



**UNHCR**  
The UN Refugee Agency

Philippines

# DESK REVIEW ON POPULATIONS AT RISK OF STATELESSNESS

**CHILDREN OF PHILIPPINE  
DESCENT IN A MIGRATORY  
SETTING IN GULF COOPERATION  
COUNCIL (GCC) COUNTRIES  
AND PERSONS OF JAPANESE  
DESCENT**

By Brian Barbour

in his capacity as Researcher  
SURGE Capacity Project on Statelessness

## SURGE Capacity Project

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

# **DESK REVIEW ON POPULATIONS AT RISK OF STATELESSNESS**

**CHILDREN OF PHILIPPINE DESCENT IN A  
MIGRATORY SETTING IN GULF COOPERATION  
COUNCIL (GCC) COUNTRIES AND PERSONS  
OF JAPANESE DESCENT**

**SURGE Capacity Project Researcher:** Brian Barbour

**SURGE Capacity Project Coordinator:** Aerial Gonzales (UNHCR)

**Report Writing:** Brian Barbour, Aerial Gonzales (UNHCR), Meriam Faith Palma (UNHCR), Maria Ermina Valdeavilla-Gallardo (UNHCR), Maria Louella Gamboa (UNHCR)

**Layout Design:** Maria Jorica Pamintuan (UNHCR)

**Data collection:** April to December 2020

**Report layout and final editing:** January to March 2021

## CONTACT US

**Protection Unit Manila**

**UNHCR Philippines**

Tel.: +632 8817 2398

Fax: +632 8817 4057

Email: [phimapro@unhcr.org](mailto:phimapro@unhcr.org)

### **COVER PHOTOGRAPH:**

*A woman from Davao, Southern Philippines was previously one of the Persons of Japanese Descent (PJD). She was recognized as a Japanese national in 2013. However, there are other PJD, whose average age is 81 years old, who cannot afford to wait for their citizenship issues to be resolved.*

© Miyuki Okuyama

## Acknowledgements

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

### *Philippine Government*

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

### *Civil Society and Academe*

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

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

# Table of Contents

<b>Acknowledgements</b>	<b>1</b>
<b>Table of Contents</b>	<b>2</b>
<b>Acronyms and Abbreviations</b>	<b>3</b>
<b>Executive Summary</b>	<b>5</b>
<b>Recommendations</b>	<b>9</b>
<b>Terminology</b>	<b>15</b>
<b>Introduction</b>	<b>19</b>
<b>Background and Statistics on Identified Populations at Risk of Statelessness</b>	<b>23</b>
Philippines National Legal Framework	23
Children of Philippine Descent in Migratory Settings	35
Persons of Japanese Descent	59
<b>Conclusion</b>	<b>85</b>
<b>Annexes</b>	<b>86</b>

## Acronyms and Abbreviations

1951 Refugee Convention	1951 Convention Relating to the Status of Refugees
1967 Protocol	1967 Protocol Relating to the Status of Refugees
1954 Statelessness Convention	1954 Convention Relating to the Status of Stateless Persons
1961 Statelessness Convention	1961 Convention on the Reduction of Statelessness
BARMM	Bangsamoro Autonomous Region in Muslim Mindanao
BASULTA	Basilan, Sulu, Tawi-Tawi
BI	Bureau of Immigration
CA	Commonwealth Act
CHRP	Commission on Human Rights of the Philippines
CID	Criminal Investigation Department
CoE	Certificate of Eligibility
COWA	Committee on Overseas Workers' Affairs
CRVS	Civil Registration and Vital Statistics
DFA	Department of Foreign Affairs
DOJ – RSPPU	Department of Justice – Refugees and Stateless Persons Protection Unit
DOLE	Department of Labor and Employment
DSWD	Department of Social Welfare and Development
ESCAP	Economic and Social Commission for Asia and the Pacific
GCC	Gulf Cooperation Council
ICRRA	Immigration Control and Refugee Recognition Act
IOM	International Organization for Migration
Komnas HAM	National Commission on Human Rights of Indonesia
LRI	Labor Reform Initiative
MC	Memorandum Circular
MOU	Memorandum of Understanding
NAP	National Action Plan to End Statelessness by 2024
NCIP	National Commission on Indigenous Peoples
NGO	Non-Government Organization
OFs	Overseas Filipinos
OFWs	Overseas Filipino Workers
OSG	Office of the Solicitor General
PDP	Philippine Development Plan 2017-2022
PID	Persons of Indonesian Descent
PJD	Persons of Japanese Descent
PNLSC	Philippine Nikkei-jin Legal Support Center
POC	Persons of Concern
POLO	Philippine Overseas Labor Office
PSA	Philippine Statistics Authority
RA	Republic Act

<b>ROB</b>	Report of Birth
<b>RSSD</b>	Refugee and Stateless Status Determination
<b>SDGs</b>	Sustainable Development Goals
<b>SEPF</b>	Socioeconomic Peacebuilding Framework
<b>SUHAKAM</b>	Human Rights Commission of Malaysia
<b>SURGE</b>	Supporting UNHCR Resources on the Ground with Experts on Mission
<b>UAE</b>	United Arab Emirates
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund

# Executive Summary

In 2011, at the *Ministerial Intergovernmental Event on Refugees and Stateless Persons*, the Government of the Philippines pledged to “Initiate the process of accession to the 1961 Convention on the Reduction of Statelessness” (1961 Statelessness Convention).<sup>1</sup> As an initial step, and a key achievement for the Philippines, the government has adopted a ‘National Action Plan to End Statelessness by 2024’.<sup>2</sup> This runs parallel to the Global Campaign to End Statelessness, or the #IBelong campaign.<sup>3</sup> In October 2019, at the High-Level Segment on Statelessness, the Government of the Philippines made a series of pledges. In its Statement, the Philippines emphasized that its pledges were made on the basis of, “[a] deeply rooted culture of hospitality and compassion for others..., the fundamental Filipino value of pakikipagkapwa (or feeling one with others), adherence to human rights instruments, national policies and commitments to achieve the Sustainable Development Goals (SDGs), and as a priority of its National Development Plan embedded within the country’s long-term vision ‘Ambisyon Natin 2040’.”<sup>4</sup>

At the *High-Level Segment on Statelessness*, the Government of the Philippines affirmed its pledge to, “continue the study of statelessness... to improve qualitative and quantitative data on populations at risk of statelessness.”<sup>5</sup> This desk review research is being pursued to support the good work of the government in this regard.<sup>6</sup>

There are persons at-risk of statelessness with factual and familial connections to the Philippines overseas. Filipinos are affected by the laws of other countries when they migrate,

<sup>1</sup> *Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011)* <https://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>

<sup>2</sup> *Government of the Republic of the Philippines, National Action Plan on the Elimination of Statelessness by 2024*, Available at: <https://www.unhcr.org/ibelong/the-philippines-joint-strategy/> (Key components of the National Action Plan include resolving existing cases of statelessness, ensuring that no child is born stateless, and improving quantitative and qualitative data on stateless populations.)

<sup>3</sup> UNHCR, *Global Campaign to End Statelessness 2014-2024*, See: <https://www.unhcr.org/en-au/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>

<sup>4</sup> *Statement of the Republic of the Philippines at the High Level Segment on Statelessness, 7 October 2019*, available at: <https://www.unhcr.org/5d9cbcb27.pdf>.

<sup>5</sup> *Results of the High-Level Segment on Statelessness, October 2019*, available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/>

<sup>6</sup> *Results of the High-Level Segment on Statelessness, October 2019*, available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/> (The Government of the Philippines further pledged to: “enhance the policy, legal, and operational framework for stateless persons”; “improve access of vulnerable and marginalized populations to documentation through birth and civil registration”; “continue the process of accession to the 1961 Convention on the Reduction of Statelessness”; continue leadership on these issues in South-East Asia, and cooperate with UNHCR.)

travel, marry, adopt, and otherwise interact and live their lives in this increasingly globalized and interconnected world. Children of Philippine descent in migratory settings may be at particular risk where the local context makes birth registration and documentation particularly difficult or inaccessible. The Philippines' act of acceding to and implementing the 1961 Statelessness Convention will strengthen the protection the Philippines makes available to its constituents, including those at-risk of statelessness in migratory settings.

There are also persons-at-risk of statelessness in the Philippines. The Philippine Government, with support from UNHCR Philippines, conducted a series of inter-agency roundtable discussions from 2010-2011 and determined the following populations to be at-risk of statelessness:

- **Sama Bajau:** A sea-faring indigenous group of approximately 130,066 people in the Philippines (according to the 2010 Census) who are at-risk due to itinerant lifestyle/frequent border-crossing and generations of non-registration of birth.
- **Persons of Indonesian Descent (“PID”):** A Joint Committee on Bilateral Cooperation between the Philippines and Indonesia was entered into in 2014, which specifically provides that the Philippines will assist Indonesia in determining the legal status of Indonesian descendants in Southern Philippines. It established an Action Plan, conducted mapping, registration, and determination of nationality for 8,745 registered PID. 8,371 (96%) were confirmed as either Filipino, Indonesian, or limited dual citizenship (as of December 2019).
- **Unregistered children within the context of forcible displacement due to armed conflict<sup>7</sup>:** While the national average for birth registration in the Philippines is relatively high (above 90%), there are disparities with areas that have a much lower rate of registration. Data from the Philippine Statistics Authority (PSA) indicate that the registration rate is only 37.85% in the Bangsamoro Autonomous Region of Muslim

<sup>7</sup> It was suggested by various stakeholders that forcible displacement due to armed conflict was not the only reason for unregistered children, and so this population should not be limited in this way. At the same time, not all unregistered children may be at risk of statelessness since those that are not within the context of displacement or conflict have available mechanisms to register their births. Addressing birth and civil registration remains a priority in all its dimensions (whether in the context of forcible displacement due to armed conflict or beyond), and has been included among the recommendations below. The Department of Justice (DOJ) further notes that in the 2010-2011 inter-agency roundtable discussions, this population was not qualified specifically in the context of armed conflict. According to the DOJ, unregistered children run the risk of becoming stateless. Philippine citizenship is determined by blood (*jus sanguinis*), as can be proven by a birth certificate, which offers *prima facie* proof of filiation, or a passport, which proves that the country which issued it recognizes the person named therein as its national. (See *Macquiling v. COMELEC*, G.R. No. 195649, July 2, 2013).

Mindanao (BARMM).<sup>8</sup> Furthermore, Region XII (81.39%), Region VIII (85.54%), and Regions IX (86.59%) also show a significant gap.<sup>9</sup>

- **Foundlings:**<sup>10</sup> Data from the PSA includes 5,660 foundling certificates issued over the 10-year period from 2010 to 2019.
- **Children of Philippine descent in migratory settings:** Particular concern has been raised about an estimated 55,000 to 97,000 persons of Philippine descent in Sabah;<sup>11</sup> as well as undocumented children born of a Filipino parent/s in the Gulf countries (Kuwait, Qatar, Saudi Arabia, or the United Arab Emirates) that host the largest number of Overseas Filipino Workers (OFWs).

In addition to the above populations already identified by the Philippine government, 111 applications have been made to the statelessness status determination procedures in the Philippines since 2012 when Department Circular 58 was issued. 108 applications have been made by “persons of Japanese Descent” (PJD), children of Japanese citizens who migrated to the Philippines from the late 19th century to 1945, but whose fathers were conscripted into the Japanese military during World War II and were subsequently captured or killed leaving their children behind.<sup>12</sup> At least 13 cases so far have been recognized as stateless by the Department of Justice of the Philippines through the process, and six of those are PJD. The other 108 cases of PJD remain pending with the Department of Justice - Refugees and Stateless Persons Protection Unit (DOJ-RSPPU).<sup>13</sup> DOJ has noted that only legitimate children of Filipino mothers and Japanese fathers, who did not acquire the Japanese citizenship of their fathers, and also failed to elect Philippine citizenship when

<sup>8</sup> *Philippines Statistics Authority, Philippines’ Success in Improving Birth Registration, August 2017, available at: <http://documents1.worldbank.org/curated/ar/913231510728898246/pdf/121394-WP-PUBLIC-PhilippinesbirthregistrationcasestudywebversionSept.pdf> (“Autonomous Region in Muslim Mindanao (ARMM) had the lowest registration (37.9 percent) which means more interventions are needed to improve the CRVS in that region . It can be noted that Regions IX, VIII, XII, and ARMM have less than 90 .0 percent levels of birth registration.”)*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Once the 2016 Supreme Court rulings have been operationalized through the issuance of birth certificates and/or enactment of an enabling law recognizing their presumed Philippine citizenship, the risk of statelessness among foundlings may be addressed.*

<sup>11</sup> *These numbers come from the Immigration Office in Malaysia in 2018, documented as persons who continue to annually renew the documentation issued to former Filipino refugees, but more up to date and accurate statistics are needed, and these figures may also include individuals who are not at-risk of statelessness.*

<sup>12</sup> *Persons of Japanese Descent may be orphans left behind by parents who died or were returned to Japan or they may have remained with Filipino mothers and may have hidden their identity for fear of discrimination. 108 cases are reported to have approached the DOJ-Refugee and Stateless Persons Protection Unit (RSPPU).*

<sup>13</sup> *Determinations of status are made pursuant to Department Circular No. 58, by the RSPPU through a process of status determination. Figures are reported by the Department of Justice, Refugee and Stateless Persons Protection Unit, through initial consultations with UNHCR on the SURGE Capacity Project. The evidentiary challenge for the pending PJD stateless status applications appears to be a lack of appropriate civil documentation: birth certificates of the PJD, marriage certificates of their parents to indicate their being legitimate children of a Filipino mother and a Japanese father, and an official negative certification or similar document from the Japanese Government through its Embassy in Manila attesting that no record of birth is found in the Family Register of Japan, or that they did not acquire the Japanese citizenship of their Japanese fathers.*

they reached the age of majority are likely to be recognized as stateless persons. The Philippine Nikkei-jin Legal Support Center (PNLSC), a Japanese non-government organization (NGO) has identified over 3,800 PJD across the Philippines based on a series of 13 surveys commissioned by the Ministry of Foreign Affairs of Japan since 1995.<sup>14</sup> Most PJD identified so far by the PNLSC are children of Filipino mothers and Japanese citizens.

This desk review supports Action Point 7 of the National Action Plan (NAP) to End Statelessness by 2024 which seeks to continue the study of statelessness, in order to improve qualitative and quantitative data on populations at risk of statelessness in the Philippines and among its nationals, and in support of the government's efforts around statelessness initiated with pledges in 2011.<sup>15</sup> It provides recommendations to support the Government's strategy to end statelessness in the Philippines, and among persons of Philippine descent in migratory settings, to support the identification and protection of at-risk populations, resolve existing situations of statelessness or among populations at-risk of statelessness, and to prevent new cases from emerging.

The Philippines has shown tremendous leadership globally in the protection of refugees and stateless persons.<sup>16</sup> It is encouraging to see that the Philippines has further pledged to "continue leadership in Southeast Asia in the development of a human rights framework and provide technical support to other States in dealing with issues relating to stateless persons."<sup>17</sup> The Philippines has demonstrated a capacity to follow through on its pledges by establishing a robust operational framework to implement its commitments under the 1954 Convention Relating to the Status of Stateless Persons ("1954 Statelessness Convention") and the 1951 Convention Relating to the Status of Refugees ("1951 Refugee Convention") and its 1967 Protocol.<sup>18</sup>

<sup>14</sup> Reported by the Philippine Nikkei-jin Legal Support Centre (PNLSC) through initial consultations with UNHCR on the SURGE Capacity Project.

<sup>15</sup> Philippines National Action Plan to End Statelessness by 2024 (NAP).

<sup>16</sup> The Philippines was the first in Asia to sign the Convention Relating to the Status of Refugees, UN Treaty Series, vol. 189, p. 137 (Philippines accession, 22 July 1981); and Protocol Relating to the Status of Refugees, UN Treaty Series, vol. 606, p. 267 (Philippines accession, 22 July 1981). It was also the first in Asia to establish an Emergency Transit Mechanism, Government of the Philippines, IOM, UNHCR Memorandum of Agreement on Providing Emergency Transit Facilities, 28 Aug 2009. (See: <https://reliefweb.int/report/philippines/philippines-government-iom-unhcr-sign-refugee-transit-agreement>)

<sup>17</sup> Results of the High-Level Segment on Statelessness, October 2019, available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/>

<sup>18</sup> See Department Circular No. 058 - Establishing the Refugees and Stateless Status Determination Procedure [Philippines], 18 October 2012, available at: <https://www.refworld.org/docid/5086932e2.html>.

# Recommendations

- a. Additional research is needed to better understand what has led to improvements for the rights and conditions of OFWs, including those who may have fallen into an undocumented status in the Gulf:** Current research and stakeholder interviews indicate that substantial improvements have been achieved with regard to the situation in the Gulf countries for overseas Filipinos and children of Philippine descent over the past ten (10) years. Additional research is needed to determine what has been effective so that such efforts can be strengthened and replicated. Evidence of improvement includes: (1) DNA testing and exit processing for mothers-and-children cases arranged through an inter-agency committee of the Saudi government starting in 2013 led to the repatriation of thousands of children of Philippine descent;<sup>19</sup> (2) a number of bilateral agreements relating to domestic workers have been signed with Gulf countries since the first was signed with Saudi Arabia in 2013, setting expectations of both parties, and establishing a Joint Committee for periodic review, monitoring, and assessment. *This is not to suggest that everything is fine in the Gulf countries now. A number of concerns have still been raised during initial stakeholder interviews.* Additional research will identify what led to improvements, but also identify additional areas that need to be addressed, including through proactive efforts to prevent risks of statelessness and address other challenges.
- b. Investigating Missions like the one previously organized by the Committee on Overseas Workers' Affairs should be replicated:** A report was issued in 2011 based on a Mission deployed to understand the conditions faced by OFWs, assess the performance of Philippine government responses.<sup>20</sup> The report itself may have been controversial, and not all of its recommendations were met with consensus and approval. However, given the changes that this report precipitated, investigating missions such as this one may be an effective way to better map the context and the protection needs of overseas Filipinos (OFs) and guide government policy. It is recommended that similar initiatives be proposed, perhaps in the United Arab Emirates (UAE) and Kuwait, and that a multi-disciplinary team, with a priority given to gender balance, support such initiatives. UNHCR in the receiving country may be able to provide vital information of the situation on the ground and should be engaged.

<sup>19</sup> See: Maria Caridad H. Tarroja, *Discussion Paper on Undocumented Children of Overseas Filipinos, Submitted to the Council for the Welfare of Children.*

<sup>20</sup> *The Condition of Overseas Filipino Workers in Saudi Arabia, Final Report of the Investigating Mission of the Committee on Overseas Workers' Affairs (COWA) to Saudi Arabia, 9 February 2011.*

Similarly, other UN agencies can be engaged where appropriate, such as UNICEF where children of Philippine descent are affected, or IOM in relation to at risk populations in migratory settings<sup>21</sup>.

**c. Facilitate periodic opportunities for sharing of information and experiences among Social Welfare Attachés to compare practices, and to share strategies and lessons learned:**

In an initial stakeholder interview, Social Welfare Attachés appeared to benefit from the sharing of information and experiences with each other, as much as we did by engaging with them in this research. The discussion revealed that PSA Memorandum Circular (MC) 2017-12 is being utilized to a very positive impact and should continue to be utilized, but also revealed different practices on PSA-MC 2017-12 between offices, and strategies at one office that may be replicated in another office. This kind of engagement can encourage the development or enhancement of national policy, regional learning and understanding, sharing of good practices, and joint strategizing to address challenges in each location. A particular focus on children of Philippine descent (documented and particularly undocumented), PSA MC 2017-12 and the issuance of report of birth (ROB), and monitoring particularly challenging or sensitive cases would be beneficial. It may also be beneficial to facilitate consultations among other stakeholders actively involved in practice to inform the development of policy (i.e. Department of Social Welfare and Development, PSA, non-government organizations (NGOs), migrants themselves etc.).

**d. Add Persons of Japanese Descent (“PJD”) to the list of identified populations at-risk of statelessness:**

The Philippine Government, with support from UNHCR Philippines, conducted a series of inter-agency roundtable discussions from 2010-2011 and identified five populations at-risk of statelessness (Sama Bajau, persons of Indonesian descent, unregistered children in the context of forcible displacement due to armed conflict,<sup>22</sup> foundlings, and children of Philippine descent in migratory settings). At the time, PJD were not included, perhaps due to a misperception that they may have been able to exercise a right to elect Philippine citizenship, but based on findings in this report, including 108 cases currently pending before the Refugee

<sup>21</sup> Paragraph 72 of the New York Declaration affirms that, “statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness.” Objective 4, Paragraph 20 of the Global Compact for Safe, Orderly, and Regular Migration commits to, “(e) Strengthen measures to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation; and (f) Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights.”

<sup>22</sup> Please refer to footnote no. 7 for more information.

and Stateless Status Determination (“RSSD”) procedures and six already recognized as stateless, the numbers are significant and the situation urgent due to the age of this population. The average age of identified PJD is 81 years old.

- e. Consider pursuing a joint committee on bilateral cooperation between the Philippines and Japan similar to what was utilized to resolve cases of Persons of Indonesian Descent (PID) as a matter of urgency:** The scheme utilized for PID appears to be similar to a scheme utilized by Japan and China for Japanese war orphans in China (albeit without UNHCR engagement). Furthermore, the Japan Ministry of Foreign Affairs is already commissioning annual surveys to identify PJD in the Philippines. It is likely, therefore, that a similar strategy that was used with PID may work also for PJD. A joint committee on bilateral cooperation between the Philippines<sup>23</sup> and Japan that can map and register at least, if not also determine nationality for PJD, would likely be effective to swiftly resolve the remaining pending caseload, and be prudent with due regard to the age and vulnerability of the population. As the population is aging, time is of the essence. The average age of the PJD population is 81 years old. A joint committee on bilateral cooperation would likely be effective to swiftly resolve the remaining pending caseload within the timeframe of the National Action Plan to End Statelessness by 2024 (alongside the global campaign), or sooner. The population is significant but not massive, and past experience has demonstrated that an official government list provides adequate evidence for family courts in Japan to move quickly.<sup>24</sup>
- f. Additional insights could be provided through direct consultations with PJD:** Key informant interviews with PJD would support the identification of needs, risks, and perceptions and should be a part of any mapping exercise for the population. Interviews or participatory assessments could be conducted, whether as part of a more formal initiative, or a less formal one. It may also be beneficial to engage relevant actors, such as the Philippine Nikkei Jin Kai Rengokai (Federation of Japanese Descendants organizations) and the Philippine Nikkeijin Legal Support Center (PNLSC) and facilitate consultations and collaboration among key stakeholders to effectively identify and resolve cases.

<sup>23</sup> Under the auspices of the Philippines' Department of Foreign Affairs (DFA), in coordination with DOJ-RSPPU.

<sup>24</sup> Without government engagement, when investigation and evidence collection is included, the time frame for resolution of each case assisted by the PNLSC, from the time of identification to approval by the Family Courts in Japan, has reached up to 13 years. At most, without any government intervention, PNLSC has said that the maximum number of cases they could possibly assist in court proceedings a year is 20. This is far from adequate and if nothing is done, it would result in a large number of PJD dying long before any progress could be made in their case. On the other hand, a single lawyer supported the resolution of 1,200 persons of Japanese descent in China on the basis of the official government list of registered PJD from China. Such a list could resolve the situation for this entire population in a relatively short timeframe.

- g. Scale-up birth and civil registration efforts as a nation-wide effort:** Birth and civil registration efforts should support access to isolated and disadvantaged areas and consider perceptions and practicalities that prevent registration. Rigorous information dissemination on the importance of birth registration should be a priority, and cross-border engagement may also be necessary. For example, Sama Bajau populations are found in the Philippines, Malaysia, and Indonesia, and culturally they have lived a sea-faring and itinerant lifestyle for generations. They are often undocumented without any form of birth or civil registration. Dialogue and common cooperative measures should be pursued between the three countries, with inclusion and the meaningful engagement of populations at-risk of statelessness themselves in the decision-making processes. This may include, revisiting or updating border crossing agreements, such as the 1975 Revised Agreement between the Philippines and Indonesia. Birth and civil registration efforts should include, as a priority, the Sama Bajaus expanding on the successful pilot delayed birth registration of Sama Bajaus in Zamboanga City in 2019 led by the Philippine Government through the DOJ, NCIP, and the City Civil Registry Office, with support from UNHCR and UNICEF, that issued around 600 birth certificates. The Department of Social Welfare and Development (DSWD) and civil society partners have recommended that the whole of BARMM especially Basilan, Sulu, and Tawi-Tawi (BASULTA), and Palawan also be included as a priority, due to the large number of persons in these areas that have no birth registration; and also that returning Filipinos from Sabah be included as a priority.
- h. Support implementation of the tripartite Memorandum of Understanding (MOU) on statelessness issues in Sabah<sup>25</sup>** signed between the Commission on the Human Rights of the Philippines (CHRP), the Human Rights Commission of Malaysia (SUHAKAM), and the National Commission on Human Rights of Indonesia (Komnas HAM), by committing to collaboration among government and civil society stakeholders “[i]n the spirit of encouraging multi-stakeholder engagement, ...to ensure that the human rights of stateless persons are respected, including access to asylum and justice, freedom of movement and liberty, non-refoulement, work, education, and healthcare...,” and concretize where possible through the development of joint work plans designed to have an impact on the greatest number of persons at-risk of statelessness as possible.

<sup>25</sup> *Memorandum of Understanding (MOU) between the Human Rights Commission of Malaysia (SUHAKAM), the National Commission on Human Rights of Indonesia (Komnas HAM), and the Commission on the Human Rights of the Philippines (CHRP) on Statelessness Issues in Sabah.*

- j. Additional research is needed to map and understand the circumstances of various groups of persons of Philippine descent in Sabah:** This might include, overseas Filipino workers and their children including those with a regularized status, but in particular those who are undocumented; former refugees/IMM13 card holders and their descendants who may be considered irregular migrants now; or mobile/migratory maritime peoples such as the various sub-groups of Sama Bajau people; noting that some also hold/held IMM13 cards and that categories are not mutually exclusive and often overlap with many persons labeled irregular migrants, with often blurred lines between migratory and non-migratory contexts of statelessness (i.e. persons undocumented and at-risk of statelessness who may have never crossed an international border, but may have familial or cultural links across borders). Research should engage desk review and consultation with various key stakeholders, including government representatives and experts, and importantly, including persons at-risk of statelessness themselves. The desk review should engage experts and make use of existing research, and avoid duplicating past efforts, but should also address gaps in analysis. Research should also consider returning Filipinos from Sabah and engage those who support them. Given political sensitivities, research should be undertaken from a neutral, objective, principled, and rights-based perspective with a focus on persons at-risk of statelessness and resolution of their risks and vulnerabilities with a particular view to legal status.
- k. Consider a tripartite approach, including Malaysia in the previously organized joint committee on bilateral cooperation between the Philippines and Indonesia that was successful in identifying and resolving cases of PID:** Universal birth registration is a principle that can garner the political will of all three countries without engaging political sensitivities, or undermining policy positions. Filipinos in Sabah, need to be able to secure a birth certificate and passport to access their Filipino nationality, and some recognized documentation is needed in relation to the Malaysian Government, to ensure a person can live normally without fear of arrest, detention, and deportation.
- i. Conduct regular special consular missions in countries with high numbers of undocumented Filipinos:** In 2012 and in 2019, the Department of Foreign Affairs (DFA) and the PSA team went to Sabah for a special mission to conduct on-site civil registration activities that included verification and issuance of delayed registration for undocumented persons of Philippine descent. This kind of mission should be replicated and continuously conducted in countries with high numbers of undocumented persons of Philippine descent.

- m. Facilitate local integration of populations whose risk of statelessness have been addressed** through meaningful engagement in decision-making processes of the community (including with a focus on developmental aspects of integration such as livelihoods).
- n. Identify indicators to monitor progress** towards addressing statelessness under the Philippine Development Plan 2017-2022, particularly on improving data collection on populations at risk of statelessness and the issuance and/or amendment of relevant policies and laws.
- o. Integrate statelessness-related indicators in the thematic areas under the Socioeconomic Peacebuilding Framework (SEPF) of the United Nations (UN) in the Philippines.** This ensures a more collaborative and effective engagement with different UN agencies to address statelessness in line with the Secretary General’s Guidance Note on the United Nations and Statelessness.<sup>26</sup>

---

<sup>26</sup> UN Secretary General, *Guidance Note of the Secretary General: The United Nations and Statelessness, 2018*, available at: <https://www.refworld.org/docid/5c580e507.html>

# Terminology

**Stateless Person (sometimes also referred to as “De Jure stateless”):** A stateless person is a person who is not considered as a national by any State under the operation of its law (Article 1 of the 1954 Convention relating to the Status of Stateless Persons).<sup>27</sup>

**Person at-risk of statelessness:** A person who may have difficulty providing proof that they meet the requirements set by law for the acquisition of nationality.<sup>28</sup> A person is at-risk of statelessness where proof of the person’s nationality status is lacking, or where a person’s nationality is doubtful, undetermined or unknown.<sup>29</sup> In such circumstances, nationality or statelessness status determination may be necessary to assess whether or not the person is stateless. On the basis of such a determination a person may be declared to be stateless, but until such a determination takes place, a person may be more appropriately referred to as “at-risk of statelessness.” This is because, using the term stateless in relation to a person or population who may not in fact be stateless, may have serious consequences. This report avoids using the term “stateless person(s)” loosely. As noted below, five populations have been identified by the Government of the Philippines as being at-risk of statelessness through inter-agency discussions in 2010-2011.<sup>30</sup>

**De Facto Stateless:** Persons who may formally possess a nationality, but are in a situation similar to stateless persons, because they are outside the country of their nationality, and are unable or, for valid reasons, are unwilling to avail themselves of the protection

<sup>27</sup> Department Circular No. 058 - Establishing the Refugees and Stateless Status Determination Procedure [Philippines], 18 October 2012, available at: <https://www.refworld.org/docid/5086932e2.html>; UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations Treaty Series, Vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>

<sup>28</sup> Hugh Massey, UNHCR and De Facto Statelessness, April 2010, LPPR/2010/01, available at: <https://www.refworld.org/docid/4bbf387d2.html> (“It should be noted that just because a person has not been registered by a State as its national does not necessarily mean that he or she is not considered as a national under the operation of that State’s law. For example, each year approximately 48 million births remain unregistered by the time the children concerned have reached the age of five, but this does not necessarily mean that none of those children have a nationality. What it does mean, however, is that the children are at the very least **at risk** of not being able to prove a claim that a claim that they have acquired nationality *jure sanguinis* or *jure soli* should their nationality status ever be questioned. Such questioning could be triggered either by the State whose nationality is at issue, or by another State (if, for example, the child concerned was born or later travelled abroad).” (emphasis added))

<sup>29</sup> Paul Weiss Statement by Paul Weiss to the United Nations Conference on the Elimination or Reduction of Future Statelessness (Aug. 25, 1961)

<sup>30</sup> DOJ has noted that under Philippine jurisprudence, Philippine citizenship is determined by blood (*jus sanguinis*), and can be proven by a birth certificate, which offers *prima facie* proof of filiation; or a passport, which proves that the country which issued it recognizes the person named therein as its national. (See, *Hrs. of Pedro Cabais v. Court of Appeals*, G.R. Nos. 106314-15, October 8, 1999, and *Casan Macode Macquiling v. COMELEC*, G.R. No. 195649, July 2, 2013). In the absence of such legal identity documents, the person concerned is at risk of statelessness. Unfortunately, the person may be recognized as stateless when he/she applies for stateless status determination, and at the time of the decision, he/she does not possess any of said identity documents to prove Philippine citizenship, or proof that he/she is a national of another country.

of that country.<sup>31</sup> A person cannot be considered to be both de jure stateless and de facto stateless at the same time.<sup>32</sup>

Persons may be unable to avail themselves of the protection of the country of their nationality either because the country of nationality refuses its protection or because the country is unable to provide its protection. On the other hand, valid reasons for a person to be unwilling to avail themselves of the protection of the country of their nationality are those reasons currently recognized by the international and regional refugee regimes, and other human rights frameworks.<sup>33</sup> Persons who refuse the protection of the country of their nationality, although it is available to them, and who are not in need of international protection, are not generally considered de jure, nor de facto, stateless.

The term “de facto stateless” has sometimes been used to describe persons who are actually “de jure stateless.” Particular care should be taken not to label a de jure stateless persons as “de facto stateless” because while stateless persons are defined and protected in the 1954 and 1961 Statelessness Conventions, there is no similar legal regime for de facto stateless persons, and therefore, it may provide less, or even no, protection in some contexts; and so the utility of the concept may be more limited.<sup>34</sup>

This report, therefore, avoids the term “de facto stateless,” but this should not be read to imply that there are no persons suffering from de facto statelessness. Some persons, who are unable to avail themselves of the protection of their country of nationality, may qualify for protection under the 1951 Refugee Convention or other complementary protection regimes, but there may also be situations in which the person falls outside of these protection regimes, but is nevertheless de facto, but not de jure, stateless.

<sup>31</sup> UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law (“Prato Conclusions”), May 2010*, available at: <https://www.refworld.org/docid/4ca1ae002.html>

<sup>32</sup> UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law (“Prato Conclusions”), May 2010*, available at: <https://www.refworld.org/docid/4ca1ae002.html> (“A person who is stateless in the sense of Article 1(1) of the 1954 Convention cannot be simultaneously de facto stateless.”)

<sup>33</sup> *Refugee Convention, Article 1(A)(2)* (“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”), *Convention Against Torture, Article 3* (“substantial grounds for believing that he would be in danger of being subjected to torture.”), *International Covenant on Civil and Political Rights (ICCPR), Articles 6 and 7* (threats to the right to life and “torture or cruel, inhuman or degrading treatment or punishment”).

<sup>34</sup> UNHCR, *Handbook on Protection of Stateless Persons, 30 June 2014*, available at: <https://www.refworld.org/docid/53b676aa4.html> (“Unlike the term “stateless person” as defined in Article 1(1), the term de facto statelessness is not defined in any international instrument and there is no treaty regime specific to this category of persons... Care must be taken that those who qualify as “stateless persons” under Article 1(1) of the 1954 Convention are recognised as such and not mistakenly referred to as de facto stateless persons as otherwise they may fail to receive the protection guaranteed under the 1954 Convention.”)

Resolution 1 of the Final Act of the 1961 Statelessness Convention “recommends that persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality.”<sup>35</sup> The UNHCR Handbook recommends that “States are encouraged to provide protection to de facto stateless persons in addition to 1954 Convention stateless persons.”<sup>36</sup> All persons are protected by the broader human rights regime.

**Statelessness Status Determination:** As described by Section 2 of Department Circular No. 58 “Establishing the Refugee and Stateless Status Determination Procedure,” *Statelessness Status Determination* is “a fair, speedy and non-adversarial procedure to facilitate identification, treatment and protection of...stateless persons consistent with the laws, international commitments, and humanitarian traditions and concerns of the Republic of the Philippines.”<sup>37</sup>

Government officials might encounter the question of whether a person is stateless in a range of contexts, and status determination will be necessary in response to a range of judicial and administrative procedures. For example: determining nationality and statelessness status may be necessary in the provision of documentation including identity documents; when seeking access to government services; and when pursuing legal residence, employment in the public sector, or exercising the right to vote, among other rights. The question of nationality and statelessness also often arises when an individual’s right to be in a country is challenged in removal procedures. Generally speaking, an assessment of statelessness will also be necessary where a person seeks the application of the safeguards set out in the 1954 and 1961 Statelessness Conventions.

While States do sometimes register a person as being of unknown or undetermined nationality, “such a classification is only reasonable as a transitory measure during a brief period of time” while a timely statelessness status determination process is scheduled.<sup>38</sup> Establishing a determination procedure and granting a legal status to stateless persons is

<sup>35</sup> *Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness held at Geneva from 24 March to 18 April 1959, and Resolutions I, II, III and IV of the Conference, concluded at New York on 30 August 1961, available at: <https://www.refworld.org/pdfid/3ae6b39620.pdf>*

<sup>36</sup> *UNHCR, Handbook on Protection of Stateless Persons, Para. 124, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>*

<sup>37</sup> *Department Circular 58, Section 2.*

<sup>38</sup> *Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children, 9 May 2009, CM/Rec(2009)13, available at: <https://www.refworld.org/docid/4dc7bffc2.html> (“A borderline case of de jure and de facto statelessness exists if authorities register a person as being of unknown or undetermined nationality, or classify the nationality of a person as being “under investigation.” Such classification is only reasonable as a transitory measure during a brief period of time. This is in line with the spirit, for example, of Article 8 of the Convention on the avoidance of statelessness in relation to State succession, requesting states to lower the burden of proof. It urges states to implement their obligations under international law by not indefinitely leaving the nationality status of an individual as undetermined.”)*

part of the good faith implementation of the 1954 Statelessness Convention, identifies and documents stateless persons, grants rights as stateless persons and allows them to fully participate in and contribute to the society in which they live, and this reduces costs and contributes to security.<sup>39</sup>

---

<sup>39</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>

# Introduction

This comprehensive desk review is being produced as part of a UNHCR Protection SURGE Capacity Project (“SURGE” = Supporting UNHCR Resources on the Ground with Experts on mission) in support of the Philippines’ implementation of the National Action Plan (NAP) to End Statelessness by 2024, and in particular Action Point 7 on Improving Quantitative and Qualitative Data on Stateless Populations.<sup>40</sup> This desk review will conduct data collection and analysis of populations at risk of statelessness in the Philippines and of Philippine descent in migratory settings.

The Philippine Government, with support from UNHCR Philippines, conducted a series of inter-agency roundtable discussions from 2010-2011 which led to the determination of the following populations at risk of statelessness:

- Children of Philippine descent in migratory settings
- Sama Bajau
- Persons of Indonesian Descent
- Unregistered children within the context of forcible displacement due to armed conflict<sup>41</sup>
- Foundlings<sup>42</sup>

There are persons at-risk of statelessness in the Philippines, and persons-at-risk of statelessness with factual and familial connections to the Philippines overseas.

The Sama Bajau currently live across the Philippines, Malaysia, and Indonesia. They live a sea-faring and itinerant lifestyle and have lived generations without birth registration.<sup>43</sup>

---

<sup>40</sup> UNHCR has developed response capacity across a broad range of UNHCR’s protection interventions. This response capacity is known as the Protection Surge Capacity Project, or SURGE (Supporting UNHCR Resources on the Ground with Experts on mission). Under an agreement between UNHCR and the International Rescue Committee (IRC), the IRC maintains an active roster of experts who are deployed as “Experts on Mission” for the United Nations. The SURGE project research will produce a comprehensive desk review on populations at risk of statelessness in the Philippines and of Filipino descent in a migratory setting. It will also develop Policy Briefs in relation to identified legislative priorities, including: in support of accession to the 1961 Convention on the Reduction of Statelessness, the Comprehensive Refugee and Stateless Persons Protection Bill, and the Facilitated (Administrative) Naturalization Bills.

<sup>41</sup> Please refer to footnote #7 for more information.

<sup>42</sup> Please refer to footnote #10 for more information.

<sup>43</sup> A Pilot Birth Registration scheme spearheaded by the Zamboanga City local government and supported by UNHCR and UNICEF has provided around 600 birth certificates from 2019 to 2020. The project is targeted to be further expanded to reach more of the communities in need (See: <https://www.unhcr.org/ph/17097-unhcr-unicef-zamboanga-birth-registration-sama-bajaus.html>).

There were approximately 130,066 Sama Bajaus identified at the 2010 Philippine Census.<sup>44</sup> The Sama Bajau were also the second-largest ethnic group in Sabah according to 2010 figures comparing populations by ethnic group compiled by the Department of Statistics of Malaysia.<sup>45</sup> Persons of Indonesian Descent (“PID”) are another population at-risk of statelessness. Through a joint initiative of the Philippines and Indonesian Governments in cooperation with UNHCR, an Action Plan was established and mapping of the population of PID and registration was conducted. Determination of nationality for 8,745 registered PID, has so far led to confirmation as either Filipino, Indonesian, or limited dual citizenship for 8,371 persons (96% of those registered) as of December 2019. Outstanding cases are those that participated in the project but did not return for the solutions phase. Based on consultations with DOJ, there may be additional unmapped PID populations estimated at around 4,000 persons of Indonesian descent not yet reached by the joint project of the Philippines, Indonesia, and UNHCR to resolve their status.<sup>46</sup>

There are still children born without birth certificates and are at risk of statelessness within the context of forcible displacement due to armed conflict.<sup>47</sup> While the national average for birth registration in the Philippines is relatively high (above 90%), there are disparities with areas that have a much lower rate of registration. Data from the Philippine Statistics Authority (PSA) indicate that the registration rate is only 37.85% in the BARMM Region.<sup>48</sup> Furthermore, Region XII (81.39%), Region VIII (85.54%), and Regions IX (86.59%) also show significant gaps. Meanwhile, data from the PSA, includes 5,660 foundling certificates issued over the ten (10)-year period from 2010 to 2019. A landmark ruling in the Supreme Court found that

<sup>44</sup> *Philippine Statistics Authority, 2010 Census.*

<sup>45</sup> “Total population by ethnic group, administrative district and state, Malaysia.” Department of Statistics, Malaysia. 2010. pp. 369/1. Available at: [https://web.archive.org/web/20120227090345/http://www.statistics.gov.my/portal/download\\_Population/files/population/05Jadual\\_Mukim\\_negeri/Mukim\\_Sabah.pdf](https://web.archive.org/web/20120227090345/http://www.statistics.gov.my/portal/download_Population/files/population/05Jadual_Mukim_negeri/Mukim_Sabah.pdf)

<sup>46</sup> Since 2011, the Philippine Government, Indonesian Government, and UNHCR has been working together to bring legal protection to over 8,000 Persons of Indonesian Descent in southern Philippines (See: <https://www.unhcr.org/ph/11753-philippine-indonesian-governments-work-together-end-statelessness-mindanao.html>). The project between UNHCR and the Governments of the Philippines and Indonesia was initiated in 2011, it is led by the Philippines’ Department of Justice, Refugees and Stateless Persons Unit (DOJ-RSPPU), and supported by the Bureau of Immigration, Public Attorney’s Office, Indonesian Consulate, and UNHCR Philippines. (96% of those who have been registered have been provided with solutions through confirmation of their nationality. This was conducted by the Governments of the Philippines and Indonesia in resolving situations of statelessness of Persons of Indonesian Descent (PID). See: *Statement of the Republic of the Philippines at the High Level Segment on Statelessness, 7 October 2019*, available at: <https://www.unhcr.org/5d9c9cb27.pdf>)

<sup>47</sup> In this regard, the Philippines has also already made a firm commitment to ensure that no child is born stateless (*Statement of the Republic of the Philippines at the High Level Segment on Statelessness, 7 October 2019*, available at: <https://www.unhcr.org/5d9c9cb27.pdf>). Note achievements to date, for example, through the Muslim Mindanao Autonomy Act No. 293, child registration in conflict-affected areas is designed to reduce the number of unregistered children. (See: *Government of the Republic of the Philippines, RLA Bill No. 24, Autonomous Region in Muslim Mindanao, Regional Legislative Assembly, 7th Legislative Assembly, Second Regular Session, Muslim Mindanao Autonomy Act No. 293, 14 May 2012, An Act Establishing Free Birth Registration in the Autonomous Region in Muslim Mindanao and Providing Funds Therefor* (available at: [https://lawphil.net/administ/mmaa/7a/pdf/mmaa\\_293\\_7a.pdf](https://lawphil.net/administ/mmaa/7a/pdf/mmaa_293_7a.pdf)))

<sup>48</sup> *UNHCR-UNICEF Joint Strategy for Addressing Childhood Statelessness.*

“[a]s a matter of law, foundlings are as a class, natural-born citizens,”<sup>49</sup> and the Government of the Philippines has pledged to adopt “legislation to implement the ruling from the Supreme Court, through which foundlings are presumed to be natural born citizens” and “a domestic law on the citizenship of foundlings” as part of its strategy.<sup>50</sup> The Government of the Philippines has included as a part of its National Action Plan (NAP) to End Statelessness by 2024 action points to ensure that “No Child is Born Stateless”; and to “Ensure Birth Registration for the Prevention of Statelessness.”<sup>51</sup>

In addition to the above listed populations, over 100 applications have been made by “persons of Japanese Descent” (“PJD”) to the statelessness status determination procedures in the Philippines.<sup>52</sup> Six cases so far have been recognized as stateless by the DOJ of the Philippines through the process. The Philippine Nikkeijin Legal Support Center (“PNLSC”) has documented 3,836 PJD in the Philippines and considers 910 of those cases to be at-risk of statelessness in the Philippines as of 5 May 2020.<sup>53</sup> PNLSC also believes there may be more that have not been reached, and emphasizes that because the average age of the Philippine Nikkeijin community members is 81, the situation is urgent.

Around 2 million Filipinos seek employment opportunities overseas annually.<sup>54</sup> Many are temporary or irregular migrants, and this may include children of Philippine descent in migratory settings who are at risk of statelessness. The risks may be particularly high in Sabah, Middle East, and Central and East Asia, where registration of birth is complicated due to access issues as well as gender, race, and other forms of discrimination in civil registration laws, and the risks of being undocumented. Particular concern has been raised about an

<sup>49</sup> *Mary Grace Natividad S. Poe-Llamanzares v. COMELEC*, G.R. Nos. 221697 & 221698-700, March 8, 2016. (The Court based its decision on deliberations of the framers of the 1935 Constitution that specifically discussed foundlings, and the generally accepted principle of international law ‘to presume foundlings as having been born of nationals of the country in which the foundling is found.’)

<sup>50</sup> See: the *Philippines Joint Strategy*, Section 2.2 “Promoting law reform, and its implementation, to ensure safeguards in nationality laws to prevent statelessness amongst children”; available at: <https://www.unhcr.org/ibelong/the-philippines-joint-strategy/>.

<sup>51</sup> *Government of the Republic of the Philippines, National Action Plan on the Elimination of Statelessness by 2024*, Action Point 2: “No Child is Born Stateless”; and Action Point 5: “Ensure Birth Registration for the Prevention of Statelessness.”

<sup>52</sup> *Persons of Japanese Descent may be orphans left behind by parents who died or were returned to Japan or they may have remained with Filipino mothers and may have hidden their identity for fear of discrimination. 108 cases are reported to have approached the DOJ-Refugee and Stateless Persons Protection Unit.*

<sup>53</sup> *Figures are according to the numbers collected by the Philippine Nikkeijin Legal Support Center in work commissioned by the Ministry of Foreign Affairs of Japan.*

<sup>54</sup> *Philippine Development Plan 2017-2022*, available at: <http://pdp.neda.gov.ph/wp-content/uploads/2021/02/Prepublication-Updated-PDP-2017-2022-as-of-Feb-10.pdf> (updated 10 February 2021)

estimated 55,000 to 97,000 persons of Philippine descent in Sabah;<sup>55</sup> as well as undocumented children born of a Filipino parent/s in the Gulf countries (Kuwait, Qatar, Saudi Arabia, or the UAE) that host the largest number of OFWs. In such circumstances, children of Filipino descent may currently be suffering without a nationality.<sup>56</sup>

This Desk Review provides an overview of populations at-risk of statelessness in the Philippines, with a particular focus on PJD, and children of Philippine descent in a migratory setting.

---

<sup>55</sup> *These numbers come from the Immigration Office in Malaysia in 2018, documented as persons who continue to annually renew the documentation issued to former Filipino refugees, but more up to date and accurate statistics are needed, and these figures may also include individuals who are not at-risk of statelessness.*

<sup>56</sup> *There are no precise figures available, but for example, estimates from qualitative reports indicate that there are at least around 2,000-3,000 children at-risk of statelessness in Saudi Arabia alone. The Department of Social Welfare and Development also noted that there are 600 undocumented children in Qatar, Jeddah, Riyadh, and Dubai from 2018 to 2020. Please refer to Annex A for more information. See also: Allerton C, 'Statelessness and the Lives of the Children of Migrants in Sabah, East Malaysia' (2014) 19 *Tilburg Law Review* 26 DOI: <http://doi.org/10.1163/22112596-01902004>.*

# Background and Statistics on Identified Populations at Risk of Statelessness

## A. Philippines National Legal Framework

### A.1. Citizenship

Citizenship in the Philippines is based upon the principle of *jus sanguinis*, determined by descent from a parent who is a citizen or national of the Philippines. The criteria for determining citizenship has shifted over time, and the relevant law for determining one's citizenship is the law that was in place at the time of birth. The Supreme Court of the Philippines has held that, "it is a well-settled rule that statutes are to be construed as having only a prospective operation, unless the legislature intended to give them a retroactive effect.<sup>57</sup>...It has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions."<sup>58</sup>

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

<sup>57</sup> *Tan v. Crisologo*, G.R. No. 193993, S. Ct., 8 Nov. 2017 (citing to: *Lepanto Consolidated Mining Co. v. WMC Resources Intl. Pty. Ltd.*, 537 Phil. 473, 485 (2006)).

<sup>58</sup> *Tan v. Crisologo*, G.R. No. 193993, S. Ct., 8 Nov. 2017 (citing to: *Balatbat v. Court of Appeals*, 282 Phil. 429, 436 (1992)).

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

Acquisition	
	<p><b>“Natural Born Citizens”</b> (1987 Constitution, Article IV, Section 2): citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.* Citizenship is defined in the relevant Constitutions: 1935; 1973; 1987, and the relevant law is the one in place at the time of birth.</p> <p><i>*Those who elect citizenship in accordance with the Constitution are considered “natural born citizens” - Procedures for Election of Citizenship (CA 625)</i></p>
Relevant Laws	<p><i>**No election of Philippine citizenship shall be accepted for registration under CA No. 625 unless the party exercising the right of election has complied with the requirements of the Alien Registration Act of 1950. In other words, [one] should first be required to register as an alien” (Republic v. Sagun, G.R. No. 187567, February 15, 2012)</i></p>
	<p><b>Naturalization</b></p> <ul style="list-style-type: none"> <li>• [Judicial] Revised Naturalization Law (CA 473)</li> <li>• [Administrative] Administrative Naturalization Law (RA 9139)</li> <li>• [Legislative] Naturalization by direct legislative act</li> </ul>
Competent Authority	<ul style="list-style-type: none"> <li>• <b>Office of the Solicitor General (OSG)</b><sup>59</sup>: Appears in all proceedings involving the acquisition or loss of Philippine citizenship</li> <li>• <b>Civil Registry</b><sup>60</sup> or <b>Philippine Embassy or Consulate</b><sup>61</sup>: Election of Citizenship, Birth Registration</li> <li>• <b>Court of First Instance of the relevant province, with appeal to the Supreme Court</b><sup>62</sup>: Judicial Naturalization</li> <li>• <b>Special Committee on Naturalization</b><sup>63</sup> (with the Solicitor General as chair, Secretary of Foreign Affairs or his representative, and the National Security Adviser, as members, with the power to approve, deny or reject applications for naturalization): Administrative Naturalization</li> </ul>
Existing Rules	<p>Jus Sanguinis, and naturalization procedures for anyone who is not a natural-born citizen</p>

<sup>59</sup> Executive Order No. 292, Administrative Code of 1987, Book IV, Title III, Chapter 12-Office of the Solicitor General, Section 35(4). (“The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers...[including] specifically the following specific... functions... [a]ppear in all proceedings involving the acquisition or loss of Philippine citizenship.”)

<sup>60</sup> Act No. 3753, Law on Registry of Civil Status: “A civil register is established for recording the civil status of persons, in which shall be entered: (a) births; (b) deaths; (c) marriages; (d) annulments of marriages; (e) divorces; (f) legitimations; (g) adoptions; (h) acknowledgment of natural children; (i) naturalization; and (j) changes of name”

<sup>61</sup> Executive Order No. 292, Administrative Code of 1987, Book IV, Title I, Foreign Affairs, Chapter 1-General Provisions, Section 3(9) “Protect and assist Philippine nationals abroad”; and (10) “Carry out legal documentation functions as provided for by law and regulations;”

<sup>62</sup> Commonwealth Act No. 473, Section 8. This court is presently known as the Regional Trial Court (RTC).

<sup>63</sup> Republic Act No. 9139, Section 6

### Loss

Relevant Laws	Loss and Re-Acquisition of Citizenship Act (CA 63)
Existing Rules	<ol style="list-style-type: none"> <li>1. By naturalization in a foreign country;</li> <li>2. By express renunciation of citizenship;</li> <li>3. By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining 21 years of age or more;</li> <li>4. By accepting commission in the military, naval or air service of a foreign country;</li> <li>5. By cancellation of the certificate of naturalization;</li> <li>6. By having been declared, by competent authority, a deserter of the Philippine army, navy or air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and</li> <li>7. In the case of a woman, upon her marriage to a foreigner if, by virtue of the law in force in her husband's country, she acquires his nationality.<sup>64</sup></li> </ol>

### Retention, Re-acquisition, and Repatriation

Relevant Laws	Loss and Re-Acquisition of Citizenship Act (CA 63) Citizenship Retention and Re-acquisition Act of 2003 (RA 9225) Citizenship Repatriation Act (RA 8171)
Competent Authority	Office of the Solicitor General (OSG) <sup>65</sup> By direct act of the Congress of the Philippines <sup>66</sup> Commissioner of Immigration Philippine Embassy or Consulate, who shall forward the entire records to the Commissioner of Immigration
Existing Rules	Under CA 63, re-acquisition is by naturalization, repatriation or direct act of the National Assembly RA 9225 provides for the retention or reacquisition of citizenship for natural-born citizens who naturalize in a foreign country, permitting dual nationality upon taking the oath of allegiance (and for their children below the age of 18). RA 8171 facilitates repatriation and re-acquisition of nationality for women who have lost their nationality through marriage to a foreigner under CA 63, by taking the necessary oath of allegiance and registration in the civil registry and Bureau of Immigration

<sup>64</sup> *In Commonwealth of the Philippines v. Gloria Baldello*, G.R. No. L-45375, April 12, 1939 (The court found that where the spouse was a stateless individual, "there being no new citizenship imposed upon her by marriage, nothing could have divested her of her original citizenship, and, therefore, her Philippine citizenship remained unchanged. The general rule that a married woman follows the nationality of her husband presupposes a nationality in the husband. Where no such nationality exists, the rule does not apply.")

<sup>65</sup> Executive Order No. 292, Administrative Code of 1987, Book IV, Title III, Chapter 12-Office of the Solicitor General, Section 35(4).

<sup>66</sup> Commonwealth Act 63, Section 2(3), "Citizenship may be reacquired: ...(3) By direct act of the National Assembly"

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

### Citizenship Acquisition

Under Article IV Section 1(4) of the 1987 Constitution, “[t]hose who are naturalized in accordance with law” are citizens.<sup>67</sup> There are three forms of naturalization under the law of the Philippines: administrative naturalization under Republic Act (RA) No. 9139; judicial naturalization under Commonwealth Act (CA) No. 473; and legislative naturalization through which Congress can enact a law bestowing Philippine citizenship (*See, for example: Republic Act 10148, 12 March 2011 or Republic Act 10636, 11 June 2014 (conferring nationality on basketball players Marcus Doubhit and Andray Blatche respectively)*). It is conceivable that a stateless person could be eligible for Administrative Naturalization already, if they satisfy the criteria found in RA No. 9139. Alternatively, any stateless person could be eligible for judicial naturalization if they satisfy the criteria found in CA No. 473.

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

<sup>67</sup> *The Constitution of the Republic of the Philippines, 1987*, available at: <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

### **Natural-Born vs. Naturalized Citizenship**

Only natural-born citizens can retain and re-acquire citizenship and sustain dual citizenship under RA 9225.<sup>68</sup> Only natural-born citizens can run for national offices such as President, Senator, or House Representative; and be eligible for appointment to the Supreme Court or serve on Civil Service Commissions, among others. Lower courts and local government positions do not require natural-born citizenship. The “natural-born” distinction was only introduced for the first time in the 1935 Constitution, and then only in reference to eligibility for President or Vice-President. In the 1973 Constitution, the distinction was defined, and became a criteria for eligibility to many national offices, and this was carried over into the 1987 Constitution.

Natural-Born Citizens	Naturalized Citizens
<p>1987 Constitution, Article IV, Section 2:</p> <p>“Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.” (These include those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority)</p> <ul style="list-style-type: none"> <li>• A person who, at the time of his/her birth, has at least one Filipino parent</li> <li>• A person born to a Filipino mother before 17 January 1973 who elected Philippine citizenship upon reaching the age of majority (21 years old) and</li> <li>• Those who were born under the 1935 and 1973 Philippine Constitutions</li> </ul>	<p>1987 Constitution, Article IV, Section 1(4):</p> <p>“Those who are naturalized in accordance with law.”</p>

*\*Foundlings are also considered natural born citizens unless there is evidence to the contrary.*<sup>69</sup>

*Under Article 8 of the Republic Act No. 386, the Civil Code of the Philippines, “Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.”*<sup>70</sup>

<sup>68</sup> Republic Act No. 9225, *Citizenship Retention and Re-acquisition Act of 2003*, available at: [https://www.lawphil.net/statutes/repacts/ra2003/ra\\_9225\\_2003.html](https://www.lawphil.net/statutes/repacts/ra2003/ra_9225_2003.html)

<sup>69</sup> A landmark ruling in the Supreme Court found that “[a]s a matter of law, foundlings are as a class, natural-born citizens” (*Mary Grace Natividad S. Poe-Llamanzares v. COMELEC*, G.R. Nos. 221697 & 221698-700, March 8, 2016), and according to Article 8 of the Civil Code, judicial decisions “form part of the legal system of the Philippines.” Moreover, the Government of the Philippines has pledged to adopt “legislation to implement the ruling from the Supreme Court, through which foundlings are presumed to be natural born citizens” and issue birth certificates to foundlings on an equal basis with other children as part of its strategy.

<sup>70</sup> Republic Act No. 386, *Civil Code of the Philippines*, June 18, 1949, available at: <https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/>

## A.2. Birth and Civil Registration

Birth registration is a prerequisite to establishing parentage and would be a means to acquire proof of nationality.<sup>71</sup> Under Article 172 of the Family Code, the filiation of legitimate children is established by any of the following: (1) The record of birth appearing in the civil register or a final judgment; or (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence of that, the legitimate filiation shall be proved by: (1) The open and continuous possession of the status of a legitimate child; or (2) Any other means allowed by the Rules of Court and special laws (265a, 266a, 267a).

A Regional Strategic Plan for the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific<sup>72</sup> was approved by the Economic and Social Commission for Asia and the Pacific (ESCAP) in Commission Resolution 69/15.<sup>73</sup> A Regional Action Framework was also developed setting goals and targets that would set a road map towards achievement of a shared vision that, “all people in Asia and the Pacific will benefit from universal and responsive CRVS systems that facilitate the realization of their rights and support good governance, health and development.”<sup>74</sup> Three outputs are intended:

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

Civil registration records should contain, for each vital event, the minimum information for judicial and administrative purposes as recommended by the United Nations.<sup>75</sup>

The Philippines, through Presidential Proclamation 1106 declared the years 2015-2024 as Civil Registration and Vital Statistics Decade.<sup>76</sup> Following up on UNESCAP Resolution 69/15

<sup>71</sup> Article 172, Chapter 2, Executive Order 209 [Family Code of the Philippines]

<sup>72</sup> Regional Strategic Plan for the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific, 3 December 2012, available at: <https://www.unescap.org/sites/default/files/CRVS%20Draft%20Regional%20Strategic%20Plan%20282012%29%20English.pdf>

<sup>73</sup> ESCAP Commission Resolution 69/15, Implementing the outcome of the High-level Meeting on the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific, E/ESCAP/69/L.5, 27 April 2013, available at: <https://www.unescap.org/sites/default/files/ESCAP%20Res-69-15.pdf>

<sup>74</sup> Regional Action Framework on Civil Registration and Vital Statistics in Asia and the Pacific, 28 November 2014, available at: <https://www.unescap.org/sites/default/files/Regional.Action.Framework.English.final.pdf>

<sup>75</sup> Principles and Recommendations for a Vital Statistics System: Revision 3, Department of Economic and Social Affairs, Statistics Division, Statistical Papers, Series M No. 19/Rev.3, available at: <https://unstats.un.org/unsd/demographic/standmeth/principles/M19Rev3en.pdf>

<sup>76</sup> Presidential Proclamation No. 1106, Declaring the Years 2015 to 2024 as Civil Registration and Vital Statistics Decade, available at: <https://www.officialgazette.gov.ph/downloads/2015/08aug/20150820-PROC-1106-BSA.pdf>

on “Implementing the Outcome of the High-level Meeting on the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific;” and the Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific where it was agreed to declare the years 2015-2024 as the “Asian and Pacific Civil Registration and Vital Statistics Decade, for 2015 to 2024.” Through this Declaration, “[a]ll agencies and instrumentalities of the National Government and local government units, including government-owned or -controlled corporations, in consultation with the private sector, development partners and the citizenry, are hereby enjoined to actively support all activities and programs relevant to the ‘Get everyone in the Picture’ initiative.”<sup>77</sup> Furthermore, Chapters 11 and 21 of the Philippine Development Plan indicate the Government’s commitment to protect persons of concern,<sup>78</sup> focusing on ensuring access to services, establishment of a database management system, and enhancement of the policy and legislative framework.<sup>79</sup> As part of the efforts to address the risks of statelessness among Persons of Indonesian Descent, advocacy meetings with local civil registrars were held to facilitate the delayed birth registration of the population. Through this initiative, local government units have issued resolutions waiving fees for birth registration and administrative corrections.

UNHCR and UNICEF have developed a joint strategy for addressing childhood statelessness in the Philippines, as a part of the global strategy.<sup>80</sup> This strategy aims to improve birth registration and support law reform and implementation, including accession to the 1961 Convention on the Reduction of Statelessness to ensure safeguards against childhood statelessness are in place. The strategy has already supported a pilot birth registration project for the Sama Bajau, spearheaded by the Zamboanga City local government and supported by UNHCR and UNICEF.<sup>81</sup>

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

<sup>77</sup> Presidential Proclamation No. 1106, Declaring the Years 2015 to 2024 as Civil Registration and Vital Statistics Decade, available at: <https://www.officialgazette.gov.ph/downloads/2015/08aug/20150820-PROC-1106-BSA.pdf>

<sup>78</sup> Persons of concern (POC) are those whose protection and needs are of concern to the State. They generally refer to refugees, asylum seekers, stateless applicants, stateless persons, and populations at risk of statelessness.

<sup>79</sup> Philippine Development Plan 2017-2022, available at: <http://pdp.neda.gov.ph/wp-content/uploads/2021/02/Prepublication-Updated-PDP-2017-2022-as-of-Feb-10.pdf> (updated 10 February 2021)

<sup>80</sup> See details of the Joint Strategy at: <https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/>

<sup>81</sup> UNHCR and UNICEF support Zamboanga City in pilot birth registration project for Sama Bajaus, 10 December 2019, available at: <https://www.unhcr.org/ph/17097-unhcr-unicef-zamboanga-birth-registration-sama-bajaus.html>

### A.3. PSA Memorandum Circular 2017-12

PSA Memorandum Circular 2017-212 was issued to all concerned Consuls General on “requirements for the preparation of reports of birth (ROB) of a child born abroad of Filipino parent/s without any foreign documents.”<sup>82</sup> It was issued due to the increase of unreported births abroad, “particularly in the Middle East.” The Department of Social Welfare and Development (DSWD) conducted consultations with the Philippine Overseas Labor Office (POLO) and other stakeholders because of children who come home undocumented. It provides that:

1. Children born to a Filipino mother without documents such as medical/hospital or local birth records, can be registered with an affidavit from the mother and two disinterested witnesses.
2. Where the mother is deceased, an affidavit of the father or person to whom the child was entrusted, plus a death certificate and two disinterested witnesses are sufficient.
3. Where the mother is missing, an affidavit of the father or person to whom the child was entrusted, and two disinterested witnesses are sufficient.
4. Where the mother is missing and unknown to the person currently entrusted with the child, the Philippine Foreign Service Post is empowered to investigate and where unsuccessful, shall assist local registration of the child in the country where the child was born.<sup>83</sup>

This Circular was reported by the Philippines during the High-Level Segment on Statelessness.<sup>84</sup> All ROBs are free (done gratis) as long as Social Welfare Attachés facilitate the requirements (affidavit of the mother, among others) for the registration of birth of the child. The following analysis regarding application of PSA MC 2017-12, is based on excerpts from the initial consultations with DSWD Social Welfare Attachés who have worked in Kuwait, the UAE, and Saudi Arabia.<sup>85</sup>

- For Embassies who are implementing this policy, it is reported that among mothers who give birth without documents, there are cases where the children are left behind or abandoned, and where parents are deported without their children, and this complicates the requirements of proof.

<sup>82</sup> PSA MC 2017-12.

<sup>83</sup> This is subject to the domestic laws and practices of the relevant State.

<sup>84</sup> Results of the High-Level Segment on Statelessness, October 2019, available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-Statelessness/>

<sup>85</sup> Based on initial consultations with Social Welfare Attachés and the Department of Social Welfare and Development, 17 June 2020.

- » Based on interviews with Social Welfare Attachés, there seems to be some inconsistency in what is required among Embassies at different locations. In practice, the Embassy in Kuwait would still require the custodian to produce proof even if affidavits have been submitted. There were currently two cases in this kind of situation. Proof can be difficult, particularly in cases under situation #4 described above. The MC stipulates that the Philippine foreign post may conduct further investigation, but if they cannot confirm the circumstances, then the child can be registered in Kuwait. However, the local law in Kuwait and other countries may not confer citizenship on the children resulting in statelessness.<sup>86</sup>
- » The Social Welfare Attaché of Kuwait shared that it would be more difficult to register a child now that three witnesses are needed for those born at home, whereas previously only two witnesses would be required and an affidavit from the mother.
- In Saudi Arabia, only two witnesses are required.
- Based on these findings, it is recommended that the application of PSA MC 2017-12 be further studied, in consultation with relevant Social Worker Attachés in the Gulf, particularly with regard to challenging cases falling into the scenario under situation #4 as described in the Circular.

#### A.4. Foundlings

With regard to foundlings, the 1961 Convention in Article 2 states that, “[a] foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.” This requirement is consistent with currently existing law in the Philippines as interpreted by the Supreme Court in the cases of: *Poe-Llamanzares v. Commission on Election and David v. Senate Electoral Tribunal*.<sup>87</sup> Under Article 8 of the Republic Act No. 386, the Civil Code of the Philippines, “Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.”<sup>88</sup> The DOJ in its letter dated 28 July 2020 addressed to the DFA favorably recommending the accession to the 1961 Statelessness

<sup>86</sup> In Kuwait, there is no law to recognize children without any information on their parents. The Social Welfare Attaché would rely on information from those who found the child, thus, neither the PSA MC, nor existing Kuwait law will resolve the situation, and the child would then be at-risk of statelessness. See also the nationality laws of Middle East countries in Section 5.2.

<sup>87</sup> *Mary Grace Natividad S. Poe-Llamanzares v. COMELEC, G.R. Nos. 221697 & 221698-700, March 8, 2016.* (The Court based its decision on deliberations of the framers of the 1934 Constitutional Convention that specifically discussed foundlings, and the generally accepted principle of international law ‘to presume foundlings as having been born of nationals of the country in which the foundling is found’); and *Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016* (the court found that “the Constitution sustains a presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother and are thus natural-born, unless there is substantial proof otherwise..., any such countervailing proof must show that both—not just one—of a foundling’s biological parents are not Filipino citizens.”

<sup>88</sup> Republic Act No. 386, Civil Code of the Philippines, June 18, 1949, available at: <https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/>

Convention, notes that, “[i]t is necessary, however, that an appropriate procedural mechanism in granting Philippine citizenship to such foundlings should also be in place.” There are draft bills considering specifically the rights of foundlings, and these define and provide natural-born citizenship to all such foundlings. For example, House Bill 7679, known as the “Foundling Welfare Act,” has been approved on 3rd reading as of 5 October 2020 by the House of Representatives,<sup>89</sup> while Senate Bill 56 and 2112<sup>90</sup> are pending at the Committee level in the Senate. Passage of a foundling bill would codify judicial precedent and ensure ongoing consistency with the 1961 Statelessness Convention, and aligns with the Convention on the Rights of the Child, Philippine Development Plan 2017-2022, National Action Plan to End Statelessness, the Philippines’ High-Level Segment on Statelessness pledge, and other relevant frameworks.

### A.5. Refugees and Stateless Persons

The Philippines ratified the 1951 Refugee Convention and the 1967 Protocol in 1981 and acceded to the 1954 Statelessness Convention in 2011. There are legal provisions in the Immigration Act of 1940 as amended, that predate these ratifications and grant the President the authority to authorize admission for humanitarian reasons to “refugees,” and authorize the admission of quota immigrants “without nationality.” Under DOJ Circular No. 58, a Refugees and Stateless Persons Protection Unit (“RSPPU”) has been established and a procedure to identify and protect refugees and stateless persons is in operation. There is, however, a lack of a comprehensive law institutionalizing the Refugee and Stateless Status Determination (RSSD) Procedure and codifying the rights of persons of concern in the areas of protection, durable solutions, and access to services among others as found in relevant policies, rules, and regulations.

#### National Policy and Legal Framework for Refugees and Stateless Persons on the Admission of Refugees and the RSSD

**Commonwealth Act No. 613, as amended, “the Philippine Immigration Act of 1940”**

*Note: This authority has been delegated to the Secretary of Justice pursuant to Presidential Decree No. 830 series of 1975 and Letter of Instruction No. 47 dated 18 August 1976 and Administrative Order No. 142 series of 1994*

Section 13: “...there may be admitted into the Philippines immigrants, termed “quota immigrants” not in excess of 50 of any one nationality or without nationality for any calendar year”

Section 47(b) the President is authorized... “for humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe.”

<sup>89</sup> House Bill 7679, Foundling Welfare Act, available at: [http://www.congress.gov.ph/legisdocs/third\\_18/HBT7679.pdf](http://www.congress.gov.ph/legisdocs/third_18/HBT7679.pdf)

<sup>90</sup> Senate Bill 56, Foundling Recognition Act, available at: <http://legacy.senate.gov.ph/lisdata/3028627114!.pdf>  
Senate Bill 2112, Foundling Recognition and Protection Act, available at: <http://legacy.senate.gov.ph/lisdata/3476031556!.pdf>

### National Policy and Legal Framework for Refugees and Stateless Persons on the Admission of Refugees and the RSSD

#### Department Circular No. 58 Establishing the Refugee and Stateless Status Determination Procedure

*(established under the authority granted to the Secretary of Justice by Title III, Section 7 of the 1987 Administrative Code)*

Section 5: Creates the Refugees and Stateless Status Persons Protection Unit ("RSPPU") in the Department of Justice responsible for the identification, determination, and protection of refugees and stateless persons under the terms of the 1951 Refugee Convention and its 1967 Protocol, and the 1954 Statelessness Convention.

Section 2: "Establishes a fair, speedy and non-adversarial procedure to facilitate identification, treatment, and protection of refugees and stateless persons"

## A.6. National Plans, Policies, and Institutional Mechanisms

### Philippine Development Plan 2017-2022

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

"Provide persons of concern (POC) with access to protective services. Engagements and partnerships of concerned agencies such as the DOJ and DSWD will continue to provide POC with access to protective services. A database management system for the POC will be developed to efficiently assess and monitor their concerns." (Chapter 11, page 198)

"The legal framework for the protection of asylum seekers, refugees, and stateless persons, including children, will be developed, including institutionalization of their access to social services." (Chapter 21, page 341)

### National Action Plan to End Statelessness by 2024 ("NAP")

A National Action Plan to End Statelessness by 2024 ("NAP") was developed in 2015 and formally launched in 2017. It is aligned with UNHCR's "IBelong Campaign to End Statelessness" and the Global Action Plan to End Statelessness. There are 7 Action Points that cover the following objectives:

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

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

In 2017, an Agreement was signed by representatives of various government agencies with a commitment to protection refugees and stateless persons. The Agreement establishes a whole-of-government approach, by establishing an “Inter-Agency Steering Committee” (see organizational chart below) with a mandate to ensure the protection and assistance for refugees, asylum-seekers, stateless persons and stateless applicants, including by institutionalizing the policies that would improve their access to rights and services, and the mechanisms in providing appropriate assistance and services to the POC.”<sup>91</sup>

The Agreement sets out both the rights and obligations of POC in Section 6, as well as the roles and responsibilities of each of the 16 relevant agencies Party to the agreement, noting that:

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

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

### The Inter-Agency Steering Committee

#### Clusters and Member Agencies



<sup>91</sup> Inter-Agency Agreement on the Protection of Persons of Concern in the Philippines.

2011 - Ministerial Intergovernmental Event on Refugees and Stateless <sup>92</sup>	2019 High-Level Segment on Statelessness <sup>93</sup>
<p>The Government of the Republic of the Philippines pledges to:</p> <ol style="list-style-type: none"> <li>1. Continue to develop the policy and operational framework to address statelessness after the ratification of the 1954 Convention Relating to the Status of Stateless Persons and to strengthen implementation of the 1951 Convention Relating to the Status of Refugees, with the support of, and in cooperation with, UNHCR.</li> <li>2. Issue machine readable travel documents to refugees and stateless persons in accordance with Philippine law.</li> <li>3. Continue the study of statelessness in the Philippines and among its nationals that are at risk of statelessness, in continuation of efforts initiated in 2011.</li> <li>4. Initiate the process of accession to the 1961 Convention on the Reduction of Statelessness.</li> <li>5. Continue leadership in ASEAN in the development of a human rights framework dealing with issues relating to migrants, trafficked persons, refugees and stateless persons; and</li> <li>6. Increase the Philippines' contribution for 2012 to USD 100,000, in support of UNHCR program</li> </ol>	<p>The Government of the Philippines hereby commits to:</p> <ol style="list-style-type: none"> <li>1. Enhance the policy, legal, and operational framework for stateless persons to ensure their full access to rights as guaranteed by the 1954 Convention Relating to the Status of Stateless Persons including their facilitated naturalization and as may be provided by national laws</li> <li>2. Improve access of vulnerable and marginalized populations to documentation through birth and civil registration</li> <li>3. Continue the study of statelessness, with a thrust to improve qualitative and quantitative data on populations at risk of statelessness in the Philippines and among its nationals, in continuation of efforts initiated in 2011.</li> <li>4. Continue the process of accession to the 1961 Convention on the Reduction of Statelessness</li> <li>5. Continue leadership in Southeast Asia in the development of a human rights framework and provide technical support to other States in dealing with issues relating to stateless persons</li> <li>6. Cooperate with UNHCR by supporting projects, continuing fund contributions, and by building or expanding partnerships</li> </ol>

## B. Children of Philippine Descent in Migratory Settings<sup>94</sup>

Each year, a survey is completed on Overseas Filipino Workers (OFWs).<sup>95</sup> The results of the 2019 survey were published on 4 June 2020.<sup>96</sup> The number of OFWs was estimated at 2.2 million based on the most recent survey. The proportion of female OFWs (56.0%) was higher than male OFWs (44.0%), and female OFWs were younger compared to male OFWs, with seven percent falling into the age group of 15 to 24 years and 46.9 percent in

<sup>92</sup> UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011, October 2012*, available at: <https://www.unhcr.org/4ff55a319.pdf>

<sup>93</sup> UNHCR, *Results of the High-Level Segment on Statelessness, October 2019*, available at: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

<sup>94</sup> For more information, please refer to Annex A.

<sup>95</sup> Philippine Statistics Authority, *Statistical Tables*, available at: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos/table>

<sup>96</sup> Philippine Statistics Authority, *Press Release, Total Number of OFWs Estimated at 2.2 Million, 4 June 2020* available at: <https://psa.gov.ph/sites/default/files/attachments/hsd/pressrelease/Press%20Release%202019%20SOF%20signed.pdf>

the age group of 25 to 34 years.<sup>97</sup> Moreover, 62.5% of female OFWs were working in what was called “elementary occupations.”<sup>98</sup> This includes those working as domestic workers, who may be unprotected by the local labor laws in the countries where they work and may be at risk of exploitation and abuse in the household. The total remittances sent by OFWs during the period of April to September 2019 was estimated at PhP 211.9 billion. This figure provides a strong economic incentive for both individuals and the State to engage in and support overseas work. Therefore, the Government of the Philippines and its population have a shared interest in ensuring basic protections for the rights of OFWs, and in promoting improved conditions for OFWs in the countries in which they work. There is a risk that both the Government of the Philippines and individual OFWs may be reluctant to disturb the status quo for fear of disrupting existing channels of work which are of economic benefit to the individuals and the country.<sup>99</sup> However, recent efforts have provided evidence that the Government of the Philippines and OFWs have greater leverage than they may have previously believed, and that intervention, advocacy, and negotiation with host States, employment agencies, etc. have a positive impact both economically and for the rights of OFWs and the conditions in which they work. For example, the Philippine Overseas Employment Administration, noted during initial consultations that the process of assessment and certification under RA 10022 is ongoing year in and year out, and carried out by the DFA, but rather than an all or nothing scenario of certification or decertification, what the Philippines strives to do is engage with these countries bilaterally to improve policies and processes for OFWs.<sup>100</sup> This has led to improvements to systems and conditions.

### B.1. Countries of the Gulf

Data on the number of stateless persons in the countries of the Gulf region is considered to be underreported and unknown, but among current estimates in the most recent UNHCR Global Trends published in June 2020, Kuwait hosts 92,020 stateless persons, Saudi Arabia 70,000, and Qatar 1,200, with no specific number listed for the UAE.<sup>101</sup>

<sup>97</sup> See *Statistical Tables attached to the Press Release issued on 4 June 2020*, available at: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos/table>

<sup>98</sup> *Philippine Statistics Authority, 2012 Philippine Standard Occupational Classification (PSOC)*, available at: <https://psa.gov.ph/classification/psoc/technical-notes#:~:text=Elementary%20occupations%20%2D%20occupations%20in%20this,members%20of%20the%20armed%20forces.> (“Major Group 9. Elementary occupations - occupations in this group involve the performance of simple and routine tasks which may require the use of handheld tools and considerable physical effort.”)

<sup>99</sup> This concern was raised in “*The Condition of Overseas Filipino Workers in Saudi Arabia*,” *Final Report of the Investigating Mission of the Committee on Overseas Workers’ Affairs (COWA) to Saudi Arabia*, January 9-13, 2011.

<sup>100</sup> Excerpt from *initial consultations with the Philippine Overseas Employment Administration (POEA), Overseas Workers Welfare Administration (OWWA), and Department of Labor and Employment (DOLE)*, 24 August 2020.

<sup>101</sup> UNHCR, *Global Trends: Forced Displacement in 2019*, 18 June 2020, available at: <https://www.unhcr.org/en-au/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>

### B.1.a. Overseas Filipinos in the Gulf

This section reviews the situation for OFs and children of Philippine descent in Kuwait, Qatar, Saudi Arabia, and the UAE.

According to the PSA's statistical tables, more than half of OFWs work in "Western Asia," including: Kuwait, Qatar, Saudi Arabia, the UAE, and including a small number in Bahrain, Israel, Lebanon and Jordan. Saudi Arabia has consistently been the destination with the largest number of OFWs (one out of five or 22.4% in 2019), and the UAE was the destination with the second largest number in 2019 (13.2%).<sup>102</sup>

Distribution of Overseas Filipino Workers (OFWs) by Region of Origin and Place of Work Abroad (%): 2019	
Western Asia	51.4
Kuwait	6.2
Qatar	5.6
Saudi Arabia	22.4
United Arab Emirates	13.2
Other countries in Western Asia (including Bahrain, Israel, Lebanon, Jordan)	4.0

### B.1.b. Labor Law and the Kafala Immigration System

Domestic workers are not covered by the labor law in any country, but separate laws are now in place for domestic workers in each country. Enforcement is an issue, and structural and practical obstacles remain. Bilateral agreements have now been signed between the Government of the Philippines and the Governments of Kuwait, Qatar, Saudi Arabia, and UAE on labor cooperation. These set out the responsibilities of each party to the agreement, and establish a Joint Committee composed of Officials representing both parties to monitor, review, and assess implementation.

Each of the Gulf States implements a "Kafala" system. This is an immigration sponsorship system that regulates the entry, exit, and employment of foreign workers by linking them to a "kafeel" or sponsor, usually the employer.<sup>103</sup> The kafeel is often responsible for applying and for renewing the foreign resident's status. The foreign resident must usually seek the permission of the kafeel in order to change their employment, and sometimes even to exit the country. The sponsor or employer can, and must, register an absconding charge if the sponsored worker leaves the employment. The Saudi Arabian Ministry of Human Resources

<sup>102</sup> Philippine Statistics Authority, *Statistical Tables, TABLE 3 Distribution of Overseas Filipino Workers by Region of Origin and Place of Work Abroad: 2019*, 4 June 2020, available at: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos/table>

<sup>103</sup> Priyanka Motaparthi, *Understanding Kafala: An archaic law at cross purposes with modern development*, 11 March 2015, available at: <https://www.migrant-rights.org/2015/03/understanding-kafala-an-archaic-law-at-cross-purposes-with-modern-development/>

and Social Development launched a Labor Reform Initiative (LRI) on November 4, 2020 which will apply to millions of foreign workers, including OFWs, in the private sector. The LRI will replace the current kafala system and ease job mobility on March 14, 2021. The Initiative will allow employees to leave their job without the consent of the employer upon the expiry of their employment contracts, and allow the employees to leave their jobs prior to the expiry of the employment contract provided that the worker has been in country for at least one year and has given 90 days notice to the employer. Under the LRI, employees may now request exit and re-entry visas directly to the Saudi Government through its online platform. Exit visas may be denied if there are outstanding debts or fines. The employer's consent for exit visas are no longer required.

While a foreign resident is present in the country, they hold an ID card, or an iqama. The iqama must be carried at all times and is needed for most things, such as opening a bank account, getting mobile services, renting an apartment, registering for utilities, and accessing medical care, etc. While there are options for filing complaints against the employer, the balance of power is not equal, and there are structural and practical obstacles to seeking redress. Language is a barrier where documents and procedures are often in Arabic, and regulations are not always clear and accessible to the foreign worker. A complaint against the sponsor will often result in cancellation of the work visa, exposing the foreign worker at least to a period of time without income, if not potential deportation.

Absconding is illegal, and as soon as a domestic worker leaves the employer, their status immediately becomes irregular with an absconding or runaway case against them. They are subject to arrest, detention and deportation. The absconding charge may affect the person's ability to exit the country.

These structural and practical challenges may make escape from an exploitative or abusive situation difficult, and in most cases, the worker is afraid of losing their job and income, and of not being able to send support home to their family. Every Gulf country has launched "amnesty" programs designed to regularize or facilitate the exit for migrant workers in an irregular status, usually multiple times.<sup>104</sup>

---

<sup>104</sup> *Migrant-Rights.org, Faulty Fixes: A Review of Recent Amnesties and Recommendations for Improvement, 29 March 2019, available at: <https://www.migrant-rights.org/2019/03/faulty-fixes-a-review-of-recent-amnesties-and-recommendations-for-improvement/> ("Over the past 30 years, each of the GCC countries has periodically launched amnesty campaigns to regularize or facilitate the exit of irregular migrant workers. Amnesties allow migrants to regularize their legal status or leave the country with fewer penalties than they would normally incur. These campaigns are commonly portrayed as a "gift" to erring migrant workers and fail to acknowledge that many migrants do not become undocumented out of choice, but because the labour migration system pushes migrants into an irregular status. The frequent use of amnesty programs indicates that irregularity is a common and recurring phenomenon; that it is a part of the kafala system, and that the relief brought by "amnesty" is as much for the labour market as it is for individual workers.")*

Amnesties in GCC countries:

Kuwait	Qatar <sup>105</sup>	Saudi Arabia <sup>106</sup>	UAE
2020 <sup>107</sup>	2016	2017	2018 <sup>108</sup>
2018 <sup>109</sup>	2004	2013	2012 <sup>110</sup>
2016			2007
2011			2002 <sup>111</sup>
2007			1996
2004			

In Kuwait, this includes in the context of COVID-19. COVID-19 is exacerbating the vulnerability and risks for migrant worker communities in the Gulf.<sup>112</sup> A coalition of NGOs and trade unions that includes Amnesty International, Human Rights Watch, Migrant-Rights.org, and Business & Human Rights Resource Centre have raised concerns and proposed recommendations regarding protecting the rights of migrant workers during the COVID-19 pandemic.<sup>113</sup>

### B.1.c. Gender Discrimination and Statelessness

Kuwait, Qatar, Saudi Arabia and the UAE each adopt the *jus sanguinis* principle that transmits nationality to children at birth through the father.<sup>114</sup>

With regard to birth registration there is a lack of clarity about who can register a birth and under what circumstances. Qatari law permits mothers to register their children, while in Kuwait there is no way for a woman to register the birth of her child. It is up to the father. In

<sup>105</sup> Migrant-Rights.org, Qatar's amnesty for undocumented migrants leaves workers and embassies in the dark, 31 August 2016, available at: <https://www.migrant-rights.org/2016/08/qatars-amnesty-for-undocumented-migrants-leaves-workers-and-embassies-in-the-dark/>

<sup>106</sup> 90-day amnesty period allows illegal workers to return to Saudi Arabia, Arab News, 21 March 2017, available at: <https://www.arabnews.com/node/1071511/saudi-arabia>; See also: Migrant-Rights.org, Faulty Fixes: A Review of Recent Amnesties and Recommendations for Improvement, 29 March 2019, available at: <https://www.migrant-rights.org/2019/03/faulty-fixes-a-review-of-recent-amnesties-and-recommendations-for-improvement/>

<sup>107</sup> 23,500 undocumented expats in Kuwait register for amnesty, Arab News, 1 May 2020, available at: <https://www.arabnews.com/node/1667876/middle-east>

<sup>108</sup> United Arab Emirates: Illegal Immigration Amnesty In The UAE, Mondaq, 18 September 2018, available at: <https://www.mondaq.com/immigration/737242/Illegal-Immigration-Amnesty-In-The-UAE>

<sup>109</sup> Kuwait announces amnesty for illegal residents, Gulf Business, 24 January 2018, available at: <https://gulfbusiness.com/kuwait-announces-amnesty-illegal-residents/>

<sup>110</sup> Two-month amnesty to illegal residents, Gulf News, 13 November 2012, available at: <https://gulfnews.com/how-to/passports-visa/two-month-amnesty-to-illegal-residents-1.1104133>

<sup>111</sup> Amnesty for illegal immigrants soon, Gulf News, 26 May 2002, available at: <https://gulfnews.com/uae/amnesty-for-illegal-immigrants-soon-1.388422>

<sup>112</sup> Amnesty International, COVID-19 makes Gulf countries' abuse of migrant workers impossible to ignore, April 2020, available at: <https://www.amnesty.org/en/latest/campaigns/2020/04/covid19-makes-gulf-countries-abuse-of-migrant-workers-impossible-to-ignore/>

<sup>113</sup> Amnesty International, Gulf: Concerns regarding migrant workers' rights during COVID-19 pandemic, 17 April 2020, available at: <https://www.amnesty.org/en/latest/research/2020/04/gulf-concerns-regarding-migrant-workers-rights-during-covid19-pandemic/>

<sup>114</sup> Kuwait Nationality Law, Article 2;

Saudi Arabia, it appears that the law would allow registration, and in the UAE there is a preference for registration by the father, but in both cases, it is unclear in practice whether mothers can actually register births.<sup>115</sup>

“Some, possibly all, GCC states have significant restrictions on the registration of non-marital children. While Kuwait and Oman’s policies are unclear, birth registration in Bahrain, Qatar, Saudi Arabia, and the UAE requires the parents to show documentation of their marriage meaning that for the child’s birth to be registered and to receive nationality, the State must treat the child as one without known parents. The child would receive nationality, but would then have no documented or legal relationship to his or her biological parents.”<sup>116</sup>

Under the Kuwaiti Civil Status Law,<sup>117</sup> Qatari Family Law,<sup>118</sup> and UAE Family Law,<sup>119</sup> the husband of a child’s mother is presumed to be the father. Saudi Arabia has not codified a civil status or family law, instead applying a form of Islamic sharia law to the relevant questions. In each of the four countries, if the husband swears a series of oaths that he is not the father, then the presumption of paternity is rebutted.<sup>120</sup> Kuwait and UAE laws allow parents to acknowledge paternity outside of marriage, but not in the case of adultery, and there may be no way to forcibly prove paternity in any of the four countries.<sup>121</sup>

Furthermore, sex outside of marriage is a punishable offense in all four countries: Kuwait, Qatar, Saudi Arabia, and UAE.<sup>122</sup> This criminalization is enforced.<sup>123</sup> In Kuwait, under Article 194 of the Penal Code, consensual sexual relationships between adults who are not married to each other are punishable by up to three years’ imprisonment, and under Article 195, any married person who has consensual sexual relations with a person other than his or her spouse can be punished by up to five years’ imprisonment.

<sup>115</sup> Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 *MICH. J. GENDER & L.* 269 (2016). Available at: <https://repository.law.umich.edu/mjgl/vol23/iss2/1>.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Kuwait Personal Status Law (No. 51/1984) art. 169.*

<sup>118</sup> *Qatar Family Law (No. 22/2006) arts. 86, 88*

<sup>119</sup> *UAE Family Law (No. 28/2005) art. 90(1)*

<sup>120</sup> Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 *MICH. J. GENDER & L.* 269 (2016). Available at: <https://repository.law.umich.edu/mjgl/vol23/iss2/1>. See Also the relevant family laws.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Kuwait Penal Code Articles 194, 195; Qatar Penal Code Article 181-187; Penal Code of the UAE, Article 356. (Saudi Arabia does not have a codified criminal code, but the justice system fixes punishments based on its interpretation of sharia law.)*

<sup>123</sup> Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 *MICH. J. GENDER & L.* 269 (2016). Available at: <https://repository.law.umich.edu/mjgl/vol23/iss2/1>. This article uses the Gulf Cooperation Council countries as a case study, analyzes the penal codes and their implementation, to outline some of the ways in which gender and birth status discrimination create new cases of statelessness.)

In Qatar, under Article 181 of the Penal Code, “Whoever copulates with a female over 16 without compulsion, duress or ruse shall be punished with imprisonment for a term up to seven years.” In Saudi Arabia, there is no codified criminal law. “...Saudi criminal judgments are determined by Islamic judges according to Saudi Arabia’s strict interpretation of sharia’ law, which includes criminalization of adultery... Sexual contact outside of marriage can carry a death sentence... [, and] Saudi Arabia’s criminal ban on adultery is actively enforced.”<sup>124</sup> In the UAE, under Article 365 of the Penal Code, “the crime of voluntary debasement shall be penalized by detention for a minimum term of one year, but if the said crime is perpetrated on a male or female below 14 years of age or if committed by coercion, the penalty shall be term imprisonment.”

For all of the above reasons, unmarried migrant workers who become pregnant are often unable to seek medical care, or are afraid to, for fear of criminal prosecution. “The potential for criminal charges is often compounded by lifelong societal discrimination against single parents and their children, as well as the threat of violent retribution for transgressing traditional notions of family ‘honor.’”<sup>125</sup> There have been cases where even reporting a rape is regarded by the authorities as illicit sex and has led to the victims being jailed.<sup>126</sup> There have also been cases of abandonment of the children, where the mother likely fears being arrested and jailed, and feels that they are also unable to look after their children.<sup>127</sup> There are child and baby detention facilities, and mothers who come forward and surrender may still be required to complete a custodial sentence before they can leave the country. Undocumented parents may have undocumented children. Without a birth certificate or any other identification, the child has no access to education or health care.

<sup>124</sup> Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 *MICH. J. GENDER & L.* 269 (2016). Available at: <https://repository.law.umich.edu/mjgl/vol23/iss2/1>

<sup>125</sup> *Ibid.*

<sup>126</sup> See for example: *US State Department Human Rights Report for 2019 on Saudi Arabia*, available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/saudi-arabia/> (“...courts often punished victims as well as perpetrators... [v]ictims also had to prove that the rape was committed, and a woman’s testimony in court was not always accepted...[m]oreover, most rape cases were likely unreported because victims faced societal and familial reprisal, including diminished marriage opportunities, criminal sanction up to imprisonment, or accusations of adultery or sexual relations outside of marriage, which are punishable under sharia.”)

<sup>127</sup> Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 *MICH. J. GENDER & L.* 269 (2016). Available at: <https://repository.law.umich.edu/mjgl/vol23/iss2/1> (“As a result of harsh criminal provisions and societal repercussions, many children in GCC states are simply abandoned in public places.”)

## B.2. Kuwait

### B.2.a. General Background

70% of Kuwait's population are non-citizens. An article published in June 2020 quotes the Prime Minister, Sheikh Sabah Al-Khalid Al-Sabah, as calling for the number of expats to be more than halved to 30%.<sup>128</sup> The same article includes a quote that, "The percentage of domestic helpers alone is more than 50% of Kuwaitis, let alone the other residents."

The population of Filipinos in Kuwait is approximately 240,000, and 70% are working in households as domestic workers.<sup>129</sup> The Kuwait government initiated amnesty programs in 2018 for undocumented persons, and initiated amnesty programs again this year due to the coronavirus outbreak.<sup>130</sup> It is reported that the initiative was in place from April 1-30, permitting undocumented persons to leave the country without paying any fines, allowed those who availed of the Amnesty to return later with the right documents, and arranged special outbound flights to fly those persons back to their countries.<sup>131</sup>

### B.2.b. Citizenship

Kuwaiti citizenship is conferred primarily on the basis of the *jus sanguinis* principle from the father, with exceptions for foundlings.<sup>132</sup> Women cannot confer nationality on their children, though they may naturalize upon reaching the age of majority on certain conditions as described below.

By the provisions of the Kuwait Constitution in Article 27, "Kuwaiti nationality shall be determined by Law." Citizenship is then prescribed in the Nationality Law of 1959 as subsequently amended.<sup>133</sup> This law provides that:

1. Original Kuwaiti nationals are those persons who were settled in Kuwait prior to 1920 and who maintained their normal residence there until the date of the publication of this Law.
  - a. Ancestral residence shall be deemed complementary to the period of residence of descendants.

<sup>128</sup> "Kuwait vows to slash expat population from 70 to 30 percent," *Arabian Business*, 4 Jun. 2020, available at: <https://www.arabianbusiness.com/politics-economics/447747-kuwait-vows-to-slash-expat-population-from-70-to-30-percent>

<sup>129</sup> *Philippine Statistics Authority, Statistical Tables, TABLE 3 Distribution of Overseas Filipino Workers by Region of Origin and Place of Work Abroad: 2019*, 4 June 2020, available at: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos/table>.

<sup>130</sup> Aarti Nagraj, *Amnesty ends in Kuwait, 30,000 undocumented expats avail scheme – report*, *Gulf Business*, 4 May 2020, available at: <https://gulfbusiness.com/amnesty-ends-in-kuwait-30000-undocumented-expats-avail-scheme-report/>

<sup>131</sup> (Arabic only) The notice was published on the Ministry of Interior Website available at: <https://www.moi.gov.kw/main/News/Index/78963>

<sup>132</sup> *Kuwait Nationality Law, 1959, Article 2*, available at: <https://www.refworld.org/docid/3ae6b4ef1c.html>

<sup>133</sup> *Nationality Law, 1959*, available at: <https://www.refworld.org/docid/3ae6b4ef1c.html>

- b. A person is deemed to have maintained his normal residence in Kuwait even if he resides in a foreign country if he has the intention of returning to Kuwait.
2. Any person born in, or outside, Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national himself.
3. Kuwaiti nationality is acquired by any person born in Kuwait whose parents are unknown. A foundling is deemed to have been born in Kuwait unless the contrary is proved.

The children of Kuwaiti women are not citizens of Kuwait. However, where the father is unknown or paternity is not legally established, citizenship may be conferred when they reach the age of majority, but only by Decree upon the recommendation of the Minister of the Interior.

Naturalization is only granted to Muslims and in very limited circumstances, by Decree upon the recommendation of the Minister of the Interior, to only those persons “of full age satisfying the following conditions”:

1. that he has lawfully resided in Kuwait for at least 20 consecutive years or for at least 15 consecutive years if he is an Arab belonging to an Arab country;
2. that he has lawful means of earning his living, is of good character and has not been convicted of an honour-related crime or of an honesty-related crime;
3. that he has knowledge of the Arabic language;
4. that he possesses qualifications or renders services needed in Kuwait;
5. that he be an original Muslim by birth, or that he has converted to Islam according to the prescribed rules and procedures and that a period of at least five years has passed since he embraced Islam before the grant of naturalization. Nationality thus acquired is *ipso facto* lost and the Decree of naturalization rendered *void ab initio* if the naturalized person expressly renounces Islam or if he behaves in such a manner as clearly indicates his intention to abandon Islam. In any such case, the nationality of any dependant of the apostate who had acquired it upon the naturalization of the apostate is also rendered void.

By law, a Committee of Kuwaiti nationals is appointed by the Minister of the Interior, to select from those who apply for naturalization, the applicants whom it recommends for naturalization. Under Article 5, exceptions to the previous conditions for naturalization may be made by Decree upon the recommendation of the Minister of the Interior for:

1. “any person who has rendered valuable services to Kuwait;” and

2. “any person [upon his attaining his majority who was]<sup>134</sup> born to a Kuwaiti mother and who has maintained his residence [in Kuwait] until reaching the age of majority and whose foreign father has irrevocably divorced his mother or has died;”<sup>135</sup>

...among other limited categories of persons.

A naturalized citizen does not have the same rights as a natural born citizen. For example, a person who has acquired nationality by naturalization, shall not have the right of voting within 30 years following the date of naturalization, nor shall they have the right to stand as a candidate for or be appointed to membership of any Parliamentary body.

Under Article 7 of the Nationality Law, a foreign wife of a naturalized Kuwaiti, does not automatically acquire Kuwaiti nationality unless she declares her wish to do so one year after her husband’s naturalization. The minor children of the naturalized citizen do become Kuwaiti nationals but will have the choice of whether to retain nationality within a year after attaining the age of majority. Moreover, under Article 8, the foreign woman may only be granted nationality by Decree upon the recommendation of the Minister of the interior, provided that she declares her wish to acquire nationality, and that the marriage has lasted for at least 15 years from the date of her declared wish to acquire nationality.

According to the 2019 UNHCR Background Note on Gender Equality, Nationality Laws and Statelessness, “[the Parliament of Kuwait is] currently examining proposals to review their... nationality laws and consider reforms that would allow women to confer citizenship on their children at birth.”<sup>136</sup> However, as of the time of conducting this research, no such reforms have taken place.<sup>137</sup>

### ***B.2.c. Children of Philippine Descent***

Based on the initial interview with Social Welfare Attachés, in 2020 alone there were 102 children repatriated to the Philippines when the parents availed themselves of the amnesty program. There were also cases of mothers who were ineligible for amnesty or repatriation for their children because the mothers had travel bans issued against them. Travel bans are issued in Kuwait for issues such as: absconding household service work, those who may have unpaid loans, or those

<sup>134</sup> This is the exact wording of the text, from an “unofficial translation,” including the brackets.

<sup>135</sup> Nationality Law, 1959, available at: <https://www.refworld.org/docid/3ae6b4ef1c.html>

<sup>136</sup> UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2019, 8 March 2019, available at: <https://www.refworld.org/docid/5c8120847.html>

<sup>137</sup> UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2020, 14 July 2020, available at: <https://www.refworld.org/docid/5f0d7b934.html>

with outstanding warrants of arrest. DSWD staff interviewed said that there were 20 such cases with denied Amnesty this year due to standing travel bans.

According to interviews with Social Welfare Attachés, at the same time, there are cases where deportations from Kuwait take place with the parent(s) refraining from declaring that they have children resulting in the children being left behind. Sometimes the child is left in the care of another person who may have no contact with the parent(s) and locating the parents can be a real challenge.<sup>138</sup> Generally, there is a negative incentive for undocumented pregnant women to come forward in Kuwait. There is an existing protocol that once a mother gives birth at the hospital, the hospital must report the birth of an undocumented child to the police. The parent may then be brought to a deportation center after giving birth. It was reported by the Social Welfare Attaché that there are also rumors that the child will be taken from them by the government if they come forward, but that this is not true, and the Embassy can assist with their situation, including assisting with airfare for the return to the Philippines if they do not have it. The Embassy maintains a positive working relationship with the Criminal Investigation Department (“CID”) of the Ministry of Interior who provides travel clearance in such cases. When the Embassy approaches the CID, the Embassy reports that all of the penalties can be waived: for example, if the child does not have an iqama for a year, they are normally supposed to pay Php 100,000, but these fees are waived for repatriation to the Philippines.

The Philippines’ ROB is recognized in Kuwait. Even in cases where a parent may have approached the Amnesty Center without documentation for their children, the Embassy reported being able to provide a ROB. However, it was also reported that there may be complications for the Embassy in instances where the details of the biological mother are not available/cannot be provided by anyone. It was noted that there are four children in such circumstances.<sup>139</sup> The Social Welfare Attaché noted that details on the biological mother may be particularly difficult to ascertain where many years have passed since the birth.

---

<sup>138</sup> Excerpt from initial consultations with Social Welfare Attachés and the Department of Social Welfare and Development, 17 June 2020.

<sup>139</sup> As an example, it was shared by Social Welfare Attachés that two children were deported to the Philippines without a ROB. The affidavits executed by the custodians were not accepted, citing PSA guidelines, and there was no information on the parents. Therefore, a ROB could not be completed. At the same time, the adoption process cannot begin without a ROB. The case remains pending at the time of publication of this report.

### **B.2.d. Bilateral Agreement<sup>140</sup>**

On 11 May 2018, the Public Authority of Manpower of the Government of the State of Kuwait, and the DOLE signed a Bilateral Agreement on the Employment of Domestic Workers. The agreement is based on “the shared desire of the ‘Parties’ to ensure the rights of Filipino domestic workers...” It sets out 9 “areas of cooperation” in Article 1 including: (1) ethical recruitment policies systems and procedures; (2) a standard employment contract; (3) ensuring recruitment and entry of domestic workers, as well as their repatriation is in accordance with laws and regulations of both parties; (4) taking legal measures against parties who violate contract provisions, laws, or regulations; (5) resolve any issue arising from this agreement; (6) provide a mechanism of inspection and monitoring of the level of care offered to the domestic workers through official authorities; (7) guarantee compliance with recruitment laws and regulations of both countries; (8) working to reduce costs of recruitment; and (9) to open all areas of cooperation relating to sending and recruiting domestic workers through license recruitment offices.

Article 2 sets out Kuwait’s responsibilities, and includes establishing a mechanism to provide 24-hour assistance to the domestic worker; prohibiting the employer from holding the domestic workers’ personal identity documents such as a passport or confiscating their phone; and facilitating the repatriation of domestic workers “upon contract completion or labor contract violation” among other provisions. Article 3 sets out the responsibilities of the Philippines and includes verifying all standard contracts signed by the parties.

Importantly, Article 4 established a “Joint Committee” with representatives of senior officials of both parties to conduct periodic review, assessment and monitoring, and to resolve disputes arising from implementation and interpretation of the agreement. The agreement is effective for four years and is renewed automatically.

## **B.3. Qatar**

### **B.3.a. General Background**

An estimated 89% of Qatar’s population are non-citizens.<sup>141</sup> Qatar is reportedly home to more than 230,000 Filipinos, but the situation is in flux due to the pandemic.<sup>142</sup> A travel ban was implemented suddenly by Qatar against travelers from the Philippines in 2020

<sup>140</sup> *Agreement on Employment of Domestic Workers Between the Government of the Republic of the Philippines and the Government of the State of Kuwait*

<sup>141</sup> *Population of Qatar by nationality - 2019 report, August 15, 2019, available at: <https://priyadsouza.com/population-of-qatar-by-nationality-in-2017/>*

<sup>142</sup> *Nick Aspinwall, Left high and dry: Virus ban hits millions of Philippine workers: Travel bans implemented by their own government as well as foreign countries, put jobs and incomes at risk, Al Jazeera, 12 Mar 2020, available at: <https://www.aljazeera.com/news/2020/03/philippines-foreign-overseas-workers-pay-price-virus-bans-200312021938306.html>*

and over 4,000 Filipino workers were required to go on forced leave due to the pandemic.<sup>143</sup> DOLE recently evacuated more than 1,000 OFWs in distress in Qatar in three separate batches on chartered flights.<sup>144</sup> Those evacuated have been stranded and displaced due to the COVID-19 pandemic. It is reported that Department of Labor and Employment (DOLE) has already assisted in the repatriation of 2,327 OFWs since the onset of the global pandemic this year.

### **B.3.b. Citizenship**

Under Article 41 of Qatar’s Constitution, “Qatari nationality and the rules governing it shall be prescribed by law.”<sup>145</sup> The acquisition of Qatari Nationality is set out in Law No. 38 of 2005 (repealing the Nationality Law previously in place, The Qatari Nationality Law No. 2 of 1961).<sup>146</sup> Under Article 1(4), Qatari citizenship is conferred primarily on the basis of the *jus sanguinis* principle from the father.

Article 1 of the Qatari Law No. 38 deems the following persons to be Qatari nationals:

1. Those residents of Qatar who have been resident in the country since 1930 and who maintained regular legal residence in the country until the enforcement date of Law No. 2 of 1961.
2. Any person who is proved to be of Qatari descent, albeit in the absence of the conditions set forth in the preceding sub-article, and additionally, any person in respect to whom an Emiri decree has been promulgated.
3. Persons to whom Qatari nationality has been reinstated in accordance with the provisions of law.
4. Any person born in Qatar or in a foreign country to a Qatari father in accordance with the preceding Articles.

No provision is made for citizenship to be conferred on the children of Qatari mothers. Qatari Law No. 38 does provide for naturalization, including with “priority...given to those applicants who have a Qatari mother,”<sup>147</sup> but this provides very limited effect because under Article 17 of the same Law, “Qatari nationality shall not be granted to more than fifty (50) applicants in one calendar year.”

<sup>143</sup> Darryl John Esguerra, *1,645 Filipino workers in Qatar displaced due to COVID-19 pandemic*, 5 May 2020, available at: <https://globalnation.inquirer.net/187484/1645-filipino-workers-in-qatar-displaced-due-to-covid-19-pandemic-envoy>

<sup>144</sup> Department of Labor and Employment, *News Release: DOLE repatriates 1,062 OFWs from Qatar*, 11 August 2020, available at: <https://www.dole.gov.ph/news/dole-repatriates-1062-ofws-from-qatar/>

<sup>145</sup> Qatar: Constitution [Qatar], 2004, available at: <https://www.refworld.org/docid/542973e30.html>

<sup>146</sup> Qatar: Law No. 38 of 2005 on the acquisition of Qatari nationality [Qatar], 30 October 2005, available at: <https://www.refworld.org/docid/542975124.html>

<sup>147</sup> *Ibid.* at Article 2.

Under Article 2, those born in Qatar to unknown parents shall “...be deemed to be a naturalized Qatari,” and this includes foundlings who are considered to be born in Qatar if found in Qatar unless proven otherwise.

It is worth noting that naturalized Qataris never receive entirely equal rights with natural-born citizens. Under Article 16, “Naturalized Qataris shall not be equated with Qatari nationals in terms of the right to work in public positions or work in general until five years after the date of naturalization... [and] Naturalized Qataris shall not be entitled to participate in elections or nominations or be appointed in any legislative body.”

## B.4. Saudi Arabia

### B.4.a. General Background

Saudi Arabia is consistently listed as the top destination country among OFWs, with 24.3% of the global total, or nearly a quarter, working there. There are approximately 800,000 OFWs in Saudi Arabia.<sup>148</sup> Many are working in construction, and others are working in medical or engineering fields, while the majority are domestic workers.<sup>149</sup> A report issued by the Philippine government in 2011 emphasized that, “The importance of the Kingdom [of Saudi Arabia] to the Philippine economy can never be emphasized enough.”<sup>150</sup> In describing the conditions for OFWs in Saudi Arabia, the same report described legal and cultural discrimination for those in the professional class of workers, and that, “low-skilled workers, especially domestic workers... appear to exist in a world of permanent crisis.” Particular attention was drawn to unregistered children of Philippine descent who are stuck in the country due to a lack of Iqama (residence certificates).<sup>151</sup> The most recent results of the 2019 Survey on Overseas Filipinos released by the PSA on 4 June 2020 reports that 46% of total remittances coming into the Philippines, come from “Western Asia” (primarily from Kuwait, Qatar, Saudi Arabia, and UAE).<sup>152</sup>

<sup>148</sup> Philippine Statistics Authority, *Statistical Tables, TABLE 3 Distribution of Overseas Filipino Workers by Region of Origin and Place of Work Abroad: 2019, 4 June 2020*, available at: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos/table>.

<sup>149</sup> *Ibid.*

<sup>150</sup> “The Condition of Overseas Filipino Workers in Saudi Arabia,” *Final Report of the Investigating Mission of the Committee on Overseas Workers’ Affairs (COWA) to Saudi Arabia, January 9-13, 2011*

<sup>151</sup> See: Chapter 5 (“The Condition of Overseas Filipino Workers in Saudi Arabia,” *Final Report of the Investigating Mission of the Committee on Overseas Workers’ Affairs (COWA) to Saudi Arabia, January 9-13, 2011*)

<sup>152</sup> Philippine Statistics Authority, *2019 Survey on Overseas Filipinos, the number of Overseas Filipino Workers (OFWs), 4 June 2020*: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos>

Information that specifically speaks to the risk of statelessness among overseas Filipinos in Saudi Arabia is limited, and one of the primary sources is this 2011 Government of Philippines Report of the Investigating Mission of the Committee on Overseas Workers' Affairs to Saudi Arabia. However, it has been nearly a decade since this report was produced and based on interviews with Social Welfare Attachés deployed to Saudi Arabia after 2011, it appears that things may have moved significantly since this time. It was reported that the number of undocumented Filipinos has been greatly reduced, that more than 2,000 children had been repatriated in around 2013, and that a database is now in place to track all cases of Filipinos coming into the country.<sup>153</sup> It was shared by Social Welfare Attachés that the government is cooperative in efforts to track down undocumented children and parents, and there was an agreement between the Embassy and the government of Saudi Arabia, on the process for repatriation of undocumented persons to the Philippines. Furthermore, Filipino communities are very active in the effort to assist those who are undocumented.<sup>154</sup>

Some of this information is corroborated by a 2017 Discussion Paper on Undocumented Children of Overseas Filipinos.<sup>155</sup> For example, according to this report, Embassy Officials shared that:

“In June 2013, Ambassador Ezzedin Tago met with the Deputy Undersecretary of the Saudi Ministry of Interior to discuss several issues, including mothers-and-children cases. The meeting resulted in the creation of an interagency committee consisting of the Ministry of Interior and the General Directorate for Passports (Immigration Office – Jawazat) whose function was to confirm the biological relationship of the mother and the child, and once proven, their exit visas will be processed. Although DNA testing had been used before for a small number of cases... this was the first time that such a mechanism was made available to a huge group and the entire process was expedited.”

The above report documented that as of 28 November 2013, 345 mothers and their 426 children were granted exit visas and repatriated by the Philippines government from the “first batch” for DNA testing. The report also noted that the Embassy used advisories to call on all mothers with undocumented children to avail themselves of the procedure, but that

<sup>153</sup> This was reported during initial consultations with Social Welfare Attachés stationed in the Gulf countries, and is corroborated by a 2017 Discussion Paper on Undocumented Children of Overseas Filipinos, Submitted to the Council for the Welfare of Children by Maria Caridad H. Tarroja.

<sup>154</sup> Excerpt from Initial Consultations with Social Welfare Attachés and the Department of Social Welfare and Development 17 June 2020.

<sup>155</sup> Maria Caridad H. Tarroja, Discussion Paper on Undocumented Children of Overseas Filipinos in, Submitted to the Council for the Welfare of Children, 2017

191 mothers from the first batch chose not to avail themselves of the mechanism. Finally, the report noted that following the closure of the inter-agency committee, the program was stopped, though mothers continued to approach the Philippine Embassy seeking to participate. At the time of publication of that report, there was no agreement yet to restart the program. The numbers that benefited from any subsequent procedures may be significant, but no information has yet been identified to confirm this.

It is reported that there was an Amnesty in 2017 in Saudi Arabia for undocumented migrants.<sup>156</sup> The same report states that Saudi Authorities removed a mandatory DNA test requirement for undocumented children during an amnesty period.<sup>157</sup> The report states that while DNA tests were previously required to determine the identity of a child's parents, during the amnesty the Saudi government only required a ROB from the Philippine Consulate. Filipino mothers under investigation were denied amnesty. The Philippine Consul General Imelda M. Panolong was quoted as saying that 5,675 Filipino workers left Saudi Arabia during the three-month amnesty, and that a further 4,300 had been referred. A previous amnesty was also granted in 2013 during which, more than 2.5 million undocumented migrants left the country.<sup>158</sup>

It was reported during an interview with Social Welfare Attachés deployed to Saudi Arabia that sometimes undocumented Filipinos are still afraid to come forward because of fear that they will be arrested, but that the Embassy tried to encourage them and assures them of support.

#### **B.4.b. Citizenship**

Saudi citizenship is conferred primarily on the basis of the *jus sanguinis* principle from the father, with exceptions for foundlings. Women can also confer nationality where the father is unknown.

Under Article 35 of Saudi Arabia's Basic Law (its Constitution), "[t]he rules which govern the Saudi Arabian nationality shall be defined by the law." The citizenship system was approved by the Cabinet according to Decision no. 4 of 25/1/1374 Hijra in 1954.<sup>159</sup>

<sup>156</sup> *Saudi allows undocumented Filipino children to leave the country without DNA test*, *Gulf Business*, 4 June 2017, available at: <https://gulfbusiness.com/saudi-authorities-allow-undocumented-filipino-children-leave-country-without-dna-test/>

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.* (See also chart of "Amnesties in GCC countries" in section 5.2.1.2)

<sup>159</sup> *Saudi Arabian Citizenship System (Regulation) [Saudi Arabia]*, Decision no. 4 of 25/1/1374 Hijra, 23 September 1954, available at: <https://www.refworld.org/docid/3fb9eb6d2.html>

Article 4 of Saudi Arabia's Citizenship system provides that the following persons are Saudi citizens:

1. Whoever acquired an Ottoman Nationality in year 1332 Hijra – 1914 A.D. among original Saudi Arabian land inhabitants.
2. Ottoman Citizens born in Saudi Arabian land or residents inside the Kingdom from 1332 Hijra – 1914 AD until 22/3/1345 Hijra and did not acquire a foreign citizenship prior to this date.
3. Non-Ottoman Citizens who resided in the Saudi Arabian land from 1332 Hijra – 1914 A.D. until 22/3/1345 Hijra and did not acquire a foreign citizenship prior to this date.
4. Individuals born inside or outside the Kingdom from a Saudi father, or Saudi mother and unknown father, or born inside the Kingdom from unknown parents (foundling) are considered Saudis.
5. Individuals born inside the Kingdom from a Non-Saudi father and Saudi mother may be granted Saudi Citizenship by the decision of The Minister of Interior so long as they: (1) have a permanent Resident Permit (Iqama) when they reach the legal age; (2) they have good behaviour and have never been sentenced to a criminal judgment or imprisonment for more than six months; (3) they are fluent in Arabic; and (4) they apply one year after reaching the legal age.

Naturalization may also be provided under the following conditions:

1. The applicant is above the legal age
2. The applicant is of sound mind
3. The applicant has had a permanent resident permit (Iqama) for a minimum of 5 years continuously
4. The applicant has good behaviour and has never been sentenced to a criminal judgment or imprisonment for more than six months
5. The applicant has a legal income

The foreign wife of a Saudi may acquire Saudi Citizenship if she abandons her original nationality and acquires Saudi Citizenship.

#### ***B.4.c. Children of Philippine Descent***

Based on the initial interview with Social Welfare Attachés, it was noted that there are cases of Filipino parents being deported without their children. The current Social Welfare Attaché was aware of three such cases and noted that two of the three children had birth certificates. The third had been with a guardian for more than a year, but it was reported that the Embassy had lost contact with the guardian and cannot locate them.

The current Social Welfare Attaché reported that the Saudi government conducts free DNA testing, and that once the biological relationship with the child is confirmed, the child can be repatriated to the Philippines.<sup>160</sup> The previous Social Welfare Attaché who had previously been deployed to Saudi Arabia in around 2013, reported that more than 2,000 children were repatriated to the Philippines during her deployment to the country.

#### ***B.4.d. Bilateral Agreement***

On 19 May 2013, the Ministry of Labor of the Kingdom of Saudi Arabia, and the Department of Labor and Employment of the Philippines signed a Bilateral Agreement on Domestic Worker Recruitment. This was the first bilateral agreement signed between the Philippines and Saudi Arabia and led to similar agreements being signed with the other Gulf countries.<sup>161</sup> The agreement includes a number of aims, intentions, and areas of cooperation. These include:

- An intention “to enhance cooperation on domestic worker recruitment in a manner that realizes the interest of both countries, maintain their sovereignty, [and] secure the rights of both the worker and the employer” set out in the preamble.
- The stated purpose in Article 2 is, “to protect the rights of both the employers and domestic workers and regulate the contractual relation between them.”
- Eight listed “areas of cooperation” in Article 3 include: (1) working towards a mutually acceptable recruitment and deployment system; (2) adopting a standard employment contract binding on the contracting parties; (3) ensuring licensing of recruitment offices, companies, or agencies; (4) regulated recruitment costs; (5) prohibition of unauthorized salary deductions or charges; (6) right of recourse to a competent authority for contractual disputes; (7) taking action against parties who violate terms; and (8) to resolve any issue arising from this agreement.

Article 4 sets out Saudi Arabia’s responsibilities, and includes endeavoring to establish a mechanism to provide 24-hour assistance to the domestic worker; and facilitating the issuance of exit visas for the repatriation of domestic workers “upon contractual completion, emergency situations, or as the need arises.” This last provision on exit visas would appear to be an important advancement given the finding of the 2011 of the Investigating Mission of the Committee on Overseas Workers’ Affairs (COWA) to Saudi Arabia that exit visas have not

<sup>160</sup> Excerpt from *Initial Consultations with Social Welfare Attachés and the Department of Social Welfare and Development* 17 June 2020.

<sup>161</sup> Republic of the Philippines, Department of Labor and Employment (DOLE), *A first between Saudi Arabia and a country of origin. In 2013, historic agreement between PH and KSA sealed stronger protection for the Filipino HSW*, 27 December 2013, available at: <https://www.dole.gov.ph/news/a-first-between-saudi-arabia-and-a-country-of-origin-in-2013-historic-agreement-between-ph-and-ksa-sealed-stronger-protection-for-the-filipino-hsw/>

been available for undocumented children.<sup>162</sup> Although, Saudi Arabia still requires an exit visa before a migrant worker is permitted to leave the country (this is not the case in Kuwait or the UAE). Article 5 sets out the responsibilities of the Philippines. Both countries are required to verify all employment contracts. Importantly, Article 6 established a “Joint Committee” with representatives of senior officials of both parties to conduct periodic review, assessment, and monitoring, and to resolve disputes arising from implementation and interpretation of the agreement. The agreement was effective for five years and was renewed in 2018.<sup>163</sup>

## B.5. United Arab Emirates

### B.5.a. General Background

There are approximately 700,000 Filipinos in Dubai and in the Emirates, around 300,000 OFs in Abu Dhabi alone.<sup>164</sup> Most OFs immigrate for employment, but some have also married and settled with their families. According to a survey produced in 2016, there are approximately 30,000 undocumented Filipinos in Dubai and the Northern Emirates.<sup>165</sup>

### B.5.b. Citizenship

Emirati citizenship is conferred primarily on the basis of the *jus sanguinis* principle from the father, with exceptions for foundlings. Women can also confer nationality where fatherhood is unsubstantiated, or the father is unknown or stateless.

Article 8 of the UAE Constitution<sup>166</sup> provides that the Union shall have a single nationality which shall be prescribed by law, and that, “No citizen of the Union may be deprived of his nationality nor may his nationality be withdrawn save in exceptional circumstances which shall be defined by Law.” Citizenship is prescribed in “Federal Law No (17) for 1972

<sup>162</sup> “The Condition of Overseas Filipino Workers in Saudi Arabia,” *Final Report of the Investigating Mission of the Committee on Overseas Workers’ Affairs (COWA) to Saudi Arabia, January 9-13, 2011*

<sup>163</sup> *Agreement on Domestic Worker Recruitment Between the Ministry of Labor of the Kingdom of Saudi Arabia and The Department of Labor and Employment of the Republic of the Philippines, 19 May 2013.*

<sup>164</sup> *Philippine Statistics Authority, Statistical Tables, TABLE 3 Distribution of Overseas Filipino Workers by Region of Origin and Place of Work Abroad: 2019, 4 June 2020, available at: <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos/table>.*

<sup>165</sup> *According to the Assessment on Documented and Undocumented Children provided by the DSWD, there are a total of 9,005 undocumented children from 2018 to November 2020 (474 or 5% of these children are from Dubai). It should be noted, however, that these figures are from foreign Posts of Malaysia, Hong Kong, Riyadh, Jeddah, Kingdom of Saudi Arabia, Qatar, Dubai, and Kuwait where the DSWD Social Welfare Attachés have been deployed. Undocumented children have been identified by DSWD as those “born out of non-marital relationships and victims of trafficking where their births are simulated or in other individual’s custody. There are also abandoned, neglected, sexually or physically abused children whose parents are either in jail or have problems on their immigration status which results to registration difficulties.” To address this, the Social Welfare Attachés have “continuously provided assistance to parents of undocumented by obtaining their Report of Birth before their repatriation.” For more information, see Annex A.*

<sup>166</sup> *Constitution of the United Arab Emirates, available at: <https://www.wipo.int/edocs/lexdocs/laws/en/ae/ae030en>*

Concerning Nationality, Passports and Amendments thereof.<sup>167</sup> Under Part One, Chapter One, Article (2) A citizen by law is:

- A. An Arab who was residing in a member Emirate in 1925 or before and continued to reside therein up to the effective date of this law. Ancestors' residence shall be deemed complementary descendant's residence.
- B. Anyone born in the country or abroad to a father who is a citizen by law.
- C. Anyone born in the country or abroad to a mother who is a citizen by law, whose fatherhood is not substantiated.
- D. Anyone born in the country or abroad to a mother who is a citizen by law, whose father is unknown or without nationality.
- E. Anyone born in the country to unknown parents. A founding shall be deemed to have been born in the country unless proved to be otherwise.

It is reported that Shaikh Khalifa issued a decree by Federal Law No 16 of 2017,<sup>168</sup> on the amendment of some provisions of Federal Law No 17 of 1972, on Nationality and Passports, such that citizenship may now be granted to the sons and daughters of Emirati women married to non-Emiratis after a minimum of six years from their birth date, and that citizenship may also be granted to the daughters of Emirati women married to foreigners, who are also married to non-Emiratis.<sup>169</sup>

Under Article 3, marriage by an alien woman to a UAE citizen shall not entitle her to nationality unless: (1) she informs the Ministry of Interior of her wish to naturalize; (2) she subsequently waits three years during which time the marriage continues; and (3) she revokes her original nationality. An alien husband may not acquire the nationality of his wife in any circumstances.<sup>170</sup> However, the wife of a naturalized citizen, is deemed naturalized if she renounces her original nationality, and their underaged children are deemed naturalized and may select their nationality within one year after they reach the age of maturity.<sup>171</sup>

<sup>167</sup> *United Arab Emirates: Federal Law No. 17 for 1972 Concerning Nationality, Passports and Amendments Thereof [United Arab Emirates]*, 18 November 1972, available at: <https://www.refworld.org/docid/3fba182d0.html>

<sup>168</sup> See entry in *International Labour Organization Database of national labour, social security and related human rights legislation*, at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=107250](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107250)

<sup>169</sup> *Decree of federal law No. (16) of 2017 concerning the amendment of some provisions of federal law No. (17) of 1972 regarding nationality and passports*; See Also: Asma I. Abdulmalik (op-ed), "Emiratis are united by values," *Gulf News*, 29 Nov. 2017, available at: <https://gulfnews.com/opinion/op-eds/emiratis-are-united-by-values-1.2132860>

<sup>170</sup> *Federal Law No. 17 for 1972, Article 3.*

<sup>171</sup> *Federal Law No (17) for 1972, Concerning Nationality, Passports and Amendments thereof, Article 10.*

According to one article in Reuters, “[a] call for the UAE to consider allowing expatriates to apply for citizenship has sparked a debate about national identity in the Gulf Arab state, where foreigners outnumber the local population by more than five to one.”<sup>172</sup> According to an Annual Statistical Yearbook on the population of Abu Dhabi, Emirati citizens represented 19% of the population, while the non-citizen population comprised 81% of the total.<sup>173</sup> Similarly, in Dubai, the Statistical Yearbook for 2018 in Chapter One on population and vital statistics reports that only 254,600 persons among the population of 3,192,275 are Emirati citizens (8%) of the total, while 92% are Non-Emirati.<sup>174</sup>

Naturalization is granted in the UAE under the following conditions in Articles 5-12 of the Nationality Law:

- An Arab of Omani, Qatari or Bahraini origin if he resides in the UAE legally and continuously for more than three years immediately preceding his application for citizenship, provided that he has a legal means of living, of good conduct and has not been convicted for a crime that impugns integrity.
- The UAE citizenship may be granted to any fully competent person if he has been legally and continuously residing in the Emirates since 1940 or before and has maintained his original residence up to the effective date of law has legal means of living, of good conduct, has not been convicted for a crime that impugns integrity, and is conversant with the Arabic language.
- Citizenship of the country may be granted to any person other than those mentioned in article (5) and article (6) if that person is: (a) of full liability; (b) has resided in a continuous and statutory manner in the member Emirates for a period not less than 30 years, of which 20 years at least after this law enters into force; (c) has a legal source of living; (d) of good conduct and has not been convicted for a crime impugns integrity; and (e) Knows Arabic language well.
- Any person who renders marvelous deeds for the country may be granted citizenship regardless of the period of residence prescribed in the precedent articles.
- Nationality by naturalization may not be given to a person unless he renounces his original nationality and nationality is granted only once.

<sup>172</sup> Mahmoud Habboush, “Call to naturalise some expats stirs anxiety in the UAE,” Reuters, 10 October 2013, available at: <https://uk.reuters.com/article/uk-emirates-citizenship-feature/call-to-naturalise-some-expats-stirs-anxiety-in-the-uae-idUKBRE99904J20131010>

<sup>173</sup> Abu Dhabi, *Statistical Yearbook 2019*, available at: [https://www.scad.gov.ae/Release%20Documents/Statistical%20Yearbook%20%20Population\\_2019\\_Annual\\_Yearly\\_en.pdf](https://www.scad.gov.ae/Release%20Documents/Statistical%20Yearbook%20%20Population_2019_Annual_Yearly_en.pdf)

<sup>174</sup> Government of Dubai, *Statistical Yearbook 2018, Chapter 1*, available at: <https://www.dsc.gov.ae/en-us/Publications/Pages/default.aspx>.

A naturalized citizen does not have the same rights as a natural born citizen. For example, a person who has acquired nationality by naturalization, “shall not have the right of voting, or being a candidate or to be appointed in any parliamentary or public body or any ministerial position.”<sup>175</sup>

Under Article 2(E) of the Nationality Law, foundlings are deemed citizens unless proved to be otherwise. Federal Law No. 1 of 2012 deals with foundlings in the UAE, and provides for the following procedure:

1. Whoever finds a child of unknown parentage shall reach the nearest police station or hand him/her over immediately, with the clothes he/she is wearing and all other things found with or near him/her.
2. The police officer shall take the child and send him/her to the nearest health centre to conduct the necessary medical examinations, notify the Public Prosecution of the same, and file a report of the circumstances and conditions in which (s)he was found..., and the name, profession and address of the person who found him/her.
3. The health centre shall conduct medical examinations on the child and take necessary actions to preserve his/her health and safety, while the specialized physician estimates his/her age.
4. The Public Prosecution shall refer the child to the Home<sup>176</sup> in coordination with the Ministry and the Ministry of Interior.
5. The Home shall choose a full name for the child and in all cases, it shall not refer, in any way, to the fact that the child is of unknown parentage, whether in the birth certificate or any other identification papers.
6. The Home shall take necessary actions to register the child in the official papers according to the laws and regulations in force at the State in coordination with the Ministry of Interior.

Under Article 17 of the Foundling law, if the sonship<sup>177</sup> of the child of unknown parentage was proved pursuant to a final judgment, (s)he shall be re-registered in the name of his/her

<sup>175</sup> Federal Law No (17) for 1972, Concerning Nationality, Passports and Amendments thereof, Article 13.

<sup>176</sup> According to the Definitions provided in Article 1 of Federal Law No. 1 of 2012 “Concerning the Custody of Children of Unknown Parentage,” “Home” refers to the “Home for the care of children of unknown parentage.” The law in Article 2, aims to establish and develop “state homes and foster families to provide health, psychological, social, entertainment and educational care for them.”

<sup>177</sup> The English translation of the law refers to ‘sonship’, which implies the relationship of the child to the father is what is relevant. However, this term is not defined in the law, so it may be interpreted to include the biological relationship with the mother as well. It does not say anything about the mother, but perhaps in such circumstances, the child will not be considered a ‘foundling’. Based on our interviews with the Social Welfare Attaché of UAE, it appears that proof of the biological relationship of the mother may be sufficient to avoid categorization as a foundling.

proven parent according to the laws in force in the State. Otherwise, under Article 21, no person shall have the right to do any act regarding the custody of the children of unknown parentage, without observing the rules and procedures set forth in this Law.

### *B.5.c. Children of Philippine Descent*

According to the Social Welfare Attaché of the UAE, undocumented children cannot be repatriated to the Philippines unless UAE authorities are satisfied that they are proven to be Philippine citizens. From 15 March to 31 May 2020, the office has served 250 undocumented children. It is also working on locating the parents of 15 to 20 abandoned children. This suggests that the numbers are very substantial. The vast majority of undocumented children of Philippine descent are the children of Filipino mothers and expat fathers. It was noted that because these children are undocumented, they cannot access healthcare or education.

With regard to birth registration, it was shared that the UAE does not recognize the Philippines' ROB and that they will only recognize a birth certificate issued by the Ministry of Health. Most of the mothers who have had children born outside of the hospital are not able to satisfy the criteria for registration in the UAE (a marriage contract, passport of the father, etc.).<sup>178</sup> In some circumstances, the mother may be required to report to the police first, at which point they will be put in prison. While in prison their DNA will be taken to establish their parental relationship.<sup>179</sup> Once they have served their sentence,<sup>180</sup> repatriation/deportation will be processed. This provides a strong disincentive to come forward.

With regard to abandoned children, the Embassy tries to locate the child's mother in order to secure a DNA sample so that they can prove Filipino descent. Without such proof, the children cannot be repatriated, and it was shared by the Social Welfare Attaché that, "If we cannot locate their parents, we seem to be helpless."<sup>181</sup> It was shared that there are approximately ten (10) children in such circumstances at present that the office is aware of, for whom the office has tried to locate their parents, but has no link. Where the mother is located, a parental capability assessment is conducted to determine if she is willing and able to take back her child. The DNA sample is sent to

<sup>178</sup> See for example: Janine Mackenzie, "All the paperwork you need to have a baby in the UAE," 21 Mar. 2017 <https://babyandchild.ae/uae-birth-guide/paperwork-and-practicalities/article/861/all-the-paperwork-you-need-to-have-a-baby-in-the-uae>

<sup>179</sup> The DNA Dignostics Center (DDC) operating in the United Arab Emirates provides DNA testing both for legal situations, such as child paternity disputes and immigration matters, to prove a biological relationship for an immigration case. See: <https://dnacenter.com/uae/>.

<sup>180</sup> According to Article 31 of Federal Law No (6) for 1973 Concerning Immigration and Residence, "If an alien enters the country or stays in the country by breaching the provisions of this law, or refuses to obey an order issued to him for deportation, he shall be punished by imprisonment for a period not exceeding four months and by a fine not exceeding Two Thousand Dirham or with either of the two punishments."

<sup>181</sup> Based on initial consultations with Social Welfare Attachés and the Department of Social Welfare and Development, 17 June 2020.

the UAE embassy, and then submitted to the concerned Department in the UAE. The government of the UAE then orders that a DNA sample be taken from the child, and after a match is made, only then can the child be processed for repatriation. Based on an interview with DSWD staff, it was noted that the office had been able to repatriate about seven totally abandoned children through this process during her deployment.

In terms of how such children are identified, it was shared that some walk into the Embassy's offices, and others are referred by agencies or community members. Ages vary, but some are already teenagers, including an 18-year-old who has never been to school, and that there are some who are now adults and remain in such circumstances.

Based on the number already identified, the age range, and considering the challenges in identifying children in such circumstances, it is possible that the number is much higher in reality than the number that the office is currently aware of. It was shared that,

“Our Ambassador has a plan to begin with data gathering, and she has initiated a committee to undertake a rapid survey to determine how many undocumented children there are, and she will use the data to negotiate with the UAE authorities.”<sup>182</sup>

This appears to be a very positive strategy, and one which is recommended to receive support.

#### ***B.5.d. Immigration***

Federal Law No (13) of 1996 Concerning “Aliens Entry and Residence,” amends provisions of Federal Law No (6) of 1973 relating to immigration and residence.<sup>183</sup> Article 31 provides that anyone who enters the UAE illegally shall be imprisoned for a period of “not less than one month” and/or pay a fine of “not less than 1,000 Dirham,” followed by deportation ordered by the court. Similarly, Article 35, states that any person who violates the provisions of this law or related regulations shall be punished with imprisonment for a period not less than one month and a fine of no less than 1,000 Dirham.

The law prescribes detention in certain circumstances, including to execute a deportation or as punishment for violating immigration provisions. Aliens can be detained for up to three months for failing to maintain a valid residence permit; failing to leave the country after cancellation or

---

<sup>182</sup> Excerpt from interviews with Social Welfare Attachés and the Department of Social Welfare and Development on 17 June 2020.

<sup>183</sup> United Arab Emirates: Federal Law No. 13 for 1996 Concerning Aliens Entry and Residence, Amending Some Provisions of the Federal Law No. 6 for 1973 Relating to Immigration and Residence [United Arab Emirates], 30 September 1996, available at: <https://www.refworld.org/docid/3fba168c4.html>

expiry of an entry or residence permit; or failing to pay overstay fines.<sup>184</sup> The Department of Nationality and Immigration is authorized to order the deportation of any alien who does not have a residence permit or who has not renewed his permit in accordance with legal requirements.<sup>185</sup> Article 28 provides that anyone ordered deported may not return to the UAE, except with special permission from the Minister of Interior.

## C. Persons of Japanese Descent

### C.1. Background

Japanese emigration to the Philippines was largest during the Meiji Restoration, from about 1868-1945, with the largest number of Japanese migrants arriving in the Philippines after 1898, when the Philippines was ceded by Spain to the United States following the Spanish-American War. Those Japanese who moved to the Philippines during this time are usually referred to as “first generation” (issei「一世」) Nikkeijin.<sup>186</sup> Their children are usually referred to as “second generation” (nisei「二世」), and the second generation’s children are called “third generation” (sansei「三世」).

During the Meiji Restoration of 1867, the Japanese government encouraged citizens to migrate abroad. People migrated for many other reasons as well, including poverty. Japanese people migrated to many places including Latin America, Hawaii, North America, China, and the Philippines.

According to a census survey conducted by the Philippine government in 1939, the number of Japanese residents reached 29,057, scattered in all 50 provinces, and the top ten (10) provinces with the highest Japanese population included: Davao (17,888), the City of Manila (4,730), Mountain Province (1,188), Cebu (623), Iloilo (574), Rizal (524), Negros Occidental (490), Camarines Norte (453), Zamboanga (345), Tayabas (158).<sup>187</sup> In the pre-war period, outside of Imperial colonial territories, the total number of Japanese migrants that moved to the Philippines was 53,115. According to Shun Ohno, in the late 1920s and 1930s, around half of the Japanese settlers living in Davao were Okinawans.

<sup>184</sup> *United Arab Emirates: Federal Law No. 6 for 1973 Concerning Immigration and Residence [United Arab Emirates], Article 21, 2 September 1973, available at: <https://www.refworld.org/docid/3fb9fab24.html>*

<sup>185</sup> *United Arab Emirates: Federal Law No. 6 for 1973 Concerning Immigration and Residence [United Arab Emirates], Article 29, 2 September 1973, available at: <https://www.refworld.org/docid/3fb9fab24.html>*

<sup>186</sup> *The term ‘nikkeijin’ (日系人) in Japanese refers to Japanese people who emigrated from Japan and their descendants. It is a term for the Japanese diaspora.*

<sup>187</sup> *See Shun Ohno, PhD Thesis: Shifting Nikkeijin Identities and Citizenships: Life Histories of Invisible People of Japanese Descent in the Philippines, March 2005, Citing to the Philippines Commission of the Census 1941: vol. II, 428.*

A large number of Japanese migrants came initially to engage in road construction, and subsequently to work on abaca (Manila hemp) plantations. Some returned to Japan, while others stayed on in the Philippines for work spreading out throughout the country with various occupations. The largest community formed in Davao, and the number of Japanese companies and employees steadily increased in the Philippines mainly in Manila and Davao. The number of local-born Nisei children steadily increased. Many Japanese men married Filipino women and raised families, adapting themselves to the Philippine local communities.

However, at the breakout of World War II, Japanese immigrants in the Philippines were conscripted into the Japanese military, which turned the U.S. Army and Philippine guerrillas against Japanese nationals. After its two-year occupation of the Philippines, Japan was beginning to lose the war. In the war-triggered turmoil, Japanese migrants working for the Japanese Military were killed or taken as hostages, and were repatriated to Japan after the war. On the other hand, most children of those Japanese migrants were left behind, mostly with their Filipino mothers, in the country. Because they became retaliatory targets of Japanese atrocities during the war, many Japanese descendants fled into remote locations and hid their Japanese bloodline and discarded the documents and pictures indicating their Japanese origin. Consequently, many were unable to have proper education, and remain marginalized.

Among the population, there are some cases where both the mother and father were Japanese, and there were some cases where only the mother was Japanese, but the vast majority of cases were those with a Japanese father and Filipino mother. Indeed, at present, the client database of the PNLSC currently consists mostly of cases with a Japanese father and Filipino mother.

Article IV of the 1935 Constitution of the Philippines grants Filipino citizenship to “[t]hose whose fathers are citizens of the Philippines.” Furthermore, the Supreme Court of the Philippines has held that, “...the ...constitutional and statutory requirements of electing Filipino citizenship apply only to legitimate children. These do not apply in the case of respondent who was concededly an illegitimate child, considering that her Chinese father and Filipino mother were never married. As such, she was not required to comply with said constitutional and statutory requirements to become a Filipino citizen. By being an illegitimate child of a Filipino mother, respondent automatically became a Filipino upon birth. Stated differently, she is a Filipino since birth without having to elect Filipino citizenship when she reached

the age of majority.”<sup>188</sup> Nevertheless, those born to a Japanese father married to a Filipino mother between 1930-1973 are not Filipino citizens.

Under Article 1 of the 1899 Nationality Law of Japan a child will be a Japanese national when, at the time of birth, its father is Japanese. Although, children acquire Japanese nationality automatically at the time of their birth, this fact may not have been recorded in the “family registry” or “koseki,” raising issues of proof. If the parents did not submit a notification of birth, then the person will be without a koseki, the starting point for all other documents. The person without a koseki will have to petition the court to create a koseki registration, in a procedure called, “shuuseki” (see details below). The family court will determine whether the person is a Japanese national and that he or she has no registered domicile, and if so, will approve the case. The family courts’ judgment is largely a question of evidence and proof. With the judgment, the person may approach the relevant Municipal Office and will be permitted to create an entry in the Koseki, and then with the koseki will be able to secure all other relevant documents.<sup>189</sup> Therefore, although, many children of Japanese descent were, by the operation of both Filipino and Japanese nationality law, Japanese nationals, they are unregistered and often lack the necessary evidence to prove their nationality.

Philippine Nikkeijin are located all over the Philippines. Davao has the largest community with membership in the local association reaching 7,000 including four to five generations. The number of persons identified by the PNLSC is over 3,800 based on a series of 13 surveys commissioned by the Ministry of Foreign Affairs of Japan, and the list is growing. There are people in very remote areas of the Philippines who are likely still not aware of the PNLSC and its work, due to the following factors:

- The practice of hiding their identity has prevailed even after the war
- Age and vulnerability (most of the population is elderly (average age is 81), and every year community members pass away)
- Many live-in remote areas and would have difficulty accessing services or information
- Due to the history, the population was also economically and socially marginalized, they may not hold a cell phone or be able to access the internet

Due to the age and vulnerability of the community, resolution of the situation is urgent.

<sup>188</sup> *Republic of the Philippines v. Chule Y. Lim*, G.R. No. 153883, January 13, 2004, available at: [https://lawphil.net/judjuris/juri2004/jan2004/gr\\_153883\\_2004.html](https://lawphil.net/judjuris/juri2004/jan2004/gr_153883_2004.html) (Under Article 8 of the Republic Act No. 386, the Civil Code of the Philippines, “Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.” Republic Act No. 386, Civil Code of the Philippines, June 18, 1949, available at: <https://www.officialgazette.gov.ph/1949/06/18/republic-act-no-386/>)

<sup>189</sup> UN High Commissioner for Refugees (UNHCR), *Typology of Stateless Persons in Japan*, December 2017, available at: <https://www.refworld.org/docid/5bb618b74.html>.

## C.2. Statistics

### Available statistics of known population:

- 3,836 persons identified by the PNLSC through Japan Government Ministry of Foreign Affairs Commissioned Surveys
  - » 1,275 have acquired Japanese nationality
  - » 1,651 deceased without acquiring nationality or unknown\*
  - » **910 of those cases are estimated to be alive and at-risk of statelessness**
- 108 applicants through the Philippines statelessness status determination system (according to the DOJ-RSPPU):
  - » 6 recognized as stateless<sup>190</sup>
  - » 102 pending applications
- 315 cases filed in Japan family court since 2003
  - » 249 approved
  - » 6 pending
  - » 30 withdrawn
  - » 30 denied

*\*PNLSC estimates that 100 persons die each year as the population is aging, and the issue is therefore urgent*

To collect these statistics, 13 surveys have been conducted periodically since 1995. The first four surveys were conducted by the Federation of Nikkeijin-Kai, commissioned by the Japanese Embassy in Manila. The subsequent nine surveys have been commissioned by the Ministry of Foreign Affairs of Japan to the PNLSC.

According to the PNLSC, the Embassy in the Philippines started the survey after coming across PJD and receiving letters and calls to help find their family members. As for why the Embassy started conducting these surveys, the PNLSC says that according to the officers and Consuls, there are limits to what they can do to help without a law, regulation, or scheme that gives them some authority. What is within their authority already is the conduct of surveys and research, and that is why this survey has consistently been commissioned.

<sup>190</sup> All six cases recognized as stateless by the Philippines DOJ-RSPPU, have been submitted and recognized in Japan through *Shuuseki* applications. Courts give weight to this official Philippines government certification.

The PNLSC reports on the history of the Survey as follows:

- 1995: Survey #1: 444 descendants were found.
- 1997: Survey #2: 1,024 descendants were found.
- 2004: Survey #3: 1,099 descendants were found (Survey 3 stayed open through to Survey #4).
- 2005: Survey #5: PNLSC was commissioned to conduct the survey and discovered that there was an official list of Japanese prisoners of war in the Philippines with 18,248 names on it. The Korosho (Ministry of Health, Labour and Welfare) had a copy of this list but said that due to government regulations on personal information (kojinjouhou) they could not provide it to the PNLSC. However, the original list was held in the United States (US) in the Smithsonian, and through a volunteer in the US, the PNLSC was able to get a copy from there. This list has proven to be an important piece of evidence as it has pictures, fingerprints, and the father's address.
- 2010: Survey #6: PNLSC made a list of 300 descendants and called it the list of war orphans in the Philippines.
- 2012: Survey #7: PNLSC conducted a survey of Japanese Diaspora organizations (Nikkeijin-kai) all over the Philippines, and the same year conducted a follow up survey #8 and found an additional 511 persons.
- 2013: Survey #9: the number of persons identified was 1001.
- 2014: Survey #10: data from all previous surveys was consolidated into a total list of 3,545.
- 2017: Survey #11: the consolidated list expanded to 3,806.
- 2019: Survey #12: the consolidated list expanded to 3,810.
- 2020: Survey #13: this is the most recent survey. The total number is now 3,836.

To conduct the latest survey, PNLSC had only two months and a total budget of ¥2,000,000 (a bit less than 20,000 USD). The project was implemented all over the Philippines through the Nikkeijin-kai under the federation. The list is distributed with the survey, and staff of the Nikkeijin-kai visit their homes or try to contact them. Those who are marked as unknown, are persons who are registered from past surveys, but could no longer be reached. PNLSC reported that many live below the poverty line, and move a lot, and are hard to find. It was noted that there were many reasons for this:

- Much time has gone by since the first survey in 1995, when there were no cell phones, and landlines were expensive, so after 25 years it is easy to lose contact.
- Perhaps they used to belong to Nikkeijin-kai, but then they moved.

### C.3. Philippines: Context, Barriers, Issues and Challenges faced by PJD

Based on interviews with the PNLSC, there were many cases of individuals who were not aware that they did not have Filipino nationality. They only became aware when they tried to obtain a passport.<sup>191</sup> There are cases where once the lack of nationality is discovered, immigration imposes fines for illegally overstaying, and after 70 years, the fines can rise to about ₱3,300,000 (1,440,000PHP).<sup>192</sup> PNLSC must then intervene to try to negotiate with Immigration to waive fees. In addition to fees, if a person is considered an overstayer, then once they go out of the Philippines, they will not be permitted to return. Through initial consultations with the Bureau of Immigration (BI) as well, it was shared that although fees are generally non-negotiable, cases involving PJD are often special cases, and can be worked out with the DOJ, as the Secretary of Justice is authorized to make such accommodations.<sup>193</sup>

Through initial consultations with the BI, it was shared that PJD have approached the immigration office often in one of two different scenarios: either they come with no records at all and apply for a passport, or they come with a Japanese passport, and that is where the fine often comes in.<sup>194</sup> The BI will follow the provisions of the law, such that a person born of a legitimate marriage between a Japanese father and a Filipino mother before 1973 is considered to be a foreigner. Where their mother is Filipino, they may elect Filipino nationality.<sup>195</sup> The 1935 Constitution and CA No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made, but the courts have determined that the election should be made within a “reasonable time.” The phrase “reasonable time” has been interpreted to mean that the election should be made generally within three years from reaching the age of majority.<sup>196</sup> Beyond that time frame, it would be a delayed election, and would require many documents, but it is possible that accommodations may be made by the local registrar and

<sup>191</sup> A birth certificate as a basic document may be required, among others, to support the application for issuance of a Philippine passport. DOJ has noted that in one PJD case, it was noticed that the birth and marriage certificates presented that the PJD is a legitimate child of a Filipino mother and Japanese father born under the effectivity of the 1935 Constitution. Proof that the PJD elected Philippine citizenship was also requested, as required under CA No. 625, but none was shown, thus, the denial of the passport application.

<sup>192</sup> Initial Consultations with the Bureau of Immigration, 13 August 2020. (the standard fee is 2,000 pesos per year, so if they are 70 years old, that is 140,000 pesos).

<sup>193</sup> Initial Consultations with the Bureau of Immigration, 13 August 2020.

<sup>194</sup> *Ibid.*

<sup>195</sup> Under CA No. 625, the statutory formalities of electing Philippine citizenship under CA No. 625 are: (1) statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry. Furthermore, under the Alien Registration Act of 1950, the party electing Filipino nationality is required to register as an alien, and thereafter to file a petition with the Bureau of Immigration for the cancellation of the alien certificate of registration (ACR) based on the election of Philippine citizenship. This petition is then elevated to the DOJ for review and final determination. (See, *Republic v. Sagun*, G.R. No. 187567, February 15, 2012).

<sup>196</sup> See, for example, *Go, Sr. v. Ramos*, G.R. Nos. 167569, 167570 & 171946, September 4, 2009.

PSA with subsequent approval by the Secretary of Justice.<sup>197</sup> Furthermore, by electing Filipino nationality, the person would have to renounce Japanese nationality.

The PNLSC has suggested that the Philippines has shown greater flexibility than Japan, but that things have become stricter recently. Once immigration recognizes that the person was born to a Japanese father married to a Filipino mother between 1930-1973, they say the person is not eligible to obtain a passport/travel document. For example, the PNLSC stated during an interview that it conducts annual “homecoming tours” among PJD, and there are new documentary requirements before travel documents are issued such as the Certificate recognizing them as stateless. PNLSC reports that this is another reason that PJD are approaching the DOJ-RSPPU for recognition of statelessness status, to facilitate travel to Japan and prevent denial of re-entry to the Philippines.

#### C.4. Japan: Context and Cultural Background

In 1984, when the Nationality Act was amended to allow citizenship to be passed from women as well as men, the Ministry of Justice Civil Affairs Bureau Director Mr. Kiyoshi Hosokawa commented that, “Japan does not need to adopt the *jus soli* principle due to the scarce possibility that it would accept a large number of immigrants,” and went on to explain that, “Japan as a country has always been a mono-ethnic State with a single language, culture and history. A deeply rooted tradition of *jus sanguinis* lies within society, and this has been related to the country’s identity. *Jus sanguinis* in our Nationality Act has been established on this tradition and consciousness, and at present, the Japanese would not be in a position to accept *jus soli*.”<sup>198</sup>

Furthermore, Japan places an emphasis on the importance of the family and social harmony. Particular duties arise from one’s situation in relation to others, and the individual always stands simultaneously in several different relationships with different people, such as: a junior in relation to parents and elders, a senior in relation to younger siblings and children, an

<sup>197</sup> DOJ has noted that there may be an argument for delayed election beyond the 3-year time frame on humanitarian grounds, but as things stand, to allow such delayed election could also be seen to contradict existing jurisprudence. (See, Re: Application for Admission to the Philippine Bar of Vicente D. Ching, B.M. No. 914, October 1, 1999, 316 SCRA 1, 10-11, “The span of years that lapsed from the time he reached the age of majority until he finally expressed his intention to elect Philippine citizenship is clearly way beyond the contemplation of the requirement of electing ‘upon reaching the age of majority’ ... One who is privileged to elect Philippine citizenship has only an inchoate right to such citizenship. As such, he should avail of the right with fervor, enthusiasm and promptitude. Sadly, in this case, Ching slept on his opportunity... as a result, this golden privilege slipped away from his grasp.”). PJD’s would also have to avail themselves of delayed election, and by electing Filipino nationality, the person would have to renounce Japanese nationality. If they do not avail of delayed election, then the DOJ is constrained to rule that the PJD are stateless.

<sup>198</sup> Abe Kohki, Overview of Statelessness: International and Japanese Context, UNHCR, April 2010, available at: <https://www.refworld.org/docid/4c344c252.html> (citing: Ministry of Justice Civil Affairs Bureau Legal Affairs Study Group ed., Kaisei kokusekiho, kosekiho no kaisetsu(Interpretation of the Revised Nationality Act, Family Registry Law) (1985), p.8.)

insider alongside one's family in relation to those outside the family, and outsider in relation to other families. These relationships are reflected in the language itself when different words or ways of speaking are used depending on who is being spoken to (to an elder with respect, to a junior with guidance and benevolence), and who is being spoken about (about oneself or one's family with humility, about another's family with honor). Respect for your elders is given particular importance in Japanese society and is an important principle to highlight in this context due to the fact that most of the persons of Japanese descent at-risk of statelessness in the Philippines are elderly.

Chapman describes how Japan from the 1890s was, "often referred to as the family nation (*kazoku kokka*), ...[and] increasingly symbolised the emperor as father of the nation-state in which the imperial family and the Japanese people were indelibly linked through blood."<sup>199</sup> The consequences of the war are also particular moving in Japan, and this is important because 2020 marks the 75th Anniversary of the end of World War I and the dropping of atomic bombs on Nagasaki and Hiroshima. The timing is important as this issue is likely to garner a lot of attention in 2020 and beyond, and there may be opportunities to move the issue forward.

### C.5. Japan: Norms, National Policy, Legal Framework, and Implementation

Until 1899 Japan did not have a Nationality Law. Under Article 1 of the 1899 Nationality Law, a child is a Japanese citizen if the father is a citizen of Japan at the time of the birth. It was not until 1984, when Article 2 of the 1950 Nationality Law was amended to remove the gendered aspect of that provision so that a child is a Japanese citizen if the father or mother is a citizen at the time of the birth.

Citizenship in Japan is, therefore, based on the principle of *jus sanguinis* (by blood 血統主義). However, Japanese Nationality Law includes elements of *jus soli* (by birth place 出生地主義), for example, when both parents are unknown or are stateless. Finally, it has been suggested by at least one scholar that citizenship in Japan is actually conferred by "registration" in the Family Register ("Koseki") (a principle that could be called "*jus koseki*" (戸籍主義)).<sup>200</sup> Whether or not we go this far, the importance of the Koseki in Japan cannot be overstated. This section provides an analysis of the Koseki, nationality, immigration to Japan, and statelessness under Japan law.

<sup>199</sup> David Chapman, *Geographies of Self and Other: Mapping Japan through the Koseki* (自己と他者の配置—戸籍を通して日本を見る), *The Asia-Pacific Journal*, Volume 9, Issue 29, Number 2, 19 July 2011.

<sup>200</sup> Although it has also been suggested that in Japan it is actually "registration" that confers citizenship. See Karl Jakob Krogness, *Jus Koseki: Household registration and Japanese citizenship* 戸籍主義 戸籍と日本国籍, *Asia-Pacific Journal: Japan Focus*, Volume 12, Issue 35, Number 1, August 29, 2014, available at: <https://apjif.org/2014/12/35/Karl-Jakob-Krogness/4171/article.html>

## C.6. Koseki (Family Registration)

In Japan, “koseki (戸籍)” is the Japan family registry.<sup>201</sup> The koseki fulfills the function of birth certificates, death certificates, marriage licenses and the census. “Unlike the west, where registration is based on the individual, since its inception [in around the seventh century in Japan] population documentation... has been based on the household as the fundamental social unit.”<sup>202</sup>

The Family Registry is held and managed by the local municipal offices, not a central authority, although under Article 3(1) of the Family Register Act (Kosekihou 戸籍法) the “Ministry of Justice may set standards with which the mayors of municipalities must comply”; and under Article 3(2) the Legal Affairs Bureau with eight stations, and its District Legal Affairs Bureaus with 42 stations generally responsible for regions where prefectures are the units may “give advice or make recommendations to the mayor of a municipality... when he/she finds it particularly necessary to ensure proper processing of clerical work related to family registers.”<sup>203</sup>

The Koseki documents births, acknowledgements of paternity, adoptions, dissolution of adoptions, parental authority and guardianship, marriage, divorce, deaths and disappearances, names and name changes, and the acquisition or loss of Japanese nationality. Marriages, adoptions and acknowledgements of paternity all become legally effective only when they are recorded in the Koseki. Births and deaths become legally effective as they happen, but still must be filed by family members. Persons affected by such events are obligated to notify the local authority within a specific timeframe, and failure to do so can incur penalties (fines for late filings, and jail time for false filings). Aside from penalties, people would also be motivated to register to be eligible for certain welfare benefits, school entry, the issuance of passports, and other kinds of administrative actions. “In sum, the official registration of children as citizens depends on household-level cooperation.”<sup>204</sup> Local authorities are obligated to compile and register such events for all Japanese citizens within their jurisdiction and failure to do so can incur penalties against the Mayor and municipality.<sup>205</sup>

<sup>201</sup> *Family Register Act (戸籍法)*, Act No. 224 of December 22, 1947.

<sup>202</sup> David Chapman, *Geographies of Self and Other: Mapping Japan through the Koseki (自己と他者の配置—戸籍を通して日本を見る)*, *The Asia-Pacific Journal*, Volume 9, Issue 29, Number 2, 19 July 2011.

<sup>203</sup> Legal Affairs Bureau, [http://www.moj.go.jp/ENGLISH/m\\_hisho06\\_00034.html](http://www.moj.go.jp/ENGLISH/m_hisho06_00034.html)

<sup>204</sup> Karl Jakob Krogness, *Jus Koseki: Household registration and Japanese citizenship 戸籍主義 戸籍と日本国籍*, *Asia-Pacific Journal: Japan Focus*, Volume 12, Issue 35, Number 1, August 29, 2014, available at: <https://apjif.org/2014/12/35/Karl-Jakob-Krogness/4171/article.html>

<sup>205</sup> *Family Register Act*, Chapter IX, Articles 132-138.

A form of registration in Japan dates back to the 6th Century, while the modern system intending to encompass all Japanese citizens dates back only to 1872. Meanwhile, the law defining nationality in Japan did not appear until Japan's 1899 Nationality Law.<sup>206</sup>

The history of the Family Register in Japan progresses from:

- Introduction of the Chinese household registration system, which was a central part of the Great Reform (Taika) that began in 646.
- Edict Restricting Change of Status and Residence (mibun tōseirei) in 1591
- A land survey (taikō kenchi) from 1583 to 1598
- Ninbetsuchō (Registry of households and social status organized according to occupation (warrior, farmer, artisan, merchant): limited mobility of the population, and change of social status was nearly impossible and only with the permission of feudal lords
- Shumon aratamechō (Religious Inquisition Registry): order for everyone in Japan to register with a local Buddhist temple,
- shūmon ninbetsuchō: combined the ninbetsuchō with the shūmon aratame (religious inquisition registry) in 1670: combined registry of religion and social status, renewed every six years and lasted almost 200 years until the beginning of the Meiji period
- Gonin gumichō (Five Household Registry): five family neighborhoods were responsible and accountable for each other.
- The kakochō (Death Registry): monitored deaths and tied individuals and households to Buddhist Temples
- Edict 170, Promulgation of the jinshin koseki (1872)
- Introduction of the Nationality Law (1899)
- Establishment of the household system as part of the Meiji Civil Code in 1898 (meiji minpō)
- Japan Imperialism complicated the system, with Japan making a number of efforts to establish separate koseki laws to distinguish between the “mainland” with a domestic family registry (nai’chi koseki), and the “colonies” with an external family registry (gai’chi koseki).<sup>207</sup>
- 1871 Koseki Law, preamble, art. 1 (Dajōkan Edict No. 170 of 4 April);
- 1898 Koseki Law, art. 170.2 (Law No. 12 of 15 June);
- Nationality Law (1899)

<sup>206</sup> The 1899 Nationality Law (Law No. 66) was promulgated on 16 May 1899 and enforced from 1 April 1899. It was revised four times – in 1916 and in 1924, and twice in 1947 (effective in 1948). It remained in effect until 1 July 1950, when the 1950 Nationality Law (Law No. 147), promulgated on 4 May 1950, came into force, thereby abolishing it.

<sup>207</sup> Examples include: The Taiwan toguchi kisoku (Regulations for Taiwan households) established in 1905 and administered by the police. Okinawa and Chichijima (Ogasawara Islands) were two locations that were the target of intense US attack leading to the destruction of koseki records in both locations.

- 1914 Koseki Law, art. 44 (Law No. 26 of 30 March);
- 1947 (current) Koseki Law, art. 6, 18, 22 (Law No. 224 of 22 December).
- In the postwar period, three other laws relating to population registration were established to further supplement regulation and control; the Basic Resident Register Law (1967), the Resident Registration Law (1951) and the Alien Registration Law (1952).
- Japan's Nationality Act only recognised patrilineal descent until 1985 when an amendment was introduced recognizing matrilineal descent.

The Koseki registers only Japanese nationals, thus, nationality and family registration are closely linked. Creation of a person's Koseki leads to the recognition by the State of the existence of the person, their residence, protection of their rights, and the provision of administrative services, and the Koseki subsequently chronologically documents the person's status from birth to death. For example, while in other countries a marriage certificate may prove that a person was married to a particular person on a particular date, it may be more difficult to prove that one is still married; but in Japan, such events must be registered to have legal effect, so the Koseki always provides proof of the family's current situation (along with a complete historical record).<sup>208</sup>

If a person cannot *prove* his or her Japanese nationality due to a lack of entry in the family registry, that person is not only a person without a Koseki but is also at-risk of statelessness. The consequences of lacking a Koseki are varied and can include: one's name not being listed in the Resident Record; difficulty accessing compulsory education; not receiving various notices such as those related to entrance into the school system; lack of access to health insurance; lack of access to medical services, such as infant and child medical care and mother and child health care; no way to exercise the right to vote; difficulty opening a bank account or having a mobile phone contract; and difficulty securing any identification documents including a passport. The non-existence of a Koseki can also affect employment, and be an obstacle to marriage, or be passed on to children with difficulty registering one's children's birth.

Under the Nationality Act children acquire Japanese nationality automatically at the time of their birth if their mother or father possess Japanese nationality at that time, though this fact may not be recorded in the Koseki, raising issues of proof. Even if a child has acquired Japanese nationality under Article 2 of the Nationality Act, if the parents do not submit notification of birth, then the person will be without a family register. A person can

<sup>208</sup> Karl Jakob Krogness, *Jus Koseki: Household registration and Japanese citizenship* 戸籍主義 戸籍と日本国籍, *Asia-Pacific Journal: Japan Focus*, Volume 12, Issue 35, Number 1, August 29, 2014, available at: <https://apjif.org/2014/12/35/Karl-Jakob-Krogness/4171/article.html>

petition the family court in a procedure called *shuuseki*, through which a registration can be created (see below).

### C.7. Koseki (Family Registration)

The Constitution of Japan in Article 10 provides that “[t]he conditions necessary for being a Japanese national shall be determined by law.”<sup>209</sup> These conditions are set out in Japan’s Nationality Law No. 147 of 1950 as amended in 1952, 1984, 1993, 2004, and 2008.<sup>210</sup> Under Article 2, citizenship by birth is granted in any of the following cases:

1. When, at the time of its birth, the father or the mother is a Japanese national;
2. When the father who died prior to the birth of the child was a Japanese national at the time of his death;
3. When both parents are unknown or have no nationality in a case where the child is born in Japan.<sup>211</sup>

Until 1984, Article 2(1) did not include the mother, and citizenship could only be passed on by the father unless the father was unknown or stateless.<sup>212</sup> “[B]ecause of the patrilineal system... the number of Japanese mothers’ children who do not possess Japanese nationality... increased in the territory of Japan.”<sup>213</sup> The law was revised after Japan became a State party to the Convention on the Elimination of Discrimination Against Women. The provisions of the revised law would apply to a child born on or after January 1, 1985, however, a child born on or after January 1, 1965 was permitted to acquire Japanese nationality by making notification to the Minister of Justice based on Article 5 of the Supplementary Provisions of the Amending Law. Such a notification was required within three years after enforcement of the New Law. Anyone over 20 years of age (the age of majority in Japan), who could not benefit from this law revision would have to pursue naturalization to resolve their situation, but could do so under more favorable conditions than those required of foreigners in general under Article 8 of the revised law. The underlying policy was that, “the Minister of Justice ought to have the power to judge, on a case-by-case basis, the appropriateness of acquisition of Japanese nationality through process of naturalization when the child concerned has been a foreign national until reaching his or her majority.”<sup>214</sup>

<sup>209</sup> *Constitution of Japan*, 3 November 1946, Chapter III, Article 10, available at: [https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

<sup>210</sup> *The Nationality Law [Japan]*, (Law No.147 of 1950, as amended by Law No.268 of 1952, Law No.45 of 1984, Law No.89 of 1993 and Law.No.147 of 2004, Law No.88 of 2008); available at: <http://www.moj.go.jp/ENGLISH/information/tnl-01.html>

<sup>211</sup> Article 2(3) therefore recognizes the possibility of a child being born to stateless parents, and grants nationality to a child on the basis of *jus soli* (the right of anyone born in the territory of a state to the nationality of that State) in such circumstances.

<sup>212</sup> Hosokawa, Kiyoshi. “Amendment of the Nationality Law.” *Japanese Annual of International Law*, 28, 1985, p. 11-28.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

Under Article 2 of the Nationality Act the words “at the time of its birth” have implications for a child born between an unmarried Japanese father and foreign-national mother. The government interprets “father” and “mother” to refer to one who has a legal parent-child relationship, and therefore, outside of marriage, the father must “acknowledge” the child to establish the legal parent-child relationship.<sup>215</sup> Article 3 of the Nationality Act, therefore, provides for acquisition of nationality by “notification.” If the Japanese father acknowledges the child while it is in the mother’s womb, then the child acquires Japanese nationality upon birth, however, if the Japanese father acknowledges the child after it is born, then the child can acquire Japanese nationality by notifying the Minister of Justice. This acknowledgment can be made until the child reaches the age of 20, after that, nationality could only be secured through naturalization. In such cases, nationality is acquired at the time of notification. There may be other filing requirements as well in order to *retain* nationality for a child born outside Japan.<sup>216</sup> For PJD in the Philippines, proof of the marriage of the Japanese father to their Filipino mother is important.<sup>217</sup> If the birth is outside of marriage, then the parental relationship between the father and the biological child is not legally a parental relationship.

Articles 4-10 of the Nationality Law deal with citizenship by naturalization, permitting the acquisition of Japanese nationality as a matter of discretion by the Minister of Justice.<sup>218</sup> Article 5 of the Nationality Law limits the Minister of Justice’s discretion with regard to naturalization unless all six criteria are satisfied:

1. that he or she has domiciled in Japan for five years or more consecutively;
2. that he or she is 20 years of age or more and of full capacity to act according to the law of his or her home country;
3. that he or she is of upright conduct;
4. that he or she is able to secure a livelihood by one’s own property or ability, or those of one’s spouse or other relatives with whom one lives on common living expenses;

<sup>215</sup> See UNHCR, *Typology of Stateless Persons in Japan, December 2017*, available at: <https://www.refworld.org/docid/5bb618b74.html>, pg. 79, FN 167 (citing to *The Supreme Court (Petty Bench II), Judgment, 22 November 2002 (Heisei 14 Nen), Shuumin Vol. 208, p. 495.*)

<sup>216</sup> For example, under Article 12 of the Nationality Act a child born abroad to a Japanese parent acquires Japanese nationality at birth, but if they also acquire another nationality, then unless they register their intention to retain the child’s Japanese nationality by filing a “notification of reservation of Japanese nationality” within three months of the birth, then the child will retroactively lose their Japanese nationality. However, this provision should not be relevant to Persons of Japanese Descent, if they did not acquire Filipino or any other nationality at the time of their birth. For such persons who lost nationality for this reason, under Article 17 of the Nationality Act, they can reacquire it until the age of 20 if they are resident in Japan and file a request to do so. After the age of majority they must seek naturalization.

<sup>217</sup> According to the PNLSC, out of 1095 cases, most are case with married parents (923) with 33 not having any evidence to prove the marriage. 50 cases are those whose parents were unmarried.

<sup>218</sup> The Nationality Law [Japan], Article 4(2), (Law No.147 of 1950, as amended by Law No.268 of 1952, Law No.45 of 1984, Law No.89 of 1993 and Law.No.147 of 2004, Law No.88 of 2008); available at: <http://www.moj.go.jp/ENGLISH/information/tnl-01.html>.

5. that he or she has no nationality, or the acquisition of Japanese nationality will result in the loss of foreign nationality;
6. that he or she has never plotted or advocated, or formed or belonged to a political party or other organization which has plotted or advocated the overthrow of the Constitution of Japan or the Government existing thereunder, since the enforcement of the Constitution of Japan.

Article 5(2) through Article 9, further modify these criteria making specific exceptions in certain circumstances. For example, as noted above, under Article 8(4), the Minister of Justice may permit naturalization notwithstanding the conditions set in Article 5(1), (2), and (4), provided that... “[the alien] was born in Japan and has had no nationality since the time of birth, and has had a domicile in Japan for three consecutive years or more since then.” Article 8(4), therefore, eases naturalization requirements for persons born stateless in Japan.

Procedures relating to the acquisition of nationality stipulated by the Japanese Nationality Act are under the jurisdiction of the Civil Affairs Bureau of the Ministry of Justice. Individual applications are handled by eight legal affairs bureaus, and 42 district legal affairs bureaus across Japan.

For Philippine Nikkeijin, under the operation of the law of Japan, they are Japanese nationals if they were born to a Japanese father legally married to a Filipino mother at the time of their birth. If the parents were not legally married, then the father would have had to acknowledge the birth to effect nationality. In cases where there was no legal marriage and no notification, the child would not be considered a Japanese national.

### **C.8. Immigration**

According to the PNLSC, many Philippine Nikkeijin do not wish to permanently relocate to Japan. Most are now elderly, and many have large families with whom they would wish to remain close in the Philippines. Yet, identity is important to many of them, and they may wish to travel to Japan to visit the grave of their parents or meet relatives. Moreover, their children and grandchildren may wish to travel to Japan to work and study, and the second generation may wish for them to have that opportunity. The second generation may be citizens of Japan, and securing nationality for this generation is a priority, but if the Japanese ancestor’s Koseki can be located, second, third, and fourth generation Japanese descendants are all eligible to travel to Japan to live and work on a Nikkeijin visa, and would be on a fast track towards permanent residence in Japan. Working in Japan and sending remittances back to the Philippines is also a very common livelihood strategy, and one that can provide a pathway out of poverty.

Procedures relating to residence of foreigners in Japan are stipulated by the Immigration Control and Refugee Recognition Act (“ICRRA”) and are under the jurisdiction of the Immigration Bureau of the Ministry of Justice. Individual applications are handled by (eight) 8 Regional Immigration Bureaus under the command of the Central Immigration Bureau.<sup>219</sup>

Article 2-2 of ICRRA requires that a Foreign National is to reside in Japan under a “status of residence” associated with the permission for landing, another status acquired, or under the status following a change to either of these. There are a number of specific categories for such “status of residence” with associated limitations on each, and an associated period of validity.<sup>220</sup> For purposes of this study the two most important are “Child / Spouse of Japanese National”<sup>221</sup> for second generation Nikkeijin, and “Long-Term Resident”<sup>222</sup> for third and fourth generation Nikkeijin. PJD can apply for these visas which both allow for entry and residence in Japan and work rights without limitation.

	2nd Generation (nissei) “Child of Japanese National” Visa	3rd Generation (sansei) “Long-term Resident” Visa	4th Generation (yonsei) “Long-term Resident” Visa
<b>Eligibility</b>	Child of a Japanese national	Grandchild of a Japanese national	Great grandchild of Japanese national between the age of 18-30, with basic Japanese at the time of entry, at least at the Japanese-Language Proficiency Test N4 level
<b>Rights</b>	<ul style="list-style-type: none"> <li>• Right to enter, reside, work</li> <li>• Can apply for Permanent Residence after 1 year in Japan under a visa with at least 3 years validity</li> </ul>	<ul style="list-style-type: none"> <li>• Right to enter, reside, work</li> <li>• Can apply for Permanent Residence after 5 years in Japan under a visa with at least 3 years validity</li> </ul>	<ul style="list-style-type: none"> <li>• Right to enter, reside, work</li> <li>• Can apply for Permanent Residence after 5 years in Japan under a visa with at least 3 years validity<sup>223</sup></li> </ul>
<b>Requirements</b>	<ul style="list-style-type: none"> <li>• Must identify family’s Koseki*</li> <li>• Certificate of Eligibility</li> <li>• Visa application and supplementary material</li> </ul>	<ul style="list-style-type: none"> <li>• Must identify family’s Koseki*</li> <li>• Certificate of Eligibility</li> <li>• Visa Application and Supplementary materials</li> </ul>	<ul style="list-style-type: none"> <li>• Must identify family’s Koseki*</li> <li>• Certificate of Eligibility</li> <li>• Visa application and supplementary materials</li> </ul>

\*Koseki Tohon of the 1st or 2nd Generation

<sup>219</sup> Ministry of Justice of Japan 2020 [brochure], available at: <http://www.moj.go.jp/content/001318607.pdf>

<sup>220</sup> For a general list of visa categories see: [https://www.mofa.go.jp/j\\_info/visit/visa/long/index.html](https://www.mofa.go.jp/j_info/visit/visa/long/index.html). For visa categories and associated applications from the Philippines, see the Visa/Consular Services Section of the Embassy of Japan in the Philippines, at: [https://www.ph.emb-japan.go.jp/itpr\\_en/00\\_000035.html](https://www.ph.emb-japan.go.jp/itpr_en/00_000035.html)

<sup>221</sup> For the period of stay and necessary documents required for issuing this kind of visa see: [https://www.mofa.go.jp/j\\_info/visit/visa/long/visa10.html](https://www.mofa.go.jp/j_info/visit/visa/long/visa10.html). For instructions specific to Philippine Nikkeijin, see the Embassy of Japan in the Philippines website, at: <https://www.ph.emb-japan.go.jp/files/000232593.pdf>.

<sup>222</sup> For the period of stay and necessary documents required for issuing this kind of visa see: [https://www.mofa.go.jp/j\\_info/visit/visa/long/visa12.html](https://www.mofa.go.jp/j_info/visit/visa/long/visa12.html). For instructions specific to Philippine Nikkeijin, see the Embassy of Japan in the Philippines website, at: <https://www.ph.emb-japan.go.jp/files/000232593.pdf>.

<sup>223</sup> In cases where the 1st generation’s koseki was not located, but the 2nd generation is Category A (Acquired Japanese national), these conditions may not apply.

**Certificate of Eligibility (CoE):**<sup>224</sup>

- The CoE is issued by the Ministry of Justice in Japan free of charge, and generally takes up to three months to process.
- Application for the CoE must be filed with a regional Immigration Bureau in Japan.
- The CoE serves as evidence that the foreign national meets the conditions for landing in Japan.
- A visa application can be made to the relevant Embassy or Consulate without a CoE, but would require a large number of verifying documents and the processing would be longer as the visa application documents would have to be sent to the Ministry of Justice via the Ministry of Foreign Affairs in Japan for examination. The Philippines requires applications made without a CoE to be filed only through accredited travel agencies or registered Nikkeijin agencies.

**C.9. Statelessness in Japan**

Japan is not a State Party to the 1954 Statelessness Convention nor is it a State Party to the 1961 Statelessness Convention. There is no provision in Japanese domestic law that defines statelessness, there is no specific procedure for determining statelessness status, and there is no procedure established for the protection of stateless persons. Yet, some existing laws assume that an individual may be stateless, and determination of nationality or statelessness is a criteria that can impact the decisions and procedures of government agencies. Though it is inconsistent and somewhat ad hoc, “nationality and statelessness determinations are conducted in practice.”<sup>225</sup> In practice, some persons have “stateless” written in the space provided for nationality on official documents,<sup>226</sup> but this cannot be said to be based on a definitive determination, but is rather the result of this more ad hoc and inconsistent determination in each individual case.<sup>227</sup>

<sup>224</sup> To see the current application form for a Certificate of Eligibility associated with the application of second, third, or fourth generation Nikkeijin, refer to the Immigration Bureau website at: <http://www.moj.go.jp/content/001290114.pdf>.

<sup>225</sup> UNHCR, *Typology of Stateless Persons in Japan, December 2017*, available at: <https://www.refworld.org/docid/5bb618b74.html>

<sup>226</sup> For example, statistics on the number of resident foreigners include the nationality written on foreigner residence cards or special permanent resident certificates issued in Japan, and records 687 persons registered as “stateless” (無国籍 [“mukokuseki”]) among the “total number of resident foreigners,” as of June 2019. Japan, Ministry of Justice, 在留外国人統計 (“Zairyu Gaikokujin Tokei” [Foreign Resident Statistics]), June 2019 (published in December 2019), available at: [https://www.e-stat.go.jp/stat-search/files?page=1&layout=datalist&toukei=00250012&tstat=000001018034&cycle=1&year=20190&month=12040606&tclass1=000001060399&stat\\_infid=000031886381&result\\_back=1&cycle\\_facet=cycle](https://www.e-stat.go.jp/stat-search/files?page=1&layout=datalist&toukei=00250012&tstat=000001018034&cycle=1&year=20190&month=12040606&tclass1=000001060399&stat_infid=000031886381&result_back=1&cycle_facet=cycle). The statistic does not include stateless persons without residency permits, and also cannot be said to be based upon a determination, but rather is the result of a more ad hoc and inconsistent practice.

<sup>227</sup> UNHCR, *Typology of Stateless Persons in Japan, December 2017*, available at: <https://www.refworld.org/docid/5bb618b74.html>.

For example, In a Study commissioned by UNHCR analyzing a “Typology of Stateless Persons in Japan” (“Study on Typologies”), reference is made to a Circular from the Director-General of Civil Affairs Bureau, Ministry of Justice, to directors of Legal Affairs Bureaus and District Legal Affairs Bureaus dated 6 July 1982 (Ministry of Justice, Min Daini Daiyon No.2-4-265), that speaks directly to the issue of statelessness. The Circular calls for careful consideration regarding statelessness, stating that there have been cases of a person being registered as “stateless” by the Immigration Bureau “merely because he or she is unable to prove his or her nationality,” and that the child of such person has then been “erroneously processed as a Japanese national” under Article 2(iii) of the Nationality Act.<sup>228</sup> The Circular requires the Head of the Municipality to request instruction from the responsible legal affairs bureau or else not to accept such a birth registration.<sup>229</sup> With this understanding, a person may be found to be “without nationality” in immigration procedures, but be found to have a nationality in procedures for civil registration.

Also, a government notice dated in 2007 has been issued finding that “without nationality” in Article 2(iii) of the Nationality Act should be interpreted not to apply to a person who is from a region which is not recognized as a State (such as Palestine), so that children born in Japan from Palestinian parents cannot acquire Japanese nationality based on Article 2(iii) of the Nationality Act.<sup>230</sup>

On the other hand, in the same Study on Typologies, reference is made to an unpublished Family Court decision which held that Article 2(iii) of the Nationality Act applied to a child whose legal father was unknown, and whose mother was without nationality because “there was no evidence to prove that the mother had the nationality of a relevant State.”<sup>231</sup> This decision would seem to be in slight opposition to the Circular described above because the court recognized the applicability of Nationality Act Article 2(iii) in circumstances where the nationality was difficult to prove. Although, one could say that the Circular above still allows for a similar decision to be made as it ultimately grants discretion in these matters to the responsible legal affairs bureau.

The ICRR includes provisions regarding statelessness in its deportation procedures.

<sup>228</sup> UNHCR, *Typology of Stateless Persons in Japan, December 2017*, available at: <https://www.refworld.org/docid/5bb618b74.html>.

<sup>229</sup> *Ibid.*

<sup>230</sup> Hosaka Nobuto Shuugiin Giin “Paresuchinajinno Kodomono Kokusekitounikansuru Shitsumon Shuisho” ntaisuru, 2007 (Heisei 19) nen 12 gatsu 11 nichiduke Seifu Toubensho (Naikaku Shuu Shitsu 168 Dai 280 Gou) [Government Response on 11 December 2007 to the “Memorandum on Questions in the Diet concerning Nationality of Palestinian Children” submitted by Nobuto Hosaka, member of the House of Representatives (No.168-280, Questions in the House of Representatives, Cabinet)]. [http://www.shugiin.go.jp/internet/itdb\\_shitsumon.nsf/html/shitsumon/b168280.htm](http://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b168280.htm)

<sup>231</sup> UNHCR, *Typology of Stateless Persons in Japan, December 2017*, available at: <https://www.refworld.org/docid/5bb618b74.html> (citing to Tokyo Family Court Tachikawa Branch, unpublished adjudication on 5 December 2016)

In Article 53 of the ICRRRA, “[a]ny person subject to deportation is to be deported to a country of which they are a national or citizen.”<sup>232</sup> In the alternative, in Article 53(2), if the person cannot be deported to such a country, then they are to be deported to a country, pursuant to the wishes of the person subject to deportation, such as:

- a country in which they had been residing immediately prior to their entry into Japan;
- a country in which they once resided before their entry into Japan;
- a country containing the port or airport where they boarded the vessel or aircraft departing for Japan;
- a country where their place of birth is located;
- a country which contained their birthplace at the time of their birth; or
- any other country.

In the deportation procedure, the country of destination must be determined, but there does not appear to be any internal guideline providing criteria for determining statelessness.

Under Article 26 of the ICRRRA, the Minister of Justice may grant “a re-entry permit to a Foreign National... residing in Japan who is to depart from Japan with the intention of reentering Japan prior to the date of expiration of their Period of Stay... [including] ...multiple re-entry permission.” Article 26 allows the same permission to be granted “if the Foreign National does not have their Passport in their possession and is unable to acquire one for reason of being without nationality or for any other reason.” This provision makes it possible to issue a passport booklet-style re-entry permit to a person who does not have a passport due to statelessness.

The Immigration Bureau requires foreign individuals to claim their nationality in various procedures, such as acquiring a residence permit, extending a period of stay, and changing a status of residence. The foreigner residence card issued to mid- to long-term residents shows the country of nationality or the region of the individual. As noted above, what is listed here cannot be said to be the result of a consistent and conclusive determination. For example, even within the Immigration Bureau, the sections responsible for entry and residence are different from those responsible for deportation procedures, and they may come to different conclusions on the same case. The Typologies Study finds that, “there seems to be no unified criteria for the determination of statelessness across various procedures where the Immigration Bureau determines the nationality of individuals concerned.”<sup>233</sup> The same study, cites the

---

<sup>232</sup> *Japan: Immigration Control and Refugee Recognition Act of 1951 as Amended in 2014 [Japan], Cabinet Order No. 319 of 1951, Article 53, available at: <https://www.refworld.org/docid/3ae6b5754.html>*

<sup>233</sup> *UNHCR, Typology of Stateless Persons in Japan, December 2017, available at: <https://www.refworld.org/docid/5bb618b74.html>.*

internal guidelines (The Manual on the Essentials of Entry and Residency Examination), which state that, in issuing a foreigner residence card upon landing permission, “a person who is without nationality or who cannot prove to have nationality is to be shown as ‘stateless.’”<sup>234</sup>

The same Typologies study also cites the same Manual with regard to the residence of children who are born in Japan stating that the status of residence assigned to the child should be determined according to the following criteria:

- The country of nationality or region shown on the father’s foreigner residence card is used if the father possesses a foreigner residence card.
- If the father is unknown and the mother possesses a foreigner residence card, the country of nationality or region shown on the mother’s foreigner residence card.
- If it is apparent that the child is able to acquire the nationality of both father and mother, and the child wishes to acquire the mother’s nationality, it is all right to use the mother’s nationality.
- The determination will be stateless if it is apparent that the child will be stateless according to the country of nationality of the parents, and the provisions of that country’s nationality laws.

Given the ad hoc nature of the determination in the cases of the nationality listed on the father and mother’s residence cards, there is a risk that a nationality that the child does not actually have may be used on their residence card. In practice, the Immigration Bureau appears to accept nationality largely on the basis of a passport or other document providing proof of identity, or in case such documents are unavailable, then based on the country of nationality of the parents.<sup>235</sup> Only when it is not possible to confirm the nationality through either of these means, is the person considered stateless.

In Japan, the determination of whether or not a person is stateless may be made under the Nationality Act, ICRRRA, or the Koseki Act, and the criteria for such determinations differ and are inconsistently applied. However, the Japanese government has stated that, “because

<sup>234</sup> UNHCR, *Typology of Stateless Persons in Japan*, December 2017, available at: <https://www.refworld.org/docid/5bb618b74.html> (citing Immigration Bureau, Ministry of Justice, *Nyuukoku, Zairyuu Shinsa Youryou [Guidelines on Immigration and Residence Inspection] (Request for Disclosure of Administrative Documents. Date for Disclosure Decision: 4 December 2015. Houmushou Kan Jou Dai 2511 Gou [No. 2511, Kan Jou, Ministry of Justice]), Part 6 Jouriku Shinsa [Landing Inspection]*, p.58.)

<sup>235</sup> UNHCR, *Typology of Stateless Persons in Japan*, December 2017, available at: <https://www.refworld.org/docid/5bb618b74.html> (citing to, See Itokazu Keiko Sangiin Giin “Wagakunino Mukokusekishano Chii Oyobi Sono Toriatsukainikansuru Shitsumon Shuisho” nitaishuru, 2016 (Heisei 28) nen 12 gatsu 22 nichiduke Seifu Toubensho (Naikaku San Shiitsu 192 Dai 59 Gou) [The Government Response on 22 December 2016 to the “Memorandum on Questions in the Diet concerning the Status of Stateless Persons and Their Treatment in Japan” Submitted by Keiko Itokazu, Member of the House of Councillors (No. 192-59, Questions in the House of Councillors, Cabinet)])

the procedure relating to the entry and residence of foreign nationals, on the one hand, and the procedure of acquisition of Japanese nationality under the Nationality Act, on the other, have the differing objectives of immigration control and the acquisition of Japanese nationality... they are different in nature(, and)... it is not necessary to establish a unified criteria for determinations of statelessness.”<sup>236</sup>

## C.10. Mitigating factors, interventions and services

### C.10.a. Philippine Nikkeijin Legal Support Center (PNLSC)

There is a Japan-based organization called the PNLSC, which is a non-profit established in 2003 with offices in Tokyo and Manila, and it operates its project in the Philippines nationwide. The project started in 2003 at a commemoration of Japanese emigration to the Philippines in Davao when a group of lawyers learned of the history and decided to form a NGO to provide legal assistance to descendants in the Philippines. There is one legal advisor in the Philippines, alongside the Secretary-General Norihiro Inomata who has lived in the Philippines for 14 years, while the other 12 lawyers are in Japan.

PNLSC has a counterpart called the Philippine Nikkei Jin Kai Rengokai (Federation of Japanese descendants organizations). The role of PNLSC is legal support to the Philippine Nikkeijin Rengokai and its 11 chapters. There have been 15 chapters all over the Philippines at one time or another, but currently there are only 11 that continue to function. Davao is the biggest association. There are seven associated project staff in seven of the 11 chapters. In the 70s, these associations began as Japanese community-based self-help organizations. The anti-Japanese sentiment that followed World War II had gradually subsided by the 70s and slowly Japanese Nikkeijin who knew each other from the community began to come together.

The PNLSC-associated lawyers have also assisted Japanese war orphans in China (Persons of Japanese Descent in China), whose cases are now mostly resolved. The approach taken with war orphans in China was more successful because the governments of Japan and China worked together to create the list of persons of Japanese descent in China, and this served as adequate evidence for the Family Court to quickly process their cases. PNLSC notes that so far, about 1,400 war-displaced Japanese from China have acquired Japanese nationality, even though their relatives have not been identified as their family

<sup>236</sup> UNHCR, *Typology of Stateless Persons in Japan*, December 2017, available at: <https://www.refworld.org/docid/5bb618b74.html> (citing to, Fukushima Mizuho Sangiin Gin “Mukokuseki Mondainikansuru Shitsumon Shuisho” Nitaisuru 2014 (Heisei 26) Nen 6 Gatsu 20 Nichiduke Seifu Toubensho (Naikaku San Shitsu 186 Dai 127 Gou) [The Government Response on 20 June 2014 to the “Memorandum on Questions in the Diet concerning Stateless Issues” Submitted by Mizuho Fukushima, Member of the House of Councillors (No.186-127, Questions in the House of Councillors, Cabinet)], at <http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/186/touh/t186127.htm>.)

registries were created based on a list of people compiled jointly by the governments of Japan and China.

The PNLSC advocates for the Japan and Philippines governments to pursue a similar process, noting that it would also be similar to what was pursued for Persons of Indonesian Descent in the Philippines. According to the PNLSC, so far, the Japan government's explanation for viewing the populations of China and the Philippines differently is to suggest that the immigrants to China were there as a result of a project under the Japan government, but those who went to the Philippines, PJD went voluntarily, and so the responsibility that the government has is different.<sup>237</sup> In the case of Japanese war orphans in China, a failed court case resulted in public backlash, and Prime Minister Shinzo Abe's first administration subsequently developed a policy with a five point plan for war orphans from China: (1) Maximum National Pension Payments to be granted; (2) life support payments to be provided; (3) counseling to be offered; (4) localized social services to be made available; and (5) employment support to be granted to both second and third generations.

PNLSC also supports applications to the DOJ-RSPPU, because recognition as 'stateless' by the Philippines government is given strong weight by the Family Courts in Japan. The lack of documentation/evidence is the main barrier to resolution of their cases in the Family Courts in Japan, so the documentation of the DOJ-RSPPU is very important. Often the only evidence available is the testimony of the applicant, other cases that are very lucky can find their own birth registration in a City Hall archives, or if they are Christian, they may have a baptism record. Witness statements are also useful, but because of the age and the time that has passed, it is hard to find people living who could serve as a witness of the paternity.

PNLSC's main project is filing cases with the family court in Japan to create a Koseki registration. The organization has filed 315 cases to the family court in Japan since 2003, and 249 have been approved, with six currently ongoing cases, 30 cases withdrawn, and 30 cases denied. These cases are called, "shuseki petitions" 「しゅうせき【就籍】」 (a process whereby a person is allowed by a family court to create a family registry, the first step toward obtaining Japanese citizenship).<sup>238</sup> It is worth noting that all six

<sup>237</sup> *Although the movement to the Philippines may have been voluntary, Nikkeijin were conscripted by the Japan government during World War II, and it was this conscription that separated families, and led to the subsequent persecution of Japanese children left behind. As such the government did have an official role to play in the current predicament for PJD in the Philippines and may therefore have a special responsibility. Furthermore, humanitarian considerations related to family links are also consistent between the China and Philippines context.*

<sup>238</sup> See: Ministry of Justice, "Mukosekino Kataga Mizukarawo Kosekini Kisaisurutameno Tetsudukitounitsuite [Procedures to Register Oneself in the Family Register]," at [http://www.moj.go.jp/MINJI/minji04\\_00047.html#q3-6](http://www.moj.go.jp/MINJI/minji04_00047.html#q3-6). (Japanese Only)

case that have been recognized by the DOJ-RSPPU as stateless have been successful in their shuuseki petitions in Japan. The court gives weight to this official Philippine government recognition.<sup>239</sup>

PNLSC is aware of 1,275 PJD (among its statistics) who have acquired Japanese nationality. With around 350 assisted, the rest have acquired Japanese nationality on their own.

PNLSC has a set of internal categories among clients to designate the strength of their evidence:

- Category A: koseki of father identified; with entry of secondary descendants of birth (can prove connection)
- Category B: Koseki of father identified, but without entry of secondary descendants own birth (embassy can issue a Nikkeijin visa, the person is considered stateless, but the children can travel to Japan)
- Category C: Koseki of father is still unidentified, and no nationality obtained, there is a lack of evidence

PNLSC also asks that the person be a member of the Nikkeijin-kai. Each Nikkeijin-kai has an investigation committee. They visit homes and talk to neighbors and identify or clarify if they are nikkeijin or not. PNLSC states that they do double and triple investigations to confirm. A staff member takes a long-history statement covering their separation from their father, their marriage and birth, educational background, and their presence before and after the war. After the evidence collection, the Nikkeijin-kai will collect documents and forward them to PNLSC and a lawyer will make a petition to the family court in Japan.

Based on interviews with the PNLSC, the longest case processing time required 13 years to process, many cases have died before the results. Shuuseki registration will still benefit subsequent generations, even after the death of the principal applicant, due to the availability of nikkeijin visas up to the fourth generation, but citizenship cannot be conferred posthumously so the process for the second generation must be completed while they are alive. The nikkeijin visa will still require proof of their Japanese ancestry. This is why the organization emphasizes urgency, and advocates for the importance of inter-governmental cooperation to create a list.

<sup>239</sup> See for example: 広島家族裁判所 (*Hiroshima Family Court*), Judgment, 25 March 2020 (令和元年 *Reiwa Gen-nen*) Ra 103, referring specifically to recognition as a stateless person by the Philippine government (“フィリピンの政府から無国籍者と認定されている...”). (Japanese only)

PNLSC also noted that the number of “denied” cases are few in the end and includes cases that the organization can appeal or re-apply. PNLSC notes that many such cases are subsequently granted. The organization suggests that it often depends on the judge because some are more flexible than others. There is a tendency to deny cases when they cannot produce a marriage or birth certificate.

Cases Filed	Approved	Pending	Withdrawn	Denied
315*	249	6	30	30

\*315 is the number of cases, not the number of persons.

### C.10.b. Family Court (*katei saibansho* 家庭裁判所)

There are generally two ways for a person of Japanese descent in Japan to pursue resolution of their situation under Japanese law: (1) “Shuuseki,” which is an application to the family court to create a new registration in the Koseki for an unregistered person; and (2) “Kokuseki kakunin sosho,” which is an application to the Family Court to Confirm Nationality. The latter is much more difficult and success is unlikely, whereas the former is easier with a higher success rate. Every Chinese and Philippine War Orphan case has been brought as a shuuseki application.

#### Shuuseki: Application to the Family Court for Registration of an Unregistered Person

“Shuuseki” (しゅうせき【就籍】), is a procedure by which unregistered persons who have failed to register their birth, or who have missed out on their family register, should be registered and listed in their Koseki. The legal procedure for creating a Koseki is before the Family Court (*katei saibansho* 家庭裁判所). It is a non-adversarial procedure, with no opposing lawyer; it is simply a hearing before a judge.<sup>240</sup> Under Article 110 of the Family Register Act, “[a] person who has no registered domicile shall obtain the permission of the family court and submit a notification for the registration of an unregistered person...”<sup>241</sup> The procedure allows a person to request the Family Court to make an entry into the family registry when they are not listed even though they have Japanese nationality. “The family court grants permission for creation of a family register, if it is found through the court proceedings that the concerned person without a family register is a Japanese national, and that he or she is found to be ‘a person who has no registered domicile’ as provided in Article 110 (1) of the Family Register Act.”<sup>242</sup> After approval by the court, the person may approach the Municipal Office with the Court judgement and will be permitted to create an entry in the Koseki.

<sup>240</sup> See: Ministry of Justice, “Mukosekino Kataga Mizukarawo Kosekini Kisaisurutameno Tetsudukitounitsuite [Procedures to Register Oneself in the Family Register],” at [http://www.moj.go.jp/MINJI/minji04\\_00047.html#q3-6](http://www.moj.go.jp/MINJI/minji04_00047.html#q3-6). (Japanese Only)

<sup>241</sup> Japan, 戸籍法 (Family Register Act), Act No. 224 of December 22, 1947.

<sup>242</sup> UNHCR, *Typology of Stateless Persons in Japan*, December 2017, available at: <https://www.refworld.org/docid/5bb618b74.html>.

Shuuseki petitions can only be filed if:

- The petitioner is alive;
- Must be a legitimate child (difficult to prove, because PJD who hold their parents' marriage certificate are few, many such marriages may never have had certificates (for example, tribal and Muslim marriages may have had no certificate, and only witnesses), and for some cases the marriage of the first generation parents was more than 100 years ago.)
- In order to confirm their Japanese citizenship, the Japan government requires certain documents that most of the Philippine Nikkeijin cannot provide. As noted above, after the war, people were afraid of persecution in the Philippines. They hid their identity and destroyed their documents on purpose. Now, after 75 years in some cases, they have no documents to prove their Japanese ancestry.

According to the PNLSC, the ways in which applicants try to satisfy the documentary requirements include:

- The Muslim community has a city hall, its own office to certify or issue documents
- Some churches keep baptism records
- Witness statements
- Death certificate of first-generation parents in the Philippines that show the parents' names
- Photos
- School records
- Certificate of Recognition by the DOJ-RSPPU as a stateless person

#### [Kokuseki kakunin soshō: Application to the Family Court to Confirm Nationality](#)

Kokuseki kakunin soshō (こくせきかくにんそしょう【国籍確認訴訟】) is a suit before the Family Court (katei saibansho【家庭裁判所】). It is an adversarial procedure in which the government is represented by the Ministry of Justice Representative in opposition to the petitioner. The hearings can take years, and the government is more likely to defer to the Government Representative, so very few such cases succeed. For this reason, this procedure has not been pursued in the case of Chinese and Philippine War Orphans.<sup>243</sup>

<sup>243</sup> Based on initial consultations with PNLSC, 15 June 2020.

### C.10.c. Publicity of the Issue

A documentary on PJD was released in 2020 in Japan entitled, “Abandoned.”<sup>244</sup> Despite challenges around the COVID-19 pandemic, it has been shown in theatres in eight cities across Japan (Tokyo, Yokohama, Nagoya, Osaka, Kyoto, Beppu, Kagoshima, and Okinawa). It is also to be shown at educational institutions, and among civil society organizations, and will be distributed through Amazon.com and online from February 2021.

The media has devoted attention to the issue of Philippine Nikkeijin this year, both because of postponement of the Olympics and in relation to the commemoration of the 75th anniversary of the end of war. According to the PNLSC, NHK and TV Asahi are planning to come to the Philippines to film two separate stories on issues related to PJD, with travel planned after the lockdown is lifted.

According to PNLSC, TV Asahi is interested in telling the story from around 1903 of Japanese people moving to the Philippines. A peaceful time when the first group of immigrants came from Japan to Baguio, mostly as construction workers, and after they lost their jobs moved to Davao to cultivate hemp, which grew into a huge Japanese community, the largest in Southeast Asia. More than half were Okinawan where the culture is similar to the Philippines in that it has a strong sense of family, custom, ritual, and food.

According to PNLSC, NHK is coming to Palawan for two weeks or at least 10 days, along with the PNLSC to interview PJD. This is in relation to the Palawan Massacre in 1944. A series of incidents that created a lot of negative sentiment and hatred against the Japanese.<sup>245</sup> This also led later to the backlash against PJD that forced them to flee and hide their identity in the Philippines. Part of the story for each program will be, “after 75 years, there is an issue not yet solved...” and that is the situation of PJD in the Philippines.

Finally, a book has recently been released, authored by the Head of the PNLSC and Attorney Hiroyuki Kawai, focusing on PJD in the Philippines.<sup>246</sup> PNLSC reports that it has been distributed to 713 lawmakers in Japan.

<sup>244</sup> “ABANDONED”- *The Stories of Japanese War Orphans in the Philippines and China*”

<sup>245</sup> Report No.263, GHQ USAF, Pacific War Crimes Branch of Murder of Approximately ninety Filipino civilians on the shores of Tagbuross river, Palawan Island, P. I., in or about 1 March 1945, and murder of three Filipino Civilians at Irauan, Palawan Island, P.I., on 4 March 1945. See Also: Roger Pe, *The hero is not forgotten*, November 2017, available at: <https://businessmirror.com.ph/2017/11/12/the-hero-is-not-forgotten/>; American POWs of Japan, Palawan Massacre December 14, 1944, December 2011, available at: <https://pows.jiaponline.org/2011/12/palawan-massacre-december-14-1944.html>.

<sup>246</sup> 河合 弘之 (著) (Hiroyuki Kawai), 猪俣 典弘 (著) (Norihiko Inomata), “ハポン(日本人)を取り戻す フィリピン残留日本人の戦争と国籍回復” (“Restoration-War and Nationality recovery movement for War displaced Japanese descendants left behind in the Philippines”), available through Amazon.

#### *C.10.d. What do the community members themselves want?*

The PNLSC staff suggest that most of the population of PJD want to restore their roots and recover the time of their childhood with their father. The PNLSC staff shared that based on a survey of 680 cases, many expressed the desire to visit their relatives or the graves of family members. Yet, since they are elderly, they would mostly prefer to stay in the Philippines near their family. They want to be able to travel and acknowledge their nationality. They also want opportunities for their own descendants. As a third generation Japanese descendant, their children could be recognized as a family member of a Japanese national and live, work, and study in Japan. They could also then apply for Japanese nationality after five years. The Nikkei-jin visa provides this privilege for PJD.

It has also been suggested that because they are victims of war, it is important for them to be recognized to redress their situation. There are also cases that do not desire Japanese nationality because they are well settled in the Philippines, including working in the military or government.

# Conclusion

This Desk Review has been produced in support of the Government of the Philippines Action Point 7 of the National Action Plan (NAP) to End Statelessness by 2024, which seeks to continue the study of statelessness, in order to improve qualitative and quantitative data on populations at risk of statelessness in the Philippines and among its nationals, and in support of the government's efforts around statelessness initiated with pledges in 2011.<sup>247</sup>

There are persons at-risk of statelessness both in the Philippines and in a migratory setting overseas. The Philippines' act of acceding to and implementing the 1961 Statelessness Convention will strengthen the protection the Philippines makes available to its constituents, including those at-risk of statelessness in migratory settings. Better knowledge of populations at risk of statelessness can help to resolve existing situations of statelessness or among populations at-risk of statelessness, and to prevent new cases from emerging, in support of the Government's strategy to end statelessness in the Philippines and among persons of Philippine descent in migratory settings.

---

<sup>247</sup> *Philippines National Action Plan to End Statelessness by 2024 (NAP)*.

# Annexes

## A. Data on Undocumented Children (2018 – November 2020)<sup>248</sup>

Number of Children by Immigration Status from January to December 2018							
Countries	Documented			Undocumented			Grand Total
	Male	Female	Sub-total	Male	Female	Sub-total	
Qatar	-	1	1	4	1	5	6
Jeddah, KSA	-	-	-	7	8	15	15
Riyadh, KSA	1	1	2	1	23	24	26
Duba, UAE	-	5	5	58	64	122	127
Hong Kong	6	26	32	-	1	1	33
Kuwait	-	-	-	350	515	865	865
Malaysia	-	-	-	1,574	1,589	3,163	3,163
Other countries	-	-	-	8	4	12	12
<b>Total</b>	<b>7</b>	<b>33</b>	<b>40</b>	<b>2,002</b>	<b>2,205</b>	<b>4,207</b>	<b>4,247</b>

Number of Children by Immigration Status from January to December 2019							
Countries	Documented			Undocumented			Grand Total
	Male	Female	Sub-total	Male	Female	Sub-total	
Qatar	-	1	1	1	-	1	2
Jeddah, KSA	-	-	-	-	-	-	-
Riyadh, KSA	1	-	1	32	47	79	80
Duba, UAE	1	1	2	58	127	185	187
Hong Kong	210	254	464	2	1	3	467
Kuwait	19	28	47	291	287	578	625
Malaysia	-	-	-	1,519	1,683	3,202	3,202
Other countries	-	-	-	11	15	26	26
<b>Total</b>	<b>231</b>	<b>284</b>	<b>515</b>	<b>1,914</b>	<b>2,160</b>	<b>4,074</b>	<b>4,589</b>

<sup>248</sup> These figures are from foreign Posts of Malaysia, Hong Kong, Riyadh, Jeddah, Kingdom of Saudi Arabia, Qatar, Dubai, and Kuwait where the DSWD Social Welfare Attaches have been deployed. Undocumented children have been identified by DSWD as those “born out of non-marital relationships and victims of trafficking where their births are simulated or in other individual’s custody. There are also abandoned, neglected, sexually or physically abused children whose parents are either in jail or have problems on their immigration status which results to registration difficulties.” To address this, the Social Welfare Attaches have “continuously provided assistance to parents of undocumented by obtaining their Report of Birth before their repatriation.”

Number of Children by Immigration Status from January to December 2020							
Countries	Documented			Undocumented			Grand Total
	Male	Female	Sub-total	Male	Female	Sub-total	
Qatar	-	1	1	-	2	2	3
Jeddah, KSA	2	1	3	1	3	4	7
Riyadh, KSA	1	6	7	1	1	2	9
Duba, UAE	3	-	3	73	94	167	170
Hong Kong	203	245	448	5	5	10	458
Kuwait	4	2	6	188	203	391	397
Malaysia	-	-	-	78	33	111	111
Other countries	-	-	-	18	19	37	37
<b>Total</b>	213	255	468	364	360	724	1,192

	Documented			Undocumented			Grand Total
	Male	Female	Sub-total	Male	Female	Sub-total	
From 2018 to November 2020	451	572	1,023	4,280	4,725	9,005	10,028

## B. GCC Countries Compared

	Kuwait	Qatar	Saudi Arabia	UAE
Relevant labor law and policy (Domestic workers are not covered by the labor law in any country, but separate laws are now in place for domestic workers in each country, enforcement is an issue, and structural and practical obstacles remain)	<ul style="list-style-type: none"> <li>Private Sector Labour Law, No. 6 of 2010</li> <li>Law No. 68 on Domestic Workers</li> <li>Ministerial Decision No. 2194 of 2016</li> <li>Kuwaiti Ministerial Decree No. 166 of 2007 (Art. 2, 5 &amp; 6)</li> <li>Council of Ministers' Decision No. 614 (2018)</li> </ul>	<ul style="list-style-type: none"> <li>Labour Law No. 14 of 2004</li> <li>Entry, Exit and Residence Law No. 21 of 2015</li> <li>Law No. 15 of 2017 concerning domestic workers</li> <li>2018 by the Council of Ministers Decision No. 6.</li> </ul>	<ul style="list-style-type: none"> <li>Labour Law approved by Royal Decree M/51, of 2005 and its Implementing Regulations.</li> <li>Ministerial Decision No. 310 of 1434 H, 2013 regulating the employment of domestic workers</li> <li>Ministerial Decision No. 605, dated 15/5/1438 H</li> </ul>	<ul style="list-style-type: none"> <li>Federal Labour Law 1980.</li> <li>Federal Law No. 10 of 2017 on Support Service Workers (UAE Domestic Workers Law).</li> <li>Passport confiscation is alleged to be illegal based on an Internal administrative order by Ministry of Interior, reference number not provided</li> </ul>
Bilateral Agreements between the Philippines and...	<ul style="list-style-type: none"> <li>Agreement on Employment of Domestic Workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait – signed on 11 May 2018</li> <li>Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the State of Kuwait in the Field of Labor Cooperation – signed on 23 March 2012</li> </ul>		<ul style="list-style-type: none"> <li>Agreement on Labor Cooperation for General Workers Recruitment and Employment between the Department of Labor and Employment of the Republic of the Philippines and the Ministry of Labor and Social Development of the Kingdom of Saudi Arabia – signed on 11 April 2017</li> <li>Agreement on Domestic Worker Recruitment between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labor and Employment of the Republic of the Philippines - signed on 19 May 2013</li> </ul>	<ul style="list-style-type: none"> <li>Memorandum of Understanding on Labor Cooperation between the Philippines and UAE with Protocol on Domestic Workers Annexed to the Memorandum of Understanding – signed on 12 September 2017</li> </ul>

	Kuwait	Qatar	Saudi Arabia	UAE
Kafala system (Immigration sponsorship system: not the labor law, it is an immigration system that regulates the exit, entry, and employment of foreign workers by linking them to a “kafeel” or sponsor)	<ul style="list-style-type: none"> <li>• A sponsor is required to apply for a residence visa.</li> <li>• It is reported that changing the sponsor/employer appears possible with the permission of original sponsor/employer, and that this would be managed by the Ministry of Interior</li> <li>• Changing employer/sponsor without the permission of original employer/ sponsor is only possible after the end of a 2 year contract”</li> <li>• The employer can register an absconding charge, which will be confirmed 7 days after it is registered, unless the domestic worker presents him/herself to the Domestic Workers Department or at a Public Authority for Manpower shelter.</li> </ul>	<ul style="list-style-type: none"> <li>• To apply for a residence permit, you must have a Qatari sponsor (usually your employer)</li> <li>• The Qatari employer lodges the application for the residence permit and is responsible for renewing it.</li> <li>• Changing the sponsor/employer requires permission of the original sponsor/employer and the Administrative Development, Labour and Social Affairs (ADLSA).</li> <li>• Changing the sponsor/employer without the permission of the original employer is only permissible after a 5 year period, and at the end of the contract period, unless the worker can prove abusive behavior.</li> </ul>	<p>Changing sponsor/employer requires the permission of the original sponsor/ employer, unless:*</p> <ul style="list-style-type: none"> <li>• The employer fails to pay the salary for 3 consecutive or intermittent months;</li> <li>• The employer is not present to receive the worker when he/she arrives in the country, or does not ‘pick up’ the worker within 15 days of arrival;</li> <li>• The employer fails to obtain a residency permit or to renew the expired permit;</li> <li>• The employer assigns the domestic worker to work for others (non-relatives);</li> <li>• The employer requires the domestic worker to perform hazardous tasks;</li> <li>• The employer files an ‘invalid complaint’ that a worker has absconded; or</li> <li>• The employer fails to attend two sessions addressing a complaint filed by the worker.</li> </ul>	<ul style="list-style-type: none"> <li>• A sponsor/employer is required to apply for a visa</li> <li>• The sponsor/employer can only be changed with the permission of the original sponsor/employer</li> <li>• Without permission of the sponsor/ employer, the domestic worker can terminate the contract only if the employer violates his legal obligations, but then the Ministry of Human Resources and Emiratization (MOHRE) decides if the domestic worker can change his employer or has to leave the country.</li> </ul>

	Kuwait	Qatar	
Iqama requirements (The Iqama generally must be carried at all times, and is needed for most things, to open a bank account, rent a home, get mobile services, register for utilities, access medical care, etc. A Kafel (employer/sponsor) is required to apply for and renew the Iqama, and may have the authority to cancel your Iqama which would automatically cancel any family members' Iqama)	<ul style="list-style-type: none"> <li>• Three main types of Kuwait residence visa: work visa, domestic, and dependent visa. These three visas all require a sponsor.</li> </ul>	<ul style="list-style-type: none"> <li>• A residence permit is required to apply for a loan, sign a rental agreement, get a license or buy a car, open a bank account, apply for a medical card , or sponsor family members to come to Qatar on a family visa .</li> <li>• To apply for a residence permit, you must have a Qatari sponsor (usually your employer)</li> <li>• The Qatari employer lodges the application for the residence permit and is responsible for renewing it.</li> <li>• The worker is on a temporary work visa, while the residence permit is issued, and cannot leave during this time.</li> </ul>	<ul style="list-style-type: none"> <li>• The Iqama is the national residency permit for foreigners living and working in Saudi Arabia</li> <li>• The physical Iqama card is a standard identification card that should be with you at all times</li> <li>• You must have an Iqama to open a bank account, rent a home, get mobile services, register for utilities, access medical care, etc. (bank account if frozen until proof of renewal is presented)</li> <li>• You must renew your Iqama every year</li> <li>• The Kafel (employer/sponsor) can cancel your Iqama, and this will automatically cancel your family members' Iqama</li> </ul>
Penalties for violation	<ul style="list-style-type: none"> <li>• Arrest, detention for up to 6 months, payment of fine of KWD600 (US\$1,979) and deportation usually accompanied by a 6 year entry ban</li> </ul>	<ul style="list-style-type: none"> <li>• Workers who terminate their contracts and leave the country prior to the completion of the contract period are not allowed to return to the country before the end of the contract period.</li> <li>• Workers who are terminated by their employer on disciplinary grounds can be banned for four years.</li> <li>• An administratively deported worker can be banned for life from Qatar.</li> </ul>	<ul style="list-style-type: none"> <li>• A UAE residence visa is mandatory for all nationalities except GCC citizens</li> <li>• The visa is sponsored by the employer</li> <li>• The residence visa is required to open a bank account, obtain a driving license, register for a car, apply for a mobile plan, etc.</li> <li>• A domestic worker can be charged with absconding if he/she did not report quitting his/her job within 48 hours, and an employer must report any illegitimate absence within 5 days.</li> <li>• An administratively deported worker due to 'absconding' charges generally receives a permanent entry ban to the UAE.</li> </ul>

	Kuwait	Qatar	
Penalties for violation	<ul style="list-style-type: none"> <li>Domestic workers are required to bring disputes to the Domestic Workers' Department at the Public Authority for Manpower.</li> <li>Cases can also be brought to the Civil Court Labour Circuit</li> </ul>	<ul style="list-style-type: none"> <li>Workers can submit their dispute to the Ministry of Administrative Development, Labour and Social Affairs (ADLSA).</li> <li>In cases where an amicable solution is not reached, ADLSA submits the case to a Workers' Dispute Settlement Committee.</li> <li>It is then possible to appeal against the decision issued by the Workers' Dispute Settlement Committee before an Appellate Court</li> </ul>	<ul style="list-style-type: none"> <li>Filed with the Labour Offices within 12 months of the dispute arising. If the matter is not resolved, disputes are referred to the Preliminary Commission for Settlement of Labour Disputes which must try to resolve the dispute within 4 weeks. Either party may appeal the decision of the Preliminary Commission for Settlement of Labour Disputes to the High Commission for Settlement of Labour Disputes.</li> <li>Judicial remedy: Recently established Labour Courts in Saudi Arabia are governed by the regulations of Sharia Pleadings and are competent for disputes related to employment contracts, rights, injuries, compensation and social insurance claims. Plaintiffs can directly or through an attorney file complaints in these Courts.</li> </ul>
Protection responses	<ul style="list-style-type: none"> <li>A women's shelter was established in Dec. 2014 by the PAM. The shelter has a maximum capacity of 500 and provides accommodation, food and legal and medical assistance. It is reported that a men's shelter may open soon.</li> </ul>		<ul style="list-style-type: none"> <li>The Ministry of Labour and Social Development, in cooperation with the police, operates a shelter in Riyadh to assist domestic workers in claiming their wages and returning home.</li> </ul>

	Kuwait	Qatar
Exit	<ul style="list-style-type: none"> <li>No exit permission is required</li> </ul>	<ul style="list-style-type: none"> <li>Some workers require the employer's/ sponsors prior approval to exit the country.</li> <li>If a worker is not able to leave the country, regardless the reason, he/ she can appeal to the Expatriates' Exit Appeals Committee that issues a decision within 3 working days.</li> </ul>

*\*On November 4 2020, the Saudi Arabian Ministry of Human Resources and Social Development launched a Labor Reform Initiative (LRI) which will replace the Kafala System and ease job mobility on 14 March 2021. For more information, please refer to the section on Saudi Arabia - Labor Law and the Kafala Immigration System.*

# DESK REVIEW ON POPULATIONS AT RISK OF STATELESSNESS

**CHILDREN OF PHILIPPINE DESCENT IN A MIGRATORY  
SETTING IN GULF COOPERATION COUNCIL (GCC)  
COUNTRIES AND PERSONS OF  
JAPANESE DESCENT**

April 2021



6th Floor, GC Corporate Plaza, 150 Legaspi Street  
Legaspi Village, 1229 Makati City, Philippines  
[www.unhcr.org](http://www.unhcr.org) | [www.unhcr.org/ph](http://www.unhcr.org/ph)  
Twitter | Instagram | Facebook