



COMMISSION ON HUMAN RIGHTS

REPUBLIC OF
THE PHILIPPINES

CHR: DIGNITY OF ALL

VISION:

A just and humane Philippine society of persons equal in opportunity, living a life of dignity, and forever vigilant against abuses and oppression.

MISSION:

As conscience of government and the people, we seek truth in human rights issues. As beacon of truth, we make people aware of their rights, and guide government and society towards actions that respect the rights of all, particularly those who cannot defend themselves—the disadvantaged, marginalized, and vulnerable.

RIGHTS OF INDIVIDUALS WHO ARE NOT NATIONALS OF THE COUNTRY IN WHICH THEY LIVE

Workshop on Rights and Duties of the Filipino Community
between International Standards and National Laws

COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

27 May 2019

Doha, Qatar

Outline of Presentation

- Introduction
- Human Rights Based Approach as Framework
- 10 Articles of the Declaration on the Rights of Individuals who are not Nationals of the Country in which they Live
- Other Instruments, Guidelines and Recommendations
- State Responsibilities arising from Instruments

Human Rights Based Approach as Framework

- fundamental human rights that apply to all migrants, regardless of their status, which are set out in the core international human rights treaties and under customary international law
- international labour conventions and standards that provide basic protections for treatment and conditions at work, which apply to all workers regardless of their migration status.

Declaration on the Rights of Individuals who are not Nationals of the Country in which they Live

- In **Article 1**, persons who are **NOT NATIONALS** in the State which he/she is presently in as an **ALIEN**.
- In **Article 2**, the Declaration cannot be interpreted
 - to legitimize the illegal entry or presence in a State of any alien
 - Or prevented States from regulating the entry of aliens and establish differences between nationals and aliens.
 - such regulations should not be incompatible with the obligations of the States including those in the field of human rights.
 - the Declaration will not prejudice the enjoyment of rights accorded by domestic law to aliens, even where the Declaration does not recognize them or recognizes them to a lesser extent.

- In **Article 3**, requires **laws** regulating or affecting aliens should be made **public**.
- In **Article 4**, requires **aliens to observe the laws** of the State in which they reside in and **respect their customs and traditions**.

Rights of Aliens

- In **Article 5**, rights afforded to aliens
 - The **right to life and security of person**;
 - **no alien shall be subjected to arbitrary arrest or detention**; no alien shall be **deprived of his or her liberty except** on such grounds and in accordance with such procedures as are established **by law**;
 - The **right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence**;
 - The **right to be equal before the courts**, tribunals and all other organs and authorities administering justice and, **when necessary, to free assistance of an interpreter in criminal proceedings** and, when prescribed by law, other proceedings;

Rights of Aliens

- The right to choose a spouse, to marry, to found a family;
- The right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others;
- The right to retain their own language, culture and tradition;
- The right to transfer abroad earnings, savings or other personal monetary assets, subject to domestic currency regulations.

Rights of Aliens

- **Subject to such restrictions** as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in this Declaration, aliens shall enjoy the following rights:
 - The **right to leave the country**;
 - The **right to freedom of expression**;
 - The **right to peaceful assembly**;
 - The **right to own property alone as well as in association with others**, subject to domestic law.

Rights of Aliens

- In **Article 6**, protection of aliens from torture or to cruel, inhuman or degrading treatment or punishment and, in particular, that **no alien shall be subjected without his or her free consent to medical or scientific experimentation.**
- In **Article 7**, the Declaration stated that an alien can only be **expelled by reason of a decision reached in accordance with law**, except where national security would require, but after a case has been filed and the alien was given the opportunity to submit reasons why he/she should not be expelled. **Individual or collective expulsion on the grounds of on grounds of race, color, religion, culture, descent or national or ethnic origin is prohibited.**

Rights of Aliens

- In **Article 8**, aliens who are lawfully residing in the territory of a State can enjoy the following rights:
 - The **right to safe and healthy working conditions, to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;**
 - The **right to join trade unions and other organizations or associations of their choice and to participate in their activities. No restrictions** may be placed on the exercise of this right **other than those prescribed by law** and which are necessary, in a democratic society, in the interests of **national security or public order** or for the **protection of the rights and freedoms of others;**

Rights of Aliens

- The **right to health protection, medical care, social security, social services, education, rest and leisure**, provided that they fulfil the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.
- With a view to protecting the rights of aliens carrying on lawful paid activities in the country in which they are present, such rights may be specified by the Governments concerned in multilateral or bilateral conventions.

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Rights of Aliens

- In **Article 9**, the Declaration protects the lawfully acquired assets of aliens.
- In **Article 10**, the Declaration allows the alien the right to communicate with their embassies, or in its absence, with the embassies of States entrusted with their protection.

Other Instruments, Principles and Guidelines

- United Nations Convention against Transnational Organized Crime and its Protocols:
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
 - Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
- Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, Institutions and Practices Similar to Slavery

Other Instruments, Principles and Guidelines

- Durban Declaration and Programme of Action
- Recommended Principles and Guidelines on Human Rights and Human Trafficking – Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council
- Resolution of the UN Commission on Human Rights on the Human Rights of Migrants (2005)
- Resolution of the UN General Assembly on Protection of Migrants (2004).

International Labor Organization Conventions

- The ILO recognizes that there are three basic stages in the labour migration process during which the rights of migrants must be protected: the pre-departure stage; the post-departure and work stage; and the return stage. Countries of origin and destination have differing responsibilities to protect the rights of migrant workers at each of these stages.
- However, the ILO also recognizes the importance of **“shared responsibility”** through the **“supervision and regulation of international labour migration and engagement in international cooperation in the interest of promoting and protecting the rights of migrant workers”**.

International Labor Organization Conventions

- Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143).
 - The **Migrant Workers (Supplementary Provisions) Convention** is the first treaty to deal directly with the rights of migrants in irregular situations. It addresses in detail issues in relation to “migrations in abusive conditions” and the “promotion of equality of opportunity and treatment of migrant workers”. Article 2 requires each member State to “seek to determine whether there are illegally employed migrant workers on its territory” and article 6 calls for penalties against traffickers and for the illegal employment of migrant workers. Article 9 sets out requirements for “equality of treatment” in wages, social security and other benefits arising from the past employment of undocumented migrant workers.

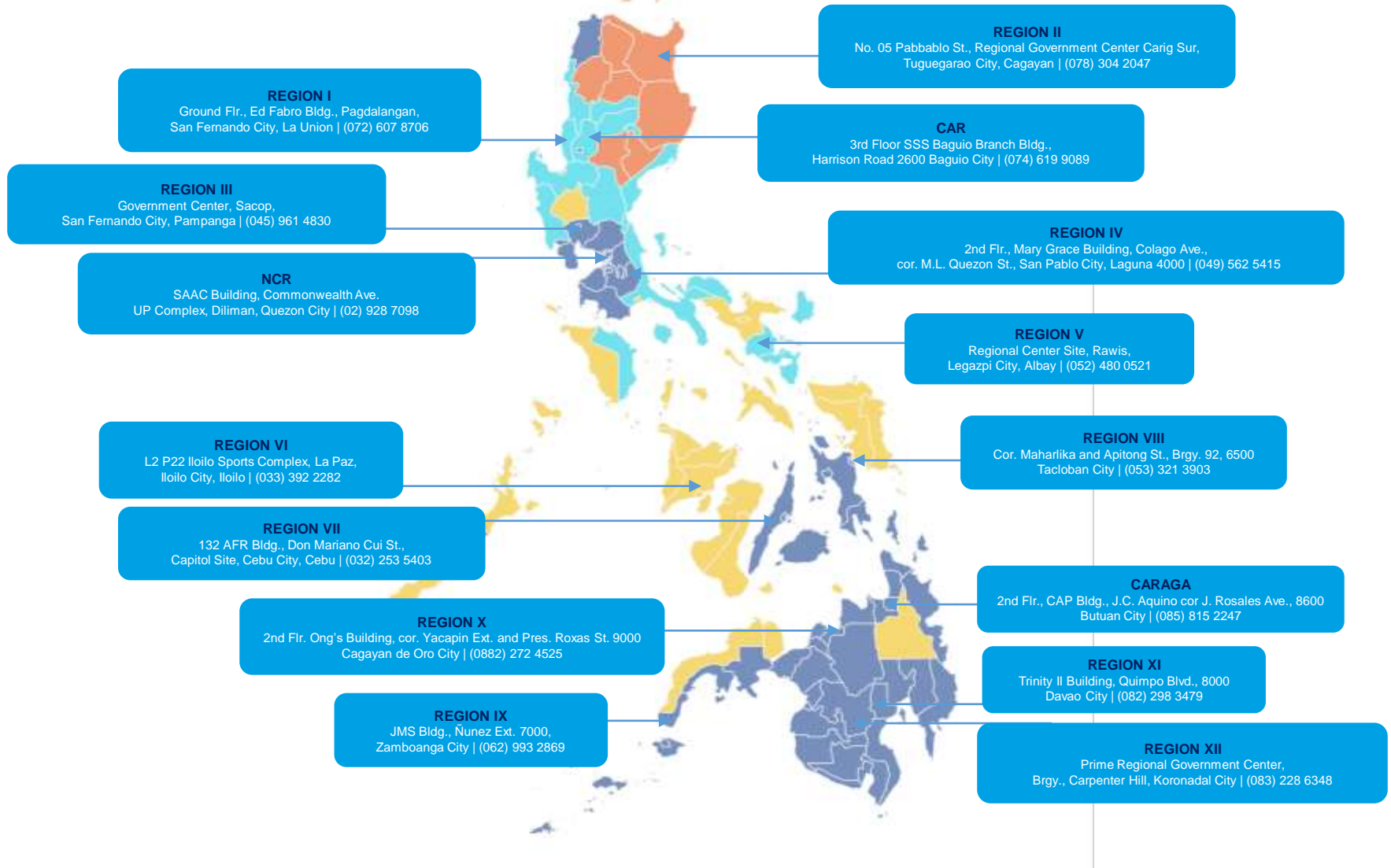
Responsibilities arising from instruments

- States may exercise their national sovereignty to decide who to admit into their territory. However, once an individual has entered a country, the Government is responsible for the protection of his or her rights. All persons regardless of their nationality, race, legal or other status are entitled to human rights and basic labour protections.

- Some of the human rights treaties, however, do make distinctions between the rights of nationals and non-nationals and impose different obligations on States in relation to nationals and non-nationals. This can also extend to a State having different obligations towards migrants who are lawfully present in the State and those who are unlawfully present.
- However, differential treatment on the basis of nationality or migration must not be “disproportionate, arbitrary or discriminatory”.

Thank you

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COMMISSION ON HUMAN RIGHTS

SAAC Bldg., Commonwealth Ave.,
UP Complex, Diliman, Quezon City

Public Assistance and Complaints Desk
(0936) 068 0982 (TM) | (0920) 506 1194 (Smart)
(02) 294 8704



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