

ESTABLISHING A BINDING AND OBLIGATORY FRAMEWORK FOR THE PROTECTION OF ASYLUM SEEKERS AND REFUGEES IN ACCORDANCE WITH THE STATE'S INTERNATIONAL LAW OBLIGATIONS

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ABSTRACT

Globalization, as well as the advancements and evils that come with it, has blurred the world's borders. While some States flourish, the world remains beset by human rights violations against its population, especially against asylum seekers and refugees. While every refugee is initially an asylum seeker, not every asylum seeker will ultimately be a recognized refugee. Regardless of the classification, they were forced to flee their home countries due to persecution and threats to their lives and liberties. The migration triggers may be unforeseen, such as the rapid spread of a deadly disease or other natural calamity. Some may be a result of years of injustice, such as upheaval and violent war.

As they seek asylum elsewhere, the enjoyment of their rights and freedoms is not always guaranteed. Shackles of discrimination leave them deprived of such universal privileges. As aliens in the host State, they are either turned away or are physically admitted though left in a legal limbo. This is the prevalent reality for most of them today, despite the States' obligation to provide international protection. And while some States are open to them, the protection provided is insufficient. This is the case for the Philippines. The Philippine legal framework reveals its willingness to comply in good faith with its pertinent obligations. However, the framework is plagued with a gap mainly arising from the absence of an updated comprehensive law. This is worsened by the inadequate and outdated non-legislative and statutory provisions. To bridge the gap, legislative reform shall be proposed. It shall be a codification of asylum seekers and refugees' rights on the one hand, and the State and its organs' obligations on the other.

It is only by clearly laying down such rights and obligations that they are liberated from discriminatory barriers to their progress. Aid and services are made accessible and local integration is facilitated. It is only through such liberation that they, as potential Filipino citizens, are able to rise up and fearlessly thrive within their new home. That is the essence of refugee law. It has a humanitarian component on the one hand. And a positive and constructive contribution to the development of the local community on the other. Their liberation introduces valuable human resources, talents, and skills to the society. In turn, the competitiveness of the local community is enhanced. Their success is the also the Filipino community's success.

OUTLINE

I. INTRODUCTION

This chapter provides three main points. First, the technical definitions of the terms “asylum seeker” and “refugee,” and a snapshot of their circumstances. Second, the basic foundations of asylum seeker and refugee protection – international law and constitutional law. Finally, the legal issue and the significance of the study, upon which the entire paper will revolve around.

II. DOMESTIC LEGAL FRAMEWORK

This chapter is divided into two parts. First, pertinent legislative measures and recent jurisprudence. Second, the recent and governing non-legislative measures in relation to the Refugee Convention and the legislative measures. This chapter serves as the guide in firming up the discussion of the legal issue and the proponent’s arguments.

III. SELECTED MODEL OF BEST PRACTICES: CANADIAN REFUGEE SYSTEM

To strengthen the proponent’s recommendation, the highlights of the selected model legal framework is discussed. The chapter also contains the rationale and the points for selecting the Canadian Refugee System.

IV. OVERVIEW AND FOUNDATION OF THE STATE’S OBLIGATIONS

This chapter provides a discussion on the Philippines’ State obligations in relation to asylum seekers and refugees. The legal bases and the impetus for such obligations and the fulfilment of the same are also presented.

V. FINAL LEGAL ANALYSIS AND CONCLUSION

This chapter presents the analysis and the main arguments given the discussions in the previous chapters. The manifestations of the gap in the legal framework are also substantiated.

VI. RECOMMENDATION

This chapter contains a three-part recommendation. First, the legal bases in advocating for the proposal. Second, the philosophy of the State commitment to its obligations, which also justifies the need for the proposal. Finally, the salient provisions of the proposed bill inspired by the Canadian Refugee System and the strong areas of the Philippine legal framework.

I. INTRODUCTION

A. Persons of Concern: Asylum Seekers and Refugees

According to the United Nations High Commissioner for Refugees (“UNHCR”), refugees and asylum seekers are part of the vulnerable group known as Persons of Concern.² Refugees are those who are “unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”³ On the other hand, asylum seekers are those who are seeking asylum, “but whose claim has not yet been finally decided.”⁴ Their migration is triggered by various reasons – discrimination, war and violence, health crises, calamities, and the like. As they migrate to seek sanctuary in other States, they are left in a legal limbo. They are placed in an inferior position where their protection is not at all times guaranteed by the receiving State. This is especially the case where no law in the host State’s legal framework protects their rights and provides standards of treatment.

Under human rights law, the absence of a law does not justify deviation from the State’s obligation to protect them. Neither does it justify unlawful discrimination of asylum seekers and refugees. It is this kind of discrimination that leads to the deprivation of rights and liberties. It is likewise the oppressive tool utilized by States to side-step the duty to protect these vulnerable groups.

B. The Cornerstone of the Philippines’ State Obligations

Advocating for asylum seekers and refugees’ rights is premised on both domestic law and international law. Under domestic law, they are covered by the

² Josefina San Juan-Torres, *Statelessness in Southeast Asia: Traversing the Tricky Tightrope of Protection* (unpublished report presented during the Asia Pacific Chapter Conference of the International Association of Refugee and Migration Judges (IARMJ) held in Wellington, New Zealand, November 14-16, 2018) (on file with Author & the Philippine Judicial Academy) (citing the UNHCR Philippines Statelessness Briefer published Oct. 19, 2018).

³ 1951 Convention Relating to the Status of Refugees, art. 1, *acceded* Jul. 22, 1981, 189 U.N.T.S. 137 [hereinafter 1951 Convention].

⁴ United Nations High Commissioner for Refugees, Glossary 288, *available at* <https://www.unhcr.org/50a4c2789.pdf> (last accessed June 20, 2019).

protective mantle of the Constitution. *Fr. Joaquin Bernas, SJ* noted the following jurisprudential affirmation: “The guaranties of the Fourteenth Amendment and so of the first paragraph of the Philippine Bill of Rights, are universal in their application to all persons within the territorial jurisdiction, without regard to differences of race, color, or nationality.”⁵ The Constitution also serves as the legal basis in the recently enacted Inter-Agency Agreement on the Protection of Persons of Concern. It emphasizes the State duty to enable asylum seekers and refugees to “thrive and live without fear of persecution.”⁶ This proves that liberty and prosperity are at the heart of refugee law.

Necessarily related to constitutional law is international law, of which treaties and principles form part. “Constitutional law practice in the Philippines recognizes that treaties ‘when concluded create rights and obligations and thus become international law between the parties to the agreement and...they also become part of the domestic law of the land.’”⁷ Hence, all rights-based instruments ratified by the Philippines give rise to different obligations.

The Philippines, by virtue of its membership in the United Nations (“UN”), accepted the mandate in the UN Charter.⁸ The State remains faithful to its pledge by acceding to, among others, the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”). It is the central instrument for refugee protection. An expert gives the following overview of the Refugee Convention:

The Refugee Convention is one of the cornerstones of the larger human rights system for protecting vulnerable persons and yet it is also a very narrow instrument, protecting a very specific group of persons. This duality is reflected in refugee protection generally where, on the one hand, states appear to believe in a moral, humanitarian imperative to protect individuals seeking refuge, yet, on the other hand, they are reluctant to permit entry to all those persons falling under their responsibility. When we consider the contemporary definition of

⁵ JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 106 (2009 ed.)

⁶ Inter-Agency Steering Committee for the Protection of Persons of Concern, *Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines* § 6 (2017).

⁷ Sedfrey M. Candelaria, *The Practice of Refugee Law in the Philippines*, 70 *PHIL. L.J.* 187, 188 (1995) (citing Joaquin G. Bernas, S.J., *FOREIGN RELATIONS IN CONSTITUTIONAL LAW* 109 (1995)).

⁸ U.N. CHARTER, art. 4, ¶ 1.

refugee, and how customary international law may supplement the definition of refugee, we see this same division of interests.⁹

Given the narrow nature of the Refugee Convention, other international principles all the more attain significance. They give rise to more obligations beyond those set forth in the Convention. They mandate States to provide complementary protection.

C. Asylum Seekers and Refugees' Right to International Protection

International protection of human rights broadly involves the State duty “to protect, to respect and to fulfil human rights.”¹⁰ The duty to respect means to “refrain from interfering with or curtailing the enjoyment of human rights.”¹¹ To protect means “protect individuals and groups against human rights abuses.”¹² And to fulfil means to “take positive action to facilitate the enjoyment of basic human rights.”¹³ These duties are a corollary of being a party to the International Bill of Human Rights, i.e. the UDHR, the ICCPR and the ICESCR. In consideration of the said international agreements, the Philippines ratified the Refugee Convention and its 1967 Protocol. Since the Convention expressly refers to refugees, there exists a bigger problem when asylum seekers' claims are denied.¹⁴ In that case, voluntary repatriation seems to be a inviable option, while involuntary repatriation may constitute *refoulement*.¹⁵ As such, international human rights law and the principle of complementary protection serve as the anchors for their protection.

To lay the predicate regarding concept of protection of the rights of asylum seekers and refugees, the following must be highlighted:

⁹ William Thomas Worster, *The Evolving Definition of the Refugee In Contemporary International Law*, 30 BERKELEY J. INT'L L. 94, 94 (2012).

¹⁰ United Nations Human Rights Office of the High Commissioner, International Human Rights Law *available at* <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (last accessed June 20, 2019).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Mary GERALYN N. FLORES & CORAZON B. GAITE, *Indo-Chinese Refugees in the Philippines: The Issue of Non-Voluntary Repatriation*, 7 WORLD BULL. 1, 6 (1991).

¹⁵ Flores & Gaite, *supra* note 14, at 7-8.

The need for international protection is predicated on the breakdown of national protection – a lack of basic guarantees which States normally extend to their citizens... accordingly, international protection provides a substitute for national protection, which lasts until the refugee is able to benefit again from national protection, either in the country of origin or by assuming a new nationality.¹⁶

In this light, the UNHCR reiterates the State's mandate to ensure the compatibility between its legal framework and treaty obligations.¹⁷ Ad hoc mechanisms inadequately guarantee international protection of asylum seekers and refugees. This is so as they fail to provide for the collective set of their rights, among other things. The same is especially problematic for asylum seekers. Their rights are often violated in instances when there is refusal to apply the Refugee Convention provisions for their benefit. Thus, it is recommended in the Final Act of the Conference of Plenipotentiaries which adopted the Refugee Convention that:

The Conference expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.¹⁸

D. Legal Issue and Significance of the Study

The legal issue sought to be addressed is best summarized in one question: Is there a gap in the Philippine legal framework arising from the absence of a law enacted for asylum seekers and refugees? This thesis aims to prove that the answer is in the affirmative. To accomplish such task, the existing legal framework will be thoroughly examined. The existence of a gap shall then be substantiated by providing an analysis of its manifestations. The end in view in pursuit of innovative legislative reform is to propose a basic yet comprehensive

¹⁶ JANE MCADAM, COMPLEMENTARY PROTECTION IN INTERNATIONAL REFUGEE LAW 20 (2007).

¹⁷ MCADAM, *supra* note 16, at 29.

¹⁸ UNHCR: The UN Refugee Agency, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Reissued, Geneva, February 2019, HCR/1P/4/ENG/REV.4) at 16, *available at* <https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html> (last accessed Aug. 8, 2019).

law. A basic law addressing basic needs must first be crafted to enable the State to effectively address more complex vulnerabilities.

Despite the absence of a law, the Philippines has developed and evolved various protection mechanisms. However, these merely consist of outdated laws and a series of non-legislative issuances and agreements. Although influenced by the shift in the policy framework towards the liberal application of human rights principles, a gap remains. It stems from the formal and substantive inadequacies of its mentioned components. The formal inadequacies are rooted from the lack of structural permanence of the non-legislative measures which provide mere ad hoc solutions. Whereas the substantive inadequacies arise from the various provisions that are in conflict with the Refugee Convention and other pertinent instruments and laws.

Given the absence of a law and the mentioned inadequacies, their rights and freedoms are not clearly laid down. This fact results in ambiguity and deprivation thereof, which holds back their advancement in society. As a result, their chances of thriving in the Philippines are minimal to null. Valuable skills, talent and potential human resources are put to waste. Hence, the necessity for this study and the recommended law.

II. THE DOMESTIC LEGAL FRAMEWORK

A. Legislation

The Refugee Convention, as a binding treaty, has the force and effect of a law in the Philippines.¹⁹ As such, its provisions must be complied with in good faith, as espoused by the principle of *pacta sunt servanda*. The said principle is a generally accepted principle of international law which the Constitution deems part of the law of the land.²⁰ Despite the binding effect of the Refugee Convention, good faith compliance is difficult to sustain sans a counterpart domestic law. The need for the latter is premised on the need to localize its provisions and better incorporate the same in this jurisdiction.

¹⁹ *Air Canada v. Commissioner of Internal Revenue*, 778 SCRA 132, 159 (2016).

²⁰ *Air Canada*, 778 SCRA at 157.

One of the notable provisions in the Refugee Convention is the article on *non-refoulement*. It is the “prohibition of expulsion or return of a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”²¹ It is a customary international law principle which makes it binding even to non-State-Parties to the Convention.²² Thus, the Philippines’ compliance with this principle is mandatory and imperative.

As to legislation, a handful of old statutes contain provisions recognizing their rights. These are the Philippine Immigration Act, the Family Code, and the Philippine Passport Act. The most archaic one is the Immigration Act, which antedates the Refugee Convention. Section 47(b) of the Act provides: “the President is authorized... for humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe.”²³ Under this section, refugee status determination is delegated by the Chief Executive to the Justice Secretary.²⁴ “Special non-immigrant” admission status will be accorded if the applicant qualifies as a refugee for humanitarian considerations.²⁵ To be granted the status, he or she must show circumstances warranting admission due to humanitarian considerations. There must likewise be proof of economic capacity throughout the applicant’s stay in the Philippines.²⁶ Despite the recognition of refugees’ presence in the Philippines, the Immigration Act only pertains to their admission. Nothing in the law lays down their rights, especially prior to the official declaration of their refugee status. Moreover, as it antedates the Refugee Convention, the sole provision does not take into account the former’s provisions.

The Family Code was enacted post-accession to the Refugee Convention. Under Article 21(2) thereof, refugees may submit affidavits in lieu of a certificate, to prove their capacity to contract marriage.²⁷ Though helpful, this sole provision

²¹ 1951 Convention, *supra* note 3, at art. 33.

²² SAM BLAY, 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY 150 (Andreas Zimmermann ed., 2010).

²³ An Act to Control and Regulate the Immigration of Aliens into the Philippines [The Philippine Immigration Act of 1940], Commonwealth Act No. 613, § 47 (1940).

²⁴ Candelaria, *supra* note 7, at 198.

²⁵ *Id.*

²⁶ Candelaria, *supra* note 7, at 200.

²⁷ The Family Code of the Philippines [THE FAMILY CODE], Executive Order No. 209, art. 21(2) (1987).

is unable to address other refugee problems more urgent than contracting marriage. It does not even provide that certain rights under the Family Code may apply to them.

Lastly, the Philippine Passport Act contains a provision that recognizes a Refugee Convention right. Section 13(e) of the said Act grants travel documents, in lieu of a passport, to any refugee granted either permanent residency or asylum in the Philippines.²⁸ However, the benefits are granted only to those who have attained refugee or permanent residency status. Asylum seekers or refugees with pending claims are not expressly covered. This creates a problematic loophole especially when an urgent need for such documents arises.

While the provisions favor refugees, they presuppose that they are not deprived of other fundamental rights. It is apparent that many other Convention rights have not been domestically codified. Despite the presence of the Convention itself, its broad provisions lead to ambiguity in its application. And although the Supreme Court is tasked to interpret the Convention provisions, refugees are often in dire situations. More often than not, they do not have the time and resources to await judicial pronouncements affirming and upholding their rights.

B. Jurisprudence

As of writing, the Supreme Court has resolved only one refugee case since the Refugee Convention was ratified in the 1980's. The 2015 landmark case is entitled *Republic v. Karman F. Karbasi*. He was forced to flee Iran due to the country's war against Iraq. The hostile government confiscated his passport, barring him from traveling outside the country except by camel. He sought refuge in Pakistan for a couple of years although he was not immediately granted refugee status by the UNHCR. Upon arrival in Manila and upon submission to the UN, he was admitted as a refugee. Given such status, he was granted allowances, medical benefits, and protection by the UNHCR. This assistance enabled him to graduate from college and eventually support his family by engaging in business. Upon applying for citizenship, the Solicitor General opposed the application. The latter had reservations as to his tendency to become a public charge. The premise was his alleged failure to prove "a lucrative income

²⁸ Philippine Passport Act of 1996 [PHILIPPINE PASSPORT ACT], Republic Act No. 8239, § 13(e) (1996).

and an irreproachable character.”²⁹ The Court of Appeals held otherwise. Instead, it tagged him as a self-made entrepreneur who “overcame this adversity through his education and skills.”³⁰ These, according to the Court, “shows that he is a potential asset of the country.”³¹

The Supreme Court held that Karbasi successfully established his refugee status and duly attained Filipino citizenship. Hence, the country is bound to comply with its obligations under the relevant international commitments, specifically those under Refugee Convention. The Court highlighted that “the Naturalization Law must be read in light of the developments in international human rights law specifically the granting of nationality to refugees and stateless persons.”³²

C. Non-Legislative Protection Mechanisms

Over the last decade, the Philippines has taken progressive steps to protect to asylum seekers and refugees. The UNHCR reported that the Philippines has cooperated with it in an effort to actively address issues of Persons of Concern.³³ However, the undertaken measures are non-legislative in nature, which consist of executive issuances and agreements.

DOJ Department Circular No. 058-12: Refugee Status Determination

The Status Determination Procedure involves a process “to determine the eligibility of protection for stateless persons”³⁴ in line with the Refugee Convention.³⁵ It is conducted by the Refugee and Stateless Persons Protection Unit (RSPPU), a body formed primarily to confer refugee status to qualified asylum seekers.³⁶

²⁹ Republic of the Philippines v. Karbasi, 764 SCRA 353, 6 (2015).

³⁰ *Karbasi*, 764 SCRA at 12.

³¹ *Id.*

³² *Karbasi*, 764 SCRA at 14.

³³ San Juan-Torres, *supra* note 2, at 18.

³⁴ Department of Justice, Establishing the Refugee and Stateless Status Determination Procedure, DOJ Department Order No. 058-12, whereas cl. (Oct. 18, 2012).

³⁵ *Id.*

³⁶ Fr. Bernard Hyacinth Arputhasamy, SJ, The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines, 35, *available at* <https://www.refworld.org/pdfid/506bfb622.pdf> (last accessed Jul. 9, 2019).

In conducting the necessary proceedings, the Circular provides the governing Basic Principles. These involve the promotion and protection of family unity; non-deprivation of refugee or stateless status and non-discrimination; general prohibition on the expulsion and repatriation; and the accommodation of the dependents of applicants who have illegally entered or are illegally present in the Philippines.³⁷ In 2016, to further the progress pursuant to the DOJ Circular No. 058-2012, DOJ Dept. Order No. 324 reconstituted the composition of the RSPPU with Protection Orders.³⁸

Public Attorney’s Office (PAO)-UNHCR Partnership

Through this partnership, the PAO and the UNHCR are able to provide free quality legal assistance to asylum seekers and refugees. The legal aid covers over 5,000 judicial and non-judicial services. PAO provides the human resources, while the UNHCR facilitates capacity-building activities and provides technical assistance. This partnership enables the Philippines to uphold “the legal standard of free access to courts.”³⁹

The Inter-Agency Steering Committee (IASC)

“Cognizant that there remains a wide gap in terms of providing material assistance and social services to asylum-seekers, refugees and stateless persons who are mostly in urban areas, an Inter-Agency Steering Committee has been organized among key governmental agencies to address practical gaps and institutionalize policy recommendations.”⁴⁰ Its creation serves as a response to the consequential hurdles of providing material assistance and social services.⁴¹

³⁷ DOJ Dept. Circular No. 058-12, whereas cl.

³⁸ Maria Josefina G. San Juan-Torres/Philippine Judicial Academy, To the Frontiers and Beyond: Assessing the Refugee Crisis and Large-Scale Human Migration within the ASEAN Context (published in the PHILJA Bulletin, Vol. XX, Issue No. 79, July – September 2018) 3 (on file with Author and the Philippine Judicial Academy).

³⁹ *Id.*

⁴⁰ United Nations High Commissioner for Refugees, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session - Philippines, September 2016 at 2, *available at* <https://www.refworld.org/docid/591984589.html> (last accessed Aug. 10, 2019).

⁴¹ Allan Mackey & Maya Bozovik, Asian Perspectives and Realities in Asylum Protection and Associated Human Rights: Can the International Association of Refugee Law Judges (IARLJ) assist?, 53, *available at* https://www.iarmj.org/images/_region-apc/docs/asian_perspectives_and_realities_in_asylum_protection_and_associated_human_rights.pdf (last accessed Jul. 11, 2019).

In this light, it is tasked “to address practical gaps and institutionalise key policy recommendations.”⁴²

These tasks are to be carried out by the following member-agencies: Bureau of Immigration; Commission on Higher Education; Department of Education; Department of Foreign Affairs; Department of Health; Department of the Interior and Local Government; Refugees and Stateless Persons Protection Unit; Department of Labor and Employment; Department of Social Welfare and Development; Department of Trade and Industry; Judiciary; Public Attorney’s Office; Philippine Charity Sweepstakes Office; Philippine Health Insurance Corporation; Professional Regulation Commission; and Technical Education and Skills Development Authority.⁴³

The Inter-Agency Agreement

In 2017, the Inter-Agency Steering Committee perfected the Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines.⁴⁴ DOJ is the lead agency while the RSPPU is the Secretariat. The latter is tasked to coordinate all IASC activities and the implementation of the Agreement.⁴⁵ The UNHCR shall provide technical assistance regarding the implementation of the Refugee Convention and IASC’s programs.⁴⁶

The UNHCR describes the Agreement as a legal instrument institutionalizing government services given the absence of a law.⁴⁷ There is a four-fold legal basis for its issuance. These are the Refugee Convention & its 1967 Protocol, the 1954 Convention, the Philippine Immigration Act, and other pertinent DOJ issuances. It addresses each agency’s commitments with regard to the accessibility of its services to Persons of Concern.⁴⁸ Not only does it recognize the State’s obligations under the Refugee Convention as well as the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ United Nations High Commissioner for Refugees, UNHCR supports inter-agency agreement on the protection of asylum seekers, refugees, and stateless persons in the Philippines, *available at* <https://www.unhcr.org/ph/12922-inter-agency-agreement-poc-philippines.html> (last accessed Jul. 11, 2019).

⁴⁵ Inter-Agency Steering Committee for the Protection of Persons of Concern, Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, § 30 (Oct. 12, 2017).

⁴⁶ *Id.*

⁴⁷ United Nations High Commissioner for Refugees, *supra* note 44.

⁴⁸ Mackey & Bozovik, *supra* note 41, at 53.

DOJ Department Circular No. 58.⁴⁹ It more importantly acknowledges that aside from the RSPPU's role, "the task of ensuring their access to rights and services entails the support of various agencies."⁵⁰ It is likewise a work in progress, being open to other government agencies willing to be signatories.⁵¹

The protection it provides to Persons of Concern ("POC") are manifest in the form of services. The spectrum of services include: (1) Those tasked to the DOJ as the lead agency;⁵² (2) Documentation;⁵³ (3) Legal Assistance;⁵⁴ (4) Welfare Assistance and Health;⁵⁵ (5) Education/Skills Training;⁵⁶ (6) Practice of Profession, Employment and Livelihood;⁵⁷ (7) Durable Solutions;⁵⁸ (8) Local Government Support Mobilization;⁵⁹ among others. The drafters of the Agreement also made sure that its provisions are flexible enough to call upon and mandate both government and non-governmental agencies to provide additional aid.⁶⁰ The final provisions also ensure the continuous improvement of the services of each agency. These are in the form of capacity-building,⁶¹ advocacy and awareness activities,⁶² and inter-agency initiatives.⁶³ The said services are tailor-fit in light of the developments under international human rights law. Under the Agreement's Basic Principles, it reiterates the State's guarantee regarding full respect for human rights.⁶⁴ It moreover ensures that the provision of services is carried out in a "gender responsive, culture sensitive, and child-friendly manner."⁶⁵ While the Agreement provides for a breakdown of specific tasks per agency, a catch-all provision defining the office of the IASC as a whole is stipulated. The said provision states: "The Inter-Agency Steering

⁴⁹ Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, preliminary at 1.

⁵⁰ *Id.*

⁵¹ *Id.* at 2.

⁵² Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, § 7.

⁵³ *Id.* § 8-9.

⁵⁴ *Id.* § 10.

⁵⁵ *Id.* § 11-14.

⁵⁶ *Id.* § 15-17.

⁵⁷ *Id.* § 18-20.

⁵⁸ Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, §21.

⁵⁹ *Id.* § 22.

⁶⁰ *Id.* § 23.

⁶¹ *Id.* § 26.

⁶² *Id.* § 27.

⁶³ *Id.* § 28.

⁶⁴ Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, § 1.

⁶⁵ *Id.*

Committee shall ensure that POC are properly protected and assisted in the Philippines through the institutionalization of policies that would improve their access to rights and services and create a more favourable protection environment for POC's.”⁶⁶

Another vital added-value of this legal framework is the inclusion of POC's specific rights and obligations. It clarifies that they have rights not only under the Constitution but also under related social legislative policies. It also adds a non-exhaustive list of Convention rights to which said POC are entitled. These include, but are not limited to:

access to socio-economic services, social security benefits and labor standards, gainful employment, free basic formal and non-formal education, judicial and administrative citizenship procedures, courts and legal assistance, freedom of religion, freedom of movement, and documentation; and all other public services not specified, as may be provided by laws, rules and regulations.⁶⁷

As for their corresponding duties, they are required to “conform to the country's laws, regulations, and measures taken for the maintenance of public order.”⁶⁸ It can be deduced that unlike other existing laws and frameworks, the rights and obligations are not solely accorded to and expected from refugees. The provisions refer to POC which, by definition, encompass even those not yet accorded refugee status. The term may also cover those who are not rigidly within the ambit of the Refugee Convention's definition of a refugee. This framework, therefore, is a valuable breakthrough being the first of its kind, in terms of providing an all-encompassing non-discriminatory protection mechanism.

⁶⁶ *Id.*

⁶⁷ *Id.* § 6(b).

⁶⁸ *Id.*

Revised Rules for the Issuance of Employment Permits to Foreign Nationals

Through this Department Order No. 186-2017, the Philippines officially started relaxing employment policies for refugees.⁶⁹ The issuance provides for DOJ-recognized refugees' exemption from the Alien Employment Permit (AEP) requirement.⁷⁰ However, the AEP is not the exclusive authority to legally engage in gainful employment.⁷¹ If other laws and regulations require other special permits, refugees shall not be automatically exempt from such requirements. This Order was issued about the same time incumbent President voted against the UN's draft resolution of the UN General Assembly for Rohingyas.⁷²

D. Synthesis

At first glance, the discussed statutory provisions seem to contemplate refugees only. Although no law expressly mention asylum seekers, they may be impliedly referred to as applicants with pending refugee claims. Even the discussed landmark case only mentions refugees. However, the Supreme Court's increasingly liberal attitude in granting nationality to refugees favors both asylum seekers and refugees. The *Karbasi* pronouncement is a milestone in the domestic legal framework. It is revolutionary since the discussion went beyond his admission in the country by recognizing his role as a potential asset.

Regarding the non-legislative measures, they are badges of the State's good faith compliance with its obligations. Though scattered and incomplete, they are potentially good components of a law that has yet to be enacted. In crafting such law, part of innovative law reform calls for the use of a relatively successful foreign model legal framework.

⁶⁹ Samuel Medenilla, *PH relaxes job rules for refugees, stateless foreigners*, MB, Nov. 22, 2017, available at <https://news.mb.com.ph/2017/11/21/ph-relaxes-job-rules-for-refugees-stateless-foreigners/> (last accessed Jul. 14, 2019).

⁷⁰ Department of Labor and Employment, Revised Rules for the Issuance of Employment Permits to Foreign Nationals, DOLE Department Order No. 186, § 2(f) (Nov. 16, 2017).

⁷¹ DOLE Department Order No. 186, Policy Declaration.

⁷² Medenilla, *supra* note 69.

III. SELECTED MODEL OF BEST PRACTICES: CANADIAN REFUGEE SYSTEM

There are two primary reasons why Canada was chosen as the model framework for purposes of building the recommendation. First, Canada has long been linked to the Philippines as a destination country for both Filipino asylum seekers and those who transit the Philippines from other countries. Second, its refugee system features cooperation of both public and private sectors, which provides avenues to address special needs to combat intersectional human rights violations.

A. The Link Between Canada and the Philippines

As previously mentioned, the Philippines has accommodated nine waves of refugees from the 1920's until early 2000's. While the country had long accommodated asylum seekers and refugees, the Philippines was often treated only as a transit state. As such, the two groups would travel to the Philippines to have their applications processed for relocation to other destination countries willing to accept them.

Canada is known to be one of the destination countries that is willing to accept asylum seekers and refugees. The country has accommodated the Vietnamese Boat People in the 1970's and the Indo-Chinese in 1980's who passed by the Philippines. In 2017, Canada's Refugee Protection Division granted refugee status to Lowell Menorca, an expelled Iglesia ni Cristo member. He was granted the said status after the Division found that he needs protection from "a risk of cruel and unusual treatment or punishment and a risk to his life."⁷³ Two years later, it granted asylum status in 2019 to a Filipina named Vanessa Rodel, also known as the "Snowden Refugee." She was a victim of sexual violence who fled the Philippines for Hong Kong to escape the militants who trafficked her.⁷⁴ However, Hong Kong is reportedly "a wealthy city with a poor record of protecting asylum seekers."⁷⁵ It was also reported that many refugees

⁷³ Paterno Esmaguil II, *Expelled INC member gets refugee status in Canada*, RAPPLER, January 26, 2018, available at <https://www.rappler.com/nation/194600-expelled-iglesia-cristo-lowell-menorca-refugee-status-canada> (last accessed Apr. 21, 2020).

⁷⁴ Paterno Esmaguil II, *Filipina who sheltered Snowden fled PH over sexual violence*, RAPPLER, March 26, 2018, available at <https://www.rappler.com/nation/226653-vanessa-rodel-sheltered-snowden-fled-philippines-sexual-violence> (last accessed Apr. 20, 2020).

⁷⁵ *Id.*

in Hong Kong are “forced to live in slum-like conditions.”⁷⁶ Hence, she sought asylum in Canada. While in Hong Kong, her Canadian lawyer asked her to house Edward Snowden, “a former CIA employee and US National Security Agency contractor.”⁷⁷ He is a whistleblower being pursued by the US government after he leaked highly classified documents that “revealed the existence of global surveillance programs run by the NSA in coordination with partners Australia, Britain, and Canada.”⁷⁸

B. Overview of the Canadian Refugee System

Three features are worth highlighting in the Canadian Refugee System. First, the cohesive efforts of the public and private sectors in admitting asylum seekers and refugees. Second, the follow-through mechanism which provides access to post-admission assistance and integration. Finally, a more nuanced approach on refugee protection, by including among others the protection of LGBTQ2 refugees.

As to the first feature, Canada provides for multiple permutations of refugee classes under the Refugee and Humanitarian Resettlement Program. In the first class (Convention Refugees Abroad Class), “a person must also be selected as either a government-assisted or privately sponsored refugee,⁷⁹ or have the funds needed to support him/herself and any dependents after arrival in Canada.”⁸⁰ The members of this class are also called government-assisted refugees who are covered by the Government-Assisted Refugees (GAR) Program. They may also be qualified and covered by the Urgent Protection Program (UPP) established for those that “face threats of being returned home, of expulsion, or of facing direct threats to their lives.”⁸¹ Whereas in the second class (Country of Asylum Class), it is “not eligible for government-funded resettlement; they must be either privately sponsored or demonstrate that they have the funds needed to

⁷⁶ Paterno Esmacuel II, *Fugitive Snowden hid among Hong Kong refugees – report* (citing *Agence France-Presse*), RAPPLER, September 7, 2016, available at <https://www.rappler.com/world/regions/asia-pacific/145527-fugitive-snowden-hid-among-hong-kong-refugees-report> (last accessed Apr. 20, 2020).

⁷⁷ Esmacuel, *supra* note 74.

⁷⁸ *Id.*

⁷⁹ Library of Congress, Refugee Law and Policy: Canada (Information under Refugee and Humanitarian Resettlement Program of Canada), available at <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019).

⁸⁰ *Id.*

⁸¹ Library of Congress, Refugee Law and Policy: Canada (Information under Urgent Protection Program), available at <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019).

support themselves and any dependents after they have arrived in Canada.”⁸² “They can also qualify for Joint Assistance Sponsorship (JAS) under the definition of ‘special needs’.”⁸³

Private sponsorships are additionally available for refugees who meet the admissibility and eligibility requirements under the Canadian Law. According to the CIC, “[t]he Government of Canada encourages involvement of the Canadian public in the resettlement from abroad of Convention refugees and members of the Humanitarian Protected Persons Abroad Class.”⁸⁴ Aside from the aforementioned JAS, the Blended Visa Office-Referred Refugees (BVORs) Program was also introduced to match UNHCR-identified refugees with private sponsor organizations.⁸⁵ There are also other programs through which refugees can file claims for them to be admitted and protected. Through these other programs, refugee claims are processed by various bodies consisting of both public and private sectors. While the criteria for eligibility and admissibility vary depending on the screening body (e.g. Canadian Government, UNHCR, Quebec Provincial Government), the end goal is similar. The end in view is to provide protection and assistance to claimants by eventually granting them visas or even permanent residence status.

One of the programs is the In-Canada Asylum Program. This program allows persons submit and process their claims either at point of entry or while they are already inside Canada. It provides refugee protection to those deemed eligible to seek asylum. These are persons who have a “well-founded fear of persecution, or are at risk of torture, or cruel or unusual punishment, in their home countries.”⁸⁶ Refugee claims and supporting evidence thereof are assessed

⁸² Library of Congress, Refugee Law and Policy: Canada (Information under Country of Asylum Class), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019) (citing *The Oxford Handbook of Refugee and Forced Migration Studies* 679 (Elena Fiddian-Qasmiyeh et al. eds., 2014)).

⁸³ *Id.*

⁸⁴ Library of Congress, Refugee Law and Policy: Canada (Information under Private Sponsorship of Refugees Program), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019) (citing

The Government of Canada, UNHCR Resettlement Handbook: Canada (Country Chapters – UNHCR Resettlement Handbook published 2014) 10, *available at* <https://www.unhcr.org/3c5e55594.pdf> (last accessed Aug. 11, 2019)).

⁸⁵ Library of Congress, Refugee Law and Policy: Canada (Information under Other Programs), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019).

⁸⁶ Library of Congress, Refugee Law and Policy: Canada (Information under In-Canada Asylum Program), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019).

by the Refugee Protection Division and heard by the Immigration and Refugee Board.⁸⁷

There also exists a program for refugees handpicked by the Province of Quebec. Pursuant to the *Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens*, the Quebec provincial government selects immigrants and refugees from abroad.⁸⁸ It approves claims for resettlement based on its own criteria and accordingly administers its own private sponsorship program.⁸⁹ Moreover, there are post-referral steps that provide assistance to those registered and identified by the UNHCR as legitimate refugees.⁹⁰ After screening processes and reviews, the applicant will be admitted as a refugee and granted permanent residence status.⁹¹ A CIC-funded organization will also assist the refugee with the necessary paperwork to leave his or her country of residence and travel to Canada.⁹²

As to the second feature, Canada also provides for a follow-through mechanism that assists those who have been admitted in the country. There are preliminary assistance and resettlement assistance schemes, both of which are funded by the previously mentioned programs. The funding enables refugees to benefit from immediate and essential services, among others. There are also loan programs to help cover costs of medical examinations, travel documents, and transportation to Canada.⁹³ Other forms of assistance and services are available. These include orientations, information dissemination, language training,

⁸⁷ *Id.*

⁸⁸ Canada–Québec Accord Relating to Immigration and Temporary Admission of Aliens (Legal agreement perfected on Feb. 5, 1991 between the government of Canada and the government of Quebec regarding immigration and temporary admission of aliens) § 17–20, *available at* <http://www.cic.gc.ca/english/department/laws-policy/agreements/quebec/can-que.asp> (last accessed Aug. 11, 2019).

⁸⁹ Library of Congress, Refugee Law and Policy: Canada (Information under Refugees Selected by the Province of Quebec), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019) (citing *Government of Québec Immigration, Diversité et Inclusion, Being Selected by Québec* (Prerequisites), *available at* <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/refugees-other/refugee-selected/selection.html> (last accessed Aug. 11, 2019)).

⁹⁰ Library of Congress, Refugee Law and Policy: Canada (Information under Post-Referral Steps, Including Screening Process), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019).

⁹¹ *Id.*

⁹² *Id.*

⁹³ Library of Congress, Refugee Law and Policy: Canada (Information under Assistance for Resettled Refugees), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019) (citing *Government of Canada, Financial help – Refugees* (Webpage of the Canadian government showing the programs for refugee resettlement) *available at* <http://www.cic.gc.ca/english/refugees/outside/resettle-assist.asp> (last accessed Aug. 11, 2019)).

employment services, facilitation of community connections, counseling, childcare, transportation assistance, translation and interpretation services, and provisions for persons with disability.⁹⁴

As to the third and final feature, Canada provides for a settlement program that aims to identify various settlement needs. This identification allows the duty-bearers to respond to these needs by delivering appropriate services. Asylum seekers and refugees are susceptible to intersectional human rights violations – violations of their rights due to intersecting factors of race, gender and sexual orientation, mental and physical illnesses, etc. In an attempt to combat these, Canada provides access to support services such as “finding resources for people with disabilities and accessing short-term/crisis counselling.”⁹⁵ It also funds the Rainbow Refugee Society, an organization that assists in the sponsorship of LGBTQ2 refugees.⁹⁶ The Canadian Immigration and Refugee Board likewise released guidelines on proceedings involving sexual orientation and gender identity and expression (SOGIE).⁹⁷ It is part of the effort to promote greater understanding of SOGIE cases and “the harm individuals may face due to their non-conformity with socially accepted SOGIE norms.”⁹⁸

C. Synthesis

Through multiple refugee classes and programs, the Canadian refugee system provides sufficient flexibility as to the coverage and extent of benefits. Its refugee system is an innovative solution in balancing the right of the refugee on the one hand, and the State’s interest on the other. More importantly, the refugee system is made more inclusive by the different avenues for refugee admission and assistance. The net effect is that the country is able to accommodate more

⁹⁴ Library of Congress, Refugee Law and Policy: Canada (Information under Assistance for All Newcomers, Including Refugees), *available at* <https://www.loc.gov/law/help/refugee-law/canada.php> (last accessed Aug. 11, 2019).

⁹⁵ Government of Canada, How Canada’s refugee system works (Immigration and citizenship, refugees and asylum), *available at* <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/canada-role.html> (last accessed Apr. 20, 2020).

⁹⁶ Government of Canada, LGBTQ2 refugees, *available at* <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/canada-role/lgbtq2.html> (last accessed Apr. 20, 2020).

⁹⁷ Government of Canada, Immigration and Refugee Board of Canada Announces New Guideline on Proceedings Involving Sexual Orientation and Gender Identity and Expression, *available at* https://www.canada.ca/en/immigration-refugee/news/2017/05/immigration_and_refugeeboardofcanadaannouncesnewguidelineonproce.html (last accessed Apr. 20, 2020).

⁹⁸ *Id.*

refugees. Despite their large population, the quality of services and assistance is not compromised. The quality of service is ensured because the system effectively triggers cooperation of various stakeholders. Through cooperation, the managing bodies of admission and resettlement programs utilize shared resources to provide services. Thus, it is able to sustainably manage State resources and best practices. It is able to cushion the impact of the growing influx of refugees upon the State's resources. It is likewise able to safeguard their rights since their needs are covered. Finally, its national security is not compromised since interviews, formal security checks, and medical and security screenings are conducted. It also denies refugee claimants who are security risks or are serious criminals.⁹⁹

Through the country's openness in admitting refugees, in addition to the follow-through mechanisms for their assistance, naturalization is facilitated accordingly. Those granted permanent residency status and are able to meet eligibility requirements are allowed to apply for naturalization. Canada's refugee system is indeed one of the exemplary models of best practices, especially for a developing country such as the Philippines. It goes well beyond the minimum standards set forth in the Refugee Convention. It also provides a multilateral approach to cover the different needs and protect the different rights of refugees.

The entire Canadian Refugee System was essentially motivated by the benefits to be derived from diversity in the society. More specifically, it "reflects the belief that our country's diversity brings its own economic and social rewards, and that it will continue to play a crucial role in shaping our future."¹⁰⁰ Canada believes that the cost of progressively protecting refugees is outweighed by the positive net effect of increasing the population of prospective citizens. It believes in "a dynamic immigration system that attracts and welcomes newcomers who will help us grow our strong, prosperous, diverse and safe country, while we maintain our international reputation for humanitarianism."¹⁰¹

⁹⁹ Immigration and Refugee Protection Act, S.C. 2001, c. 27, § 3(2) (2001) (CAN).

¹⁰⁰ Government of Canada, Immigration, Refugees and Citizenship Canada Departmental Plan 2018-2019 available at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-plan-2018-2019/departmental-plan.html#sec03-1-2> (last accessed Aug. 11, 2019).

¹⁰¹ *Id.*

IV. OVERVIEW AND FOUNDATION OF THE STATE'S OBLIGATIONS

A. Obligation to Fulfil Asylum Seekers and Refugees' Rights

The UN states that “by becoming parties to international treaties, States assume obligations and duties under international law to”¹⁰² to fulfil human rights. The obligation to fulfil refers to the positive action that States must take to “facilitate the enjoyment of basic human rights.”¹⁰³ This general obligation serves as the main premise for this thesis and its recommended framework. Facilitation of the enjoyment of asylum seekers and refugees' rights is effectively done through legislation. Through the enactment of a comprehensive law for these specific groups, their rights and responsibilities are codified. In turn, public services and aid are not only made available, but likewise made accessible.

B. Complementary Protection

Complementary protection “denotes protection granted to individuals on the basis of a legal obligation other than the principal refugee treaty.”¹⁰⁴ It additionally describes the State's protection obligations that complement those under the Refugee Convention, “whether derived from treaty law or customary international law.”¹⁰⁵ Finally, “it stems from legal obligations preventing return to serious harm, rather than from compassionate reasons or practical obstacles to removal.”¹⁰⁶ It does not provide mere provisional protection. Rather, it is a State response to “individual asylum seekers who cannot be removed by virtue of the extended principle of *non-refoulement* under international law.”¹⁰⁷ A synthesized description of the concept would define it as “the legal obligation of non-removal (threshold eligibility), and the recognition that some sort of legal status should attach.”¹⁰⁸ Hence, an expert at complementary protection concluded in this wise: “by analyzing the concept of international protection and the interrelationship of international treaties, ... there is no legal justification for

¹⁰² United Nations, *The foundation of international human rights law*, available at <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (last accessed Apr. 20, 2020).

¹⁰³ *Id.*

¹⁰⁴ MCADAM, *supra* note 16, at 2.

¹⁰⁵ MCADAM, *supra* note 16, at 3.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

differentiating between the status of Convention refugees and the status of beneficiaries of complementary protection.”¹⁰⁹

To better understand the term, its scope and limitations must be delineated. It does not cover compassionate or practical reasons (e.g. age, health, family connections, inability to obtain travel documents) for providing State protection.¹¹⁰ While humanitarian in nature, they do not fall within the ambit of the term. They are not based on the State’s international protection obligation.¹¹¹ Rather, the term covers international protection need beyond the Refugee Convention, which may be based on human rights treaties or on more general humanitarian principles.¹¹² An instance of a general humanitarian principle as basis is the State’s assistance to those fleeing from generalized violence.¹¹³ Thus, complementary protection “operates as a form of... humanitarian protection triggered by States’ expanded *non-refoulement* obligations.”¹¹⁴

Even the UNHCR’s Executive Committee (ExCom) is of the view that there is a necessity for complementary protection. It has called upon States to provide complementary protection “with the highest degree of stability and certainty by ensuring their human rights and fundamental freedoms... without discrimination, and affirming that complementary protection should be applied in a manner that strengthens, rather than undermines, the existing international refugee protection regime.”¹¹⁵ The 2005 ExCom Conclusion moreover acknowledges and encourages complementary protection for individuals who do not necessarily meet the Refugee Convention refugee definition.¹¹⁶ It affirms the need to apply complementary protection to strengthen the existing refugee protection regime. Finally, it emphasizes that the manner of application and development of international protection should avoid the creation or continuation of protection gaps.

It must be noted, however, that the ExCom Conclusion is in the nature of a soft law. It is a “soft-law instrument that calls for States to uphold their international obligations under the 1951 Convention, the statelessness treaties,

¹⁰⁹ MCADAM, *supra* note 16, at 1.

¹¹⁰ MCADAM, *supra* note 16, at 21.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ MCADAM, *supra* note 16, at 5 (citing the Oct. 2005 ExCom Conclusion No. 103 (n16)(n), (k)).

¹¹⁶ GOODWIN-GILL & MCADAM, *supra* note 53, at 296.

human rights law, and humanitarian law...”¹¹⁷ Through such kinds of instruments, there seems to be an increased recognition of the said extended protection.¹¹⁸ The concept and value of complementary protection have also evolved through the years. However, the discrepancies of such recognition by States lie on their understanding as to the beneficiaries of this kind of protection and the status that they should be accorded.¹¹⁹

The UNHCR itself also fortifies the view that entitlement to international protection applies even to asylum seekers. The body notes that “in so far as there is no legal justification for distinguishing between the status granted to Convention and extra-Convention refugees,”¹²⁰ both must be accorded protection. The UNHCR issues guiding notes on international protection in relation to the Convention’s interpretation. However, its opinions on treaty term definitions are not authoritative.¹²¹ While generally not binding on States, international protection obligations remain to be supported by international law sources. In addition, it is argued that given the nature of the Convention as a specialist human rights instrument. As such, the ‘protection’ it embodies is necessarily extended by human rights law developments.¹²² Hence, the protection mechanism provided acts as a type of *lex specialis* applicable to persons covered by complementary protection.¹²³

Both concepts of subsidiary protection and complementary protection, however, are not without criticisms. UNHCR’s former Director of International Protection herself criticized subsidiary forms of protection. She considers using the same as a means for States to restrict asylum on their own terms; thus, implying less binding State obligations vis-à-vis those under international law.¹²⁴ The UNHCR also criticizes approaches that “shift Convention refugees into subsidiary protection categories.”¹²⁵ The shift is viewed not only as a denial of refugees’ Refugee Convention and international law protection privileges, but also an attempt to shield States from international scrutiny for doing so.¹²⁶ The

¹¹⁷ *Id.*

¹¹⁸ MCADAM, *supra* note 16, at 19.

¹¹⁹ *Id.*

¹²⁰ MCADAM, *supra* note 16, at 33.

¹²¹ JANE MCADAM, 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY 79 (Andreas Zimmermann ed., 2010).

¹²² MCADAM, *supra* note 16, at 33.

¹²³ *Id.*

¹²⁴ MCADAM, *supra* note 16, at 49.

¹²⁵ *Id.*

¹²⁶ MCADAM, *supra* note 16, at 50.

eloquently written observation is that “there is a danger of soft law edging out hard law obligations by ‘diluting principles and fudging standards.’”¹²⁷ Through subsidiary and complementary forms of protection, a protection hierarchy is created. Such hierarchy is aptly described below:

Creating a protection hierarchy reflects a very literal interpretation of respecting the Convention’s primacy. Simply entrenching the Convention as the pinnacle of protection does not engage with the underlying protection principles it reflects, and may in fact undermine its primacy by siphoning refugees into complementary categories. Conceptually, the affirmation of the Convention’s primacy is, in effect, a commitment to respect its protection principles and refrain from diluting”¹²⁸ ... “its scope by developing the law outside its boundaries. The Convention’s primacy would be better observed if it were recognized as the source of international protection status for all persons protected by the principle of *non-refoulement*.¹²⁹

C. The Policy Framework Shift Towards Human Rights Law

The most compelling evidence of compliance with the Philippines’ obligations is the shift of the overall policy framework. The shift is specifically geared towards the progressive application of international human rights law and principles to public law issues such as naturalization and extradition. The pieces of evidence of the policy framework shift in the international and domestic spheres shall be presented. The corresponding impact of the said shift shall also be discussed.

Related Literature: *Boll’s* Multiple Nationality and International Law

Boll is one of the authors who traced the evolution of human rights concepts and standards to the adoption of the UN Charter.¹³⁰ This evolution has affected the manner in which States treat not only their nationals, but also aliens and human beings in general.¹³¹ *Boll’s* work solely focused on multiple nationality and naturalization laws. Nonetheless, his writings are of great significance in

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ MCADAM, *supra* note 16, at 50-51.

¹³⁰ ALFRED BOLL, MULTIPLE NATIONALITY AND INTERNATIONAL LAW 240 (2007).

¹³¹ *Id.*

presenting the evidence and impact of the said policy shift in the international setting. He highlighted how States have the discretion as to what privileges, exemptions, and even disabilities are to be accorded to foreigners and to citizens.¹³² It is in this wise that he introduced the vital role of international human rights law, as well as the recognition of such vital role, which had been motivated by the adoption of the UN Charter.

Despite the existence of this trend, the concept of multiple nationality or dual citizenship remains the subject of opposing views. On the one hand, its rejection by critics is grounded on conflicts that may possibly arise due to allegiance, and other legal obligations and rights in relation to different states. On the other hand, the acceptance of multiple nationality is premised on the development of treaty regimes¹³³ and the human rights trend. For instance, States forming part of the Council of Europe (COE) have increasingly embraced multiple nationality. This is seen not only in the evolution of COE treaty provisions deviating from disapproving attitudes toward multiple nationality. It is also “demonstrated by a fundamental change in the premise and outlook of the treaties... and the influence of notions and provisions of human rights and standards of treatment of the individual, such as the principle of non-discrimination.”¹³⁴ The author highlighted these positive changes in favor of human rights recognition by placing the old and the new Conventions side by side. Whereas the *1963 Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multinational Nationality* sought to “reduce as far as possible the number of cases of multiple nationality,”¹³⁵ the *1997 European Convention on Nationality* mainly sought to avoid discrimination and statelessness.¹³⁶ The latter recognized the respective interests of both states and individuals, and focused on providing solutions to the rights and duties of those with multiple nationality.¹³⁷ Subsequent amendments to the 1963 Convention by way of a Protocol were also “specifically predicated on an idea of individual human rights.”¹³⁸ The said Protocol allowed multiple nationality consistent with the Convention’s preamble, which provides for “integration of migrants, unity of nationality with the same family, and conservation of nationality of origin.”¹³⁹

¹³² *Id.*

¹³³ BOLL *supra* note 130, at 191.

¹³⁴ BOLL *supra* note 130, at 199.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ BOLL *supra* note 130, at 200-201.

¹³⁹ BOLL *supra* note 130, at 202.

The facts stated, according to *Killerby*, is “evidence of a growing trend... to allow multiple nationality in a greater number of cases.”¹⁴⁰ It was also observed that municipal laws of select European countries have allowed more cases of automatic multiple nationality. These laws have likewise paid more attention to the individual’s freedom to choose which among his nationalities he desires to retain.¹⁴¹ This supports the suggestion regarding a “changing view of human rights in terms of the weight given to the individual’s will, and a recognition of the gravity of the forced breaking of legal ties by state’s against an individual’s will.”¹⁴² It is also worth adding that “by setting limits on how states treat categories of persons, as nationals, aliens, or simply human beings, modern developments in the international law of human rights have significantly altered this balance of considerations.”¹⁴³

While it is also unclear if international law provides a right to nationality, there exists a clear trend toward recognizing such right. This recognition complements the “hardening of the principle against the avoidance of statelessness.”¹⁴⁴ And even if one concedes that there is a right to nationality but not right to multiple nationality, an author notes that “developments in individual rights in relation to nationality have in and of themselves contributed to the existence of multiple nationality.”¹⁴⁵

Despite clashing views on the tolerance of multiple nationality, issues involving “international standards of human rights and respect for the individual”¹⁴⁶ are consistently incorporated in the narrative. Some international bodies advocate for multiple nationality as a possible mechanism for an individual’s international protection.¹⁴⁷ The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities appealed to States to study the possibility of granting migrant workers dual nationality.¹⁴⁸ It stated that granting dual nationality would facilitate integration with due respect for cultural identity and protection against racial discrimination.¹⁴⁹

¹⁴⁰ *Id.* (citing *Killerby* “Steps taken by the Council of Europe to promote the modernization of the nationality laws of European states”, 31.)

¹⁴¹ BOLL *supra* note 130, at 200.

¹⁴² BOLL *supra* note 130, at 207.

¹⁴³ BOLL *supra* note 130, at 240.

¹⁴⁴ *Id.*

¹⁴⁵ BOLL *supra* note 130, at 242.

¹⁴⁶ BOLL *supra* note 130, at 210.

¹⁴⁷ BOLL *supra* note 130, at 234.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

In light of the increased acceptance of multiple nationality, all the more should asylum seeker and refugee protection be embraced. Asylum seekers have no State to protect them, or have been forced to flee from the State originally obliged to do so. Such circumstances therefore warrant a similar recognition of an enhanced perspective of using human rights as a premise to embrace their full protection.

Philippine Jurisprudence

The trends which have led to the shift in the policy framework in the international setting have spilled over to Philippine State practice. Salient doctrinal pronouncements evidencing the remarkable shift showing the flourishing application of international human rights will be presented. This shift is mainly evidenced by the Supreme Court's attitude in deciding cases involving refugees and stateless persons. The landmark case of *Government of Hong Kong v. Olalia* was the first to itemize the four badges of the said trends which the Court cannot ignore in deciding cases. These are: "(1) the growing importance of the individual person in public international law who, in the 20th century, has gradually attained global recognition;"¹⁵⁰ "(2) the higher value now being given to human rights in the international sphere;"¹⁵¹ "(3) the corresponding duty of countries to observe these universal human rights in fulfilling their treaty obligations;"¹⁵² and "(4) the duty of this Court to balance the rights of the individual under our fundamental law, on one hand, and the law on extradition, on the other."¹⁵³ While the cited case pertains to extradition, the trends are nevertheless exhibited in other landmark cases pre- and post-*Olalia*. They are also especially apparent in the State's previously discussed non-legislative protection mechanisms.

The same year the Refugee Convention was conceived, *Mejoff v. The Director of Prisons* was decided using a human rights lens. The Court had the opportunity to apply the Constitution and its relevant principles to a non-Filipino citizen. *Mejoff* is a habeas corpus case involving an alien deprived of his liberty due to prolonged detention. His detention was pursuant to the immigration authorities' declaration that he illegally entered the Philippines and was therefore

¹⁵⁰ *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, 521 SCRA 470, 481 (2007).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

set to be deported to Russia.¹⁵⁴ Due to repeated failure to deport him, the decision in the previous habeas corpus case involving petitioner stated that it is for the country's best interests to continuously detain him in the interim.¹⁵⁵ More than two years after the promulgation of the mentioned decision, petitioner remains detained as "no ship or country would take the petitioner."¹⁵⁶

The Court ruled that the prolonged detention, not being premised on actual danger or charges, would be unwarranted by both the law and the Constitution.¹⁵⁷ No charges had been filed, and the possibility of bringing any is also said to be remote, given that he was eventually declared to have entered the Philippines lawfully through the *de facto* government during the occupation.¹⁵⁸ The ratio unequivocally stated that "the protection against deprivation of liberty without due process of law and except for crimes committed against the laws of the land is not limited to Philippine citizens but extends to all residents, except enemy aliens, regardless of nationality."¹⁵⁹ The Court more importantly applied the UDHR in light of Art. II, Sec. 3 of the Constitution which provides for the doctrine of incorporation. It specifically cited the provisions proclaiming the equality, without any distinction, of all human beings as to their freedom and rights.¹⁶⁰ It also cited provisions proclaiming the circumstance in which the right to an effective remedy need be exercised, as well as the right not to be subjected to arbitrary arrest, detention, or exile.¹⁶¹ *Mejoff* reveals that long before the Court expressly recognized the trends in *Olalia*, it did not hesitate to duly uphold an alien's fundamental human rights. It did so by essentially applying the laws of the land, i.e., the Constitution and the UDHR principles. As a refresher, the latter is considered part of the law of the land through the doctrine of incorporation.

Fast forward to the entry of the new millennium, *Secretary of Justice v. Lantion and Jimenez* was promulgated. In this case, private respondent filed a petition for mandamus against select government officials. The purpose is for him to be furnished with and given access to extradition documents, and to give him an opportunity to comment or oppose the extradition request. The remedies of

¹⁵⁴ Boris Mejoff v. The Director of Prisons, 90 SCRA 71, 71 (1951).

¹⁵⁵ *Mejoff*, 90 SCRA at 72.

¹⁵⁶ *Mejoff*, 90 SCRA at 73.

¹⁵⁷ *Mejoff*, 90 SCRA at 76.

¹⁵⁸ *Mejoff*, 90 SCRA at 73.

¹⁵⁹ *Id.*

¹⁶⁰ Universal Declaration of Human Rights art. 1-2, Dec. 10, 1948, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf. The General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948. [hereinafter UDHR].

¹⁶¹ UDHR, *supra* note 160, art. 8-9.

certiorari and prohibition were also resorted to. The issue was whether during the evaluation stage of extradition proceedings, private respondent is entitled to due process. It upheld the rights to due process which, in turn, guarantees his right to liberty given the prevailing circumstances. The Court then ordered the Justice Secretary to furnish private respondent the extradition request and other necessary information, and a reasonable period within which to file his comment with supporting evidence.¹⁶²

Similar to *Mejoff*, the Court upheld in this case the prospective extraditee's rights under constitutional guarantees. It acknowledged that private respondent was faced with the clear and present danger of property and of liberty, "which may eventually lead to his forcible banishment to a foreign land."¹⁶³ If in an extradition proceeding, the Court took a "libertarian approach"¹⁶⁴ to ensure that "constitutional guarantees in the enforcement of a law or treaty"¹⁶⁵ will not be disregarded, what more when it comes to cases involving asylum seekers and refugees who have even more to lose? The libertarian attitude of the Court in the case at bar all the more proves the recognition of the State's duty to observe universal human rights not only in the fulfilment of treaty obligations. The same is also pursuant to acknowledgement of the higher value of human rights in the international sphere, and the balancing of individual constitutional rights on the one hand and the extradition law on the other.

The Supreme Court took the opportunity to re-examine the *Olalia* case which similarly involves extradition. Such re-examination was consciously adopted "in light of the various international treaties giving recognition and protection to human rights."¹⁶⁶ It also pinpointed the constitutional provision upon which the domestic application of the mentioned trends is anchored. It cited the State's commitment under Article II, Section 2, which is to value the dignity of every human person and to guarantee full respect of human rights.¹⁶⁷ It is well to note that the Constitution enjoys primacy as against other statutes and treaties. Thus, Article II, Section 2 of the highest law of the land prevails over the restrictive provisions and gaps of treaties, including those of the Refugee Convention. It also prevails over the clearly inadequate laws in place relating to refugees.

¹⁶² Secretary of Justice v. Lantion, 322 SCRA 161, 202 (2000).

¹⁶³ *Lantion*, 322 SCRA at 201.

¹⁶⁴ *Lantion*, 322 SCRA at 199.

¹⁶⁵ *Lantion*, 322 SCRA at 200.

¹⁶⁶ *Olalia, Jr.*, 521 SCRA at 482.

¹⁶⁷ *Id.* (citing PHIL. CONST., art. II, § 2).

One of the most recent cases evidencing the trends is *Republic of the Philippines v. Karbasi*. Previous discussions have already tackled its facts and doctrinal pronouncements. Nonetheless, it is worth highlighting that it reveals the generally consistent attitude of the Supreme Court. It has chosen to uphold human rights over the rigid interpretation and standards of applicable laws.

Given the trends showing a policy shift, the evolutive interpretation of treaties should be observed in applying the Refugee Convention. This process of interpretation is carried out in a progressive or dynamic manner.¹⁶⁸ The said process or technique was first observed in *Namibia*, and later on in *Navigational and Related Rights*.¹⁶⁹ The Court took the position that “there are situations in which the parties’ intent upon the conclusion of the treaty was, or may be presumed to have been, to give the terms used... a meaning or content capable of evolving...so as to make allowance for, among other things, developments in international law.”¹⁷⁰ Human rights conventions are said to be outstanding examples supporting the necessity for evolutive treaty interpretation.¹⁷¹ The process is also said to be notably present in human rights courts’ jurisprudence.¹⁷² As a closing remark for this kind of interpretation, the words of Bernhardt serve as an important guide: “If it is the purpose of a treaty... to guaranty personal freedoms to citizens as well as foreigners, it is hardly compatible with the purpose to eliminate new developments in the process of treaty interpretation.”¹⁷³

The application of the evolutive treaty principle supports the proponent’s view that the State must pursue law reform. It must be actively pursued to include in the legal radar not only the protection of refugees, but also of asylum seekers. It is only by covering both groups that the barriers to their holistic welfare are removed. And it is only by such freedom that they are able to “live without fear of persecution,”¹⁷⁴ and thrive within the Filipino community.

¹⁶⁸ JAMES CRAWFORD, STATE RESPONSIBILITY 246 (2013).

¹⁶⁹ CRAWFORD, *supra* note 168, at 247.

¹⁷⁰ *Id.*

¹⁷¹ CRAWFORD, *supra* note 168, at 249.

¹⁷² CRAWFORD, *supra* note 168, at 248.

¹⁷³ *Id.* (citing Bernhardt (1999), 16-17. Further: Fitzmaurice (2010), 55-9.).

¹⁷⁴ Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines, § 7.

V. FINAL LEGAL ANALYSIS AND CONCLUSION

A. The Gap in the Philippine Legal Framework

The Philippines continuously implements various protection mechanisms through administrative or department issuances, a refugee status determination procedure, and inter-stakeholder agreements. Notwithstanding these measures, the proponent concludes that there exists a gap in the Philippine legal framework for asylum seekers and refugees. The manifestations of the said gap can be summarized in two points.

First, the inherent gap in the Refugee Convention. Second, the inadequacy of the current legal framework in which the Refugee Convention is likewise incorporated. The second includes the mere declaratory nature of the grant of refugee claims under the Refugee Status Determination Procedure (RSDP). All these result in specific vulnerabilities of asylum seekers and refugees who are in a legal limbo. While these vulnerabilities come in different forms, the net effect is the perpetuation of discrimination against them. If the gap is left unaddressed at the earliest possible instance, it will continue to leave a looming string of violations the Refugee Convention, the Constitution, and in turn, of their human rights. Stemming from these violations is the Philippines' non-compliance with its obligation to fulfil their rights. Hence, the need to fill in the gap through a comprehensive national legislation.

Inherent Gap in the Refugee Convention

The inherent gap of the Refugee Convention is seen in the construction of its provisions. A reading thereof shows broad provisions that allow room for interpretation. It necessarily allows flexibility not only in terms of interpretation but also in the implementation of the said provisions.

The letter of the Refugee Convention provides for the bare minimum requirements. A closer look at the wordings reveal that refugees are entitled to gliding rights under the Refugee Convention. These gliding rights thus creates different classes of refugees with different entitlements under the instrument. Breaking down the provisions, the different classes of refugees under the

Refugee Convention are as follows: (1) all refugees within the territory; (2) refugees lawfully in the territory; (3) refugees lawfully staying in the territory; and (4) refugees residing in the territory. In using the word territory, the Convention contemplates the receiving State such as the Philippines. While future dissertations may tackle these refugee classes and the corresponding rights per refugee class, a short illustration of select provisions is worth adding.

The non-discrimination and religious freedom clauses under Articles 3 and 4 of the Refugee Convention respectively apply to all refugees within the territory. The right to self-employment under Article 18 is accorded to refugees lawfully in the territory. The right of association under Article 15 applies to refugees lawfully staying in the territory. The said class is also entitled to public relief and labor legislation and social security benefits under Articles 23 and 24, respectively. And finally, Article 25 on administrative assistance is afforded to refugees residing in the territory. Without a law that localizes, interprets, and defines these refugee classes, their rights remain ambiguous. It follows that their specific needs and vulnerabilities will not be effectively addressed.

Inadequacy of the Current Legal Framework

The current legal framework may be divided into two divisions. On the one hand, there are statutes; on the other hand, there are executive or non-legislative issuances, orders and agreements. Both are inadequate either in substance, form, or both.

As to the first division, the statutes in place are outdated. The pertinent statute is the archaic 1940 Philippine Immigration Act (Immigration Act), which contains only one provision with regard to alien refugees. Sec. 47(b) of the Immigration Act provides that the President is authorized, “for humanitarian reasons and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe.”¹⁷⁵ It is outdated as it predates the Refugee Convention, as the latter was codified in 1951. It fails to replicate even the most basic provisions of the latter. Moreover, it only refers to the admission of refugees in the country. It neither lays down their rights nor specifies their classes. It also fails to take into account the asylum seekers or those who have

¹⁷⁵ Philippine Immigration Act of 1940, §47(b).

not been declared refugees pursuant to the refugee status determination procedure, which was established only in the late 2000's. The Immigration Act also gives the President the sole authority and leeway to prescribe conditions for refugee admission. While there already exists a Refugee Status Determination Procedure under Department of Justice Circular No. 058-12, the enabling instrument is only a circular or an executive issuance. Despite its merits, specifically the procedure itself and the creation of the Refugees and Stateless Persons Protection Unit, its substance is arguably easily defeated by its form.¹⁷⁶ In sum, its structural value is problematic, the discussion of which, leads to the second division of the current legal framework.

As to the second division, it pertains to executive or non-legislative issuances, orders and agreements. They are released by various governmental units to serve as regulations that implement the law. They may be department circulars or orders, memorandum circulars or orders, and the like. In this case, the law they implement is the clearly inadequate Immigration Act. Even if they supposedly implement the Refugee Convention, its inherent gap given its broad and ambiguous provisions likewise make it inadequate. In fact, an examination of these executive or non-legislative enactments shows that they are problematic in both substance and form. The same is true regarding inter-stakeholder agreements, specifically those involving various governmental units.

A myriad of defects in the components of the two mentioned divisions can be pointed out. Nonetheless, it must be noted that there are numerous issuances, orders and agreements scattered in the legal framework. A nuanced discussion of specific defective provisions, especially the substantive ones, altogether requires a separate study. Thus, similar to the illustration of refugee classes and their gliding rights, the gist of the defects can be best communicated through a concise illustration.

Substantive Inadequacy

An instance of a substantive inadequacy of an issuance is the DOJ Department Circular No. 058-12 (DOJ Circular) establishing the Refugee Status Determination Procedure (RSDP). The grant of refugee claims under the RSD

¹⁷⁶ Department of Justice, Establishing the Refugee and Stateless Status Determination Procedure, DOJ Department Order No. 058-12, §5 (Oct. 18, 2012).

proceedings is merely declaratory in nature. This means that the applicant may be a refugee under the Refugee Convention although he or she is not treated as such until officially declared to be one pursuant to the RSDP. Thus, the applicant may be a Convention refugee entitled to the rights under its provisions. However, the RSPPU has discretion as to what Convention rights to accord since the DOJ Circular makes a distinction between a Convention refugee and an applicant who has yet to be declared as such. There will always be a possibility that a refugee who is otherwise entitled to certain rights will be deprived of such due to the pendency and/or the denial of his or her refugee claim. It follows that there will always be an imminent violation of the Convention provisions during the said period. Moreover, the rights to which said refugee may be entitled to are uncertain, considering the gliding rights and the refugee classes that are not captured by the DOJ Department Circular and RSDP.

Formal Inadequacy

As to the formal defects, these concern two things. First, lack of structural permanence; and second, the binding effect.

Regarding the first formal defect, non-legislative issuances and agreements are easily revoked or rescinded. Unlike the repeal of a law, the process of revoking or rescinding the former are less tedious. The process may even said to be more easily affected by the political climate and the whims of those in public office. As they can be easily dissolved or altered to the prejudice of asylum seekers and refugees, these issuances and agreements are merely ad hoc in character. Their progressive clauses do not exclude the fact that the measures they provide are temporary and unsustainable.

Regarding the second formal defect, their binding effect and mandatory character are of a lesser degree vis-à-vis those of statutes. For instance, an Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons in the Philippines (Inter-Agency Agreement) was perfected in 2017. Although it consolidates the public services to be rendered by various government institutions, it is not binding to those whose official representatives have not signed. The absence of their signatures defeats the mandatory tenor of the Inter-Agency Agreement provisions requiring them to deliver certain services. In effect, the unsustainability stems not only from the lack of structural

permanence. The same is also rooted in the fact that compliance is premised on volunteerism and good will of the parties.

B. Conclusion

The proponent concludes that there is a three-tiered gap in the Philippine legal framework for asylum seekers and refugees. It stems from the gap in the Refugee Convention, which trickles down to the Philippine Immigration Act, which also trickles down to the implementing regulations and the agreements upon which the first two are premised. To add, the current legal framework also holistically fails to expressly provide the following: the specific rights of the asylum seekers and refugees; the extent of and standards therefor; and the specific duties and sanctions of the State and its organs. All these factors which comprise of the said gap boils down to the absence of a law. Thus, mere absence of a law does not constitute breach of the Philippines' international law obligations. However, the gap in the overall legal framework due to the absence of a law makes possible the violation of the State's obligation to fulfil the rights of asylum seekers and refugees.

Despite the gap in the legal framework, the protection mechanisms in place – albeit scattered – evinces good faith compliance with the State's obligations. Good faith compliance can also be seen in the State's cooperation with the UNHCR. Given the proponent's conclusion, the enactment of a comprehensive national legislation is recommended. Its purpose is not only to bridge the gap in the Philippine legal framework, but also to place the Philippines at a level where it can *potentially* be a model of best practices within the ASEAN. This is in consideration of the fact that aside from Cambodia, only the Philippines has ratified the Refugee Convention.

VI. RECOMMENDATIONS

Two umbrella arguments justifying the imperative need for a law shall be highlighted. First: the legal bases, namely, jurisprudence and international human rights law which covers the principle of *pacta sunt servanda*. Second: the philosophy of the State's commitment to protect asylum seekers and refugees, captured by the overall structural value of a legislative measure.

A. Legal Bases

Jurisprudence captures the policy framework shift towards international human rights law, which is the subject of a lengthy discussion in Chapter IV. A recent Supreme Court pronouncement also squarely provides that “a state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.”¹⁷⁷ The gap in the legal framework which the proponent concludes to be a looming violation to the State’s obligation to fulfil the rights of asylum seekers and refugees call for such modification. Hence, the recommendation in the form of a House Bill.

On the other hand, *pacta sunt servanda* includes the compliance with and application of the principle of complementarity and the *jus cogens* principle of *non-refoulement*. This is so because all these principles facilitate and guarantee good faith compliance with the State’s treaty obligations. To recap, complementary protection refers to the engagement of States’ legal protection obligations that are *complementary* to those assumed under the Refugee Convention & its 1967 Protocol. It may be derived from treaty or customary international law. Thus, by virtue of being a State-Party to other international human rights instruments, it is obliged to enact a law to facilitate the realization of rights. It is only through legislation, which will trigger executive and judicial action, that rights of asylum seekers and refugees beyond those set forth in the Refugee Convention will be guaranteed. The necessity and the obligation to enact the said law is further premised on the scattered provisions of the international human rights instruments to which the Philippines is a signatory. The pertinent provisions are: Article 2 of the ICCPR; Article 2 of the ICESCR; Article 3 of the CRC; Article 2 of the CEDAW; Article 4 of the CAT. In sum, a law with the functional and operational aspects that overtake the Refugee Convention’s minimum standards enables the Philippines to realize its State obligations.

Only the Refugee Convention & its 1967 Protocol make a distinction based on the status of both groups given that their application generally only covers recognized refugees. Conversely, other international human rights instruments make no distinction as to their status when it comes to their entitlement to human rights protection. The principle of complementarity and of *non-refoulement* therefore dilutes the distinction between the two groups. They

¹⁷⁷ *Air Canada*, 778 SCRA at 159.

are the means by which asylum seekers' fundamental human rights are protected despite not falling within the ambit of the Refugee Convention or not being declared as such under RSDP.

The other legal bases for the application of the principle of *non-refoulement* are the ICCPR, the CAT, and the Anti-Torture Act of 2009. Other than the Anti-Torture Act, no other domestic statutory provision embodies the broad principle of *non-refoulement* under the Refugee Convention. Thus, the context of the application of the principle under domestic laws only revolves around situations of torture or threats thereof. This supports the need for a law that includes a more all-encompassing legal mandate with regard to the obligation of *non-refoulement*. Although it has attained *jus cogens* status, the broader obligation of *non-refoulement* must be codified to ensure more effective protection to those not classified as refugees. Domestic laws must not limit the principle only to situations contemplating torture.

B. Philosophy of the State Commitment to Protect Asylum Seekers and Refugees

Refugee law goes beyond technical terms. It has a humanitarian component on the one hand, and a positive and constructive contribution to the development of the local community on the other.

Recommending a legislative measure, as against a non-legislative one, is the optimal choice in ensuring the State's faithfulness to its commitment to protect the two groups. Roughly 38 years have passed since the Philippines ratified the Refugee Convention and yet, there is still no law localizing its provisions. Had a non-legislative measure been recommended, it would contribute more to the disarray than to the State's efforts thus far. There are already scattered provisions in statutes and scattered issuances by different governmental institutions. Part of effectively fulfilling the State's commitment is the organized drafting of the main document which would mandate and guide all stakeholders. It serves as proof of the State's initiative to be the main actor in providing protection, instead of heavily relying on the UNHCR.

Of equal importance is the vital ingredient that enables the delivery of services to asylum seekers and refugees – budget. Without an organized law in

place, no appropriations would be made. State agents may have to scramble to find funds, since existing appropriations may either be lacking or entirely wanting. Moreover, diligence dictates that financial planning be undertaken for the management of scarce resources allotted for purposes of providing asylum seekers and refugees accessible services. This is imperative considering that global events, unforeseen or otherwise, may trigger a sudden influx of asylum seekers and refugees in the Philippines. These considerations all boil down to one thing – State preparedness.

In sum, the enactment of a pertinent law would be part of the much-needed law reform and innovation. It is a follow-through mechanism that consolidates and replicates the non-legislative measures. This mechanism ensures structural permanence, without prejudice to its more liberal application and interpretation in light of human rights law developments. The recommended law embodies protection mechanisms to be carried out by various governmental units. This mirrors a burden-sharing agreement that calls for a collective and cohesive approach, which makes it feasible for a developing country to protect both its citizens and those seeking asylum. It is also through the said arrangement that the state is able to provide international protection over and beyond the Refugee Convention provisions. Thus, it advances the fulfillment and realization of the rights of asylum seekers and refugees by also promoting their local integration in the Filipino community.

It would also serve as the machinery through which the State can utilize international cooperation. Through cooperation, the State will be able to comply with the recommendations and other pertinent agreements and persuasive materials (such as the Global Compact for Refugees), notwithstanding its resource and other constraints. International cooperation will not only help fill in the gaps through which human rights violations may seep through. It will also help guarantee the Philippines' preparedness in case *serious* breach of their human rights that may be committed by neighboring ASEAN member-States. Since serious breach calls for cooperation to bring the breach to an end,¹⁷⁸ among others, the presence of a law will enable the State to act accordingly.

Finally, a law is seen as a stepping-stone for the development of a *potential* model of best practices in the ASEAN region. As such, the law may also be substantially replicated in a regional cooperation model in the ASEAN or the

¹⁷⁸ CRAWFORD, *supra* note 168, at 107.

Asia-Pacific. The complexity of protection issues, uncertainty of the large-scale influx, and the unforeseen triggers therefor, among others, also call for the perfection of a regional protection mechanism. Its purpose is to make international cooperation more effective in addressing the worsening and the imminent refugee crisis in specially-affected ASEAN member-States and in the region.

C. Salient Provisions of the Proposed Bill

The proposed bill shall be known as “The Comprehensive Act for the Protection of Asylum Seekers and Refugees.” It comprises of eight titles, all of which replicate the Refugee Convention, other human rights instruments, and the provisions of other progressive non-legislative measures. As a whole, it is a consolidation of the various protection mechanisms of the domestic legal framework. The replicated provisions were carefully chosen only after a thorough analysis of the said framework, as discussed in the previous chapter. The wordings were crafted and revised accordingly to cure the ambiguities and formal and substantive inadequacies. Moreover, the law captures various principles that were used as the legal bases for the proponent’s analysis and conclusion. These are the principles of complementary protection and of *non-refoulement*.

Title one contains the preliminary provisions. Its highlights include exclusion and cessation clauses. Both provide for the reasonable grounds removing the accorded refugee status. Exclusion clauses are on the negative side; they apply due to person’s fault, specifically due to serious illegal or immoral acts. Cessation clauses are on the positive side; they apply when protection is restored due to another State’s recognition or when grounds for application cease. It also has a liberal construction provision.

Titles two, four and five respectively provide for state responsibility and the asylum seekers and refugees’ rights and obligations. The State Responsibility provisions mandate State organs to comply with the specified duties. These duties mainly involve the provision of various forms of accessible aid and services. The asylum seekers and refugees’ rights and obligations mainly apply the principle of complementary protection. There are specific sections mandating the application of the Bill of Rights, labor laws, and specified human rights instruments (i.e. ICCPR, ICESCR, CEDAW, CRC, and CAT). However,

gliding rights and refugee classes were removed to ensure that both asylum seekers and refugees are clearly covered.

Title six contains the refugee status determination procedure, which was lifted from DOJ Department Circular No. 058-2012. Title seven clarifies the UNHCR's role while mandating the cooperation of national authorities. Finally, Title eight contains the final provisions. It includes a confidentiality provision containing a non-disclosure clause and stating that the Data Privacy Act applies. It also provides durable solutions mandating the State to facilitate refugees' assimilation and naturalization. It likewise provides penal and appropriations provisions. The former is directed against pertinent public entities while the latter is for the funding of programs and policies for the implementation of the law.

Given the foregoing, it can be gleaned that it does not entirely capture the Canadian Refugee System. This was the proponent's deliberate choice, since the Act is intended to be basic and comprehensive. It is meant to pave the way for programs and policies that address complex vulnerabilities by first dealing with the initial barriers. These are: first, the ambiguity as to their rights and freedoms, which make aid and services inaccessible; and second, the lack of mandatory provisions obligating State agents to meet their pertinent obligations. Nonetheless, inter-stakeholder cooperation, burden-sharing agreements, and durable solutions facilitating naturalization and local integration.

In essence, the proposal marries the handpicked strong points of the Canadian Refugee System and the Philippine legal framework. The core purpose of such hybrid approach is to facilitate local integration, discussed by an expert in this wise:

According to Alexandra Fielden, local integration as a durable solution combines three dimensions. First, it is a legal process in which refugees attain a wider range of rights in the host State. Second, it is an economic process of establishing sustainable livelihood and a standard of living that is comparable to those enjoyed by the host community. Third, it is a sociocultural process of adaptation and acceptance wherein the refugee is able to both contribute to the social life of the host State and live without fear of discrimination.¹⁷⁹

¹⁷⁹ Francis Tom F. Temprosa, *The "Liberalization" of Refugee Naturalization: Some Insights in Republic v. Karbasi on the Gains and Deficits on the Law on Local Integration*, 61 ATENEO L.J. 242, 265-266 (2016) (citing Different countries approach local integration of refugees in different ways, but most often, naturalization is an integral part of the

integration process. *See generally* Alexandra Fielden, Local integration: an under-reported solution to protracted refugee situations (A Paper Prepared for the Policy Development and Evaluation Service of the UNHCR), *available at* <http://www.unhcr.org/486cc99f2.pdf> (last accessed Aug. 31, 2016).