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UNDOCUMENTED OVERSEAS FILIPINO WORKERS: IRREGULAR MIGRANTS OR ECONOMIC REFUGEES?

Introduction

The Filipino Diaspora began during the Marcos regime in the 1970s.¹ In 1974, former President Ferdinand E. Marcos, wielding executive and legislative power, issued Presidential Decree 442, otherwise known as the Labor Code of the Philippines (Labor Code). The Labor Code promoted and facilitated overseas employment of Filipino workers, an attractive option back then in light of the unpredictable political climate.² Today, more Filipinos are travelling across the globe to find better employment opportunities, better pay, and a better life. During the period of April to September 2018, there was an estimated 2.3 million Overseas Filipino Workers (OFWs).³ An OFW refers to any Filipino of legal age who is “to be engaged, or is engaged or has been engaged in a remunerated activity in a state of which the worker is not a legal resident”.⁴ They leave behind families, friends, and the familiar vernacular. In a country where 17.6 million Filipinos live below the poverty threshold, they have no choice but to leave for greener pastures.⁵

In this paper, the author focuses on undocumented OFWs, those who do not come back to the Philippines after their visas and permits expire.⁶ This type of OFW is called by many names. The Commission on Filipinos Overseas (CFO) calls them *irregular migrants*.⁷ In 2013, the CFO

¹ Anna Romina Guevarra, ‘The Legacy of Undesirability: Filipino TNTs, ‘Irregular Migrants,’ and ‘Outlaws’ in the US Cultural Imaginary’ in Martin F Manalansan and Augusto F Espiritu (eds) *Filipino Studies: Palimpsests of Nation and Diaspora* (NYU Press 2016) 357.

² Labor Code, art 12(g). The entire Philippines was placed under martial law from 1972 to 1986.

³ Philippine Statistics Authority (PSA), ‘Total Number of OFWs Estimated at 2.3 Million (Results from the 2018 Survey on Overseas Filipinos)’ <<https://psa.gov.ph/content/total-number-ofws-estimated-23-million-results-2018-survey-overseas-filipinos>> accessed 26 December 2019.

⁴ Philippine Overseas Employment Administration 2002 Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, Rule II(19) (2002 POEA Rules). The 2002 POEA Rules were adopted pursuant to Philippine Republic Act No. 8042, otherwise known as Migrant Workers and Overseas Filipinos Act of 1995, which did not officially use the term “Overseas Filipino Worker”.

⁵ PSA, ‘Proportion of Poor Filipinos was Estimated at 16.6 Percent in 2018’ <<https://psa.gov.ph/poverty-press-releases/nid/144752>> accessed 26 December 2019.

⁶ Although this paper focuses on irregular Filipino migrants, this situation is not unique to the Philippines and is an ongoing global concern.

⁷ The Commission on Filipinos Overseas (CFO) was also created during the Marcos regime in 1980 by *Batas Pambansa Bilang 79*, otherwise known as An Act Creating the Commission on Filipinos

estimated a total of 1,161,830 irregular migrants.⁸ This term overlaps with that used in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which is *non-documented or irregular migrant workers*.⁹ In the Philippines, they are known as *TNTs*, short for “*tago nang tago*” which directly translates to always hiding (from authorities).¹⁰ For brevity, the author will hereinafter refer to them as *irregular migrants*.

This paper proposes that irregular migrants may claim refugee status.¹¹ The author does not dispute that migrant workers, documented and irregular alike, are protected by the ICRMW.¹² However, ICRMW does not obligate State parties to adhere to the principle of non-refoulement, which is specific to the Convention relating to the Status of Refugees (1951 Refugee Convention) and which is the ultimate objective of this paper’s proposal: to protect irregular migrants from deportation to their countries of origin.¹³

In order to support the proposal, the paper will first introduce irregular migrants as victims of socioeconomic hardship. It will look at the working definitions of *irregular migrant workers* and *economic migrants* under international human rights law and analyze whether irregular migrants fall under the category of economic migrants. The paper will discuss the socioeconomic climate of the Philippines as the driver of this kind of irregular migration, and whether this may be considered as persecution within the framework of the 1951 Refugee Convention, as well as looking into existing studies and papers on socioeconomic persecution.

Overseas. CFO defines “irregular migrants” as Filipinos who are without valid residence or work permits, or who may be overstaying workers or tourists in a foreign country:

<<https://cfo.gov.ph/downloads/statistics/stock-estimates.html>> accessed 26 December 2019.

⁸ CFO, ‘Stock Estimate of Overseas Filipinos as of December 2013 Report’ <<https://cfo.gov.ph/downloads/statistics/stock-estimates.html>> accessed 26 December 2019. The CFO, however, has not released recent estimates pending approval of the PSA of a proposed framework for counting overseas Filipinos.

⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 01 July 2003) 220 UNTS 3, art 5(b) (ICRMW).
¹⁰ Guevarra (n 1) 356.

¹¹ E Tendayi Achuiume proposed an alternative approach to obtain legal protection and migration by viewing migration as a form of decolonization: ‘Migration as Decolonization’ (2019) 71 Stanford Law Review 1509.

¹² ICRMW, art 1.

¹³ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Refugee Convention).

Finally, the paper will ask the ultimate question of whether irregular migrants may claim refugee status.

Irregular Migrants as Victims of Socioeconomic Hardship

OFWs become irregular migrants out of economic desperation.¹⁴ It is a hard decision for OFWs to make because it comes with grave consequences. It is a decision to stay illegally in another country without proper documentation, resulting to having no records of identification and therefore, having no recourse to legal remedies or protection, nor to social welfare services.¹⁵ Essentially, it is giving up a normal life and living *underground* not knowing when and how they can see the family and loved ones they sacrificing for.¹⁶ It is a life lived in constant fear of being found out by the authorities and their inevitable deportation.¹⁷ The stakes are extremely high and the level of sacrifice they willingly make is unbearable, all for a slim chance at survival.¹⁸

In 2018, the Philippine Statistics Authority estimated that 37.1% of 2.3 million OFWs worked in elementary occupations.¹⁹ Elementary occupations consist of simple and routine tasks which may involve the use of hand-held tools and physical effort, but will require minimal personal judgement.²⁰ Main tasks include selling goods in streets, cleaning, washing, pressing, collecting garbage and the like.²¹ In other words, roughly 850,000 workers left the Philippines in 2018 to work as domestic workers and cleaners. In 2017, an estimated 880,000 out of 2.34 million OFWs worked in elementary occupations.²² In 2016, the figure was 770,000 out of 2.2

¹⁴ Virginia Mantavalou, 'Am I Free Now?' Overseas Domestic Workers in Slavery' (2015) 42 *Journal of Law and Society* 329, 347.

¹⁵ *ibid* 345-347.

¹⁶ *ibid*.

¹⁷ *ibid* 357.

¹⁸ *ibid* 338-348.

¹⁹ PSA, Table 1.4 Distribution of Overseas Filipino Workers by Major Occupation Group, Sex and Area 2018 in <<https://psa.gov.ph/content/statistical-tables-overseas-filipino-workers-ofw-2018>> accessed on 26 December 2019.

²⁰ International Labour Organization (ILO), International Standard Classification of Occupations (ISCO-08).

²¹ *ibid*.

²² PSA, Table 1.4 Distribution of Overseas Filipino Workers by Major Occupation Group, Sex and Area 2017 in <<https://psa.gov.ph/content/statistical-tables-overseas-filipino-workers-ofw-2017>> accessed on 26 December 2019.

million OFWs. Some jobs require basic literary and numeracy skills or completion of primary education, but these are not hard rules.²³

This segment of the OFW population – those who work in elementary occupations – are prone to overstaying their overseas permits.²⁴ Their skillset only allows them to work the same kind of jobs in the Philippines, such as domestic work which pays on average PhP3,500-4,000 (roughly £53-£60) per month.²⁵ That amount is PhP6,000 (£90) short of the poverty threshold estimated at PhP10,727 (£160) on average, for a family of five per month in 2018.²⁶ But even a family of three will be hard-pressed to survive on PhP4,000 (£60) a month. This is the socioeconomic reality of most OFWs.

Irregular Migrant Workers versus Economic Migrants

The ICRMW defines the *migrant worker* as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” and *irregular migrant workers* as migrant workers who are not “authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party”.²⁷ The term *economic migrant* is not found in the ICRMW, nor does it appear in the text of the 1951 Refugee Convention, although the Office of the United Nations High Commissioner for Refugees (UNHCR) felt the need to define it in the 1979 Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR Handbook):

A migrant is a person who, for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a

²³ ILO (n 20).

²⁴ Another way to become an irregular migrant is to fly out as a tourist and intentionally overstay the visa. The end goal is the same: to work, earn and send money back home.

²⁵ National Wages and Productivity Commission (NWPC), ‘Current Monthly Minimum Wage for Domestic Workers’ for January 2020 <<https://nwpc.dole.gov.ph/stats/current-monthly-minimum-wage-for-domestic-workers/>> accessed on 08 January 2020.

²⁶ PSA (n 5).

²⁷ ICRMW, arts 2 and 5.

personal nature. If he is moved exclusively by economic considerations, he is an **economic migrant** and not a refugee.²⁸

Taking all the different definitions given so far for different terms essentially describing the same individual, it may be argued that an OFW does not fall under the category of economic migrant because the Philippine government's definition of an OFW directly contradicts UNHCR's definition of a migrant with respect to residency. An OFW engages in remunerative activity "in a state of which the worker is not a legal resident".²⁹ UNHCR defines a migrant as one who takes up residence elsewhere. However, the ICRMW defines a migrant worker as one engaged in remunerative activity in a State where he or she is not a national. The ICRMW does not use the words *resident* or *residence*.³⁰ Furthermore, ICRMW is a treaty, and thus a legally binding instrument. An OFW, for all intents and purposes, is a *migrant worker*. A migrant worker takes up residence in a State where he or she is not a national. Thus, OFWs fall under the category of *economic migrants*.

The next question to ask is whether OFWs who overstay their work permits, otherwise known as *irregular migrant workers*, likewise fall under the category of economic migrants. This is a significant distinction to make. If an irregular migrant worker is considered as an economic migrant, then by definition of the UNHCR, an irregular migrant is not a refugee.³¹ The two elements in the UNHCR's definition pertinent to the analysis of whether or not a person is an economic migrant are voluntariness and exclusivity of economic intent. Both require an inquiry into the intention of the OFW in overstaying his or her work permit. What were their reasons for taking an overseas job? Did they leave the Philippines voluntarily? What was their reason for overstaying? The answers to these questions all point to economic reasons.

Domestic workers leave the country to find work that will pay them more than what they earn in the Philippines.³² The economic hardship for these workers can be illustrated in statistics:

²⁸ UNHCR 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1979, reissued 2019) UN Doc HCR/IP/4/ENG/REV.4 para 62 (emphasis and underscoring added) (UNHCR Handbook).

²⁹ 2002 POEA Rules (n 4).

³⁰ ICRMW, arts 2 and 5.

³¹ UNHCR Handbook, para 62.

³² NWPC (n 25).

The average daily basic pay of workers in elementary occupations in January 2018 was PhP260 (roughly £4).³³ This amount does not comply with Philippine minimum wage rates corresponding that period.³⁴ It is not enough to pay for decent housing, food, water, clothing, transportation, medicine or children’s education.³⁵ This is the level of poverty in the Philippines for a lot of people.³⁶ Clearly, the overarching and driving reason for the OFW overstaying his or her work permit is economic. The voluntariness, though, is questionable. The author opines that OFWs are forced to overstay because they are simply left without any other option: To return home is equivalent to a death sentence. Thus, it cannot be a voluntary act.

Even if the OFW’s act of overstaying is seen as voluntary, thus making them economic migrants, the UNHCR permits an alternative argument. Under the UNHCR Handbook, an economic migrant may still claim refugee status “Where economic measures destroy the economic existence of a particular section of the population ... the victims may according to the circumstances become refugees on leaving the country.”³⁷ Therefore, economic migrants have a basis to argue that economic measures affecting their livelihood in their country of origin may be discriminatory resulting to violations of their economic, social and cultural rights.³⁸

Socioeconomic Persecution

The 1951 Refugee Convention defines a refugee as:

³³ PSA, Current Labor Statistics: Average Daily Basic Pay of Wage and Salary Workers by Major Occupation Group, Philippines: 2016 - January 2018 at <<https://psa.gov.ph/current-labor-statistics/statistical-tables>> last accessed 27 December 2019.

³⁴ PSA, Current Labor Statistics: Minimum Wage Rates by Sector and Region, Philippines: As of October 3, 2018 at <<https://psa.gov.ph/current-labor-statistics/statistical-tables>> last accessed 27 December 2019. While minimum wage rates are mandated by the Philippine government, it has been observed that it is not implemented in the informal sector: see UN Committee on Economic, Social and Cultural Rights ‘Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Philippines’ (26 October 2016) UN Doc E/C.12/PHL/CO/5-6 para 29 (CESCR Concluding Observations: Philippines).
³⁵ CESCR Concluding Observations: Philippines para 43.

³⁶ *ibid.*

³⁷ UNHCR Handbook, para 63.

³⁸ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007) 13.

[A] person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.³⁹

The most crucial element of the refugee definition is that of a well-founded fear of persecution.⁴⁰ Remarkably, the 1951 Refugee Convention did not define the term *persecution*. While there is no universally accepted definition, it is generally agreed that serious violations of human rights constitute persecution.⁴¹ Michelle Foster regards this general human rights-based framework as the dominant approach in interpreting the term *persecution*.⁴² James Hathaway defines it as the “sustained or systemic failure of state protection in relation to one of the core entitlements”.⁴³ Together, they posit that an accumulation of socioeconomic rights violation lead to the denial of the right to an adequate standard of living and therefore, persecutory.⁴⁴ Scholars have theorized that the drafters of the 1951 Refugee Convention intentionally left out a definition of persecution allowing the convention to live and breathe, to accommodate new issues and situations as the world and peoples evolve.⁴⁵

Socioeconomic persecution is not a novel issue. There has been considerable discussion on this topic and as far back as 1961, a United States federal court stayed a deportation order because “The denial of an opportunity to earn a livelihood in a country such as the one involved here is the equivalent of a sentence to death by means of slow starvation and none the less final because it is gradual. The result of both is the same.”⁴⁶ This widely cited passage

³⁹ 1951 Refugee Convention, art 1(A)(2).

⁴⁰ Lauren Michelle Ramos, ‘A New Standard for Evaluating Claims of Economic Persecution Under the 1951 Convention Relating to the Status of Refugees’ [2011] 44 Vanderbilt Journal of Transnational Law 499, 504 citing *The Refugee Convention, 1951: The Travaux Préparatoires Analysed 3* in Paul Weis (ed), (1995).

⁴¹ UNHCR Handbook, para 51.

⁴² Foster (n 38) 30-31.

⁴³ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014).

⁴⁴ *ibid* 228.

⁴⁵ Ramos (n 40) 504.

⁴⁶ *Dunat v Hurney* 297 F.2d 744, 746 (3d Cir. 1961).

comes from the 1961 *Dunat* case of a Roman Catholic Yugoslav who applied for the indefinite stay of a deportation order, arguing that he would be “physically persecuted” if he was sent back to (what was then) communist Yugoslavia. He claims that he would be denied of employment opportunities due to his faith, thus denying him of means to earn a living. In her seminal work, Foster asks the question of whether the 1951 Refugee Convention is “capable of encompassing claims based on economic destitution”.⁴⁷ After an exhaustive analysis of case law, Foster concludes that it is indeed capable and that there has been an increased recognition of socioeconomic rights violations in the spectrum of persecution.⁴⁸

Socioeconomic rights are inherently linked to poverty. While there is no universally accepted definition of poverty, it has been defined by the UN Committee on Economic, Social and Cultural Rights (CESCR) as “a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights”.⁴⁹ Strangely, the term *poverty* is not incorporated in the International Covenant on Economic Social and Cultural Rights (ICESCR) despite the fact that poverty is central to its text.⁵⁰ The rights in the ICESCR – the right to an adequate standard of living, the right to work, housing, food, education, health – are directly connected to and have a definite impact on poverty.⁵¹ Regardless, the CESCR holds the firm view that poverty constitutes a denial of human rights.⁵²

If poverty constitutes a denial of basic human rights, does poverty then amount to persecution? Thus far, it has been said that serious violations of human rights amount to persecution, including economic measures that destroy the economic existence of persons.⁵³ And it has been stated that poverty is a “sustained and chronic deprivation of resources”

⁴⁷ Foster (n 38) 1.

⁴⁸ *ibid* 110.

⁴⁹ UN Committee on Economic, Social and Cultural Rights (25th session) ‘Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant On Economic, Social And Cultural Rights’ (4 May 2001) UN Doc E/C.12/2001/10 para 8 (CESCR Statement on Poverty).

⁵⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

⁵¹ CESCR Statement on Poverty, para 1.

⁵² *ibid*.

⁵³ n 41, n 37.

necessary for an adequate standard of living.⁵⁴ Taking these authoritative statements together, the author asserts that chronic deprivation of resources threaten the economic existence of a person amounting to a serious violation of human rights, and thus, poverty amounts to persecution.

In fact, this concept has been codified in the amended Migration Act 1958 of Australia, which provides instances of “serious harm” in the context of persecution:

Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of serious harm for the purposes of that paragraph:

- (a) ... ;
- (b) ... ;
- (c) ... ;
- (d) significant economic hardship that threatens the person’s capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.⁵⁵

Irregular Migrants as Refugees

The next question is: who may claim refugee status on the basis of poverty? The UNHCR Handbook gives some guidance:

Whether the same would apply to victims of general economic measures (i.e. those that are applied to the whole population without discrimination) would depend on the circumstances of the case. Objections to general economic measures are not by themselves good reasons for claiming refugee status. On the other hand, what appears at first sight to be primarily an economic motive for departure may in reality also involve a political element, and it may be the political opinions of the individual

⁵⁴ n 49.

⁵⁵ s 5J.

that expose him to serious consequences, rather than his objections to the economic measures themselves.⁵⁶

Thus, even if poverty may serve as basis for persecution, the nexus element should still be demonstrated to be able to claim refugee status. Under the 1951 Refugee Convention, “A person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...”.⁵⁷ Under which of the nexus categories might irregular migrants belong? It could be argued that for reasons of nationality – by reason of being Filipino – irregular migrants have a well-founded fear of socioeconomic persecution. This may be true, but is perhaps too general of a category to merit refugee status. The author believes that the most available nexus category would be “membership in a particular social group”. The UNHCR has recommended that this category be interpreted openly and according to the changing times and norms.⁵⁸ The UNHCR Handbook describes a “particular social group” as comprising of persons of similar background, habits or social status.⁵⁹ Women and occupational groups have been recognized as constituting a particular social group.⁶⁰ Statistically, there are more female OFWs than males, comprising 55.8% total OFWs and more than half of these women work in elementary occupations (58.7%).⁶¹ In fact, the UN Committee on the Rights of the Child is concerned at the impact of the increasing feminization of migration in the Philippines.⁶² While this social group may still be ‘too general’ to substantiate a claim to refugee status, the UNHCR Handbook allows for “special circumstances where mere membership can be sufficient ground to fear persecution”.⁶³

⁵⁶ UNHCR Handbook, para 64.

⁵⁷ 1951 Refugee Convention, art 1(A)(2).

⁵⁸ UNHCR ‘Guidelines on International Protection No 2: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees’ (7 May 2002) UN Doc HCR/GIP/02/02 para 3 (UNHCR Guidelines on International Protection No 2).

⁵⁹ UNHCR Handbook, para 77.

⁶⁰ UNHCR Guidelines on International Protection No 2, para 1.

⁶¹ PSA (n 3).

⁶² UN Committee on the Rights of the Child ‘Concluding Observations: Philippines’ (22 October 2009) UN Doc CRC/C/PHL/CO/3-4, para 45.

⁶³ UNHCR Handbook, para 79.

What are these “special circumstances”? The UNHCR Handbook does not list what these special circumstances are, but it is briefly explained in the UNHCR Guidelines on International Protection No. 6 on religion-based refugee claims.⁶⁴ It provides that:

[T]here may, however, be special circumstances where mere membership suffices, particularly when taking account of the overall political and religious situation in the country of origin, which may indicate a climate of genuine insecurity for the member of the religious community involved.⁶⁵

Taking this explanation and applying it in the context of membership in a particular social group, it could be said that mere membership in a particular social group may be sufficient ground where the overall political situation in the country of origin generates genuine insecurity for the members of the particular social group. In the Philippines, poverty is attributed to the political culture of oligarchy – “It is dominated by an elite minority whose entrenchment into power is mainly due to the country being a colony of two foreign countries: Spain and the United States.”⁶⁶

A closer look at the UNHCR Handbook statement on economic measures and the CESCR’s statement on poverty may provide some clarity in this respect. The UNHCR Handbook speaks of economic measures that destroy the economic existence of a particular section of the population, while the CESCR mentions *chronic deprivation of resources* to its subject.⁶⁷ Both statements refer to poverty, but both statements are lacking with respect to answering the questions of why there is poverty, who causes poverty and who are affected by it. These are important criteria against which a discussion of a country’s overall political situation is to be evaluated.

⁶⁴ The exception of “special circumstances” is also available to religion-based claims. UNHCR Handbook, para 73 states that “Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.”

⁶⁵ UNHCR ‘Guidelines on International Protection No 6: Religion-Based Refugee-Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees’ (28 April 2004) UN Doc HCR/GIP/04/06 para 14 (UNHCR Guidelines on International Protection No 6).

⁶⁶ Ryan Urbano, ‘Global justice and the Plight of Filipino Domestic Migrant Workers’ (2011) 47(6) *Journal of Asian and African Studies* 605.

⁶⁷ n 49, n 37.

Economic measures and restriction of resources necessary for the enjoyment of an adequate standard of living and other human rights may only come from and be sanctioned by the State. Thus, it may be said that poverty is political especially when the State, with full knowledge of the statistics presented above, and access to a working government, fails to provide the basic needs of its people and the most essential tool for survival: opportunity to earn a livelihood.

While poverty is not directly caused by corruption, it is a political situation causing genuine socioeconomic insecurity because it “has direct consequences on economic and governance factors, intermediaries that in turn produce poverty”.⁶⁸ Corruption is present in all countries, however, its effects in developing countries like the Philippines is extreme and disastrous.⁶⁹ Not only does it cause serious violations of various socioeconomic rights, it is itself a violation of a State’s obligation to use the maximum available resources to progressively realize socioeconomic rights under the ICESCR.⁷⁰

International refugee case law demonstrates that there is a higher and stronger chance of successfully claiming refugee status if persecution is based on an accumulation of various economic and social rights violations.⁷¹ As explained by the UK tribunal in *Gudja*, persecution may be constituted by “a concatenation of individual denials of rights; for example to the right to work, to education, to health or to welfare benefits to such an extent that it erodes the very quality of life in the result that such a combination is an interference with a basic human right to live a decent life”.⁷² These refugee applications are most especially accepted where the cumulative socioeconomic violations are State-sponsored or inflicted.⁷³

⁶⁸ Eric Chetwynd, Frances Chetwynd & Bertram Spector, ‘Corruption and Poverty: A Review of Recent Literature’ (commissioned by USAID, January 2003) <https://pdf.usaid.gov/pdf_docs/PNACW645.pdf> accessed 27 December 2019.

⁶⁹ Kofi A Annan, Secretary-General, Foreword of the UN Convention Against Corruption (UN New York 2004).

⁷⁰ ICESCR, art 2(1).

⁷¹ Foster (n 38) 104-105.

⁷² *ibid* 105, 214, citing *Gudja* (Unreported, IAT, CC/59626/97, 5 August 1999).

⁷³ *ibid* 107.

The author proposes that corruption violates almost all socioeconomic rights – the right to work, food, housing, water, education, health – and that it is a special political circumstance allowing for mere membership in a particular social group to claim refugee status. Corruption is the purest form of persecution; The government derives power and financial resources through taxing the same people it denies the right to live a life with dignity.

Conclusion

This paper proposed that OFWs who have overstayed their work permits, thus becoming irregular migrants, may claim refugee status based on socioeconomic hardship inflicted onto them by the State. Therefore, irregular migrants who have sacrificed much and risked living an undocumented existence have an opportunity to be protected against deportation back to the Philippines. This framework could be criticized as opening the floodgates to potentially millions of *economic refugees* from all over the world. But it is a framework that merits further investigation and scrutiny nonetheless. There is still much scholarship to be done in this emerging and evolving field of law.⁷⁴ First among the many, is the need to establish clearer and uniformed legal terms and definitions. In the discussion above, what seems to be a recurring theme is the lack of consistency and specificity in the terminology of the law. Different terms are used to refer to the same thing, but the law, or the curators of law, seem to be very careful in delineating and obfuscating these definitions. It is a roadblock, but one that can be overcome with the aid of new scholarly data and information.

This proposal comes at a time when it necessary to open and continue the discussion on irregular migration and to speak of it more profoundly. It also comes at a time when along with the migrant count, the death count also rises, all due to the desperate desire to escape poverty.⁷⁵ If the 1951 Refugee Convention is to be interpreted in the spirit of its purpose, then

⁷⁴ Michelle Foster, 'Economic Migrant or Person in Need of Protection? Socio-Economic Rights and Persecution in International Refugee Law' in Bruce Burson, and David James Cantor (eds), *Human Rights and the Refugee Definition : Comparative Legal Practice and Theory* (BRILL, 2016) 251.

⁷⁵ Daniel Trilling, 'The Essex lorry deaths throw up so many questions. It's vital we ask the right ones.' *The Guardian* (London, 23 October 2009) <<https://www.theguardian.com/commentisfree/2019/oct/23/essex-lorry-borders-governments>> accessed 08 January 2020; Vinnie O'Dowd, 'Essex lorry deaths: Who are the victims?' BBC News (London, 08 November 2019) <https://www.bbc.co.uk/news/uk-50208251?intlink_from_url=https://www.bbc.co.uk/news/topics/c9exrp28wekt/essex-lorry-deaths&link_location=live-reporting-story> accessed 08 January 2020.

it must be allowed to live and breathe.⁷⁶ It is a time to change the historical perception that asylum claims based exclusively on economic harm should be automatically dismissed.⁷⁷

⁷⁶ 1951 Refugee Convention, preamble. The first line states: “Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, ...”

⁷⁷ Ramos (n 40) 512.

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