Statelessness in Philippine Law: Expanding Horizons of the International Stateless Person Protection Regime

Francis Tom Temprosa[★]

I. INTRODUCTION

The right to a nationality is established in international human rights instruments and in the local laws of many jurisdictions around the world. Under Article 15 of the Universal Declaration of Human Rights (UDHR), every person has such a right, and no one should be "arbitrarily deprived of his or her nationality nor denied the right to change [the same.]"[1] The

★ '10 J.D., *with honors*, Ateneo de Manila University School of Law. The Author is a former staff member and statelessness focal point of the Office of the United Nations High Commissioner for Refugees (UNHCR). He is currently a faculty member of the Department of International Studies of the College of International, Humanitarian, and Development Studies of Miriam College. He is a regular contributor to the Asian Yearbook of International Law. The Author has contributed his work to the following books: *Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study* published by the Human Rights Resource Centre for the ASEAN and *Disaster-Induced Internal Displacement in the Philippines* published by the Internal Displacement Monitoring Centre (Norwegian Refugee Council).

Cite as 58 ATENEO L.J. 29 (2013).

Convention on the Rights of the Child states that every child has the right to acquire a nationality[2] and to preserve his or her identity, which includes his or her nationality.[3] The Convention on the Elimination of All Forms of Discrimination Against Women provides that women should enjoy equal rights with men with respect to the conferral of nationality upon their children.[4]

Likewise, the right is expounded on in the International Covenant on Civil and Political Rights (ICCPR),[5] Convention on the Rights of Persons with Disabilities,[6] International Convention for the Protection of All Persons from Enforced Disappearance,[7] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,[8] and Convention on the Nationality of Married Women.[9]

Despite this, statelessness is a condition that still affects millions of people across the globe.[10] Former United Nations (U.N.) Special Rapporteur on the Rights of Non-citizens David S. Weissbrodt writes that, "[i]n many countries[,] there are institutional and endemic problems confronting non-citizens."[11] While the international framework provides for the right to

1. Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 15, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].
2. Convention on the Rights of the Child, G.A. Res. 44/25, art. 7, U.N. Doc. A/RES/44/25 (Sep. 2, 1990).
3. *Id.* art. 8.
4. Convention on the Elimination of Discrimination Against Women, art. 9 (2), *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
5. International Covenant on Civil and Political Rights, art. 24 (3), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].
6. Convention on the Rights of Persons with Disabilities, art. 18, *opened for signature* Mar. 30, 2007, 2515 U.N.T.S. 3 (entered into force May 3, 2008).
7. International Convention for the Protection of All Persons from Enforced Disappearance, art. 25, *adopted* Dec. 20, 2006, U.N. Doc. A/RES/61/177.
8. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 29, *adopted* Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003).
9. Convention on the Nationality of Married Women, arts. 1-3, *opened for signature* Jan. 29, 1957, 309 U.N.T.S. 65 (entered into force Aug. 11, 1958).
10. United Nations High Commissioner for Refugees (UNHCR), Stateless People, *available at* http://www.unhcr.org/pages/ 49c3646c155.html (last accessed June 30, 2013).
11. United Nations (U.N.) Sub-Commission on the Promotion and Protection of Human Rights, *The rights of non-citizens: final report of the Special Rapporteur, David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103,*

nationality, and different approaches in domestic legal systems attempt to address statelessness, there remains a large gap between the rights guaranteed to non-citizens and the realities that they must face.[12]

Since the first half of the 20th century, the local policy and legal environment of the Philippines has been conducive to providing rights to stateless persons. References to stateless persons are replete in laws, and a corpus of jurisprudence evidencing favorable treatment for the stateless exists.[13] Recently, there have been developments which deserve attention and merit careful analysis as added building blocks to the international regime of protection for the stateless. Aside from giving a short introduction on statelessness as a phenomenon, this Article aims to provide a brief outline of the Philippine legal and policy framework on statelessness, highlighting recent changes in municipal law as it contextualizes them as regards current movements in international law.

II. STATELESSNESS IS GLOCAL

A. A Global Phenomenon

In 2000, the The U.N. High Commissioner for Refugees (UNHCR) launched consultations to engage States and other partners in broad-ranging dialogues on refugee protection. Following months of discussions, the UNHCR's Executive Committee, composed of States which form the highest policy-making body of the UNHCR, adopted and endorsed an Agenda for Protection.[14]

The Agenda, "[n]oting that statelessness is often associated with displacement and refugee flows[,] ... invited States to give renewed consideration to ratifying the [conventions] relating to [statelessness]."[15] Furthermore, it requested the UNHCR to seek information from States on steps taken to control the condition of statelessness and to protect those who

---

Commission resolution 2000/104 and Economic and Social Council decision 2000/283, ¶ 2, E/CN.4/Sub.2/2003/23 (May 26, 2003) (by David Weissbrodt).

12. *Id.* ¶¶ 2, 6-9.

13. *See generally* Kookooritchkin v. Solicitor General, 81 Phil. 435 (1948); Mejoff v. Director of Prisons, 90 Phil. 70 (1951); Andreu v. Commissoner on Immigration, 90 Phil. 347 (1951); & Department of Justice, Establishing the Refugees and Stateless Status Determination Procedure, Department Circular No. 58 [DOJ Dept. Circ. No. 58] (Oct. 18, 2012).

14. UNHCR, Final Report Concerning the Questionnaire on Stateless Pursuant to the Agenda for Protection (A Report by the Department of International Protection) ¶ 14, *available at* http://www.unhcr.org/4047002e4.pdf (last accessed June 30, 2013) [hereinafter UNHCR, Questionnaire].

15. *Id.* ¶ 15.

find themselves without a nationality as a result of such condition.[16] The Agenda also asked the UNHCR to report on the survey and its recommendations.[17]

Based on this request, a survey on statelessness was conducted in 2003 to probe into the phenomenon.[18] The UNHCR forwarded a Questionnaire on Statelessness to all U.N. Member States,[19] and "this [was] the first global survey [of U.N. Member States conducted] on [the] steps ... taken to avoid and reduce statelessness and to protect stateless persons."[20]

A finding of the survey was that no region in the world was free from problems leading to statelessness.[21] While many States adopted measures to address statelessness, the survey indicated that measures were inconsistent; "each State has adopted its own independent approach; and gaps remained which continue to create cases of statelessness and make the resolution of these cases difficult to achieve in concrete terms."[22]

About 74 States responded to the survey.[23] Of the respondents, most (59.4%) have encountered problems of statelessness, and most (83.7%) have adopted at least one measure to address issues of statelessness.[24] As regards approaches to regulate the acquisition and loss of nationality, most (79.7%) "grant nationality to children born on their territory who would otherwise be stateless."[25] Likewise, almost all (90.5%) grant nationality to their nationals' children, even when born abroad, if the child would otherwise remain stateless.[26] Safeguards are also in place to protect against arbitrary deprivation of nationality (82.4%), and against "renunciation or loss of nationality resulting in statelessness" (77%).[27]

With regard to issues of nationality concerning family unity, women, and children, almost all (93.2%) stated that an individual's nationality status is "not automatically altered by virtue of marriage or the dissolution of

16. *Id.*
17. *Id.*
18. *Id.* ¶ 16.
19. *Id.*
20. UNHCR, Questionnaire, *supra* note 14, ¶ 13.
21. *Id.* ¶ 12.
22. *Id.*
23. *Id.* ¶ 5.
24. *Id.* ¶ 6.
25. *Id.* ¶ 7.
26. UNHCR, Questionnaire, *supra* note 14, ¶ 7.
27. *Id.*

marriage."[28] Likewise, most reported that all marriages are registered (87.8%) and almost all "include the names of both spouses on the marriage certificate" (95.9%).[29] Almost all (91.9%) facilitate access to nationality if a person is born to a national of a respective State; most (75.7%) if the person is married to a national.[30]

Almost all (91.9%) reported having a system for registration at birth in place and most (86.5%) "provide for nationality or [ ] legal status for abandoned children and orphans."[31]

However, the survey revealed some areas of concern. In the event of State succession, only some (40.6%) would have at least one mechanism in place to address the nationalities of those affected by such a situation.[32] A slim majority (52.7%) indicated having mechanisms to assist trafficked persons who encounter "difficulties in establishing identity and nationality," particularly women and children.[33] Around the same number have a procedure to identify cases of statelessness (54.1%) and a means to identify stateless asylum seekers (47.3%).[34] Most States (78.4%) issue identity and travel documents to permanent and lawfully residing stateless persons, but a smaller number (59.5%) facilitate access to naturalization.[35]

This Author notes that the rate of response to the survey of U.N. Member States points to another area of concern. Although the questionnaire was sent to all U.N. Member States, as mentioned, only 74 of them responded to the survey.[36] Also, though each region in the world was represented in the survey, a large percentage were European countries.[37] The results may thus not be representative of all U.N. Member States. As the UNHCR stated in the survey report, this "in itself [suggests that] more work is [needed] to be done to raise awareness and promote a comprehensive and international dialogue on statelessness in which all States are actively engaged."[38]

28. *Id.* ¶ 8.

29. *Id.*

30. *Id.*

31. *Id.*

32. UNHCR, Questionnaire, *supra* note 14, ¶ 7.

33. *Id.* ¶ 8.

34. *Id.* ¶ 9.

35. *Id.*

36. *Id.* ¶ 5.

37. *Id.*

38. UNHCR, Questionnaire, *supra* note 14, ¶ 8.

How does one characterize the severity of statelessness as a worldwide phenomenon? According to Laura van Waas, while statelessness is a "substantial, rather than a one-off anomaly[,] ... a distinct absence of concrete and reliable information [exists]."[39] Several reasons for the varying approximations of stateless persons include the ongoing discussion on the definition of statelessness, the procedure for the recognition of stateless persons, and the proof of statelessness.[40] As Van Waas explains, —

> Without a universal interpretation and application of the term 'stateless,' it comes as no surprise that statistics on the matter are hazy. In cases where there is an opportunity to identify a person as stateless, for example in the event of a census or where an individual statelessness-status determination procedure does exist, there is no guarantee that they will be (correctly) registered as such. To register a stateless person as a person of 'unknown nationality' or simply as a 'non-citizen' is to further obscure the statistics and add to the invisibility of this group. Finally[,] there is the consideration that statelessness is often a highly politici[z]ed issue. Therefore, the absence of any data in some [S]tates on the magnitude of the statelessness plight may imply that the authorities may have chosen to ignore the problem rather than publici[z]e it. Moreover, the quality and reliability of any statistical data that *is* offered by governments and institutions is by no means beyond question — it may be heavily influenced by an underlying agenda.[41]

Uncertainty in numbers is, therefore, the only certain fact about the full extent of the problem. For instance, it is no wonder that only less than half (44.6%) of the States participating in the 2003 survey had general information available on the potential number of stateless persons in their country, and most (86.5%) expressed the desire to receive information on how to identify and document stateless persons.[42] Also, there is continued reliance on estimates to paint a complete picture of statelessness. In 2005, Refugees International's comprehensive report on statelessness gave a low-end estimate

39. Laura van Waas, Nationality Matters: Statelesness under International Law (A Paper Published as Part of the School of Human Rights Research Series) 9, *available at* http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf (last accessed June 30, 2013).

40. *Id.*

41. *Id.* at 9-10.

42. UNHCR, Questionnaire, *supra* note 14, ¶ 9.

of 11 million stateless persons worldwide.[43] By 2009, around 12 million people were already stateless according to the UNHCR.[44]

Scholars have argued that statelessness is a "forgotten human rights crisis."[45] Despite the deprivation of a host of basic rights, and the discriminatory treatment which often accompany statelessness, "stateless persons do not register much on the international community's radar screen."[46] It is also noteworthy that international conventions dealing with statelessness are not as widely ratified by States.[47]

The consequences of statelessness may range from discrimination, to expulsion or deportation, to the total denial of certain rights associated with nationality.[48] Moreover, although not stateless, some people live on the margins of society in a situation akin to legal limbo due to the lack of legal forms establishing or confirming identity related to nationality, e.g., national identification cards or birth certificates.[49]

As the "Report of the Regional Expert Roundtable on Good Practices for the Identification, Prevention, and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia" highlights —

> Stateless people will find that their lack of any nationality has an impact on many aspects of their lives. Statelessness can obstruct access to work, education[,] and healthcare as well as the ability to travel, own property[,] or get married. Statelessness often leads to the political, social[,] and economic [marginalization] of the individuals concerned. This can also be detrimental to a person's sense of identity and worth. Moreover, the

43. Katherine Southwick & M. Lynch, Nationality Rights for All: A Progress Report and Global Survey on Statelessness (A Report and Survey Written for Refugees International) 28, *available at* http://www.refugeesinternational.org/sites/default/files/RI%20Stateless%20Report_FINAL_031109.pdf (last accessed June 30, 2013).

44. *Id.*

45. *See* Lindsey N. Kingston, *"A Forgotten Human Rights Crisis" Statelessness and Issue (Non)Emergence*, HUM. RTS. REV., June 2013.

46. Francis Tom Temprosa, *Falling Between the Cracks: Statelessness, Nationality and Migration*, QUILTED SIGHTINGS: A WOMEN AND GENDER STUDIES READER, 2012 vol. 2, no. 1, at 11 (citing Bill Frelick and Maureen Lynch, *Statelessness: a forgotten human rights crisis*, FORCED MIGRATION REV., Nov. 24, 2005, at 65-66).

47. *Id.* at 11-12.

48. George Soros and Fazle Hasan Abed, *Rule of law can rid the world of poverty*, FINANCIAL TIMES, Sep. 26, 2012, *available at* http://www.ft.com/cms/s/0/f78f8e0a-07cc-11e2-8354-00144feabdc0.html#axzz2VgAYfZhJ (last accessed June 30, 2013).

49. *Id.*

> immediate impact of statelessness extends beyond the stateless people themselves, to affect their families. For instance, without appropriate safeguards in place, statelessness and its accompanying hardships can be transmitted from parent to child. Statelessness can also have a broader impact on society as a whole, in particular because excluding an entire sector of the population may create social tension and significantly impair efforts to promote economic and social development. Moreover, statelessness may lead to forced displacement.[50]

Statelessness arises or persists for a variety of reasons, including technical causes such as conflict of laws, laws and practices which particularly affect children, administrative practices, laws and practices which particularly affect women, and automatic loss of nationality.[51] It can also occur within the context of state succession, discrimination, or arbitrary deprivation of nationality.[52]

The condition of statelessness is not only applicable to persons as individuals, since "whole groups can suffer from a sort-of collective statelessness."[53] Some of these groups include the "*Rohingya* in Burma and throughout Asia, *Bidun* in the Middle East, Roma in Europe, children of Haitian migrants in the Caribbean, individuals from the former Soviet bloc, denationalized Kurds, some Palestinians, and certain groups in Thailand."[54]

B. A Local Phenomenon

The experience of statelessness is not alien to the Philippine psyche. There are stateless persons who are residing or are found in the Philippines. More so, there are groups of people who are at risk of statelessness.

A prominent and early episode of stateless person influx into Philippine soil involves stateless Jewish refugees who fled Nazism in Europe during the first half of the 20th Century.[55] Noel M. Izon, a filmmaker involved in a

50. UNHCR, Good Practices: Addressing Statelessness in Southeast Asia, (Report of the Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia) 3, *available at* http://www.refworld.org/docid/4d6e0a792.html (last accessed June 30, 2013).

51. UNHCR & THE INTER-PARLIAMENTARY UNION, NATIONALITY AND STATELESSNESS: A HANDBOOK FOR PARLIAMENTARIANS 27-34 (2005).

52. *Id.* at 34-42.

53. van Waas, *supra* note 39, at 11.

54. Southwick & Lynch, *supra* note 43, at i.

55. Carmela G. Lapeña, Documentary chronicles how the Philippines rescued 1,300 Jews from the Holocaust, *available at* http://www.gmanetwork.com/news/story/295523/lifestyle/culture/documentary-chronicles-how-the-philippines-rescued-1-300-jews-from-the-holocaust (last accessed June 30, 2013).

series of war documentaries on the Philippines, describes the plight of the Jews after the Nazi regime declared them stateless. According to him, about 47 nations convened in France in 1938 to deal with Jewish refugees, but not one nation "changed their immigration laws to make them more accommodating of Jews,"[56] except the Philippines.[57]

In "Escape to Manila: From Nazi Tyranny to Japanese Terror," Frank Ephraim recounts that the "history of the rescue" began with the decision of the Frieder brothers in 1918 to relocate a cigar business from Manhattan to Manila where production would be cheaper. In 1937, some 28 German Jews who had earlier fled Germany for Shanghai were evacuated to Manila after troops in China and Japan became engaged in hostilities.[58] The evacuees narrated to the Frieders the suffering experienced by the Jews at the hands of the Nazi regime, and the "uncertain fate of the 17,000 Jews still stranded in Shanghai."[59] This prompted them to advocate for the Philippines to become a safe haven for the stateless Jewish refugees.[60]

The Frieders, together with then American High Commissioner for the Philippines Paul V. McNutt, Col. Dwight D. Eisenhower, and Philippine President Manuel L. Quezon, planned for the Philippines to accept as many as 100,000 Jews.[61] McNutt was to convince the United States (U.S.) Department of State to grant entry visas for Jews to enter Manila.[62] The Philippines was then a commonwealth of the U.S.[63] Eisenhower took on the task of planning for the Jews to settle in the island of Mindanao, south of the country.[64] Quezon won over anti-semitic members of his cabinet and the opposition of Emilio Aguinaldo, who was said to view Jews as "communists" who wanted to control the world.[65]

According to Rodel Rodis, in April 1940, Quezon remarked this during the dedication of a housing facility for the Jews: "It is my hope and, indeed, my expectation that the people of the Philippines will have in the future

56. *Id.*

57. Rodel Rodis, *Philippines: A Jewish refuge from the Holocaust*, PHIL. DAILY INQ., Apr. 13, 2013, *available at* http://globalnation.inquirer.net/72279/philippines-a-jewish-refuge-from-the-holocaust (last accessed June 30, 2013).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Rodis*, *supra* note 57.

64. *Id.*

65. *Id.*

every reason to be glad that when the time of need came, their country was willing to extend a hand of welcome."[66]

The settlement for the stateless refugees was built on land that Quezon had personally donated. In 1947, the Philippines became part of the solution to the statelessness of many Jews by becoming the only Asian country to support the U.N. partition resolution creating the Jewish State in Palestine.[67]

As discussed below, the 1930s and the 1940s were important decades in laying down the foundation of the domestic law on statelessness in the Philippines. They were years also crucial to the building of a legal arsenal for the protection of refugees. Bernard Kerblat, UNHCR Representative to the Philippines, states in his article entitled "Dilemmas" —

> Filipinos may not be fully aware, but their nation was among the first to spontaneously offer asylum to successive waves of refugees fleeing persecution. Who remembers Vice-Admiral Oskar Victorovich Stark who led 'white Russians' in the 1920s in escaping the turmoil in their country? Who remembers the Jewish victims of rising totalitarian ideology in Europe landing on the shores of the Philippines in the late 1930s? Who remembers the arrival of pro-republican Spaniards seeking asylum in the Philippines after the end of the civil war in Spain? What about the 500,000 Indochinese refugees who either sought asylum or transited through the Philippines in search of a new home?[68]

The phenomenon of statelessness in the country has several notable features. *First*, the influx of *ex situ* stateless populations in the country is inextricably linked to refugee flows. For instance, the stateless Jews who arrived in the country in the first half of the 20th century were refugees.[69] The hundreds of thousands of Indochinese refugees who came from former French colonies and were scattered throughout Asia in the mid-1970s also exhibited features of statelessness brought about *inter alia* by episodes of civil war and ideological differences among peoples.[70] This feature is a testament to the non-exclusivity of the status of refugee and the condition of

66. *Id.*

67. *Id.*

68. Bernard Kerblat, *Dilemmas*, PHIL. DAILY INQ., June 20, 2012, *available at* http://globalnation.inquirer.net/40719/dilemmas#ixzz2SIBXiDhH (last accessed June 30, 2013).

69. Philippine Embassy, History of the Jews in the Philippines, *available at* http://www.philippine-embassy.org.il/index.php?option=com_content&view=article&id=33%3Ahistory-of-the-jews-in-the-philippines&catid=11%3At (last accessed June 30, 2013).

70. Arthur C. Helton, (Part of the Collected Papers Submitted to the Colloquium on the Comprehensive Plan of Action) 17-20, *available at* http://repository.forcedmigration.org /pdf/?pid=fmo:921 (last accessed June 30, 2013).

statelessness, and the relationship between the lack of nationality and forced displacement.

Second, statelessness is a condition that affects groups of people, and the Philippine experience is a witness to this. As studies above cited confirm, the *ex situ* emigration of stateless groups to the country points to this indisputable reality.

Third, there are also stateless persons who have individually reached Philippine shores in the context of migration. For example, based on the records of the Bureau of Immigration of the Philippines, some 187 stateless persons arrived in the country between 2005 and 2010. This is aside from 266 individuals from places of "unknown codes" or those whose countries of nationality are unknown.

Fourth, some populations in the Philippine context are at risk of statelessness. Consequently, the presence of stateless persons among these groups is highly probable. This is one of the conclusions reached in a recent roundtable discussion on statelessness, which included representatives from agencies of the Government of the Philippines, the UNHCR, and civil society.[71]

According to the summary note of the Inter-Agency Round Table Discussion on Statelessness, some of the groups are the undocumented children of Filipino descent who are or have been conceived/born outside undisputed Philippine territory (e.g., those in the Kingdom of Saudi Arabia and Japan); undocumented children of Filipino descent who are or have been conceived/born in Northern Borneo/Sabah; persons of Indonesian descent in Mindanao; the *sama dilaut* or *Badjaos*; and undocumented children in the Philippines.[72] The groups share common characteristics which put them at risk of statelessness, but they are by no means exhaustive of all at risk or stateless populations in the Philippine context.[73]

It should be pointed out that the "risk of statelessness" relates to the degree by which one is rendered more probable to be stateless, owing to reasons that are associated with the causes of statelessness. To be sure, there is

71. *See* Department of Justice & UNHCR, Second Round Table Discussion on Statelessness (An Unpublished Report on the Second Round Table Discussion on Statelessness) 1 (on file with author). In cooperation with the UNHCR, the Department of Justice of the Philippines convenes the round table. The round table is a series of inter-agency discussions organized as part of the commemorative activities for the 60th Anniversary of the 1951 Convention relating to the Status of Refugees, the 30th Anniversary of the Philippine Accession to the 1951 Convention and its 1967 Protocol, and the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness. *Id.*

72. *Id.* ¶ 23 at 5-7.

73. *Id.* ¶ 23 at 5.

always the possibility that one could be stateless. However, there are certain factors or reasons which heighten this risk for certain groups or individuals.[74]

The summary note describes each group's characteristics which render them at risk of statelessness, thus —

> *Undocumented Children of Filipino Descent who are or have been conceived/born outside undisputed Philippine territory*
>
> *Children in Saudi Arabia*
>
> 24. The Committee on Overseas Worker's Affairs (COWA) of the House of Representatives of the Philippines has recently concluded an investigation mission on stateless children in Saudi Arabia. The geopolitical context between Saudi Arabia and the Philippines — including bilateral relations, Saudi labour laws, the sponsorship system[,] and the *kafala-iqama* (residence certificate) linkage — influence the risk of statelessness amongst children of Filipino descent in Saudi Arabia.
>
> 25. According to the COWA, as a sending state, the Philippines has no bilateral [labor] agreement of any significance with Saudi Arabia. There are also no domestic laws protecting foreign workers in Saudi [Arabia]. COWA estimated around 2,000 to 3,000 children in Saudi Arabia (though citizens of the Philippines under the 1987 Philippine Constitution) are faced with the operational problem of confirming nationality. Access to services such as health and education is adversely affected, for instance, due to lack of residence certificate, identity papers[,] or illegitimacy.
>
> *Children in Japan*
>
> 26. The International Organisation for Migration (IOM) described the plight of Japanese-Filipino Children (JFCs). Estimated at [100,000], JFCs are children born out of wedlock between a Filipino and [a] Japanese. Many of them are unregistered and now live in the Philippines with their Filipino mothers.
>
> 27. The phenomenon of JFCs arose as Japan became one of the top destination countries for migrant workers from the Philippines. Whilst the children are considered citizens under the 1987 Constitution because of Filipino parentage, non-registration is prevalent amongst the population group and access to rights related to nationality becomes an issue. Prior to legislative reform in Japan, many JFCs have not been registered within the time prescribed by law for acquisition of nationality.
>
> *Undocumented Children of Filipino Descent who are or have been conceived/born in Northern Borneo/Sabah*
>
> 28. The Department of Social Welfare and Development (DSWD) described the long history of movement from Mindanao to Northern Borneo, which included both refugees and undocumented workers.

74. This is not to be confused with *de jure* or *de facto* statelessness. There is no definitive statement that the groups identified are stateless.

Filipinos comprise a large part of the regular [labor] force in Northern Borneo. However, there remains a substantial number of irregular Filipino migrants in the disputed region whose children are not registered for fear of detention and deportation to the Philippines. Consequently, access to health services and education is impaired.

29. There are no baseline studies mapping the number of children at risk of statelessness in Northern Borneo. Initial sources indicate them to be in the thousands. Similar to the situation of children in the Kingdom of Saudi Arabia, DSWD highlights the issue of family separation and the need for reunification.

Marori

30. Pasali Foundation Philippines (Pasali) described the situation of the *marori*, a group of persons of Indonesian descent living primarily in Mindanao. According to Pasali, they are a low-income group who rely on fishing, livestock[,] and subsistence agriculture. Because of socio-economic conditions, many have been unable to renew their permits for Philippine residency, and the confirmation of Indonesian nationality is uncertain because of non-residency.

31. Based on Pasali, it is uncertain whether the population group is stateless or at risk of statelessness as there is a need to ensure an effective link to nationality. The exercise of certain civil and political rights amongst the group remains an issue, along with access to basic services and livelihood opportunities.

Sama Dilaut

32. The *sama dilaut* is an indigenous group found mostly in Mindanao. Many of this population have migrated to Northern Borneo and other parts of the Philippines such as Metro Manila. The group faces a number of issues, such as what has been referred to the Human Rights Committee as a statistical genocide of the population group due to the nomadic and sea-faring lifestyle and generations of non-registration of birth.

33. The lack of birth certificate amongst the *sama dilaut* creates a situation of inability to confirm nationality other than through evidence of membership in a particular social group considered generally as Filipinos.

Undocumented children in the Philippines

34. In the Philippines, there are more than five million children who remain unregistered. Despite the essential nature of birth registration — as the birth certificate represents an acknowledgment by the state of the child's existence and nationality in certain cases — the number of unregistered children is particularly high amongst indigenous peoples with some non-registration rates at around 90%.

35. Whilst the national average on birth registration is high, there are certain regions in the Philippines, particularly in Mindanao where the birth registration dramatically falls below the national average. Because of non-registration, access to certain rights provided by law becomes an issue.

> 36. The population groups presented raise issues of confirmation of nationality. As at risk groups, they confront the problem of identity and access to rights related to nationality.[75]

How many people are at risk of statelessness in the Philippine context? Authorities could only provide estimates. The number of Saudi Arabian-Filipino children who are at risk of statelessness, as stated in the House Committee on Overseas Workers' Affairs report, is from 2,000 to 3,000 as of 2010.[76] The number of JFCs greatly varies from one piece of literature to another. Some point out that in 1999, a single non-governmental organization handled over 600 JFCs.[77] The International Organization on Migration estimates those born after World War II at 100,000.[78]

Southwick and Lynch's survey of statelessness notes the situation of some children in Malaysia who are of Filipino descent. They hold that "[d]ecades of irregular migration to Sabah in eastern Malaysia have resulted in large numbers of undocumented children of migrants from the Philippines and Indonesia who are stateless or at the risk of statelessness."[79] The number of stateless children of Filipino descent is predicted to be higher than 36,000.[80] Center for Migrants Advocacy and Refugees International confirm that they are in the thousands.[81]

In 2011, the persons of Indonesian descent in the Philippines, also called *marori*[82] and *sangir* were estimated to be 43,871, of which 7,200 are thought to be "living without proper registration."[83] The Author was part of the inter-agency effort to map statelessness among this group. Meanwhile, based

75. Department of Justice & UNHCR, *supra* note 71, ¶¶ 24-36 at 5-7.

76. *Id.* ¶ 25 at 5.

77. Nobue Suzuki, *Outlawed Children: Japanese Filipino Children, Legal Defiance and Ambivalent Citizenships*, 83 PAC. AFF. 31, 36 (2010).

78. Department of Justice & UNHCR, *supra* note 71, ¶ 26 at 5.

79. Southwick & Lynch, *supra* note 43, at 38.

80. *Id.* at 38-39.

81. Department of Justice & UNHCR, *supra* note 71, ¶ 29 at 6.

82. There are different explanations as to how they have come to be called *marori* (*marure/maruri/marore*). One view holds that this relates to the island of exit from Indonesia to the Philippines of some of the early migrants among the group. Another believes that the term is derogatory and a derivate of a word relating to shrewdness in trade, barter, or business.

83. Pasali Philippines, Persons of Indonesian Descent in Mindanao, Philippines (A Periodic Report to the United Nations High Commissioner for Refugees), *available at* http://issuu.com/manchamancha/docs/mapping_indonesians_pasali_philippines_unhcr (last accessed June 30, 2013).

on records of the National Statistics Office, there are 42,601 *badjaos* and 5,360,028 unregistered children in the Philippines in the year 2000.[84]

III. RIGHT TO NATIONALITY AND THE PROTECTION OF STATELESS PERSONS: INTERNATIONAL LAW AND PHILIPPINE LAW BASES

A. Right to Nationality in International Law

From a historic perspective, scholars argue that "nationality is somewhat a new phenomenon."[85] It replaced the dynamic of master and servant, and, thus, is no longer considered to be a "personal relationship of allegiance."[86] Nationality is "a legal status embracing a set of mutual rights and obligations towards a political entity fulfilling certain requirements necessary for the existence of a sovereign [S]tate."[87]

The conceptualization of nationality varies from one State to another. Under international law, the traditional understanding of the term "national" refers to a person "over whom a State considers it has jurisdiction on the basis of nationality, including the right to bring claims against other States for their ill-treatment."[88] Designations that might be applied to the status of being a "national" of a certain State include "'citizen,' 'subject,' '*national*' in French, and '*nacional*' in Spanish."[89] Within a State, there may be various categories of nationality with differing names and associated rights. In a paradigm of statelessness, the definition of stateless person incorporates a concept of national which reflects a formal link, of a political and legal character, between the individual and a particular State.[90]

Kay Hailbronner notes that "philosophical and social perceptions of what constitutes a nation may be different. For one, nationhood may not require statehood."[91] Previously, concepts of nationality revolved around exclusion of outsiders and being able to maintain dominance over a certain

84. Department of Justice & UNHCR, *supra* note 71, ¶¶ 24-36 at 5-7.

85. Kay Hailbronner, Nationality in public international law and european law (An Unpublished Paper on file with the University of Edinburgh School of Law) 35, *available at* http://www2.law.ed.ac.uk/citmodes/files/NATACCh1Hailbronner.pdf (last accessed June 30, 2013).

86. *Id.*

87. *Id.*

88. UNHCR, *Guidelines for Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, ¶ 45, HCR/GS/12/01 (Feb. 20, 2012).

89. *Id.*

90. *Id.*

91. Hailbronner, *supra* note 85, at 35.

defined territory.[92] Today, a more modern view holds that nationality denotes "status of membership in a community based upon a common history, culture, ethnicity[,] and political convictions or values."[93]

In the *Nottebohm Case*,[94] the International Court of Justice (ICJ) ruled that nationality is a "juridical expression" of a social fact that connects an individual to a State.[95] As such, there must be a link that connects an individual to a State which has to be genuine and effective.[96] More specifically, the ICJ described nationality as a

> legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests[,] and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State.[97]

There are several criticisms raised against the *Nottebohm* doctrine. Contemporary movements in international law have veered away from the interpretation of nationality in *Nottebohm* for purposes of statelessness. The UNHCR notes that "there is no requirement [for] a 'genuine' or an 'effective' link implicit in the concept of 'national' in the [1954 Convention relating to the Status of Stateless Persons.]"[98] By its nature, nationality reflects a linkage between the State and an individual, often on the basis of territory or descent from a national.[99]

Furthermore, the International Law Commission highlights that the *Nottebohm* conceptualization of nationality should be applied only to a narrow set of circumstances.[100] Furthermore, whether *Nottebohm* is a reliable precedent is a matter of controversy. For instance, Albrecht Randelzhofer argues with reason that the decision wrongly transferred the genuine

---

92. *Id.*

93. *Id.*

94. Nottebohm Case (Liech. v. Guat.), 1955 I.C.J. 4, (Apr. 6, 1955).

95. *Id.* at 24.

96. *Id.* at 23.

97. *Id.*

98. *Guidelines for Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, *supra* note 88, ¶ 47.

99. *Id.* The UNHCR states as well that this is distinct from the concept of nationality which is concerned with membership of a religious, linguistic, or ethnic group. *Id.*

100. International Law Commission, *Draft Articles on Diplomatic Protection with commentaries, included in the Report of the Fifty-Eighth Session*, 33, A/61/10 (2006).

connection principle belonging to the realm of dual nationality to the field of diplomatic protection.[101] Nonetheless, as of this writing, there is no comparable case amounting to a refusal of diplomatic protection that international courts have decided.[102]

The *Nottebohm* doctrine arose and applies in the field of diplomatic protection that is the area of customary international law governing the right of a State to take diplomatic and other action against another State on behalf of a national whose rights and/or interests have been injured.[103] Aside from relating to diplomatic protection, the conceptualization of nationality also affects the residence rights of nationals and obligations with regard to the readmission of a State's own nationals.[104] Although domestic law may impose conditions and/or restrictions on a residence right, nationality as a constitutional law principle implies a right of entry and residence in the State of nationality.[105]

In the *Advisory Opinion on the Tunis and Morocco Nationality Decrees*,[106] what the Permanent Court of International Justice (PCIJ) stated in 1923 relevantly echoes today —

> The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.[107]

Arguably, it could be posited already that the present state of international law regards nationality as not entirely within the reserved domain. Since nationality has international aspects related to diplomatic protection, international responsibility, and personal sovereignty, authors such as Hailbronner write that limits are set by the rights of other States as well as human rights considerations.[108] States are now not entirely possessed with unlimited discretion as to the regulation of nationality.[109] Such

101. Hailbronner, *supra* note 85, at 35 (citing Albrecht Randelzhofer, *Nationality*, *in* ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, 502 (1997)).

102. Hailbronner, *supra* note 85, at 35.

103. *Guidelines for Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, *supra* note 88, ¶ 47.

104. Hailbronner, *supra* note 85, at 78–79.

105. *Id.*

106. Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, 1923 P.C.I.J. (ser. B) No.4, (Feb. 7).

107. *Id.* at 24.

108. Hailbronner, *supra* note 85, at 52.

109. *Id.* at 52–54.

considerations of the right to nationality in human rights instruments are discussed in the proceeding sections.

1. International Human Rights Instruments

The first international attempt to ensure that all persons have a nationality came seven years after the *Advisory Opinion on the Tunis and Morocco Nationality Decrees*.[110] Article 1 of the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (Hague Convention of 1930), which was held under the Assembly of the League of Nations, provides —

> It is for each State to determine under its own law who are its nationals. This law shall be recogni[z]ed by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recogni[z]ed with regard to nationality.[111]

Many States commented on the PCIJ's 1923 *Advisory Opinion* as it related to the drafting of the 1930 Hague Convention on Nationality. They interpreted the *Advisory Opinion* as a limitation on the applicability of a State's nationality-related decisions outside that State, especially when those decisions conflict with nationality-related decisions made by other States.[112]

The right to have a nationality is enshrined in the UDHR of 1948 and other international human rights instruments. The UDHR states that everyone has the right to a nationality, and no one shall be deprived of his or her nationality nor denied the right to change his or her nationality.[113]

The insertion of the right to nationality in the UDHR is revolutionary. It does not indicate under which provisions a person is entitled to a specific nationality, and State practice provides little support to the proposition that it replaced the traditional understanding of nationality as a sovereign prerogative of the State "with an individual [rights-oriented] approach that would be based upon an individual's free choice in determining his or her destiny as a member of a community legally defined by nationality law."[114] But, human rights considerations influence the determination of nationality, and States have increasingly recognized them in the process.[115]

110. UNHCR & THE INTER-PARLIAMENTARY UNION, *supra* note 51, at 8.

111. Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 1, *adopted* Apr. 12, 1930, 179 L.N.T.S. 89.

112. UNHCR & THE INTER-PARLIAMENTARY UNION, *supra* note 51, at 8.

113. UDHR, *supra* note 1, art. 15.

114. Hailbronner, *supra* note 85, at 37.

115. *Id.* at 37-38.

After the UDHR of 1948, other various instruments also incorporated the right to nationality in their respective adopted treaty texts. Quoted below are some relevant provisions in the more pertinent treaties:

(1) The International Covenant on Civil and Political Rights (16 December 1966), which provides —

Article 24

(1) Every child shall have, without any discrimination as to race, [color], sex, language, religion, national or social origin, property[,] or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society[,] and the State.

(2) Every child shall be registered immediately after birth and shall have a name.

(3) Every child has the right to acquire a nationality.[116]

(2) The Convention on the Rights of Persons with Disabilities (13 December 2006), which provides —

Article 18 — Liberty of movement and nationality

(1) [State] Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence[,] and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change [ ] nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess[,] and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own; [and]

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

(2) Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality[,] and, as far as possible, the right to know and be cared for by their parents.[117]

116. ICCPR, *supra* note 5, art. 24 (3).

117. Convention on the Rights of Persons with Disabilities, *supra* note 6, arts. 18 & 25.

(3) The International Convention for the Protection of All Persons from Enforced Disappearance (20 December 2006), which provides —

Article 25

(1) Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother[,] or legal guardian is subjected to enforced disappearance[,] or children born during the captivity of a mother subjected to enforced disappearance;

...

(4) Given the need to protect the best interests of the children referred to in paragraph 1 (a) and their right to preserve, or to have re-established, their identity, including their nationality, name[,] and family relations as recognized by law, [State] Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated [from] an enforced disappearance.[118]

(4) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990), which provides —

Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth[,] and to a nationality.[119]

(5) The Convention on the Rights of the Child (20 November 1989), which provides —

Article 7

(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality[,] and as far as possible, the right to know and be cared for by his or her parents.

(2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

118. International Convention for the Protection of All Persons from Enforced Disappearance, *supra* note 7, art. 25.

119. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *supra* note 8, art. 29.

(1) [State] Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name[,] and family relations as recognized by law[,] without unlawful interference.

(2) Where a child is illegally deprived of some or all of the elements of his or her identity, [State] Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.[120]

(6) The International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), which provides —

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, [State] Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, [color], or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(c) Political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level[,] and to have equal access to public service;

(d) Other civil rights, in particular:

...

(iii) The right to nationality.[121]

(7) The Convention on the Nationality of Married Women (29 January 1957), which provides —

Article 1

Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

Article 2

Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

120. Convention on the Rights of the Child, *supra* note 2, arts. 7 & 8.

121. International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195.

Article 3

(1) Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the [interest] of national security or public policy.

(2) Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.[122]

(8) The Covenant on the Rights of the Child in Islam (June 2005), which provides —

Article 7: Identity

A child shall, from birth, have [a] right to a good name, to be registered with authorities concerned, to have his nationality determined[,] and to know his/her parents, all his/her relatives[,] and foster mother.

[State] Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title[,] and nationality.[123]

Several observations can be drawn from a general reading of the above provisions relating to the right to nationality. *First*, they follow the spirit of the UDHR and its Article 15.[124] This could give substance to the argument that the right is customary in nature. *Second*, the multitude of provisions in international human rights instruments either address the right of everyone to nationality or elaborate the right as regards certain classes of people (e.g., women, children, or persons with disabilities). *Third*, most of the instruments (if not all) incorporate nationality as a prohibited ground for discrimination. *Fourth*, while the provisions generally follow the spirit of the UDHR and its Article 15, certain factors have come to play to interpret such spirit "differently" in some of the treaties.

For example, according to van Waas, during the formulation of the ICCPR, one of the instruments designed to transpose the ideals in the

122. Convention on the Nationality of Married Women, *supra* note 9, arts. 1-3.

123. Covenant on the Rights of the Child in Islam, art. 7, *adopted* June 2005, OIC Doc. OIC/9-IGGE/HRI/2004/Rep.Final.

124. van Waas, *supra* note 39, at 38.

UDHR into binding legal obligations, the provision regarding nationality "underwent an interesting transformation."[125] While the UDHR proclaims a general right of everyone to nationality, the ICCPR merely refers to the nationality of children.[126] It was opined by van Waas that nationality issues and statelessness were considered "too complex" to enable States to reach a consensus on a general affirmation of the right.[127] There is thus agreement that every child should acquire an original nationality, but what happens to the person later in life is another matter.[128]

Therefore, in a General Comment, the Human Rights Committee interprets the particular ICCPR provision as having the purpose of preventing a child "from being afforded less protection by society and the State because he [or she] is stateless[.] [I]t does not necessarily make it an obligation for States to give their nationality to every child born in their territory."[129] Nonetheless, they are required to take measures to ensure that a child has a nationality at birth, whether these measures be internal or in coordination with other States.[130]

2. Regional Human Rights Instruments

There are regional human rights instruments which touch upon the right to nationality. Notably, the instruments can either be binding treaties or non-binding declarations.[131] Also, they either provide for more liberal treatment in favor of the exercise of the right or subjections of the right to provisions — liberal or otherwise — found in municipal law.[132]

To recall, none of the international instruments previously cited (save those international instruments specific to statelessness) expressly encourage or espouse for the incorporation of either or both the *jus sanguinis* and *jus soli* principles in domestic or constitutional legislation. It is widely known that

125. *Id.* at 58.

126. ICCPR, *supra* note 5, art. 24 (3).

127. van Waas, *supra* note 39, at 58–59.

128. *Id.*

129. U.N. Human Rights Committee, *General Comment No. 17: Article 24 (Rights of the Child)*, ¶ 8, 35th Session of the Human Rights Committee, U.N. Doc. HRI/GEN/Rev.9 (vol. 1) (Apr. 7, 1989).

130. *Id.*

131. *See* Southwick & Lynch, *supra* note 43, at 10–16.

132. *Id.*

jus sanguinis as a principle is the acquisition of citizenship by descent.[133] *Jus soli* as a principle is the acquisition of citizenship based on place of birth.[134]

Particular to general regional human rights instruments, some obligatory instruments in the African and American contexts prescribe the application of the *jus soli* principle in certain cases. Accordingly, the relevant provisions of the regional human rights instruments are quoted below:

(1) The African Charter on the Rights and Welfare of the Child (11 July 1990), which provides —

Article 6: Name and Nationality

(1) Every child shall have the right from his birth to a name.

(2) Every child shall be registered immediately after birth.

(3) Every child has the right to acquire a nationality.

(4) [State] Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.[135]

(2) The American Declaration of the Rights and Duties of Man (2 May 1948), which provides —

Article XIX

Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.[136]

(3) The American Convention on Human Rights (22 November 1969), which provides —

Article 20: Right to Nationality

(1) Every person has the right to a nationality.

(2) Every person has the right to the nationality of the [State] in whose territory he was born if he does not have the right to any other nationality.

---

133. Merriam Webster Inc., Jus Sanguinis, *available at* http://www.merriam-webster.com/dictionary/jus%20sanguinis (last accessed June 30, 2013).

134. Merriam Webster Inc., Jus Soli, *available at* http://www.merriam-webster.com/dictionary/jus%20soli (last accessed June 30, 2013).

135. African Charter on the Rights and Welfare of the Child, art. 6, *entered into force* Nov. 29, 1999, OAU Doc. CAB/LEG/24.9/49.

136. American Convention on Human Rights, art. 20, *entered into force* July 18, 1978, 1144 U.N.T.S. 123.

(3) No one shall be arbitrarily deprived of his nationality or of the right to change it.[137]

Some regional instruments, for example, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Arab Charter, and the ASEAN Human Rights Declaration clearly provide for the relationship between the right to nationality and municipal law. Applicable to the Philippine context, the recent non-binding ASEAN Human Rights Declaration emphatically pronounces that the right to nationality is the right of every person but should be granted and regulated "as prescribed by law."[138] These regional instruments are set forth below:

(1) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (11 July 2003), which provides —

Article 6: Marriage

[State] Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

...

(d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recogni[z]ed;

...

(g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

(h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.[139]

(2) The Arab Charter on Human Rights (22 May 2004), which provides —

Article 29

137. American Declaration of the Rights and Duties of Man, art. XIX, *adopted* April 1948, O.A.S. Res. XXX.

138. Association of South East Asian Nations (ASEAN), ASEAN Human Rights Declaration, *available at* http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration (last accessed June 30, 2013).

139. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 6, *adopted* Sep. 12, 2000, OAU Doc. CAB/LEG/66.6 (entered into force Nov. 25, 2005).

(1) Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.

(2) [State] [P]arties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

(3) [No] one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.[140]

(3) The ASEAN Human Rights Declaration (19 November 2012), which provides —

Civil and Political Rights

...

(18) Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.[141]

Notably, there are regions which adopt a more proactive approach to the problem of statelessness at birth. It was recognized by van Waas that newer European and African instruments are examples of such proactive instruments.[142] Many of the provisions of the European Convention on Nationality, "[a]lthough not strictly a human rights document ... [aim] to ensure the respect of a number of basic human rights principles [as related to] nationality."[143] Exemplarily, the 1961 Convention of the Reduction of Statelessness inspired the European Convention on Nationality.[144] The European Convention on Nationality is a consolidation of developments in municipal and international law regarding nationality.[145] One of its features also involves the *jus soli* attribution of nationality to children either automatically at birth or later, upon application to the appropriate authority.[146]

3. Treaties Specific to Statelessness

140. Arab Charter on Human Rights, art. 29., *adopted* May 22, 2004, 12 INT'L HUM. RTS. REP. 893 (2005) (entered into force Mar. 15, 2008).

141. ASEAN, *supra* note 138, no. 18.

142. van Waas, *supra* note 39, at 61.

143. *Id.*

144. *Id.*

145. *Id.* at 61-62.

146. *Id.* at 61.

There are two main international treaties which deal with statelessness: the 1954 Convention relating to the Status of Stateless Persons[147] (1954 Statelessness Convention), and the 1961 Convention on the Reduction of Statelessness[148] (1961 Statelessness Convention). The Author will be treating them in this part of the discourse as they relate to the right to nationality.

According to the UNHCR and the Inter-Parliamentary Union (IPU), although Article 15 of the UDHR asserts every person's right to a nationality, it does not prescribe the specific nationality to which a person is entitled.[149] Thus, to ensure that individuals are not deprived of a minimum set of rights associated with the nationality, the international community developed the two treaties: the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention),[150] and the 1954 Statelessness Convention.[151]

The common thread that ties the 1951 Refugee Convention and the 1954 Statelessness Convention involves the need of refugees and stateless persons for international protection. They both have a shared history and language. The UNHCR and the IPU tells us the link between the 1951 Refugee Convention and the issue of statelessness, thus —

> In the aftermath of World War II, one of the most pressing issues for the member States of the newly created United Nations was how to address the needs of the millions of individuals whom the war had left as refugees or had rendered stateless. A 1949 resolution of the UN Economic and Social Council (ECOSOC) led to the appointment of an Ad Hoc Committee whose task was to consider formulating a Convention on the status of refugees and stateless persons and to consider proposals for eliminating statelessness.
>
> In the end, Committee members drafted a Convention on the status of refugees and a Protocol to the proposed Convention that focused on stateless persons. The Committee did not fully address the elimination of statelessness largely because it was assumed that the newly formed International Law Commission (ILC) would focus on that issue.
>
> Historically, refugees and stateless persons both received protection and assistance from the international refugee organizations that preceded UNHCR. The draft Protocol on Statelessness was intended to reflect this

147. Convention relating to the Status of Stateless Persons, *adopted* Sep. 28, 1954, 360 U.N.T.S. 117 (entered into force June 6, 1960).

148. Convention on the Reduction of Statelessness, *adopted* Aug. 30, 1961, 989 U.N.T.S. 175 (entered into force Dec. 13, 1976).

149. UNHCR & THE INTER-PARLIAMENTARY UNION, *supra* note 51, at 9.

150. Convention relating to the Status of Refugees, *adopted* July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

151. UNHCR & THE INTER-PARLIAMENTARY UNION, *supra* note 51, at 9.

> link between refugees and stateless persons. But the urgent needs of refugees and the impending dissolution of the International Refugee Organization meant that there was not sufficient time for a detailed analysis of the situation of stateless persons at the 1951 Conference of Plenipotentiaries that had been convened to consider both issues. Thus, the 1951 Convention relating to the Status of Refugees was adopted at the Conference, while adoption of the Protocol addressing stateless persons was postponed for a later date.[152]

The 1951 Refugee Convention addresses the situation of stateless persons who are also refugees, since the arbitrary denial of citizenship could be due to one's "race, religion, nationality, membership in a particular social group, or political opinion."[153] Thus, stateless refugees are entitled to the protection of the 1951 Refugee Convention as refugees. However, stateless persons who are not also refugees remained unprotected by a specific treaty for a time. In order to address their situation, the draft Protocol to the 1951 Refugee Convention was made into a Convention in its own right in 1954, and it is now the "primary international instrument that aims to regulate and improve the status of stateless persons and [ensure] that they are accorded their fundamental rights and freedoms without discrimination."[154]

Actually, the 1951 Refugee Convention and the 1954 Statelessness Convention are very similar in many respects. For one, they both define persons who are subject to their protection. The 1954 Statelessness Convention contains a strictly legal definition of a "stateless person."[155] The 1951 Refugee Convention defines the concept of "refugee" under international law.[156] Nonetheless, the 1954 Statelessness Convention does not declare nationality as a right.[157] It does not also oblige States to grant citizenship to stateless persons in their respective territories.[158] In the same manner, the 1951 Refugee Convention does not prohibit persecution based on race, religion, nationality, membership in a particular social group, or political opinion.[159] Rather, the 1954 Statelessness Convention and the 1951 Refugee Convention both provide for fundamental rights and freedoms without discrimination to stateless persons and refugees, respectively.

---

152. *Id.* at 9-10.

153. *Id.* at 10.

154. *Id.*

155. *See* Convention relating to the Status of Stateless Persons, *supra* note 147, art. 1.

156. *See* Convention relating to the Status of Refugees, *supra* note 150, art. 1.

157. *See generally* Convention relating to the Status of Stateless Persons, *supra* note 147.

158. *Id.*

159. *See generally* Convention relating to the Status of Refugees, *supra* note 150.

According to the UNHCR, "[t]he rights provided for in the 1954 [Statelessness] Convention are extended to stateless persons based on their degree of attachment to the State."[160] The rights are on a gradual and conditional scale,[161] but they are accorded to one who satisfies the strict definition of "stateless person" under the treaty.[162] Some provisions are applicable to those who are "either subject to the jurisdiction of a State party or present in its territory."[163] Others are "conditional upon whether an individual is 'lawfully in,' 'lawfully staying in[,]' or 'habitually resident' in the territory of a Contracting State."[164] Of course, States may grant a more favorable treatment than those prescribed under the convention since the standards set there are prescriptive of the minimum only.[165]

Table 1. Rights of Stateless Persons and Conditions under the 1954 Statelessness Convention[166]

Condition	*Rights*
The stateless person is subject to the jurisdiction of the State party.	Personal Status (Article 12), Property (Article 13), Access to Courts (Article 16(1)), Rationing (Article 20), Public Education (Article 22), Administrative Assistance (Article 25), and Facilitated Naturalization (Article 32).[167]
The stateless person is physically present in the territory of the State party.	Freedom of Religion (Article 4), and the Right to Identity Papers (Article 27).[168]
The stateless person is "lawfully in" the State party (in French "*se trouvant régulièrement*").	Right to Engage in Self-Employment (Article 18), Freedom of Movement within a Contracting State (Article 26), and Protection from Expulsion (Article 31).[169]

160. UNHCR, *Guidelines for Statelessness No. 3: The Status of Stateless Persons at the National Level*, ¶ 13, U.N. Doc. HCR/GS/12/03 (July 12, 2012).

161. *See generally Guidelines for Statelessness No. 3: The Status of Stateless Persons at the National Level*, *supra* note 160, ¶¶ 13–20.

162. *Guidelines for Statelessness No. 3: The Status of Stateless Persons at the National Level*, *supra* note 160, ¶ 13.

163. *Id.*

164. *Id.*

165. *See Guidelines for Statelessness No. 3: The Status of Stateless Persons at the National Level*, *supra* note 160, ¶ 1.

166. *Id.* ¶¶ 13–20.

167. *Id.* ¶ 14.

168. *Id.*

169. *Id.* ¶ 15.

The stateless person is "lawfully staying" in the State party (in French "*résidant régulièrement*").	Right of Association (Article 15), Right to Work (Article 17), Practice of Liberal Professions (Article 19), Access to Public Housing (Article 21), Right to Public Relief (Article 23), Labor and Social Security Rights (Article 24), and Travel Documents (Article 28).[170]
The stateless person is "habitually resident or residing" in a State party.	Protection of Artistic Rights and Intellectual Property (Article 14) and Rights pertaining to Access to Courts, including Legal Assistance and Assistance in Posting Bond or Paying Security for Legal Costs (Article 16(2)).[171]

Recognizing that there is a need to eliminate statelessness, in August 1950, a resolution requested the ILC to prepare a draft convention or conventions for the elimination of statelessness.[172] The ILC drafted two conventions for consideration, both aiming to address the problem of statelessness resulting from conflicts of laws.[173] One convention dealt with the elimination of future statelessness; another focused on reducing the incidence of statelessness in the future.[174] Authors opined that the former was considered radical and States "elected to work with the draft Convention on the Reduction of Future Statelessness."[175] Eventually, the instrument that emerged was the 1961 Convention on the Reduction of Statelessness.[176]

The object and purpose of the 1961 Statelessness Convention is the prevention and reduction of statelessness, with the goal of ensuring every individual's right to a nationality, "including every child's right to acquire a nationality."[177] The convention "establishes rules on acquisition, renunciation, loss, and deprivation of nationality."[178] Specifically, according

170. *Id.* ¶ 17.

171. *Guidelines for Statelessness No. 3: The Status of Stateless Persons at the National Level*, *supra* note 160, ¶ 19.

172. UNHCR & THE INTER-PARLIAMENTARY UNION, *supra* note 51, at 12.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. UNHCR, *Guidelines for Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, ¶ 1, U.N. Doc. HCR/GS/12/04 (Dec. 21, 2012).

178. *Id.*

to UNHCR, Articles 1-4 of the convention concern the acquisition of nationality by children.[179] Article 1 represents the cornerstone of efforts to prevent statelessness among children.[180] A child who would otherwise be stateless has the right to acquire the nationality of his or her State of birth through one of two means: (1) A State may grant its nationality automatically, by operation of law (*ex lege*), to children born in its territory who would otherwise be stateless; or (2) a State may grant nationality to such persons later upon application.[181] However, the later grant of nationality may be subject to conditions.[182]

Furthermore, the UNHCR tells us that the 1961 Statelessness Convention has provisions for the "acquisition of the mother's nationality by descent if the child was born in the mother's State and would otherwise be stateless;"[183] "acquisition of the nationality of a parent by descent via an application procedure for individuals who do not acquire nationality of the State of birth;"[184] and "acquisition of the nationality of a parent by descent for individuals born abroad who would otherwise be stateless."[185] There is also a rule that regulates the nationality of foundlings.[186] Thus, unlike the 1954 Statelessness Convention, the 1961 Statelessness Convention contains direct treaty provisions that oblige contracting State parties to accord nationality to certain classes of persons. It also squarely addresses the rights of women to pass on nationality to their children and considers the situation of foundlings who may not have evidence relating to parentage, descent, and other facts of birth.

The conventions still find relevance in today's world. For one, there are millions of stateless persons today and many more people are at risk of statelessness. These stateless persons may have problems accessing rights and fundamental freedoms. Also, the issue covers the basic rights of women and children who collectively comprise majority of the world's population. This year, the U.N. Human Rights Council published a report on the discrimination against women on nationality related matters, including the

179. *Id.* ¶ 2.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Guidelines for Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, *supra* note 177, ¶ 3.

184. *Id.*

185. *Id.*

186. *Id.*

impact on children.[187] The report notes that despite some positive developments, many nationality laws still discriminate against women.[188] Women in certain countries do not enjoy equal rights with men to acquire, change, and retain their nationality.[189] This very often results in statelessness.[190] The discriminatory principle of *dependent nationality*, which provides that a married woman's nationality is dependent on that of her husband, is contained in the nationality laws of many countries.[191] In fact, the nationality laws of 30 countries do not grant women equal rights with men with regard to the nationality of their children.[192]

The 1954 and 1961 Statelessness Conventions, one of which accords rights to the stateless and another which seeks to reduce cases of statelessness, are the two leading international instruments on statelessness. There were previous concerns with regard to the low level of ratification of and accession to the treaties. However, States have recently gained more interest in becoming parties to one or both of the conventions.

In 2011, the Philippines ratified the 1954 Statelessness Convention, thereby becoming the first and only State party to the convention in Southeast Asia.[193] The Philippines was one of the first 23 countries to sign the 1954 Statelessness Convention before it closed for signature on 31 December 1955.[194] When the Philippines ratified the convention, other signatory states that have yet to ratify the treaty included Colombia, El Salvador, and Honduras.[195] Meanwhile, initiatory steps have been undertaken to study and consider whether or not the Philippines should accede to the 1961 Statelessness Convention.

B. Right to Nationality in Philippine Law

187. *See* United Nations Human Rights Council, *Report on discrimination against women on nationality related matters, including the impact on children: Report of the Office of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/23/23 (Mar. 15, 2013).

188. *Id.* ¶ 6.

189. *Id.* ¶ 19.

190. *Id.* ¶ 7.

191. *Id.* ¶ 19.

192. UNHCR, Revised Background Note on Gender Equality, Nationality Laws and Statelessness, *available at* http://www.unhcr.org/4f5886306.html (last accessed June 30, 2013).

193. Yanya Viskovich and Francis Tom Temprosa, Statelessness: UNHCR hails new support, urges more action on treaties, *available at* http://www.unhcr.org/4e7c8cd755.html (last accessed June 30, 2013).

194. *Id.*

195. *Id.*

The Philippines treats nationality as citizenship. Citizenship is defined as personal and more or less permanent membership in a political community, denoting possession within that community of full civil and political rights subject to special disqualifications. Citizenship imposes the reciprocal duty of allegiance to the political community.[196]

The 1987 Philippine Constitution enumerates who the citizens of the Philippines are,[197] declares who natural-born citizens are,[198] and the principles that Philippine citizenship may be lost or reacquired in the manner provided by law,[199] and that dual allegiance is inimical to national interest.[200] In addition, it also states that citizens who marry aliens generally retain their citizenship.[201] This latter statement, along with many innovations in law that are in keeping with the retention of Philippine citizenship, may aid in the prevention of statelessness. In several occasions, statelessness have arisen when the individual loses his or her original citizenship upon marriage to an alien and the citizenship of his or her spouse is not granted to him or her.

However, while international law regards nationality as a right, Philippine law has not elaborated on many other developments in international law in relation to citizenship and the right to nationality.[202] Fr. Joaquin G. Bernas, S.J. states that the core of citizenship is the capacity to enjoy political rights, encompassing the right to participate in government principally through the right to vote, right to hold public office, and the right to petition the government for redress of grievances.[203] In his discussion on citizenship, he adds a reference to these rights as found in the words of United States Chief Justice Earl Warren, in the latter's dissenting opinion in the 1958 case of *Perez v. Brownell*,[204] stating that "[c]itizenship *is* man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen."[205]

196. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 629 (2009 ed.) [hereinafter BERNAS, CONSTITUTION].

197. PHIL. CONST. art. IV, § 1.

198. PHIL. CONST. art. IV, § 2.

199. PHIL. CONST. art. IV, § 3.

200. PHIL. CONST. art. IV, § 5.

201. PHIL. CONST. art. IV, § 4.

202. Department of Justice & UNHCR, *supra* note 71, ¶ 6 at 2.

203. BERNAS, CONSTITUTION, *supra* note 196, at 629-630.

204. Perez v. Brownell, 356 U.S. 44 (1958).

205. *Id.* at 630 (citing *Perez*, 356 U.S. at 64 (J. Warren, dissenting opinion)).

Despite Fr. Bernas' elucidation of nationality as the right to have rights, the predominant legal discourse in the Philippines today is that, nationality or citizenship is a privilege, not a right. Understandably, the Philippine Constitution does not contain references to nationality as a right. Furthermore, it is not among the rights of the people as found in the Bill of Rights of the present Constitution. Nonetheless, it would be illuminating to recall that the Bill of Rights and the ICCPR contains basically the same guarantees. The ICCPR unmistakably declares that nationality is a right.[206]

The state of jurisprudence in the Philippines regards nationality as a mere privilege. The Supreme Court has used this doctrine to justify the non-conferral, withholding, or deprivation of Philippine citizenship. For instance, in *Choy King Tee v. Galang*,[207] the Supreme Court pronounced that the national policy is selective admission to Philippine citizenship.[208] This means that since citizenship after all is a privilege, it should be granted only to those who are found worthy of it, and not indiscriminately to anybody at all on the basis alone of marriage to a citizen, irrespective of the person's moral character, ideological beliefs, and identification with Filipino ideals, customs, and traditions.[209]

In *Tecson v. Commission on Election*,[210] citizenship was viewed as a "treasured right conferred on those whom the [Philippine State] believes are deserving of the privilege."[211] According to the Court, it is "a 'precious heritage, as well as an inestimable acquisition,' that cannot be taken lightly by anyone — either by those who enjoy it or by those who dispute it."[212] Moreover, in *Ma v. Fernandez, Jr.*,[213] it was held that Philippine citizenship could never be treated "like a commodity that can be claimed when needed and suppressed when convenient."[214] When a person is privileged to elect Philippine citizenship, he or she only has an inchoate right to such citizenship.[215]

While nationality as a right may be subject to certain conditions and certainly the domestic regulations of the State, the position put forward by

206. JOAQUIN G. BERNAS, S.J., AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 300 (2009).

207. Choy King Tee v. Galang, 13 SCRA 402 (1965).

208. *Id.* at 405-406.

209. *Id.* at 406.

210. Tecson v. Commission on Elections, 424 SCRA 277 (2004).

211. *Id.* at 320.

212. *Id.*

213. Ma v. Fernandez, Jr., 625 SCRA 566 (2010).

214. *Id.* at 576.

215. *Id.*

the Author is that a discussion may be enriched if the law and jurisprudence in the Philippines could accommodate a rights discourse on nationality. Notably, there seems to be a movement toward such a discourse. From the *Choy King Tee* case which the Court decided in 1965, which expounded on the policy of selective admission to citizenship, the Court alluded to rights in its succeeding discussions in the cases of *Tecson* and *Ma.*

IV. DOMESTIC LEGAL FRAMEWORK ON STATELESSNESS IN RELATION TO CITIZENSHIP

The legal framework on statelessness in the Philippines consists of laws, issuances, regulations and orders, and jurisprudence on stateless persons. Several observations about the framework are in order.

First, the legal framework on statelessness in the Philippines is intimately related to the policy treatment of the State toward refugees, and to a lesser extent, irregular migrants. About 11 years before the international community adopted the 1951 Refugee Convention, the Philippines passed a law that, in part, aimed to address the status of refugees who were also stateless. This is shaped by international relations and the collective national experience of dealing with stateless refugees at the time.

Second, the framework shows a relatively increasing liberal treatment in favor of the exercise of the rights and fundamental freedoms of stateless persons. This is perhaps due to the continued realization by the State of its duties and obligations as State party to the 1954 Statelessness Convention and other international instruments related to nationality as a right. Furthermore, it is testament to the rights orientation to the subject that is now being adopted by the State in collaboration with other international actors and stakeholders.

Third, the discourse is also linked with immigration concerns, which *inter alia* covers admission, exclusion or deportation, and detention. The immigration aspect of the framework is animated by discursive discussions of the Supreme Court of the Philippines on the matter. Occasionally, there is a confluence with matters of identity, family relations, and the reserved rights of citizens, such as political participation during elections.

A. Laws Pertaining to Stateless Persons

At the dawn of World War II, the Philippines enacted Commonwealth Act No. 613 or the Philippine Immigration Act of 1940. Section 47 (b) allows the President for "humanitarian reasons, and when not opposed to the public interest"[216] to admit "aliens who are refugees for religious, political, or racial

216. An Act to Control and Regulate the Immigration of Aliens to the Philippines [The Philippine Immigration Act of 1940], Commonwealth Act No. 613, § 47 (b) (1940).

reasons."[217] This Section of the Act has been interpreted to allow not only the admission of refugees, but also other aliens, arguably including stateless persons, who may be admitted for humanitarian reasons. Further, Section 13 of the law states —

> Section 13. Under the conditions set forth in this Act, there may be admitted into the Philippines immigrants, termed 'quota immigrants' not in excess of fifty (50) of any one nationality or without nationality for any one calendar year, except that the following immigrants, termed 'non-quota immigrants,' may be admitted without regard to such numerical limitations.
>
> ...
>
> (a) The wife or the husband or the unmarried child under [21] years of age of a Philippine citizen, if accompanying or following to join such citizen;
>
> (b) A child of alien parents born during the temporary visit abroad of the mother, the mother having been previously lawfully admitted into the Philippines for permanent residence, if the child is accompanying or coming to join a parent and applies for admission within five years from the date of its birth;
>
> (c) A child born subsequent to the issuance of the immigration visa of the accompanying parent, the visa not having expired;
>
> (d) A woman who was a citizen of the Philippines and who lost her citizenship because of her marriage to an alien or by reason of the loss of Philippine citizenship by her husband, and her unmarried child under twenty-one years of age, if accompanying or following to join her;
>
> (e) A person previously lawfully admitted into the Philippines for permanent residence, who is returning from a temporary visit abroad to an unrelinquished residence in the Philippines;
>
> (g) [sic] A natural-born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including his spouse and minor unmarried children, shall be considered a non-quota immigrant for purposes of entering the Philippines.[218]

The immigration law represents the solidification of a policy into a legal statement, allowing some level of discretion to the President to accept stateless persons into the country. Moreover, according to Bernard Kerblat, Section 47 (b) is remarkable since it was adopted by the Philippines at a time when Europe, which often boasts about being the "cradle of human rights," was engulfed in generating millions of victims of war including refugees.[219]

---

217. *Id.*

218. *Id.* § 13.

219. Kerblat, *supra* note 68.

It was also "promulgated 11 years before the world agreed on the definitions of some concepts [of refugee law and the law on stateless persons], including 'humanitarian' and 'persecution.'"[220]

In 1987, Executive Order No. 209 or the Family Code of the Philippines provided a mechanism for stateless persons or refugees to enter into marriage in the Philippines.[221] Citizens of a foreign country who are not stateless or refugees should obtain a certificate of legal capacity, issued by their respective diplomatic or consular officials, in order to be issued a marriage license.[222] In lieu of the certificate, the law requires stateless persons or refugees to submit an affidavit stating the circumstances showing their capacity to contract marriage.[223] The Family Code recognizes the difference of the situation of stateless persons and refugees, compared with other aliens in general, when it comes to the presence or absence of national protection. At the very least, the Family Code understands that stateless persons and refugees have difficulties in accessing diplomatic protection. At the most, it furthers the protection accorded to them since this recognizes their right to enter into marriage and establish a family.

In 1996, Republic Act (R.A.) No. 8239 or the Philippine Passport Act of 1996 became the authority for the issuance of travel documents, in lieu of passports, to a stateless person who is a permanent resident of the Philippines.[224] The Philippines, in allowing stateless permanent residents to be issued travel documents, is strengthening ties which may result in nationality acquisition. The lack of consular protection is a distinctive factor in deciding whether nationality is ineffective, and it can arise due to "the absence of diplomatic ties between two countries, the non-existence of a consulate due to resource problems, and the failure of a consulate to cooperate with removal."[225] Diplomatic and/or consular protection is indicia of nationality and a consequence of its possession. For instance, in the *Castillo Petruzzi, et al. Case*,[226] the Inter-American Court of Human Rights emphasized that since nationality is a link which binds a person to a given

220. *Id.*

221. *See* The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, art. 21 (1987).

222. FAMILY CODE, art. 21.

223. *Id.*

224. *See* Philippine Passport Act of 1996, Republic Act No. 8239, § 13 (1996).

225. THE EQUAL RIGHTS TRUST, UNRAVELING ANOMALY: DETENTION, DISCRIMINATION AND THE PROTECTION NEEDS OF STATELESS PERSONS xxv (2010).

226. Castillo Petruzzi, et al. Case, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 52 (May 30, 1999).

State, it entitles him to diplomatic protection from that State.[227] Aside from a fulfilment of the obligation under the 1954 Statelessness Convention, the extension of the issuance of a travel document by the Philippines to stateless persons shows the intent of the Philippines to extend aspects parts of the traditionally reserved domain of consular protection to the stateless.

In 2009, R.A. No. 9710 or the Magna Carta of Women was signed into law.[228] The measure is also significant for stateless persons inasmuch as it guarantees that "women have equal rights with men to acquire, change, or retain their nationality."[229] The State is required to "ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of the husband."[230] The laws of other countries concerning dual citizenship which may be enjoyed equally by women and men should also be considered.[231] This provision is in line with equal rights in all matters relating to marriage and family relations.

Moreover, R.A. No. 9851, or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, included "a person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instruments accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence"[232] as among the classes of persons who are to be protected in an armed conflict.[233]

B. Issuances, Regulations, and Administrative Orders

Prior to the ratification by the Philippines of the 1954 Statelessness Convention, stateless persons were not treated specifically in administrative instruments of government. Precisely, stateless persons were treated in the same manner as aliens in general, except with regard to matters intimately requiring the possession of nationality, such as in the grant of certain privileges which require reciprocity. In which case, stateless persons were

227. *Id.* ¶ 99.

228. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).

229. *Id.* § 19 (g).

230. *Id.*

231. *Id.*

232. An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes [Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity], Republic Act No. 9851, § 3 (q) (4) (2009).

233. *Id.* ¶ 3 (q).

excluded in policy. Stateless persons who are also refugees were treated as refugees and accorded rights, privileges, and benefits pertaining to refugees.

Upon becoming a State party to the 1954 Statelessness Convention, the Philippines immediately initiated steps to transform some elements of the Convention, such as the implied obligation to determine stateless status, into Philippine administrative law. On 18 October 2012, the Department of Justice (DOJ) issued Department Circular No. 58 entitled "Establishing the Refugee and Stateless Status Determination Procedure." While the DOJ, as early as 1998, had a Refugee Processing Unit (RPU), such unit, however, did not have the mandate to deal with stateless persons.[234]

The Circular renames the DOJ's RPU into the Refugee and Stateless Persons Protection Unit (RSPPU).[235] The DOJ states that this ensures that the highly vulnerable group of refugees and stateless persons "will have access to a facilitated, prompt[,] and efficient process application for the [grant] of refugee or a stateless status."[236] Mainly procedural in nature, the rule provides "for the standard of proof to establish such [statuses] and, more importantly, [allows] for the suspension of deportation proceedings pending consideration of the application."[237] The "recognition of stateless or refugee status [ ] directly [benefits] both the applicant and his or her family members."[238] Once the application is granted, the applicant's status as a refugee or stateless person is affirmed. Thus, for the stateless person, he or she is entitled to rights and benefits under the 1954 Statelessness Convention as applied by the Philippines in law and policy. This includes, among others, permanent residency and non-deportation.

The main objective of the Circular is to establish such procedure which is fair, speedy, and non-adversarial to facilitate identification, treatment, and protection of refugees and stateless persons consistent with the laws, international commitments, and humanitarian traditions and concerns of the Philippines.[239]

234. Department of Justice, DOJ Formalizes Rules and Mechanisms for the Protection of Refugees and Stateless Persons, *available* at http://www.doj.gov.ph/news.html?title=DOJ%20FORMALIZES%20RULES%20AND%20MECHANISMS%20FOR%20THE%20PROTECTION%20OF%20REFUGEES%20AND%20STATELESS%20PERSONS&newsid=138 (last accessed June 30, 2013).

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. DOJ Dept. Circ. No. 58, § 2.

The Circular animates and makes reference to the provisions of the Philippines' main immigration law, particularly Sections 47 (b) and 13 of the Philippine Immigration Act of 1940, as cited above.[240] It also recalls that the President delegated to the DOJ the authority over immigration matters, including the admission of aliens, pursuant to Letter of Implementation No. 47 dated 18 August 1976.[241] Under Title III, Section 7 of the Administrative Code of 1987, "the Legal Staff of the [DOJ] may perform such functions as may be assigned by the Secretary of Justice."[242] The RSPPU is composed of persons from the Legal Staff who act as protection officers who conduct status determination and may perform protection and advocacy activities.[243]

The stateless status determination procedure in the Philippines is thus administrative in nature, with the right to judicial appeal in appropriate cases, as provided by law.[244] The procedure for stateless status is related with, but can be separate and distinct from, refugee status determination.[245] The procedure is governed by the following basic principles:

> (a) Preservation and promotion of family unity;
>
> (b) Non-detention on account of being stateless or refugee;
>
> (c) Non-deprivation of refugee or stateless status, and non-discrimination in the application of the Conventions, on account of race, religion, political opinion, or country of origin[;]
>
> (d) An applicant and/or his or her dependents during the pendency of his or her application, or a refugee shall not be expelled or returned to a country where there are valid reasons to believe his or her freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group[,] or political opinion[; and]
>
> (e) An applicant for refugee status and/or his or her dependents shall not be punished on account of his or her illegal entry or presence in the country, provided he or she presents himself or herself without delay to the authorities and/or shows good cause for his or her illegal entry or presence.[246]

In her commentary on the issuance of the Circular, van Waas describes the Circular as "a good example, not only in the region, where protection frameworks for stateless people are largely absent, but also to countries in

240. *Id.* whereas cl.

241. *Id.*

242. *Id.*

243. *Id.* §§ 1 (m), 9, 11, & 31.

244. *Id.* §§ 20-21.

245. DOJ Dept. Circ. No. 58, §§ 8 & 24.

246. *Id.* § 3.

other parts of the world which acceded to the 1954 [Statelessness] Convention but have yet to take this vital step in its implementation."[247] There are only less than a dozen examples of dedicated statelessness determination procedures in the world.[248] Van Waas goes on to further state —

> What is most commendable about the law which has now been passed establishing the Philippines' Stateless Status Determination Procedure, is this: while clearly incorporating good practices drawn from Spain, Hungary[,] and the handful of other countries where a procedure exists, the Philippines' procedure has addressed some of the shortcomings that are found elsewhere. For instance, it has not mimicked Hungary's restrictive approach of only accepting applications for stateless status determination from people already lawfully staying in the territory. Moreover, the Philippines' law explicitly states that, following the lodging of an application for statelessness determination, 'any proceeding for the deportation or exclusion of the Applicant and/or his or her dependents shall be suspended' and that an order may also be given to release the applicant from detention (section 7). The Philippines' law can therefore be considered as something of an instant best practice, providing a more favourable regime than the handful of 'older' statelessness specific procedures and following instead in the footsteps of other recently created mechanisms in Moldova and Georgia. It has evidently also drawn from the recent UNHCR guidelines on statelessness determination procedures and the status of a stateless person, reinforcing the approach that is recommended in these guidance documents.
>
> Besides the aforementioned section on the question of deportation and detention, other noteworthy elements of the Philippines law include: a shared burden of proof whereby the applicant and the government protection officer 'collaborate' to determine whether the person is stateless; a standard of proof that takes into account the difficulty of establishing beyond any doubt that the person is stateless and instead requires this to be established 'to a reasonable degree[;]' an entitlement to legal counsel, to an interpreter, to access to UNHCR[,] and to be interviewed (heard) during the procedure; an explicit right to residence for a person found to be stateless and his/her family members; and the right to receive a motivated decision in writing and to seek review of a negative decision. In addition, the law deals clearly and appropriately with the relationship between stateless and refugee status determination. Where it is discovered that 'a refugee claim appears to exist' in relation to an applicant for stateless status, the investigation into possible refugee status takes priority and stateless determination is only picked up again if the person is found not to be a

247. Laura van Waas, An instant best practice: Philippines' new Stateless Status Determination Procedure, *available at* http://statelessprog.blogspot.com/2012/10/an-instant-best-practice-philippines.html (last accessed June 30, 2013) [hereinafter van Waas, Instant Best Practice].

248. *Id.*

> refugee or following cessation of refugee status. For good measure, the law also explicitly reaffirms that 'in no case shall there be contact with the authorities of a foreign state (*an important tool in stateless determination*) where there is a claim of persecution' (section 31). Finally, with the entry into force of this law, the Philippines' Refugee Protection Unit has been renamed to become the Refugee and Stateless Persons Protection Unit, in acknowledgement of the need to promote the visibility of both vulnerable groups.[249]

However, van Waas opines that there are questions that the Circular does not address. Matters of evidence are not sufficiently detailed, such as which forms of evidence may be accepted, how such evidence should be weighed, and what conclusions are to be drawn from the failure of a country to which the applicant has a relevant link to respond to questions regarding his or her nationality status.[250] Likewise, the 90-day timeframe for reaching a decision on an application for either refugee or stateless status, unless there are reasonable grounds for an extended period, is said to remain to be seen as a realistic goal in the context of stateless status determination, and it may be impossible for the applicant to establish his or her statelessness "to a reasonable degree" within this time.[251]

Van Waas, nonetheless, discusses that all of the procedural issues are likely to be ironed out as the determination officers gain experience with the procedure.[252] There is sufficient flexibility for on-the-job learning and all the most important elements with regard to guiding principles, procedural guarantees, and rights are in place.[253] This Author adds that the procedure is also a first in an envisaged series of circulars or orders which may clarify the content and procedural standards relating to stateless status determination.

The National Statistics Office's Administrative Order No. 1, Series of 1993, is another administrative issuance which seeks to complement legislation.[254] Rule 48 of the order expounds on the requirement for stateless persons to submit an affidavit showing the capacity to marry, for purposes of the issuance of a marriage license.[255] Meanwhile, in 2012, the Department of Labor and Employment amended certain provisions of its Department Order No. 97-09, entitled "Revised Rules for the Issuance of Employment Permits to Foreign Nationals," to include a photocopy of passport with visa, or

---

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. van Waas, Instant Best Practice, *supra* note 247.

254. *See* Rules and Regulations Implementing the Law on Registry of Civil Status, Commonwealth Act No. 3753 (1930).

255. *Id.* rule 48 (8).

certificate of recognition for refugees or stateless persons, as among the accepted documents for refugees and stateless persons who seek to be issued alien employment permits.[256] This is a positive step toward the realization of their right to wage-earning employment under the 1951 Refugee and 1954 Statelessness Conventions.

Likewise, in 2012, the Professional Regulation Commission issued Resolution No. 2012-668 which *inter alia* establishes a mechanism for qualified alien professionals, including stateless persons, to be issued special temporary permits to practice their respective professions in the Philippines.[257] It is to be noted, however, that the permit requires conditions that must be complied with in order to be issued. Furthermore, perhaps in view of the reservation in the Philippine Constitution of the practice of profession in the Philippines to Filipino citizens only as a general rule, the temporary permit is viewed as a privilege (not a right) and one that is for a limited period of time.[258]

C. Jurisprudence on Statelessness

In jurisprudence, the Supreme Court has had occasion to make references to the issue of statelessness in the Philippines. Several themes arise in precedents. Preliminarily, as mentioned, citizenship is viewed as a privilege and not a right.[259] Further, the status of statelessness has been decided upon by the Supreme Court of the Philippines. In a round table discussion, it was found that since 1939, the Judiciary has crafted several doctrines on statelessness, such as the rule that a stateless person may not be indefinitely kept in detention on the sole account of his being stateless.[260] It has been also held "that a stateless person has the 'right to life and liberty and all other fundamental rights as applied to human beings, as proclaimed in the

256. Department of Labor and Employment, Amending Certain Provisions of Department Order No. 97-09 Entitled Revised Rules for the Issuance of Employment Permits to Foreign Nationals, Department Order No. 120-12, Series of 2012 [DOLE D.O. No. 120-12, s. 2012], § 1 (Mar. 2, 2012).

257. *See* Professional Regulation Commission, Guidelines in Implementing Section 7, Paragraphs (j), (l) and Section 16 of Republic Act No. 8981, Called the "PRC Modernization Act of 2000," and the Pertinent Provisions of the Professional Regulatory Laws, the General Agreement on Trade in Services, and other International Agreements on the Practice of Foreign Professionals in the Philippines, Resolution No. 2012-668 [PRC Res. No. 2012-668] (June 21, 2012).

258. *Id.* § 1 (f).

259. Department of Justice & UNHCR, *supra* note 71, ¶ 6 at 2 (citing *Choy King Tee*, 13 SCRA at 402).

260. Department of Justice & UNHCR, *supra* note 71, ¶ 8 at 2.

'Universal Declaration of Human Rights.'"[261] This part of the discussion explores the key precedents that have shaped the landscape of stateless person protection in the Philippines.[262]

1. *Baldello v. Baldello*[263]

Based on the Author's survey of jurisprudence, this may be the earliest case-law involving the issue of statelessness in the Philippines. Gloria Baldello, a Filipino citizen, married Gabino Ordorica, a native of Mexico, who was then serving in the United States Army in the Philippines.[264] After having been abandoned for more than 11 years, Baldello obtained a court order declaring her husband presumptively dead.[265] Thereafter, she filed a petition seeking the return of Philippine citizenship.[266]

The Court held that Baldello was a Filipino citizen and her petition for Philippine citizenship was unnecessary.[267] The general rule that a married woman follows the nationality of her husband presupposes a nationality in the husband.[268] Where no such nationality exists, the rule does not apply.[269] The Court determined that at the time of his marriage with Baldello, Ordorica was neither a Mexican nor an American citizen.[270] He was a stateless person.[271] Thus, since there was no new citizenship imposed upon Baldello by marriage, she retained her Philippine citizenship.[272]

2. *Kookooritchkin v. Solicitor General*[273]

This case affirmed the grant of Philippine citizenship by the lower court to Eremes Kookooritchkin who was a stateless White Russian.[274] The Solicitor

261. *Id.*

262. The succeeding discussion is largely inspired by the Author's participation in the Second Round Table Discussion's survey of the jurisprudence in the Philippines. *See generally* Department of Justice & UNHCR, *supra* note 71.

263. Baldello v. Baldello, 67 Phil. 277 (1939).

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.* at 278.

268. *Id.*

269. *Baldello*, 67 Phil. At 278.

270. *Id.*

271. *Id.*

272. *Id.*

273. Kookooritchkin v. Solicitor General, 81 Phil. 435 (1948).

274. *Id.* at 445.

General opposed the grant of Philippine citizenship, opining that Kookooritchkin failed to show that he has lost his Russian citizenship under the laws of Russia, and that he has failed to show that Russia grants to Filipinos the right to become a naturalized citizen thereof.[275]

In upholding the naturalization of Kookooritchkin, the Supreme Court gave credence to the testimony of Kookooritchkin who attested that he was formerly a citizen of the Empire of Russia which ceased to exist when, in 1917, the Czars were overthrown by the Bolshevists, and that he disclaims allegiance or connection with the Soviet Government established by the Bolshevists.[276] This was supported by the well-known fact that the ruthlessness of modern dictatorships scattered a large number of stateless refugees or displaced persons, without country and without flag, throughout the world.[277]

The Court added that it would be beyond comprehension to support the notion that Kookoortichkin maintained any bond of attachment to the Soviet dictatorship since he fled from Russia to permanently reside in the Philippines, established a family in the Philippines, and enjoyed the freedoms and blessings of the democratic way of life for 25 years, to the extent of refusing to claim Russian citizenship.[278] He was even captured by the Japanese and joined the fortunes and misfortunes of the guerrillas in the Philippines during the Second World War.[279]

In 1951, the subsequent case of *Bermont v. Republic of the Philippines*[280] adopted the Court's ruling in *Kookooritchkin*.[281] This case granted Philippine citizenship to another former citizen of the Imperial Russian Government. Jack Bermont who was born in Siberia was considered by the Court to be a White Russian stateless refugee who had permanently abandoned the land of his birth and adopted the Philippines as his home and identified himself with its people.[282] Bermont's alien certificate of registration describes him as a stateless Russian.[283] Since Kookooritchken was held entitled to Philippine citizenship, it would be fair to extend the same to Bermont who presented an even more convincing case for naturalization.[284]

275. *Id.* at 443.

276. *Id.* at 444.

277. *Id.*

278. *Id.* at 444-45.

279. *Kookooritchkin*, 81 Phil. At 445.

280. Bermont v. Republic of the Philippines, 89 Phil. 479 (1951).

281. *Id.* at 481-82.

282. *Id.* at 480-81.

283. *Id.* at 482.

284. *Id.* at 482-83.

3. *Mejoff v. Director of Prisons*[285]

Stateless persons have the right against detention for unreasonable periods of time. This is the doctrine enunciated in this landmark case decided in 1951. Borris Mejoff was an alien Russian who came to the Philippines as a secret operative of the Japanese forces during the Japanese occupation of the Philippines.[286] The Board of Commissioners of Immigration declared that he entered the Philippines illegally in 1944.[287] Therefore, they ordered that he be deported on the first available transportation to Russia.[288]

In 1948, Mejoff was arrested and "transferred to the Cebu Provincial Jail together with three other Russians to await the arrival of some Russian vessels."[289] In July and August 1948, two boats of Russian nationality called at the Cebu Port, but their masters refused to take him and his companions, alleging lack of authority to do so.[290] In October 1948, after repeated failures to ship him abroad, authorities moved him to the national penitentiary.[291] He filed a petition for *habeas corpus*.[292] The Court held that his detention was temporary, and that the "temporary detention is a necessary step in the process of exclusion or expulsion of undesirable aliens and that pending arrangements for his deportation, the Government has the right to hold the undesirable alien under confinement for a reasonable length of time."[293]

Some two years passed since the decision on his petition for *habeas corpus*.[294] Still being held under detention, Mejoff filed another petition for *habeas corpus*, arguing that "the Government has not found ways and means of removing [him] out of the country, and none are in sight."[295] The Court ordered Mejoff's release and placed him under the surveillance of immigration authorities to ensure that he was available for deportation.[296] Although "[a]liens illegally staying in the Philippines have no right of asylum therein ..., even if they are 'stateless,' which [Mejoff] claims to be,"[297]

285. Mejoff v. Director of Prisons, 90 Phil. 70 (1951) [hereinafter *Mejoff, 1951*].

286. *Id.* at 71.

287. *Id.*

288. *Id.*

289. *Id.* at 72

290. *Id.*

291. *Mejoff, 1951*, 90 Phil. at 72.

292. *See* Mejoff v. Director of Prisons, 84 Phil. 218 (1949).

293. *Mejoff, 1951*, 90 Phil. at 72.

294. *Id.* at 73.

295. *Id.*

296. *Id.* at 78.

297. *Id.* at 73.

"foreign nationals, not enemy, against whom no charge has been made other than that their permission to stay has expired, may not indefinitely be kept in detention."[298] He has the right to life and liberty and all other fundamental rights as applied to human beings as proclaimed in the UDHR.[299]

On the strength of the *Mejoff* doctrine, several other stateless persons were likewise subsequently released from indefinite detention. The Court followed the *Mejoff* doctrine in *Borovsky v. Commissioner of Immigration*,[300] *Chirskoff v. Commissioner of Immigration*,[301] and *Andreu v. Commissioner of Immigration*.[302]

4. *Moy Ya Lim Yao v. Commissioner of Immigration*[303]

The main issue in this case involved the proper construction of the phrase "who might herself be lawfully naturalized" in Section 15 of Commonwealth Act No. 473.[304] According to the Supreme Court, an alien female spouse of a Filipino citizen needs only to show that she does not fall within any of the enumerated disqualifications in the law in order to be qualified for naturalization.[305] It would be unreasonable to require an alien wife to prove that she possesses the qualifications prescribed under the law when it could result in a status of statelessness.[306]

For example, "[o]ne of the qualifications required of an applicant for naturalization under Section 2 of [Commonwealth Act No. 473] is that the applicant 'must have resided in the Philippines for a continuous period of not less than [10] years.'"[307] The Court stated that "[i]f this requirement were applied to an alien wife married to a Filipino citizen, this means that for a period of [10] years at least, she cannot hope to acquire the citizenship of her husband,"[308] and if she happens to be "a citizen of a country whose law declares that upon her marriage to a foreigner she automatically loses her

298. *Id.*

299. *Mejoff, 1951*, 90 Phil. at 90 Phil. at 73-74.

300. Borovsky v. Commissioner of Immigration, 90 Phil. 107 (1951).

301. Chirskoff v. Commissioner of Immigration, 90 Phil. 256 (1951).

302. Andreu v. Commissioner of Immigration, 90 Phil. 347 (1951).

303. Moy Ya Lim Yao v. Commissioner of Immigration, 41 SCRA 292 (1971).

304. An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization, and to Repeal Acts Numbered Twenty-Nine Hundred and Twenty-Seven and Thirty-Four Hundred and Forty-Eight [Revised Naturalization Law, Commonwealth Act No. 473, § 15 (1939).

305. *Moy Ya Lim Yao*, 90 Phil. at 344.

306. *Id.* at 345.

307. *Id.* at 344-45.

308. *Id.* at 345.

citizenship and acquires the citizenship of her husband, this could mean that for a period of [10] years at least, she would be stateless."[309] Even "after having acquired continuous residence in the Philippines for [10] years, there is no guarantee that her petition for naturalization would be granted, in which case she would remain stateless for an indefinite period of time."[310]

5. *Frivaldo v. Commission on Elections*[311]

This case involved various issues relating to the qualification of Juan Gallanosa Frivaldo to run for public office. In ruling on the issue of Frivaldo's citizenship, the Court ruled that Frivaldo was stateless for the period prior to his reacquisition of Philippine citizenship.[312]

During the Marcos regime, Frivaldo left the Philippines.[313] He claimed to have gone to the U.S. to escape political persecution.[314] He stated that he was coerced into becoming an American citizen due to those circumstances.[315] Upon returning to the Philippines, he sought an elective public office.[316] In order to run for public office, he assumed that the oath in his certificate of candidacy was sufficient to divest him of American citizenship and restore his Philippine citizenship.[317] The Court ruled that he did not automatically reacquire his original Philippine citizenship by virtue of the oath alone.[318] If Frivaldo wanted to reacquire Philippine citizenship, he should have properly done so in accordance with the laws of the Philippines.[319] His active participation in the elections in the Philippines forfeited his American citizenship under the laws of the U.S.[320] While such did not concern the issue before the Court, and the alleged forfeiture "was between him and the [U.S.] as his adopted country,"[321] "even if he did lose his naturalized American citizenship, such forfeiture did not and could not

309. *Id.*

310. *Id.* at 345.

311. Frivaldo v. Commission on Elections, 17 SCRA 245 (1989) [hereinafter *Frivaldo, 1989*]. *See also* Frivaldo v. Commission on Elections, 257 SCRA 727 (1996).

312. *Frivaldo, 1989*, 17 SCRA at 254.

313. *Id.* at 248.

314. *Id.*

315. *Id.*

316. *Id.*

317. *Id.* at 250.

318. *Frivaldo, 1989*, 17 SCRA at 254.

319. *Id.*

320. *Id.*

321. *Id.*

have the effect of automatically restoring his citizenship in the Philippines that he had earlier renounced."[322] Therefore, the result of the loss of his naturalized citizenship was that he momentarily became a stateless person.[323]

6. Other Cases

In addition to the jurisprudence cited above, some justices of the Supreme Court have also touched upon issue of statelessness in their separate and dissenting opinions. Justice Hugo Gutierrez, Jr.'s dissenting opinion in *Yu v. Defensor-Santiago*[324] disagreed with a so-called "summary procedure" which divested a Filipino of his citizenship. As Justice Gutierrez states —

> Judging from the records available to us, it appears that Mr. Willie Yu is far from being the desirable kind of Filipino we would encourage to stay with us. But precisely for this reason, I believe that a petition for denaturalization should have been filed and prosecuted in the proper trial court instead of the shortcut methods we are sustaining in the majority opinion. I must emphasize that the Bill of Rights, its due process clause, and other restrictions on the untrammeled exercise of government power find their fullest expression when invoked by non-conforming, rebellious, or undesirable characters.
>
> Considering the serious implications of de-Filipinization, the correct procedures according to law must be applied. If Mr. Yu is no longer a Filipino, by all means this Court should not stand in the way of the respondent Commissioner's efforts to deport him. But where a person pleads with all his might that he has never formally renounced his citizenship and that he might die if throw [sic] out of the country, he deserves at the very least a full trial where the reason behind his actions may be explored and all the facts fully ascertained. The determination that a person (not necessarily Mr. Yu) has ceased to be a Filipino is so momentous and far-reaching that it should not be left to summary proceedings.
>
> I find it a dangerous precedent if administrative official on such *informal evidence* as that presented in this case are allowed to rule that a Filipino has 'renounced' his citizenship and has, therefore, become stateless or a citizen of another country (assuming that other country does not reject him because he formally renounced citizenship therein when he became a Filipino) and to immediately throw him out of the Philippines.[325]

In *Tecson v. Commission on Elections*,[326] Justice Antonio T. Carpio's dissent contradistinguished the situation of the stateless persons of Vietnamese descent who arrived in the Philippines in the 1970s in the wake

322. *Id.*

323. *Id.*

324. Yu v. Defensor-Santiago, 169 SCRA 364 (1989).

325. *Id.* at 373.

326. Tecson v. Commission on Elections, 424 SCRA 277 (2004).

of the Indochinese crisis to that of the late Fernando Poe, Jr., whose nature of citizenship was then being questioned in light of the requirement in the Philippine Constitution that only natural-born Filipinos are eligible to run for the office of the President of the Philippines.[327] While the dissent in *Tecson* did not squarely ponder on the nature of statelessness vis-à-vis Philippine law, it was reflective of judicial reasoning with regard to the Philippine experience with stateless persons and the slowly growing recognition of statelessness as an issue in the body of law of the Philippines. As Justice Carpio states —

> The case of the illegitimate Vietnamese children, born in Vietnam of Vietnamese mothers and allegedly of Filipino fathers, is illustrative. These children grew up in Vietnam, many of them studying there until high school. These children grew up knowing they were Vietnamese citizens. In 1975, a Philippine Navy vessel brought them, together with their Vietnamese mothers, to the Philippines as Saigon fell to the communists. The mothers of these children became stateless when the Republic of (South) Vietnam ceased to exist in 1975. The Department of Justice rendered Opinion No. 49 dated 3 May 1995 that being children of Filipino fathers, these Vietnamese children, even if illegitimate, are Philippine citizens under Section 1(3), Article IV of the 1935 Constitution and Section 1(2), Article III of the 1973 Constitution. This Opinion is cited by FPJ as basis for his claim of being a natural-born Philippine citizen. However, this Opinion categorically stated that before the illegitimate Vietnamese children may be considered Filipino citizens *'it is necessary in every case referred to that such paternity be established by sufficient and convincing documentary evidence.'*
>
> In short, the illegitimate child must prove to the proper administrative or judicial authority the paternity of the alleged Filipino father by 'sufficient and convincing documentary evidence.' Clearly, an administrative or judicial act is necessary to confer on the illegitimate Vietnamese children Philippine citizenship. The mere claim of the illegitimate child of filiation to a Filipino father, or the mere acknowledgment of the alleged Filipino father, does not automatically confer Philippine citizenship on the child.
>
> ...
>
> The Philippines signed the Convention on the Rights of the Child on 26 January 1990 and ratified the same on 21 August 1990. The Convention defines a child to mean 'every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.' Obviously, FPJ cannot invoke the Convention since he is not a child as defined in the Convention, and he was born half a century before the Convention came into existence. FPJ's citizenship at birth in 1939 could not in any way be affected by the Convention which entered into force only on 2 September 1990.

327. *Id.* at 421-22.

...

> In any event, the Convention guarantees a child 'the right to acquire a nationality,' and requires States Parties to 'ensure the implementation' of this right, 'in particular where the child would otherwise be stateless.' *Thus, as far as nationality or citizenship is concerned, the Convention guarantees the right of the child to acquire a nationality so that he may not be stateless.* The Convention does not guarantee a child a citizenship at birth, but merely 'the right to acquire a nationality' in accordance with municipal law. When FPJ was born in 1939, he was apparently under United States law an American citizen at birth. After his birth FPJ also had the right to acquire Philippine citizenship by proving his filiation to his alleged Filipino father in accordance with Philippine law. At no point in time was FPJ in danger of being stateless. Clearly, FPJ cannot invoke the Convention to claim he is a natural-born Philippine citizen.[328]

In procedural law and conflict of laws, *Koh v. Court of Appeals*[329] clarified that the rule governing venue of actions accommodates the situation of stateless persons. The "situs for bringing real and personal civil actions are fixed by the rules to attain the greatest convenience possible to the parties litigants by taking into consideration the maximum accessibility to them of the courts of justice."[330] Likewise, "*domicile* is not exactly synonymous in legal contemplation with the term *residence*,"[331] for the former refers to the relatively permanent abode of a person while the latter relates to a temporary stay of a person in a given place.[332] In cases involving stateless persons, the Domiciliary Theory supplants the Nationality Theory.[333] This doctrine was reiterated in subsequent cases, such as *Dangwa Transportation Co., Inc. v. Sarmiento*.[334]

V. CONCLUSION

Stateless persons are persons who are not considered as nationals by any state under the operation of its laws. The status of statelessness renders individuals vulnerable to protection or human rights risks. Aside from the lack of access to many rights, privileges and benefits owing to the presence of nationality are not generally experienced by stateless persons. Diplomatic and consular protection is an issue. Similar to refugees, stateless persons also often lack national or state protection.

328. *Id.* at 421–27.

329. Koh v. Court of Appeals, 70 SCRA 298 (1976).

330. *Id.* at 304.

331. *Id.* at 304–05.

332. *Id.* at 305.

333. *Id.*

334. Dangwa Transportation Co., Inc. v. Sarmiento, 75 SCRA 124, 127–28 (1977).

Recognizing this, the international community endeavoured to create an international regime of protection for the stateless. This included the creation of treaty instruments for their protection. Although the Convention on the Rights of the Child is almost universally ratified, in Southeast Asia, the Philippines is the first and only state party to a statelessness convention. It is also the only one with a dedicated procedure for the determination of stateless status.

Clearly, the Philippines is not alien to the experience of statelessness. In addition to having stateless persons in its shores, the humanitarian traditions of the Philippines have impelled it to become a haven for them throughout the years. The Philippine Immigration Act was visionary in providing legal authority for the entry of stateless migrants into the Philippines. Subsequent laws, administrative issuances, and state practice have continued to carry on the humanitarian spirit of the act.

While Philippine law has yet to completely elaborate on nationality as a right, it has contributed to the rubric of protection for the stateless by instituting laws and administrative issuances that are relatively favorable to stateless persons. The Supreme Court has also generally adopted a positive approach toward the plight of the stateless, including generating a body of jurisprudence that considers the differential impact of the lack of nationality on women and children.

However, there are still issues that need to be addressed, such as the reduction of statelessness in the country and the continued alignment of Philippine law with international standards that provide for the exercise of rights by the stateless. As U.N. Secretary General Ban Ki-Moon said in his note on statelessness: "The cycle of statelessness and marginalization is difficult to break. Statelessness has a detrimental impact not only on individuals concerned but also on societies more generally, in particular, because excluding entire sectors of a population can create social and political tensions and significantly impair efforts to promote economic and social development."[335]

335. U.N. Secretary General, Guidance Note of the Secretary General — The United Nations and Statelessness (A Guidance Note on Addressing Statelessness) 2, *available at* http://www.unrol.org/files/FINAL%20Guidance%20Note%20of%20the%20Secretary-General%20on%20the%20United%20Nations%20and%20Statelessness.pdf (last accessed June 30, 2013).