EN BANC

G.R. No. 221697: MARY GRACE NATIVIDAD S. POE LLAMANZARES, *petitioner,* **v. COMMISSION ON ELECTIONS and ESTRELLA C. ELAMPARO,** *respondents.*

G.R. Nos. 221698-700: MARY GRACE NATIVIDAD S. POE LLAMANZARES, *petitioner,* **v. COMMISSION ON ELECTIONS, FRANCISCO S. TATAD, ANTONIO P. CONTRERAS and AMADO D. VALDEZ,** *respondents.*

Promulgated:

March 8, 2016

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DISSENTING OPINION

CARPIO, *J.*:

I dissent from the majority opinion.

With the ruling of the majority today, a presidential candidate who is deemed a natural-born Filipino citizen by less than a majority of this Court, deemed not a natural-born Filipino citizen by five Justices, and with no opinion from three Justices, can now run for President of the Philippines even after having been unanimously found by the Commission on Elections *En Banc* (COMELEC) to be not a natural-born Filipino citizen. What is clear and undeniable is that there is no majority of this Court that holds that petitioner Mary Grace Natividad S. Poe Llamanzares (petitioner) is a natural-born Filipino citizen. This ruling of the majority will lead to absurd results, making a mockery of our national elections by allowing a presidential candidate with uncertain citizenship status to be potentially elected to the Office of the President, an office expressly reserved by the Constitution exclusively for natural-born Filipino citizens.

This means that the majority of this Court wants to resolve the citizenship status of petitioner after the elections, and only if petitioner wins the elections, despite petitioner having already presented before the COMELEC all the evidence she wanted to present to prove her citizenship status. This will make a mockery of our election process if petitioner wins the elections but is later disqualified by this Court for not possessing a basic qualification for the Office of the President – that of being a natural-born Filipino citizen.

Those who voted for petitioner would have utterly wasted their votes. This is not how the natural-born citizenship qualification for elective office mandated by the Constitution should be applied by the highest court of the land.

There is no dispute that petitioner is a Filipino citizen, as she publicly claims to be. However, she has failed to prove that she is a **natural-born** Filipino citizen and a resident of the Philippines for at least ten years immediately preceding the 9 May 2016 elections. Petitioner is not eligible to run for President of the Republic of the Philippines for lack of the essential requirements of citizenship and residency under Section 2, Article VII of the 1987 Constitution.[1] Petitioner's certificate of candidacy (COC), wherein she stated that she is qualified for the position of President, contains false material representations, and thus, must be cancelled. Petitioner, not being a natural-born Filipino citizen, is also a nuisance candidate whose COC can *motu proprio* be cancelled by the COMELEC under Section 69 of the Omnibus Election Code.

The Case

These consolidated certiorari petitions[2] seek to nullify the Resolutions[3] of the COMELEC for allegedly being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. In the assailed Resolutions, the COMELEC cancelled petitioner's COC for the position of President for the 9 May 2016 elections on the ground of "false material representations" when she stated therein that she is a "natural-born Filipino citizen" and that her "period of residence in the Philippines up to the day before May 09, 2016" is "10 years and 11 months," which is contrary to the facts as found by the COMELEC.

The Issues

The core issues in this case are (1) whether petitioner, being a foundling, is a natural-born Filipino citizen, and (2) whether she is a resident of the Philippines for ten years immediately preceding the 9 May 2016

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[1] This provision reads:

SECTION 2. No person may be elected President unless he is a **natural-born citizen of the Philippines,** a registered voter, able to read and write, at least forty years of age on the day of the election, and **a resident of the Philippines for at least ten years immediately preceding such election.** (Emphasis supplied)

[2] Under Rule 65, in relation to Rule 64, of the Rules of Civil Procedure.

[3] In G.R. Nos. 221698-700, petitioner assails the COMELEC Resolutions dated 11 December 2015 (issued by the COMELEC's First Division) and 23 December 2015 (issued by the COMELEC *En Banc*).

In G.R. No. 221697, petitioner assails the COMELEC Resolutions dated 1 December 2015 (issued by the COMELEC's Second Division) and 23 December 2015 (issued by the COMELEC *En Banc*).

national elections. The resolution of these issues will in turn determine whether petitioner committed false material representations in her COC warranting the cancellation of her COC. If petitioner is not a natural-born Filipino citizen, the issue arises as a necessary consequence whether she is a nuisance candidate whose COC can *motu proprio* be cancelled by the COMELEC.

COMELEC Jurisdiction

Section 2(1), Article IX-C of the Constitution vests in the COMELEC the power, among others, to "[e]nforce and administer all laws and regulations relative to the conduct of an election, x x x."[4] Screening initially the qualifications of all candidates lies within this specific power. In my dissent in *Tecson v. COMELEC*,[5] involving the issue of Fernando Poe, Jr.'s citizenship, I discussed the COMELEC's jurisdiction, to wit:

> x x x. Under Section 2(1), Article IX-C of the Constitution, the Comelec has the power and function to *"[E]nforce and administer all laws and regulations relative to the conduct of an election."* The initial determination of who are qualified to file certificates of candidacies with the Comelec clearly falls within this all-encompassing constitutional mandate of the Comelec. The conduct of an election necessarily includes the initial determination of who are qualified under existing laws to run for public office in an election. Otherwise, the Comelec's certified list of candidates will be cluttered with unqualified candidates making the conduct of elections unmanageable. For this reason, the Comelec weeds out every presidential election dozens of candidates for president who are deemed nuisance candidates by the Comelec.
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> Section 2(3), Article IX-C of the Constitution also empowers the Comelec to *"[D]ecide, except those involving the right to vote, all questions affecting elections x x x."* The power to decide "all questions affecting elections" necessarily includes the power to decide whether a candidate possesses the qualifications required by law for election to public office. This broad constitutional power and function vested in the Comelec is designed precisely to avoid any situation where a dispute affecting elections is left without any legal remedy. **If one who is obviously not a natural-born Philippine citizen, like Arnold Schwarzenneger, runs for President, the Comelec is certainly not powerless to cancel the certificate of candidacy of such candidate. There is no need to wait until after the elections before such candidate**

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[4] This provision pertinently reads:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

[5] 468 Phil. 421, 624-642 (2004).

may be disqualified.[6] (Italicization in the original; boldfacing supplied)

Clearly, pursuant to its constitutional mandate, the COMELEC can initially determine the qualifications of all candidates and disqualify those found lacking any of such qualifications before the conduct of the elections. In fact, the COMELEC is empowered to *motu proprio* cancel COCs of nuisance candidates.[7] In *Timbol v. COMELEC,*[8] the Court stated thus:

> Respondent's power to *motu proprio* deny due course to a certificate of candidacy is subject to the candidate's opportunity to be heard.
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> Under Article II, Section 26 of the Constitution, "[t]he State shall guarantee equal access to opportunities for public service[.]" This, however, does not guarantee "a constitutional right to run for or hold public office[.]" To run for public office is a mere "privilege subject to limitations imposed by law." Among these limitations is the prohibition on nuisance candidates.
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> **Nuisance candidates are persons who file their certificates of candidacy "to put the election process in mockery** or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate." x x x. (Emphasis supplied)

It cannot be disputed that a person, not a natural-born Filipino citizen, who files a certificate of candidacy for President, "put[s] the election process in mockery" and is therefore a nuisance candidate. Such person's certificate of candidacy can *motu proprio* be cancelled by the COMELEC under Section 69 of the Omnibus Election Code, which empowers the COMELEC to cancel *motu proprio* the COC if it "**has been filed to put the election process in mockery.**"

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[6] Id. at 625-626.

[7] Section 69 of the Omnibus Election Code provides:

> Sec. 69. Nuisance candidates. - The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that **said certificate has been filed to put the election process in mockery** or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (Emphasis supplied)

[8] G.R. No. 206004, 24 February 2015.

In *Pamatong v. COMELEC*,[9] cited in *Timbol*,[10] the Court explained the reason why nuisance candidates are disqualified to run for public office:

> The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. x x x.
>
> x x x x
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> x x x. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.

To allow a person, who is found by the COMELEC not to be a natural-born Filipino citizen, to run for President of the Philippines constitutes a mockery of the election process. Any person, who is not a natural-born Filipino citizen, running for President is obviously a nuisance candidate under Section 69 of the Omnibus Election Code. Allowing a nuisance candidate to run for President renders meaningless the COMELEC's constitutional power to "[e]nforce and administer all laws x x x relative to the conduct of an election, x x x." The election process becomes a complete mockery since the electorate is mercilessly offered choices which include patently ineligible candidates. The electorate is also needlessly misled to cast their votes, and thus waste their votes, for an ineligible candidate. The COMELEC cannot be a party to such mockery of the election process; otherwise, the COMELEC will be committing a grave abuse of discretion.

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[9] G.R. No. 161872, 13 April 2004, 427 SCRA 96, 104, 105.

[10] Supra note 8.

Citizens of the Philippines

It is the sovereign power and inherent right of every independent state to determine who are its nationals. The Philippines, and no other state, shall determine who are its citizens in accordance with its Constitution and laws.

In this case, the 1935 Philippine Constitution shall be applied to determine whether petitioner is a natural-born citizen of the Philippines since she was born in 1968 when the 1935 Constitution was in effect.

Section 1, Article IV of the 1935 Constitution identifies who are Filipino citizens, thus:

> Article IV.—Citizenship
>
> Section 1. The following are citizens of the Philippines:
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> 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
> 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
> 3. Those whose fathers are citizens of the Philippines.
> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
> 5. Those who are naturalized in accordance with law.

From this constitutional provision, we find that, except for those who were already considered citizens at the time of the adoption of the Constitution, there were, as there are still now, only two methods of acquiring Philippine citizenship: (1) by blood relation to the father (or the mother under the 1987 Constitution) who must be a Filipino citizen; and (2) by naturalization according to law.[11]

The Philippines adheres to the *jus sanguinis* principle or the "law of the blood" to determine citizenship at birth. An individual acquires Filipino citizenship at birth **solely** by virtue of biological descent from a Filipino father or mother. The framers of the 1935 Constitution clearly intended to make the acquisition of citizenship available on the basis of the *jus sanguinis* principle. This view is made evident by the suppression from the Constitution of the *jus soli* principle, and further, by the fact that the Constitution has made definite provisions for cases not covered by the *jus*

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[11] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines*, Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 444 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed on 2 March 2016).

sanguinis principle, such as those found in paragraph 1, Section 1 of Article IV, i.e., those who are citizens of the Philippines at the time of the adoption of the Constitution, and in paragraph 2, Section 1 of the same Article, i.e., those born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.[12]

In terms of jurisprudence, there was a period when the Court was uncertain regarding the application of *jus soli* or "law of the soil" as a principle of acquisition of Philippine citizenship at birth.[13] In *Tan Chong v. Secretary of Labor*,[14] decided in 1947, the Court finally abandoned the *jus soli* principle, and *jus sanguinis* has been exclusively adhered to in the Philippines since then.[15]

Based on Section 1, Article IV of the 1935 Constitution, petitioner's citizenship may be determined only under paragraphs (3), (4) and (5). Paragraph (1) of Section 1 is not applicable since petitioner is not a Filipino citizen at the time of the adoption of the 1935 Constitution as petitioner was born after the adoption of the 1935 Constitution. Paragraph (2) of Section 1 is likewise inapplicable since petitioner was not born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.

Of the Filipino citizens falling under paragraphs (3), (4) and (5), only those in paragraph (3) of Section 1, whose fathers are citizens of the Philippines, can be considered natural-born Filipino citizens since they are Filipino citizens from birth without having to perform any act to acquire or perfect their Philippine citizenship.[16] In short, they are Filipino citizens by

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[12] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines*, Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 448, http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed on 2 March 2016).

[13] Some of the cases applying the *jus soli* principle:
Roa v. Collector of Customs, 23 Phil. 315 (1912)
Vaño v. Collector of Customs, 23 Phil. 480 (1912)
US v. Ang, 36 Phil. 858 (1917)
US v. Lim Bin, 36 Phil. 924 (1917)
Go Julian v. Government of the Philippines, 45 Phil. 289 (1923)

[14] 79 Phil. 249 (1947).

[15] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, Philippine Law Journal, Vol. 60, No. 1, Supplemental Issue, 1985, p. 18 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20International%20Law.pdf; last accessed on 2 March 2016).

[16] Section 2, Article IV of the 1987 Constitution reads:

SECTION 2. 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. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

the mere fact of birth.

Under paragraph (4) of Section 1, those Filipino citizens whose mothers are Filipinos and whose fathers are aliens cannot be considered natural-born Filipino citizens since they are still required to elect Philippine citizenship upon reaching the age of majority – they are not Filipino citizens by the mere fact of birth.

However, under paragraph (2), Section 1 of Article IV of the 1987 Constitution, those whose fathers are Filipino citizens and those whose mothers are Filipino citizens are treated equally. They are considered natural-born Filipino citizens.[17] Moreover, under Section 2, Article IV of the 1987 Constitution, in relation to paragraph (3), Section 1 of the same Article, those born before 17 January 1973 of Filipino mothers and who elected Philippine citizenship upon reaching the age of majority are also deemed natural-born Filipino citizens.

In *Co v. Electoral Tribunal of the House of Representatives*,[18] the Court held that the constitutional provision treating as natural-born Filipino citizens those born before 17 January 1973 of Filipino mothers and alien fathers, and who elected Philippine citizenship upon reaching the age of majority, has a retroactive effect. The Court declared that this constitutional provision was enacted "to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not, under earlier laws, conferred the status of a natural-born."[19] The Court explained:

> The provision in Paragraph 3 was intended to correct an unfair position which discriminates against Filipino women. There is no ambiguity in the deliberations of the Constitutional Commission, *viz*:
>
> > Mr. Azcuna: With respect to the provision of section 4, would this refer only to those who elect Philippine

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[17] Sections 1 and 2, Article IV of the 1987 Constitution provide:

SECTION 1. The following are citizens of the Philippines:
(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
(2) Those whose fathers or mothers are citizens of the Philippines;
(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
(4) Those who are naturalized in accordance with law.

SECTION 2. 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. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

[18] 276 Phil. 758 (1991).

[19] Id. at 784.

citizenship after the effectivity of the 1973 Constitution or would it also cover those who elected it under the 1973 Constitution?

Fr. Bernas: *It would apply to anybody who elected Philippine citizenship by virtue of the provision of the 1935 Constitution whether the election was done before or after January 17, 1973.* (Records of the Constitutional Commission, Vol. 1, p. 228; Emphasis supplied.)

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Mr. Trenas: The Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights has more or less decided to extend the interpretation of who is a natural-born citizen as provided in section 4 of the 1973 Constitution by adding that persons who have elected Philippine citizenship under the 1935 Constitution shall be natural-born? Am I right Mr. Presiding Officer?

Fr. Bernas: Yes.

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Mr. Nolledo: And I remember very well that in the Reverend Father Bernas' well written book, he said that the decision was designed merely to accommodate former delegate Ernesto Ang and that the definition on natural-born has no retroactive effect. Now it seems that the Reverend Father Bernas is going against this intention by supporting the amendment?

Fr. Bernas: As the Commissioner can see, there has been an evolution in my thinking. (Records of the Constitutional Commission, Vol. 1, p. 189)

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Mr. Rodrigo: But this provision becomes very important because his election of Philippine citizenship makes him not only a Filipino citizen but a natural-born Filipino citizen entitling him to run for Congress...

Fr. Bernas: Correct. We are quite aware of that and for that reason we will leave it to the body to approve that provision of section 4.

Mr. Rodrigo: I think there is a good basis for the provision because it strikes me as unfair that the Filipino citizen who was born a day before January 17, 1973 cannot be a Filipino citizen or a natural-born citizen. (Records of the Constitutional Commission, Vol. 1, p. 231)

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Mr. Rodrigo: The purpose of that provision is to remedy an inequitable situation. Between 1935 and 1973 when we were under the 1935 Constitution, those born of Filipino fathers but alien mothers were natural-born Filipinos. However, those born of Filipino mothers but alien fathers

> would have to elect Philippine citizenship upon reaching the age of majority; and if they do elect, they become Filipino citizens but not natural-born Filipino citizens. (Records of the Constitutional Commission, Vol. 1, p. 356)
>
> The foregoing significantly reveals the intent of the framers. To make the provision prospective from February 3, 1987 is to give a narrow interpretation resulting in an inequitable situation. It must also be retroactive.[20]

Therefore, the following are deemed natural-born Filipino citizens: (1) those whose fathers or mothers are Filipino citizens, and (2) those whose mothers are Filipino citizens and were born before 17 January 1973 and who elected Philippine citizenship upon reaching the age of majority. Stated differently, those whose fathers or mothers are neither Filipino citizens are not natural-born Filipino citizens. If they are not natural-born Filipino citizens, they can acquire Philippine citizenship **only** under paragraph (5), Section 1 of Article IV of the 1935 Constitution which refers to Filipino citizens who are naturalized in accordance with law.

Intent of the Framers of the 1935 Constitution

Petitioner concedes that she does not fall under paragraphs (1) and (2) of Section 1, Article IV of the 1935 Constitution. However, petitioner claims that the mere fact that she is a foundling does not exclude her from paragraphs (3) and (4) of the same provision. Petitioner argues in her Petition that "the pertinent deliberations of the 1934 Constitutional Convention, on what eventually became Article IV of the 1935 Constitution, show that **the intent of the framers was <u>not</u> to <u>exclude foundlings</u> from the term "citizens" of the Philippines.**"[21]

Likewise, the Solicitor General asserts in his Comment[22] that "[t]he deliberations of the 1934 Constitutional Convention indicate the intention to categorize foundlings as a class of persons considered as Philippine citizens. x x x. **The 1935 Constitution's silence** cannot simply be interpreted as indicative of an intent to entrench a disadvantaged class in their tragedy. **Not only is there no evidence of such intent**, but also the silence can be explained in a compassionate light, one that is geared towards addressing a fundamental question of justice."[23]

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[20] Id. at 782-783.

[21] Petitioner's Petition, p. 112. Underscoring in the original and boldfacing supplied.

[22] Manifestation dated 4 January 2016, adopting the Solicitor General's Comment in G.R. No. 221538, *Rizalito Y. David v. Senate Electoral Tribunal*. Emphasis supplied.

[23] Comment in G.R. No. 221538, pp. 6, 9, 10.

Petitioner and the Solicitor General are gravely mistaken. The framers of the 1935 Constitution voted to categorically reject the proposal to include foundlings as citizens of the Philippines. Petitioner's Petition, and the Solicitor General's Comment, **glaringly omitted that the 1934 Constitutional Convention actually voted upon, and rejected, the proposal to include foundlings as citizens of the Philippines**. The following exchange during the deliberations of the Convention shows this unequivocally.

SPANISH	ENGLISH
SR. RAFOLS: Para una enmienda. Propongo que despues del inciso 2 se inserte lo siguiente: "Los hijos naturales de un padre extranjero y de una madre filipina no reconocidos por aquel. x x x x EL PRESIDENTE: La Mesa desea pedir una aclaracion del proponente de la enmienda. Se refiere Su Señoria a hijos naturales o a toda clase de hijos ilegitimos? SR. RAFOLS: A toda clase de hijos ilegitimos. Tambien se incluye a los hijos naturales de padres desconocidos, los hijos naturales o ilegitimos, de padres desconocidos. SR. MONTINOLA: Para una aclaracion. Alli se dice "de padres desconocidos." Los Codigos actuales consideran como filipino, es decir, me refiero al codigo español quien considera como españoles a todos los hijos de padres desconocidos nacidos en territorio español, porque la presuncion es que el hijo de padres desconocidos es hijo de un español, y de esa manera se podra aplicar en Filipinas de que un hijo desconocido aqui y nacido en Filipinas se considerara que es hijo filipino y no hay necesidad ... SR. RAFOLS: Hay necesidad, porque estamos relatando las condiciones de los que van a ser filipinos.	MR. RAFOLS: For an amendment, I propose that after subsection 2, the following is inserted: "The natural children of a foreign father and a Filipino mother not recognized by the father. x x x x PRESIDENT: [We] would like to request a clarification from the proponent of the amendment. The gentleman refers to natural children or to any kind of illegitimate children? MR. RAFOLS: To all kinds of illegitimate children. It also includes natural children of unknown parentage, natural or illegitimate children of unknown parents. MR. MONTINOLA: For clarification. The gentleman said "of unknown parents." Current codes consider them Filipino, that is, I refer to the Spanish Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need ... MR. RAFOLS: There is a need, because we are relating the conditions that are [required] to be Filipino.

SR. MONTINOLA: Pero esa es la interpretacion de la ley, ahora, de manera que no hay necesidad de la enmienda.	MR. MONTINOLA: But that is the interpretation of the law, therefore, there is no [more] need for the amendment.
SR. RAFOLS: La enmienda debe leerse de esta manera: "Los hijos naturales o ilegitimos de un padre extranjero y de una madre filipina reconocidos por aquel o los hijos de padres desconocidos.	MR. RAFOLS: The amendment should read thus: "Natural or illegitimate children of a foreign father and a Filipino mother recognized by the former, or the children of unknown parentage."
SR. BRIONES: Para una enmienda con el fin de significar los hijos nacidos en Filipinas de padres desconocidos.	MR. BRIONES: The amendment [should] mean children born in the Philippines of unknown parentage.
SR. RAFOLS: Es que el hijo de una filipina con un extranjero, aunque este no reconozca al hijo, no es desconocido.	MR. RAFOLS: The son of a Filipina to a foreigner, although the latter does not recognize the child, is not of unknown parentage.
EL PRESIDENTE: Acepta Su Señoria o no la enmienda?	PRESIDENT: Does the gentleman accept the amendment or not?
SR. RAFOLS: No acepto la enmienda, porque la enmienda excluiria a los hijos de una filipina con un extranjero que este no reconoce. No son desconocidos y yo creo que esos hijos de madre filipina con extranjero y el padre no reconoce, deben ser tambien considerados como filipinos.	MR. RAFOLS: I do not accept the amendment because the amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is not unknown and I believe that these children of a Filipino mother by a foreigner who does not recognize them should also be considered Filipinos.
EL PRESIDENTE: La cuestion en orden es la enmienda a la enmienda del Delegado por Cebu, Sr. Briones.	PRESIDENT: The question to be settled is the amendment to the amendment of the delegate from Cebu, Mr. Briones.
MR. BUSLON: Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?	MR. BUSLON: Mr. President, don't you think it would be better to leave the matter in the hands of the Legislature?
SR. ROXAS: Señor Presidente, mi opinion humilde es que estos son casos muy pequeños y contados, para que la constitucion necesite referirse a ellos. Por leyes internacionales se reconoce el principio de que los hijos o	MR. ROXAS: Mr. President, my humble opinion is that these cases are very insignificant and very few that the constitution need not make reference to them. International law recognizes the principle that the children or

las personas nacidas en un pais de padres desconocidos son ciudadanos de esa nacion, y no es necesario incluir una disposicion taxativa sobre el particular.	persons in a country of unknown parents are citizens of that nation and it is not necessary to include a restrictive provision on this subject.
LA ENMIENDA BRIONES ES RETIRADA	THE BRIONES AMENDMENT IS WITHDRAWN
EL PRESIDENTE: Insiste el Caballero por Cebu, Sr. Briones, en su enmienda?	PRESIDENT: Does the gentleman from Cebu, Mr. Briones, insist in his amendment?
SR. BRIONES: No tengo especial interes, señor Presidente, en esa enmienda y la retiro.	SR. BRIONES: I have no special interest, Mr. President, in the amendment and I withdraw.
EL PRESIDENTE: Por retirada.	PRESIDENT: Withdrawn.
LA ENMIENDA RAFOLS ES RECHAZADA	**THE RAFOLS AMENDMENT IS REJECTED**
EL PRESIDENTE: Insiste el Caballero por Cebu, Sr. Rafols, en su enmienda?	PRESIDENT: Does the gentleman from Cebu, Mr. Rafols, insist in his amendment?
SR. RAFOLS: Si.	SR. RAFOLS: Yes.
EL PRESIDENTE: La Mesa sometera a votacion dicha enmienda. Los que esten conformes con la misma, que digan si. (Una minoria: SI.) Los que no lo esten, que digan no. (Una mayoria: NO.) Queda rechazada la enmienda.[24]	PRESIDENT: Let us submit to a vote the amendment. Those who agree with it, say yes. (a minority: YES.) Those who are not, say no. (a majority: NO.) **The amendment is rejected.** (Emphasis supplied)

During the 26 November 1934 deliberations of the Constitutional Convention, Delegate Rafols proposed an amendment to declare as Filipino citizens those natural or illegitimate children of Filipino mothers and alien fathers who do not acknowledge them. Such proposed amendment, according to Delegate Rafols, included "**children of unknown parentage.**"

Three delegates voiced their objections to Rafols's amendment, namely Delegates Buslon, Montinola, and Roxas.

Delegate Teofilo Buslon suggested that the subject matter be left in the hands of the legislature, which meant that Congress would decide whether to

[24] Proceedings of the Philippine Constitutional Convention, Vol. IV, 26 November 1934, pp. 186-188.

categorize as Filipinos (1) natural or illegitimate children of Filipino mothers and alien fathers who do not recognize them; and (2) children of unknown parentage. If that were the case, foundlings were not and could not validly be considered as natural-born Filipino citizens as defined in the Constitution since Congress would then provide the enabling law for them to be regarded as Filipino citizens. Foundlings would be naturalized citizens since they acquire Filipino citizenship "in accordance with law" under paragraph (5), Section 1 of Article IV of the 1935 Constitution. Significantly, petitioner and the Solicitor General, who agrees with petitioner's position, conveniently left out Delegate Buslon's opinion.

Petitioner quotes the opinions of Delegates Ruperto Montinola and Manuel Roxas to support her theory. Petitioner argues that "the pertinent deliberations of the 1934 Constitutional Convention show that the intent of the framers was not to exclude foundlings from the term 'citizens of the Philippines,' but simply to avoid redundancy occasioned by explicating what to them was already a clear principle of existing domestic and international law."[25]

Petitioner is again gravely mistaken.

There was no domestic law as well as international law existing during the proceedings of the 1934 Constitutional Convention explicitly governing citizenship of foundlings, and thus, there could not have been a redundancy of any law to speak of.

Delegate Montinola applied the Spanish Civil Code provision, stating that children of unknown parentage born in Spanish territory were considered Spaniards, and opined that the same concept could be applied in the Philippines and thus children of unknown parentage born in the Philippines should be considered Filipino citizens.

However, this was an erroneous application since the provisions of the Spanish Civil Code (which Delegate Montinola was relying on) were no longer in effect as of the end of Spanish rule in the Philippines. The provisions of the Spanish Civil Code cited by Delegate Montinola ceased to have effect upon the cession by Spain of the Philippines to the United States. As early as 1912, in *Roa v. Collector of Customs*,[26] the Court stated:

> Articles 17 to 27, inclusive, of the Civil Code deal entirely with the subject of Spanish citizenship. When these provisions were enacted, Spain was and is now the sole and exclusive judge as to who shall and who shall not be subjects of her kingdom, including her territories. Consequently, the said articles, being political laws (laws regulating the relations sustained by

[25] Petitioner's Memorandum, pp. 103-104.
[26] 23 Phil. 315, 330-331 (1912).

> the inhabitants to the former sovereign), must be held to have been abrogated upon the cession of the Philippine Islands to the United States.
>
> > "By well-settled public law, upon the cession of territory by one nation to another, either following a conquest or otherwise, * * * those laws which are political in their nature and pertain to the prerogatives of the former government immediately cease upon the transfer of sovereignty." (Opinion, Atty. Gen., July 10, 1889.)

Thus, Delegate Montinola's opinion was based on an erroneous premise since the provisions of the Spanish Civil Code he cited had already long been repealed and could no longer be applied in the Philippines.

The same can be said of Delegate Manuel Roxas's opinion regarding the supposed international law principle which recognizes a foundling to be a citizen of the country where the foundling is found. At that time, there was nothing in international law which automatically granted citizenship to foundlings at birth. In fact, Delegate Roxas did not cite any international law principle to that effect.

Only the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which articulated the presumption on the **place of birth** of foundlings, was in existence during the deliberations on the 1935 Constitution. As will be discussed further, the 1930 Hague Convention does not guarantee a nationality to a foundling **at birth**. Therefore, there was no prevailing customary international law at that time, as there is still none today, conferring automatically a nationality to foundlings at birth.

Moreover, none of the framers of the 1935 Constitution mentioned the term "natural-born" in relation to the citizenship of foundlings. Again, under the 1935 Constitution, only those whose fathers were Filipino citizens were considered natural-born Filipino citizens. Those who were born of Filipino mothers and alien fathers were still required to elect Philippine citizenship, preventing them from being natural-born Filipino citizens. If, as petitioner would like us to believe, the framers intended that foundlings be considered natural-born Filipino citizens, this would have created an absurd situation where a child with unknown parentage would be placed in a better position than a child whose mother is actually known to be a Filipino citizen. The framers of the 1935 Constitution could not have intended to create such an absurdity.

In any event, Delegate Rafols's amendment, when put to a vote, was clearly rejected by the majority of the delegates to the 1934 Constitutional Convention. **To reiterate, Delegate Rafols's proposal was defeated in the voting**. The rejection of the Rafols amendment not only meant the non-inclusion in the text of the Constitution of a provision that children with

unknown parentage are Filipino citizens, but also signified the rejection by the delegates of the idea or proposition that foundlings are Filipino citizens at birth just like natural-born citizens. While the framers discussed the matter of foundlings because of Delegate Rafols's amendment, they not only rejected the Rafols proposal but also clearly manifested that foundlings could not be citizens of the Philippines at birth like children of Filipino fathers. Stated differently, the framers intended to exclude foundlings from the definition of natural-born Filipino citizens.

Clearly, there is no "silence of the Constitution" on foundlings because the majority of the delegates to the 1934 Constitutional Convention expressly rejected the proposed amendment of Delegate Rafols to classify children of unknown parentage as Filipino citizens. There would have been "silence of the Constitution" if the Convention never discussed the citizenship of foundlings. **There can never be "silence of the Constitution" if the Convention discussed a proposal and rejected it, and because of such rejection the subject of the proposal is not found in the Constitution**. The absence of any mention in the Constitution of such rejected proposal is not "silence of the Constitution" but "express rejection in the Constitution" of such proposal.

Further, to include foundlings among those born of Filipino fathers or Filipino mothers based solely on Montinola's and Roxas's opinions during the deliberations of the Constitutional Convention is a strained construction of the Constitution which clearly runs counter to the express provisions of the Constitution and contravenes the *jus sanguinis* principle underlying the citizenship provisions of the Constitution.

Besides, there is nothing in the deliberations of the 1934 Constitutional Convention indicating that a majority of the delegates agreed with the opinion of either Delegate Montinola or Delegate Roxas. The opinions of Delegates Montinola and Roxas remained their personal opinions, just like the countless opinions of other delegates who aired their opinions during the deliberations of the Convention without such opinions being put to a vote. Delegate Buslon proposed that the citizenship of foundlings be addressed through legislation by Congress, a proposal that carried more weight since it falls squarely under paragraph 5, Section 1 of Article IV of the 1935 Constitution authorizing Congress to enact naturalization laws.

Definition of the Term "Natural-Born Citizens"

The term "natural-born citizen" was first discussed by the framers of the 1935 Constitution in relation to the qualifications of the President and Vice-President. In particular, Delegate Roxas elaborated on this term,

explaining that a natural-born citizen is a "**citizen by birth**" – a person who is a citizen by reason of his or her birth and not by operation of law. Delegate Roxas explained:

> Delegate Roxas. - Mr. President, the phrase, 'natural-born citizen,' appears in the Constitution of the United States; but the authors say that this phrase has never been authoritatively interpreted by the Supreme Court of the United States in view of the fact that there has never been raised the question of whether or not an elected President fulfilled this condition. The authors are uniform in the fact that the words, **'natural-born citizen,' means a citizen by birth, a person who is a citizen by reason of his birth, and not by naturalization or by a further declaration required by law for his citizenship.** In the Philippines, for example, under the provisions of the article on citizenship which we have approved, **all those born of a father who is a Filipino citizen, be they persons born in the Philippines or outside, would be citizens by birth or 'natural-born.'**
>
> And with respect to one born of a Filipino mother but of a foreign father, the article which we approved about citizenship requires that, upon reaching the age of majority, this child needs to indicate the citizenship which he prefers, and if he elects Philippine citizenship upon reaching the age of majority, then he shall be considered a Filipino citizen. **According to this interpretation, the child of a Filipino mother with a foreign father would not be a citizen by birth, because the law or the Constitution requires that he make a further declaration after his birth.** Consequently, the phrase, 'natural-born citizen,' as it is used in the English text means a Filipino citizen by birth, regardless of where he was born.[27] (Emphasis supplied)

Clearly, it was the intent of the framers of the 1935 Constitution to refer to natural-born citizens as only those who were Filipino citizens by the

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[27] This is the English translation of the explanation given by Delegate Roxas during the deliberations. Jose M. Aruego, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 1949, Vol. 1, pp. 404-405.

The portions of the records read:

SR. ROXAS. Señor Presidente, la frase *natural born citizen* aparece en la Constitucion de los Estados Unidos; pero los autores dicen que esta frase nunca ha sido interpretada autoritativamente por la Corte Suprema de los Estados Unidos, en vista de que nunca se habia suscitado la cuestion de si un Presidente elegido, reunia o no esta condicion. Los autores estan uniformes en que las palabras *natural born citizen*, quiere decir un ciudadano por nacimiento, una persona que es ciudadano por razon de su nacimiento y no por naturalizacion o por cualquiera declaracion ulterior exigida por la ley para su ciudadania. En Filipinas, por ejemplo, bajo las disposiciones de los articulos sobre ciudadania que hemos aprobado, seria ciudadano por nacimiento, o sea *natural born* todos aquellos nacidos de un padre que es ciudadano filipino, ya sea una persona nacida en Filipinas o fuera de ellas.

Y con respeto de uno nacido de madre filipina, pero de padre extranjero, el articulo que aprobamos sobre ciudadania, requiere de que al llegar a la mayoria de edad, este hijo necesita escoger la ciudadania por la cual opta, y si opta por la ciudadania filipina al llegar a la mayoria de edad, entonces sera considerado ciudadano filipino. Bajo esta interpretacion el hijo de una madre filipina con padre extranjero, no seria un ciudadano por nacimiento, por aquello de que la ley o la Constitucion requiere que haga una declaracion ulterior a su nacimiento. Por lo tanto, la frase *a natural born citizen*, tal como se emplea en el texto ingles, quiere decir un ciudadano filipino por nacimiento, sin tener en cuenta donde ha nacido. (Proceedings of the Philippine Constitutional Convention, Vol. V, 18 December 1934, pp. 307-308).

mere fact of being born to fathers who were Filipino citizens – nothing more and nothing less. To repeat, under the 1935 Constitution, only children whose fathers were Filipino citizens were natural-born Filipino citizens. Those who were born of alien fathers and Filipino mothers were not considered natural-born Filipino citizens, despite the fact that they had a blood relation to a Filipino parent. Since a natural-born citizen is a citizen by birth who need not perform any act to acquire or perfect Philippine citizenship, then those born of Filipino mothers and alien fathers and who had to elect citizenship upon reaching the age of majority, an overt act to perfect citizenship, were not considered natural-born Filipino citizens. As a matter of course, those whose parents are neither Filipino citizens or are both unknown, such as in the case of foundlings, cannot be considered natural-born Filipino citizens.

Foundlings and International Law

A. Each State Determines its Citizens

Fundamental is the principle that every independent state has the right and prerogative to determine who are its citizens. In *United States v. Wong Kim Ark,*[28] decided in 1898, the United States Supreme Court enunciated this principle:

> It is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.

In our jurisdiction, the Court similarly echoed in the 1912 case of *Roa v. Collector of Customs*[29] this incontrovertible right of each state to determine who are its citizens. Hence, every independent state cannot be denied this inherent right to determine who are its citizens according to its own constitution and laws.

Article 1, Chapter I of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws explicitly provides:

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

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[28] 169 U.S. 649 (1898).

[29] Supra note 26.

This means that municipal law, both constitutional and statutory, determines and regulates the conditions on which citizenship is acquired.[30] There is no such thing as international citizenship or international law by which citizenship may be acquired.[31] Whether an individual possesses the citizenship of a particular state shall be determined in accordance with the constitution and statutory laws of that state.

B. Conventional International Law, Customary International Law, and Generally Accepted Principles of International Law

Petitioner invokes conventional international law, customary international law and generally accepted principles of international law to support her claim that she is a natural-born Filipino citizen. A review of these concepts is thus inevitable.

Article 38 of the Statute of the International Court of Justice sets out the following sources of international law: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) general principles of law recognized by civilized nations; and (4) judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.[32]

Essentially, conventional international law is the body of international legal principles contained in treaties or conventions as opposed to customary international law or other sources of international law.[33]

Customary international law is defined as a general and consistent practice of states followed by them from a sense of legal obligation.[34] I had occasion to explain the concept of customary international law as used in our Constitution in this wise:

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[30] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines,* Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 443 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed on 2 March 2016).

[31] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines,* Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 443 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed on 2 March 2016).

[32] http://www.icj-cij.org/documents/?p1=4&p2=2; last accessed on 2 March 2016.

[33] https://www.law.cornell.edu/wex/conventional_international_law; last accessed on 2 March 2016.

[34] *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386 (2007).

> Generally accepted principles of international law, as referred to in the Constitution, include customary international law. Customary international law is one of the primary sources of international law under Article 38 of the Statute of the International Court of Justice. Customary international law consists of acts which, by repetition of States of similar international acts for a number of years, occur out of a sense of obligation, and taken by a significant number of States. It is based on custom, which is a clear and continuous habit of doing certain actions, which has grown under the aegis of the conviction that these actions are, according to international law, obligatory or right. Thus, customary international law requires the concurrence of two elements: [1] the established, wide-spread, and consistent practice on the part of the States; and [2] a psychological element known as *opinio juris sive necessitatis* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[35]

In the *North Sea Continental Shelf Cases*,[36] the International Court of Justice held that "[n]ot only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element is implicit in the very notion of the *opinio juris sive necessitatis*."

Moreover, to be considered as customary international law, a rule must apply to all, or majority of all, states. One possible exception to the universal applicability of customary international law is local or special custom. A local or special customary international rule binds only a group of states, regional or otherwise.[37] "Regional customary international law refers to customary international law that arises from state practice and *opinio juris* of a discrete and limited number of states; as it departs from generally applicable customary international law, it is only binding upon and opposable against those states participating in its formation."[38]

Generally accepted principles of international law are those legal principles which are so basic and fundamental that they are found universally in the legal systems of the world. These principles apply all over

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[35] Dissenting Opinion, *Bayan Muna v. Romulo*, 656 Phil. 246, 326 (2011).

[36] Judgment of 20 February 1969, at 77 (http://www.icj-cij.org/docket/files/52/5561.pdf; last accessed on 1 March 2016).

[37] *Formation and Evidence of Customary International Law,* International Law Commission, UFRGS Model United Nations Journal, p. 192 (http://www.ufrgs.br/ufrgsmun/2013/wp-content/uploads/2013/10/Formation-and-Evidence-of-Customary-International-Law.pdf; last accessed on 1 March 2016).

[38] John H. Currie, PUBLIC INTERNATIONAL LAW, Second Edition, 2008 (https://www.irwinlaw.com/cold/regional_customary_international_law; last accessed on 1 March 2016).

the world, not only to a specific country, region or group of states. Legal principles such as laches, estoppel, good faith, equity and *res judicata* are examples of generally accepted principles of international law.[39] In *Pharmaceutical and Health Care Association of the Philippines v. Duque III*,[40] the Court further explained the concept of generally accepted principles of law, to wit:

> Some legal scholars and judges look upon certain "general principles of law" as a primary source of international law because they have the "character of *jus rationale*" and are "valid through all kinds of human societies." (Judge Tanaka in his dissenting opinion in the 1966 South West Africa Case, 1966 I.C.J. 296). O'Connell holds that certain principles are part of international law because they are "basic to legal systems generally" and hence part of the *jus gentium*. These principles, he believes, are established by a process of reasoning based on the common identity of all legal systems. If there should be doubt or disagreement, one must look to state practice and determine whether the municipal law principle provides a just and acceptable solution. x x x.

C. There is No Customary International Law Presuming a Foundling as a Citizen of the Country Where the Foundling is Found

Petitioner claims that under customary international law and generally accepted principles of international law, she (1) has a right to a nationality from birth; (2) has a right to be protected against statelessness; and (3) is presumed to be a citizen of the Philippines where she was found.

Petitioner anchors her claims on the (1) 1989 Convention on the Rights of the Child (CRC), (2) 1966 International Covenant on Civil and Political Rights (ICCPR), (3) 1948 Universal Declaration of Human Rights (UDHR), (4) 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930 Hague Convention), and (5) the 1961 Convention on the Reduction of Statelessness (CRS), among others.

1. The 1989 Convention on the Rights of the Child

> Article 7
> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and as far as possible, the right to know and be cared for by his or her parents.

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[39] See Malcolm N. Shaw, INTERNATIONAL LAW, Seventh Edition, 2014, pp. 69-77.

[40] Supra note 34, at 400, citing Louis Henkin, Richard C. Pugh, Oscar Schachter, Hans Smith, *International Law, Cases and Materials*, 2nd Ed., p. 96. Emphasis omitted.

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

The Philippines signed the Convention on the Rights of the Child on 26 January 1990 and ratified the same on 21 August 1990. The Convention defines a child to mean every human being below the age of eighteen years unless, under the law applicable to the child, the age of majority is attained earlier.

Since petitioner was born in 1968 or more than 20 years before the Convention came into existence, the Convention could not have applied to the status of her citizenship at the time of her birth in 1968. Petitioner's citizenship at birth could not be affected in any way by the Convention.

The Convention guarantees a child the right to acquire a nationality, and requires the contracting states to ensure the implementation of this right, in particular where the child would otherwise be stateless. Thus, as far as nationality is concerned, the Convention guarantees the right of the child to acquire a nationality so that the child will not be stateless. **The Convention does not guarantee a child a nationality at birth, much less a natural-born citizenship at birth as understood under the Philippine Constitution, but merely the right to acquire a nationality in accordance with municipal law.**

2. *The 1966 International Covenant on Civil and Political Rights*

> Article 24
> 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
>
> x x x x
>
> 3. **Every child has the right to acquire a nationality.** (Emphasis supplied)

Adopted on 16 December 1966 and entered into force on 23 March 1976, the International Covenant on Civil and Political Rights recognizes "the ideal of free human beings enjoying civil and political freedom and freedom from fear and want which can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."[41]

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[41] http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; last accessed on 2 March 2016.

The Philippines is a signatory to this international treaty. Similar to the text of the Convention on the Rights of the Child, the ICCPR does not obligate states to automatically grant a nationality to children at birth. **The Covenant merely recognizes the right of a child to acquire a nationality. In short, the Covenant does not guarantee a foundling a nationality at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.**

3. *The 1948 Universal Declaration of Human Rights*

> Article 15.
> (1) **Everyone has the right to a nationality.**
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. (Emphasis supplied)

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948 whereby "Member States (including the Philippines) have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."[42] It sets out, for the first time, fundamental human rights to be universally protected.[43]

Article 15(1) of the UDHR simply affirms the right of every human being to a nationality. Being a mere declaration, such right guaranteed by the UDHR does not obligate states to automatically confer nationality to a foundling at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.

4. *The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*

> Article 14.
> **A child whose parents are both unknown shall have the nationality of the country of birth**. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
>
> **A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found**.
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> Article 15.
> Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents

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[42] http://www.un.org/en/documents/udhr/; last accessed on 2 March 2016.
[43] http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx; last accessed on 2 March 2016.

> having no nationality, or of unknown nationality, may obtain the nationality of the said State. **The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.** (Emphasis supplied)

The Philippines is not a signatory to this Convention, and therefore, it is not bound by the Convention. Petitioner, however, claims that this Convention is evidence of "generally accepted principles of international law," which allegedly created the presumption that a foundling is a citizen at birth of the state in which the foundling is found.

Article 14 merely states that a foundling "shall have the nationality of the **country *of* birth**." It does not say that a foundling shall have the **nationality *at* birth** of the country where the foundling is found. Nowhere in Article 14 is nationality guaranteed to a foundling ***at* birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.** Likewise, Article 14 merely lays down the presumption that a foundling is born in the territory of the state in which the foundling is found. This is the **only presumption** that Article 14 establishes.

Article 15 acknowledges the fact that acquisition of nationality by reason of birth in a state's territory is not automatic. **Article 15 expressly states that municipal law shall "determine the conditions governing the acquisition of its nationality" by a foundling.** Thus, to implement the Convention the contracting parties have to enact statutory legislation prescribing the conditions for the acquisition of citizenship by a foundling. This rules out any automatic acquisition of citizenship at birth by a foundling.

5. *The 1961 Convention on the Reduction of Statelessness*

> Article 1
> 1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. **Such nationality shall be granted:**
> **(a) at birth, by operation of law, or**
> **(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law.** Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.
>
> A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.
>
> x x x x

> Article 2
> **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.** (Emphasis supplied)

A 1961 United Nations multilateral treaty, the primary aim of the Convention is the prevention of statelessness by requiring states to grant citizenship to children born in their territory, or born to their nationals abroad, who would otherwise be stateless. **To prevent statelessness in such cases, states have the option to grant nationality (1) at birth by operation of law, or (2) subsequently by application. In short, a contracting state to the Convention must enact an implementing law choosing one of the two options before the Convention can be implemented in that state.**

The Philippines is not a signatory to this Convention, and thus, the Philippines is a non-contracting state. **The Convention does not bind the Philippines.** Moreover, this Convention does not provide automatically that a foundling is a citizen at birth of the country in which the foundling is found.

Article 2 of the Convention provides, "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 of parents possessing the nationality of that state." Dr. Laura van Waas explains the meaning of Article 2 of the Convention, as follows:

> Once more, the wording of this provision is evidence of the compromise reached between *jus soli* and *jus sanguinis* countries. **Rather than determining that a child found abandoned on the territory of the state will automatically acquire the nationality of that state,** it declares that the child will be assumed to have both the necessary *jus soli* and *jus sanguinis* links with the state: born on the territory to parents possessing the nationality of the state. **This means that the child will then simply acquire nationality *ex lege* under the normal operation of the state's nationality regulations** – the effect being the same in both *jus soli* and *jus sanguinis* regimes. No attempt is made to further define the type of evidence that may be accepted as "proof to the contrary", this being left to the discretion of the contracting states.[44] (Emphasis supplied)

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[44] Laura van Waas, *Nationality Matters: Statelessness under International Law*, pp. 69-70, Volume 29, School of Human Rights Research Series, Intersentia, 2008 (http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf; last accessed on 2 March 2016).

First, Article 2 applies only to a "**foundling found in the territory of a Contracting State.**" The Philippines is not a contracting state to the Convention and thus Article 2, and the entire Convention, does not apply to the Philippines.

Second, there must be "absence of proof" that the parents of the foundling do not possess the nationality of another state. This means there must be an administrative or judicial proceeding to determine this factual issue, an act necessary to acquire the citizenship of the state where the foundling is found. This also means that the grant of citizenship under Article 2 is not automatic, as Dr. Laura van Waas explains. This factual determination prevents the foundling from acquiring natural-born citizenship at birth as understood under our Constitution, assuming Article 2 applies to the Philippines.

Third, the grant of citizenship under Article 2 is *ex lege* – which means by operation of law – referring to municipal **statutory** law. Assuming Article 2 applies to the Philippines, and it does not, this grant of citizenship refers to naturalization by operation of law, the category of citizens under paragraph (5), Section 1 of Article IV of the 1935 Constitution (now Section 1(4), Article IV of the 1987 Constitution), or "[t]hose who are naturalized in accordance with law."

Nationality at birth may result because the law applicable is either *jus soli* or *jus sanguinis*. A child born in the United States to foreign parents is a citizen of the United States at birth because the United States adopts the *jus soli* principle. Under the *jus soli* principle, the place of birth determines citizenship at birth, not blood relation to the parents. In contrast, a child born in the Philippines to foreign parents is not a Philippine citizen at birth but a foreigner because the Philippines follows the *jus sanguinis* principle. Under the *jus sanguinis* principle, citizenship at birth is determined by blood relation to the parents.

Nationality at birth does not necessarily mean natural-born citizenship as prescribed under the Philippine Constitution. The Constitution recognizes natural-born citizens at birth only under the principle of *jus sanguinis* – there must be a blood relation by the child to a Filipino father or mother. Even assuming, and there is none, that there is an international law granting a foundling citizenship, at birth, of the country where the foundling is found, it does not necessarily follow that the foundling qualifies as a natural-born citizen under the Philippine Constitution. In the Philippines, any citizenship granted at birth to a child with no known blood relation to a Filipino parent can only be allowed by way of naturalization as mandated by the Constitution, under paragraph 5, Section 1 of Article IV of the 1935

Constitution,[45] paragraph 4, Section 1 of Article III of the 1973 Constitution,[46] and paragraph 4, Section 1 of Article IV of the 1987 Constitution.[47] **Such a child is a naturalized Filipino citizen, not a natural-born Filipino citizen.**

In sum, there is no international treaty to which the Philippines is a contracting party, which provides expressly or impliedly that a foundling is deemed a **natural-born** citizen of the country in which the foundling is found.[48] There is also obviously no international treaty, to which the Philippines is not a party, obligating the Philippines to confer automatically Philippine citizenship to a foundling at birth.

Since the Philippines is not a signatory to the various international conventions regulating nationality,[49] we shall scrutinize whether the relevant provisions on foundlings contained in the international conventions cited by petitioner have become part of customary international law or generally accepted principles of international law on nationality.

We shall first lay down the basic premise for an international rule to be considered customary international law. Such a rule must comply with the twin elements of widespread and consistent state practice, the objective element; and *opinio juris sive necessitatis*, the subjective element. State practice refers to the continuous repetition of the same or similar kind of acts or norms by states. It is demonstrated upon the existence of the following elements: (1) generality or widespread practice; (2) uniformity and consistency; and (3) duration. On the other hand, *opinio juris*, the psychological element, requires that the state practice or norm be carried out

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[45] Section 1, Article IV of the 1935 Constitution reads in part:

Section 1. The following are citizens of the Philippines:
x x x x
(5) Those who are naturalized in accordance with law.

[46] Section 1, Article III of the 1973 Constitution reads in part:

Section 1. The following are citizens of the Philippines:
x x x x
(4) Those who are naturalized in accordance with law.

[47] Section 1, Article IV of the 1987 Constitution reads in part:

Section 1. The following are citizens of the Philippines:
x x x x
(4) Those who are naturalized in accordance with law.

[48] See Jaime S. Bautista, *No customary international law automatically confers nationality to foundlings*, The Manila Times Online (http://www.manilatimes.net/no-customary-international-law-automatically-confers-nationality-to-foundlings/221126; last accessed on 2 March 2016).

[49] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, Philippine Law Journal, Vol. 60, No. 1, Supplemental Issue, 1985, p. 16 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20International%20Law.pdf; last accessed on 2 March 2016).

in the belief that this practice or norm is obligatory as a matter of law.[50]

The pertinent provisions on foundlings are found in the 1930 Hague Convention and the 1961 Convention on the Reduction of Statelessness. Article 14 of the 1930 Hague Convention and Article 2 of the 1961 Convention on the Reduction of Statelessness state, respectively: (1) "A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found"; and (2) "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."

We shall limit our discussion to Article 2 of the Convention on the Reduction of Statelessness since the presumption in Article 14 of the 1930 Hague Convention concerns merely the **place of birth** of foundlings. In this case, the parties admit that petitioner was born in Jaro, Iloilo in the Philippines, which is the same place where she was found. Therefore, it is no longer presumed that petitioner was born in the territory of the Philippines since it is already an admitted fact that she was born in the Philippines.

There are only 64 States which have ratified the Convention on the Reduction of Statelessness as of February 2016.[51] Out of the 193 Member-States of the United Nations,[52] **far less than a majority** signified their agreement to the Convention.

One of the essential elements of customary international law is the widespread and consistent practice by states of a specific international principle, in this case, that foundlings are presumed to be born to parents who are citizens of the state where the foundling is found. **Petitioner failed to prove this objective element**. Prof. Malcolm N. Shaw, in his widely used textbook *International Law*, explains the meaning of widespread and consistent practice in this way:

> One particular analogy that has been used to illustrate the general nature of customary law as considered by de Visscher. He likened the growth of custom to the gradual formation of a road across vacant land. After an initial uncertainty as to direction, the **majority** of users begin to follow the same line which becomes a single path. Not long elapses before that path is transformed into a road accepted as the only regular way, even though it is not possible to state at which precise moment this latter change occurs. And so it is with the formation of a custom. De Visscher develops this idea by reflecting that just as some make heavier

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[50] *Bayan Muna v. Romulo*, 656 Phil. 246, 303 (2011).

[51] See Dean Ralph A. Sarmiento, *The Right to Nationality of Foundlings in International Law*, (http://attyralph.com/2015/12/03/foundlingsnationality/; last accessed on 1 March 2016).

[52] http://www.un.org/en/members/index.shtml, last accessed on 7 March 2016.

> footprints than others due to their greater weight, the more influential states of the world mark the way with more vigour and tend to become the guarantors and defenders of the way forward.[53] (Emphasis supplied)

Prof. Shaw concludes, "Accordingly, custom should to some extent mirror the perceptions of the **majority of states**, since it is based upon usages which are practiced by nations as they express their power and their hopes and fears."[54]

Petitioner manifestly failed to show that Article 2 of the Convention on the Reduction of Statelessness is an "established, **widespread and consistent practice**" of a **majority** of sovereign states. There is no showing that this Convention was in fact enforced or practiced by at least a majority of the members of the United Nations. Petitioner claims that "ratification by a majority of states is not essential for a principle contained in an international treaty or convention to be 'customary international law.'"[55] On the other hand, it is generally accepted by international law writers that the Convention on the Reduction of Statelessness does not constitute customary international law precisely because of the small number of states that have ratified the Convention. Dr. Laura van Waas summarizes the state of the law on this issue:

> In order to contend that a rule of customary international law has thereby been established, we must also prove that states are legislating in this way due to the conviction that they are legally compelled to do so – the *opinio juris sive necessitatis.* **The codification of the obligation to grant nationality to foundlings in the 1930 Hague Convention and the 1961 Statelessness Convention cannot be taken as sufficient evidence due, mainly, to the low number of state parties to both instruments.**[56] (Emphasis supplied)

It is hornbook law that there is no general international law, whether customary international law or generally accepted principle of international law, obligating the Philippines, or any state for that matter, to automatically confer citizenship to foundlings at birth. As Prof. Serena Forlati writes: "It is thus not possible to conclude that every child who would otherwise be stateless is automatically entitled to the nationality of her or his country of

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[53] Malcolm N. Shaw, INTERNATIONAL LAW, Seventh Edition, 2014, p. 56, citing De Visscher, Theory and Reality, p. 149. See also Hersch Lauterpacht, THE DEVELOPMENT OF INTERNATIONAL LAW, p. 368; Pitt Cobbett, LEADING CASES ON INTERNATIONAL LAW, 4th Edition, London, 1922, p. 5, and Michael Akehurst, *Custom as a Source of International Law*, British Yearbook of International Law, 1975, Vol. 47, pp. 22-3.

[54] Id.

[55] Petitioner's Memorandum, p. 174, citing *Mijares v. Rañada* (495 Phil. 372 [2005]) and *Razon v. Tagitis* (621 Phil. 536 [2009]).

[56] Laura van Waas, *Nationality Matters: Statelessness under International Law*, pp. 70-71, Volume 29, School of Human Rights Research Series, Intersentia, 2008 (http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf; last accessed on 2 March 2016).

birth under the ICCPR, the CRC or **general international law.**"[57]

Out of the 64 parties to the Convention on the Reduction of Statelessness, **only 13 states provide for the automatic and unconditional acquisition of nationality by foundlings.**[58] This means that the majority of the contracting states to the Convention do not automatically confer nationality to foundlings at birth. In fact, the majority of the contracting states impose various conditions for the acquisition of nationality to prevent statelessness, such as proof of unknown parentage, the specific place where the foundling is found, and whether the foundling is a newborn infant or a child of a certain age, among others. These conditions must necessarily be established in the appropriate proceeding before the foundling can acquire citizenship. These conditions for the acquisition of citizenship effectively prevent a foundling from being automatically considered a citizen at birth. In the Philippines, such conditions will prevent a foundling from being considered a natural-born citizen as defined under the Philippine Constitution.

Since the first essential element for an international rule to be considered a customary international law is missing in this case, the second essential element of *opinio juris* is logically lacking as well. In fact, petitioner failed to demonstrate that any compliance by member states with the Convention on the Reduction of Statelessness was obligatory in nature. In *Bayan Muna v. Romulo*,[59] the Court held:

> Absent the widespread/consistent-practice-of-states factor, the second or the psychological element must be deemed non-existent, for an inquiry on why states behave the way they do presupposes, in the first place, that they are actually behaving, as a matter of settled and consistent practice, in a certain manner. This implicitly requires belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it. Like the first element, the second element has likewise not been shown to be present.

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[57] Prof. Serena Forlati, *Nationality as a Human Right*, pp. 22-23, The Changing Role of Nationality in International Law, edited by Alessandra Annoni and Serena Forlati, Routledge Research International Law, 2015 Kindle Edition; emphasis supplied.

[58] http://eudo-citizenship.eu/databases/protection-against-statelessness?p=dataEUCIT&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S02; last accessed on 2 March 2016.

These countries are:

1. Belgium
2. Bulgaria
3. Croatia
4. Finland
5. France
6. Germany
7. Hungary
8. Lithuania
9. Montenegro
10. Netherlands
11. Romania
12. Serbia
13. Sweden

[59] 656 Phil. 246, 306 (2011).

Moreover, aside from the fact that the Philippines is not a contracting party to the Convention on the Reduction of Statelessness, Article 2 of the Convention is inapplicable to this case because the Convention, which took effect after the birth of petitioner, does not have retroactive effect. Paragraph 3, Article 12 of the Convention explicitly states:

> 3. The provisions of Article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State **after the entry into force of the Convention for that State.** (Emphasis supplied)

In short, even if the Philippines were to ratify the Convention today, the Convention would still not benefit petitioner who was born in 1968.

D. Applicable Customary International Law on Citizenship of Foundlings

While there is no customary international law conferring nationality to foundlings at birth, there is no dispute that petitioner has the right to a nationality and the corollary right to be protected against statelessness.

The Philippines is not a signatory to the 1930 Hague Convention or to the Convention on the Reduction of Statelessness. However, the Philippines is a signatory to the Convention on the Rights of the Child and to the International Covenant on Civil and Political Rights. The Philippines also adheres to the Universal Declaration of Human Rights.

The salient provisions of the CRC, the ICCPR and the UDHR on nationality establish principles that are considered customary international law because of the widespread and consistent practice of states and their obligatory nature among states. Generally, most states recognize the following core nationality provisions: (1) every human being has a right to a nationality; (2) states have the obligation to avoid statelessness; and (3) states have the obligation to facilitate the naturalization of stateless persons, including foundlings living within such states.

Right to a Nationality

Article 15 of the Universal Declaration of Human Rights affirms that "everyone has the right to a nationality." With these words, the international community recognizes that every individual, everywhere in the world, should hold a legal bond of nationality with a state.[60]

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[60] https://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/53a164ab0b80eeaac70001fe/preventing_and_reducing_statelessness.pdf; last accessed on 2 March 2016.

The right to a nationality is a fundamental human right[61] from which springs the realization of other cardinal human rights. Possession of a nationality carries with it the diplomatic protection of the country of nationality and is also often a legal or practical requirement for the exercise of political and civil rights. Consequently, the right to a nationality has been described as the "**right to have rights.**"[62]

Obligation to Avoid Statelessness

Closely linked to the right of the individual to a nationality is every state's obligation to avoid statelessness since the non-fulfillment of such right results in statelessness.[63] In determining who are its nationals, every state has an obligation to avoid cases of statelessness.

Obligation to Facilitate the Naturalization of Stateless Persons, Including Foundlings

The right to confer nationality, being an inherent right of every independent state, carries with it the obligation to grant nationality to individuals who would otherwise be stateless. To do this, states must facilitate the naturalization of stateless persons, including foundlings. Therefore, states must institute the appropriate processes and mechanisms, through the passage of appropriate statutes or guidelines, to comply with this obligation.

Most states recognize as customary international law the right of every human being to a nationality which in turn, requires those states to avoid statelessness, and to facilitate the naturalization of stateless persons, including foundlings. However, there is no customary international law conferring automatically citizenship at birth to foundlings, much less natural-born citizenship at birth as understood under the Philippine Constitution.

E. General Principle of International Law Applicable to Foundlings

Considering that there is no conventional or customary international law automatically conferring nationality to foundlings at birth, there are only

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[61] http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx; last accessed on 2 March 2016.

[62] See http://www.ijrcenter.org/thematic-research-guides/nationality-citizenship/; last accessed on 2 March 2016.

[63] http://eudo-citizenship.eu/InternationalDB/docs/Explanatory%20report%20Convention%20avoidance%20statelessness%20in%20relation%20to%20State%20succession%20CETS%20200%20PDF.pdf; last accessed on 1 March 2016.

two general principles of international law applicable to foundlings. *First* is that a foundling is deemed domiciled in the country where the foundling is found. **A foundling is merely considered to have a *domicile at birth, not a nationality at birth.*** Stated otherwise, a foundling receives at birth a domicile of origin which is the country in which the foundling is found.[64] *Second*, in the absence of proof to the contrary, a foundling is deemed born in the country where the foundling is found.[65] These two general principles of international law have nothing to do with conferment of nationality.

F. Status of International Law Principles in the Philippines

Under Section 3, Article II of the 1935 Constitution,[66] Section 3, Article II of the 1973 Constitution,[67] and Section 2, Article II of the 1987 Constitution,[68] the Philippines adopts the generally accepted principles of international law as part of the law of the land. International law can become part of domestic law either by transformation or incorporation.[69] The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as domestic legislation.[70] The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.[71] The Philippine Constitution adheres to the incorporation method.

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[64] See The Law Commission and the Scottish Law Commission, *Private International Law, The Law of Domicile*, p. 4 (http://www.scotlawcom.gov.uk/files/3212/7989/6557/rep107.pdf; last accessed on 3 March 2016). See also M.W. Jacobs, *A Treatise on the Law of Domicil*, 1887, p. 167 (http://famguardian.org/Publications/TreatOnLawOfDomicile/A_Treatise_on_the_Law_of_Domicil__Nation.pdf, citing Savigny, System, etc. § 359 (Guthrie's trans. p. 132), citing Linde, Lehrbuch, § 89; Felix, Droit Int. Priv. no. 28; Calvo, Manuel, § 198; Id. Dict. *verb.* Dom.; Westlake, Priv. Int. L. 1st ed. no. 35, rule 2; Id. 2d ed. § 236; Dicey, Dom. p. 69, rule 6; Foote, Priv. Int. Jur. p. 9; Wharton, Confl. of L. § 39, citing Heffter, pp. 108, 109, last accessed on 3 March 2016).

[65] John Bassett Moore, A DIGEST OF INTERNATIONAL LAW, Vol. III, 1906, p. 281 (http://www.unz.org/Pub/MooreJohn-1906v03:289; last accessed on 3 March 2016).

[66] Section 3, Article II of the 1935 Constitution provides:

> The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as a part of the law of the Nation.

[67] Section 3, Article II of the 1973 Constitution provides:

> The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[68] Section 2, Article II of the 1987 Constitution provides:

> The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[69] *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, supra note 34, citing Joaquin G. Bernas, S.J., CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT (NOTES AND CASES), Part I (2005).

[70] Id.

[71] Id.

Any treaty, customary international law, or generally accepted international law principle has the status of **municipal statutory law**. As such, it must conform to our Constitution in order to be valid in the Philippines. If a treaty, customary international law or generally accepted international law principle does not contravene the Constitution and statutory laws, then it becomes part of the law of the land. If a treaty, customary international law or generally accepted international law principle conforms to the Constitution but conflicts with statutory law, what prevails is the later law in point of time as international law has the same standing as municipal statutory law.[72] However, if a treaty, customary international law or generally accepted international law principle conflicts with the Constitution, it is the Constitution that prevails. The Constitution remains supreme and prevails over any international legal instrument or principle in case of conflict. In explaining Section 2, Article II of the 1987 Constitution, the constitutionalist Father Joaquin Bernas, S.J. narrated:

> When Commissioner Guingona asked whether "generally accepted principles of international law" were adopted by this provision as part of statutory law or of constitutional law, Nolledo's answer was unclear. He seemed to suggest that at least the provisions of the United Nations Charter would form part of both constitutional and statutory law. Nobody adverted to the fact that Nolledo's interpretation was a departure from what had hitherto been the accepted meaning of the provision. Later, however, during the period of amendment, **Commissioner Azcuna clarified this by saying that generally accepted principles of international law were made part only of statutory law and not of constitutional law.**[73] (Emphasis supplied)

Treaties, customary international law and the generally accepted principles of international law concerning citizenship cannot prevail over the provisions of the Constitution on citizenship in case of conflict with the latter.[74] Treaties, customary international law or generally accepted international law principles on acquisition of citizenship that contravene the language and intent of the Constitution cannot be given effect in the Philippines for being unconstitutional.

Assuming *arguendo* that there was in 1935 and thereafter a customary international law conferring nationality to foundlings at birth, still foundlings could not be considered as natural-born Filipino citizens since to treat them as such would conflict with the concept of *jus sanguinis* under the

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[72] *Secretary of Justice v. Lantion*, 379 Phil. 165 (2000).

[73] Joaquin Bernas, S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1995, pp. 75-76.

[74] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, Philippine Law Journal, Vol. 60, No. 1, Supplemental Issue, 1985, p. 1. (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20International%20Law.pdf; last accessed on 2 March 2016).

1935 Constitution. As stated, in case of conflict between customary international law and the Constitution, it is the Constitution that prevails. The 1935 Constitution clearly required blood relation to the father to establish the natural-born citizenship of a child. The 1935 Constitution did not contain any provision expressly or impliedly granting Filipino citizenship to foundlings on the basis of birth in the Philippines (*jus soli* or law of the soil),[75] with the presumption of Filipino parentage so as to make them natural-born citizens.

Even assuming there was in 1935 and thereafter a customary international law granting to foundlings citizenship at birth, such citizenship at birth is not identical to the citizenship of a child who is biologically born to Filipino parents. The citizenship of a foundling can be granted at birth by operation of law, but the foundling is considered "naturalized in accordance with law" and not a natural-born citizen. Since a foundling's nationality is merely granted by operation of statutory law, specifically customary international law (which has the status of statutory law) assuming such exists, a foundling can only be deemed a Filipino citizen under paragraph 5, Section 1 of Article IV of the 1935 Constitution which refers to naturalized Filipino citizens. To add another category of natural-born Filipino citizens, particularly foundlings born in the Philippines whose parents are unknown, conflicts with the express language and intent of the 1935 Constitution to limit natural-born Filipino citizens to those whose fathers are Filipino citizens.

In short, there is a difference between citizenship at birth because of *jus soli*, and citizenship at birth because of *jus sanguinis*. The former may be granted to foundlings under Philippine statutory law pursuant to paragraph (5), Section 1 of Article IV of the 1935 Constitution but the Philippine citizenship thus granted is not that of a natural-born citizen but that of a naturalized citizen. Only those citizens at birth because of *jus sanguinis*, **which requires blood relation to a parent**, are natural-born Filipino citizens under the 1935, 1973 and 1987 Constitutions.

Foundlings as Naturalized Filipino Citizens

If a child's parents are neither Filipino citizens, the only way that the child may be considered a Filipino citizen is through the process of naturalization in accordance with statutory law under paragraph (5), Section

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[75] See Jaime S. Bautista, *No customary international law automatically confers nationality to foundlings*, The Manila Times, 28 September 2015 (http://www.manilatimes.net/no-customary-international-law-automatically-confers-nationality-to-foundlings/221126/, last accessed on 2 March 2016). See also Joel Ruiz Butuyan, *Legal and emotional entanglements in Poe issue*, 6 October 2015, Philippine Daily Inquirer (http://opinion.inquirer.net/89141/legal-and-emotional-entanglements-in-poe-issue, last accessed on 2 March 2016).

1 of Article IV of the 1935 Constitution. If a child's parents are unknown, as in the case of a foundling, there is no basis to consider the child as a natural-born Filipino citizen since there is no proof that either the child's father or mother is a Filipino citizen. Thus, the only way that a foundling can be considered a Filipino citizen under the 1935 Constitution, as well as under the 1973 and 1987 Constitutions, is for the foundling to be naturalized in accordance with law.

In the Philippines, there are laws which provide for the naturalization of foreigners. These are Commonwealth Act No. 473,[76] as amended by Republic Act No. 530, known as the Revised Naturalization Law, which refers to judicial naturalization, and Republic Act No. 9139,[77] which pertains to administrative naturalization.

Significantly, there is no Philippine statute which provides for the grant of Filipino citizenship specifically to foundlings who are found in the Philippines. The absence of a domestic law on the naturalization of foundlings can be sufficiently addressed by customary international law, which recognizes the right of every human being to a nationality and obligates states to grant nationality to avoid statelessness. Customary international law can fill the gap in our municipal statutory law on naturalization of foundlings in order to prevent foundlings from being stateless. Otherwise, a foundling found in the Philippines with no known parents will be stateless on the sole ground that there is no domestic law providing for the grant of nationality. This not only violates the right of every human being to a nationality but also derogates from the Philippines' obligation to grant nationality to persons to avoid statelessness.

Customary international law has the same status as a statute enacted by Congress. Thus, it must not run afoul with the Constitution. Customary international law cannot validly amend the Constitution by adding another category of natural-born Filipino citizens, specifically by considering foundlings with no known parents as natural-born citizens. Again, under paragraphs (3) and (4) of Section 1, Article IV of the 1935 Constitution, in relation to Sections 1 and 2, Article IV of the 1987 Constitution, only those born of Filipino fathers or Filipino mothers are considered natural-born Filipino citizens.

Applying customary international law to the present case, specifically the right of every human being to a nationality and the Philippines' obligation to grant citizenship to persons who would otherwise be stateless,

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[76] An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization, and to Repeal Acts Numbered Twenty-Nine Hundred and Twenty-Seven and Thirty-Four Hundred and Forty-Eight.

[77] An Act Providing for the Acquisition of Philippine Citizenship for Certain Aliens by Administrative Naturalization and for Other Purposes.

a foundling may be naturalized as a Filipino citizen upon proper application for citizenship. This application should not be interpreted in the strictest sense of the word. On the contrary, the term "application" for purposes of acquiring citizenship must be construed liberally in order to facilitate the naturalization of foundlings. The application for citizenship may be any overt act which involves recognition by the Philippines that the foundling is indeed its citizen. Thus, the application for citizenship may be as simple as applying for a Philippine passport, which serves as evidence of citizenship.[78] An application for a passport is an application for recognition that the holder is a citizen of the state issuing such passport. In the case of petitioner, she applied for, and was issued a Philippine passport on the following dates: (1) 4 April 1988;[79] (2) 5 April 1993;[80] (3) 19 May 1998;[81] (4) 13 October 2009;[82] (5) 19 December 2013;[83] and (6) 18 March 2014.[84]

In any event, for a foundling to be granted citizenship, it is necessary that the child's status as a foundling be first established. It must be proven that the child has no known parentage before the state can grant citizenship on account of the child being a foundling. In the Philippines, a child is determined to be a foundling after an administrative investigation verifying that the child is of unknown parentage. The Implementing Rules and Regulations (IRR) of Act No. 3753[85] and Other Laws on Civil Registration provide that the *barangay* captain or police authority shall certify that no one has claimed the child or no one has reported a missing child with the description of the foundling.[86] Rule 29 of the said IRR provides:

> RULE 29. Requirements for Registration of Foundling. — No foundling shall be recorded in the civil registrar unless the following requirements are complied with:
>
> a) Certificate of Foundling (OCRG Form No. 101, Revised January 1993) accomplished correctly and completely;
>
> b) Affidavit of the finder stating the facts and circumstances surrounding the finding of the child, and the fact that the foundling has been reported to the barangay captain or to the police authority, as the case may be; and

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[78] See Francis Wharton, LL.D., A DIGEST OF THE INTERNATIONAL LAW OF THE UNITED STATES, Vol. II, 1886, p. 465, § 192 (Mr. Fish, Secretary of State, to Mr. Davis, January 14, 1875, MSS. Inst., Germ. XVI 6). See also Paul Weis, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW, Second Edition, 1979, p. 228 (https://books.google.com.ph/books?id=hSLGDXqXeegC&printsec=frontcover&dq=paul+weis+nationality&hl=en&sa=X&redir_esc=y#v=onepage&q=paul%20weis%20nationality&f=false; last accessed on 2 March 2016).

[79] Philippine Passport No. F927287.

[80] Philippine Passport No. L881511.

[81] Philippine Passport No. DD156616.

[82] Philippine Passport No. XX4731999.

[83] Philippine Passport No. DE0004530.

[84] Philippine Passport No. EC0588861.

[85] Civil Registry Law, 27 February 1931.

[86] See Rules 26-30, IRR of Act No. 3753 and Other Laws on Civil Registration, 18 December 1992.

> c) **Certification of the *barangay* captain or police authority regarding the report made by the finder, stating among other things, that no one has claimed the child or no one has reported a missing child whose description may be the same as the foundling as of the date of the certification**. (Emphasis supplied)

Before a foundling is conferred Philippine citizenship, there must first be a factual determination of the child's status as a foundling after an administrative investigation. Once factually determined that a child is a foundling, that child through its guardian may thereafter initiate proceedings to apply for Philippine citizenship, e.g., apply for a Philippine passport.

This need for a factual determination prevents the foundling from automatically acquiring Philippine citizenship at birth. The fact of unknown parentage must first be proven in an administrative proceeding before a foundling is granted citizenship on account of the child's foundling status. Such factual determination is a necessary act to acquire Philippine citizenship, preventing the foundling from being a natural-born Filipino citizen. In contrast, for natural-born Filipino citizens, no factual determination in an administrative proceeding is required to grant citizenship since the certificate of live birth speaks for itself – it establishes natural-born citizenship.

Erroneous Interpretation of Statistics

During the Oral Arguments, the Solicitor General insisted that petitioner is a natural-born Filipino citizen based on the 99.93% statistical probability that any child born in the Philippines from 2010 to 2014 would be a natural-born Filipino citizen. From 1965 to 1975, there is a 99.83% statistical probability that a child born in the Philippines would be a natural-born Filipino citizen. To buttress his position, the Solicitor General presented a certification from the Philippine Statistics Authority showing the "**number of foreign and Filipino children born in the Philippines: 1965-1975 and 2010-2014**."

This is grave error.

There is no law or jurisprudence which supports the Solicitor General's contention that natural-born citizenship can be conferred on a foundling based alone on statistical probability. Absent any legal foundation for such argument, the Solicitor General cannot validly conclude that a 99.93% (or 99.83%) statistical probability that a foundling born in the Philippines is a natural-born Filipino citizen legally confers on such foundling natural-born citizenship. There is no constitutional provision or statute that confers natural-born citizenship based on statistical probability.

The Solicitor General's data speak of **foreign and Filipino births** in the Philippines. The data collected show the number of foreign and Filipino children born in the Philippines during the periods covered. This means that the figures reflect the total number of children born in the Philippines with **known parents, either Filipino or foreigner.** The data do not show the number of foundlings (those with unknown parentage) born in the Philippines from 1965 to 1975 and from 2010 to 2014. The data also do not show the number of foundlings who were later determined to have Filipino parentage. This is precisely because foundlings have unknown parents. A foundling's unknown parentage renders it quite difficult, if not impossible, to collect data on "the number of foreign and Filipino foundlings."

For the Solicitor General's proposition to be correct, he should have presented statistics specifically based on the number of foundlings born in the Philippines, and not on the number of children born in the Philippines with known foreign or Filipino parents. Children with known parents constitute a class entirely different from foundlings with unknown parents. Gathering data from the number of children born in the Philippines with known parents to determine the number of foundlings born in the Philippines to confer natural-born citizenship on foundlings resembles comparing apples with oranges and avocados. Since the figures were collected from the universe of children with known parents, either Filipinos or foreigners, and not from the universe of foundlings, the Solicitor General's proposition is fallacious in concluding that foundlings in the Philippines are natural-born Filipino citizens.

Further, if there is a 99.93% (or 99.83%) probability that a child born in the Philippines is a natural-born Filipino citizen, it does not automatically follow that there is a 99.93% (or 99.83%) probability that a foundling born in the Philippines is a natural-born Filipino citizen. The data, if any, on the universe of foundlings may show a different statistical probability. There is evidently no such statistical data. Therefore, the Solicitor General's argument that the probability that a foundling born in the Philippines would be a natural-born Filipino is 99.93% (or 99.83%) based on the number of children born in the Philippines with known parents is glaringly *non-sequitur.*

The following exchange between Justice Carpio and the Solicitor General illustrates the fallacy of the so-called 99.93% (99.83%) statistical probability advanced by the Solicitor General. Such statistical probability would result in patent absurdities.

JUSTICE CARPIO:

Now, how does the Constitution define natural-born citizen?

x x x x

SOLICITOR GENERAL HILBAY:

Natural-born citizens of the Philippines from birth without having to perform any act to acquire or perfect their citizenship.

JUSTICE CARPIO:

Okay. Let us assume that an infant is found, a three-day infant is found today in front of the Manila Cathedral. The infant has blue eyes, blonde hair, milky white skin. The parish priest looks around and doesn't find any one claiming the child. So, the parish priest goes to the DSWD, turns over the child to the DSWD. The DSWD conducts an investigation, a formal investigation, to find out if the biological parents are around if they can be found. Nobody comes out, so the DSWD issues a foundling certificate, okay. What is the nationality of the child? Is the child a natural-born citizen of the Philippines?

SOLICITOR GENERAL HILBAY:

I would consider the child a natural-born citizen of the Philippines because 99.9 percent of the time, that child will be a natural-born citizen.

JUSTICE CARPIO:

So even if the child has blue eyes, blonde hair, Caucasian skin...

SOLICITOR GENERAL HILBAY:

It's possible for Filipinos to have blue eyes, Your Honor.

JUSTICE CARPIO:

Blonde hair?

SOLICITOR GENERAL HILBAY:

It's possible Your Honor.

JUSTICE CARPIO:

How many percent?

SOLICITOR GENERAL HILBAY:

Again, Your Honor, if we are looking at percentage....

JUSTICE CARPIO:

How many percent of Filipinos, natural-born, have blue eyes, blonde hair, white skin, 99.9 percent?

SOLICITOR GENERAL HILBAY:

I don't know about the specific numbers.....

x x x x

JUSTICE CARPIO:

You don't have the statistics.

x x x x

SOLICITOR GENERAL HILBAY:
I don't, Your Honor, I don't.

x x x x

JUSTICE CARPIO:
So, you would say that every child born in the Philippines who has blue eyes, blonde hair, white skin, whose parents cannot be found, and there is a certificate by the DSWD that's a foundling, they are all natural-born citizens of the Philippines. If Filipino....

SOLICITOR GENERAL HILBAY:
Your Honor, I am not threatened by people with blue eyes and, you know, blonde...

JUSTICE CARPIO:
Yes, but my question is, what is the nationality of those children, of those infants?

SOLICITOR GENERAL HILBAY:
Natural-born Filipinos still, Your Honor.

x x x x

JUSTICE CARPIO:
Supposing now, there is a DNA taken from the child[ren], you say they are natural-born citizens. The DNA shows that they have Caucasian genes, no Asian genes at all, would you say they are natural-born citizens of the Philippines?

SOLICITOR GENERAL HILBAY:
Well, it's possible for Caucasians to be Filipinos, Your Honor, and natural-born Filipinos.

JUSTICE CARPIO:
If their parents are Filipinos.

SOLICITOR GENERAL HILBAY:
Yes, exactly, Your Honor.

JUSTICE CARPIO:
But if you don't know who their parents....

SOLICITOR GENERAL HILBAY:
Then I, again, would go back to 99.9 percent, which is a rather comfortable number for me.

JUSTICE CARPIO:
Yes, but how many percent of Filipinos have blue eyes, blonde hair and white skin?

SOLICITOR GENERAL HILBAY:
That is an irrelevant fact for me, Your Honor. I'm not looking at the class of citizens....

x x x x

JUSTICE CARPIO:
You have to look at the statistics also.

SOLICITOR GENERAL HILBAY:
Yes, Your Honor, of course.[87] (Emphasis supplied)

For the Solicitor General to assert that a foundling with blond hair, blue eyes, and milky white Caucasian skin, with no Asian gene in the foundling's DNA, is a natural-born Filipino citizen, is the height of absurdity. The Solicitor General's position amends the Constitution and makes *jus soli* the governing principle for foundlings, contrary to the *jus sanguinis* principle enshrined in the 1935, 1973, and 1987 Constitutions.

Philippine Laws and Jurisprudence on Adoption Not Determinative of Natural-Born Citizenship

During the Oral Arguments, the Chief Justice cited Republic Act No. 8552 (RA 8552) or the *Domestic Adoption Act of 1998* and Republic Act No. 8043 (RA 8043) or the *Inter-Country Adoption Act of 1995* in arguing that there are domestic laws which govern the citizenship of foundlings.

This is an obvious mistake.

The term "natural-born Filipino citizen" does not appear in these statutes describing qualified adoptees. In fact, while the term "Filipino" is mentioned, it is found only in the title of RA 8552 and RA 8043. The texts of these adoption laws do not contain the term "Filipino." Specifically, the provisions on the qualified adoptees read:

RA 8552, Section 8

Section 8. *Who May Be Adopted.* – The following may be adopted:
(a) Any person below eighteen (18) years of age who has been administratively or judicially declared available for adoption;

(b) The legitimate son/daughter of one spouse by the other spouse;

(c) An illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy;

(d) A person of legal age if, prior to the adoption, said person has been

[87] TSN, 16 February 2016, pp. 152-157.

> consistently considered and treated by the adopter(s) as his/her own child since minority;
>
> (e) A child whose adoption has been previously rescinded; or
>
> (f) A child whose biological or adoptive parent(s) has died: *Provided,* That no proceedings shall be initiated within six (6) months from the time of death of said parent(s).
>
> **RA 8053, Section 8**
>
> *Sec. 8. Who May be Adopted.* — Only a legally free child may be the subject of inter-country adoption. x x x.

Clearly, there is no specific provision in these adoption laws requiring that adoptees must be Filipinos, much less natural-born Filipinos. These adoption laws do not distinguish between a Filipino child and an alien child found in the Philippines, and thus these adoption laws apply to both Filipino and alien children found in the Philippines. In other words, either Filipino or alien children found in the Philippines, over which the Philippine government exercises jurisdiction as they are presumed domiciled in the Philippines, may be subject to adoption under RA 8552 or RA 8043.

However, the Implementing Rules and Regulations of RA 8552, issued by the Department of Social Welfare and Development, provide that they shall "apply to the adoption in the Philippines of a *Filipino child* by a Filipino or alien qualified to adopt under Article III, Section 7 of RA 8552."[88] The IRR, in effect, restricted the scope of RA 8552 when the IRR expressly limited its applicability to the adoption of a Filipino child when the law itself, RA 8552, does not distinguish between a Filipino and an alien child. In such a case, the IRR must yield to the clear terms of RA 8552. Basic is the rule that the letter of the law is controlling and cannot be amended by an administrative rule. In *Perez v. Phil. Telegraph and Telephone Co.*,[89] the Court declared:

> At the outset, we reaffirm the time-honored doctrine that, **in case of conflict, the law prevails over the administrative regulations implementing it.** The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope. (Emphasis supplied)

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[88] Section 2 of the Implementing Rules and Regulations pertinently reads:

SECTION 2. Applicability. – These Rules shall apply to the adoption in the Philippines of a Filipino child by a Filipino or alien qualified to adopt under Article III, Section 7 of RA 8552.

x x x x

[89] 602 Phil. 522, 537 (2009).

In *Hijo Plantation, Inc. v. Central Bank of the Philippines,*[90] the Court ruled:

> x x x [I]n case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law. Rules that subvert the statute cannot be sanctioned.

In *Cebu Oxygen & Acetylene Co., Inc. v. Drilon,*[91] the Court stated:

> x x x **[I]t is a fundamental rule that implementing rules cannot add or detract from the provisions of law it is designed to implement.** The provisions of Republic Act No. 6640, do not prohibit the crediting of CBA anniversary wage increases for purposes of compliance with Republic Act No. 6640. The implementing rules cannot provide for such a prohibition not contemplated by the law.
>
> **Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. The law itself cannot be expanded by such regulations. An administrative agency cannot amend an act of Congress.** (Emphasis supplied)

The following exchange during the Oral Arguments highlights the Chief Justice's glaringly erroneous interpretation of RA 8552 and RA 8043, thus:

> JUSTICE CARPIO:
> Okay, Let's go to x x x adoption laws. x x x [W]e have an adoption law, correct?
>
> COMMISSIONER LIM:
> Yes, Your Honor.
>
> JUSTICE CARPIO:
> x x x Republic Act...8552?
>
> COMMISSIONER LIM:
> Yes, Your Honor.
>
> JUSTICE CARPIO:
> It says who can be adopted, correct? Who may be adopted? Section 8, correct?
>
> COMMISSIONER LIM:
> Yes, Your Honor.

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[90] 247 Phil. 154, 162 (1988). Citations omitted.
[91] 257 Phil. 23, 29 (1989).

JUSTICE CARPIO:

Does it say there that the adoptee must be a citizen of the Philippines?

COMMISSIONER LIM:

Yes, Your Honor.

JUSTICE CARPIO:

x x x Can you read Section 8.

COMMISSIONER LIM:

I stand corrected, Your Honor, it does not require citizenship.

JUSTICE CARPIO:

There is no requirement.

COMMISSIONER LIM:

Yes, Your Honor.

JUSTICE CARPIO:

Because the law covers citizens of the Philippines and children not citizens of Philippines but found here.

COMMISSIONER LIM:

Yes, Your Honor.

JUSTICE CARPIO:

If a foundling cannot be shown to be a citizen of the Philippines, can we exercise jurisdiction and have that child adopted?

COMMISSIONER LIM:

Yes, Your Honor.

JUSTICE CARPIO:

Do we have the power, the State has the power? Yes, because a foundling is deemed to be domiciled where?

COMMISSIONER LIM:

In the place of his birth.

JUSTICE CARPIO:

If his place [of] birth is unknown, where is he presumed to be domiciled?

COMMISSIONER LIM:

He is presumed to be domiciled in the territory of the State where the foundling is found.

JUSTICE CARPIO:

Yes, because the domicile of a foundling is presumed to be where he is found.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
That's why the State has jurisdiction over him for adoption purposes. And if no other State will claim him with more reason, we will have jurisdiction over a foundling, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Okay. So, the law does not distinguish whether Philippine citizen or non-Philippine citizen, whether natural born-Filipinos or naturalized, none. There's no distinction?

COMMISSIONER LIM:
That's correct, Your Honor.

JUSTICE CARPIO:
Okay. Let's go to the Supreme Court x x x rule on adoption. We adopted this in 2002. What does it say? Who may be adopted?

COMMISSIONER LIM:
Any person below 18 years of age...

JUSTICE CARPIO:
Does it say that only citizens of the Philippines?

COMMISSIONER LIM:
No, Your Honor.

JUSTICE CARPIO:
There's no...

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
...nothing there which says only citizens of the Philippines can be adopted.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Precisely because we don't know the citizenship of a foundling.

COMMISSIONER LIM:
That's right, Your Honor.

JUSTICE CARPIO:
That's why it's not required that he would be a Filipino, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Okay. Let's go to the implementing rule and regulation of R.A. 8552. x x x. It says here, this is an implementing rule and regulation to implement Republic Act 8552. So this was promulgated by the administrative agency, by DSWD, correct?

COMMISSIONER LIM:
Correct, Your Honor.

JUSTICE CARPIO:
Okay. It says here applicability, Section 2, the Rule shall apply to the adoption in the Philippines of a Filipino child by a Filipino or alien qualified to adopt. So it limits adoption to Philippines citizens, to a Filipino child?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Okay, This is supposed to implement the law. Can the implementing rules restrict the law?

COMMISSIONER LIM:
Water cannot rise higher than its source, Your Honor...

JUSTICE CARPIO:
Okay.

COMMISSIONER LIM:
The IRR....

JUSTICE CARPIO:
Do you have a decision, jurisprudence for that, that an Implementing Rule cannot expand and cannot deduct from what the law provides?

COMMISSIONER LIM:
I cannot cite one now, Your Honor.

JUSTICE CARPIO:
Okay. *Cebu Oxygen v. Drilon,* x x x. It says here it is a fundamental rule that Implementing Rules cannot add or detract from the provisions of law it is designed to implement. x x x. But this implementing rule says only Filipinos can be adopted. That cannot be done, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Fundamental rule, if the Court says fundamental rule, all practicing lawyers must know that, correct?

COMMISSIONER LIM:
Yes, Your Honor.[92]

Moreover, contrary to the opinion of the Chief Justice during the Oral Arguments, the cases of *Ellis v. Republic of the Philippines*[93] and *Duncan v. CFI Rizal*[94] do not apply in this case since the *Ellis* and *Duncan* cases do not involve foundlings or their citizenship. These two cases are about adoption, not about citizenship or foundlings.

In *Ellis*, the only issue before the Court was whether petitioners, not being permanent residents in the Philippines, were qualified to adopt Baby Rose. The citizenship of the abandoned Baby Rose was not put in issue. Baby Rose's mother was known since she delivered Baby Rose at the Caloocan Maternity Hospital but left Baby Rose four days later to the Heart of Mary Villa, an institution for unwed mothers and their babies. The Court in *Ellis* stated:

> Baby Rose was born on September 26, 1959, at the Caloocan Maternity Hospital. Four or five days later, the mother of Rose left her with the Heart of Mary Villa — an institution for unwed mothers and their babies — stating that she (the mother) could not take of Rose without bringing disgrace upon her (the mother's family.).[95]

In short, Baby Rose was not a foundling because her mother was known. The Court merely mentioned in the decision that Baby Rose was a "citizen of the Philippines," thus, the local courts have jurisdiction over her status. The term "natural-born Filipino citizen" is not found in the decision.

On the other hand, the case of *Duncan* involved solely the issue of whether or not the person who gave the consent for adoption, Atty. Corazon de Leon Velasquez, was the proper person required by law to give such consent. The unwed mother entrusted the baby to Atty. Velasquez who knew the mother. The Court in *Duncan* stated:

> Sometime in May of 1967, the child subject of this adoption petition, undisputedly declared as only three days old then, was turned over by its mother to witness Atty. Corazon de Leon Velasquez. The natural and unwedded mother, from that date on to the time of the adoption proceedings in court which started in mid- year of said 1967, and up to the

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92 TSN, 2 February 2016, pp. 135-141.
93 117 Phil. 976 (1963).
94 161 Phil. 397 (1976).
95 Supra note 93, at 978.

> present, has not bothered to inquire into the condition of the child, much less to contribute to the livelihood, maintenance and care of the same. x x x.We are convinced that in fact said mother had completely and absolutely abandoned her child.[96]

In short, the baby was not a foundling because the mother was known. Again, the Court did not mention the term "natural-born Filipino citizen." Neither did the Court classify the abandoned infant as a Filipino citizen.

Burden of Proof

Any person who claims to be a citizen of the Philippines has the burden of proving his or her Philippine citizenship.[97] Any person who claims to be qualified to run for the position of President of the Philippines because he or she is, among others, a natural-born Filipino citizen, has the burden of proving he or she is a natural-born Filipino citizen. Any doubt whether or not he or she is natural-born Filipino citizen is resolved against him or her. The constitutional requirement of a natural-born citizen, being an express qualification for election as President, must be complied with strictly. As the Court ruled in *Paa v. Chan*:[98]

> It is incumbent upon the respondent, who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. **No presumption can be indulged in favor of the claimant of Philippine citizenship**, and any doubt regarding citizenship must be resolved in favor of the State.[99] (Emphasis supplied)

This statement in *Paa* was reiterated in the 2009 case of *Go, Sr. v. Ramos*.[100] *Paa* and *Go* lay down three doctrines: *First*, a person claiming Philippine citizenship has the burden of proving his claim. *Second*, there can be no presumption in favor of Philippine citizenship. This negates petitioner's claim to any presumption that she is a natural-born Filipino citizen. *Third*, any doubt on citizenship is resolved against the person claiming Philippine citizenship. Therefore, a person claiming to be a Filipino citizen, whether natural-born or naturalized, cannot invoke any presumption of citizenship but must establish such citizenship as a matter of fact and not by presumptions, with any doubt resolved against him or her.

While it is the burden of the private respondents to first prove the fact of disqualification before the petitioner is called upon to defend herself with

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[96] Supra note 94, at 407.
[97] Carpio, J., Dissenting Opinion, *Tecson v. Comelec,* 468 Phil. 421, 634 (2004).
[98] 128 Phil. 815 (1967).
[99] Id. at 825.
[100] G.R. No. 167569, 4 September 2009, 598 SCRA 266.

countervailing evidence,[101] in this case, there is no dispute that petitioner is a foundling with unknown biological parents. Since petitioner's parentage is unknown as shown in her Certificate of Live Birth, such birth certificate does not show on its face that she is a natural-born Filipino citizen. This shifted the burden of evidence to petitioner to prove that she is a natural-born Filipino citizen eligible to run as President of the Philippines.

Since the Constitution requires that the President of the Philippines shall be a natural-born citizen of the Philippines, it is imperative that petitioner prove that she is a natural-born Filipino citizen, despite the fact that she is a foundling. The burden of evidence shifted to her when she admitted her status as a foundling with no known biological parents. At that moment, it became her duty to prove that she is a natural-born Filipino citizen.[102]

DNA Evidence

As the burden of evidence has shifted to petitioner, it is her duty to present evidence to support her claim that she is a natural-born Filipino citizen, and thus eligible to run for President. The issue of parentage may be resolved by conventional methods or by using available modern and scientific means.[103] **One of the evidence** that she could have presented is deoxyribonucleic acid (DNA) evidence[104] which could conclusively show that she is biologically (maternally or paternally) related to a Filipino citizen, which in turn would determine whether she is a natural-born Filipino citizen.

The probative value of such DNA evidence, however, would still have to be examined by the Court. In assessing the probative value of DNA evidence, the Court would consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[105] More specifically, they must be evaluated in accordance with A.M. No. 06-11-5-SC or the Rule on DNA Evidence:[106]

> Sec. 9. Evaluation of DNA Testing Results. – In evaluating the results of DNA testing, the court shall consider the following:

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[101] *Fernandez v. HRET,* 623 Phil. 628 (2009).

[102] See *Reyes v. Commission on Elections*, G.R. No. 207264, 25 June 2013, 699 SCRA 522.

[103] *Tijing v. Court of Appeals*, 406 Phil. 449 (2001).

[104] In *Tijing v. Court of Appeals*, 406 Phil. 449 (2001), the Court held that to establish parentage, the DNA from the mother, alleged father and child are analyzed since the DNA of a child, which has two copies, will have one copy from the mother and another copy from the father.

[105] See *People v. Vallejo*, 431 Phil. 798 (2002).

[106] Dated 2 October 2007.

> (a) The evaluation of the weight of matching DNA evidence or the relevance of mismatching DNA evidence;
> (b) The results of the DNA testing in the light of the totality of the other evidence presented in the case; and that
> (c) DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity. If the value of the Probability of Paternity[107] is less than 99.9% the results of the DNA testing shall be considered as corroborative evidence. If the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity.

Petitioner is Not a Natural-Born Filipino Citizen

The 1987 Philippine Constitution is clear: "No person may be elected President unless he is a **natural-born citizen of the Philippines**, x x x, and a resident of the Philippines for at least ten years immediately preceding such election." Is petitioner, being a foundling, a natural-born Filipino citizen?

The answer is clearly no. *First*, there is no Philippine law automatically conferring Philippine citizenship to a foundling at birth. Even if there were, such a law would only result in the foundling being a naturalized Filipino citizen, not a natural-born Filipino citizen.

Second, there is no legal presumption in favor of Philippine citizenship, whether natural-born or naturalized. Citizenship must be established as a matter of fact and any doubt is resolved against the person claiming Philippine citizenship.

Third, the letter and intent of the 1935 Constitution clearly excluded foundlings from being considered natural-born Filipino citizens. The Constitution adopts the *jus sanguinis* principle, and identifies natural-born Filipino citizens as only those whose fathers or mothers are Filipino citizens. Petitioner failed to prove that either her father or mother is a Filipino citizen.

Fourth, there is no treaty, customary international law or a general principle of international law granting automatically Philippine citizenship to a foundling at birth. Petitioner failed to prove that there is such a customary international law. At best, there exists a presumption that a foundling is domiciled, and born, in the country where the foundling is found.

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[107] Section 3(f) of the Rule on DNA Evidence defines "Probability of Parentage" as the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population.

Fifth, even assuming that there is a customary international law presuming that a foundling is a citizen of the country where the foundling is found, or is born to parents possessing the nationality of that country, such presumption cannot prevail over our Constitution since customary international law has the status merely of municipal statutory law. This means that customary international law is inferior to the Constitution, and must yield to the Constitution in case of conflict. Since the Constitution adopts the *jus sanguinis* principle, and identifies natural-born Filipino citizens as only those whose fathers or mothers are Filipino citizens, then petitioner must prove that either her father or mother is a Filipino citizen for her to be considered a natural-born Filipino citizen. Any international law which contravenes the *jus sanguinis* principle in the Constitution must of course be rejected.

Sixth, petitioner failed to discharge her burden to prove that she is a natural-born Filipino citizen. Being a foundling, she admitted that she does not know her biological parents, and therefore she cannot trace blood relation to a Filipino father or mother. Without credible and convincing evidence that petitioner's biological father or mother is a Filipino citizen, petitioner cannot be considered a natural-born Filipino citizen.

Seventh, a foundling has to perform an act, that is, prove his or her status as a foundling, to acquire Philippine citizenship. This being so, a foundling can only be deemed a naturalized Filipino citizen because the foundling has to perform an act to acquire Philippine citizenship. Since there is no Philippine law specifically governing the citizenship of foundlings, their citizenship is addressed by customary international law, namely: the right of every human being to a nationality, and the State's obligations to avoid statelessness and to facilitate the naturalization of foundlings.

During the Oral Arguments, the purportedly sad and depressing plight of foundlings if found not to be natural-born Filipino citizens, particularly their disqualification from being elected to high public office and appointed to high government positions, had been pointed out once again. As I have stated, this appeals plainly to human emotions.[108] This emotional plea, however, conveniently forgets the express language of the Constitution reserving those high positions, particularly the Presidency, exclusively to natural-born Filipino citizens. Even naturalized Filipino citizens, whose numbers are far more than foundlings, are not qualified to run for President. The natural-born citizenship requirement under the Constitution to qualify as a candidate for President must be complied with strictly. To rule otherwise

[108] See Joel Ruiz Butuyan, *Legal and emotional entanglements in Poe issue*, 6 October 2015, Philippine Daily Inquirer (http://opinion.inquirer.net/89141/legal-and-emotional-entanglements-in-poe-issue; last accessed on 2 March 2016).

amounts to a patent violation of the Constitution. It is basic in Constitutional Law that the qualification requirements prescribed by the Constitution must be complied with by all presidential candidates, regardless of popularity or circumstances. Being sworn to uphold and defend the Constitution, the Members of this Court have no other choice but to apply the clear letter and intent of the Constitution.

However, a decision denying natural-born citizenship to a foundling on the ground of absence of proof of blood relation to a Filipino parent never becomes final.[109] *Res judicata* does not apply to questions of citizenship. In *Moy Ya Lim Yao v. Commissioner of Immigration,*[110] cited in *Lee v. Commissioner of Immigration,*[111] this Court declared that:

> [e]very time the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand. x x x.

Likewise, in *Go, Sr. v. Ramos*,[112] which involved the citizenship of Jimmy T. Go, as well as his father Carlos, who was alleged to be an illegal and undesirable alien in our country and thus was subjected to deportation proceedings, the Court stated that citizenship cases are *sui generis* and *res judicata* does not apply in such cases:

> x x x Cases involving issues on citizenship are *sui generis*. Once the citizenship of an individual is put into question, it necessarily has to be threshed out and decided upon. In the case of *Frivaldo v. Commission on Elections*, we said that decisions declaring the acquisition or denial of citizenship cannot govern a person's future status with finality. This is because a person may subsequently reacquire, or for that matter, lose his citizenship under any of the modes recognized by law for the purpose. Indeed, if the issue of one's citizenship, after it has been passed upon by the courts, leaves it still open to future adjudication, then there is more reason why the government should not be precluded from questioning one's claim to Philippine citizenship, especially so when the same has never been threshed out by any tribunal.
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> x x x x

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[109] See *Kilosbayan Foundation v. Ermita*, 553 Phil. 331, 343-344 (2007), where the Court stated in the dispositive portion of the Decision that "respondent Gregory S. Ong x x x is hereby ENJOINED from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship."

[110] 148-B Phil. 773, 855 (1971).

[111] 149 Phil. 661, 665 (1971).

[112] Supra note 100, at 288, 290-291.

> Citizenship proceedings, as aforestated, are a class of its own, in that, unlike other cases, *res judicata* does not obtain as a matter of course. In a long line of decisions, this Court said that every time the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res judicata*; hence, it has to be threshed out again and again as the occasion may demand. *Res judicata* may be applied in cases of citizenship only if the following concur:
>
> 1. a person's citizenship must be raised as a material issue in a controversy where said person is a party;
>
> 2. the Solicitor General or his authorized representative took active part in the resolution thereof; and
>
> 3. the finding or citizenship is affirmed by this Court.

Consequently, if in the future, petitioner can find a DNA match to a Filipino parent, or any other credible and convincing evidence showing her Filipino parentage, then petitioner can still be declared a natural-born Filipino citizen.

Not being a natural-born Filipino citizen, petitioner is a nuisance candidate whose certificate of candidacy for President can *motu proprio* be cancelled by the COMELEC. In fact, the COMELEC is duty-bound to cancel petitioner's COC because to allow a person who, as found by the COMELEC is not a natural-born Filipino citizen, to run for President makes a mockery of the election process. Since petitioner is not a natural-born Filipino citizen, I deem it irrelevant to discuss the issue of whether petitioner complied with the ten-year residency requirement to run for President. At any rate, assuming petitioner is a natural-born Filipino citizen, which she is not, I concur with Justice Mariano C. Del Castillo's Dissenting Opinion on the residency issue.

A final word. The Constitution defines natural-born citizens as "those who are citizens of the Philippines **from birth without having to perform any act to acquire or perfect their Philippine citizenship**." "**From birth**" means that the possession of natural-born citizenship starts at birth and continues to the present without interruption. The phrase "**without having to perform any act to acquire or perfect their Philippine citizenship**" means that a person is not a natural-born Filipino citizen if he or she has to take an oath of allegiance before a public official to acquire or reacquire Philippine citizenship. This precludes the reacquisition of natural-born citizenship that has been lost through renunciation of Philippine citizenship. The fact that the reacquisition of citizenship is made possible **only** through

legislation by Congress – Republic Act No. 9225[113] – means that Philippine citizenship is acquired pursuant to paragraph (4), Section 1 of Article IV of the 1987 Constitution, referring to "[t]hose who are naturalized in accordance with law."

In short, natural-born Filipino citizens who have renounced Philippine citizenship and pledged allegiance to a foreign country have become **aliens**, and can reacquire Philippine citizenship, just like other aliens, only if "**naturalized in accordance with law.**" Otherwise, a natural-born Filipino citizen who has **absolutely renounced and abjured allegiance to the Philippines** and pledged sole allegiance to the United States, undertaking to bear arms against any foreign country, including the Philippines, when required by U.S. law,[114] could still become the Commander-in Chief of the Armed Forces of the Philippines by performing a simple act – taking an oath of allegiance before a Philippine public official – to reacquire natural-born Philippine citizenship. The framers of the Constitution, and the Filipino people who ratified the Constitution, could not have intended such an anomalous situation. For this reason, this Court should one day revisit the doctrine laid down in *Bengson III v. HRET.*[115]

ACCORDINGLY, there being no grave abuse of discretion on the part of the Commission on Elections *En Banc*, I vote to **DISMISS** the petitions.

ANTONIO T. CARPIO
Associate Justice

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[113] Citizenship Retention and Re-acquisition Act of 2003.

[114] The oath of allegiance to the United States that naturalized Americans take states:

> I hereby declare, on oath, that **I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen**; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; **that I will bear arms on behalf of the United States when required by the law**; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

(https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america; last accessed on 7 March 2016). Emphasis supplied.

[115] 409 Phil. 633 (2001).