority. Therefore, the determination of whether a person's fear is well-founded must be undertaken through a careful balancing of both its objective and subjective elements.

To establish the objective element of fear, reference must be made to the factual conditions and circumstances in the country from which the person fears persecution. For instance, if a Cameroonian national, who was born and raised in an English-speaking<sup>46</sup> region in Cameroon (e.g., *Bamenda*), is applying for refugee status recognition, the receiving State may review and evaluate the socio-political context in the said country if the same warrants genuine fear of being persecuted. If the personal account of the person applying for refugee status recognition fits the narrative or is fundamentally consistent with objective accounts and information as regards the country of origin, then it may warrant the finding that his or her fear of persecution is well-founded, albeit not automatically. While symmetrical accuracy between the personal or subjective account of the applicant and the objective data and information on the socio-political milieu or context of the country of origin is not an indispensable requisite in determining whether one's fear of persecution is well-founded, balancing the consideration for these two elements must be undertaken with utmost caution and due attention on information patterns and factual consistencies.

It must also be noted that for one's fear of persecution to be regarded as well-founded, it is not necessary that the person has actually experienced or is already experiencing persecution. Suffice that there is a clear chance and real possibility of experiencing persecution or discrimination given the established socio-political context of the country of origin and his or her personal circumstances and standing. To require personal and actual experience of persecution as a requirement before a person may be considered a refugee, even if such a person has the opportunity to escape such an impending tragedy, would be contrary to even the most basic tenets of human logic and reason.

In addition, "these considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his or her friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he or she will become

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<sup>46</sup> These are known as *Anglophone* regions, as opposed to *Francophone* regions, which are predominantly French-speaking.

a victim of persecution is well-founded. The situation of each person must, however, be assessed on its own merits.”<sup>47</sup>

The **fourth element** is that the reason for persecution is one or more of the Convention grounds, *i.e.*, race, religion, nationality, political opinion or membership of a particular social group. Briefly, race should be interpreted in its most common usage and is understood to cover all kinds of ethnic groups. “Discrimination on racial grounds will frequently amount to persecution in the sense of the 1951 Convention. This will be the case if, as a result of racial discrimination, a person’s human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights or where the disregard of racial barriers is subject to serious consequences.”<sup>48</sup> A person’s right against racial discrimination is also enshrined under other international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination<sup>49</sup>.

Persecution on account of religion may come in the form of a prohibition to change one’s religion or in forcing a person to publicly subscribe to a State religion, non-compliance to which may result in unreasonable punishment. It must be noted that a person’s freedom of religion and conscience is protected in other relevant international conventions, such as the United Declaration of Human Rights and the Human Rights Convention.

Nationality, which may sometimes overlap with race, should be understood to cover a broad spectrum of membership to an ethnic or linguistic group. As such, nationality in the context of the 1951 Convention is not limited to citizenship. National or ethnic minorities may be the subject of such discrimination when there are measures adopted by the State that are adverse to them or are largely iniquitous and unjust when compared to those extended to other members of society. An example of a cultural minority that experienced persecution on account of their ethnicity or race is the Rohingyas of Myanmar, who, as stated above, are also one of the largest populations of stateless persons in the world.

In August 2017, armed attacks, massive-scale violence, and serious human rights violations forced thousands of Rohingya to flee their homes in Myanmar’s Rakhine State. Many walked for days through jungles and undertook dangerous sea journeys across the Bay of Bengal to reach safety in Bangladesh. Now, more than 960,000 people have found safety in Bangladesh, with a majority living in the Cox Bazar region - home to the

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<sup>47</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 43.

<sup>48</sup> *Ibid.*, para. 69.

<sup>49</sup> Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life

world's largest refugee camp. The United Nations has described the Rohingya as "the most persecuted minority in the world."<sup>50</sup>

Membership in a particular social group is a rather wide category and can morph into different conglomerations of persons who share the same social status or cultural background. "Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies."<sup>51</sup>

Finally, a refugee may be persecuted on account of his or her political opinion. Persecution arising from one's political opinion generally comes in the form of having expressed an opinion, position, or stand that is different from or contrary with those held by the Government, when the latter is intolerant of such critical and divergent political opinions and would go as far as impose measures of penalties or sanctions on individuals with such non-conforming views. However, it must be noted that "such measures have only rarely been based expressly on 'opinion'. More frequently, such measures take the form of sanctions for alleged criminal acts against the ruling power. It will, therefore, be necessary to establish the applicant's political opinion, which is at the root of his behavior, and the fact that it has led or may lead to the persecution that he or she claims to fear."<sup>52</sup>

As such, not all modes of persecution will result in a person's declaration as a refugee under the 1951 Convention. For instance, persons who are forced to leave their countries due to international or national armed conflict, otherwise known as war refugees, "are not normally considered refugees under the 1951 Convention or 1967 Protocol. They do, however, have the protection provided for in other international instruments, *e.g.*, the Geneva Convention of 1949 on the Protection of War Victims and the 1977 Protocol additional to the Geneva Conventions relating to the protection of Victims of International Armed Conflicts."<sup>53</sup>

In addition, persons who seek to avoid military service in countries where the same is compulsory are also not generally regarded as refugees under the 1951 Convention.

"Fear of prosecution and punishment for desertion or draft evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft evader. A person is clearly not a refugee if his only reason for desertion or draft evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or

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<sup>50</sup> UNHCR, *Rohingya Refugee Crisis Explained*, <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>, accessed on 10 April 2023.

<sup>51</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 78.

<sup>52</sup> *Ibid.*, para. 81

<sup>53</sup> *Ibid.*, para. 164.

remaining outside his country, or if he otherwise has reasons, within the meaning of the definition, to fear persecution.”<sup>54</sup>

“States have a right of self-defense under both the UN Charter and customary international law. States are entitled to require citizens to perform military service for military purposes, and this does not in itself violate an individual’s rights. This is recognized explicitly in human rights provisions concerned with forced labor, such as Article 8 of the 1966 International Covenant on Civil and Political Rights [“ICCPR”].”<sup>55</sup>

In the same manner, economic migrants, or those who voluntarily leave their countries for economic considerations, are also generally excluded from qualifying as refugees under the 1951 Convention. The reason for this is that individuals who leave their countries to embark on a journey in search of greener pastures are usually not forcibly displaced from their homes, nor are they subjected to persecution. However, the fact alone that a person leaves his or her country for economic considerations does not necessarily mean that he or she can no longer be treated as a refugee, especially if the primary reason for such a person’s inability to properly earn decent money in his or her country of origin is due to political measures adopted by the State that may be discriminatory in substance and as applied on account of one’s race, religion, nationality, political opinion or membership of a particular social group.

Finally, the **fifth element** is that the person is unable or unwilling to avail of the protection of, or to return to, his country of origin due to such fear. This is in consideration of the fact that generally, the actors or agents of persecution in one’s country of origin are the State or are State-sponsored. As such, a person experiencing or is likely to experience persecution may fear to seek protection from the authorities in his or her home country. On the contrary, “where a person is willing to avail himself of the protection of his home country, such willingness would normally be incompatible with a claim that he is outside that country ‘owing to a well-founded fear of persecution.’ Whenever the protection of the country of nationality is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.”<sup>56</sup>

Once a person fulfills the criteria, as provided under the 1951 Convention, he or she is automatically considered a refugee. The formal determination of refugee status that will be undertaken by the Contracting States under the 1951 Convention is merely for the purpose of recognizing him or her as a refugee and not one of vesting legal status. In other words, State recognition does not make a person a refugee, as he or she is already deemed one upon fulfillment of the criteria laid down in the 1951

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<sup>54</sup> *Ibid.*, para. 167-168.

<sup>55</sup> *UNHCR Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, para. 5.

<sup>56</sup> *Ibid.*, para. 100.

Convention; recognition simply formally declares him or her to be one, *i.e.*, it is merely declarative.

## ii. Fundamental Principles on Refugee Protection

The main objective of the 1951 Convention is to grant international protection to refugees all over the world. To ensure that this objective will be achieved to its fullest extent, returning the refugee back to the country from which he or she fears persecution, whether in his or her home country or elsewhere, has been deemed prohibited under the 1951 Convention. Article 33 of the 1951 Convention, states that “no Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,” is also known as the principle of *non-refoulement*.

“This provision constitutes one of the basic Articles of the 1951 Convention, **to which no reservations are permitted**. It is also an obligation under the 1967 Protocol by virtue of Article I(1) of that instrument. **Unlike various other provisions in the Convention, its application is not dependent on the lawful residence of a refugee in the territory of a Contracting State.** The words “where his life or freedom would be threatened have been the subject of some discussion. It appears from the travaux préparatoires that they were not intended to lay down a stricter criterion than the words “well-founded fear of persecution” figuring in the definition of the term “refugee” in Article 1 A (2). **The different wording was introduced for another reason namely to make it clear that the principle of non-refoulement applies not only in respect of the country of origin but to any country where a person has reason to fear persecution.** (*emphasis supplied*)”<sup>57</sup>

Allowing the return of a refugee to a country where he or she is in danger of being persecuted will be tantamount to delivering him straight into the hands of his or her persecutors. To a certain extent, allowing such expulsion will be to participate in the evil sought to be prevented by the 1951 Convention. The principle of *non-refoulement* applies not only from the time that the refugee has been recognized by the receiving State to possess such status, but also includes the period during which his or her application for status recognition is pending.

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<sup>57</sup> UNHCR, *Note on Non-Refoulement (Submitted by the High Commissioner)*, EC/SCP/2, 1977, para. 4, <https://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>, accessed on 08 April 2023.

The principle of *non-refoulement* is not exclusive to the 1951 Convention and is somewhat universalized with its constant use in other international conventions relating to human rights. It is for this reason that the principle of *non-refoulement* has been widely regarded as part of customary international law.<sup>58</sup>

While it is true that the principle of *non-refoulement* is one of the most essential features of refugee protection, respect for the sovereignty of each State brought to light the need for a legitimate exception to such principle. Therefore, Article 33(2) expressly states that “the benefit of the present provision, *i.e.*, Article 33(1), may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.” This is in view of the reservations made by certain States during the deliberation of the 1951 Convention as regards their ability to exclude individuals claiming refugee recognition who, on account of their criminal acts, may pose grave threat to their public security and order.<sup>59</sup>

“However, in view of the serious consequences to a refugee of being returned to a country where he is in danger of persecution, the exception provided for in Article 33(2) should be applied with the greatest caution. It is necessary to take fully into account all the circumstances of the case and, where the refugee has been convicted of a serious criminal offence, to any mitigating factors and the possibilities of rehabilitation and reintegration within society.<sup>60</sup>

Another important component of refugee protection under the 1951 Convention is the principle of *non-discrimination*. Article 3 of the 1951 Convention states that “the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.” As discussed above, refugees are forcibly displaced individuals by reason of persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group. This persecution may come in the form of discrimination, especially if the measures for discrimination are substantially prejudicial to the ability of a person to enjoy basic and fundamental human rights. Because of this, it is

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<sup>58</sup> UNHCR, *Protecting Refugees*, <https://www.refworld.org/pdfid/3c03682d4.pdf>, accessed on 30 October 2023.

<sup>59</sup> During the *Travaux Préparatoires* for the 1951 Convention, the United Kingdom raised the point that “they have in mind, however, certain exceptional cases, including those in which an alien, despite warning, persists in conduct prejudicial to good order and government and the ordinary sanctions of the law have failed to stop such conduct; or those in which an alien, although technically a refugee within the meaning of Article 1 of the Convention is known to be a criminal. In such and similar exceptional cases His Majesty's Government must reserve the right to deport or return the alien to whatever country is prepared to receive him, even though this involved his return to his own country” – *The Refugee Convention, 1951: The Travaux Préparatoires*.

<sup>60</sup> *Note on Non-Refoulement*, para. 14.

equally incumbent upon receiving States to ensure that refugees whom they have recognized do not suffer the same fate of discrimination, specifically as regards the application of the provisions of the 1951 Convention and its 1967 Protocol.

## B. STATELESSNESS PERSONS

Generally, the ability of a person to exercise his or her rights is anchored upon his or her nationality or citizenship. While basic human rights ought to be protected and upheld regardless of one's nationality, the actual enjoyment of the same is largely dependent upon how the national laws of a particular State will implement and actualize such international commitments. In other words, one's nationality constitutes his or her legal bond with his or her country or State.

For example, while a person's right to education is enshrined under different international conventions, such as the UDHR<sup>61</sup> and Convention on the Rights of the Child (CRC)<sup>62</sup>, its actual and definite exercise will vary depending on the measures and mechanisms in place in one country relating to education. Similarly, the freedom of a person to move from one country to another, while established under the UDHR and International Covenant on Civil and Political Rights (ICCPR), its enjoyment is heavily regulated by one's nationality and the national immigration laws of the country of destination. Without a valid passport or visa, for instance, a person cannot simply squeeze in and out of his or her country. In addition, the exercise of a person's civil rights, such as the right to marry, and political rights, such as the right to vote, are also largely based upon one's citizenship.

As such, it is very important that one's nationality is clearly established and firmly ascertained. A person without a nationality is susceptible to a sundry of discriminations, the actors ranging from private individuals to the government itself, which in turn unduly hampers his or her capacity to exercise basic and fundamental human rights fully and genuinely.

The question of whether a person is a national or citizen of a particular State is generally one that is covered by the domestic jurisdiction of such State. However, States should seek to strike an equilibrium between the enforcement of their domestic nationality regimes and compliance with their obligations under relevant treaties and rules of international law.<sup>63</sup>

A person's right to a nationality is recognized under different international conventions, such as the UDHR<sup>64</sup>, CRC<sup>65</sup>, and the ICCPR<sup>66</sup>. However, this notwithstanding, people all over the world have suffered

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<sup>61</sup> Article 26.

<sup>62</sup> Articles 23(3 and 4), 24(2.e), 28, and 29.

<sup>63</sup> Permanent Court of International Justice, *Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923*, <https://www.refworld.org/cases,PCIJ,44e5c9fc4.html>, accessed on 15 September 2023.

<sup>64</sup> Article 15.

<sup>65</sup> Article 7.

<sup>66</sup> Article 24(3) and Article 7.



from the societal malady of statelessness. According to UNHCR, in its statement relating to its #IBelong Campaign<sup>67</sup>, “without any nationality, stateless persons often don’t have the basic rights that citizens enjoy. Statelessness affects socio- economic rights such as: education, employment, social welfare, housing, healthcare as well as civil and political rights including: freedom of movement, freedom from arbitrary detention and political participation. When thousands of people are stateless, the result is communities that are alienated and marginalized. In the worst cases, statelessness can lead to conflict and cause displacement.”

In the Philippines, there is a growing number of populations at risk of statelessness. In a series of roundtable discussions between the Philippine government and UNHCR, the following has been identified as being at risk of statelessness:

**Table 1**

Group/Population	Reason for Risk	Location/Large Concentration
1. Persons of Indonesian Descent	Conflict of national/citizenship laws between the Philippines and Indonesia	Southern Philippines
2. Sama Bajaus	Itinerant lifestyle and frequent border crossing	Southern Philippines
3. Children of Philippine Descent in Migratory Settings	Unable to register children’s births and acquire birth certificates as proofs of identity due to lack of consular office or stringent immigration policies	Middle East and Sabah
4. Unregistered children	Unable to register children’s births and acquire birth certificates as proofs of identity due to the non-accessibility to a properly functioning civil registry. This is also brought about by the frequent armed conflicts in the areas of concentration, which	Mostly in BARMM and Region XII

<sup>67</sup> “Launched in November 2014, the #IBelong Campaign aims to end statelessness within ten years, by identifying and protecting stateless people, resolving existing situations of statelessness and preventing the emergence of new cases. Through legal advocacy and awareness-raising, UNHCR works with governments and partners around the globe towards achieving the Campaign goals.” <https://www.unhcr.org/ibelong/>.

	results in forced displacement.	
5. Philippine Nikkei-Jins <sup>68</sup>	Conflict of nationality laws between Japan and the Philippines	No specific area of concentration

The 1954 Convention mandates the establishment of national measures that would aid States in determining whether a person may be considered a stateless person. Once a person qualifies as a stateless person, the 1954 Convention then directs States to substantially accord said person with basic human rights without discrimination, such as the right to religion, employment, education, housing, and social legislation, as well as the right to be issued with travel documents and identity papers, similar to those afforded to refugees under the 1951 Convention.

Like refugee protection under the 1951 Convention, the principle of non-discrimination is also applicable to stateless persons, as the same has also been expressly incorporated into the 1954 Convention, specifically under Article 3. The principle of *non-refoulement*, while not expressly provided under the 1954 Convention, also applies to stateless persons.

“The Final Act of the Convention indicates that non-refoulement is a generally accepted principle. Non-refoulement, the principle of not returning a person to a territory where he/she would be at risk of persecution, is explicitly upheld or interpreted in the provisions of several international treaties. Since the prohibition against refoulement is accepted as a principle of international law, the drafters of the Convention felt it was not necessary to enshrine it in the articles of a Convention that is regulating the status of de jure stateless persons.”<sup>69</sup>

However, even in the absence of the express reference to the principle of *non-refoulement* under the 1954 Convention, Article 31 thereof nonetheless states that “the Contracting States shall not expel a stateless person lawfully in their territory save on grounds national security or public order”.

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<sup>68</sup> They are children of Japanese citizens who migrated from the late 19th century to 1945 to the Philippines and Filipino women. The reason why they are treated as a population at risk of becoming stateless is the conflict between the nationality laws of the Philippines and Japan, *i.e.*, Article 4, Section 1(4) of the 1935 Philippine Constitution, which requires the election of Philippine citizenship upon reaching the age of majority and Japanese nationality law, which acknowledges paternity and registration.

<sup>69</sup> *Ibid.*, 24-25.

Cognizant of the fact that statelessness cannot be fully addressed by merely establishing and defining rights that they are entitled to, vis-à-vis the reality that the number of stateless persons or populations at risk of statelessness is ballooning by the day, UN adopted a supplemental international convention to the 1954 Convention, which is geared towards eradicating statelessness globally, *i.e.*, the 1961 Convention. “It is the leading international instrument that sets rules for the conferral and non-withdrawal of citizenship to prevent cases of statelessness from arising. Underlying the 1961 Convention is the notion that while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided. By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness over time. The Convention seeks to balance the rights of individuals with the interests of States by setting out general rules for the prevention of statelessness, and simultaneously allowing some exceptions to those rules.”<sup>70</sup>

#### **IV. ESTABLISHED RIGHTS FOR REFUGEES UNDER THE 1951 CONVENTION AND ITS 1967 PROTOCOL AND STATELESS PERSONS UNDER THE 1954 CONVENTION**

The 1951 Convention, its 1967 Protocol, and the 1954 Convention have significantly contributed to establishing a clear and internationally recognized legal status for refugees and stateless persons and in codifying international standards regarding the protection of POCs throughout the world. By giving refugees and stateless persons a legal identity, the collective effort among States towards ensuring that POCs can exercise the most basic and fundamental human rights became substantially pragmatic, and the steps undertaken to achieve such endeavor gained more specificity.

The international conventions did not only provide refugees and stateless persons with a distinctive platform through which they are to be particularly recognized and identified but also, more importantly, established the rights that they ought to enjoy and which the Contracting States ought to respect and promote. The most fundamental of these rights is the right not to be forcibly returned to one’s country of nationality, in the case of refugees, or to one’s country of residence or origin, in the case of stateless persons. Some of the fundamental rights of refugees and stateless persons under the 1951 and 1954 Conventions are as follows:

1. Freedom of Religion;
2. Right to Property;
3. Right of Association;
4. Access to Courts;
5. Right to Employment, Practice of Profession, and Social Security;

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<sup>70</sup> Introductory Note, *1961 Convention*, [https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf), accessed on 10 April 2023.

6. Right to Public Education;
7. Right to Public Relief and Health Care; and
8. Freedom of Movement

It must be noted that most of these rights are anchored upon the context of foreign nationals who are similarly situated or are in the same circumstances insofar as the exercise of such rights within the territorial jurisdiction of the receiving Contracting State is concerned. Under Article 6 of both conventions, “the term ‘in the same circumstances’ implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfill for the enjoyment of the right in question, if he were not a refugee (or a stateless person), must be fulfilled by him, with the exception of requirements which by their nature a refugee (or a stateless person) is incapable of fulfilling.”

In other words, as a rule, what may be required from a POC before he or she can exercise the rights within the territory of the receiving Contracting State are the same as those that are currently being demanded from foreign nationals who are also residing or sojourning therein. Article 7.1 of both conventions also states that “except where this Convention contains more favorable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.” However, if the same cannot be fulfilled by the POC because of his or her circumstances and because he or she is a refugee and stateless person, such requirement shall be waived.

It must also be noted that POCs are generally exempt from the requirement of reciprocity, which is a common international principle followed by States when granting rights or benefits to a foreign national residing or sojourning in their territories. Basically, the principle of reciprocity under international law, as applied to the relationship between States and private individuals, is granting certain rights to a foreign national residing or sojourning in one country to the extent that the country of said foreign national also extends the same rights to the national of the country where he or she is residing or sojourning.

The primary reason for exempting POCs from the requirement of reciprocity is the recognition that they do not have a country from which they are receiving protection. “Since a refugee is not protected by any State, the requirement of reciprocity loses its *raison d’être* and its application to refugees would be a measure of severity. Refugees would be placed in an unjustifiable position of inferiority.”<sup>71</sup> The same is true for stateless persons, especially on account of the fact because he or she has no nationality, there will be no country upon which reference may be had as regards the requirement of reciprocity.

Article 7.4 of both conventions provides a recommendation that Contracting States should consider favorably to grant rights and benefits to POCs over and beyond those which are provided in the same article. As a recommendation, Contracting States may or may not actually grant POCs

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<sup>71</sup> The Refugee Convention: The Travaux Préparatoires, 42.

with rights outside those allowed by virtue of reciprocity, but are mandated to at least consider adopting measures and policies towards granting such rights. “Thus, States may grant the rights and benefits even prior to the period of three years' residence, may grant rights and benefits in a Contracting State where the refugee (or stateless person) does not reside such as the right to compensation for war damages, to grant rights and benefits even in the absence of diplomatic reciprocity.”<sup>72</sup>

Finally, it must be noted that the list of rights enumerated under the 1951 and 1954 Conventions is not exclusive and Contracting States are not proscribed from according POCs more than they are mandated to provide. Article 5 of both conventions state that nothing therein shall be deemed to impair any rights and benefits granted by a Contracting State to refugees and stateless persons apart from those already provided therein. In the same manner, where the point of reference for the exercise of an established right under the 1951 and 1954 Conventions are foreign nationals residing in the receiving Contracting State in the same circumstances, such State is not precluded from elevating the basis of exercise to that of its national. This is especially true if the refugee or stateless person, due to their peculiar circumstances, will not be able to produce the documentary requirements that are preconditions before a foreign national can exercise the corresponding right.

### **i. Freedom of Religion**

One of the most fundamental and internationally recognized basic human rights is freedom of religion. Article 18 of the UDHR provides that “everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

In consonance therewith, and cognizant of the reality that one of the grounds of persecution or discrimination that a POC may suffer from is on account of one's religion, Article 4 of both 1951 and 1954 Conventions mandate the Contracting States to “accord refugees (and stateless persons) within their territories treatment at least as favorable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.” Because of the recognition of how deeply rooted this right is with regard to one's humanity, the freedom of religion provision under both conventions is one of the few guaranteed rights for POCs whose point of reference is with that of the Contracting State's national, rather than of a foreign national residing or sojourning therein – the latter being usually the case in the other rights that refugees and stateless persons are entitled to.

It is also important to note that this is the only “Article where treatment *at least as favourable* as that accorded to nationals of the Contracting States is

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<sup>72</sup> Ibid.

provided for. This was intended to cover the situation in countries where there are limitations on religious freedom, particularly countries in which there is a State religion to which the refugees do not belong or where the refugees' religion is not represented in the local population. The Article does not oblige the Contracting States to provide the material or financial means for the exercise of their religion by the refugees or the religious education of their children where such means are not provided for nationals."<sup>73</sup>

## ii. Right to Property

The right to property granted to POCs under the 1951 and 1954 Conventions is two-fold: first is as regards the acquisition of movable and immovable property, and second is with respect to the protection of artistic rights and industrial property. Article 17 of the UDHR also upholds and promotes the right of every person to property:

- “1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.”

This general recognition of a person's fundamental right to property without distinction of any kind is reflected under Articles 13<sup>74</sup> and 14<sup>75</sup> of the 1951 and 1954 Conventions.

One striking difference between Article 13 and Article 14 is that the former is anchored upon a “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”, while the latter's reference is the protection similar to those granted to the nationals of the receiving Contracting Party. With regard Article 13, the covered “property includes not only tangible property but also securities, monies, bank accounts, etc. As to rights pertaining to property, this includes sale, exchange, mortgaging, income, compensation for expropriation, apart from leasing which is specially mentioned. The provision applies to all refugees and stateless persons, whether resident in the territory of the Contracting State or not.”<sup>76</sup>

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<sup>73</sup> The Refugee Convention: The Travaux Préparatoires, 37.

<sup>74</sup> The Contracting States shall accord to a refugee (and stateless person) treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

<sup>75</sup> In respect of the protection of industrial property, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a refugee (and stateless person) shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence

<sup>76</sup> *Ibid.*, 85.

As regard Article 14, it covers the general spectrum of intellectual properties. As such, if a POC was able to publish a book, his or her rights thereto will be governed by the national law of his or her country of habitual residence and relevant international conventions to which such country is a Party to, insofar as it applies to its nationals. Some of the relevant international conventions are as follows:

“There are numerous such treaties such as the Bern Convention on Intellectual Property of 1886, the Paris Additional Act and Imperative Declaration of 1896, the Berlin Convention of 1908, the Brussels Convention of 1948, the European Convention on Establishment and the Paris Universal Copyright Convention of 1952 which in Protocol No. 1 explicitly assimilates refugees and stateless persons to the nationals of the country of their habitual residence. It has since been replaced by the Paris Universal Copyright Convention of 24 July 1971 whose Protocol No. 1 equally assimilates refugees and stateless persons to the nationals of the country of their habitual residence.”<sup>77</sup>

### iii. Right of Association

Article 15 of both conventions states that “as regards non-political and non-profit-making associations and trade unions, the Contracting States shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country, in the same circumstances.” It must be noted that the right of association under this provision is limited to non-political associations and trade unions, which may include labor unions. Political associations are not included under Article 15. However, this does not mean that refugees cannot exercise their right to political association, as the same may be included under Article 7(1) of both conventions. As such, if a receiving Contracting State opts to extend such right for foreign nationals residing or sojourning therein so as to include political associations, the same can also be enjoyed by POCs – in which case, the reference will no longer be foreign nationals whose country receives most favorable treatment from the receiving Contracting States, but rather only that which is granted to aliens generally.

The point of reference for a POC’s right to association under both conventions is the “*most favorable treatment* accorded to foreign nationals residing in the same State”<sup>78</sup> and are under the same circumstances. In other words, the reference of protection granted to POCs is not simply based on rights enjoyed by foreign nationals residing in the receiving

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<sup>77</sup> *Ibid.*, 89.

<sup>78</sup> Most favorable treatment means the best treatment which is accorded to nationals of another country by treaty or usage. It also includes rights granted under bilateral or multilateral treaties on the basis of special provisions or the ‘most-favoured-nation clause.’ - *The Refugee Convention: The Travaux Préparatoires*, 94.

Contracting State; if there are certain countries whose nationals receive more favorable treatment in the receiving Contracting State by reason of treaty or usage, then the same shall be applied for the rights that may be granted to POCs.

#### iv. Access to Courts

Article 16 of the 1951 and 1954 Conventions provides for the different rights that POCs are entitled to as regards their ability to access courts and judicial processes in the receiving Contracting State. Specifically, it is provided therein that:

“1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*<sup>79</sup>. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.”

It must be noted that free access to the courts of law, as stated under paragraph 1 of Article 16 of the 1951 and 1954 Conventions, does not necessarily mean freedom from payment of any sort of court fees and charges, as may also be imposed by the receiving Contracting State upon its own nationals and other foreign nationals residing or sojourning therein. What it seeks to establish is that POCs will have unhampered access to court and judicial process, free from any additional requirement or superfluous burden which is nonetheless not being required from nationals and aliens alike in the receiving Contracting State, to protect his or her private rights, as may be enshrined under relevant domestic laws and procedures. Paragraph 2 further amplifies the right of a refugee to access courts, which may include legal assistance and exemption from payment of bonds if he or she is habitually residing in the receiving Contracting State, and such rights are also being extended to its own nationals.

There have been judicial decisions in different jurisdictions, citing the 1951 Convention to uphold the rights of refugees before domestic courts of the receiving Contracting States. One example is in France, to wit:

“In France, the Tribunal de la Seine decided on 14 May 1954 in *Ilitsch v. Banque Franco-Serbe* that the Franco-Yugoslav Convention was applicable to refugees not deprived of nationality

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<sup>79</sup> *Cautio judicatum solvi* is the security for costs which foreigners have sometimes to furnish for the costs of the other party in civil proceedings provided the plaintiff loses the lawsuit. - *Ibid.*, 97.



and that they were therefore exempt from *cautio judicatum solvi*.”<sup>80</sup>

## v. Right to Gainful Employment and Livelihood

When POCs are compelled to leave their home countries, they are often forced to also leave their properties and means of livelihood behind. As such, their plight does not stop with the uncertainties and risks surrounding their travel towards and arrival in a different country; once they set foot, their quandary continues with how they will fend for themselves in such new terrain where communication barriers may range from simple immigration rules to the magnanimity of difference in language and culture. While there are States that are immediately equipped with instant and instantaneous relief for refugees casting anchors upon their territories, not all will have the same capacity or resources to sustain the ordeal.

Genuine POC protection cannot be properly and fully achieved if refugees are perpetually reliant on the assistance and support that they are afforded under the 1951 and 1954 Conventions and by the receiving Contracting State granting them recognition. POC protection also entails that they are provided with an equal and substantive opportunity to become self-reliant and productive members of the society that they will be part of. “Labor market integration is an important indicator of short- and long-term refugee integration and of a successful, durable solution to the limbo and protection needs stemming from forcible displacement.”<sup>81</sup> This is the reason why community integration is an important component of comprehensive refugee protection. To this end, the 1951 and 1954 Conventions lay down the provisions to ensure that POCs can achieve economic self-reliance. The Chapter on gainful employment under both conventions is divided into three (3) provisions, namely: wage-earning employment (Article 17), self-employment (Article 18), and liberal professions (Article 19). In addition, both conventions also provide for the right of POCs to labor legislation and social security (Article 24).

Wage-earning employment under Article 17 should be taken to cover the widest array of undertakings and services for which a person may be hired and where compensation is paid, unless the same qualifies as self-employment and exercise of liberal professions, which is covered by Articles 18 and 19, respectively. As a rule, the right granted to POCs regarding wage-earning employment in the receiving Contracting State will be similar to that which is given to foreign nationals residing or sojourning therein whose country is given the most favorable treatment.

However, regarding restrictive measures that are imposed upon foreign nationals as regards wage-earning employment for the protection of

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<sup>80</sup> *Ibid.*, 98.

<sup>81</sup> UNHCR, *The labour market integration of resettled refugees*, PDES/2013/16, p. 3, <https://www.unhcr.org/media/labour-market-integration-resettled-refugees>, accessed on 08 April 2023.

the national labor market<sup>82</sup>, such as securing work permits, the same will not apply to POCs if they have already been exempt from such measures at the date of entry into force of both conventions for the receiving Contracting State. A POC can also be exempt therefrom if he or she fulfills the requirements provided under the 2<sup>nd</sup> paragraph of Article 17. As such, saying that a POC may be treated differently from other foreign nationals residing or sojourning in the same Contracting State does not necessarily mean that they will be granted treatment similar to the nationals of said State.

Self-employment may cover income-generating arrangements initiated by a person without working for an employer. In a sense, individuals who are engaging in self-employment are those who “earn their living from any independent pursuit of economic activity, rather than working for a company or an individual.”<sup>83</sup> Self-employed individuals are also called independent contractors in some jurisdictions. It must be noted that rights provided under Article 18 “apply to refugees 'lawfully in the territory' of the Contracting States. Thus, physical presence, even a temporary stay or visit are sufficient, in distinction ‘o 'lawfully staying', the terminology used in other Articles. To a refugee (or stateless person) who is not lawfully in the country but who lives elsewhere, on the other hand, Article 7 paragraph 1 applies, that is, the treatment accorded to aliens generally. The refugee must, of course, fulfill the conditions required for the exercise of the activity in question, such as specific qualifications, licenses, or concessions.”<sup>84</sup>

Next, the inclusion of the practice of the liberal professions as part of the rights that POCs are entitled to under the 1951 and 1954 Conventions allows them to pursue the educational degrees that they were able to complete and professions they were able to accomplish in their country of origin. This ensures that in terms of working their way towards self-reliance, they can also become productive members of the community as they are able to practice the profession that they have spent years studying and training for.

“The term 'liberal' means that the persons must possess certain qualifications or a special license. The word 'diploma' includes any degree or certificate required to exercise a particular profession.”<sup>85</sup> Examples of liberal professions may include doctors, engineers, architects, dentists, accountants, pharmacists, and lawyers. The point of reference for the practice of the liberal profession for POCs, as provided under Article 19 of both conventions, is the “treatment as favorable as possible and, in any

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<sup>82</sup> Measures for the protection of the national labour market are either measures imposed on aliens such as restrictions in time or space or concerning employment in certain occupations, or restrictions on the employment of aliens such as fixing a certain number or percentage of aliens in general or in certain occupations or enterprises, or the provision that aliens may only be employed if no nationals are available for the job in question, *The Refugee Convention: The Travaux Préparatoires*, 107.

<sup>83</sup> *Investopedia*, <https://www.investopedia.com/terms/s/self-employed-person.asp>, accessed on 15 May 2023.

<sup>84</sup> *The Refugee Convention: The Travaux Préparatoires*, 109.

<sup>85</sup> *Ibid.*, 113.

event, not less favorable than that accorded to aliens generally in the same circumstances.”

## vi. Public Education

In connection with the goal of self-reliance for refugees and stateless persons, access to public education is of utmost importance, which is provided under Article 22<sup>86</sup> of both conventions. According to UNHCR’s recent report on the matter: “close to half of all refugee children – 48 percent – remain out of school. At the pre-primary level, the average gross enrolment rate for the academic year 2020 to 2021 for reporting countries was 42 percent. For the primary level, the corresponding rate for reporting countries was 68 percent. For the secondary level, it was 37 percent, illustrating that significant structural barriers remain for refugee learners to access post-primary education. At the tertiary level, enrolment rates for the same period were at 6 percent. This increase of 3 percentage points since 2019 represents a transformational change for thousands of young people and their communities. Of the 20.7 million refugees under our care, 7.9 million are refugee children of school age. Their access to education is limited, with almost half of them unable to attend school at all.”<sup>87</sup>

Without proper access to education, it will be difficult for refugees to achieve self-reliance and may even hamper their self-development and growth, especially for children. As such, lack of access thereto is gravely inimical to the multi-faceted development and maturity of refugees. Without proper education, refugees may still be subjected to the same vulnerabilities and discriminations that they are seeking to run away from.

Access to education is equally important for stateless persons. However, unfortunately, similar to refugees, it is also difficult for them to have proper access to quality education and educational facilities, primarily because stateless persons have no country or government from whom they can, as a matter of right, definitively and clearly demand this from. The Institution on Statelessness and Inclusion (ISI)<sup>88</sup> conducted a recent study on the impact of lack of access to education for stateless persons, especially for children.

“The denial of education for stateless children has consistently emerged as a key concern from partners working in communities

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<sup>86</sup> 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

<sup>87</sup> UNHCR, *Education*, <https://www.unhcr.org/what-we-do/build-better-futures/education.>, accessed on 30 October 2023.

<sup>88</sup> ISI is the first and the only human rights NGO dedicated to promoting the right to a nationality and the rights of stateless people globally, <https://www.institutesi.org>, accessed on 15 April 2023.

affected by statelessness. In June-July 2022, ISI conducted semi-structured interviews with 14 partners in eight countries around the world, to better understand the specific challenges stateless children face in accessing education; followed by a Roundtable discussion to share and further contextualise the findings together with participating partners, convened online in September 2022.

Based on those consultations, ISI notes with deep concern the increasingly significant obstacles stateless children face in realizing their right to education, despite international guarantees, as set out in this submission. ISI has also identified, through this dialogue with partners, a number of ways in which stakeholders working to improve equitable access to education for children globally, through dedicated attention to the distinct challenges faced as a result of statelessness.”<sup>89</sup>

The point of reference for a POC’s access to public education in the receiving Contracting State is national treatment, but only with respect to elementary education. Qualifying access to education with the word “public” is important, for the purpose of a Contracting State’s compliance with its obligation under both conventions. This means that as a matter of obligation, a Contracting State must ensure that POCs have proper access to elementary education, which may be subsidized or funded by the government. This may also include access to scholarships that may be granted through such system.

With respect to access to education other than elementary education, Article 22.2 of both conventions does not accord to POCs the same treatment granted to its nationals. Instead, what both conventions mandate from Contracting States is for them to make the same accessible to POCs, including the “recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.” The recognition of these documents pertains to admission to schools for higher education, and not for purpose of exercising one’s profession.

## **vii. Public Relief**

Article 23 of both conventions state that “Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals”. The concept of public relief is broad enough to include basic services that the

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<sup>89</sup> ISI, *Submission to the UN Special Rapporteur on the Right to Education, in response to the call for contributions on “the right to education, advances and challenges”*, January 2023, <https://www.ohchr.org/sites/default/files/documents/issues/education/cfi-hrc53/submission-education-hrc53-cso-isi-en.pdf>, para. 2, 3, and 17, accessed on 15 September 2023.

public is entitled to as a matter of right and are ought to receive for purposes of protecting and promoting their welfare, such as health care, hospital treatment, relief during times of emergency, and other similar benefits outside of those that already fall within the spectrum of social security benefits.

For example, access to health care is crucial in genuinely promoting and protecting the welfare of POCs. Due to their unfortunate circumstances, increased mobility, and susceptibility to discrimination, there are significant barriers to proper health care for POCs, which may exist in their countries of origin, countries of transit, and even in the territory of the receiving Contracting State.

“The dynamic process of the forced migration of refugee and asylum seeker populations contributes to added pressures on the health and social infrastructures of the receiving state, region or country and is ever evolving as a direct consequence of the ongoing global trends of persecution, conflict, violence or human rights violations. While forced migration itself is not a risk factor for poor health outcomes as migrants are often comparatively healthy, vulnerability to physical, mental and social health problems may arise from the process and specific circumstances of migration, giving rise to public health concerns.

Approaches to managing refugee health problems or barriers to accessing health services have not sufficiently matched the pace of increasing challenges associated with the scale, diversity and disparity of current migration patterns. Forced migration and the resultant creation of refugees is a top priority on the policy agendas of many of the world’s leading member states of the World Health Organisation (WHO).”<sup>90</sup>

As stated under Article 23 of both conventions, POC’s right to public relief is anchored upon national treatment.

### **viii. Freedom of Movement**

One of the more palpable vulnerabilities that refugees suffer from is their ability to safely and freely move into another country, given the circumstances that may have compelled them to leave theirs. It may even be possible that they are without the proper travel documents to enter another

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<sup>90</sup> Bafreen Sherif, *Refugee healthcare needs and barriers to accessing healthcare services in New Zealand: a qualitative phenomenological approach*, <https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-022-08560-8>, accessed on 15 May 2023.

country, as they may fear seeking assistance from the relevant authorities in their respective countries, considering that the State itself might be the agent of persecution. This is the reason why one of the early resolutions adopted by the League of Nations to address this problem is the issuance of travel documents and identity certifications to refugees, as earlier discussed.

The 1951 and 1954 Conventions further established the freedom of movement of refugees within the territory of the receiving Contracting State as a matter of right. Article 26 of both conventions states that “each Contracting State shall accord to refugees (and stateless persons) lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.”

As regards a refugee’s ability to travel outside the country that granted him or her refugee or stateless person status, Article 27 of both conventions mandates the Contracting States to “issue identity papers to any refugee in their territory who does not possess a valid travel document,” while Article 28 obliges them to “issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require.”

It is also for the same consideration that refugees may have to enter another country illegally, for lack of proper travel documentation, that Article 31 of the 1951 Convention generally prohibit the imposition of penalties on account of such illegal entry.

“It is not a crime to cross a border without authorization to seek asylum. Article 31 of the 1951 Convention provides that refugees coming directly from a country where their life or freedom is threatened shall not be punished because of their illegal entry or presence, as long as they are coming directly from that country, present themselves without delay to the authorities, and show good cause for their illegal entry or presence. This provision recognizes the realities of refugee flight. Refugees are often compelled to arrive at, or enter, a territory without the requisite documents or prior authorization. Article 31 also applies to asylum-seekers, since some of them are refugees who have not yet been recognized as such.”<sup>91</sup>

The exercise of freedom of movement for POCs is anchored upon the same treatment being extended to foreign nationals generally, who are residing and sojourning in the receiving Contracting State and under the same circumstances.

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<sup>91</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 94.

## V. INTERNATIONAL CONVENTIONS THAT ESTABLISH THE OBLIGATIONS OF STATE PARTIES FOR THE PROTECTION AND PROMOTING RIGHTS OF POCS

With every right established under the relevant conventions on POC protection, there is a corresponding obligation for Contracting States to said conventions to protect and uphold such rights through the institutionalization of domestic measures and mechanisms sufficient to undertake such endeavor. This is further highlighted by the fact that the provisions establishing the rights of refugees and stateless persons under the relevant conventions use the word “shall” in characterizing what Contracting States are required or mandated to accord to said individuals. By signing and acceding to the 1951 Convention, its 1967 Protocol, and the 1954 Convention, a State commits itself to comply with the mandatory obligations provided under such international conventions by incorporating the same into its domestic legal system.

“When countries accede to the 1951 Convention or 1967 Protocol, they agree to protect refugees on their territory and under their jurisdiction, in accordance with the terms of these instruments. States have also agreed to extend relevant rights to refugees in accordance with international human rights obligations.”<sup>92</sup>

Aside from the obligation of Contracting States to positively take and adopt measures that will ensure that refugees and stateless persons within their territories are able to properly exercise the rights established under the relevant international conventions and amply access the government services corresponding to such rights, Contracting States are also obliged not to do certain actions, which otherwise they are empowered to do as sovereign states. These prohibited conducts under the 1951 and 1954 Conventions are the expulsion or return (*refoulement*) of the POC to his or her country of origin or habitual residence (Article 33), expulsion of a refugee or stateless person lawfully staying in the Contracting State’s territory (Article 32), imposition of penalty on account of illegal entry or presence in the territory of the receiving State (Article 31), application of exceptional measures which otherwise would apply to the nationals of a particular another State wherein the refugee is also a national of (Article 8), and discrimination on account of race, religion, and country of origin (Article 3).

Another vital responsibility that Contracting States have under the relevant international conventions is the institutionalization of a status determination procedure<sup>93</sup>. Before a State can provide the needed protection to POCs, they must first be able to identify who they are. This process of status determination is important because POCs are afforded different preferential treatment than ordinary foreign nationals residing within the same territory.

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<sup>92</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 34.

<sup>93</sup> Article 9, 1951 and 1954 Conventions.

“Status determination is a process through which States and/or the UNHCR decide who is entitled to the benefits of protection and thus facilitate the fulfillment of States’ obligations to the beneficiaries of the international refugee and statelessness regime. Status determination does not grant the status of a refugee or stateless person, but merely acknowledges it is a truism of international law. This implies that status determination is an integral component of being accepted as a refugee or stateless person. This is the legal or administrative process that determines if State governments or the UNHCR deem an individual seeking international protection to be a refugee or stateless person under international, regional, or national law.”<sup>94</sup>

However, it must be noted that the procedure as to how status determination will be undertaken is not specifically defined or regulated under the 1951 and 1954 Conventions. As such, Contracting Parties are afforded the liberty to adopt the relevant procedure that they deem appropriate and consistent with their respective legal systems and administrative structure. To ensure that there is at least a semblance of uniformity in the different procedures established by the Contracting States, and to guarantee that the rights of POCs are protected throughout the process, the Executive Committee of the High Commissioner’s Programme, at its twenty-eighth session in October 1977, recommended certain basic requirements that such status determination procedure should satisfy.<sup>95</sup>

Finally, Contracting States are also mandated to inform the Secretary General of the United Nations of laws and regulations that they have adopted or may adopt for the purpose of ensuring that the 1951 and 1954 Conventions are properly implemented in their respective territories and jurisdictions<sup>96</sup>.

## **VI. PHILIPPINES’ COMPLIANCE WITH ITS INTERNATIONAL OBLIGATIONS UNDER THE INTERNATIONAL CONVENTIONS**

To reiterate, the Philippines is a signatory to the 1951 (as amended by the 1967 Protocol), 1954, and 1961 Conventions, acceding thereto in 1981, 2011, and 2021, respectively. Throughout the years, the Philippine government has adopted several domestic measures to provide protection for refugees and stateless persons.

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<sup>94</sup> Nordin, Nor, and Rofiee, *Ineffective Refugee Status Determination Process: Hindrance To Durable Solution For Refugees Rights And Protection*, Indonesia Law Review, Vol. 11, Number, 1, Article 5 (2021), 77.

<sup>95</sup> *Handbook*, citing the Official Records of the General Assembly, Thirty-Second Session, Supplement No. 12 (A/32/12/Add.1), para. 53 (6) (e), 43.

<sup>96</sup> Article 36.



Briefly, a convention is a formal agreement between States, which is synonymous with the generic term 'treaty' and is normally open for participation by the international community, or by many States.<sup>97</sup> Treaties are binding in nature upon the parties thereto. The binding effect of treaties is fundamentally based upon the fact they are the product of the voluntary act of independent and sovereign states, who undertook the careful and cerebral negotiation of such agreement, cognizant of the possible ramifications of the same to their constituents, stakeholders, and domestic legal system.

“Treaties are express agreements and are a form of substitute legislation undertaken by states. They bear a close resemblance to contracts in a superficial sense in that the parties create binding obligations for themselves, but they have a nature of their own that reflects the character of the international system. They fulfill a vital role in international relations.

For many writers, treaties constitute the most important sources of international law as they require the express consent of the contracting parties.”<sup>98</sup>

Following the principle of *pacta sunt servanda*, it is incumbent upon the Philippines to fulfill its international obligation under said conventions in good faith. This principle has been recognized and adopted in the Philippines' legal system. In the case of Government of the United States of America, represented by the Philippine *Department of Justice vs. Hon. Guillermo Purganan*<sup>99</sup>, involving the Extradition Treaty between the Philippines and the United States, the Court explained that by voluntarily entering into such treaty, a presumption is created that the same is consistent with the country's legal frameworks and will serve the national interest.

#### A. FORMAL STATUS RECOGNITION PROCEDURE

The country's compliance with its obligations under the relevant international conventions formally started with the issuance of a Department Order (D.O.) No. 94 in 1998, which established a status determination procedure for refugees and stateless persons. Under this order, the DOJ-Legal Staff was designated as the lead agency in the country's implementation of these conventions. To further enhance this undertaking, the DOJ issued a Department Circular (D.C.) No. 058 in 2012 for the purpose of creating the Refugees and Stateless Persons Protection Unit (RSPPU), which is principally mandated to facilitate the identification, determination, and protection of refugees and stateless persons in the Philippines and establish the pertinent procedures and mechanisms for such determination.

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<sup>97</sup> Funa, *International Law*, citing the *Concise Oxford Dictionary of Current English* (8<sup>th</sup> edition) and the United Nations Treaty Collection, *Treaty Guide Reference* (1999), 14.

<sup>98</sup> Shaw, *International Law*, 70.

<sup>99</sup> G.R. No. 148571, 24 September 2002.

Specifically, the steps for the processing of applications for recognition of refugee and stateless person status are divided into two categories: regular and accelerated, the latter referring to those filed immediately at the port of entry of the POC, such as in the airport, or when the POC is detained in Bureau of Immigration detention facilities.

An important component of the initiation of an application for status determination is its suspensive effect on any pending deportation or exclusion case against the applicant and her or her dependents. Specifically, under Section 7 of D.C. No. 58, s. 2012:

“The RSPPU shall notify the Commissioner of the receipt of the application. Following receipt of the notice, any proceeding for the deportation or exclusion of the Applicant and/or his or her dependents shall be suspended. If the Applicant and/or his or her dependents is/are in detention, the Secretary, subject to the conditions that he or she may impose, may direct the Commissioner to order his or her and/or their release. The Commissioner shall furnish the RSPPU a copy of the Release Order.”

If an applicant is recognized as a refugee or stateless person, “the benefits of recognition, as appropriate, shall automatically inure to the accompanying Family Members. Refugees and stateless persons, including their Family Members, have the right to residence. They are entitled to the appropriate visas and such other immigration documents appurtenant thereto as may be provided by immigration laws and regulations. No renewal of visa shall be allowed by the Bureau without the endorsement of the RSPPU.”<sup>100</sup>

In 2022, the DOJ amended the circular with the issuance of D.C. No. 024, s. 2022, with the aim of streamlining some of the processes for refugee status determination, particularly as regards the timeframes within which the interview of applicants should be undertaken and the decisions for such applications be released by DOJ.

## **B. OTHER SPECIFIC MEASURES FOR POC PROTECTION IN THE PHILIPPINES**

Aside from the formal status recognition procedures as established through DOJ-RSPPU, other relevant measures have been adopted by the Philippine government to ensure POC protection in the country. These programs are normally undertaken in coordination with or upon the initiation of UNHCR.

One of the most recent measures adopted for such purpose, specifically for addressing the issue of statelessness in the Philippines, is the enactment of R.A. No. 11767, or the Foundling Recognition and Protection

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<sup>100</sup> Section 15, D.C. No. 58, s. 2012.

Act, in 2022. This law seeks to resolve the risk of statelessness of one of the identified populations in the Philippines, *i.e.*, foundlings. Briefly, a foundling is defined as a “deserted or abandoned child or infant with unknown facts of birth and parentage, which shall include those who have been duly registered as a foundling during her or his infant childhood but have reached the age of majority without benefitting from adoption procedures upon the passage of this law.”<sup>101</sup> To address this legal conundrum, the law declared that:

“Foundling found in the Philippines and/or in Philippine embassies, consulates, and territories abroad is presumed to be a natural-born Filipino citizen regardless of status, circumstance, or birth. As a natural-born citizen of the Philippines, a foundling is accorded with rights and protections at the moment of birth equivalent to those belonging to such class of citizens whose citizenship does not need perfection or any further act.”<sup>102</sup>

This means that a foundling found in the Philippines enjoys the legal presumption that he or she is a natural-born Filipino citizen. This is to ensure that the child is vested with nationality upon birth, prevent the scenario of the child needing to prove his or her nationality at the risk of becoming a stateless person for failing to do so, and aid in the global objective of putting an end to statelessness.

This law sought to institutionalize the 2016 case of *Poe-Llamanzares vs. COMELEC*<sup>103</sup>, wherein the Supreme Court explained that:

“We find no such intent or language permitting discrimination against foundlings. On the contrary, all three Constitutions guarantee the basic right to equal protection of the laws. All exhort the State to render social justice. Of special consideration are several provisions in the present charter: Article II, Section 11 which provides that the ‘State values the dignity of every human person and guarantees full respect for human rights,’ Article XIII, Section 1 which 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 xxx’ and Article XV, Section 3 which requires the State to defend the ‘right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.’ Certainly, these provisions contradict an intent to

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<sup>101</sup> Section 3.

<sup>102</sup> Section 5.

<sup>103</sup> G.R. Nos. 221697, 221698-700, March 08, 2016.

discriminate against foundlings on account of their unfortunate status.”<sup>104</sup>

In the area of inter-agency coordination for POC protection, Executive Order (E.O.) No. 163 was issued on 22 February 2022. The primary purpose of E.O. No. 163 is to institutionalize the *Inter-Agency Committee on the Protection of Refugees, Stateless Persons, and Asylum Seekers* (“IAC”), which seeks to ensure that the endeavor of promoting the rights of POCs in the Philippines is a whole-of-government approach, especially considering that access to the basic needs of POCs fall within the separate and independent mandates of different agencies of the government. The IAC is intended to “closely monitor and ensure full protection of the rights of POCs to liberty and security, and freedom of movement”<sup>105</sup> and continue the previous work of the *Inter-Agency Steering Committee* (IASC) created under the Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, which was entered into by the different agencies of the government in 2017<sup>106</sup>. The Chairperson of the IAC is Secretary of Justice, and its Vice-Chairperson is the Secretary of Social Welfare and Development, with the DOJ-RSPPU as the Secretariat.

Other significant national measures that were undertaken for the protection of refugees and stateless persons in the Philippines are as follows:

**Table 2**

Measure	Year signed/issued	Framework summary
1. NSO Administrative Order (A.O.) No. 1, as amended by NSO Memorandum Circular No. 2004-01	1993	This established the rules relating to the registration of children with unknown parentage or foundlings. This is a reiteration of Section 21 of the Family Code.
2. R.A. No. 8239, or the Philippine Passport Act of 1996	1996	This law allowed the issuance of travel documents to refugees in the Philippines, in lieu of a passport. <sup>107</sup>
3. DOLE Circular No. 120-12	2012	This refers to the issuance of Alien Employment Permits (AEPs) to foreign nationals, which included refugees and stateless persons in the country.

<sup>104</sup> G.R. Nos. 221697, 221698-700, 08 March 2016.

<sup>105</sup> Section 1.

<sup>106</sup> This agreement institutionalizes the whole-of-nation approach in fulfilling the country’s international commitment to the twin international convention on refugee and stateless person protection by establishing an inter-agency coordination mechanism for the creation and implementation of measures that are within the mandates and competencies of each government agency involved.

<sup>107</sup> Section 13.

4. Revised Rules for the Issuance of Employment Permits to Foreign Nationals (DOLE Department Order No. 186)	2017	This issuance seeks to further liberalize the capacity of refugees and stateless persons to work in the Philippines, by exempting them from securing AEP.
5. DOJ Circular No. 26	2018	This issuance establishes the mechanisms for the registration of Persons of Indonesian Descent (PIDs), who are considered as being at risk of statelessness in the Philippines.
6. TESDA Circular No. 24	2018	“The objective of this guideline is to provide the POCs assistance in identifying their skills needs and providing them access to TVET institutions of their choice where they are qualified to enroll.” <sup>108</sup>
7. DOLE-DOJ-BI Joint Guidelines on the Issuance of Work and Employment Permits to Foreign Nationals	2019	This issuance further liberalizes the ability of refugees and stateless persons to work in the Philippines.
8. Rule on Facilitated Naturalization of Refugees and Stateless Persons (A.M. No. 21-07-22-SC)	2022	“This rule seeks to facilitate and expedite the judicial process for naturalization for refugees and stateless persons. “With the approval of the Rule, the Philippines becomes the first in the world to have a judiciary-led initiative to simplify and reduce legal and procedural hurdles in the naturalization procedure for refugees and stateless persons, facilitating access to durable solutions to their displacement or lack of nationality.” <sup>109</sup>

At the height of the COVID-19 pandemic, the Philippine government also undertook administrative measures to ensure that the basic needs of refugees and stateless persons are attended to. Examples of these measures are the following:

<sup>108</sup> TESDA Circular No. 24, s. 2018 (II. Objective).

<sup>109</sup> UNHCR Philippines.

- a. Department of Labor and Employment DO 218-20;
- b. Department of the Interior and Local Government (DILG) Memorandum Circular No. 2020-153;
- c. Department of Health Memorandum No. 2021-0157; and
- d. DOLE-DOT Joint Memorandum Circular No. 2021-001.

In the international arena, the Philippines has also participated in the international pledges established for the purpose of providing protection to refugees and statelessness, such as the 10-year National Action Plan to End Statelessness<sup>110</sup> and the Global Compact on Refugees<sup>111</sup>.

However, while the Philippines have adopted measures for the purpose of fulfilling its international obligations under the 1951 Convention, its 1967 Protocol, and the 1954 Convention, the lack of a comprehensive and special law for the protection of refugees and stateless persons proved to be inimical in fully accomplishing such ordeal. Lack of funding, absence of a specialized and separate implementing body or government agency, inconsistency and lack of continuity in the establishment and implementation of policies from relevant agencies due to lack of legal basis, discrepancy in execution in relation to existing legislative and regulatory mechanisms, absence of a government monitoring mechanism on POCs, and the government's over-reliance on the assistance being provided by UNHCR, are but some of the glaring gaps in the country's fulfillment of its international obligations on refugee and stateless person protection, due to the absence of the necessary legislative measure.

For example, DOLE Circular No. 120-12, as amended by DOLE D.O. No. 186, is limited only to exempting refugees and stateless persons from securing alien employment permits and not to proactively taking measures towards ensuring that they are able to find employment, especially one that is in line with their skills. Rather than the government taking the responsibility of institutionalizing steps towards the labor market integration and meaningful productivity of refugees and stateless persons in the country, said task falls within the individual efforts of said individuals.

In addition, the exemption from securing an alien employment permit before being able to work in the Philippines applies only to refugees and stateless persons, who are already recognized by the DOJ. It does not extend to asylum seekers and persons applying for recognition as stateless persons, who are also entitled to international protection under relevant conventions.

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<sup>110</sup> In October 2013, the UN High Commissioner for Refugees called for the total commitment of the international community to end statelessness. The Global Action Plan to End Statelessness: 2014 - 2024, developed in consultation with States, civil society, and international organizations, sets out a guiding framework made up of 10 Actions that need to be taken to end statelessness within 10 years. - UNCHR, #IBelong, <https://www.unhcr.org/ibelong/>, accessed on 10 April 2023.

<sup>111</sup> on 17 December 2018, the United Nations General Assembly affirmed the Global Compact on Refugees, after two years of extensive consultations led by UNHCR with Member States, international organizations, refugees, civil society, the private sector, and experts. The Global Compact on Refugees is a framework for more predictable and equitable responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation. - UNHCR, *Global Refugee Forum 2023*, <https://www.unhcr.org/global-refugee-forum-2023>, accessed on 10 April 2023.

Moreover, the Philippines is yet to issue any measure that will ease the practice of profession in the country for refugees and stateless persons, which they may have earned in their countries of nationality or origin. At present, the Philippine Constitution limits the practice of profession to Filipino nationals, save for those the practice of which may be allowed for foreign nationals under relevant laws<sup>112</sup>. Furthermore, TESDA Circular No. 24, which seeks to aid POCs in identifying the skills they need to pursue a livelihood, the same is limited to accessing TVET institutions where they can enroll. However, this circular only qualifies POCs to regular programs of TESDA that is not subsidized by the government and expressly excludes them from being eligible to training-for-work scholarship and special training for employment programs of TESDA, which provides free skills training, assessment, entrepreneurship training, starter tools, and training allowance<sup>113</sup>.

In addition, while the issuance of E.O. No. 163 is a huge step towards institutionalizing a whole-of-government approach in affording international protection to POCs, the implementation of the same is still heavily dependent upon the involved agency's perceived consistency or otherwise between the undertaking and existing laws and regulations. As stated earlier, one of the functions of the IAC is to "ensure that policies on the protection of, and the services and assistance offered to POCs are consistent with relevant laws, rules and regulations..." As such, in the absence of a law that would fully support and uphold access of POCs to basic government services, consistent with the international protection that contracting Parties to the 1951 and 1954 Conventions are mandated to undertake and implement in their respective jurisdictions, POCs may end up being treated as ordinary foreign nationals in the country and be subject to the same restrictive measures as those imposed upon the latter, without taking cognizance of the specific vulnerabilities to which the former are normally being subjected to.

## **VII. ENHANCED PROTECTIVE MECHANISMS FOR POCS IN THE PHILIPPINES UNDER THE INTERNATIONAL CONVENTIONS**

In the Philippines, the rights and obligations of the citizenry and the powers and structure of the government are fundamentally governed by a codified legal system. The assertion of a person's right is generally based upon the law that creates or establishes such right. And with every right legally created is a corresponding obligation established as well.

As a country generally governed by a formal and codified system of laws, when an obligation is said to be derived from law, the same should be expressly provided therein and cannot be merely presumed<sup>114</sup>. In other words, to compel compliance to an obligation arising from law, the same must be expressly stated in the law itself. If the law does not expressly

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<sup>112</sup> Article 12, Section 14.

<sup>113</sup> TESDA No. 03, s. 2018.

<sup>114</sup> Article 1158, Civil Code of the Philippines.

obligate a person to do something, then he or she is by no means bound to perform such act – save when the obligation arises from other sources of obligation, which is still nonetheless governed by law.

The importance of a law in the establishment of rights and obligations in the Philippines is also expressed through the legal framework that governs the judiciary in relation with the manner through which they are to implement laws in resolving cases pending before them. Particularly, Article 9 of the Civil Code of the Philippines states that “no judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.” The same is also reflected under Article 5 of the Revised Penal Code.

Section 1, Article VI of the 1987 Constitution provides that “legislative power is vested upon the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum”. Following the principle of separation of powers, no other branch of government can enact, amend, or repeal laws aside from the Congress of the Philippines. Conversely, Congress cannot delegate this power to another body or agency of the government, pursuant to the principle *potestas non potest delegare*, i.e., “a delegated power may not be further delegated by the person to whom such power is delegated, and that in all cases of delegated authority, where personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment or discretion, the authority is purely personal and cannot be delegated to another unless there is a special power of substitution either express or necessarily implied.”<sup>115</sup>

However, in spite the existence of this general principle governing law-making power, there are recognized theories to the effect that Congress may nonetheless delegate certain power to another body or branch of government for the purpose of filling up details to a law necessary for its implementation and execution.

It must be noted that the function performed by administrative agencies is only for the purpose of executing a law, rather than enacting one that does not exist or amending one that does. Administrative agencies are not authorized to go beyond the letters of the law that they are mandated to implement and operationalize. In the case of *Pelaez vs. Auditor General*, the Court explained that:

“Although Congress may delegate to another branch of the Government the power to fill in the details in the execution, enforcement or administration of a law, it is essential, to forestall a violation of the principle of separation of powers, that said law: **(a) be complete in itself** – it must set forth therein the policy to be executed, carried out or implemented by the delegate –

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<sup>115</sup> *Dalamal vs. Deportation Board*, G.R. No. L-16812, October 31, 1963, citing 2 Am. Jur. 2d. p. 52.



and (b) fix a standard – the limits of which are sufficiently determinate or determinable – to which the delegate must conform in the performance of his functions.”<sup>116</sup>

Insofar as rules and regulations issued by administrative agencies are not in themselves laws, such issuances cannot introduce any changes to the law that the same seek to implement. Similarly, it will be difficult for administrative agencies to implement rules and policies in the absence of a clear law from which they derive such power to implement or upon which the program or regulation they seek to undertake is based. As such, it may be difficult for an administrative body to initiate or undertake a public program without a law supporting its establishment or a statutory mandate allowing such office or agency to carry out the same.

As such, before answering the question as to how enhancing the protective measures for POCs in the Philippines, such as through the enactment of a comprehensive law for this purpose, will further aid the country in complying with its international obligations under the relevant conventions, it is important to first identify and evaluate the different institutional gaps that exist in the absence of such legislative measure.

#### **A. Lack of Separate Government Agencies or Office**

As discussed above, the first formal step that was undertaken by the Philippine government after acceding to the 1951 and 1954 conventions is the establishment of a status recognition mechanism under the DOJ through the RSPPU. The refugee status determination procedure includes the conduct of interviews with the applicant, independent research and study on the applicant’s country of origin, and the issuance of a detailed resolution on the application for status recognition.

The lawyers assigned to the RSPPU are also called Protection Officers. These lawyers are comprised of State Counsels from the Legal Staff of DOJ, who undertake the mandates of said unit on top of their other duties and responsibilities under the Legal Staff.

Briefly, the Legal Staff was created under R.A. No. 2705, whose primary function is to assist the Secretary of Justice in his or her functions and duties as Attorney General of the Philippines and as *ex officio* legal adviser of government-owned and controlled corporations or enterprises. Executive Order No. 292, or the Administrative Code of 1987, expanded the function of the Legal Staff, to wit:

1. Assist the Secretary in the performance of his duties as Attorney General of the Philippines and as *ex-officio* legal adviser of government-owned or controlled corporations or enterprises and their subsidiaries;

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<sup>116</sup> G.R. No. L-23825, December 24, 1965.

2. Prepare and finally act for and in behalf of the Secretary on all queries and/or requests for legal advice or guidance coming from private parties, and minor officials and employees of the government;
3. Maintain and supervise the operation of the Department Law Library as well as its personnel; and
4. Perform such other functions as are now or may hereafter be provided by law or assigned by the Secretary.<sup>117</sup>

The mandates and duties of the Legal Staff multiplied throughout the years. Some of these general functions are the following:

1. Prepare legal opinions on questions of law upon request of national government functionaries and the Office of the President;
2. Prepare action papers on requests on matter involving the implementation of treaties on mutual legal assistance in criminal matters and extradition and represents treaty partners in court relating to the extradition and mutual legal assistance in criminal matters;
3. Prepare comments or legal advice upon requests of other government agencies relating to the negotiations and implementation of free trade agreements, including participation in negotiations whenever so requested;
4. Act on administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned and controlled corporations under Presidential Decree No. 242; and
5. Resolve any petition involving the constitutionality and/or legality of a municipal tax ordinance under the Local Government Code of 1991.

Given the diversity in the scope of functions being performed by the Legal Staff of the DOJ, the focus and attention allotted by the RSPPU for the purpose of fulfilling the country's obligations under the international conventions may not be at par with what may be required to fully accomplish such a task. State Counsels assigned to the RSPPU are not relieved of their other functions, which enables them to focus mainly on POC protection matters. This, coupled with the growing number of foreign nationals seeking refugee or stateless person status recognition in the Philippines, results in the clogging of applications pending before the RSPPU.

Moreover, it must be noted that undertaking status determination procedures goes beyond the simple conduct of an interview, as even the interview itself requires more than the usual process of how the same is undertaken. Due to the weight corresponding to the decision-making power of a receiving Contracting Party with regard to the status of an individual applying for refugee or stateless status recognition and its eventual impact on the lives of those that the relevant international conventions seek to protect, status determination must be embarked on with care, caution, and due diligence. As such, the burden of proof required for status determination

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<sup>117</sup> Section 7, Book IV, Title III, Chapter 2.

is different from those recognized under our jurisdiction. Specifically, the burden of proof for status determination is a shared and collaborative burden<sup>118</sup> between the applicant and the Protection Officer.<sup>119</sup>

As such, an applicant's failure to present tangible proof that clearly show his or her claim of persecution should not automatically result in the dismissal of his or her application. This is in cognizance of the reality that people who are running away from persecution will not always have the vigilance to collect evidence that they think will be sufficient to warrant their recognition as refugees. On the contrary, most of those who are forcibly displaced from their countries on account of persecution might not even be aware that there is a formal recognition process in the country where they may be heading. Their utmost priority is to bring themselves into safety and away from harm and persecution, and not so much with collating all possible proof that will establish their claim for refugee status recognition.

“As regards supportive evidence, where there is corroborative evidence supporting the statements of the applicant, this would reinforce the veracity of the statements made. On the other hand, given the special situation of asylum seekers, they should not be required to produce all necessary evidence. In particular, it should be noted that, often, asylum-seekers would have fled without their personal documents. **Failure to produce documentary evidence to substantiate oral statements should, therefore, not prevent the claim from being accepted if such statements are consistent with known facts and the general credibility of the applicant is good.**”<sup>120</sup> (*emphasis supplied*)

Given the foregoing, it is equally the mandate of Protection Officers to study and research on relevant information from competent and credible sources about the country of origin or nationality of an applicant as it is the obligation of the latter to provide such information to the former in his or her written application and during interview. As such, the process of evaluating the written application, conducting the interview, and issuing the pertinent resolution is an arduous process and can be time-consuming.

In the case of *Sabir vs. DOJ-RSPPU*, the Supreme Court even declared as *sui generis* the peculiar nature of status determination procedure:

“The *sui generis* nature of refugee determination cases is more pronounced when We consider the concept of shared burden of proof. This peculiar

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<sup>118</sup> This means that while an applicant is obliged to provide full, credible and accurate account of his or her claim, and provide evidence when reasonably available, it is also the responsibility of the of the Protection Officer to conduct his or her own research on the objective situation in the country of origin of the applicant for the purpose of evaluating and ascertaining the information and data provided by the applicant.

<sup>119</sup> *Ibid.*, Section 9.

<sup>120</sup> *Ibid.*

concept is provided under DOJ Circular No. 058-12.

The shared and collaborative burden means that the protection officer, who is a DOJ-RSPPU officer, should actively assist and help the applicant clarify his or her claims and allegations in support of the application. The shared burden of proof is in recognition of the possibility that some applicants may have left their country in haste, and as such, may not have any evidence to prove their claims. Moreover, there may be other factors which may hinder applicants from fully discussing their allegations, including language barriers and personality differences. In these cases, the protection officer is expected to assist and help the applicant clarify his or her account.

Thus, due to the shared burden between the applicant and the protection officer, the latter assumes a more active role in ascertaining the truth. The protection officer shares the responsibility of untangling inconsistencies and contextualizing the applicant's claims.

The protection officer is expected to assist and collaborate with the applicant in presenting the latter's claims and allegations and in gathering supporting evidence. At the same time, the protection officer is also expected to maintain a certain level of objectivity to determine and assess whether a finding of refugee status is warranted."

Moreover, comprehensive POC protection goes beyond mere status determination procedures. It is only the beginning of an entire gamut of steps and measures to be undertaken in a consistent basis to ensure that POCs in the country are protected and can access basic government services. Initiating and establishing programs and policies to promote and safeguard the rights of POCs established under the 1951 and 1954 Conventions is an equally, if not more, important task in relation to POC protection.

Aside from the general approach towards protecting POCs in the country, special and case-specific measures should also be undertaken to consider the different vulnerabilities and demographics of each POC. "States have responsibilities towards asylum-seekers and refugees generally. They have additional responsibilities towards certain asylum-seekers and refugees on account of their age, sex, disability and/or other factors. Initiatives to secure the protection of refugees and asylum-seekers need to take full account of the diversity of this population."<sup>121</sup>

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<sup>121</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 37.

For example, women and girls have their own specific needs and vulnerabilities that need to be specially addressed as well. UNHCR also recommended a framework for such endeavor through Executive Committee Conclusion No. 105. Aside from women and children, other categories of POC that may require special and targeted response are those with disabilities, those suffering from mental illness due to the trauma of persecution, elders, members of ethnic minorities, and victims of trafficking.

Given the scope and magnitude of the duties to be undertaken in providing protection to POCs, there ought to be a separate government office or agency whose main and sole task is to properly implement the country's obligations to the international conventions, ensure comprehensive protection for POCs in the Philippines, and warrant that in accomplishing such tasks, an equilibrium is maintained between the interests of both POCs and the State.

In relation to this, it must be noted that outside of the mandate to facilitate the identification, registration, and status determination of refugees and stateless persons in the Philippines, the RSPPU, as it is currently instituted, is not empowered to adopt and establish measures that can ensure that POCs are able to exercise their established convention rights and access basic government services in the country. At most, the RSPPU can organize inter-agency meetings, establish coordination mechanisms, and institute referral pathways between POCs and relevant agencies or organizations to allow the former to access basic government services.

As to whether the relevant agency or organization will accede to such a referral or request or if an actual measure or policy to cater to the needs of POCs will depend heavily upon the discretion of such agency. D.C. No. 024 particularly provides that the extent of authority that RSPPU has in the establishment of such protective measures for POCs is merely recommendatory, to wit:

**“May assist, coordinate, and seek the assistance** of government agencies, government-owned and controlled corporations, government financial institutions, civil society organizations, international organizations and the UNHCR in order to facilitate means and measures aimed at reducing and preventing statelessness, finding durable solutions for refugees and stateless persons, and ensuring their protection and access to the appropriate assistance and services. *(emphasis supplied)*”<sup>122</sup>

## **B. Lack of Funding**

Aside from the lack of a separate government office specifically mandated to oversee the implementation of the relevant international conventions and legally empowered to undertake measures and policies for

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<sup>122</sup> Section 6.

the comprehensive protection of POCs in the Philippines, another hurdle in the country's full compliance with its obligations under the 1951 and 1954 Conventions is the lack of funding.

For example, the DOJ-RSPPU does not have a separate budget for the purpose of undertaking its mandate as the country's lead agency in providing international protection to POCs in the Philippines. As a unit within the DOJ-Legal Staff, its budget constitutes a small portion of the collective appropriation allotted for the whole of the Legal Staff. Said budget is divided into as many functions as the Legal Staff is legally mandated to undertake. Due to the meager amount allocated for RSPPU matters within the Legal Staff, such budget is utilized mainly on training for Protection Officers and inter-agency meetings.

Often, it is the UNHCR who shoulders the expenses for training and meetings outside of those that can be catered by the budget of the DOJ, as well as missions in other parts of the Philippines for the purpose of addressing the legal concerns of populations at risk of statelessness, such as the Sama Bajaus and PIDs in Mindanao. Over-reliance on the UNHCR for budgetary needs may become problematic, considering that its ability to finance such undertakings would also depend on the availability of resources on its end. Moreover, the presence of the local office of UNHCR in the Philippines is not permanent in character, as they can opt to leave the country as soon as its mission here has been deemed complete or in the event that sustaining an office in the country is no longer feasible due to budgetary constraints<sup>123</sup>.

In the absence of a clear legal basis that the different government agencies can use for the inclusion of POCs in their appropriations or yearly budgets, it will be difficult for them to expressly allocate resources for the purpose of ensuring that POCs are effectively able to access basic government services within their respective mandates and jurisdictions. Without the proper resources and funding, it might be challenging for said agencies to initiate programs that will aid in the country's compliance with the 1951 and 1954 Conventions.

### **C. Consistency and Coherence with Existing Laws**

As stated earlier, one of the challenges in the implementation of the 1951 and 1954 Conventions in the Philippines, absent a special enabling law, is the potential inconsistency or conflict that such undertaking may have with existing domestic laws. This conundrum becomes more problematic

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<sup>123</sup> UNHCR is one of the few UN agencies which depends almost entirely on voluntary contributions to fund their operations. Only two per cent of UNHCR's annual budget is covered by a subsidy from the UN regular budget. These funds are mainly used to fund about 200 administrative posts at Headquarters. Most of UNHCR's programmes are funded by governments, but partnerships with corporations, foundations and private individuals also constitute important sources of funding. This reliance on voluntary funds, compounded by large and unforeseen refugee crises, has in recent years resulted in serious funding shortages, which have had a severe effect on the organisation's ability to respond to the needs of the people it is mandated to serve. - <https://www.unhcr.org/sites/default/files/legacy-pdf/3e2c05c30.pdf>, accessed on 15 November 2023.

because such conflict pertains to basic human rights and rights expressly established under the 1951 and 1954 Conventions, such as health care, self-organization, and employment.

One example cited earlier is the R.A. No. 11223, or the Universal Health Care Act. Section 2 of R.A. No. 11223 expressly states that the objective of this law is to provide Filipino citizens with an efficient and comprehensive health care system. Sections 5 and 6 of said law also make it explicit that the health care system envisioned to be adopted therein covers Filipino citizens only:

**“Section 5. Population Coverage - Every Filipino citizen shall be automatically included into the NHIP, hereinafter referred to as the Program.**

**Section 6. Service Coverage - a) Every Filipino shall be granted immediate eligibility and access** to preventive, promotive, curative, rehabilitative, and palliative care for medical, dental, mental and emergency health services, delivered either as population-based or individual-based health services: Provided, That the goods and services to be included shall be determined through a fair and transparent HTA process; xxx” (*emphasis supplied*)

With the express mention of Filipino nationals as the intended recipients of this law, and the apparent silence as to its applicability to foreign nationals, much less to refugees and stateless persons, accessing health care in the Philippines will be difficult for POCs. This interpretation is consistent with the statutory construction *expressio unius est exclusio alterius*.<sup>124</sup>

Another example is the practice of profession in the Philippines. As stated earlier, the Philippine Constitution generally limits the practice of profession in the country to Filipino nationals, to wit:

**Section 14.** The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

Foreign nationals may only be allowed to practice their profession in the country if there is a law allowing them to do so. Domestic laws that allow foreign nationals to practice certain professions are generally based upon the principle of reciprocity, *i.e.*, the country of such foreign nationals should also allow Filipino nationals residing in said country to practice the same profession therein.

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<sup>124</sup> Development Bank of the Philippines vs. Commission on Audit, G.R. No. 221706, 13 March 2018.

As such, a mere administrative issuance or policy, even by the Philippine Regulatory Commission (PRC), will not be enough to allow the practice of profession for refugees and stateless persons in the Philippines as the Constitution requires that such exemption be provided under a law. While it is true that POCs are still considered foreign nationals, it must be noted that, as discussed above, the right to practice liberal profession under the 1951 and 1954 Conventions is exempt from the requirement of legislative reciprocity generally applicable for foreign nationals residing or sojourning in the territory of the receiving contracting State.

#### **D. Lack of an Efficient Monitoring Mechanism**

At present, the RSPPU's monitoring mechanism on POCs is not comprehensive. Mostly, what is recorded in the RSPPU database are the number of refugee and stateless persons in the Philippines, as well as the number of applications for status recognition and people at risk of statelessness. The database will also show the demographics of POCs in the Philippines, such as area concentration, gender, and age.

However, there is no sufficient data as to how many of the POC population in the Philippines are able to access basic government services, such as the number of POCs who are actually working or are employed and in what fields or industries they are engaged in, or the number of refugee or stateless children who are studying and in what level, or the number of POCs who might be suffering from physical or mental illnesses and whether they are able to access the needed health care. Adopting a comprehensive monitoring mechanism on POCs in the Philippines will help the government further assess the efficacy of its efforts in providing protection to POCs, understand the avenues where changes ought to be made, and evaluate the specific measures to be adopted and interventions to be had in undertaking such efforts.

“Monitoring is a widely used tool supporting key management objectives such as the quality of performance and resource accountability. The precise meaning of monitoring varies between organisations, but definitions share a common language of continuous measurement and comparison to a previously established plan, situation or set of targets. Monitoring is essentially a tool that tracks change, be it progress within a project, or changes in a situation and the external environment.”<sup>125</sup>

Knowing if and where POCs are engaged in employment or livelihood and understanding both existing and possible vulnerabilities they may encounter in exercising this right as enshrined under the 1951 and 1954

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<sup>125</sup> UNHCR Evaluation and Policy Analysis Unit, *Enhancing UNHCR's capacity to monitor the protection, rights and well-being of refugees: Main Report*, Chapter 1, para 1, 4, and 8, <https://www.unhcr.org/sites/default/files/legacy-pdf/40d9781d4.pdf>, June 2004, accessed on 14 October 2023.



Conventions is essential not only in ensuring that they become self-reliant and productive members of the society, but also in identifying the facets in which they can further contribute to the socio-economic development of the country.

Monitoring is also important because there is no resettlement program for POCs in the Philippines or any policy with regard relocation of POCs to a designated area within the country. POCs are free to move and choose their place of residence in the country. Given this mobility, it is essential for the government to know where the different populations they seek to protect are residing. This is also to ensure that they do not fall victim to certain unlawful activities, such as human trafficking and recruitment from illegal groups.

Furthermore, this mechanism is essential in identifying whether a person has already ceased to be a refugee or stateless person following the cessation clause<sup>126</sup> of the 1951 Convention. For instance, a person who was recognized as a refugee in the Philippines has returned to his or her home country and has reestablished residence therein – an indicator that he or she has re-availed of the protection of said country, which is a basis for status cessation. As such, the 1951 Convention will cease to apply to said person.

For the State to identify such cases wherein the relevant conventions already cease to apply, it must be equipped with a comprehensive monitoring mechanism wherein the State is made aware of the whereabouts of POCs in the country, especially when they leave the country to return to their country of nationality or origin to re-avail of the protection of such country.

At present, the RSPPU is reliant on data regarding POCs' movements and access to government services to the UNHCR and other NGOs, such as CSFI. This lack of a comprehensive monitoring mechanism within the RSPPU is primarily due to the lack of resources and manpower, as explained earlier. The continuity and sustainability of the programs being adopted by the country for comprehensive POC protection depends upon effective monitoring, and undertaking such protective measures also hinges on the existence of adequate funding and manpower.

Finally, monitoring is also integral to maintaining the country's national security. It ensures that those who are accepted into the Philippines and recognized as refugees and stateless persons herein are those who are genuinely and legally entitled to such recognition and that the benefits and international protection afforded under the 1951 and 1954 Conventions are

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<sup>126</sup> The 1951 Convention has cessation and exclusion clauses, *i.e.*, instances when a person may lose his or her refugee status and instances wherein the convention does not apply to such person altogether. Cessation of refugee status happens when events happen rendering the continuance of international protection no longer necessary. Exclusion, on the other hand, takes place if at the onset the grant of international protection to a person is not justified given his or her circumstances. The 1954 Convention also has exclusion clauses.

not abused by foreign nationals who are merely using the same to escape legitimate prosecution in their countries of nationality.

“States have a duty and a legitimate interest in preventing those who support, plan, commit or intend to commit terrorist acts from securing access to their territory. The challenge is to make sure that security measures are not implemented at the expense of persons forced to leave their home countries due to threats to their life and safety, often caused by war and persecution. Security and refugee protection are not mutually exclusive. An important starting point is to recognize that refugees are themselves fleeing from persecution and violence, including terrorist acts. The international refugee instruments do not provide a safe haven to terrorists and do not shield them from criminal prosecution, extradition or expulsion. On the contrary, they recognize that the identification of such persons is both possible and necessary, and foresee their exclusion from refugee status.”<sup>127</sup>

## VIII. ANALYSIS AND DISCUSSION

After its accession to the 1951 Convention, its 1967 Protocol in 1981, and the 1954 Convention in 2011, it was vital that the Philippines should establish a national system and framework aimed at effectively translating its treaty consent into pragmatic, feasible, and flexible humanitarian measures that will realize the obligation of affording international protection to POCs. Since acceding to the 1951 Convention, its 1967 Protocol, and the 1954 Convention, the Philippines has adopted different national measures with the goal of complying with its obligations under said international conventions. Mostly, these measures have come in the form of department orders or memorandum circulars issued by the different agencies and bodies of the executive department of the government, within whose jurisdictions some of the basic needs of POCs may be accessed.

To reiterate, in the absence of an overarching law to govern the country's efforts and actions towards the needed international protection of POCs, relevant government agencies are bereft of the clear legal basis upon which they are to anchor their respective programs for such endeavors and the needed appropriation to accomplish the same successfully. Considering that these government agencies primarily derive their authority and functions from enabling legislative measures, the manner through which they adopt policies to accomplish their mandates would heavily depend upon the letters of the law that legally justify their existence, officially

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<sup>127</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 73-74.

rationalize their appropriations, and formally warrants the exercise of their duties.

The closest to an overarching national framework that the Philippines has is the Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines of 2017, which created the IASC, and E.O. No. 163, s. 2022, which established the IAC, as discussed above. However, both measures still fall short of addressing the institutional loopholes in the implementation of the country's obligations under the relevant international conventions in the absence of an all-encompassing law for such a purpose. For one, the Inter-Agency Agreement is highly cooperative in nature and does not direct or mandate member agencies to undertake protective measures for POCs or align their existing programs for such endeavor.

At most, the same strengthened the coordinating mechanisms between relevant agencies with regard allowing POCs in the country access to government services within their respective competences and jurisdictions. However, programs that may be undertaken for the purpose of POC protection, as well as the resources needed to accomplish the same, would still be in due consideration of existing laws, which at times might conflict with the intended inclusion of POCs in said programs, such as in the instances discussed above.

E.O. No. 163, while a notch higher than the Inter-Agency Agreement in terms of mandating relevant government agencies within the Executive Department and an inch wider in terms of scope and coverage, is also amiss in establishing the needed overarching legal framework for the comprehensive protection of POCs in the country that a law can provide. To reiterate, the IAC is primarily "tasked with the central role of assuring the provision of relevant services and assistance to POCs pursuant to the 2017 Inter-Agency Agreement."<sup>128</sup> As such, E.O. No. 163 simply seeks to build upon what has already been established under the Inter-Agency Agreement, rather than address the shortcomings of the latter in terms of the incorporation of the relevant international conventions into the country's legal system.

In addition, the lack of the needed overarching legal basis for the institution of the relevant measures for POC protection has not been addressed by E.O. No. 163, given that one of the functions of the IAC is to "ensure that policies on the protection of, and the services and assistance offered to POCs are consistent with relevant laws, rules and regulations, and fully implement the same."<sup>129</sup> However, as seen in the discussions above, there are instances that certain laws and measures in the Philippines have become hindrances towards fully and profoundly affording POCs with the rights that they are entitled to under the relevant international conventions.

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<sup>128</sup> Section 3, E.O. No. 163, s. 2022.

<sup>129</sup> Section 4(a), *ibid.*

This lack of clear legal basis to pave the way for a meaningful and pragmatic local integration of POCs becomes more problematic considering that one of the important features of POC protection is to facilitate their transition from being perceived as an alien from another country into one who will be treated as an integral part of the community, and their eventual amalgamation into the societal niches of the receiving Contracting State. Article 34 of the 1951 Convention and Article 32 of the 1954 Convention mandates Contracting States to facilitate the assimilation of POCs as far as possible. This is especially important for Contracting States that does not have resettlement program or where voluntary repatriation is not an immediately feasible option.

“Where voluntary repatriation is not a viable option, integrating into the local community in a country of asylum can provide a durable solution. Integration it is a complex and gradual process with distinct but inter-related legal, economic, social and cultural dimensions. It does not happen by itself but requires concerted efforts on the part of refugees and receiving communities. Integration is facilitated when refugees can make use of national services and systems. This helps them to understand and adapt to local norms and encourages greater social and cultural connections.”<sup>130</sup>

Absent a law that would create a national governing framework for comprehensive POC protection, facilitating the local integration of POCs in all its facets might be difficult to achieve.

On the other hand, while E.O. No. 163 and other existing measures for POC protection in the Philippines fall short of establishing the needed overarching legal framework for the continuity and sustainability of such endeavor that will not be dependent upon the discretion of the seating administration, will go beyond mere coordination between government agencies, and will address the possible conflicts that the same may have with existing laws, such measures have continuously recognized the importance of the relevant international conventions, the need to provide protection to POCs, and have manifested the country’s positive inclination towards the eventual enactment and adoption of a national comprehensive law for refugees and stateless persons in the country.

In a country where most of the rights and obligations are established by law, it becomes equally important that a national legislative measure be enacted to govern the holistic, nationwide, and comprehensive protection of POCs in the country. Not only will it properly provide the over-arching legal basis and national framework for the country’s compliance with its obligations under the relevant international conventions, but it will also

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<sup>130</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 234.

amply capacitate and empower the different agencies of the government to undertake the relevant measures for such endeavor in a consistent, coherent, and sustainable manner.

A national law for this purpose will unite and coalesce all efforts towards the comprehensive protection of POCs in the Philippines and will also ensure that while complying with its international obligations, the country's territorial sovereignty and security are not compromised in the process by establishing a strong monitoring mechanism to supervise and analyze the influx of POCs in the country and their mobility throughout the status determination procedures and after they are recognized as refugees and stateless persons.

“The adoption of national refugee (and stateless person) legislation that is based on international standards is key to strengthening asylum, making protection more effective and providing a basis for seeking solutions to the plight of refugees. Incorporating international law into national legislation is particularly important in areas on which the Convention is silent.”<sup>131</sup>

## IX. CONCLUSION AND RECOMMENDATIONS

We are living in a highly globalized world wherein political boundaries are obscured, international interdependence is amplified, and socio-cultural differences are abridged. Globalization has not only influenced the ecosystem of world economies but has also broadened the reach of socio-political ideas and led to the internationalization of certain issues and concerns. In other words, there are socio-political issues whose impact goes beyond the singular border of one State, which can create ripple effects in other States. Due to the vast range of effects that such issues spawn within the international community, the solution cannot be undertaken by just one State – rather, it must be one of collective and symbiotic response. It is in this context that international laws and principles emerged and have been institutionalized.

Given that the resolution of problems with international character calls for collective action and solidarity among the community of States, it necessarily paved the way for the internationalization of political institutions, such as the United Nations. Protection of basic human rights is one of the pressing issues affecting the international community, and it has been generally regarded as having a universal character. Its internationalization has led to the institutionalization of sundry human

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<sup>131</sup> Kate Jastram and Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law*, <https://www.refworld.org/pdfid/3cd6a8444.pdf>, accessed on 28 October 2023.

rights treaties and conventions across different epochs and between different sovereign States, anchored upon the basic recognition that human rights are something shared by all human beings regardless of the difference in race, nationality, and culture, religion, gender, and other points of divergence and that domestic political institutions should not discriminate as to its exercise.

The Philippines has had a history of participating in the global clamor to protect and uphold human rights by acceding to different international conventions and agreements geared towards achieving such international objectives and adopting domestic laws to fully integrate the same into the country's legal system. This legal tradition of adopting legislative measures to ensure compliance with the country's commitments under international conventions is consistent with the principle of transformation. This is also undertaken to avoid the possibility of conflict between existing national laws and the domestic implementation of international conventions to which the Philippines is a party.

While the country has had a long humanitarian history of accepting refugees even prior to such accession<sup>132</sup>, the growing complexity of the issue of the forced displacement of refugees and stateless persons around the world and the emergent intricacies of accommodating their entry into our country and granting them protection during their stay herein necessitates the establishment of clear legal framework and adoption of feasible durable solutions to govern such endeavor.

While it is equally true that the country has adopted certain domestic measures for the purpose of complying with the country's obligations under the international conventions, there is still a glaring need to enhance the protective measures being extended to POCs. The fact that such measures fall short of law has highlighted crucial institutional gaps in the implementation of said conventions in the country.

“The concept of the rule of law is central to a fair and efficient State asylum system. Protection systems grounded in the rule of law offer legal certainty in the application of rules, as well as accountability, equity and

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<sup>132</sup> Historically, the Philippines has made its mark in the international community for constantly opening its gates to differing waves of refugees, whenever called upon. For instance, at the end of the 1<sup>st</sup> World War, a wave of 800 “White Russians” came to the Philippines fleeing persecution from the supporters of the Socialist Revolution of 1917. Another wave of refugees came to the country during the 2<sup>nd</sup> World War of around 1200 European Jews, who are escaping Nazi persecution. They were admitted in the Philippines by President Manuel L. Quezon and U.S. High Commissioner Paul V. McNutt in 1934. This second wave of refugees later became the basis for the issuance of Commonwealth Act 613, or the Philippine Immigration Act of 1940. Another wave of refugees came to the Philippines in 1939, who were primarily composed of Spanish republicans fleeing the end of the Spanish Civil War. Then came some 30,000 Chinese immigrants or Kuomintang members, who were seeking refuge after the Chinese Civil War, and wishing to evade the grasp of the newly formed communist People's Republic of China. From 1975 to 1992, Vietnamese “boat people” fled to the Philippines to escape the Vietnam War and reunification of the North and South Vietnam. Several boats washed up on the shores of northern Philippines and refugees were initially rescued by fishermen and families living along the coasts of Bataan. In total, 2,700 refugees were admitted and lived in refugee centers located in Palawan. In 1980, waves of refugees from other Asian countries escaping regime changes in Laos, Cambodia and Vietnam, also came to the Philippines.

transparency. They are built on legal and policy frameworks that meet international standards and are administered by impartial and properly trained officials, supported by a functioning judiciary and other accountability structures. Such systems are especially important in times of crisis.”<sup>133</sup>

It is in this context that this article is proposing for the enhancement of the protective measures being provided to POCs through the enactment of a comprehensive law for such purpose, which will seek to address the institutional gaps in the implementation of the country’s obligations under the 1951 Convention, its 1967 Protocol, and the 1954 Convention. The salient features of the law that may be proposed and adopted for the purpose of amplifying the protection being extended to POCs may include the following:

1. Basic Principles on refugee and stateless person protection;
2. Exclusion and cessation clauses;
3. Rights and obligations of POCs;
4. Creation of a separate government office and the establishment of an inter-agency committee for POC protection; and
5. Funding and appropriation

#### **A. Basic Principles on Refugee and Stateless Person Protection**

It is recommended that the national law on POC protection should primarily and explicitly establish the fundamental principles relating to such endeavor, in consonance with the provisions of the 1951 Convention, its 1967 Protocol, and the 1954 Convention: namely, the principles of *non-refoulement*, non-expulsion, non-discrimination, and non-penalization for illegal entry. The formal codification of these principles into law does not only establish with clarity the fundamental obligations of the Philippines under the conventions, but it also grants the legislature an opportunity to spell out some of the concepts encased in each principle to ensure their effective implementation and enforcement in the country.

As discussed above, the principle of *non-refoulement* has been widely considered as part of customary international law. However, while the principle of *nonrefoulement* has been elevated into the status of customary international law, the exception thereto, as articulated under the 1951 Convention, has not. To reiterate, this exception refers to the right of the Contracting State to return a refugee to his country of nationality if “there are reasonable grounds for regarding (the refugee) as a danger to the security of the country in which he is, or who, having been convicted by a

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<sup>133</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 55.

final judgment of a particularly serious crime, constitutes a danger to the community of that country.”<sup>134</sup>

Considering that this exception should be undertaken with great caution and prudence, regarded even as a measure of last resort, it is recommended that the institution or agency who will make the determination as to whether the refugee has become a danger to the security of the country, the procedure through which such determination will be had, and the process of actual *refoulement*, if warranted, need to be clearly established. In addition, what constitutes as a serious crime for the purpose of applying the afore-quoted exception, enough to legally justify a refugee’s *refoulement*, should also be properly defined and established. The Philippines’ current legal system is bereft of such details, which legal deficiency can be best addressed in a national law that will comprehensively cover the entire gamut of POC protection.

Aside from the principle of *non-refoulement*, the principles of non-expulsion and non-penalization for illegal entry should also be explicitly provided under the national law on POC protection. This is important considering that both conventions are silent as to the process of expulsion, the procedure for such determination, and the grounds of national security and public order are not clearly defined under both conventions. This silence accords the Contracting States with the flexibility of determining how the same will be undertaken within their respective territories and legal systems. For the Philippines, the same can be done through the process of deportation under the Philippine Immigration Act or extradition under extradition treaties that the country has with other States. As such, there should be a clear reference in the proposed national law on such procedures to avoid conflict in their application to refugees and stateless persons.

On the principle of non-penalization for illegal entry, it is recommended that there must be clarity on the reckoning point during which refugees and stateless persons are regarded as exempt from penalties on account of their illegal presence or entry in the country. It must also be clarified as to whether the same has retroactive effect and what steps they are required to undertake to warrant such exemption.

Finally, it is recommended that the proposed national law should embody the basic principle of non-discrimination, as enshrined under the 1951 and 1954 Conventions.

## **B. Exclusion and Cessation Clauses**

It is recommended that the proposed national law should include the exclusion and cessation clauses of the 1951 and 1954 Conventions. This is to ensure that the benefits and protection granted by said international conventions are properly claimed and received only by those for whom the same was particularly established and are not abused by foreign nationals who are simply seeking a quick way out of their countries and into ours.

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<sup>134</sup> Article 33.



For the application of the cessation clause, the Philippines must ensure that due process is duly adopted before the same is implemented against a refugee or stateless person. This can include notifying the person concerned of the possibility of cessation, the ground for cessation, the conduct of interview for such purpose, and the availability of appeal.

“Cessation procedures should include requirements for notice to the refugee (or stateless person) concerned of the nature and purpose of the cessation procedures, and the reasons why the individual’s status should be terminated. The individual should be advised that he or she has information to explain or challenge the facts upon which the cessation procedures have been commenced, or other information regarding the continued need for protection, he or she may request for an interview.”<sup>135</sup>

Moreover, the concept of “serious non-political crime, as a ground for exclusion under Article 1, Section F(b) should also be clarified and legally defined.

### **C. Rights and Obligations of POCs**

Apart from the basic guarantees of *non-refoulement*, non-expulsion, non-discrimination, and non-penalization for illegal entry, POCs are also entitled to a sundry of other rights, as enshrined under the 1951 and 1954 Conventions. These rights should be clearly established in the country’s legal system, as the same ensures that refugees and stateless persons are not only liberated from persecution and discrimination but are also granted a meaningful opportunity to exercise their basic human rights and work their way towards becoming self-reliant and productive members of the country. The same can be undertaken under the proposed national law for POC protection.

The enactment of a national law on POC protection will allow the legislature to clearly define the extent through which such rights may be exercised, as well as the corresponding government service that may be availed of by the POC. The national law will also ensure that POCs who require special protection, such as children, women, and those with disabilities, are accorded with the needed intervention. This will then serve as a clear legal basis for the relevant government agencies to adopt the measures for POC protection or at least their inclusion in their existing programs.

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<sup>135</sup> UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*, Unit 11-2, <https://www.refworld.org/pdfid/42d66dd84.pdf>, accessed on 28 October 2023.

Moreover, enacting a national law on POC protection also gives the legislature the opportunity to address the conflict between undertaking POC protection and certain existing laws, such as access to health care and the practice of the profession. Through this law, the legislature can also elect to expand or elevate the standard of treatment on certain rights, from that of a foreign national to a national of the Philippines, where necessary, such as the right of association.

It is also recommended for such law to clearly state that some of the rights and protective measures under the relevant international conventions, especially those that are essential to meaningful survival and sustenance such as the right to employment and livelihood and health care, should also apply to asylum seekers and statelessness applicants, for the reason that the status of a refugee and stateless person is not something that is vested by the Contracting State, but one that is automatically acquired if the elements provided under the 1951 and 1954 Conventions are present in the person. As such, to unduly limit such rights to a recognized refugee or stateless person might result in unjustly depriving a person who, under the relevant conventions, is a refugee or stateless person; only that his or her application for recognition has not yet been resolved by the relevant authority. Furthermore, granting them access to essential government services is in consonance with basic humanitarian commitments.

One example of a law that incorporates the rights of refugees into its legal system is Uganda's 2006 Refugee Act. Briefly, this refugee law seeks to treat refugees as active economic partners, rather than individuals who are perpetually in need of government assistance, by clearly establishing the rights that they are entitled to within their legal system, the extent to which the same may be exercised, and conversely, the obligations that government agencies have in adopting measures for such purpose. In Ireland, the standard of treatment for the rights of refugees to property, wage-earning employment, self-employment, business, practice of profession, medical care, social welfare services, and association, among others, has been elevated under its refugee law from that of a foreign national, which is the minimum standard of treatment as provided under the 1951 Convention for such rights, to that of an Irish national.

In addition to providing the rights of POCs in the proposed national law, it is also recommended that the same be included in a general provision on their obligations to the Philippines. Article 2 of both the 1951 and 1954 Conventions state that refugees and stateless persons "have duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." Being a refugee or stateless person in another country does not exempt one from following and complying with the laws and rules that exist therein. In addition to this, it is endorsed that POCs be subject to a reportorial requirement to boost the monitoring mechanism of the Philippines.

#### **D. Creation of a Separate Government Office, an Inter-Agency Committee, and their Functions**

As discussed above, the task of providing comprehensive protection to POCs, which includes the mandate of undertaking status determination procedure, is a colossal responsibility that will entail undivided attention and will require sufficient manpower and resources. Presently, the same is being performed by an office within the Department of Justice, which is also performing a sundry of other functions and duties. To efficiently undertake this immense mandate, there ought to be a separate government office or agency that will mainly specialize in this function and will allow its full focus and resources to be the same.

It is in this context that this article recommends the creation of a separate government office in the proposed national law on POC protection. Said government office will have its own plantilla positions for its officials and staff and a separate source of funding and resources. It is also recommended that this office be independent and autonomous, which shall nonetheless be attached to the DOJ for purposes of policy and program coordination.

The proposed national law will also provide for the different powers and functions of said office, which may include the following:

1. Facilitate the comprehensive protection of refugees and stateless persons in the country and oversee the effective implementation of this Act, in consonance with the Philippines' international obligations under the 1951 Convention, its 1967 Protocol, and the 1954 Convention;
2. Establish and implement a fair, efficient, and non-adversarial status determination procedure for refugees and stateless persons, including applicants, to facilitate their identification, registration, and recognition;
3. Formulate and propose programs to provide durable solutions for and ensure proper access to basic public services to refugees and stateless persons, including applicants, consistent with the 1951 Convention, its 1967 Protocol, and the 1954 Convention, and coordinate with relevant government agencies and the UNHCR for the development, progress, implementation, and evaluation of these programs;
4. Establish and maintain a comprehensive monitoring database on refugees and stateless persons, including applicants;
5. Facilitate the mapping out of populations at risk of statelessness and formulate measures and programs to address such risk, in coordination with the UNHCR and relevant government agencies;
6. Review and resolve cases for cessation of status, refoulement, or expulsion and coordinate its implementation, when warranted, to the relevant government agencies; and

7. Conduct public information campaign on refugees and stateless persons with relevant stakeholders.

Creating an office through a law, for the purpose of fully undertaking a particular governmental function or mandate, is not new to the country's legal system. This is in cognizance of the reality that there are certain specialized functions that require undivided and intensive attention and an ample of resources for their effective, prompt, and proper fulfillment.

An example of a recently created office attached to the DOJ is the Office for Alternative Dispute Resolution, pursuant to R.A. No. 9285, or the "Alternative Dispute Resolution Act of 2004". Another office within the DOJ created through a special law is the Office of Cybercrime (OOC), under R.A. No. 10175, or the "Cybercrime Prevention Act of 2012."

In another executive department, the Strategic Trade Management Office (STMO) was created under R.A. No. 10697, or the Strategic Trade Management Act, which is a law intended to prevent the proliferation of weapons of mass destruction and their means of delivery.

Furthermore, considering that the endeavor of protecting POCs in the country should be a whole-of-government approach, it is also recommended that an inter-agency committee composed of relevant government agencies be established under the proposed law for the purpose of ensuring that the appropriate programs and measures are adopted in a timely and effective manner, in consonance with each agency's respective mandate. The proposed national law will provide the powers and functions of the inter-agency committee, in general, and the obligations of each respective government agency of ensuring that they are able to provide services to POCs that fall within their competence and jurisdiction. The same will provide the needed legal justification for the programs to be adopted and may also be used as legal basis for the inclusion of such programs and services in their yearly budget and appropriation.

#### **E. Status Determination Procedure and Monitoring Mechanism**

As discussed above, status determination is a necessary initial step toward providing international protection to refugees and stateless persons. Before a Contracting State can establish and implement protective measures for POCs within its territory, it must first be able to identify these people, their number, their demographics, and their vulnerabilities and immediate needs.

"Fair and efficient asylum procedures are an essential element in the full and inclusive application of the 1951 Convention. They enable a State to identify those who are refugees under the 1951 Convention and others who may need international protection, as well as those who are

not. Procedures based on fair standards and consistency in decision-making are essential for the integrity of State asylum systems based on the rule of law.”<sup>136</sup>

It is recommended that the establishment of a status determination procedure for refugees and stateless persons be included in the proposed national law. It is also recommended that the following provisions be included in the law: rights of applicants during status determination procedure, the suspensive effect of an application for recognition, the rule on confidentiality, the burden of proof necessary for status determination, and the effect of recognition.

Furthermore, it is also recommended that a provision for the establishment of a monitoring mechanism be incorporated in the proposed national law, which will include a reportorial requirement on refugees and stateless persons. An example of a law that mandates refugees to report to the State is the Immigration and Refugee Protection Act of Canada.”<sup>137</sup>

A strong and comprehensive monitoring mechanism will also ensure the security protection of both the Philippines and POCs – for the former, it will seek to guarantee that no undesirable aliens or foreign nationals with existing and valid criminal charges or records in other countries are able to benefit from the protection provided under the relevant international conventions; for the latter, it will endeavor to protect POCs from engaging in illegal activities that are inimical to their safety and to the country’s national security or from falling prey to unlawful undertakings, such as human trafficking and discrimination.

“Both from a protection and a security perspective, it is critical to establish asylum systems that allow for the fair and efficient determination of claims for international protection. When States assume responsibility for refugee status determination, they can conduct checks and inquiries, and ensure the rigorous and careful application of the exclusion clauses. Good practice also involves cooperation between border guards, security services and immigration and asylum authorities within a given State, as well as with other States along travel routes and with regional and international organizations (such as, INTERPOL, Europol and Frontex), based on a clear understanding of international protection principles and standards.”<sup>138</sup>

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<sup>136</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 154.

<sup>137</sup> Government of Canada, Justice Laws Website, *Immigration and Refugee Protection Act*, <https://laws.justice.gc.ca/eng/acts/i-2.5/page-12.html#h-275559>, accessed on 30 October 2023.

<sup>138</sup> Nicholson and Kumin, *A guide to international refugee protection and building state asylum systems: Handbook for Parliaments*, 73-74.

## F. Funding

An important component in providing protection to POCs is the availability of resources and funding. In the Philippines, this has been one of the hindrances towards the consistent, inclusive, and encompassing adoption of relevant measures for such purposes.

"Attending to the life-saving needs of refugees in emergency situations, setting up fair and efficient asylum procedures, providing protection for women, men, boys and girls, and helping refugees to return home or integrate in new host communities all have a financial cost. Parliamentarians play a key role in budgetary appropriations and can help to ensure that the necessary resources are available."<sup>139</sup>

As such, it is recommended that a provision on appropriation be included in the proposed national law on POC protection. Said provision can be worded in this manner:

"The amount needed for the initial implementation of this Act shall be charged against the current year's appropriations of the DOJ. Thereafter, such sums as may be necessary for the implementation of this Act shall be included in the annual General Appropriations Act."

Clearly providing for an appropriation provision in the law that will institutionalize the comprehensive protection for POCs in the country will not only aid the implementing agencies in adopting relevant measures, programs, and policies, but will also ensure that basic and necessary government services are provided to them, at least until such time that they become self-reliant and productive members of the community. Such provision will also ensure the continuity and development of the programs intended to cater to the needs of POCs in the country, as well as properly align such programs with the available resources that the country has for such purpose. Furthermore, ample resources are also needed for the continued training and capacity building for personnel who are to undertake status determination procedures and for the different government agencies responsible for the implementation of the various protective measures intended for POCs in the country, as well as properly informing the public of such endeavor.

It is important to allocate sufficient personnel and resources to these authorities so that they can build capacity, provide training in applicable international refugee and human rights law and appropriate interviewing techniques, and thereby enable officials to accomplish their tasks expeditiously and fairly. It is likewise important to allocate resources for the training of others, such as law enforcement officials, interpreters, lawyers,

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<sup>139</sup> *Ibid.*, 49.

service providers, and adjudicators, who interact with refugees and asylum-seekers to sensitize them to racism, racial discrimination, xenophobia, and related intolerance and make them aware of their responsibilities.<sup>140</sup>

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<sup>140</sup> *Ibid.*, 153 and 220.

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